

THE STATE of SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHESTER COUNTY
Court of Common Pleas
John C. Hayes, III, Circuit Court Judge
Brian M. Gibbons, Circuit Court Judge
J. Mark Hayes, II, Circuit Court Judge

Appellate Case Nos. 2022-001312 and 2022-001390

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten is Petitioner,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Co, John Ammendola, Trustgard Insurance Company, Blackwell, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does, Defendants,

Of whom Kevin Carter is the Respondent.

APPELLANT'S COMBINED
TITLE II And TITLE III of the AMERICANS with DISABILITIES ACT
REASONABLE ACCOMODATION REQUEST
To ACCEPT as TIMELY FILED And
GRANT MOTION FOR EXTENSION of TIME
To FILE PETITION FOR A WRIT OF CERTIORARI and APPENDIX, And
To Serve Respondents by Email

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COMES NOW Petitioner, Heidi Gersten (“GERSTEN”), pursuant of/to The Golden Rule, Title II and Title III of the Americans with Disabilities Act (“ADA”) Reasonable Accommodation Request, Order 2014-07-16-01 of the Supreme Court of South Carolina dated July 16, 2014 (<http://www.sccourts.org/whatnew.cfm?indexID=963>), Rule 242, SCACR, Rule 263 (b), SCACR, and any, and all applicable law, and kindly moves and seeks this Supreme Court of South Carolina (“COURT”) for a grant of entry of an order(s) of extension of time permitting GERSTEN to file her writ of certiorari and appendix in the above stated case numbers 2022-001312 and 2022-001390 within forty (40) days, up until and including April 21, 2025, and to permit her to serve the Respondents by email, for the following grounds, reasons, and basis for this request and motion are set forth in her attached memorandum in support.

MEMORANDUM IN SUPPORT OF APPELLANT’S COMBINED TITLE II And
TITLE III of the AMERICANS with DISABILITIES ACT REASONABLE
ACCOMODATION REQUEST to ACCEPT as TIMELY FILED and
GRANT MOTION FOR EXTENSION of TIME to FILE PETITION FOR A
WRIT OF CERTIORARI and APPENDIX,
And To Serve Respondents by Email

INTRODUCTION

On February 10, 2025, the South Carolina Court of Appeals issued an ORDER stating, “After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is not basis for granting a rehearing. Accordingly, the petition for rehearing is denied.” (Exhibit A)

As stated in part, in RE: Extensions in Cases Seeking a Petition for a Writ of Certiorari to Review a Decision of the South Carolina Court of Appeals from Order 2014-07-16-01 of the Supreme Court of South Carolina dated July 16, 2014, “Under Rule 242 of the South Carolina Appellate Court Rules (SCACR), a party may seek review of a decision of the South Carolina Court of Appeals by filing a petition for a writ for certiorari and appendix with this Court...”

The said order dated July 16, 2014 further states in pertinent part, “Accordingly, this Court establishes the following policy regarding extensions in cases filed under Rule 242, SCACR:

- (1) Upon a showing of good cause, a party (or multiple parties if represented by the same counsel) may be granted extensions totaling no more than twenty (20) days during the proceedings before this Court. If multiple extensions are taken within the

twenty (20) day cumulative limit, the minimum period that can be requested is five (5) days.

- (2) Any extension beyond the twenty (20) days specified in (1) above will be granted only if extraordinary circumstances such as illness or other circumstances beyond the control of the movant warrant the granting of the extension. The parties are warned that the press of other business is not an extraordinary circumstance which will warrant the granting of an extension. These extensions will generally be granted for no more than ten (10) days.

Rule 263, SCACR, states in part **(b) Extending and Diminishing Time Prescribed by These Rules**. The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.

This filing is made before the expiration of time to serve and file a writ of certiorari and appendix.

This is a complex matter.

Additional time is required to complete the writ of certiorari and its appendix until and including April 21, 2025.

This COURT has previously granted GERSTEN an extension to serve a petition for writ of certiorari and appendix for Appellate Case No. 2019-001484. (Exhibit B)

GERSTEN is paralyzed disabled as a result of the 2015 collision in controversy.

GERSTEN is paralyzed which causes her to be substantially limited on one or more of her major life activities and she is now a qualified individual of and protected under the Americans with Disabilities Act

(ADA). She has no caregiver, personal aid, or assistance to help her with daily functions. She lives under extreme hardship and extraordinary circumstances.

A disability is considered an "extraordinary circumstance," meaning it is a situation that is unusual, unexpected, and beyond a person's typical control, often warranting special consideration or flexibility in rules or procedures, especially for a paralyzed disabled who has no help from a caregiver, aid, or any assistance in daily life, as GERSTEN is going through.

The term "extraordinary circumstances" includes disability, as well as ongoing or sudden illness including health related issues, such as the secondary complications of paralysis, like noncontagious pressure wounds and total loss of control over bowel movements, bladder, and other incontinence issues GERSTEN suffers from daily since the said collision in controversy.

GERSTEN's disability of being paralyzed with illness of multiple secondary complications that include noncontagious pressure wounds, along with incontinent issues due to her total loss of control of bowel movements and bladder, coupled with no caregiver, aid, or assistance in her daily life, renders her incapable of asserting or defending her claims in a timely manner, along with years of active litigation.

On February 15, 2023, the South Carolina Court of Appeal issued an ORDER granting GERSTEN's request to serve filings upon Respondents

via email. (Exhibit C)

LAW and ARGUMENT

GERSTEN is a qualified individual of and protected under the ADA, which permits reasonable requests under Title II and Title III of the ADA.

This COURT is subject to the ADA.

The Americans with Disabilities Act of 1990 (ADA) requires that reasonable accommodations be provided on request to qualified persons with disabilities in order that they might fully participate in court programs, services, activities, and benefits: and it is presumed that the intent of the judiciary, is to comply fully with the ADA, to assure equity, fairness, and full participation in the judicial system for persons with disabilities, and to facilitate when requested by qualified persons with disabilities.

A reasonable accommodation is a change in the way things are typically done that the person needs because of a disability.

GERSTEN is paralyzed disabled which causes her to be substantially limited on one or more of her major life activities. She suffers from numerous secondary complications from being paralyzed that include, but are not limited to, a non contagious pressure wound located on her left buttocks that prevents her from sitting down for very long without further injury to it. (Exhibit D) In addition, she has no control over her bowel movements or bladder and frequently experiences diarrhea “attacks”, “explosions”, and “accidents”.

GERSTEN is a “vulnerable adult”; defined, in part, as a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. She has no caregiver or aid or assistance. She lives under extreme hardship and extraordinary circumstances.

For the previous reasons, and more, GERSTEN’s a qualified individual of and protected under the ADA.

A “qualified individual with a disability’ is defined as “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” *United States v. Georgia*, 546 U.S. at 153–54, 126 S.Ct. 877 (quoting 42 U.S.C. § 12131(2)).

GERSTEN simply is unable to perform at the level of an abled body. It takes her approximately fifty-two (52) times longer to complete basic daily functions or tasks than an abled body. She spends most of her days performing bowel movements, relieving her bladder with a catheter, and other self-care, like wound care, for example, that includes, but is not limited to, cleaning up after each perpetual function. She experiences frequent diarrhea attacks, explosions, and accidents that include unexpected bouts of urination throughout the day. It takes her between

two to five hours to perform the task of extracting at least one bowel movement daily. Using the digital stimulation technique often leaves her fingers pruned and numb and causes her to feel exhausted afterwards. She changes her diapers frequently and changes clothes and linens multiple times a day because of the excreta leakage out of the diaper. Due to the years of paralysis, the weight of her upper body crushing down on her lower half, especially while sitting, prolapse has occurred. GERSTEN must periodically push organs that protrude from her vagina and anus back into place. For these reasons and more, additional time is required for her to file her writ of certiorari and appendix. (Pictures and video available upon request; this is an offer of proof of evidence.)

“The ADA was passed by large majorities in both Houses of Congress [in 1990] after decades of deliberation and investigation into the need for comprehensive legislation to address discrimination against persons with disabilities.” Lane, 541 U.S. at 516, 124 S.Ct. 1978. “Congress found that ‘individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, [and] failure to make modifications to existing facilities and practices....’ ” *Crowder v. Kitagawa*, 81 F.3d 1480, 1483 (9th Cir.1996) (alteration in original) (quoting 42 U.S.C. § 12101(a)(5)). The ADA aims “to provide a clear and comprehensive national mandate for the elimination of discrimination

against individuals with disabilities. “42 U.S.C. § 12101(b)(1). “It forbids discrimination against persons with disabilities in three major areas of public life: employment, which is covered by Title I of the statute; public services, programs, and activities, which are the subject of Title II; and public accommodations, which are covered by Title III.” *Lane*, 541 U.S. at 516–17, 124 S.Ct. 1978

“Title II of the ADA [, ‘Public Services,] provides that ‘no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.’” *United States v. Georgia*, 546 U.S. at 153, 126 S.Ct. 877 (quoting 42 U.S.C. § 12132). The statute “require[s] that covered entities make reasonable accommodations in order to provide qualified individuals with an equal opportunity to receive benefits from or to participate in programs run by such entities.” *Tsombanidis v. West Haven Fire Dep’t*, 352 F.3d 565, 573 (2d Cir.2003) (internal quotation marks omitted). The ADA “defines ‘public entity’ to include ‘any State or local government’ and ‘any department, agency, ... or other instrumentality of a State.’” *United States v. Georgia*, 546 U.S. at 154, 126 S.Ct. 877 (quoting 42 U.S.C. § 12131(1)) (some internal quotation marks omitted). *United States v. Georgia*, 546 U.S. at 153– 54, 126 S.Ct. 877 (quoting 42 U.S.C. § 12131 (2)). “A public entity shall make reasonable modifications in policies, practices, or procedures when the

modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.”

Title III provides that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns ... or operates a place of public accommodation.” 42 U.S.C. § 12182(a). Courts have read the requirements of Title II and Title III as being consistent with each other:

“In the ADA, Congress provided [a] broad mandate” to “effectuate its sweeping purpose[to] ... forbid[] discrimination against disabled individuals in major areas of public life, [including] ... public services....” Id. at 675, 121 S.Ct. 1879. “As a remedial statute, the ADA must be broadly construed to effectuate its purpose of providing a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” *Noel v. New York City Taxi and Limousine Comm'n*, 687 F.3d 63, 68 (2d Cir.2012) (internal quotation marks omitted).

As noted above, “[i]n the ADA, Congress provided [a] broad mandate” to “effectuate its sweeping purpose[to] ... forbid[] discrimination against disabled individuals in major areas of public life, [including] ... public

services....” *Martin*, 532 U.S. at 675, 121 S.Ct. 1879. “Congress found that ‘individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, facilities and practices....’ ” *Crowder*, 81 F.3d at 1483 (alteration in original) (quoting 42 U.S.C. § 12101(a)(5)). The ADA aims “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. §12101(b)(1). Title II of the ADA represents Congress's attempt to apply this “clear and comprehensive national mandate” to the “services, programs, or activities,” 42 U.S.C. § 12132, of “ ‘any State or local government’ and ‘any department, agency, ... or other instrumentality of a State,’ ” *United States v. Georgia*, 546 U.S. at 154, 126 S.Ct. 877 (omission in original)(quoting 42 U.S.C. § 12131(1)). Congress clearly meant Title II to sweep broadly. If all state laws were insulated from Title II's reasonable modification requirement solely because they were state laws, “state law [would serve as] an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” in enacting Title II. *Marsh*, 499 F.3d at 177. Far from “provid[ing] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities,” 42 U.S.C. § 12101(b)(1), the ADA would be powerless to work any reasonable modification in any requirement imposed by state law, no matter how trivial the requirement

and no matter how minimal the costs of doing so. We conclude that the ADA's reasonable modification requirement contemplates modification to state laws, thereby permitting preemption of inconsistent state laws, when necessary to effectuate Title II's reasonable modification provision. And this statement must be considered in context. Title II provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

A grant of this Title II and Title III of the ADA request and motion does not fundamentally alter this COURT's policies, practices, or procedures, nor does it create any undue burden or financial or otherwise hardship on this COURT.

Please note that when responding to a Title II or Title III ADA REQUEST, which this COURT is subject to, as a government agency, and a place of public accommodations, and in commercial facilities, which this COURT is, should acknowledge receipt of the request, engage in an interactive process to understand the individual's needs, discuss potential accommodations, and provide a timely, detailed response outlining the approved accommodation (if applicable) or explaining why the requested accommodation cannot be provided, citing specific reasons related to undue burden or fundamental alteration of the program or service; always ensuring clear communication and respectful consideration of the

individual's disability-related needs.

CONCLUSION

This reasonable request under Title II and Title II of the ADA and motion are not made for the purposes of nor made to cause unnecessary delay, rather they are made in the interest and furtherance of justice, its equal protection, and to prevent and avoid a grave miscarriage.

THEREFORE, for the previous reasons and more, after showing good cause and extraordinary circumstances, GERSTEN is worthy of a grant(s) of her Title II and Title III of the ADA Reasonable Accommodation Request to accept as timely filed, and grant her motion for extension of time to file her writ of certiorari and appendix up until and including April 21, 2025, and permitting service upon Respondents by GERSTEN via email, including this filing, is proper, applying The Golden Rule.

Respectfully submitted this 12th day of March 2025,

_____/S/Heidi Gersten_____
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