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S.C. SUPREME COURT

THE STATE of SOUTH CAROLINA
In the 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 ACCOMMODATION REQUEST
To ACCEPT as TIMELY FILED And
WAIVE DEADLINE
To FILE PETITION FOR A WRIT OF CERTIORARI and APPENDIX, And
To Serve Future Filings Upon 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 requests, and seeks this Supreme Court of South Carolina (“COURT”) for a grant of entry of an order(s) waiving the deadline and for extension of time permitting GERSTEN to file her writ of certiorari and appendix in the above stated case numbers 2022-001312 and 2022-001390 up until and including May 1, 2025, and to permit her to serve the Respondents by email, for the following grounds, reasons, and basis for these requests 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 ACCOMMODATION REQUEST
To ACCEPT as TIMELY FILED And
WAIVE DEADLINE
To FILE PETITION FOR A WRIT OF CERTIORARI and APPENDIX, And
To Serve Future Filings Upon Respondents by Email

INTRODUCTION

On March 12, 2025, GERSTEN served and filed 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 requesting this COURT to grant GERSTEN's motion for extension of time up until and including April 21, 2025, and to permit her to serve documents to the Respondents via email.

On March 14, 2025, this COURT issued an order stating,

"The request for an extension to serve and file the petition for writ of certiorari is granted, and the time is extended for twenty days until April 1, 2025. Please refer to the order of the Supreme Court of South Carolina dated July 16, 2014 (<http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=963>),¹ regarding any further extension requests in this matter.

¹The Order provides that, in cases where a party seeks review of a decision of the Court of Appeals pursuant to Rule 242 of the South Carolina Appellate Court Rules, a party "may be granted extensions totaling no more than twenty (20) days during the proceedings before this Court." Extensions beyond twenty (20) days are permitted based only on "extraordinary circumstances such as illness or other circumstances beyond the control of the movant

[that] 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."

On May 12, 2025, GERSTEN, who is paralyzed disabled, and a qualified individual of and protected under the Americans with Disabilities Act ("ADA"), made several reasonable accommodation requests under Title II and Title III of the ADA, in her said filing, to this COURT.

1. For an extension of time up until and including April 21, 2025, to file her writ of certiorari and appendix; and
2. To serve Respondents by email.

Neither was granted according to her requests.

There was an extension of time until April 1, 2025; however, because it wasn't the amount of time GERSTEN requested, this COURT was required by law under the ADA to provide a written explanation of why the amount of time GERSTEN requested was not granted, citing specific reasons of how her request fundamentally altered the nature of the program or service; and/or how it was an undue hardship, financial or otherwise, upon this COURT. GERSTEN's request to serve the Respondents by email is still pending and there was no mention of it in the said order of March 14, 2025.

GERSTEN more than satisfied the requirements for a grant of her said requests made on March 12, 2025.

Due to her disability of being paralyzed, more time is required for her to file and serve her writ of certiorari and appendix, especially with the

added time it has taken GERSTEN to produce this filing, make paper copies, and place them into hand written addressed envelopes for the United States Postal Service to deliver, more time is required for her to file and serve her writ of certiorari and appendix, up until and including May 1, 2025.

On February 15, 2023, The South Carolina Court of Appeals issued an order, stating,

“Appellant’s request to serve future filings upon Respondents via email is granted. Appellant shall serve all future filings on each Respondent’s counsel via the email address listed for them in the Attorney Search database, which can be found at:
<https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>”

(Exhibit A)

“Exhibit C” of GERSTEN’s filing of March 12, 2025, was mistakenly attached as a duplicate of “Exhibit B” and should have been what is now attached as “Exhibit A” to this instant filing. (Exhibit A)

LAW and ARGUMENT

In situations where the Americans with Disabilities Act (ADA) and state laws conflict, the ADA, which is federal law, takes precedence.

In Mary Jo. C. v. New York State and Local Retirement System, 2013 WL322879 (2d Cir. Jan. 29, 2013), The Court of Appeals agreed, finding filing deadlines imposed by state law are not insulated from the reasonable accommodation requirements of the Americans with Disabilities Act (ADA). This means that individuals with disabilities can request accommodations to meet those deadlines. Filing deadlines can

act as a barrier for individuals with disabilities. Therefore, individuals with disabilities can request accommodations to meet these deadlines, such as extended time to file.

GERSTEN's disability of being paralyzed renders her incapable of asserting her claims or defenses in a timely manner, and prevents her from doing anything at the same level as an abled-body. It takes her approximately fifty-two (52) longer to perform simple basic daily functions that an abled-body can do. 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 lives under extreme hardship and extraordinary circumstances that include, but are not limited to, incontinence issues, such as total loss of control of bladder and bowel movements. She changes her diapers frequently and often has diarrhea accidents, explosions, and attacks. She uses the digital stimulation method to perform the task of extracting at least one bowel movement daily that takes between two (2) to four (4) hours or longer to complete. Using the digital stimulation technique or method 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 diapers. Cleanup is tedious and time consuming. . She has no caregiver, aide, or assistance in her daily life. Due to prolapse, which has

happened due to the years of her upper body crushing down on her lower half, especially from sitting, she periodically pushes organs protruding from her anus and vagina back into place. Secondary complications to paralysis include, but are not limited to, the illness of noncontagious pressure wounds. One is located in a precarious place on her left buttocks that is the most troubling and prevents her from sitting down for too long without further injury. (Exhibit B)

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 May 1, 2025.

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).

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, aide, 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 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 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)).

"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 second attempt at receiving a grant for GERSTEN's reasonable requests made under Title II and Title II of the ADA and motion on March 12, 2025, 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 of it.

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, waive the deadline, and grant her request for extension of time to file her writ of certiorari and appendix up until and including May 1, 2025, and to serve future filings upon Respondents via email by GERSTEN, including this filing, is proper, applying The Golden Rule.

Respectfully submitted this 1st day of April 2025,

_____/S/Heidi Gersten_____
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