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**Jun 12 2025**

**S.C. SUPREME COURT**

THE STATE of SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

Judge J. Mark Hayes, II, Circuit Court Judge

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Appellate Case No. 2025-000493

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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.

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PETITIONER'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 REPLY  
TO PETITION for a WRIT of CERTIORARI  
And APPENDIX

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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 reply and appendix to the Respondent Kevin Carter’s (“CARTER”) return to her petition for writ of certiorari (“PETITION”) and appendix in the above stated case number 2025-000493 up until and including September 10, 2025, for the following grounds, reasons, and basis for these requests are set forth in her attached memorandum in support.

MEMORANDUM IN SUPPORT OF PETITIONER'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 REPLY  
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**INTRODUCTION**

On June 2, 2025, CARTER served his return to GERSTEN's PETITION.

Rule 242 (g), SCACR, states, "The petitioner shall have ten (10) days from the date of service of the return to file with the Clerk of the Supreme Court a reply and proof of service showing that the reply has been served. The total length of the reply shall not exceed fifteen (15) pages."

This instant request has been served and filed before the expiration of the permitted time to reply.

GERSTEN has been previously granted two extensions totaling fifty (50) days by this COURT to file her PETITION. The last grant was issued by Chief Justice John W. Kittredge.

GERSTEN's PETITION was five (5) pages, excluding the cover page and last page, which only contained her electronic signature and contact information.

CARTER's RESPONSE was fifteen (15) pages, excluding the cover page, which is three (3) times the amount of pages, which will require GERSTEN to do an abundance of research and information gathering, among other things, to compose a reply that is to her satisfaction, which is most challenging to do paralyzed, and difficult if not impossible to comprehend for abled-bodies.

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>),<sup>1</sup> regarding any further extension requests in this matter.

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<sup>1</sup> The 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."

GERSTEN, who is paralyzed disabled, as a result of the collision in controversy, and a qualified individual of and protected under the Americans with Disabilities Act ("ADA"), requires more time to file and serve her reply due to her disability of being paralyzed, which renders her incapable of asserting or defending her claims in a timely manner.

In addition, GERSTEN woke up a few weeks ago with excruciating pain to her left shoulder area and was unable to lift it like usual. She could barely move because her left arm is the equivalent of an arm and a leg to her since being paralyzed. She now moves dramatically slower in an effort to regain her strength in it. Her left arm's use is required to make transfers onto and off of her manual wheelchair and to operate it requires the use of two hands. She has been less mobile lately and has found that progress is being made with recovery of what appears to be a strain in her left shoulder muscle area.

GERSTEN is not able to write or produce documents lying in bed. She is most productive sitting up in her wheelchair. Unfortunately with secondary complications of being paralyzed that include total loss of bladder control and bowel movements, pressure sores, coupled with no caregiver, aide, or assistance in her daily life, doing basic functions takes her at least fifty-two (52) times longer to perform than abled-bodies, and now much longer because of her injured shoulder area.

### **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 A)

This is a complex matter.

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 this ADA request 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**

GERSTEN's reasonable request for extension of time to file her reply made under Title II and Title III of the ADA is 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. CARTER is not prejudiced.

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 reply and appendix up until and including September 10, 2025, is proper, applying The Golden Rule.

Respectfully submitted this 12<sup>th</sup> day of June 2025,

\_\_\_\_\_/S/Heidi Gersten\_\_\_\_\_

Heidi Gersten, Petitioner

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