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SC Court of Appeals

IN 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 No. 2025-000493

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.

PETITIONER's EMERGENCY MOTION for
COMPREHENSIVE RELIEF UNDER
TITLE II / TITLE III of the AMERICANS with DISABILITIES ACT ("ADA"),
DUE PROCESS, AND FEDERAL SUPREMACY;
MOTION FOR 90-DAY EXTENSION;
REQUEST FOR CLARIFICATION OF "UNTIL" DEADLINE;
AND EMERGENCY CONSIDERATION
to Prevent Miscarriage of Justice Due to ADA Violations

Heidi Gersten
All Rights Reserved without Prejudice
1438 W. Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142
Paralyzed Disabled Petitioner

Wesley B. Sawyer
14406-B Forest Drive
P.O Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for the Respondent
Kevin Carter

TO THE HONORABLE CHIEF JUSTICE and ASSOCIATE JUSTICES of
THE SUPREME COURT of SOUTH CAROLINA, And TO ALL
CONCERNED:

Petitioner Heidi Gersten (“GERSTEN”), proceeding as a qualified individual
with paralysis under Title II and Title III of the Americans with Disabilities
Act (“ADA”), kindly and respectfully moves this Supreme Court of South
Carolina (“COURT”) for emergency relief as follows:

1. Declare that this COURT’s July 16, 2014 Order [limiting extensions to
twenty (20) days absent extraordinary circumstances] cannot override
GERSTEN’s federal ADA Title II / Title III and Due Process rights.
2. Provide a full 90-day extension—from today, August 1, 2025—until
and including October 30, 2025, for GERSTEN to file an amended
petition for writ of certiorari, an appendix, and any reply briefs, as
reasonable accommodation for her paralysis.
3. Clarify that “until” plus date includes that date, making filings on
dates the same as the “until” date timely under SCACR Rule 263.
4. Prohibit dismissal or waiver of GERSTEN’s reply to Respondent’s
Return by reason of non-filing by August 1, 2025, where GERSTEN
has spent the time documenting systematic ADA violations.

5. Provide emergency consideration and a decision within ten (10) days.

In support, GERSTEN shows:

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Initial Petition Period and First Extension Request

- March 12, 2025: GERSTEN filed “Combined Title II and Title III ADA Reasonable Accommodation Request” seeking a 40-day extension to April 21, 2025, to file petition and appendix, and to serve Respondents by email.
- March 14, 2025: A court clerk granted only 20 days—until April 1, 2025—citing the July 16, 2014 Order, without any written explanation or interactive process.

B. Second Extension Request

- April 1, 2025: GERSTEN filed a second Combined ADA request for 30 days (until May 1, 2025) and to serve future filings by email.
- April 3, 2025: Chief Justice granted until May 2, 2025, and categorically ruled “no further extensions” without explanation.

C. Filing of Petition and Return

- May 1, 2025: GERSTEN filed Petition for Writ of Certiorari.

- May 2, 2025: Chief Deputy Clerk sent letter reiterating July 16, 2014 Order controls all extension requests and directing compliance with Rule 242.
- June 2, 2025: Respondent filed Return to Petition.

D. Third Extension Request for Reply

- June 12, 2025: GERSTEN filed Combined ADA request for 90 days—until September 10, 2025—to file Reply to Return and Appendix.
- June 13, 2025: Chief Justice granted only 49 days—until August 1, 2025—and again declared “no further extensions.”

II. LEGAL ARGUMENT

A. ADA TITLE II SUPREMACY AND FEDERAL PREEMPTION

Under *Tennessee v. Lane*, 541 U.S. 509, 533–34 (2004), Title II applies to state courts and “seeks to enforce a fundamental right—the right of access to the courts.” Federal ADA requirements “supersede conflicting state procedural rules” under the Supremacy Clause. July 16, 2014 Order cannot override GERSTEN’s right to reasonable ADA accommodations.

B. REQUIRED INTERACTIVE PROCESS AND WRITTEN
EXPLANATION

1. Title II mandates an “interactive process” to identify limitations and accommodations, *Barnett v. U.S. Air*, 228 F.3d 1105, 1114 (9th Cir. 2000). Here, no clerk or justice engaged GERSTEN in any dialogue about her paralysis, alternatives, or timetable.
2. Federal precedent (Amendments to Pa. Rules 250–252) requires any denial/modification of an accommodation request be in writing with specific reasons. Neither the clerk’s March 14 nor the Chief Justice’s April 3 and June 13 orders of 2025 provided any rationale.

C. CLERK AUTHORITY LIMITED—ULTRA VIRES ACTIONS

Under *Duvall v. County of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001), ADA accommodation determinations are judicial, not ministerial. The clerk’s March 14, 2025 reduction of GERSTEN’s request to 20 days was beyond clerical authority.

D. CATEGORICAL DENIALS VIOLATE DUE PROCESS AND ADA

Blanket “no further extensions” statements constitute prohibited “categorical denials” without individualized assessment, *Bennett-*

Nelson v. La. Bd. of Regents, 431 F.3d 448, 454 (5th Cir. 2005). They foreclose future interactive process, violate equal protection, and deny meaningful court access.

E. MISCHARACTERIZATION OF ACCOMMODATIONS AS DISCRETIONARY EXTENSIONS

Chief Justice’s framing of ADA accommodations as mere “extensions” misconstrues GERSTEN’s rights as discretionary privileges. ADA Title II and Title III accommodations are civil rights remedies requiring federal compliance, not administrative favors.

III. NEED FOR EMERGENCY RELIEF

IV. Irreparable Harm

Continued denial of reasonable accommodations—loss of meaningful court access—constitutes per se irreparable harm. Imminent August 1, 2025 deadline will strip GERSTEN of her right to reply unless extended.

IV. Public Interest and Balance of Harms

Ensuring ADA compliance and due process serves the public interest in equal court access. No prejudice arises from a 90-day extension; only GERSTEN’s access is preserved.

IV. SPECIFIC RELIEF REQUESTED

GERSTEN kindly and respectfully requests this COURT to enter an Order(s):

1. Declaring GERSTEN's June 12, 2025 ADA request a valid Title II and/or Title III reasonable accommodation request superseding the said July 16, 2014 Order.
2. Granting GERSTEN a **90-day extension**, from August 1, 2025 through and including October 30, 2025, to file:
 - a. Amended Petition for Writ of Certiorari and Appendix;
 - b. Reply to Respondent's Return and any supplemental materials;
 - c. Serve Respondents by email.
3. Clarifying that "until August 1, 2025" includes that date under SCACR Rule 263.
4. Prohibiting dismissal or waiver of GERSTEN's right to reply if not filed by August 1, 2025, because time was used to address systematic ADA and due process violations.
5. Mandating that any future modifications or denials of GERSTEN's ADA requests be:
 - a. Accompanied by written explanations with specific reasons;
 - b. Based on documented interactive process;

c. Judicial—not clerical—determinations.

6. Appointing an ADA Coordinator for the Court to ensure compliance with Title II.

7. Expedited consideration with decision within ten (10) days.

V. CONCLUSION

For the foregoing reasons, GERSTEN kindly and respectfully requests immediate emergency relief as outlined above to vindicate her ADA Title II / Title III, due process, and equal protection rights and to preserve her meaningful access to this COURT's proceedings, and is proper applying The Golden Rule.

Kindly and respectfully submitted August 1, 2025,

_____/S/Heidi Gersten
Heidi Gersten, Paralyzed Disabled Petitioner
All Rights Reserved Without Prejudice
1438 W. Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142
hanginhangout@gmail.com

Other Counsel of Record

Wesley Brian Sawyer, Esquire (SC Bar # 100229)
Murphy & Grantland, P.A.
4406-B Forest Drive Columbia, SC 29206
P.O. Box 6648 Columbia, SC 29260
(803) 782-4100
wsawyer@murphygrantland.com
(Attorney for Respondents Kevin Carter and Richard Davis)

Pamela J. Larson, Esquire
WOMBLE BOND DICKINSON (US) LLP
5 Exchange St. Charleston, SC 29401-2948
PO Box 999 Charleston, SC 29402
(843) 213-5519 (843) 720-4630
pamela.larson@wbd-us.com
(Attorney for Respondents Nationwide Mutual Insurance Company and Joseph Tirbovich)

Shelley S. Montague, Esquire
Jessica W. Laffitte, Esquire Gallivan,
White & Boyd, P.A.
P.O. Box 7368 Columbia, SC 29202
smontague@gwblawfirm.com
jlaffitte@gwblawfirm.com
(Attorneys for Respondents Trustgard Insurance Company and John Ammendola)

William H. Davidson, II, Esquire
Davidson, Wren & Plyler, P.A. & DeMasters
P.O. Box 8568 Columbia, SC 29202
wdavidson@dml-law.com
(803)806-8222
(Attorney for Respondents SC Dept. of Public Safety and Herbert Blackwell)

Reynolds Williams
P.O. Box 1909 Florence, SC 29503-1909
(843) 662-3258
reynolds@willcoxlaw.com
(Attorney for Respondent Interinsurance Exchange of the Automobile Club)

PROOF OR CERTIFICATE OF SERVICE

I hereby certify that service of a true, genuine, and accurate copy of the

PETITIONER's EMERGENCY MOTION for
COMPREHENSIVE RELIEF UNDER
TITLE II / TITLE III of the AMERICANS with DISABILITIES ACT ("ADA"),
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to Prevent Miscarriage of Justice Due to ADA Violations

along with this PROOF or CERTIFICATE of SERVICE, and Cover Letter in
the above-captioned Appellate Case No. 2025-000493 was made upon all parties
and counsel of record by email per Title II and Title III of the Americans with
Disabilities Act Reasonable Accommodation Request, as well as regular mail
with postage prepaid and the addresses legible on August 1, 2025 to:

Wesley Brian Sawyer, Esquire
wsawyer@murphygrantland.com
P.O. Box 6648 Columbia, SC 29260
(Attorney for Respondents Kevin Carter and Richard Davis)

Pamela J. Larson, Esquire
Pamela.larson@wbd-us.com
5 Exchange St. Charleston, SC 29401-2948
(Attorney for Respondent Nationwide Mutual Insurance Company and
Joseph Tirbovich)

Shelley S. Montague, Esquire
Jessica W. Laffitte, Esquire
smontague@gwblawfirm.com
jlaffitte@gwblawfirm.com
P.O. Box 7368 Columbia, SC 29202
(Attorneys for Trustgard Insurance Company and John Ammendola)

William H. Davidson, II, Esquire
wdavidson@dml-law
P.O. Box 8568 Columbia, SC 29202
(Attorney for Respondents SC Dept. of Public Safety and Herbert Blackwell)

Reynolds Williams
reynolds@willcoxlaw.com
P.O. Box 1909 Florence, SC 29503-1909
(Attorney for Respondent Interinsurance Exchange of the Automobile Club)

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
ctappfilings@sccourts.org

Email addresses listed sent by ctappfilings@sccourts.org

jcobb@gwblawfirm.com pholland@gwblawfirm.com
dblack@murphygrantland.com thumphries@willcoxlaw.com
carla.cerchione@wbe-us.com nbouknight@dml-law.com

Respectfully submitted this 1st day of August 2025

_____/S/Heidi Gersten_____
Heidi Gersten, Paralyzed Disabled Petitioner
All Rights Reserved, Without Prejudice
1438 W. Lantana Rd. #330
Lantana, FL 33462
(323) 245-6142
hanginhangout@gmail.com

August 1, 2025
1438 W. Lantana Rd. #330
Lantana, Florida 33462
(323) 245-6142
hanginhangout@gmail.com

The Honorable Patricia A. Howard
Clerk of Court, The South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street Columbia, SC 29201
(803) 734-1800
supctfilings@sccourts.org

Re: Appellate Case No. 2025-000493

TO ALL CONCERNED: Good day to you!

Per RE: Methods of Electronic Filing and Service Under rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022) Appellate Case No. 2020-000447 ORDER of The Supreme Court of South Carolina, please accept the attached:

PETITIONER's EMERGENCY MOTION for COMPREHENSIVE RELIEF UNDER TITLE II / TITLE III of the AMERICANS with DISABILITIES ACT ("ADA"), DUE PROCESS, AND FEDERAL SUPREMACY; MOTION FOR 90-DAY EXTENSION; REQUEST FOR CLARIFICATION OF "UNTIL" DEADLINE; AND EMERGENCY CONSIDERATION to Prevent Miscarriage of Justice Due to ADA Violations, along with Proof or Certificate of Service for filing and email me back a time-stamped copy at the above address.

There is no filing fee for a Title II or Title III Reasonable Accommodation Request.

Let me know if you have any questions. Emailing preferred.

Kind regards,

_____/S/Heidi Gersten_____

hg/enc./ PETITIONER's EMERGENCY MOTION for COMPREHENSIVE RELIEF UNDER TITLE II / TITLE III of the AMERICANS with DISABILITIES ACT ("ADA"), DUE PROCESS, AND FEDERAL SUPREMACY; MOTION FOR 90-DAY EXTENSION; REQUEST FOR CLARIFICATION OF "UNTIL" DEADLINE; AND EMERGENCY CONSIDERATION to Prevent Miscarriage of Justice Due to ADA Violations, along with Proof and Certificate of Service

Total pages including this cover letter is twelve (12).