

S.W.3d 232, 234 (Mo. banc 2006). This Court has the authority to ‘issue and determine original remedial writs.’ MO. CONST. art. V, § 4.1. A writ of prohibition is appropriate to preserve ‘the orderly and economical administration of justice,’ or where there is ‘an important question of law decided erroneously that would otherwise escape review by this Court, and the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision’.” *State ex rel. White Family P'ship v. Roldan*, 271 S.W.3d 569, 572 (Mo. 2008). In that case, the relators petitioned the Court to order a determination of value of their land to which they believed a statute entitled them. Similarly, here, Relator is petitioning the Court to provide access to certain court records to which they believe a statute entitles them.

Both the cited case and this matter involve the interpretation of a statute. “Where .. issuance of the writ depends on the interpretation of a statute, this Court reviews the statute's meaning *de novo*. *Delta Air Lines, Inc. v. Dir. of Revenue*, 908 S.W.2d 353, 355 (Mo. banc 1995). In so doing, this Court's primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute.” *Id.*

As the *Delta* court explained, “The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning.” *Id. quoting Farmers' & Laborers' v. Director of Revenue*, 742 S.W.2d 141, 145 (Mo. banc 1987). Such writs are for use to “avoid irreparable harm to a party.” *State ex rel. Lebanon Sch. Dist.*, at 234. Here, Relator will suffer an irreparable harm if the writ is not granted.

RIGHT OF ACCESS TO COURT FILINGS

As the Supreme Court has ruled, all members of the public have a right to be heard

on the question of their access to court records. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 n. 25 (1982). As non-party members of the public have standing to challenge the sealing of court records, *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 790 (1st Cir. 1988), Relator has clear standing to bring this action.

The right of access to Missouri court filings is guaranteed by the Missouri Constitution.² This right is further supported by Supreme Court Operating Rule 2.02, which states that “Records of all courts are presumed to be open to any member of the public for purposes of inspection and copying during the regular business hours of the court having custody of the records. This policy does not apply to records that are confidential pursuant to statute,”

While Supreme Court Operating Rule 4.24, relating to Confidential Records, does not have a special section related to Section 452.430³, which limits access to pleadings and filings in a dissolution of marriage, legal separation, or modification proceeding filed prior to August 28, 2009, Relator assumes the Court will consider it encompassed by subsection 1(s), which closes “Any other record sealed or closed by statute, Supreme Court Rule or order of a court of record.” Relator relies on Rule 4.24(2) which provides that a court is to “consider all requests to inspect confidential records and may approve such requests if

²Art. V, § 12 states, “The opinions of the supreme court and court of appeals and all divisions or districts of said courts shall be in writing and filed in the respective causes, and shall become a part of the records of the court, be available for publication, and **shall be public records**. The supreme court and the court of appeals may issue memorandum decisions or dispose of a cause by order pursuant to and as authorized by supreme court rule.” (Emphasis added.)

³All references to statutes herein are to the Revised Statutes of Missouri (2016).

authorized by statute....”

Section 452.430 states “All pleadings and filings in a dissolution of marriage ... or modification ... filed prior to August 28, 2009, ... shall be subject to inspection only by the parties, an attorney of record, ... or upon order of the court for good cause shown.” This statute was originally adopted in 2009, as was Section 509.520, which states that neither the full Social Security number nor other financial account numbers (such as bank account or credit card numbers) may be filed in any court pleading. Notably, these two statutes were introduced and passed together as House Bill 481^{4,5}. Pleadings filed prior to the effective date of Section 509.520 contained such personal identifying numbers. It is reasonable to believe that filings in domestic actions, such as divorces, contain far more such numbers than most other pleadings in a courthouse leaving clerks with the burdensome task of redacting identifying numbers from documents contained in the files. Clearly, legislators believed that one solution to this issue was to limit access to such pleadings filed prior to August 28, 2009, but realized that the public needed access to final judgments in such matters. Therefore the language in Section 452.430 provides that while limitations access to such pleadings is limited, other than an interlocutory of final judgment or any modification thereof, these limits are not absolute. Instead, access to other than a limited group of individuals named in the statute is provided solely “upon order of the court for good cause shown.”

This is the matter to which Relator focuses this Court’s attention. Relator argues that one of the parties, Andrew F. Puzder, who accepted President Trump’s nomination to be Secretary of Labor has become a person in whom the public has a high and overriding

⁴2009 Mo. Legis. Serv. H.B. 481 (VERNON'S).

⁵Relator also notes that H.B. 481, in Section 509.520, uses the same language as Section 452.30 regarding petitioning a court for access.

interest as well as a right to obtain information about his business and personal affairs. Prior to Mr. Pudzer's confirmation hearing, he is required to submit financial disclosure forms to the Office of Government Ethics⁶ and other material to the Senate Committee on Health, Education, Labor and Pensions. Mr. Pudzer's hearing has been rescheduled several times and is now awaiting a new date because he has so far failed to submit all of the necessary paperwork. Much of his personal information, as well as the entire confirmation process, is subject to public scrutiny. The information contained in the files Relator seeks has direct bearing on Mr. Pudzer's fitness for high government office.

There have been numerous press reports indicating that Mr. Pudzer physically abused his then-wife and that details about the extent of the abuse are contained in the divorce records. Mr. Pudzer, however, denies the allegations of domestic violence. Before the Senate votes on whether Mr. Pudzer is qualified to lead an agency charged with protecting the safety of American workers -- many of whom suffer from workplace violence -- the public is entitled to have as complete information as possible about his background.

The information contained in Mr. Pudzer's filings relates directly both to his present financial disclosures and to his past personal history. Relator contends that allowing the public the opportunity to scrutinize the history of a potential cabinet official, charged with both making policy and enforcing laws, constitutes the "good cause" necessary to trigger disclosure pursuant to Section 452.430.

The term "good cause" is used in many Missouri statutes and has been defined in numerous cases. The phrase appears frequently in cases involving discharge from work ("for good cause"), in ex parte orders for child protection ("for good cause"), and in cases where one wants to set aside a default judgment ("for good cause"), to name a few

⁶ U.S.C.A. § APP. 4 § 101 (West).

examples. The Missouri Supreme Court has not provided a single definition that would apply in all cases, but a number of decisions are instructive as to a proper interpretation of the language in the statute at issue.

For example, in one domestic law case, the court noted, “ ‘Good cause,’ as required under Rule 75.01, ‘eludes a precise definition, but refers to a remedial purpose and is to be applied with discretion to prevent a manifest injustice or to avoid a threatened one’.” *Levine v. Schmidt*, 421 S.W.3d 465, 472 (Mo.App. S.D. 2013), citing *In re Marriage of Bennett*, 938 S.W.2d 952, 957 (Mo.App.S.D.1997).

In another domestic relations case, a court spoke at length about the definition of “good cause”:

When the General Assembly fails to define a term and it has a common law meaning, we presume that the General Assembly intended that meaning. *PharmFlex Inc. v. Div. of Employment Sec.*, 964 S.W.2d 825, 830 (Mo.App.1997). [Under the common law, t]he meaning of the concept of ‘good cause’ appears to vary to some extent according to the context in which the issue arises. Good cause has been defined as ‘a cause or reason sufficient in law: one that is based on equity or justice or that would motivate a reasonable man under all the circumstances.’ *State v. Davis*, 469 S.W.2d 1, 5 (Mo.1971) (quoting Webster's Third New International Dictionary). *Reisdorph v. Div. of Employment Sec.*, 8 S.W.3d 169, 172 (Mo.App.1999). “Good cause” in the context of section 452.400 requires that the parent's denial or interference with the other parent's visitation be reasonable to avoid the granting of a family access motion. *Morgan v. Gaeth*, 273 S.W.3d 55, 59 (Mo.App. W.D. 2008).⁷

⁷This particular definition – that the “good cause” be “reasonable” -- is important

Other cases have defined good cause in the following ways:

- “Good cause” has no precise definition, but the term “encompasses the occurrence of mistakes or conduct that is not intentionally or recklessly designed to impede the judicial process.” *Cent. Am. Health Scis. Univ., Belize Med. Coll. v. Norouzian*, 236 S.W.3d 69, 76 (Mo.App. W.D. 2007), *aff'd sub nom. Cent. Am. Health Scis. Univ. v. Norouzian*, 249 S.W.3d 255 (Mo.App. W.D. 2008), citing *Brueggemann v. Elbert*, 948 S.W.2d 212, 214 (Mo.App. E.D.1997).

- Although the phrase good cause “eludes a precise definition,” it refers to a remedial purpose and is interpreted liberally so as to avoid manifest injustice. [*Stroup v. Leopard*, 981 S.W.2d 600, 603 (Mo.App.1998).] “On appeal from a trial court's order amending [or vacating] a judgment under Rule 75.01, this court is limited to a determination of whether the trial court had good cause within the meaning of the rule [.]” *Id.*; *Scott v. Scott*, 147 S.W.3d 887, 892 (Mo.App. W.D. 2004).

- We interpret that [showing good cause] to mean that the trial court must determine whether good cause has been shown according to the unique facts of each case. Under this Court's prior interpretation of the rule and later Supreme Court cases, Appellants may satisfy the good cause requirement by showing that their conduct was not intentionally or recklessly designed to

because it applies to the term as used in Section 452.400, a section adjoining the one before the Court (Section 452.430).

impede the judicial process. *J.E. Scheidegger Co., Inc. v. Manon*, 149 S.W.3d 499, 504 (Mo.App. S.D. 2004), citing *Great Southern Sav. & Loan Ass'n v. Wilburn*, 887 S.W.2d 581, 584 (Mo. banc 1994), and *Myers v. Pitney Bowes, Inc.*, 914 S.W.2d 835, 839 (Mo.App. S.D.1996).

Certainly, Relator is not seeking the files to “impede the judicial process.” The term “good cause” must be interpreted liberally. There is no doubt that Mr. Puzder had a choice whether or not to subject his private affairs to public scrutiny. By accepting the nomination to the President’s cabinet, he knew his affairs would be examined, by the Office of Government Ethics, the Senate, and the public at large. Ultimately, American taxpayers finance his salary and his office. Relator’s rationale for petitioning this Court for access to the files is one that is “sufficient in law” to justify the Court releasing these materials for public inspection and copying.

Finally, had Mr. Puzder’s divorce and all related proceedings occurred **after** 2009, this petition would be unnecessary because most, if not all, of those files automatically would be open to the public. There is no difference in the case filings after 2009 and the case filings prior to 2009, except for the exclusion of complete identification numbers. There is no rational reason a case filed prior to one particular fdate is closed and a case filed a day later is open, except for this issue of identifiers, and these can readily be redacted by the clerk if the Court deems that prudent.

CONCLUSION

For the reasons set out above, Relator petitions this Court to enter its order in Prohibition, and ultimately to issue an order directing the Circuit Clerk of the Twenty-first Circuit Court, State of Missouri to make available to Relator the files identified as Cases

Number 21482862, 21577367, 21546046, 21546046-01 and 21546046-02, and for such other and further relief as this Court deems proper in this matter.

Respectfully submitted,

/s/ Jean Maneke

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