

**MISSOURI CIRCUIT COURT
FOR THE TWENTY-FIRST JUDICIAL CIRCUIT
(St. Louis County)**

CAMPAIGN FOR ACCOUNTABILITY, a)
not-for-profit corporation,)
Petitioner/Relator,)

v.)
STATE OF MISSOURI,)

Serve:)
ERIC R. GREITENS)
Governor, State of Missouri)
201 West Capitol Avenue)
Jefferson City, Missouri 65100)

and)

CIRCUIT COURT CLERK JOAN M. GILMER, in her)
capacity as Circuit Clerk, Missouri Circuit Court for the)
Twenty-First Judicial Circuit (St. Louis County))

Case No.
Div.

Serve:)
JOAN M. GILMER)
Circuit Clerk, Missouri Circuit Court)
for the Twenty-First Judicial District)
105 S. Central Ave.)
Clayton, Missouri 63105)

Respondents.)

MISSOURI ATTORNEY GENERAL:)

JOSHUA DAVID HAWLEY)
Office of the Attorney General, State of Missouri)
Supreme Court Building)
Jefferson City, Missouri 65100)

OTHER INTERESTED PARTIES:)

ANDREW F. PUZDER)
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Copy to:)
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and)

LISA FIERSTEIN (f/k/a Lisa Puzder))
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**PETITION
(FOR DECLARATORY JUDGMENT AND FOR WRIT OF PROHIBITION)**

Petitioner and Relator, the Campaign for Accountability (“Petition/Relator” or “CfA”), for its Petition for Declaratory Judgment and for Writ of Prohibition, states that:

Preliminary Statement

Section 452.430 of the Missouri Revised Statutes purports to limit public access to pleadings and filings in certain cases prior to a certain date, without notice, without an evidentiary hearing, without a showing of a compelling interest, and without closure narrowly tailored to achieve such a compelling interest. The statute is invalid procedurally because it was not enacted in accordance with the Missouri Constitution, and is invalid substantively because the statute is unconstitutional as contrary to the First Amendment and other provisions of the United States Constitution, and the right of public access to court records guaranteed by the Missouri Constitution, Missouri common law, and Missouri Supreme Court Rules.

Even if §452.430, RSMo, were deemed valid, the statute permits access to court records otherwise closed to the public “upon order of the court for good cause shown”. There is such “good cause” here because United States President Donald J. Trump previously nominated Andrew Puzder Secretary of the U.S. Department of Labor, and is now being considered to serve in President Trump’s administration in some other capacity. Mr. Puzder is a controversial public figure who withdrew his nomination after certain of his business and personal matters were reported, including allegations of physical abuse pleaded in his divorce proceedings in St. Louis County.

Allegations Common to All Counts

1. Petitioner/Relator, Campaign for Accountability, is a not-for-profit corporation in good standing in the District of Columbia, and is organized under 26 U.S.C. §501(c)3, §501(c)3 of the Internal Revenue Code. Petitioner/Relator’s principle offices are in Washington, DC.

2. Andrew F. Puzder was nominated to be United States President Donald J. Trump’s Secretary of the U.S. Department of Labor, and then withdrew his nomination from consideration after certain business and personal matters were reported, including

allegations of abuse in his divorce proceedings in St. Louis County. Upon information and belief, Andrew Puzder is now being considered for another position in President Trump's administration.

3. In February 2017, Petitioner/Relator requested access to court files in cases that had been pending in the Missouri Circuit Court for the Twenty-First Judicial Circuit (St. Louis County) between 1982 and 1997, specifically Case Nos. 21482862, 21577367, 21546046, 21546046-01, and 21546046-02. *See Campaign for Accountability v. Circuit Court Clerk Joan Gilmer*, Petition, Cause No. 17SL-CC00433 (Feb. 2, 2017). On February 15, 2017, upon learning that Mr. Puzder had withdrawn his nomination, the presiding judge dismissed the matter without prejudice, finding the matter moot.

4. Upon information and belief, those court records (identified in the preceding paragraph) pertain to the named parties in interest, Andrew F. Puzder and his former spouse, now known as Lisa Fierstein and formerly known as Lisa Puzder.

5. Petitioner/Relator's rights are affected by §452.430, RSMo, and therefore are within the parameters of Supreme Court Rule 87. Mo.R.Civ.P. 87.

6. Section 452.430, RSMo, provides:

All pleadings and filings in a dissolution of marriage, legal separation, or modification proceeding filed more than seventy-two years prior to the time a request for inspection is made may be made available to the public. Any pleadings, other than the interlocutory or final judgment or any modification thereof, in a dissolution of marriage, legal separation, or modification proceeding filed prior to August 28, 2009, but less than seventy-two years prior to the time a request for inspection is made, shall be subject to inspection only by the parties, an attorney of record, the family support division within the department of social services when services are being provided under section 454.400, the attorney general or his or her designee, a person or designee of a person licensed and acting under chapter 381 who shall keep any information obtained confidential, except as necessary to the performance of functions

required by chapter 381, or **upon order of the court for good cause shown**. Such persons may receive or make copies of documents without the clerk being required to redact the Social Security number, unless the court specifically orders the clerk to do otherwise. The clerk shall redact the Social Security number from any copy of a judgment or satisfaction of judgment before releasing the copy of the interlocutory or final judgment or satisfaction of judgment to the public.

§452.430, RSMo (*emphasis added*).

7. Section 452.430, RSMo, was void *ab initio* because House Bill 481, which became §452.430, RSMo, was enacted in violation of the Missouri Constitution. Without limiting the generality of the foregoing:

A. 452.430, RSMo, was enacted in violation of Art. III, §21 of the Missouri Constitution, which requires that each bill be read by title on three different days in each house of the General Assembly.

B. 452.430, RSMo, was enacted in violation of Art. III, §23 of the Missouri Constitution because the bill pertained to more than a single subject.

C. Section 452.430, RSMo, was enacted in violation of Art. III, §23 of the Missouri Constitution because the bill's title failed to clearly express its subject.

8. In addition to the defects in enactment of §452.430, RSMo, the statute is unconstitutional for the additional substantive reasons that:

A. Section 452.430, RSMo, limits public access to court records, and the right of public access to court records guaranteed by the First Amendment of the United States Constitution, by the Missouri Constitution, Missouri common law, and Missouri Supreme Court Rules.

B. Section 452.430, RSMo, violates the Missouri Constitution, Art. I, §13

because the statute is a retrospective law to limit public access to court records that were filed prior to the enactment of the statute. At the time certain divorce petitions or other pleadings were filed with this Court, the general rule that court files are open to the public applied. Subsequently, the Missouri legislature enacted §452.430, RSMo, purporting to change the general rule retrospectively to limit public access to certain court files.

D. Section 452.430, RSMo, denies due process and equal protection to Petitioner/Relator and others seeking access to Missouri court records. Certain members of the public have access to the court records at issue here while others do not have access.

E. Section 452.430, RSMo, violates the required separation of powers between branches of government, and lacks sufficient standards. Without limiting the generality of the foregoing:

1. Section 452,430, RSMo, is unconstitutional because the state legislature purported to vest discretion in the judiciary without adequate standards.

2. Section 452.430, RSMo, lacks sufficient certainty and definiteness as to reasonably apprise ordinary persons of required information to be supplied and action to be taken, and imparts substantial penalties in the event required information is not provided or action is not taken. Arbitrary and discriminatory application of the statute, and therefore access to certain court records, is enabled.

9. In the alternative, even if §452.430, RSMo, were deemed constitutional, Petitioner/Relator seeks an order of this court that would allow Petitioner/Relator access to Court Files in Case Nos. 21482862, 21577367, 2154606, 21546146-01, and 21546046-02 for “good cause”.

Count I

SECTION 452.430, RSMO, IS VOID BECAUSE IT WAS ENACTED IN VIOLATION OF THE MISSOURI CONSTITUTION, ART. III §21, WHICH REQUIRES THAT EACH BILL BE READ BY TITLE ON THREE DIFFERENT DAYS, IN EACH HOUSE.

10. Petitioner/Relator restates and incorporates by reference the allegations of paragraphs 1 through 9 herein.

11. The Missouri Constitution, Art. III, §21 provides in part that:

“...Every bill shall be read by title on three different days in each house.”

12. Upon information and belief, House Bill 481 was not read by title on three different days in each house.

WHEREFORE, Petitioner/Relator prays for judgment in its favor on Count I as follows:

A. Section 452.430, RSMo, purported to have been enacted *via* H.B. 481, was enacted in violation of the Missouri Constitution, Art. III, §21;

B. Section 452.430, RSMo, was void *ab initio* and is of no force and effect;

C. By purporting to enact §452.430, RSMo. without having H.B. 481 read by title on three different days in each house, the General Assembly exceeded its constitutional authority;

D. The State of Missouri, by §452.430, RSMo, has violated 42 U.S.C.

§1983;

E. Petitioner/Relator shall recover its costs and attorneys' fees herein;

F. Petitioner/Relator shall recover such further or alternative relief deemed just.

Count II

SECTION 452.430, RSMO, IS VOID BECAUSE IT WAS ENACTED IN VIOLATION OF THE MISSOURI CONSTITUTION, ART. III §23, WHICH REQUIRES THAT EACH BILL BE LIMITED TO A SINGLE SUBJECT.

13. Petitioner/Relator restates and incorporates by reference the allegations of paragraphs 1 through 12 herein.

14. **The Missouri Constitution, Art. III, §23 provides in part that:**

“No bill shall contain more than one subject...”

15. House Bill 481 contains more than one subject.

WHEREFORE, Petitioner/Relator prays for judgment in its favor on Count II as follows:

A. Section 452.430, RSMo, purported to have been enacted via H.B. 481, was enacted in violation of the Missouri Constitution, Art. III, §23;

B. Section 452.430, RSMo, was void *ab initio* and is of no force and effect;

C. By purporting to enact §452.430, RSMo. via H.B. 481, which contained more than one subject, the General Assembly exceeded its constitutional authority;

D. The State of Missouri, by §452.430, RSMo, has violated 42 U.S.C.

§1983;

E. Petitioner/Relator shall recover its costs and attorneys' fees herein;

F. Petitioner/Relator shall recover such further or alternative relief deemed just.

Count III

SECTION 452.430, RSMO, IS VOID BECAUSE IT WAS ENACTED IN VIOLATION OF THE MISSOURI CONSTITUTION, ART. III §23, WHICH REQUIRES THAT EACH BILL'S TITLE CLEARLY EXPRESS ITS SINGLE SUBJECT.

15. Petitioner/Relator restates and incorporates by reference the allegations of paragraphs 1 through 14 herein.

16. **The Missouri Constitution, Art. III, §23 provides in part that:**

“No bill shall contain more than one subject which shall be clearly expressed in its title...”

17. The title of House Bill 481 is set forth below:

AN ACT

To repeal sections 41.950, 60.010, 82.300, 84.150, 84.175, 141.160, 208.040, 208.055, 217.450, 217.460, 229.110, 347.179, 347.183, 351.047, 351.120, 351.125, 351.127, 351.145, 351.155, 351.484, 351.592, 351.594, 351.598, 351.602, 351.690, 355.016, 355.021, 355.066, 355.071, 355.151, 355.176, 355.688, 355.706, 355.796, 355.806, 355.811, 355.821, 355.856, 356.211, 359.681, 452.305, 452.310, 452.312, 452.343, 452.423, 452.440, 452.445, 452.450, 452.455, 452.460, 452.465, 452.470, 452.475, 452.480, 452.485, 452.490, 452.495, 452.500, 452.505, 452.510, 452.515, 452.520, 452.525, 452.530, 452.535, 452.540, 452.545, 452.550, 454.500, 455.010, 473.743, 476.415, 485.077, 516.200, 517.041, 535.030, 535.120, 545.050, 550.050, 550.070, 550.080, 550.090, 561.031, 537.610, 630.407, and 650.055, RSMo, section 454.516 as enacted by conference committee substitute for house substitute for house committee substitute for senate bill no. 895, ninety-first general assembly, second regular session, and to enact in lieu thereof one hundred twenty-five new sections relating to courts and judicial proceedings, with penalty provisions.

18. The title of House Bill 481 does not clearly express its subject.

WHEREFORE, Petitioner/Relator prays for judgment in its favor on Count III as follows:

A. Section 452.430, RSMo, purported to have been enacted via H.B. 481, was enacted in violation of the Missouri Constitution, Art. III, §23;

B. Section 452.430, RSMo, was void *ab initio* and is of no force and effect;

C. By purporting to enact §452.430, RSMo, via H.B. 481, the title of which did not clearly express its subject, the General Assembly exceeded its constitutional authority;

D. The State of Missouri, by §452.430, RSMo, has violated 42 U.S.C. §1983;

E. Petitioner/Relator shall recover its costs and attorneys' fees herein;

F. Petitioner/Relator shall recover such further or alternative relief deemed just.

Count IV

SECTION 452.430, RSMO, IS UNCONSTITUTIONAL UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION BECAUSE IT PURPORTS TO CLOSE CERTAIN COURT RECORDS ACROSS-THE-BOARD WITHOUT NOTICE, WITHOUT AN EVIDENTIARY HEARING, WITHOUT FINDING A COMPELLING INTEREST, AND WITHOUT NARROWLY TAILORING ITS BLANKET CLOSURE OF CERTAIN COURT RECORDS TO SUCH A COMPELLING INTEREST.

19. Petitioner/Relator restates and incorporates by reference the allegations of paragraphs 1 through 18 herein.

20. Section 452.430, RSMo, purports to close certain court records across-the-board,

- A. Without notice;
- B. Without an evidentiary hearing;
- C. Without finding of a compelling interest in each such closed court file;

and

D. Without narrowly tailoring its blanket across-the-board closure to such a compelling interest.

WHEREFORE, Petitioner/Relator prays for judgment in its favor on Count II as follows:

A. Section 452.430, RSMo, violates the First Amendment of the United States Constitution;

B. Section 452.430, RSMo, was void *ab initio* and is of no force and effect;

C. The State of Missouri, by §452.430, RSMo, has violated 42 U.S.C. §1983;

E. Petitioner/Relator shall recover its costs and attorneys' fees herein;

F. Petitioner/Relator shall recover such further or alternative relief deemed just.

Count V

SECTION 452.430, RSMO, IS UNCONSTITUTIONAL UNDER MISSOURI LAW BECAUSE THE STATUTE PURPORTS TO CLOSE CERTAIN COURT RECORDS ACROSS-THE-BOARD WITHOUT NOTICE, WITHOUT AN EVIDENTIARY HEARING, WITHOUT FINDING A COMPELLING INTEREST, AND WITHOUT NARROWLY TAILORING ITS BLANKET CLOSURE OF CERTAIN COURT RECORDS TO SUCH A COMPELLING INTEREST.

21. Petitioner/Relator restates and incorporates by reference the allegations of paragraphs 1 through 20 herein.

22. Section 452.430, RSMo, purports to close certain court records across-the-board,

- A. Without notice;
- B. Without an evidentiary hearing;
- C. Without finding of a compelling interest in each such closed court file;

and

D. Without narrowly tailoring its blanket across-the-board closure to such a compelling interest.

WHEREFORE, Petitioner/Relator prays for judgment in its favor on Count II as follows:

- A. Section 452.430, RSMo, violates Missouri Law;
- B. Section 452.430, RSMo, was void *ab initio* and is of no force and effect;
- C. The State of Missouri, by §452.430, RSMo, has violated 42 U.S.C.

§1983;

- E. Petitioner/Relator shall recover its costs and attorneys' fees herein;
- F. Petitioner/Relator shall recover such further or alternative relief deemed

just.

Count VI

SECTION 452.430, RSMO, IS VOID BECAUSE IT WAS ENACTED IN VIOLATION OF THE MISSOURI CONSTITUTION, ART. I, §13, WHICH PROHIBITS RETROSPECTIVE LAWS.

23. Petitioner/Relator restates and incorporates by reference the allegations of paragraphs 1 through 22 herein.

24. **The Missouri Constitution, Art. I, §13 provides in part that:**

“...No...law...retrospective in its operation...can be enacted.”

25. At the time Case Nos. 214828962, 215436046, 21546046-01 and 215460946-02 were initiated, and pleadings in those cases were filed with the Court, all court records were open to the public. Thereafter, in 2009, the Missouri General Assembly enacted §452.430, RSMo, purporting to restrict public access to court records in certain cases that were previously pending.

26. In other words, after-the-fact, the Missouri General Assembly, by §452.430, RSMo, purported to change the rules in certain cases that were previously pending before this Court.

27. §452.430, RSMo, is a retrospective law.

WHEREFORE, Petitioner/Relator prays for judgment in its favor on Count VI as follows:

A. Section 452.430, RSMo, violates the Missouri Constitution, Art. I, §13 because the statute is a retrospective law;

B. Section 452.430, RSMo, is of no force and effect;

C. By purporting to enact §452.430, RSMo, the General Assembly exceeded its constitutional authority;

D. The State of Missouri, by §452.430, RSMo, has violated 42 U.S.C. §1983;

E. Petitioner/Relator shall recover its costs and attorneys' fees herein;

F. Petitioner/Relator shall recover such further or alternative relief deemed

just.

Count VII

SECTION 452.430, RSMO, IS UNCONSTITUTIONAL BECAUSE THE MISSOURI GENERAL ASSEMBLY PURPORTED TO VEST THE JUDICIARY WITH UNBRIDLED DISCRETION TO ALLOW OR DENY ACCESS TO CERTAIN COURT RECORDS BASED ON ITS FINDING OF “GOOD CAUSE” WITHOUT ANY STANDARDS WHATSOEVER FOR THE SAME.

28. Petitioner/Relator restates and incorporates by reference the allegations of paragraphs 1 through 27 herein.

29. The Missouri General Assembly, in §452.430, RSMo, purported to vest the judiciary with the ability to allow or deny access to certain court records based on its finding of “good cause” without any standards for determining what constitutes “good cause”.

30. The Missouri legislature has bestowed unbridled discretion on the judiciary to determine what constitutes “good cause”, and therefore who is permitted access to certain court records and conversely who is denied such access.

WHEREFORE, Petitioner/Relator prays for judgment in its favor on Count VII as follows:

A. Section 452.430, RSMo, is invalid as it bestows unbridled discretion on the judiciary to determine who is permitted access to certain court records, and conversely who is denied access to those court records with no standards;

B. Section 452.430, RSMo, is of no force and effect;

C. By purporting to enact §452.430, RSMo. with no standards for determining who is permitted access to certain court records and conversely who

is denied such access to such court records, the Missouri legislature exceeded its constitutional authority;

D. The State of Missouri, by §452.430, RSMo, has violated 42 U.S.C. §1983;

E. Petitioner/Relator shall recover its costs and attorneys' fees herein;

F. Petitioner/Relator shall recover such further or alternative relief deemed just.

Count VIII

EVEN IF §452.430. RSMO, IS VALID/CONSTITUTIONAL, THERE IS "GOOD CAUSE", AND A COURT ORDER SHOULD ISSUE, OR A WRIT OF PROHIBITION REQUIRING SUCH A COURT ORDER, SHOULD ISSUE REQUIRING ACCESS TO SPECIFIED COURT RECORDS.

31. Petitioner/Relator incorporates by reference paragraphs 1 – 22.

32. The parties of interest identified in this Petition are Andrew F. Puzder and his former spouse, Linda Feinstein.

33. The parties of interest were parties in court proceedings, Case Numbers 214828962, 215436046, 21546046-01 and 215460946-02, pending in this court between 1982 and 1997, and within the court files closed by application of §452.430, RSMo.

34. Petitioner/Relator has attempted to access the above court files, but has been denied access.

35. Petitioner/Relator is not within the class of persons authorized to access such court files without an order authorizing such access.

36. The court files identified herein are of great interest to the Petition/Relator and to the public generally.

37. Such public interest outweighs any privacy interest in the court files identified herein.

WHEREFORE, Petitioner/Relator seeks judgment in its favor and against Respondent Circuit Clerk Joan Gilmer, and an order finding “good cause” by application of §452.430, RSMo. Court files in Case Numbers 214828962, 215436046, 21546046-01 and 215460946-02 shall be immediately available to Petitioner/Relator. This Court should issue a Writ of Prohibition commanding Circuit Clerk Joan Gilmer to Answer this Petition and to make the above-identified court files immediately available to Petitioner/Relator. Petitioner/Relator requests its costs and attorneys’ fees herein, and such further or alternative relief this Court deems just.

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