

January 2016

Good Cause is Bad News: How the Good Cause Standard for Record Access Impacts Adult Adoptees Seeking Personal Information and a Proposal for Reform

Christopher G.A. Loriot

Follow this and additional works at: <http://scholarship.law.umassd.edu/umlr>

 Part of the [Family Law Commons](#), and the [Privacy Law Commons](#)

Recommended Citation

Loriot, Christopher G.A. (2016) "Good Cause is Bad News: How the Good Cause Standard for Record Access Impacts Adult Adoptees Seeking Personal Information and a Proposal for Reform," *University of Massachusetts Law Review*: Vol. 11: Iss. 1, Article 6. Available at: <http://scholarship.law.umassd.edu/umlr/vol11/iss1/6>

This Note is brought to you for free and open access by Scholarship Repository @ University of Massachusetts School of Law. It has been accepted for inclusion in University of Massachusetts Law Review by an authorized administrator of Scholarship Repository @ University of Massachusetts School of Law.

Good Cause is Bad News: How the Good Cause Standard for Records Access Impacts Adult Adoptees Seeking Personal Information and a Proposal for Reform.

Christopher G. A. Loriot

11 U. MASS. L. REV. 100

ABSTRACT

There are many hurdles that adult adoptees face when seeking access to personal information contained in original birth records or adoption proceedings. One such hurdle is the widely-used good cause standard, which requires adoptees seeking information to show good cause to obtain access. This standard is problematic primarily for its vagueness. Very few jurisdictions that use this standard define “good cause” in any meaningful way, and case law interpreting good cause statutory language is inconsistent at best. Although it is meant to protect the privacy interests of all parties in an adoption proceeding, the good cause standard acts as a barrier to those seeking information about their history. While recognizing that progressive legislative solutions are ideal, this Note proposes to shift the burden in jurisdictions where the good cause standard still applies; courts should be required to show good cause to keep records sealed, consistent with other areas of records access and first amendment jurisprudence.

AUTHOR NOTE

Christopher Loriot is a staff editor of the University of Massachusetts Law Review for the 2015-16 term. He earned his BA from the University of Rhode Island and expects to receive his J.D. in May 2016. The author thanks Professor James F. Freeley, III for his guidance through the writing process. The author also thanks the Law Review Editorial Board: Alexander Rovzar, Marea Tumber, Richard Aime, Samantha Seserman, and Courtney DaCunha. Finally, the author thanks his editing team: Karen Solis, Domenic Leco, Jill Santiago, Kendall Poirier, Teri Chung, Erica Souza and Rebecca Lacoste.

I.	INTRODUCTION	102
II.	THE GOOD CAUSE STANDARD.....	103
III.	ADOPTION LAW	108
IV.	INCONSISTENCY IN GOOD CAUSE JURISDICTIONS.....	112
V.	BALANCING INTERESTS	115
A.	Privacy	115
B.	Disclosure	117
VI.	CONSIDERATIONS AND SOLUTION.....	119
VII.	CONCLUSION	121

I. INTRODUCTION

He closes his laptop after writing an unremarkable email about his current endeavors and trials, the most recent link in a long chain of communications. Looking back into the email chain, the topics become increasingly more sensitive, discussing relatives he has never met or meeting the brother he never knew he had. Peering further back into the chain of emails reveals a flood of emotions between the writer and the recipient, expressing gratitude for entering one another's lives, and affirming a part of them that, in his case, has been missing for a lifetime. There is joy in the emails, and an eagerness to learn all that the other could possibly convey.

The genesis of this long chain of communications goes back to the moment the writer first met his biological mother. This moment was not exclusively their own, as it would not have been made possible without the unwavering support from the writer's loved ones, who never dissuaded him from tracing his biological past. The moment of reunification affirms the close familial bond that every human being understands to be fundamental—the bond between a biological mother and her child. But unlike all those who have distant memories made hazy with an accumulation of constant contact and the passage of time, the writer's first memory of his biological mother is as clear as day. This memory remains fresh because the writer did not meet the woman long ago as an infant, but rather, as a fully matured adult. He reminds himself that she appreciates the moment they shared as much as he does, which enables him to settle his mind and realize that he is blessed.

The writer does not forget, however, that there are many other adult adoptees like himself who cannot make contact with their biological parents. Whereas the writer sought out his biological mother for personal fulfillment, other adult adoptees may seek out their biological parents for different reasons, such as exploration of their medical histories,¹ or identification of property rights.² Accessing court adoption proceedings or birth records can provide adult adoptees with a wealth of information about their past, however gaining access to these documents can prove quite burdensome. Unlike non-adopted adults, who are able to look into their past uninhibitedly simply by

¹ *In re Adoption of Spinks*, 232 S.E.2d 479, 482-83 (N.C. Ct. App. 1977).

² *Massey v. Parker*, 369 So. 2d 1310, 1314 (La. 1979).

virtue of being raised by biological parents, adult adoptees often face significant obstacles when trying to connect the dots of their earlier years. Perhaps the greatest barrier that adult adoptees face is the common law “good cause” requirement to access sealed records.³

This Note examines the “good cause” standard for accessing adoption records and explores its scope. Further, this Note identifies the hurdles that the good cause standard creates when adult adoptees attempt to access their birth or adoption records, and suggests a possible solution by advocating for a shift in the burden of proof from the adult adoptee to the court. The court would be required to show good cause to keep records sealed in a manner similar to common practices in other record requesting scenarios. This reform would likely require a qualified consent otherwise in favor of the adult adoptee, consistent with shifting societal attitudes toward adoption and transparency.

II. THE GOOD CAUSE STANDARD

In the area of records access law, there is a long recognized right of access to public records.⁴ Public policy recognizes “the citizen’s desire to keep a watchful eye on the workings of public agencies.”⁵ This right of access applies to all “judicial decisions and the documents which comprise the bases of those decisions,”⁶ including hearings, depositions, and conferences. There is a strong common law presumption in favor of public access to records filed with the court in conjunction with any case, civil or criminal.⁷ There is also a constitutional presumption in favor of public access, unless there is a compelling government interest, and the terms of any secrecy order are narrowly tailored to serve that interest.⁸ For the purposes of this Note, whether the right of access stems from the Constitution or the common law is of little concern. Factual circumstances under which the need for privacy is strong enough to outweigh the common law right of access, yet not compelling enough to overcome the constitutional right

³ See, e.g., MASS. GEN. LAWS ch. 210, § 5C (1972).

⁴ Nixon v. Warner Commc’ns, 435 U.S. 589, 597 (1978).

⁵ *Id.* at 598.

⁶ Grove Fresh Distribs. v. Everfresh Juice, 24 F.3d 893, 898 (7th Cir. 1994).

⁷ Wilson v. Am. Motors Corp., 759 F.2d 1568, 1569-70 (11th Cir. 1985).

⁸ Globe Newspaper Co. v. Super. Ct., 457 U.S. 596, 606-07 (1982).

of access, would be quite novel indeed. But no matter the source, the right of access can be described best as a “presumption—however gauged—in favor of public access to judicial records.”⁹

This presumption applies to more areas of judiciary law than just trial records. One example is the area of settlement agreements. Parties that wish to seal records as part of an integrated settlement agreement, even with the court’s active encouragement, must still demonstrate good cause to keep them sealed from the public.¹⁰ Also, in a class action, a settlement agreement cannot prevent interested non-class member parties from intervening to seek access to the discovery materials, regardless of the terms of the agreement.¹¹

A second example lies in the area of discovery. Federal Rule of Civil Procedure 26(c) presumes a right of public access to discovery materials unless good cause is shown.¹² Though the rule itself governs the issuance of protective orders during discovery, its permissive language indicates that “[u]nless the public has a presumptive right of access to discovery materials, the party seeking to protect the materials would have no need for a judicial order [because] the public would not be allowed to examine the materials in any event.”¹³

A third example of legal arenas which are presumptively open to the public and press are criminal plea agreements and hearings. However, plea agreements for cooperative criminal defendants are not subject to the right of access until those agreements are properly filed.¹⁴ Also, the public does not have a right to access a plea agreement filed with a motion to seal the agreement that is withdrawn before the court can rule on the sealing.¹⁵ These two subtle variations

⁹ *Nixon*, 435 U.S. at 602.

¹⁰ *Brown v. Advantage Eng’g, Inc.*, 960 F.2d 1013, 1016 (11th Cir. 1992).

¹¹ *In re “Agent Orange” Prod. Liab. Litig.*, 821 F.2d 139, 144 (2d Cir. 1987).

¹² *See* FED. R. CIV. P. 26(c); *see also Agent Orange*, 821 F.2d at 145-46 (“A plain reading of . . . Rule 26(c) demonstrates that the party seeking a protective order has the burden of showing that good cause exists for issuance of that order. It is equally apparent that the obverse also is true, . . . if good cause is not shown, the discovery materials in question should not receive judicial protection and therefore would be open [for public inspection]. . . . Any other conclusion effectively would negate the good cause requirement of Rule 26(c).”).

¹³ *Agent Orange*, 821 F.2d at 145-46.

¹⁴ *See In re Wash. Post Co.*, 807 F.2d 383, 390 (4th Cir. 1986).

¹⁵ *See United States v. El-Sayegh*, 131 F.3d 158, 159 (D.C. Cir. 1997).

in the law create a more qualified right of access to criminal plea agreements and hearings than a full right of access.

Although courts strongly favor the presumption of public access, there are circumstances in which it can be overcome.¹⁶ Good cause is one measure of such circumstances and serves as an exception to the right of public access, essentially making the presumption rebuttable. The term itself can be simply defined as the circumstances that warrant non-disclosure because they are *traditionally kept secret*¹⁷ or *sensitive*.¹⁸ The legal test has two broad prongs. The first prong analyzes whether the proceeding has been historically open to the public.¹⁹ The second prong analyzes “whether the right of access fosters good operation of the courts and the government.”²⁰ The party seeking to maintain confidentiality bears the burden of satisfying both prongs for the documents to remain sealed.²¹ In conjunction, the trial court must balance the interests of the parties involved based on the totality of the circumstances. If this burden is met, the district court must “base its decision [to maintain confidentiality] on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture.”²² Once the shielding party has shown good cause, the burden to unseal shifts to the party seeking access.²³

Illustrative of this standard is *Nixon v. Warner Communications*. *Nixon* concerns a nuance of the sensitive material prohibition, where access to evidentiary exhibits was denied because their contents were already made public in the trial record.²⁴ Certain audiotapes belonging to ex-President Nixon were introduced into evidence at a trial for one of his former advisors.²⁵ The plaintiff wished to copy the tapes for

¹⁶ See *Wilson*, 759 F.2d at 1570 (right of public access is presumed absent unusual circumstances).

¹⁷ See ROBERT TIMOTHY REAGAN, SEALING COURT RECORDS AND PROCEEDINGS: A POCKET GUIDE, 3-16 (Fed. Jud. Ctr., 2010) (emphasis added).

¹⁸ See *Nixon*, 435 U.S. at 598 (emphasis added).

¹⁹ Reagan, *supra* note 18, at 3.

²⁰ *Id.*

²¹ *Kamakana v. City of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006).

²² *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995).

²³ *Chi. Trib. Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1314-15 (11th Cir. 2001).

²⁴ *Nixon*, 435 U.S. at 589.

²⁵ *Id.* at 591.

broadcasting and sale to the public.²⁶ In refusing to release the tapes, Justice Powell stated that under both the constitutional and common law rights of access, the public had no right to the actual tapes in the court's possession, as historically there had never been a right to access physical evidence,²⁷ and the contents of the tapes had already been made public and widely disseminated.²⁸

Although *Nixon* did not fully explore whether the plaintiff met its burden to show good cause, the case did identify situations where the right of access has been denied for various reasons. For example, trade secrets and other sources of business information that might harm a litigant's competitive standing are not disclosed, due to their *sensitive* nature.²⁹ Additionally, the right of access cannot be "used to gratify private spite or promote public scandal" through the publication of "the painful and sometimes disgusting details of a divorce case."³⁰ "Similarly, courts have refused to permit their files to serve as reservoirs of libelous statements for press consumption."³¹ Consistent with this sentiment, Justice Powell further supported his denial of access to the tapes by stating that "[t]he [C]ourt—as custodian of tapes obtained by subpoena over the opposition of a sitting President . . . has a responsibility to exercise an informed discretion as to release of the tapes, with a sensitive appreciation of the circumstances that led to their production."³² In accord, the Sixth Circuit has suggested that a defendant's right to a fair trial, certain privacy rights of participants or third parties, trade secrets, and national security are virtually the only reasons which would justify a total closure of public records.³³

In addition to the compelling reasons described above, the presumption of public access to court records is further limited on a state level. For example, New York articulated areas of law where it has *traditionally* (writer's emphasis) prevented public access: "in all proceedings and trials in cases for divorce, seduction, abortion, rape,

²⁶ *Id.*

²⁷ *Id.* at 608-09.

²⁸ *Id.* at 609.

²⁹ *Id.* at 598 (emphasis added).

³⁰ *Nixon*, 435 U.S. at 598 (quoting *In re Caswell*, 29 A. 259 (R.I. 1893)).

³¹ *Id.*

³² *Id.* at 603.

³³ *Brown & Williamson Tobacco v. Fed. Trade Comm'n*, 710 F.2d 1165, 1179 (6th Cir. 1983).

assault with intent to commit rape, sodomy, bastardy or filiation, the court may, in its discretion, exclude therefrom all persons who are not directly interested therein, excepting jurors, witnesses, and officers of the court.”³⁴ New York also limits public access to family court proceedings by statute.³⁵ Although Section 166 of the Family Court Act allows the court to permit public inspection of papers or records in a particular case upon completion of an application process, this procedure does not cause the record to be made available to the general public at the courthouse.³⁶ Most relevant to the subject of this Note, New York also has a statutory prohibition on public access to adoption orders.³⁷ The relevant statute provides:

No person shall be allowed access to such sealed records and order and any index thereof except upon an order of a judge or surrogate of the court in which the order was made or of a justice of the supreme court. No order for disclosure or access and inspection shall be granted except on good cause shown and on due notice to the adoptive parents and to such additional persons as the court may direct.³⁸

Other examples of restriction to the public’s right of access include records in a sex offense case that might identify the victim,³⁹ grand jury minutes,⁴⁰ and records that identify jurors.⁴¹

With such a large array of considerations and consequences involving matters exempt from the public right of access, it makes sense to afford trial judges the discretion to prohibit the general public from reviewing any court record. Judge Michael Boudin, while sitting on the First Circuit Court of Appeals, explained that courts needed

³⁴ COMM’N TO PUBLIC ACCESS TO COURT RECORDS, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, 19 (2004) (*citing* N.Y. JUDICIARY LAW § 4 (2003)).

³⁵ N.Y. FAM. CT. ACT § 166 (1962).

³⁶ COMM’N TO PUBLIC ACCESS, *supra* note 35 (*citing* N.Y. FAM. CT. ACT § 166).

³⁷ N.Y. DOM. REL. § 114 (1994).

³⁸ *Id.* § 114(2).

³⁹ COMM’N TO PUBLIC ACCESS, *supra* note 35 (*citing* N.Y. CIV. RIGHTS LAW § 50-b (2006)).

⁴⁰ COMM’N TO PUBLIC ACCESS, *supra* note 35 (*citing* N.Y. CRIM. PROC. LAW § 190.25(4) (2014), N.Y. PENAL LAW § 215.70 (1980)).

⁴¹ COMM’N TO PUBLIC ACCESS, *supra* note 35 (*citing* N.Y. JUD. LAW § 509(a) (1996)).

“wide latitude” and “broad discretion” regarding when and what degree of confidentiality protection is needed. Boudin believed that courts should be afforded “great deference . . . [when] framing and administering” such protection.⁴² Yet this kind of discretion can prove problematic for an adult adoptee. What guidance does the public’s presumed right of access offer a trial judge in a family court proceeding that is traditionally kept secret? Can precedent be reliable when the nebulous⁴³ good cause standard requires only that a trial judge consider all the circumstances and then simply decide? Are the policy considerations supporting the public’s right of access and its good cause limitation relevant to matters concerning adoptions? The ability to answer these questions requires an understanding of how states handle adoptions.

III. ADOPTION LAW

Adoption laws in the United States vary widely. Traditionally, adoption law is set by the states and each state has its own governing statute. There is no uniform standard for adoption practices in the United States. The closest thing to a uniform standard is the Uniform Adoption Act (UAA).⁴⁴ The UAA was drafted in 1994, and aims to reduce the “extraordinarily confusing system of state, federal, and international laws and regulations.”⁴⁵ Indeed, the UAA ambitiously sets out to create an adoption code that is: (1) consistent with relevant federal constitutional and statutory law;⁴⁶ (2) delineates the legal requirements and consequences of different kinds of adoption;⁴⁷ (3)

⁴² *Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 532 (1st Cir. 1993).

⁴³ Justice Powell conceded that “[i]t is difficult to distill from the relatively few judicial decisions a comprehensive definition of what is referred to as the common-law right of access or to identify all the factors to be weighed in determining whether access is appropriate. The few cases that have recognized such a right do agree that the decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case. In any event, we need not undertake to delineate precisely the contours of the common-law right, as we assume, *arguendo*, that it applies to the tapes at issue here.” *Nixon*, 435 U.S. at 598-99.

⁴⁴ UNIF. ADOPTION ACT (1994).

⁴⁵ *See Id.*, Prefatory Note.

⁴⁶ *Id.*

⁴⁷ *Id.*

promotes the integrity and finality of adoptions while discouraging “trafficking” in minors;⁴⁸ (4) respects the choices made by the parties to an adoption about how much confidentiality or openness they prefer in their relations with each other, subject, however, to judicial protection of the adoptee’s welfare;⁴⁹ and (5) promotes the interest of minor children in being raised by individuals who are committed to, and capable of, caring for them.⁵⁰ The UAA also provides the layman with a basic semblance of the adoption process. The UAA allows any individual to adopt or be adopted by another for the purpose of creating a parent-child relationship between them.⁵¹ The biological parent or parents must first relinquish all rights to their child.⁵² The relinquished child is usually placed in the temporary custody of an agency, until suitable parents can be found.⁵³ Naturally, prospective parents must undergo a screening and evaluation process to assess parental fitness.⁵⁴ Prospective parents then commence a civil proceeding in a closed court.⁵⁵ A trial judge will then issue a decree of adoption.⁵⁶ Following the decree, a new birth certificate will be issued.⁵⁷ Typically, all documents, exhibits, and data pertaining to the adoption process will be sealed and remain confidential after the adoption is finalized.⁵⁸

Most adoption statutes have provisions that enable adult adoptees to access their sealed court records. States employ a wide variety of approaches in regard to requests to obtain records relating to adoption proceedings, some of which share common elements. One of these approaches grants the adult adoptee seeking court records unfettered access. This category places no legal burden on the adult adoptee seeking information. For example, Tennessee⁵⁹ grants this unfettered

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* § 1-102.

⁵² *See Id.* § 2-403, 2-406-07.

⁵³ *See Id.* § 2-103, 2-105, 3-204.

⁵⁴ *Id.* § 2-201.

⁵⁵ *Id.* § 3-203.

⁵⁶ *Id.* § 3-705.

⁵⁷ *Id.* § 3-802.

⁵⁸ *Id.* § 6-101-02.

⁵⁹ TENN. CODE ANN. § 36-1-127 (1996).

access, and allows adult adoptees unrestricted access to their original adoption proceedings after reaching the age of twenty-one.⁶⁰ The only burden on the adult adoptee is an administrative burden, requiring the adoptee seeking records to file a written request to the Department of Public Welfare.⁶¹ This is the ideal approach for an adult adoptee, and is one of the most comprehensive and progressive statutes in the country concerning the recognition of adult adoptees' right to access information about themselves.

South Dakota and Oregon both follow a similar approach. South Dakota allows adult adoptees unfettered access to adoption proceedings upon reaching the "age of maturity."⁶² South Dakota has also created a voluntary adoption registry to facilitate the exchange of information between adoptees and birth parents.⁶³ Oregon specifies the age of 18 as the age at which adult adoptees can access their adoption proceedings,⁶⁴ and also operates a voluntary adoption registry.⁶⁵

Another approach acknowledges and accommodates adult adoptees' interest in their own adoption proceedings, but with limitations. Alabama uses such an approach, allowing adult adoptees to access their original birth certificates when they turn nineteen.⁶⁶ However, the state also permits birth parents to specify a contact preference if and when an adult adoptee requests his or her original birth certificate from the State Registrar of Vital Statistics.⁶⁷ Additionally, birth parents have the option to simply attach a medical history with every issuance of a new birth certificate to the adopting parents.⁶⁸ But, the records for the adoption proceeding itself remain sealed, except "for good cause shown."⁶⁹ No statutory provisions further explain how good cause is defined in this instance.

⁶⁰ *Id.* § 36-1-127(b)(3)(A).

⁶¹ *Id.* § 36-1-127(h).

⁶² S.D. CODIFIED LAWS § 25-6-15 (1986).

⁶³ *Id.* § 25-6-15.3.

⁶⁴ OR. REV. STAT. § 109.319 (4)(b) (2015).

⁶⁵ *Id.* § 109.430 (2015).

⁶⁶ *See* ALA. CODE § 26-10A-31(c) (2000); *see also id.* § 22-9A-12(c).

⁶⁷ *Id.* § 22-9A-12(d).

⁶⁸ *Id.*

⁶⁹ *Id.* § 26-10A-31(c).

Arizona requires adult adoptees to petition the court for access to adoption proceedings.⁷⁰ The Arizona statute requires a court order to access non-identifying information, and the adult adoptee must establish a “compelling need” for the disclosure of the information, absent consent of the birth parents.⁷¹ This “compelling need” standard is not defined within the statute. There are few illustrative cases in Arizona, and those that attempt to provide insight may leave adult adoptees with more questions than answers. In one case, Arizona concluded that the request to access the adoption records to obtain information about service of process presented a [compelling interest] to unseal the file, in light of a possible jurisdictional defect.⁷² In another case, the integrity of the judicial process was held to be a compelling interest under circumstances where parties who relied on a trial judge’s express assurances would be harmed by release of a video.⁷³ These cases offer no guidance to adult adoptees seeking sealed records for other, perhaps more personal reasons.

Echoing the “compelling need” standard is the “good cause” standard. This widely used standard, applied in states such as Vermont, Georgia, and Massachusetts, is the standard adopted by the UAA.⁷⁴ Albeit, Vermont is the only state to have actually implemented the UAA thus far.⁷⁵ Georgia adoption law stipulates:

Records may be examined by the parties at interest in the adoption and their attorneys when, after written petition has been presented to the court having jurisdiction and after the department and the appropriate child-placing agency have received at least 30 days’ prior written notice of the filing of such petition, the matter has come on before the court in chambers and, good cause having been shown to the court, the court has entered an order permitting such examination.⁷⁶

⁷⁰ See ARIZ. REV. STAT. ANN. § 8-120(B) (2003).

⁷¹ *Id.* § 8-121(D).

⁷² *In re Hernandez*, 2012 Ariz. App. Unpub. LEXIS 618 at *12 (Ariz. Ct. App. 2012).

⁷³ *Perry v. Brown*, 667 F.3d 1078, 1084 (9th Cir. 2012).

⁷⁴ UNIF. ADOPTION ACT § 6-105(c)(1).

⁷⁵ Legislative Fact Sheet- Adoption Act (1994), available at [http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Adoption%20Act%20\(1994\)](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Adoption%20Act%20(1994)).

⁷⁶ GA. CODE ANN. § 19-8-23(a) (2011).

Massachusetts adoption law, which also contains a good cause standard, provides:

All petitions for adoption, all reports submitted thereunder and all pleadings, papers or documents filed in connection therewith, docket entries in the permanent docket and record books shall not be available for inspection, unless a judge of probate of the county where such records are kept, for good cause shown, shall otherwise order.⁷⁷

Nowhere in the statutory scheme of either of these states' codes is "good cause" defined.

The approaches discussed above are not exhaustive. Of all the possible approaches that states could utilize to address the question of access to adoption proceedings, the good cause standard, as written in Georgia and Massachusetts state statutes, creates the biggest hurdle for adult adoptees due to uncertainty and vagueness.

IV. INCONSISTENCY IN GOOD CAUSE JURISDICTIONS

When addressing the issue of adult adoptees seeking access to their birth records or adoption proceedings, there is no clear standard articulated in a good cause provision. As described above,⁷⁸ good cause is viewed as a way to balance interests. Indeed, the application of a balancing test would likely be adequate in cases where adult adoptees seek access to their adoption records, provided courts have the means to intelligently apply it. Courts in good cause jurisdictions have noted the lack of guidance they receive from state legislatures when determining what interests to balance. When confronted with the issue, some courts have simply sidestepped it, choosing to deny access to the adult adoptee and wait for the legislature to define good cause.⁷⁹ For example, in *Backes v. Catholic Family & Community Services*, a New Jersey trial court refused to appoint an intermediary that would have allowed an adult adoptee to make contact with his birth parents because there was no express authority for the court to do so, despite the presence of statutory "good cause" language.⁸⁰ Though the court

⁷⁷ MASS. GEN. LAWS ch. 210, § 5C (2015).

⁷⁸ See *supra* Part II.

⁷⁹ *Backes v. Cath. Fam. & Cmty. Servs.*, 509 A.2d 283 (N.J. Super. Ct. Ch. Div. 1985).

⁸⁰ *Id.* at 294.

followed prior case law by considering both parental privacy interests⁸¹ and the adult adoptee's interests in his own medical history and psychological health,⁸² it effectively held that unknown policy considerations in pending legislation outweighed an adult adoptee's interest in accessing personal information.⁸³

Other courts have recognized an implied good cause standard from vague statutory schemes.⁸⁴ For example, *In re Roger B.* concerned a challenge to a discretionary statute by an adult adoptee who sought information about his birth family because of feelings of inadequacy and uncertainty as to his background based solely on the fact that he was adopted.⁸⁵ The relevant statute sealed adoption records and original birth records, and only permitted unsealing with a valid court order.⁸⁶ The adoptee challenged the statute, claiming that it infringed upon a fundamental right, created a suspect classification in violation of the Equal Protection clause of the United States Constitution, and violated his right to receive information.⁸⁷ While acknowledging that information regarding one's background, heritage, and heredity is important to one's identity, the court also noted that such information was not within the ambit of any zone of privacy protected by the Constitution, and thus did not implicate a fundamental right.⁸⁸ The court then struck down the assertion that the statute created a suspect class, noting that the status of an adoptee is created by a legal proceeding,⁸⁹ and does not result from "an immutable characteristic determined solely by the accident of birth."⁹⁰ Finally, while acknowledging that the right to receive information and ideas is generally protected, the court noted that the Constitution does not guarantee a right of access to information that is not available to the public generally.⁹¹ With no express statutory language or prior case

⁸¹ *Id.* at 292.

⁸² *Id.* at 293.

⁸³ *Id.* at 294.

⁸⁴ *See In re Roger B.*, 418 N.E.2d 751 (Ill. 1981).

⁸⁵ *Id.* at 752.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 754.

⁸⁹ *Id.* at 756.

⁹⁰ *Id.* (quoting *Frontiero v. Richardson*, 411 U.S. 677, 684-86 (1973)).

⁹¹ *Id.* at 757.

law to guide its decisions, the Supreme Court of Illinois nonetheless found that the discretionary standard in the relevant statute survived the adoptee's constitutional challenge, comparatively implying that good cause satisfactorily protected the rights of the parties involved.⁹²

Some state statutes offer minimal guidance, such as allowing access when unsealing an adoptee's record meets a "best interests of the child" standard.⁹³ Others permit unsealing except under circumstances where the adoptee, birth parents, or adoptive parents would be prejudiced by the disclosure.⁹⁴ Judges grasping for guidance in interpreting good cause provisions not only receive little-to-nothing from their respective legislatures, but also, as noted in *Spinks*, find persuasive authority from other jurisdictions unhelpful.⁹⁵

Such frustration is understandable considering the patchwork of circumstances which satisfy the good cause standard today. Courts have unsealed records based on severe psychological problems caused by lack of information.⁹⁶ Records have been unsealed to aid in determining an "adopted person's right of inheritance from his natural parents."⁹⁷ The good cause standard has also been met by a religious obligation to identify one's ancestors.⁹⁸ Furthermore, in past cases where the good cause standard has been satisfied, adult adoptees have been successful in accessing records based on an "intense" psychological need to know.⁹⁹ This last circumstance is particularly puzzling, because courts have held that "mere curiosity" does not establish good cause.¹⁰⁰ What, then, is the difference between an intense psychological need to know and mere curiosity? Even more

⁹² *Id.*

⁹³ *In re Wells*, 281 F.2d 68, 70 (D.C. Cir. 1960) (quoting relevant statute prohibiting inspection of sealed records except upon court's finding that the welfare of child would be protected or promoted); *In re Adoption of Spinks*, 232 S.E.2d 479, 481 (quoting relevant statute and finding that the best interests of the child were not adequately considered).

⁹⁴ DEL. CODE ANN. tit. 13, § 925 (1953).

⁹⁵ *Spinks*, 232 S.E.2d at 482.

⁹⁶ *In re Assalone*, 512 A.2d 1383, 1387-88 (R.I. 1986).

⁹⁷ *Massey*, 369 So. 2d at 1314.

⁹⁸ *In re Gilbert*, 563 S.W.2d 768, 770 (Mo. 1978).

⁹⁹ *In re Dodge Estate*, 413 N.W.2d 449, 454 (Mich. Ct. App. 1987).

¹⁰⁰ *Mills v. Atl. City Dep't of Vital Statistics*, 372 A.2d 646, 655 (N.J. Super. Ct. Ch. Div. 1977).

frustrating to the adult adoptee is the denial of any explanation as to why the good cause standard was not met.¹⁰¹

V. BALANCING INTERESTS

A. Privacy

Privacy and confidentiality are central to the debate surrounding adult adoptees' abilities to access adoption proceedings. Standing alone, these terms appear just as broad as the good cause standard itself, necessitating a closer look at what privacy concerns arise in adoption proceedings.

In *Olmstead v. United States*, Justice Taft stated that “the right to be let alone [is] the most comprehensive of rights and the right most valued by civilized men.”¹⁰² As discussed above, adoption proceedings are traditionally kept secret from the public, and historically, courts have been very protective of information in these proceedings when third parties request access to such information.¹⁰³ In *People v. Doe*, a New York grand jury issued a subpoena requiring the county clerk to produce the sealed records for all adoptions approved in the preceding year.¹⁰⁴ The court held that the request was too broad and that good cause had not been shown.¹⁰⁵ The court noted that, during adoption proceedings, inquiry is made into many intimate details of the lives of the biological parents, the adoptive parents, and others connected with the proceeding.¹⁰⁶ The court afforded substantial weight to a biological mother and her child's desire to prevent illegitimate births from being publicized.¹⁰⁷ Because the adoption process, an area of vital public interest, required free and frank disclosure of confidential information, the court maintained that information obtained in the proceeding should be kept secret unless disclosure was absolutely necessary.¹⁰⁸

¹⁰¹ See *Fineberg v. Suffolk Div. of Prob. & Fam. Ct. Dep't*, 644 N.E.2d 264 (Mass. App. Ct. 1995).

¹⁰² *Olmstead v. United States*, 277 U.S. 438, 478 (1928).

¹⁰³ E.g. *People v. Doe*, 138 N.Y.S.2d 307 (Erie County Ct. 1955).

¹⁰⁴ *Id.* at 307-08.

¹⁰⁵ *Id.* at 310.

¹⁰⁶ *Id.* at 309.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 310.

People v. Doe contemplated that bearing an illegitimate child would have a disparaging impact on the birth parents, and justified sealing adoption proceedings from the general public. Other courts have reasoned that under some circumstances, the adoption process can be quite traumatic for birth parents.¹⁰⁹ In *Application of Maples*, the Missouri Supreme Court stated the latter, articulating the need for confidentiality during adoption proceedings.¹¹⁰ In arguably an overly broad assertion, the court found that adoptions were often the product of unfortunate mistakes,¹¹¹ and that the decision to give a child up for adoption is agonizing for birth parents.¹¹² The court noted the value of secrecy surrounding adoption proceedings, stating that it gave solace to troubled birth parents who sought to hide circumstances of abandonment or neglect from their birth children.¹¹³

In addition to those of birth parents, the privacy interests of adoptive parents are also considered in adoption proceedings. The Illinois Supreme Court in *In re Roger B* stated that “[c]onfidentiality also must be promoted to protect the right of the adopting parents.”¹¹⁴ The court regarded the decision to adopt as an intimate one—by taking a child “into their home adopting parents have taken into their home a child whom they will regard as their own and whom they will love, support, and raise as an integral part of the family unit.”¹¹⁵ The court further reasoned that adoptive parents need the opportunity to form a stable family relationship free from outside intrusion.¹¹⁶ Such concerns are the premise of the adoptive parents’ right to privacy.

Last but not least, courts have acknowledged the privacy interests of adoptees. Sealing adoption records fully protects the adoptee’s privacy interest during childhood.¹¹⁷ The sealed record shields the adoptee and his or her new family from intrusion by the birth family.¹¹⁸ This protects the adoptee “from any stigma resulting from

¹⁰⁹ *In re Maples*, 563 S.W.2d 760, 763 (Mo. 1978).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Roger B.*, 418 N.E.2d at 754-55.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 755.

¹¹⁸ *Id.*

illegitimacy, neglect, or abuse.”¹¹⁹ “The preclusion of outside interference allows the adopted child to develop a relationship of love and cohesiveness with the new family unit.”¹²⁰

In addition to privacy rights, courts have also recognized the state’s interest in protecting the integrity of the adoption system as a whole. Courts have recognized that adoption exists “as a humane solution to the serious social problem of children who are, or may become unwanted, abused, or neglected.”¹²¹ The public’s interest in protecting the adoption process lies in assuring that policy and practice will not diminish the pool of prospective adoptive parents or “the willingness of biological parents to make decisions which are best for them and their children.”¹²²

B. Disclosure

In contrast to the well-articulated arguments in favor of secrecy, courts are slowly recognizing that permitting access to adoption records provides benefits to adult adoptees. One of these benefits is increased access to medical information. For example, in *Chattman v. Bennett*, a married woman, wanting to begin her own family, made a request to inspect her adoption records to ascertain whether there were any genetic or hereditary factors in her background that might be detrimental to her future children.¹²³ Her concern constituted “good cause” to allow her access to any medical reports or related matter contained in the records of her adoption, and the court granted her request.¹²⁴ The subsequent order also directed that any non-pertinent information be deleted, including the names of her natural parents.¹²⁵ The court supported its decision with reference to a New York Domestic Relations Law statute which governed the furnishing of an adopted child’s medical history to the adoptive parents.¹²⁶

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 755 (quoting Elton B. Klibanoff, *Genealogical Information in Adoption: The Adoptees Quest and the Law*, 11 FAM. L.Q. 185, 196-97 (1977)).

¹²² *Id.*

¹²³ *Chattman v. Bennett*, 393 N.Y.S.2d 768 (App. Div. 1977).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

Objectively, medical information has great value and may significantly impact the health of an adult adoptee. A more subjective position suggests simple knowledge of the identity of his or her biological parents may be important to an adult adoptee. *Mills v. Atlantic City Dep't of Vital Stat.* explored how much weight to give this need to know.¹²⁷ To address the question of whether a psychological need to know satisfied good cause, the court discussed the testimony and other evidence at length.¹²⁸ While acknowledging that mere curiosity is insufficient to satisfy good cause, the court determined that “[a]n adoptee who is moved to a court proceeding such as the one here is impelled by a need to know which is far deeper than ‘mere curiosity.’”¹²⁹ The court was convinced that the adult adoptee’s testimony had “its origins in the psychological makeup of the adoptee’s identity, self-image and perceptions of reality.”¹³⁰ The court noted the testimony of another adult adoptee who searched for and found her natural mother, and stated that “in addition to the desire to be able to relate hereditary and ethnic background information to her children, she was driven to search by a deep-seated feeling of unreality—that her origin was not from a human being but an adoption agency.”¹³¹ The court recognized that those feelings “manifest themselves in physical symptoms such as nervousness or insomnia.”¹³² Those feelings also present “a psychological inability of the adoptees to devote themselves fully and wholeheartedly to their efforts. There was a general feeling among the adoptees that the search is one for mental contentment.”¹³³

Corroborating this evidence, an expert witness testified “that the need to search, far from being curiosity, arises from a deficiency in their sense of self.”¹³⁴ He further explained that “[i]n the case of an adopted child the natural parents are unseen and unreal to the adoptee. He or she is not able to de-mythologize them and a continuing sense of

¹²⁷ *Mills v. Atl. City Dep't of Vital Stat.*, 372 A.2d 646 (N.J. Super. Ct. Ch. Div. 1977).

¹²⁸ *Id.* at 655.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

unreality pervades the self-image.”¹³⁵ Based on the combined testimony, the court was convinced that this compelling psychological need constituted the good cause required to unseal the adoption records in question.¹³⁶

VI. CONSIDERATIONS AND SOLUTION

How does a trial judge balance such sensitive considerations surrounding the privacy of all parties concerned, with the need for information that may be vital for the physical or psychological health of the adult adoptee? Ideally, a trial judge would not bear such a burden; there would be a legislative solution. Indeed, some courts have expressly mentioned that “. . . the Legislature, as the creator of the adoption process, is the appropriate forum to articulate changes in the procedure for releasing such information in order to reflect changes in societal attitudes.”¹³⁷ As mentioned above, the Tennessee adoption statute provides what is perhaps the most comprehensive solution to the adult adoptee’s dilemma. But absent any guidance from their legislatures, states that abide by the good cause standard can, and should, take an alternative judicial measure to alleviate the hardship that good cause poses on adoptees. The current burden on the adoptee to show good cause to access records from his or her adoption proceedings should shift in such a manner that the court prove good cause to withhold access to such records.

As discussed above, the burden is currently on the adult adoptee to demonstrate good cause when he or she wishes to unseal records. If the burden were to shift to the court to show good cause for withholding access, a trial judge would maintain the ability to preserve confidentiality when necessary while catering to an adult adoptee’s need to access information. This standard, first articulated in *Mills*, is consistent with the good cause standard as it applies to matters that are traditionally open to the public.¹³⁸ The *Mills* court articulated the following “procedural criteria to be a solution which protects the rights of all parties, effectuates the intent of the Legislature and lessens the legal and financial burden . . . [on adoptees].”¹³⁹ Should the adoptee

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *In re Assalone*, 512 A.2d 1383, 1390 (R.I. 1986).

¹³⁸ *Mills*, 372 A.2d at 654.

¹³⁹ *Id.*

seeking access be a minor, then the burden to show good cause would be on the adoptee.¹⁴⁰ The need for medical information or information regarding the minor's heredity may constitute good cause in such a situation, but that determination can only be made after weighing the effect the revelation will have upon all parties and the best interests of the minor child.¹⁴¹ If the adoptee is an adult, however, the burden of proof shifts to the court to demonstrate that good cause is not present.¹⁴² This shift is predicated on the idea that "[i]n certain situations the request of the adult adoptee for information should be granted as a matter of course."¹⁴³ For example, if a birth parent files some indicia of consent to identification, access by the adult adoptee should be automatically allowed.¹⁴⁴ This would have the additional effect of alleviating administrative burdens for adult adoptees, as they would be able to forego a court hearing in favor of a simple consent order or its equivalent.¹⁴⁵

Consider the hypothetical situation where a trial judge must balance an adult adoptee's need to understand his or her medical history with the privacy concerns of a biological mother who conceived the adoptee as the unfortunate victim of rape or incest. Though jarring, this situation is within the contemplation of adoption statutes,¹⁴⁶ and is not so far-fetched as to be beyond a trial judge's expectation to encounter it. If a trial judge applied the modified good cause standard with burden shifting, the starting point would favor disclosure. Yet, because of the circumstances surrounding the adoptee's birth, the privacy interests of the birth mother could truly outweigh traditionally recognized circumstances supporting disclosure (even the need to access medical information) in this situation. Under the new burden shifting approach, the trial judge would demonstrate good cause to keep the records sealed, and the birth mother's privacy would be maintained thereby satisfying the good cause standard.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 654-55.

¹⁴⁶ TENN. CODE ANN. § 36-1-127(e)(2) (2015).

VII. CONCLUSION

An adult adoptee attempting to access his or her own adoption proceedings will not receive help in states that permit access only upon showing good cause. It must seem arbitrary, almost capricious, to an adoptee who is not permitted to inspect adoption records because he or she does not show good cause. Though an ideal solution would come from the legislature, courts must grapple with the good cause standard until a better approach is adopted (pun intended). There is very little case law consistent enough to serve as precedent when applying the good cause standard. Moreover, statutes containing vague and ambiguous language offer little guidance to the adoptee seeking access to his or her records. Efforts like the Uniform Adoption Act only become part of the problem.¹⁴⁷ While navigating this confusing legal terrain, trial judges must balance very important interests. Privacy concerns for all parties involved must be weighed carefully against the needs of adult adoptees.

Shifting the burden to the courts to show good cause to keep records sealed would be a step in the right direction. The shift would account for the needs of adult adoptees that were not contemplated when statutes requiring a showing of good cause were drafted. Should interests diverge enough, the court would still have the ability to prevent disclosure. Burden shifting would also be minimally offensive to the legislative intent behind disclosure statutes. It is unlikely that the number of records requests by adult adoptees will decrease in the foreseeable future, and hopefully, a new, consistent body of jurisprudence using the new good cause standard will make it much easier for courts to balance the interests of all parties.

¹⁴⁷ UNIF. ADOPTION ACT § 6-105(c) (NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS 1994). The statute reads, "[t]he court may order the disclosure of the requested information only upon a determination that good cause exists for the release based on the findings required by subsection (b) and a conclusion that: (1) there is a compelling reason for disclosure of the information; and (2) the benefit to the petitioner will be greater than the harm to any other individual of disclosing the information." This language operates contrary to the proposed solution in this Note.