

STATE OF FLORIDA

v.

CASEY MARIE ANTHONY,  
Defendant.

)  
) In the Circuit Court of the  
) Ninth Judicial Circuit, in and for  
) Orange County, Florida  
)  
) Case No.: 482008-CF-0015606-O  
) Division 16  
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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S  
MOTION TO PRECLUDE THE STATE'S IMPERMISSIBLE, GENDER BIASED,  
REQUEST FOR IMPOSITION OF THE DEATH PENALTY**

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COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through undersigned counsel, and submits this Memorandum of Law in support of her Motion to Preclude the State's Impermissible, Gender Biased, Request for Imposition of the Death Penalty. The defense, and Miss Anthony, state the following:

**STATEMENT OF FACTS**

1. On October 14, 2008 a Grand Jury Indicted Miss Anthony on seven counts relating to the disappearance of her daughter, Caylee Anthony. The seven charges include first degree murder, aggravated child abuse, aggravated manslaughter of a child, and four counts of providing false information to a police officer.
2. On December 5, 2008, the State filed a Notice of Intention Not to Seek the Death Penalty.
3. On April 13, 2009, citing the availability of additional information, the State filed a Notice of Intention to Seek the Death Penalty. Attorney Jose Baez wrote the State, to inquire

about the identity of this additional information, however, the defense has yet to receive a response.

4. To this date the State has not disclosed what the additional information is which motivated changing their position and seeking death. Nor has the State disclosed which aggravating circumstances they plan to rely on in determining Miss Anthony's eligibility for death.

5. On September 30, 2009, Miss Anthony filed a Motion to Preclude the Death Penalty Procedures citing a lack of good faith in the State's decision to seek the death penalty. This Court denied that motion on December 18, 2009. That Motion and supporting Memorandum of Law are incorporated here by reference.

## ARGUMENT

### **I. The Judiciary Has the Authority and Duty to Curb Prosecutorial Discretion Where the State Has Impermissible Motives**

Although the discretion to prosecute is broad, the United States Supreme Court has recognized that it is not unfettered. *United States v. Batchelder*, 442 U.S. 114, 125 (1979). Under the Florida Constitution, the decision to charge and prosecute is an executive responsibility, and the State Attorney has discretion in deciding whether and how to prosecute. Fla. Const. art. II, § 3 (establishing separation of powers between legislative, judicial, and executive branches). However, the Florida Supreme Court has concluded that judges have the authority to restrict the State's discretion in seeking the death penalty when the prosecutor has impermissible motives, such as bad faith or the desire to prevent the exercise of a defendant's constitutional rights. *State v. Donner*, 500 So.2d 532, 533 (Fla. 1987). A judge's decision to prevent the State from seeking the death penalty is not subject to interlocutory appeal. *See Fla.*

R. App. P. 9.140(c)(1) (not including an order barring the Prosecution from seeking the death penalty in the list of appeals by the State that are permitted).<sup>1</sup>

Furthermore, the judiciary has the duty and responsibility to protect individuals from the unconstitutional invasion of their rights by all branches of the government. *United States v. Butler*, 297 U.S. 1, 62-63 (1936). Specifically, the Due Process Clause of the Fourteenth Amendment requires that this Court protect the defendant's right to a fair trial. *Danforth v. Minnesota*, 128 S.Ct. 1029, 1035 (2008). Thus, this Court has the authority and duty to protect Miss Anthony's rights by precluding the State from seeking the death penalty when the Prosecution harbors bad faith motivations for doing so.

**II. Given the Requirement of Heightened Reliability in Capital Cases, This Court Must Ensure that the State's Decision to Seek the Death Penalty is Not Driven by Impermissible Motives.**

The death penalty is categorically different from all other punishments. *See, e.g., Gardner v. Florida*, 430 U.S. 349, 357-58 (1977) ("From the point of view of the defendant, it is different in both its severity and its finality. From the point of view of society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action.") (opinion of Stevens, Stewart, and Powell, JJ.); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) ("[T]he penalty of death is qualitatively different from a sentence of imprisonment, however long. Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two."). Given this difference, the Supreme Court has placed "special constraints on the procedures used to convict an accused of a capital offense and sentence him to death." *See Murray v. Giarrantano*, 492 U.S. 1, 8-9 (1989); *see also Beck v. Alabama*, 447 U.S. 625, 638 (1980) ("[W]e have invalidated

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<sup>1</sup> The Prosecution may still seek review of such a decision by writ of certiorari, *see Brown v. State*, 521 So.2d 110, 112 (1988), but there is no requirement that a higher court entertain such an appeal, *see Combs v. State*, 436 So.2d 93, 96 (Fla. 1983).

procedural rules that tended to diminish the reliability of the sentencing determination. The same reasoning must apply to rules that diminish the reliability of the guilt determination.”); *Woodson*, 428 U.S. at 304-305 (recognizing a heightened reliability requirement under the Eighth and Fourteenth Amendments).

While the Supreme Court upheld Florida’s current death penalty statute as facially constitutional in *Proffitt v. Florida*, 428 U.S. 242, 251-52 (1976), it is unconstitutional as applied to Miss Anthony. The State appears to be seeking the death penalty in this case, after having publicly declined to do so, in order to receive a conviction-prone jury. The State also appears to be motivated by gender-based societal stereotypes, and the pervasive media involvement, which divert attention from the lack of evidence supporting first degree murder, let alone to support a good faith basis for the imposition of the death penalty. Seeking the death penalty in such circumstances unconstitutionally diminishes the reliability of these proceedings.

A. **By Seeking the Death Penalty Where It Is Not Justified by a Legitimate State Interest, the State is Impermissibly Attempting to Prevent the Exercise of Miss Anthony’s Constitutional Right to a Fair Trial and Due Process.**

There is insufficient evidence as a matter of law to establish first degree murder, let alone to establish sufficient aggravating circumstances to recommend the death penalty. Where the State does not have a legitimate interest in seeking the death penalty, permitting it to use death penalty procedures for a bad faith, strategic purpose would prejudice Miss Anthony and violate her constitutional rights to due process and a fair trial. Miss Anthony incorporates argument from her previous Motion, and supporting Memorandum of Law, to Preclude the Death Penalty Procedures here by reference.

### **III. Traditional gender expectations, and an inherent societal bias against women accused of crimes, work to disadvantage women in criminal proceedings.**

Despite advances in gender equality, traditional gender stereotypes are still widely held and serve to ensure that women accused of crimes are treated more harshly in both the court of public opinion and the court of law. A brief discussion of such stereotypes, and their effect on women in criminal proceedings, is necessary to understand the State's impermissible, gender biased, motivation for seeking to execute Miss Anthony.

Sexist attitudes are important in shaping how the public perceives a woman who has been arrested and accused of committing a criminal act. G. Tendayi Viki, Kristina Massey, & Barbara Masser, *When Chivalry Backfires: Benevolent Sexism and Attitudes Toward Myra Hindley*, 10 J. LEGAL & CRIMINOL. PSYCHOL. 109, 111 (2005). Sexist attitudes can enter the sacrosanct realm of the fair and neutral criminal trial in a number of ways. While hostile sexist attitudes are less common and more apparent to an observer, benevolent sexist attitudes are often more subconscious and difficult to recognize. Benevolent sexism is often viewed in a positive light, with such generalizations seen as being necessary to protect women. *Id.* Benevolent sexist attitudes can enter the criminal justice system at all levels when they are subconsciously held by individual actors such as police officers, detectives, social workers, attorneys for the prosecution and defense, judges, and juries. Also, while perhaps not individually harboring sexist beliefs, prosecutors can be influenced and motivated by a perceived public demand for justice. Elizabeth Rapaport, *Mad Women and Desperate Girls: Infanticide and Child Murder in Law and Myth*, 33 FORDHAM URB. L.J. 527, 558 (2006). All of these factors work in tandem to disadvantage female offenders, causing them to be punished much more severely than a male who committed the same crime.

A. **Traditional gender expectations view women as incapable of certain types of crime.**

Gender stereotypes reflect traditional attitudes as to what types of behavior are, or are not, appropriate for women. Criminal offenses are often viewed as being gendered in nature. Tendayi, *supra*, at 110. Certain crimes, such as those that are violent in nature, are traditionally seen as being only committed by men. *Id.* These male dominated crimes include murder, rape, robbery, and the like. The crimes which are viewed as being possible for a woman to commit are much less severe. Society views women as only being capable of petty crimes such as shoplifting. *Id.*

Researchers have found that when women defy traditional gender stereotypes, and commit “men-type” crimes, they are punished more severely than comparable male offenders. *Id.* Such women are seen as “doubly deviant” and judged not only for their legal transgressions but also for their breaking from the traditional gender stereotype by committing a non-typical crime. *Id.*

B. **Society places a premium on motherhood, holding mothers responsible for any harm that may befall their child, regardless of involvement or culpability.**

Women are commonly thought of as being nurturing toward children and this role is even more pronounced when a woman is herself the mother of the child. *Id.* at 111. Tragically, harm occasionally befalls children. In such situations, when a child is injured or killed, the mother is often vilified simply for her being a mother - a mother who was unable to prevent her child from falling into harm’s way. Molly Karlin, *Damned if She Does, Damned if She Doesn’t: De-Legitimization of Women’s Agency in Commonwealth v. Woodward*, 18 COLUM. J. GENDER & L. 125, 141 (2008). Mothers are seen as always being responsible. *Id.* at 149. Especially in the case of working mothers, “[W]henver anything happens to the child . . . the mother is

automatically to blame.” *Id.* at 143. This strict liability for mothers “ensures that they will be criticized regardless of the choices they make.” *Id.* at 149. Mothers are expected to be exceptionally mature and as a result, the mistakes of others are often imputed to the mother. *Id.* at 146. Mothers will often be deemed guilty for nothing more than their failure to live up to traditional gender stereotypes. *Id.* at 149. This especially heavy burden, placed uniquely on mothers, exists not only in the public at large but also permeates the judicial sphere. *Id.* Women accused of crimes against children are much more likely to be disproportionately charged with a higher offense and punished more severely due to preconceived notions of motherhood.

C. **Women are often tried and punished not only for the crime they committed but also for their degree of non-conformity with traditional gender stereotypes.**

While gender stereotypes are widely held by the public, the effect such stereotypes has on female offenders is most pronounced in two situations. First, occurring earliest in the litigation process, women who fail to conform to traditional gender stereotypes are often overcharged by prosecutors. Claudia Dreifus & Karen Rose, *Women on Death Row*, Ms. Magazine, Spring 2003, 71, 74. When the evidence available to the State is deficient, non-conformity with gender expectations will ensure that, for women, “[a] case that probably was manslaughter or second degree murder is charged as a capital crime.” *Id.* Over-charging is a common trait found in the cases of women on death row. *Id.*

The second way in which gender stereotypes most significantly infiltrate the criminal justice system is through the internal biases held by jurors. Juries are unsympathetic to women who live non-traditional lifestyles or who are thought of as having committed a crime that is outside the traditional gender stereotype for women. *Id.* Juries punish such women not only for the crime they committed but also for their non-conformity with the expectations for their

gender. *Id.* In cases where the State's evidence is weak, prosecutors, acting in bad faith, see it as being advantageous to elicit such gender biases in order to secure a conviction.

Many of the deviations from traditional gender stereotypes, seen by the public as warranting harsher treatment of a particular female defendant, have been alleged against Miss Anthony<sup>2</sup>. Women are traditionally thought of as being chaste and pure and as a result any sort of sexual misconduct is viewed as warranting punishment. Intimate details of a woman's life, although wholly irrelevant to culpability for the crime to which she is charged, are often exposed to show her deviation from traditional gender expectations.<sup>3</sup> For example, in the case of Darlie Routier, who was accused of stabbing her children, much attention was given to her being a flashy dresser, the fact that she had breast implants, body piercings, and tattoos and also to the fact that she frequented a club with male strippers. Rapaport, *supra*, at 564-565.

Women are also frequently adjudicated as being particularly blameworthy if they fail to exhibit what society views as being the proper emotional response. Karlin, *supra*, at 168. In the case of Deborah Eappen, she was threatened by mail and by telephone, as well as being vilified in the press. *Id.* at 127. By defending herself, and exhibiting anger at being attacked for the death of her own son, something she was not involved in, Eappen was seen by the public as being culpable. *Id.* at 149. No two people are alike, and there exists no right response to a

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<sup>2</sup> A comment posted to the Orlando Sentinel website, on March 9, 2010, states, "... her priorities were...party ing. Having sex. Drinking." Comment Posted to the Story, *Defense Wants Casey Anthony Party Pictures Barred from Trial*, (Mar. 9, 2010 7:45 EST) <http://discussions.orlandosentinel.com/20/orlnews/os-casey-anthony-defense-motions-20100308/10?page=3>. This comment is illustrative of the general theme of the public opinion of Miss Anthony. Many of the persons commenting on Miss Anthony's case are much less reserved in their characterizations.

<sup>3</sup> In an August 18, 2008 interview with Anthony Rusciano, Detective Yuri Melich asks whether Miss Anthony has any sexually transmitted diseases, and how many people from Rusciano's Academy class Miss Anthony "hooked up with." Such information was and is wholly irrelevant to the investigation and demonstrates the State's bias toward Miss Anthony based upon her non-conformity with traditional gender stereotypes, not to mention a certain prurience.

highly traumatic or stressful situation, yet women are consistently judged for whatever reaction they express.

Society today still harbors a great deal of class bias which, in the case of privileged women, serves to elicit harsher punishment for wrongs they commit. In the case of Deborah Eappen, another factor affecting the degree of her perceived culpability was class and wealth. *Id.* at 144. As a commentator stated, “[Mom] gets special blame if she doesn’t ‘have’ to work.” *Id.* Privileged women invoke a much harsher response to criminal acts they commit. Similarly, if women engage in non-traditional gender pursuits such as mothers who work, they are also more harshly judged. *Id.*

Women who resist informal types of social control also elicit much harsher treatment. Ania Wilczynski, *Mad or Bad? Child-Killers, Gender and the Courts*, 37 BRIT. J. CRIMINOL. 419, 431 (1997). Such rebellious behavior can include sexual promiscuity, violence, and alcohol or drug abuse. Dreifus, *supra*, at 74. Women who drink heavily are often viewed as being bad women or bad mothers and treated more severely in the criminal justice system. Wilczynski, *supra*, at 426. Ultimately the fate of a woman accused of crime may be based more upon the prosecutor’s ability to play to gender bias rather than his or her ability to prove the elements of the crime. Rapaport, *supra*, at 531. The use of such biases and gender stereotypes by prosecutors, however, deprives a defendant of the constitutional right to due process and a fair trial and is also highly unethical. Rachel King & Judy Bellin, *The Forgotten Population: A Look at Death Row in the United States Through the Experiences of Women*, ACLU, December 2004, at 8.

**IV. Gender bias provides the State with an impermissible motive for its decision to seek the death penalty for Miss Anthony.**

The State has not shown a good faith basis for its decision to reverse the previous Notice of Intention Not to Seek the Death Penalty, and instead seek to execute Miss Anthony. Given the unparalleled media scrutiny in Miss Anthony's case, and the special attention shown to Miss Anthony's perceived deviations from traditional gender stereotypes and expectations of motherhood, it is likely that the State harbors a bad faith, gender biased, motive for its decision to seek the death penalty.

Scholars have found that when faced with cases of great notoriety<sup>4</sup>, prosecutors will often pursue severe punishments even when there is powerful evidence showing a lesser punishment is most appropriate. Rapaport, *supra*, at 558. Public demands for notorious defendants to be brought to justice for their non-conformity with gender stereotypes give prosecutors a motive to seek harsh penalties. *Id.* Such notorious cases also allow prosecutors a platform in order to pursue their own individual agendas, at the expense of the defendant. *Id.* Any motivation for the decision to seek the death penalty, outside of individual consideration of the facts of the crime, is impermissible and deprives Miss Anthony of her constitutional rights to due process, a fair trial, and to be free from cruel and unusual punishment.

There exists no direct evidence showing that Miss Anthony was in any way responsible for the death of her daughter Caylee. The State's case is purely circumstantial. *See Defense Motion to Preclude the Death Penalty.* Part of the circumstantial evidence the State is likely to

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<sup>4</sup> Miss Anthony's case is certainly one of great notoriety. A Google search for "Casey Anthony" returns 7,650,000 results. CNN's website currently lists Casey Anthony as second on their list of top Legal News stories. Inflammatory television host Nancy Grace, as of October, 2009, has devoted 181, hour long, shows to Miss Anthony's case. Walter Pacheco, *Add New Casey Anthony Stat. – One Year Anniversary of Her Indictment, By-the-numbers Look at the Past Year of Casey Anthony's Life*, (Oct. 14, 2009 12:14 EST), <http://www.orlandosentinel.com/news/local/caylee-anthony/orl-casey-anthony-anniversary-101409.0,240444.story>. Miss Anthony also incorporates here, by reference, her Amended Motion, and Memorandum of Law, for Change of Venue, filed September 17, 2009.

attempt to present at trial is intimate, irrelevant, details of Miss Anthony's personal life, past sexual partners and sexual practices. The State is likely to also attempt to introduce photographs that show Miss Anthony attending parties, consuming alcohol, and dancing with other women<sup>5</sup>. Most of these photos are wholly irrelevant, not even being from the same period of time as the alleged criminal act. This circumstantial evidence is designed not to show Miss Anthony's involvement in her daughter's death, but rather to inflame gender biases present in potential jurors by showing her deviation from traditional gender expectations. The inflammation of such prejudices detracts attention away from the fact that the State's case, as a matter of law, is weak. It is likely that the State's decision to seek the death penalty is based on such impermissible, gender biased, motives.

Much of the media attention in Miss Anthony's case is focused not on the facts known, but upon irrelevant, prejudicial, evidence of her non-conformity with traditional gender roles. The public outrage is based most fundamentally on the notion that Miss Anthony has violated the sanctity of motherhood. Much attention has been given to Miss Anthony's failure to exhibit what the public deems an appropriate emotional response. Miss Anthony was first criticized for a failure to show emotion, and then later criticized for shedding tears during a court appearance<sup>6</sup>. As discussed in Section IV, mothers accused of crimes are seemingly subject to strict liability and any action can be seen as being outside the traditional ideals of motherhood. *See* Karlin, *supra*. Further evidence can be seen in articles published and reports aired in the local media. For example one article published on the Orlando Sentinel website says, "horrific murder goes

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<sup>5</sup> Miss Anthony incorporates here, by reference, her previously filed Motion, and Memorandum of Law, to Exclude Irrelevant Evidence of "Party Pictures" as well as her previously filed Motion, and Memorandum of Law, to Exclude Hearsay Evidence, Gossip, and Innuendo.

<sup>6</sup> *See* Posting of Lillian Glass to <http://drillianglassbodylanguageblog.wordpress.com/2009/12/16/casey-anthony-s-body-language-in-recent-court-appearance-looks-like-the-fake-tears-and-emotion-of-sociopath/#comments> (Dec. 16, 2009 21:23). (Characterizing Miss Anthony's tears and emotion as "phony").

against the grain of everything parenting stands for.”<sup>7</sup> The public demands harsh punishment for such deviations from idealized notions of motherhood. Such public demands for gender-biased justice are also likely to have influenced the State’s decision to seek the death penalty. A gender-biased basis for deciding to seek the death penalty is unethical, impermissible, and this Honorable Court has the power to intervene to prevent a deprivation of Miss Anthony’s constitutional rights.

**V. Evidence shows that the State engages in a pattern of gender-biased imposition of the death penalty.**

The State, specifically Orange County, has repeatedly not sought the death penalty for men who have murdered a child. The defense, albeit limited in their ability to search, has found four cases in the last five years where Orange County prosecutors have declined to seek the death penalty against fathers who murdered their children.<sup>8</sup> In each of these cases there were documented injuries, which showed the child’s death to be a product of physical abuse. Despite charging the fathers with first degree murder as well as aggravated child abuse, and despite the existence of Fla. Stat. § 921.141(5)(d) and § 921.141(5)(l), which specifically enumerate aggravated child abuse and an intentional killing of a child under the age of 12 as aggravating circumstances warranting the death penalty, Orange County prosecutors failed to seek the death penalty against these fathers.

In one of these cases, the case of William Pickett II, it was shown that the child was already recovering from previously broken ribs when his father killed him. Sarah Lundy, *Dad Sentenced to Prison for Death of Infant Son*, ORLANDO SENTINEL, Feb. 19, 2009, at B3. In that

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<sup>7</sup> See [http://blogs.orlandosentinel.com/entertainment\\_tv\\_tvblog/2010/03](http://blogs.orlandosentinel.com/entertainment_tv_tvblog/2010/03)

<sup>8</sup> Despite not having access to a comprehensive database in which to perform their search, the defense has found the cases of William Pickett II (2007-CF-015174-A-O), Roosevelt Bradley III (2009-CF-011825-A-O), Paul Darden (2006-CF-006347-A-O), and Noah Redding (2005-CF-004089) each of whom was charged with first degree murder and aggravated child abuse, yet did not face the death penalty, in the last five years. In an additional case from 2002, Robert Early (2002-CF-013232-A-O) was also charged with first degree murder and aggravated child abuse, however, also did not face the death penalty.

case, Orange County prosecutors filed a Notice of Intent Not to Seek the Death Penalty.<sup>9</sup> Prosecutor Linda Drane Burdick stated that the case was difficult “because of the lack of information” and because, “[i]t’s unclear what happened and whether the injuries were intentional or accidental.” *Id.*

In Miss Anthony’s case, the medical examiner found no signs of trauma, no signs of volatiles, nor any signs of drugs being present in the remains of Caylee Anthony.<sup>10</sup> There is nothing that would indicate by what means Caylee Anthony died. The concerns expressed by Prosecutor Linda Drane Burdick in the Pickett case should apply with equal, if not greater, force in Miss Anthony’s case, a case in which there was absolutely no signs of trauma. Here, however, the prosecution – one of whom is that same prosecutor, Linda Drane Burdick – is seeking the death penalty for Miss Anthony. The difference between Miss Anthony and Mr. Pickett, which could explain why she is facing death and he did not, is that Miss Anthony is a woman who deviated from traditional expectations for her gender.

In another of these cases, the case of Noah Redding, Orange County homicide detectives arrested the father while he was getting a tattoo, shortly after the death of his daughter. Henry Pierson Curtis, *Detectives Interrupt Tattoo to Make Arrest*, ORLANDO SENTINEL, March 31, 2005. Doctors found Redding’s daughter to have had severe bleeding behind the eyes, a skull fracture, and a bruised abdomen. *Id.* Such injuries were indicative of child abuse. *Id.* Orange County prosecutors charged Redding with first degree murder and aggravated child abuse, however did not seek the death penalty. No mention was made of Redding’s tattoo being indicia of guilt.

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<sup>9</sup> See docket for case no. 2007-CF-015174-A-O

<sup>10</sup> See Autopsy Report. Miss Anthony also incorporates argument here by reference from her previous Motion, and supporting Memorandum of Law, to Preclude the Death Penalty.

Similarly Miss Anthony also decided to get a tattoo, sometime after the disappearance of her child. However, unlike the Redding case, in Miss Anthony's case Orange County prosecutors have made the tattoo a significant aspect of their case.<sup>11</sup> The large amount of attention being given to Miss Anthony's tattoo can be explained by the gender-biased motives of the State. It defies traditional gender expectations for a woman to be tattooed. As shown previously, in sections IV and V, a woman's deviation from traditional gender stereotypes elicits a harsher punishment. The fact that the State has devoted significant attention to Miss Anthony's non-conformity with traditional gender expectations explains why the death penalty is being sought here but was not in similar cases, cases with documented injuries, where the offender was male.

Having shown a pattern of gender-biased imposition of the death penalty by Orange County prosecutors, the burden of proof should shift to the State. The State is in a far superior position in that they have access to records of previous cases. The State also knows what the, yet to be disclosed, additional information is which they say supports their decision to seek the death penalty for Miss Anthony. In light of the evidence offered by the defense, and to ensure that Miss Anthony's constitutional rights are protected, this Honorable Court should require the State to show, conclusively, that they are not relying upon an impermissible, gender-biased, motive in making the decision to seek the death penalty for Miss Anthony.

### **CONCLUSION**

Having shown a lack of any legitimate basis for the State's decision to seek the death penalty against Miss Anthony, and given the pervasiveness of the gender bias in her case, such bias is fairly imputed to the State. Furthermore, the defense has shown the specific prosecutors in this case to have previously engaged in what appears to be a pattern of gender-biased

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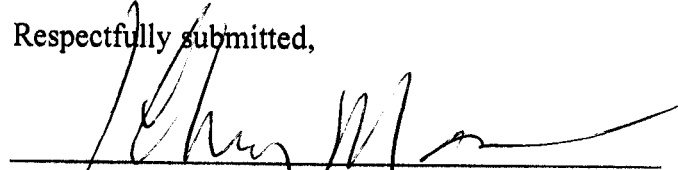
<sup>11</sup> See State's Motion to Compel Photographs, filed June 19, 2009.

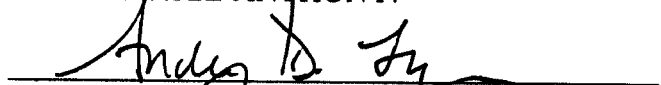
imposition of the death penalty. Due to the State's impermissible, gender biased, motivation for seeking the death penalty, this Honorable Court should intervene to secure Miss Anthony's rights as guaranteed by the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and Article I, Sections 9, 16, 17, 21 and 22 of the Florida Constitution. Being that this is a capital case, this Court must apply heightened scrutiny to the protection of Miss Anthony's rights. As a result, this Court should order the Prosecution to cease its use of death procedures and preclude the Prosecution from seeking the death penalty against Miss Anthony.

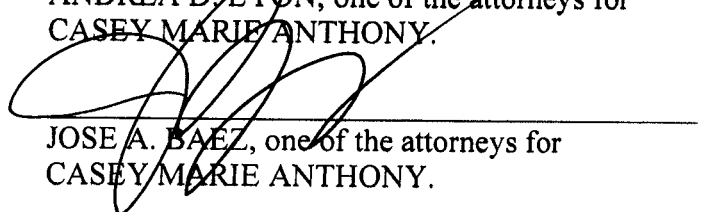
WHEREFORE, the Defendant CASEY MARIE ANTHONY respectfully requests this Honorable Court to:

- a. Order the State to file a response motion and memorandum of law within thirty days of the filing of this motion and accompanying memorandum of law. In this response, the State should have the burden of showing that they are not seeking the death penalty because of impermissible motives, and should be compelled to present more than conclusory statements in this regard;
- b. Allow the defense ten business days from the State's filing of its responsive motion and memorandum of law to file a reply motion and memorandum of law;
- c. Set a hearing date, at which time this Honorable Court may hear arguments relating to the defense and prosecution's motions; and
- d. Preclude the prosecution from seeking the death penalty.

Respectfully submitted,

  
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J. CHENEY MASON, one of the attorneys for  
CASEY MARIE ANTHONY.

  
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ANDREA D. LYON, one of the attorneys for  
CASEY MARIE ANTHONY.

  
\_\_\_\_\_  
JOSE A. BAEZ, one of the attorneys for  
CASEY MARIE ANTHONY.

Dated: April 29, 2010

J. Cheney Mason, P.A.  
Bank of America Building  
390 North Orange Avenue  
Suite 2100  
Orlando, FL 32801  
407-843-5785 (Phone)  
407-422-6858 (Fax)

Andrea D. Lyon  
Director, Center for Justice in Capital Cases  
DePaul University College of Law  
25 E. Jackson Blvd., Suite 1050  
Chicago, IL 60604  
312-362-8294 (Phone)  
312-362-6918 (Fax)

Jose A. Baez  
The Baez Law Firm  
522 Simpson Road  
Kissimmee, FL 34744  
407-705-2626 (Phone)  
407-705-2625 (Fax)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to the Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801; via facsimile and /or U.S. Mail on this 28 day of April, 2010.



JOSE A. BAEZ, ESQUIRE

FL Bar No.: 0013232

JOSE L. GARCIA, ESQUIRE

FL Bar No.: 0026020

THE BAEZ LAW FIRM

522 Simpson Road

Kissimmee, Florida 34744

Tel.: (407) 705-2626

Fax: (407) 705-2625