

)	In the Circuit Court of the
)	Ninth Judicial Circuit, in and for
)	Orange County, Florida
STATE OF FLORIDA)	
)	Case No.: 482008-CF-0015606-O
v.)	Division 16
)	
CASEY MARIE ANTHONY,)	Hon. Stan Strickland
)	
Defendant.)	
)	

MOTION TO PRECLUDE THE DEATH PENALTY PROCEDURES

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through her attorneys, ANDREA D. LYON and JOSE A. BAEZ, and respectfully asks this Honorable Court to secure her 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 and thus, respectfully asks this Court to preclude the Prosecution from seeking the death penalty. In support thereof, the Defense states the following:

1. The judiciary has the authority to curb prosecutorial discretion where the Prosecution harbors bad faith motives that infringe the defendant's constitutional rights. *See State v. Donner*, 500 So.2d 532, 533 (Fla. 1987).
2. Because the death penalty is categorically different from all other punishments, *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976), the Constitution requires heightened reliability in capital cases, *see Beck v. Alabama*, 447 U.S. 625, 638 (1980).
3. The Prosecution does not have a legitimate interest in seeking the death penalty against Miss Anthony.

- a. The Prosecution cannot establish capital murder as a matter of law.
See Motion to Dismiss Counts I and II of the Indictment Against Casey Marie Anthony.
- b. There is insufficient evidence as a matter of law to establish sufficient aggravating circumstances to recommend the death penalty.
 - i. The Prosecution must prove aggravating factors beyond a reasonable doubt. *Hildwin v. State*, 727 So.2d 193, 194 (Fla.1998).
 - ii. Even if the Prosecution were able to prove capital murder, which it cannot do as a matter of law, only one aggravating factor would apply in this case: the victim of the capital felony was a person less than 12 years of age. Fla. Stat. § 921.141(5)(l).
 1. As a matter of law, the Prosecution cannot establish that Miss Anthony committed a capital felony that was especially heinous, atrocious, or cruel.
 2. As a matter of law, the Prosecution cannot establish that Miss Anthony committed a capital felony of homicide that was committed in a cold, calculated, and premeditated manner.
 3. As a matter of law, the Prosecution cannot establish that Miss Anthony committed a capital felony after

committing or attempting to commit aggravated child abuse.

4. As a matter of law, the Prosecution cannot establish that Miss Anthony committed a capital felony in which the victim was particularly vulnerable because the defendant stood in a position of familial or custodial authority over the victim.
5. It would be unconstitutional to impose the death penalty based solely on the under 12 aggravator because the under 12 aggravator does not tailor the application of the death penalty to the most culpable offenders. *Cf. Zant v. Stephens*, 462 U.S. 862, 876 (1983).
 - c. Even if the Prosecution were able to prove that Miss Anthony was responsible for her daughter's death, the death penalty would be grossly disproportionate considering the outcomes of other Florida cases. *See, e.g., Smalley v. State*, 546 So.2d 720, 723 (1989); *Cardona v. State*, 641 So.2d 361, 362-63 (Fla. 1994).
4. This lack of evidence and gross disproportionality strongly indicate that the State is not seeking the death penalty in a good faith effort to implement its capital punishment scheme but rather is attempting to use death penalty procedures to gain a strategic advantage.
5. Seeking the death penalty where it is not justified by a legitimate state interest would severely prejudice Miss Anthony and violate her constitutional rights.

- a. Death qualification diminishes the reliability of the guilt determination and sentencing.
 - i. Death qualification creates conviction-prone juries. *See, e.g.,* James R. P. Ogloff & Sonia R. Chopra, *Stuck in the Dark Ages: Supreme Court Decision Making and Legal Developments*, 10 *Psychol. Pub. Pol'y & L.* 379, 394.
 - ii. Death qualification increases the likelihood of unconstitutional sentencing. *See, e.g.,* John H. Blume, *Probing "Life Qualification" Through Expanded Voir Dire*, 29 *Hofstra L. Rev.* 1209, 1220 (2001).
 - b. The State must have a legitimate interest in order to permissibly death qualify a jury. *See Witherspoon v. Illinois*, 391 U.S. 510, 518-20 (1968); *Wainwright v. Witt*, 469 U.S. 412, 423 (1985); *Lockhart v. McCree*, 476 U.S. 162, 175-76 (1986).
6. Therefore, in the interests of Casey Marie Anthony's constitutional rights, the Defense respectfully asks this Honorable Court to:
- a. Order the Prosecution to file a response motion and memorandum of law within thirty days of the filing of this motion and accompanying memorandum of law;
 - b. Allow the defense ten business days from the Prosecution's filing of its responsive motion and memorandum of law to file a reply motion and memorandum of law;

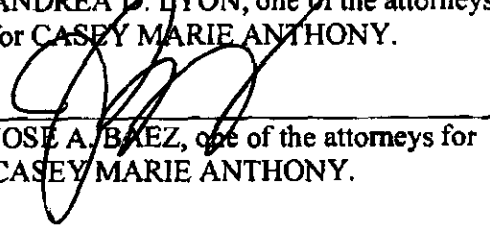
- c. Set a hearing date, at which time this Honorable Court may hear arguments relating to the defense and prosecution's motions;
- d. Preclude the Prosecution from seeking the death penalty.

WHEREFORE, the Defendant CASEY MARIE ANTHONY respectfully requests that this Honorable Court enter an order precluding the Prosecution from seeking the death penalty.

Respectfully submitted,



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for CASEY MARIE ANTHONY.



JOSE A. BAEZ, one of the attorneys for
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Dated: September 30, 2009

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