

1 RYAN ROTH
2 ATTORNEY AT LAW
3 State Bar No. 291844
4 1120 14th St, Suite 5
5 Modesto, CA 95354
6 (209)579-2206/ (209)579-2211 Fax

7 Attorney for Defendant
8 CHRISTINA DEFILIPPO

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF STANISLAUS

11 PEOPLE OF THE STATE OF CALIFORNIA,)

12 Plaintiff,)

13 vs.)

14 CHRISTINA DEFILIPPO,)

15 Defendant.)

CASE NO. 1490969

RENEWED C.C.P.F. 170.6 MOTION

DATE: September 25, 2015

TIME: 9:30 am

DEPT: 26

16 TO THE HONORABLE JUDGE BARBARA ANN ZUNIGA, JUDGE OF THE
17 SUPERIOR COURT:

18 Defendant hereby submits the following points and authorities are a renewed C.C.P.F.
19 170.6 motion under changed circumstances. The court previously denied this defendant's 170.6
20 motion. As a result, defendant has been now denied equal protection of the law as argued below.

21 Johnson v. Superior Court (1958) 50 C. 2d 693, held CCP 170.6 limitation to one
22 challenge per side was rationally based and hence constitutional, it was wrongly decided in
23 view of subsequent First Amendment right to petition cases. The U.S. Supreme Court has since
24 the Johnson decision made it explicitly clear the First Amendment right to petition applies to the
25 courts. See California Motor Transport v. Trucking Unlimited (1972) 404 U.S. 508, Bill
26 Johnson's Restaurants, Inc. v. NLRB (1983) 461 U.S. 731. It is axiomatic that the state may not
27 discriminate against the use of the right to petition without a compelling state interest, i.e. strict
28 scrutiny applies. Perry Education Assn. v. Perry Local Education Assn. (1983) 460 U.S. 37, 45.
Here, the 170.6 statute discriminates against a defendant on an irrational basis that the first
defendant to petition, i.e. the first to file a 170.6 motion, bars all other co-defendants from

FILED
SEP 25 2015
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY *[Signature]*

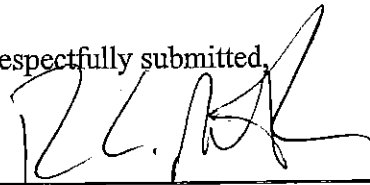
1 equally exercising this crucial right. Thus the action of the first defendant automatically denies
2 the other co-defendants the equal right to petition.

3 Thus equally situated defendants are denied equal access to the court process. The
4 discrimination here is all the more transparent in that the prosecutor decided to name numerous
5 defendants in one case at her whim, thus giving her the power to deny each defendant an equal
6 right to challenge a judge under 170.6. This capricious whim is demonstrated here in that the
7 confessed murderer, Robert Woody, is named in a separate action. There can be no clearer
8 example of denial of equal right to exercise the right to petition, especial by a criminal
9 defendant, than to effective repose the exercise of that right in the hands of the prosecutor, as
10 has been done here, by allowing her to selectively name numerous defendants in one action.
11 This sort of gaming the system also constitutes a denial of due process and right to a fair trial.
12 Thus, the First Amendment, the Due Process clause and the Equal Protection require that each
13 defendant be allowed to file a 170.6 challenge, and as to this defendant it must be granted.

14
15
16 Dated:

9/25/2015

Respectfully submitted,



RYAN ROTH

Attorney for Christina Defilippo