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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

STATE OF IDAHO, Plaintiff, v. LORI NORENE VALLOW AKA LORI NORENE DAYBELL, Defendant.	Case No.: CR22-21-1624 **STATE'S RESPONSE TO DEFENDANT'S MOTION TO PREVENT DEATH QUALIFICATIONS OF JURY**

The State responds to Defendant Lori Vallow Daybell's Motion to Prevent Death Qualification of the Jury by requesting the Court deny the Motion in its entirety. The State explains as follows:

I. Legal Standard for Jury Selection and Service in Death Penalty Cases

Jury selection and service are controlled by Idaho Code and authority as found in holdings from the Idaho Supreme Court. Specifically, § 19-2515(5)(b) establishes that if "the defendant's guilt was determined by a jury verdict, the same jury shall hear the special sentencing proceeding" unless impracticable because of an insufficient number of jurors.

The statute does not allow the defendant to waive the requirement for the same jury or request a different jury for sentencing, and it does not authorize the Court to order any variation from this statutory requirement. The U.S. Supreme Court has recognized and upheld a "State's interest in having a single jury decide all the issues in a capital case." *Buchanan,* 483 U.S. at 417, 107 S.Ct. at 2914

The Idaho Supreme Court has ruled multiple times on the parameters of jury selection as being within the discretion of the trial court whose ruling will not be overruled absent gross error. The Supreme Court likewise has long held that a trial may exclude a prospective juror for cause because of his or her views on capital punishment. *State v. Abdullah, 158 Idaho 386, 422 (2015).* Quoting *Wainwright v. Witt* the Idaho Supreme Court in *Abdullah* explained that the standard for jury selection in capital cases is "whether the juror's views would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.'" *Abdullah* at 422 (quoting *Wainwright v.Witt,* 469 U.S. 412, 424, 105 S.Ct. 844, 852, 83 L.Ed.2d 841, 851–52 (1985) (quoting *Adams v. Texas,* 448 U.S. 38, 45, 100 S.Ct. 2521, 2526, 65 L.Ed.2d 581, 589 (1980)).

Fundamentally jurors must be able to follow the law and render a verdict based on the law and instructions before them unfettered by a preconceived bias toward or against a particular outcome. Prosecutive jurors' whose personal beliefs inhibit their ability to apply the law as it exists – not how they would like it to be or not be – cannot fulfill their oaths and therefore cannot serve as jurors. This includes jurors whose beliefs on the death penalty would prevent them from considering the death penalty as a form of punishment. "[S]uch jurors—whether they be unalterably in favor of, or opposed to, the death penalty in every case—by definition are ones who cannot perform their duties in accordance with law, their protestations to the contrary

notwithstanding." *State v. Abdullah, 158 Idaho* at 422 (quoting *Morgan v. Illinois*, 504 U.S. 719, 735, 112 S.Ct. 2222, 2233, 119 L.Ed.2d 492, 506 (1992).)

II. Defense Request to Prevent Death Qualification or Suggestions in the Alternative

The Defense, despite controlling authority from the Idaho and United States Supreme Courts, relies on various social science articles and academic studies to request the Court prevent death qualification of jurors. The Defendant further asks the Court instead implement alternatives to jury selection by selecting separate juries on the issues of guilt and punishment. The Defendant cites no Idaho law for her request and indeed cannot as they have been rejected by both Courts and legislatures. As such, these alternatives fail on their face.

The Defendant's proposed alternatives to jury selection are not supported by Sixth Amendment jurisprudence and are contrary to Idaho law. Defendant asks the jury not be "death qualified," and the Court impose separate juries for guilt and sentencing. These challenges have been made by other defendants and soundly rejected by both the U.S. Supreme Court and the Idaho Supreme Court. *See, e.g., Morgan v. Illinois*, 504 U.S. 719, 112 S.Ct. 2222 (1992); *Buchanan v. Kentucky*, 483 U.S. 402, 107 S.Ct. 2906 (1987); *Lockhart v. McCree*, 476 U.S. 162, 106 S.Ct. 1758 (1986); and *State v. Abdullah, 158 Idaho 386, 422 (2015)*.

Further, Defendant's proposals suffer from three fatal flaws, as discussed below. First, reviewing courts have clearly explained the "fair cross section" requirement of the Sixth Amendment applies to the venire. *See, e.g., Buchanan*, 483 U.S. at 415, 107 S.Ct. at 2913; *Lockhart*, 504 U.S. at 173, 106 S.Ct. at 1765. Although the jury panel should be representative, "petit juries do not have to reflect the composition of the community at large." *Buchanan*, 483 U.S. at 415, 107 S.Ct. at 2913 (internal quotations omitted). Therefore, a "death qualified" petit jury will not give rise to a fair cross section challenge. Second, the process of "death qualifying"

a jury through voir dire and exclusion for cause has been approved. In *Buchanan*, the U. S. Supreme Court held that the State has a "legitimate interest in obtaining a jury that does not contain members who are unable to follow the law with respect to a particular issue in a capital case." *Buchanan*, 483 U.S. at 416, 107 S.Ct. at 2914. The Court clarified "not all who oppose the death penalty are excludable for cause." *Id*. "Those who indicate that they can set aside temporarily their personal beliefs in deference to the rule of law may serve as jurors." *Id*. Trial courts are similarly authorized to exclude a "juror who will automatically vote for the death penalty in every case," because that juror "will fail in good faith to consider the evidence of aggravating and mitigating circumstances as the instructions require him to do." *Id.* Idaho's jury qualification procedures for death penalty cases empower the trial court to remove jurors who are unable to follow instructions and apply the law because they strongly oppose the death penalty or strongly favor the death penalty. *Dunlap v. State,* 360 P.3d 289 (Idaho 2015) (holding that jurors who deem mitigating evidence to be irrelevant should be disqualified for cause)(*citing Morgan v. Illinois*, 504 U.S.719, 112 S.Ct. 2222 (1992). Therefore, the process of voir dire does not create a biased jury, but establishes a jury willing to apply the law to the facts as instructed by the Court. Third, Defendant's request for two separate juries for guilt and punishment directly contradicts Idaho Code § 19-2515(5)(b) requiring a single jury for guilt and punishment.

Wherefore, he State requests that the Defendant's Motion to Prevent Death Disqualification be denied for the above reasons.

DATED this 1st day of December, 2022

/s/ Lindsey A. Blake
Lindsey A. Blake
Prosecuting Attorney for Fremont County

/s/ Rob H. Wood
Rob H. Wood
Prosecuting Attorney for Madison County

CERTIFICATE

I HEREBY CERTIFY that on this 1st day of December, 2022, that a copy of the foregoing RESPONSE TO MOTION TO PREVENT DEATH QUALIFICATIONS OF JURY was served as follows:

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By: /s/ Jodi L. Thurber