

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office  
Phone (415) 355-7900 Fax (415) 355-8566  
<http://www.ca9.uscourts.gov/mediation>

**MEDIATION QUESTIONNAIRE**

This form is available in a fillable version at [http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Mediation\\_Questionnaire.pdf](http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Mediation_Questionnaire.pdf).

The purpose of this questionnaire is to help the court’s mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	15-15428		
District Court/Agency Case Number(s):	CV 11-01440 LJO-MJS		
District Court/Agency Location:	United States District Court, Eastern District of CA, Fresno Division		
Case Name:	Barry Bauer, et al	v.	Kamala D. Harris, in her official capacity, et al.
If District Court, docket entry number(s) of order(s) appealed from:	60		
Name of party/parties submitting this form:	Barry Bauer, Nicole Ferry, Jeffrey Hacker, National Rifle Association of America, CRPA Foundation, Herb Bauer Sporting Goods, Inc.		

Briefly describe the dispute that gave rise to this lawsuit.

California law imposes a DROS fee on nearly every legal firearm transaction in the state. Plaintiffs have purchased and intend to again purchase firearms in California. They have thus paid, and will again pay, the required DROS Fee. Defendants use DROS revenues to fund a program (“APPS”) designed to identify and investigate individuals who unlawfully possess firearms and to then arrest and prosecute them. Plaintiffs contend such use of DROS Fee funds violates the Second Amendment and is otherwise invalid under well-established case law regarding the imposition of fees on constitutionally protected conduct. Defendants dispute this contention.

Briefly describe the result below and the main issues on appeal.

The district court denied Plaintiffs’ Motion for Summary Judgment in its entirety and granted Defendants’ Motion for Summary Judgment. The main issues on appeal are: (1) Whether Defendants’ use of Dros Fee revenues to fund APPS is invalid under well-established case law regarding the imposition of fees on constitutionally protected conduct; and (2) Whether Defendants’ use of Dross Fee revenues to fund APPS violates the Second Amendment. There are no disputes concerning material facts.

(Continue to next page)

Describe any proceedings remaining below or any related proceedings in other tribunals.

There are no proceedings remaining below. However, a related proceeding in the Sacramento Superior Court, Gentry v. Harris, No. 34-2013-80001667, is currently in the discovery stage and Respondents filed an Answer to Plaintiffs' Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandamus on March 6, 2015. That case challenges Senate Bill 819's adding the term "possession" into the statute that lists activities DROS Fees revenues can fund. The plaintiffs-petitioners argue that SB 819 is an illegal tax because it did not receive the approval of two-thirds of all members of each house of the Legislature, as required to pass a tax under the California Constitution.

Provide any other thoughts you would like to bring to the attention of the mediator.

This is a case of first impression in the Ninth Circuit, and it involves critical constitutional issues relating to the Second Amendment and preconditioning the exercise of constitutionally protected conduct on the payment of a fee. This is unlikely a case appropriate for mediation.

*Any party may provide additional information **in confidence** directly to the Circuit Mediation Office at [ca09\\_mediation@ca9.uscourts.gov](mailto:ca09_mediation@ca9.uscourts.gov). Provide the case name and Ninth Circuit case number in your message. Additional information might include level of interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.*

## CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

***How to File:*** Complete the form and then convert the filled-in form to a static PDF (File > Print > PDF Printer or any PDF Creator). To file, log into Appellate ECF and select File Mediation Questionnaire. (*Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system.*)

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

BARRY BAUER, et al.,  
Plaintiffs,  
v.  
KAMALA D. HARRIS, in her official  
capacity as Attorney General for the State  
of California, et al.,  
Defendants.

No. 15-15428  
**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age.  
My business address is 180 East Ocean Blvd., Suite 200, Long Beach, CA 90802.

I am not a party to the above-entitled action. I have caused service of:

**MEDIATION QUESTIONNAIRE**

on the following party by electronically filing the foregoing with the Clerk of the Ninth Circuit  
Court of Appeals using its ECF system, which electronically notifies them.

Kamala Harris, Attorney General of California  
Stepan A. Haytayan, Supervising Deputy Attorney General  
Anthony R. Hakl, Deputy Attorney General  
1300 "I" Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
*Attorneys for Defendants-Appellees*

I declare under penalty of perjury that the foregoing is true and correct.

Executed March 16, 2015.

\_\_\_\_\_  
/s/ C.D. Michel  
C.D. Michel