

1 KAMALA D. HARRIS  
Attorney General of California  
2 STEPAN A. HAYTAYAN  
Supervising Deputy Attorney General  
3 ANTHONY R. HAKL, State Bar No. 197335  
Deputy Attorney General  
4 1300 I Street, Suite 125  
P.O. Box 944255  
5 Sacramento, CA 94244-2550  
Telephone: (916) 322-9041  
6 Fax: (916) 324-8835  
E-mail: Anthony.Hakl@doj.ca.gov  
7 *Attorneys for Defendants and Respondents*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO

10  
11  
12 **DAVID GENTRY, JAMES PARKER,  
13 MARK MID LAM, JAMES BASS, and  
14 CALGUNS SHOOTING SPORTS  
ASSOCIATION,**

15 Plaintiffs and Petitioners,

16 v.

17 **KAMALA HARRIS, in Her Official  
18 Capacity as Attorney General for the State  
19 of California; STEPHEN LINDLEY, in His  
20 Official Capacity as Acting Chief for the  
California Department of Justice, BETTY  
21 T. YEE, in her official capacity as State  
Controller, and DOES 1-10,**

22 Defendants and  
Respondents.  
23  
24  
25  
26  
27  
28

Case No. 34-2013-80001667

**DEFENDANTS' REPLY  
IN SUPPORT OF MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Date: June 5, 2015  
Time: 9:00 a.m.  
Dept: 31  
Judge: The Honorable Michael P.  
Kenny  
Trial Date: None set  
Action Filed: October 16, 2013

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

Introduction ..... 1  
Argument ..... 1  
Conclusion ..... 5

1 **TABLE OF AUTHORITIES**

2 **Page**

3 **CASES**

4 *Professional Engineers in California Government v. Kempton*  
5 (2007) 40 Cal.4th 1016 .....1

6 *S. California Edison Co. v. Pub. Utilities Comm'n*  
7 (2014) 227 Cal.App.4th 172 .....4

8 *Schmeer v. Cnty. of Los Angeles*  
9 (2013) 213 Cal.App.4th 1310 .....3, 4, 5

10 *Western States Petroleum Assn. v. Board of Equalization*  
11 (2013) 57 Cal.4th 401 .....2

12 **STATUTES**

13 Government Code  
14 § 16346.....4

15 **CONSTITUTIONAL PROVISIONS**

16 California Constitution  
17 Article XIII B, § 8, subd. (c) .....4  
18 Article XIII A, § 3, subd. (a) .....1, 2, 3  
19 Article XIII C .....4  
20 Article XIII C, § 3 .....2

1 **INTRODUCTION**

2 Plaintiffs’ opposition to defendants’ motion for judgment on the pleadings contains no basis  
3 for extending the application of Proposition 26 in this case. This Court should therefore grant  
4 defendants’ motion in its entirety.

5 **ARGUMENT**

6 Proposition 26 restricts the Legislature’s power to enact certain levies, charges, and  
7 exactions (defined as “taxes”). That restriction applies *only* to “[a]ny change in state statute  
8 which results in any taxpayer paying a higher tax.” (Cal. Const., art. XIII A, § 3, subd. (a).) This  
9 language is clear and unambiguous and the ordinary meaning of these words is the best evidence  
10 of the intent of the voters who enacted Proposition 26. (See *Professional Engineers in California*  
11 *Government v. Kempton* (2007) 40 Cal.4th 1016, 1037.)

12 Here, SB 819 did not result in anyone paying a higher tax. Prior to the enactment of  
13 SB 819, firearms purchasers paid a DROS fee in the amount of \$19.00. After the passage of the  
14 SB 819, firearms purchasers paid a DROS fee in the same amount, \$19.00. Thus, Proposition 26  
15 does not apply.

16 Plaintiffs’ proffered construction of Proposition 26 is contrary to the plain meaning of its  
17 words. Plaintiffs recognize that the DROS fee has been \$19.00 since 1994. Yet they go on to  
18 argue that SB 819 “created a firearms purchaser tax that did not exist before SB 819, and going  
19 from zero tax to some amount of tax plainly satisfies the ‘higher tax’ element of a Proposition 26  
20 claim.” (Pls.’ Opp’n at p. 6.) In other words, plaintiffs argue that the Legislature somehow  
21 transformed an unspecified amount of the \$19.00 DROS fee into a tax by passing SB 819, which  
22 authorizes the expenditure of DROS fee revenues for certain purposes. Thus, according to  
23 plaintiffs, because SB 819 arguably expanded the *use* of DROS fee revenues, prior to SB 819  
24 they were paying “zero tax” whereas after they were paying “some tax” – even though the exact  
25 same amount of money (i.e., \$19.00) was charged at all relevant times. (*Ibid.*)

26 Plaintiffs cite no authority in support of their novel reading of Proposition 26. That’s  
27 because there is none. Again, the plain language of Proposition 26 makes it applicable to “any  
28 taxpayer *paying* a higher tax.” (Cal. Const., art. XIII A, § 3, subd. (a), emphasis added.) An

1 individual's *payment* of a tax is simply not the same thing as the government's *expenditure* of the  
2 revenues generated from that tax. To put it another way, the constitutional language at issue in  
3 this case focuses on the fiscal impact of a new statute on a taxpayer (i.e., it asks whether the  
4 *taxpayer* is *paying* a higher tax.) The language does not concern the conduct of an agency like  
5 the Department of Justice (DOJ) (i.e., it does not ask how the *government* is *spending* revenues).  
6 That is where plaintiffs' argument goes wrong. They fail to focus on the *amount* of money the  
7 payer is actually *paying*, as required by the unambiguous language of Proposition 26.

8 Related, the plain language of Proposition 26 shows that it is a restriction on the  
9 *Legislature's* revenue power. Again, Proposition 26 applies to "[a]ny change in state statute  
10 which results in any taxpayer paying a higher tax." (Cal. Const., art. XIII A, § 3, subd. (a)), and  
11 only the Legislature can change a state statute. Plaintiffs want to apply the measure to *DOJ's use*  
12 of DROS fee revenues, but that would wrongly expand the scope of Proposition 26 to include  
13 actions taken by state agencies who do not have the power to tax, such as the Department of  
14 Justice. That is not what the voters intended. (See *Western States Petroleum Assn. v. Board of*  
15 *Equalization* (2013) 57 Cal.4th 401, 423–424 [Proposition 26 does not apply to regulations or  
16 administrative action].) Rather, they intended to "define[] a 'tax' for state and local purposes so  
17 that neither *the Legislature* nor local governments can circumvent these restrictions on increasing  
18 taxes by simply defining new or expanded taxes as 'fees.'" (See Ballot Pamp., Gen. Elec.  
19 (Nov. 2, 2010) text of Prop. 26, § 1, p. 114, reprinted in Historical Notes, 2A West's Ann. Cal.  
20 Const. (2013 supp.) foll. art. XIII C, § 3, pp. 141–142, emphasis added.) For this reason as well,  
21 Proposition 26 simply does not apply.

22 The ballot pamphlet language just quoted is also instructive because it speaks in terms of  
23 "increasing" taxes as well as "new or expanded" taxes. Nothing in SB 819 "increased" the DROS  
24 fee or resulted in a "new or expanded" fee. Rather, plaintiffs have been paying the same amount  
25 (i.e., \$19.00) in connection with DROS transactions since 2004. Plaintiffs briefly argue that this  
26 "same amount" scenario is encompassed by Proposition 26 because the measure extends to  
27 "revenue neutral" laws. (Pls.' Opp'n at pp. 6-7.) Here plaintiffs are inventing a Legislative intent  
28 that is not there. Prior to Proposition 26, the restriction on taxing power was assessed on net,

1 meaning a change in law could impose a new kind or amount of tax if the added tax burden was  
2 offset by a reduction elsewhere. (See generally *Schmeer v. Cnty. of Los Angeles* (2013)  
3 213 Cal.App.4th 1310, 1321-22, as modified (Mar. 11, 2013), review denied (May 15, 2013)  
4 [discussing historical foundations of Proposition 26].) Proposition 26 was intended to eliminate  
5 offsetting, instead restricting each new or increased tax without regard to offsetting reductions  
6 elsewhere. That intention is not nearly the same as requiring every statute (even those that do not  
7 add or increase a tax) to be revenue neutral, as plaintiffs apparently argue. Proposition 26 clearly  
8 was not intended to restrict the Legislature from enacting laws like SB 819 – a law where the  
9 Legislature is merely exercising its powers other than its revenue powers. And in any event, the  
10 relevant language of Proposition 26 speaks expressly in terms of “any taxpayer paying a higher  
11 tax.” (Cal. Const., art. XIII A, § 3, subd. (a).) This Court should give that phrase its plain,  
12 ordinary meaning and reject plaintiffs’ invitation to read it out of the Constitution.

13 Plaintiffs also argue – again without citation to authority – that Proposition 26 applies  
14 because the Department of Finance (DOF) says so. That argument is meritless. As an initial  
15 matter, the argument is based on a single page taken out of the Manual of State Funds, which  
16 plaintiffs have submitted to the Court in connection with a separate motion to compel. It is not at  
17 all clear on what basis the Court should consider that “evidence” in connection with the instant  
18 motion for judgment on the pleadings, which is generally governed by the facts pled in the  
19 petition and complaint. The Court should therefore not even consider the document.<sup>1</sup>

20 Moreover, even if the Court were to consider the page at issue, which is the fund  
21 description for the DROS special account, it does not help plaintiffs. Looking at the page in  
22 question, the entire passage at issue reads as follows:

23 **State Appropriations Limit**

24 **Excluded** – Revenues in this fund are not proceeds of taxes, however, when  
25 transferred, may become proceeds of taxes. These revenues are used to regulate  
26 the activities engaged in by the payers.

27 <sup>1</sup> The same can be said for almost all of the documents attached to the declaration filed in  
28 connection with plaintiffs’ opposition.

1 The heading of the passage makes clear that DOF made the observation in the context of the state  
2 appropriations limit and whether revenues in the DROS special account might become “proceeds  
3 of taxes” for purposes of that separate constitutional limit. (See Cal. Const. art. XIII B, § 8, subd.  
4 (c) [defining the phrase “proceeds of taxes” for purposes of the state appropriations limit].)

5 Simply stated, these are questions that have nothing to do with this case or Proposition 26.

6 Indeed, even plaintiffs’ reliance on DOF’s use of the word “transfer” is misplaced. On the  
7 same page in reference to the same fund, DOF makes the following statement:

8 **Disposition of Fund (upon abolishment)**

9 Pursuant to Government Code section 16346, absent language that identifies a  
10 successor fund, any balance remaining in this fund upon abolishment shall be  
transferred to the General Fund.

11 This language makes it clear that the “transfer” DOF refers to in the fund description is a transfer  
12 of funds from the DROS special account to the General Fund upon abolishment of the latter. It is  
13 undisputed that there has been no such transfer in this case. In relevant part, in this case DROS  
14 fees have been collected, deposited into the DROS special account, and appropriated from that  
15 account to DOJ by the Legislature. There has been no transfer from a special fund to the General  
16 Fund.

17 Finally, plaintiffs’ opposition brief is nearly devoid of authority addressing the  
18 Proposition 26 issue. And the sole Proposition 26 case cited in that brief actually supports  
19 defendants’ straightforward reading of the measure. In *Schmeer v. Cnty. of Los Angeles* (2013)  
20 213 Cal.App.4th 1310, 1313-14, as modified (Mar. 11, 2013), review denied (May 15, 2013), the  
21 court considered whether a county ordinance prohibiting retail stores from providing plastic  
22 carryout bags and requiring stores to charge customers 10 cents for each paper carryout bag  
23 provided violated Proposition 26. The court ultimately concluded that the paper carryout bag  
24 charge was not a tax for purposes of article XIII C. (*Id.* at p. 1313.) But Proposition 26 was an  
25 issue because prior to the passage of the ordinance customers paid *nothing* for a paper carryout  
26 bag whereas after the ordinance they paid *ten cents* for a paper carryout bag. (*Id.* at 1314.) In  
27 other words, as a result of the ordinance customers paid a “higher amount” for the paper bag, and  
28 Proposition 26 was implicated. (See *id.* at pp. 1313-14 & 1326-30; see also *S. California Edison*

1 *Co. v. Pub. Utilities Comm'n* (2014) 227 Cal.App.4th 172, 197-198, as modified (June 18, 2014)  
2 [considering whether implementation of a separate Electric Program Investment Charge (EPIC)  
3 violated Proposition 26.]

4 In this case, SB 819 resulted in no “higher amount” analogous to the “higher amount” of  
5 ten cents charged in *Schmeer*. SB 819 simply did not increase the amount of the DROS fee for  
6 plaintiffs or anyone else. The fee was \$19.00 before SB 819; it was \$19.00 after SB 819; and it  
7 has been \$19.00 for more than ten years. Proposition 26 therefore does not apply.

8 **CONCLUSION**

9 For these reasons, and for all of the reasons set forth in defendants moving papers, the  
10 Court should grant defendants motion for judgment on the pleadings and dismiss the first and  
11 second causes of action without leave to amend.

12 Dated: May 29, 2015

Respectfully Submitted,

13 KAMALA D. HARRIS  
14 Attorney General of California  
15 STEPAN A. HAYTAYAN  
16 Supervising Deputy Attorney General

17   
18 ANTHONY R. HAKL  
19 Deputy Attorney General  
20 *Attorneys for Defendants and Respondents*

21 SA2013113332  
22 11891554  
23  
24  
25  
26  
27  
28



**DECLARATION OF SERVICE BY OVERNIGHT COURIER**

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**

No.: **34-2013-80001667**

I declare:


I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On May 29, 2015, I served the attached **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS** by placing a true copy thereof enclosed in a sealed envelope with the **GOLDEN STATE OVERNIGHT COURIER**, addressed as follows:

Scott Franklin  
Michel & Associates, P.C.  
180 E. Ocean Boulevard, Suite 200  
Long Beach, CA 90802

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 29, 2015, at Sacramento, California.

Tracie L. Campbell  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature