

Court of Appeal Third Appellate District Appellate Case No: <u>C089655</u>		34-2013-80001667 <hr/> TRIAL COURT CASE NUMBER COUNTY: <u>SACRAMENTO</u>
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, Address) Robert E. Asperger (SBN 116319) 1300 I Street, Sacramento, CA 95814 Telephone No: (916) 210-7348 Attorney For: Defendant and Respondent Xavier Becerra, et al.		For Court Use Only
APPELLANT: David Gentry, et al.		
RESPONDENT: Xavier Becerra, et al.		
RESPONDENT'S CIVIL APPEAL MEDIATION STATEMENT		

NOTE: Ten days after filing of the appellant's Civil Appeal Mediation Statement, respondent may serve and file its completed Civil Appeal Mediation Statement (Local Rule 1).

(USE ADDITIONAL SHEETS AS NECESSARY.)

1. Provide any additions or corrections to the statement of the case as set forth in the appellant's Civil Appeal Mediation Statement:

The appellants challenge the constitutionality of a \$19 fee that the Legislature authorizes the Department of Justice to impose on each purchase of firearms. The purpose of the fee is to cover the costs of performing background checks on those who purchase firearms, maintaining a database of persons prohibited from possessing firearms, and performing related enforcement activities. The trial court upheld the constitutionality of the fee, finding that the fee was not governed by Proposition 26 and that the total revenue from the fee does not exceed the cost of the relevant governmental activities.

2. Respond briefly to the items identified by appellant as issues raised on appeal in the appellant's Civil Appeal Mediation Statement:

The issues on appeal include the following:

1. Whether Proposition 26 applies to the challenged fee, even though the fee has not been increased since Proposition 26 was enacted;
2. Whether the fee satisfies the constitutional requirements for a valid regulatory fee;
3. Whether the fee is a "property tax" prohibited by article XIII of the California Constitution;
4. Whether the total revenue from the fee exceeds the cost of the relevant governmental activities; and
5. Whether the appellants' action is barred by an earlier action in which the same fee was challenged as unconstitutional.

Date: July 2, 2019
 Robert E. Asperger

(Print or Type Name)



(Signature of Attorney)

***A proof of service of this document on all counsel, prior to filing, must be attached.

NOTES: Recognizing the appellate record has not yet been prepared and that counsel and parties may not yet be able to identify all appellate contentions, the Court will not deem an omission from this Statement to be a waiver or forfeiture of any claim on appeal.

This form is also online in fillable form at <http://www.courts.ca.gov/3140.htm>. Questions about the Appellate Mediation Program should be directed to the Appellate Mediation Coordinator at 916-643-7084. For general information about your appeal, please contact the clerk's office of the Third District Court of Appeal at 916-654-0209, or visit its web site at <http://www.courts.ca.gov/3dca.htm>; click on Court Programs, click on Mediation Program.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Gentry et al. v. Becerra, et al.**
No.: **C089655**

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. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On July 2, 2019, I served the attached ***RESPONDENT'S CIVIL APPEAL MEDIATION STATEMENT*** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Anna Marie Barvir
Michel & Associates, PC
180 E Ocean Blvd., Ste. 200
Long Beach, CA 90802-4760
~ Attorneys for Plaintiff and Appellant
David Gentry, et al. ~

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 July 2, 2019, at Sacramento, California.

M.E. Conde
Declarant



Signature