Close the Loophole
That Opens the Door to More Taxes and
Higher Prices for Consumers

When Proposition 13 passed 22 years ago, California voters did more than cut property taxes; they amended the state constitution to require that future state tax increases or new state taxes be approved by two-thirds of the State Legislature.

Proposition 218, which passed in 1996, reaffirmed voter approval of taxes at the local level. New local taxes must be approved by a majority vote of the people in that jurisdiction if the taxes are for general purposes or a two-thirds majority if the new taxes are for a specific purpose.

But now there’s a way around the state constitution. The California Supreme Court has said the State Legislature and local governments may levy “fees” on products and services which are believed to create a burden on society. Although the average taxpayer probably sees little distinction between a tax and a government-imposed fee, the Supreme Court ruled that these fees are not subject to the constitutional voting requirements that apply to new taxes.

It is both necessary and reasonable that government levy fees to recover the cost of regulating a business or providing a specific service of value to the fee-payer. Few quarrel with the fees we pay to use the county landfill, visit state parks or license a business.

The Supreme Court’s definition of a “fee,” however, goes far beyond these traditional fees. Overturning two lower courts, the Court ruled that the State Legislature may levy a fee on a product or service on the theory that the revenues generated by the fees will mitigate past or future harm to the public -- and it may do so by a simple majority vote, not the two-thirds vote required by the constitution.

This decision opens the door to a plethora of new taxes, disguised as fees, on a host of new products and services. Most Californians believe they pay...
enough in taxes. Should we impose additional taxes on automobiles because they are involved in accidents? Fast food because people litter? Electricity because it is carried through transmission lines? Movie tickets because films are said to cause violence? Fatty foods because they lead to health problems? The list is limited only by the imagination.

**The cost of a Sinclair-type fee could be astronomical.** Consumers of paint and other products containing lead have paid at least $75 million to support a program the State Auditor has criticized as ineffective and lacking in accountability.

During California’s economic downturn in the early nineties, the Legislative Analyst identified dozens of potential new revenue sources, many of which fall within the definition of a Sinclair fee. If Sinclair had been law when the Legislature was struggling to balance the budget, it is a safe assumption that more of these fees would be in effect today. It is also safe to assume that if Sinclair had been on the books, some businesses would have been easy targets for cities and counties looking for ways to replace the billions in tax revenues that were diverted from local governments to balance the state budget.

The two-thirds vote requirement of Proposition 13 was intended to prevent the State Legislature and local governments from recovering lost property tax revenues by raising other taxes. It was meant to limit the growth of government as well as the growth of tax revenues by holding politicians more accountable for tax increases. To allow the types of fees that would be permitted by this court decision violates not only the letter, but the spirit, of Propositions 13 and 218.

**Consumers ultimately bear the burden of government-mandated fees on products.** Maybe you don’t use the products that are taxed now, but if the decision is allowed to stand, it won’t be long before a tax is levied on a product you use on a regular basis to finance some politician’s pet project. This initiative will guarantee that taxpayers have a voice in determining which tax proposals are necessary and which aren’t.

Over one million signatures were submitted to qualify Proposition 37 for the November ballot. Prop 37 will amend the constitution and re-affirm the voting requirements that Propositions 13 and 218 established for new taxes. It will stop politicians from enacting “hidden taxes” and restore the accountability to taxpayers the public and the state constitution demand of our elected officials.

**Vote YES on Proposition 37.**