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## Courts



### Court Upholds Lead Paint Fees

By Ron Roach

A 7-0 California Supreme Court decision upheld actions by the Legislature and Governor Pete Wilson to finance a lead poisoning treatment and education program from fees imposed on manufacturers of products containing lead.

The June 26 decision in *Sinclair Paint Company v. State Board of Equalization* concluded that majority-vote approval by the state Senate and Assembly of the Childhood Lead Poisoning Prevention Act of 1991 "imposed bona fide regulatory fees, not taxes, because the Legislature imposed the fees to mitigate the actual or anticipated adverse effects of the fee payers' operations, and under the Act, the amount of the fees must bear a reasonable relationship to those adverse effects."

Thus, wrote Associate Justice Ming Chin, the trial court had erred in granting a summary judgment award to the plaintiff with a refund of \$97,825 in fees paid under the act.

The plaintiff contended that fees were taxes and therefore illegal because they were not approved by two-thirds votes of the Senate and Assembly. They were taxes because there was no regulatory process or benefit to the industry, the plaintiff argued, and the Court of Appeal had agreed.

The high court sided with appellants, including the state Department of Health Services as an intervenor, who argued that fees "fall squarely within a third recognized category not dependent on government-conferred benefits or privileges, namely

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*regulatory* fees imposed under the police power, rather than the taxing power."

The decision was praised by children's health advocates. Joyce C. Wang, a San Francisco attorney who represented two children with lead poisoning, said, "I think the Supreme Court has sent a message that when big business or industry creates a burden for society, they won't be able to pass it off to taxpayers and will have to share in the cost of mitigating the harm."

Gene Livingston, Sacramento attorney who represented Sinclair, said the decision created a "major loophole" in Proposition 13, the 1978 tax-cutting initiative that requires two-thirds votes of the Legislature to raise taxes. "There's no end to the kind of fees government will be able to impose now because everybody creates some burden on society."

Jonathan Coupal, counsel for the Howard Jarvis Taxpayers Association, said the decision erodes Proposition 13 protections relative to the imposition of state taxes. "I believe the tax-and-spend lobby will begin to exploit this loophole, to push the envelope, and try to impose taxes disguised as fees," he said.

Mr. Coupal said the Supreme Court had appeared to show sympathy for the plight of children. Mr. Livingston said, "I think the opinion is a result in search of a rationalization. I'm thinking the court had trouble getting away from the emotional appeal of the program."

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