Rider v. County of San Diego: “Special Districts” and “Special Taxes” Under Proposition 13

Initiative Proposition 13 was passed by the voters of California over a decade ago. The courts were left with the difficult task of interpreting that initiative as applied to numerous factual situations, a task made more difficult by the lack of any meaningful legislative history. When San Diego County sought to finance certain judicial and criminal facilities with a sales tax increase, the California Supreme Court had already laid out an analysis of Proposition 13 that suggested the new tax was constitutionally imposed. However, upon challenge in Rider v. County of San Diego, the California Supreme Court struck the tax down as violative of Proposition 13. This Note analyzes that decision, the precedents which suggested the tax was constitutional, and the concerns raised by the decision. This Note illustrates the uncertainty inherent in the initiative process and the obstacles which local governments face when attempting to manage their revenue-gathering affairs.

INTRODUCTION

In 1978, the voters of California limited the ability of state and local taxing authorities to raise revenue by approving initiative Proposition 13. The constitutionality of Proposition 13, which added article XIII-A to the California Constitution, was upheld in Amador


2. CAL. CONST. art. XIII-A, §§ 1-6 provides:
   Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.
   (b) The limitation provided for in subdivision (a) shall not apply to ad
Valley Joint Union High School District v. State Board of Equalization. In Amador, multiple constitutional challenges to Proposition 13 were consolidated. The supreme court only addressed "those principal, fundamental challenges to the validity of [Proposition 13] as a whole." Many specific definitional issues and provisional applications were left for later case analyses, and the resulting litigation over the interpretation of these provisions has been enormous.

Sec. 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year.

Sec. 3. From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

Sec. 4. Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

Sec. 5. This article shall take effect for the tax year beginning on July 1 following the passage of this Amendment, except Section 3 which shall become effective upon the passage of this article.

Sec. 6. If any section, part, clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect.

3. 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239 (1978).
This Note addresses local taxing authorities' attempts to raise revenues within the limitations of article XIII A, section 4.\(^6\) Section 4 requires a two-thirds voter approval for special taxes enacted by cities, counties, and special districts.\(^7\) In *Rider v. County of San Diego*,\(^8\) the California Supreme Court was faced with interpreting "special districts" and "special taxes" within the meaning of section 4. The issue was whether the County of San Diego, through the newly created San Diego County Regional Justice Facility Financing Agency, had effectively satisfied the command of section 4 when it sought to fund judicial facilities with a local sales tax. This Note will analyze this issue by introducing the facts of *Rider*, examining the case precedents dealing with section 4 interpretation, and then examining the court's majority opinion, concurrence, and dissenting opinions. Finally, this Note will discuss the impact of the court's holding and present some issues left unsettled.

### I. Factual Background

In 1985, the San Diego County Board of Supervisors addressed its need for additional funding for local courtrooms and jail facilities\(^9\) by seeking the creation of a special county fund for administering and operating these facilities.\(^10\) An election held in November 1986 failed to produce the two-thirds voter approval required by section 4.\(^11\) The board of supervisors then requested a local legislator to introduce state legislation to create a limited purpose special district with limited taxing powers. In 1987, the state legislature passed the San Diego County Regional Justice Facility Financing Act.\(^12\) The Act created the San Diego County Regional Justice Facility Financing Agency,\(^13\) which is a board composed of seven directors.\(^14\) The

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\(^6\) CAL. CONST. art. XIII A, § 4. "Section 4. Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district." *Id.*

\(^7\) *Id.*

\(^8\) 1 Cal. 4th 1, 820 P.2d 1000, 2 Cal. Rptr. 2d 490 (1991).

\(^9\) Hereinafter referred to as judicial facilities.

\(^10\) *Rider*, 1 Cal. 4th at 9, 820 P.2d at 1004, 2 Cal. Rptr. 2d at 494.

\(^11\) The measure was supported by only 51% of the voters. *Id.*


\(^13\) *Id.* § 26260. "'Agency' means the San Diego County Regional Justice Facility Financing Agency." *Id.* § 26253.

\(^14\) *Id.* § 26261(a). Two board members are also members of the county board of supervisors. *Id.* § 26261(a)(1).
Act called for the adoption of a retail transactions and use tax within the county if approved by a majority of the electors voting on the measure at a special election. The Agency was given no other taxing power.

In June 1988, a tax ordinance adopted by the Agency was submitted to the voters. The voters approved the tax by a bare majority. The Agency then began operations and hired personnel. The tax went into effect on January 1, 1989. To date, the tax has raised approximately $200 million and was anticipated to bring in $1.6 billion in revenues during the Agency's 10-year term.

Soon after the tax was passed, certain taxpayers in the county brought suit challenging the validity of the sales tax. Their complaint asserted three causes of action:

1) [t]he tax violated the requirement of section 4 of Article XIII A of the California Constitution (Proposition 13) that local “special” taxes be approved by a two-thirds vote;
2) the tax violated the requirement contained in Proposition 62 ([CAL. GOV'T CODE] §§ 53720-53730) that special taxes imposed by a district be approved by a two-thirds vote; and
3) the tax violated the proscription against “excess appropriations” set forth in Article XIII B of the California Constitution.

The trial court found for the taxpayers, stating that the sales tax was a “deliberate and unlawful avoidance of Proposition 13” and violated the two-thirds voter approval requirement for local special taxes. On appeal, the court of appeal reversed, holding that Proposition 13 did not apply, and, alternatively, even if two-thirds voter approval was required, such a requirement would be an unconstitutional local tax referendum. The court of appeal reasoned that since the Agency was not empowered to levy a property tax, it was not a “special district” within the meaning of section 4.

15. This tax will be referred to as the “sales tax” throughout this Note.
16. CAL. GOV'T CODE § 26271. The rate of tax authorized, if approved by the voters, was 0.5%. Id. § 26275.
17. Id. § 26283.
18. 50.8% of the voters approved the measure. Rider, 1 Cal. 4th at 9, 820 P.2d at 1005, 2 Cal. Rptr. 2d at 495.
19. Id.
20. Id. The revenues have been collected, but not spent. Id. at 6, 820 P.2d at 1002, 2 Cal. Rptr. 2d at 492.
21. Id. The challenge was authorized under CAL. CIV. PROC. CODE § 863 (West 1980) (CAL. GOV'T CODE § 26282 referred to this civil procedure code section). See CAL. GOV'T CODE § 26282.
22. Rider v. County of San Diego, 272 Cal. Rptr. 857, 859 (1990), superseded by, 799 P.2d 1280, 274 Cal. Rptr. 847 (1990), rev'd, 1 Cal. 4th 1, 820 P.2d 1000, 2 Cal. Rptr. 2d 490 (1991). At trial, the taxpayers focused on their Proposition 13 and Proposition 62 arguments, deciding not to pursue the article XIII B cause of action. Id.
23. Id. The trial court declared the tax invalid and did not rule on the Proposition 62 arguments. Id. at 859 n.4. See infra note 27 on Proposition 62.
In December 1991, the California Supreme Court reversed the court of appeal decision and found the sales tax invalid (under Proposition 13) because it failed to meet the two-thirds voter approval requirement of section 4. The majority opinion was joined by a concurring opinion of Justice George, who believed the tax should have been found invalid under the statutory provisions of Proposition 62. Justice Mosk wrote a strong dissent which argued that the majority effectively ignored precedent and seriously jeopardized local governmental financing efforts. Justice Kennard also dissented, agreeing with Justice Mosk that the Agency was not a special district within the meaning of section 4.

To thoroughly understand the opinions in Rider, a discussion of the section 4 precedents is warranted. One case focused on the meaning of "special district," the other with "special taxes." Because these two cases attempted to define both key terms, each precedent has particular relevance to the Rider decision.

II. JUDICIAL INTERPRETATION OF SECTION 4

Two cases decided almost ten years ago dealt with some of the definitional problems arising from section 4. Local governments have presumably followed these decisions in structuring their revenue-raising activities. Each precedent had been followed in interpreting section 4, but as will be presented below, the holdings in these landmark cases have been either significantly narrowed or perhaps overruled by Rider (though not explicitly).

13 was inapplicable, the court of appeal held that "Richmond is dispositive of the Proposition 13 argument. . . ." Id. at 860. See infra notes 30-44 and accompanying text (discussing Richmond).

26. Rider, 1 Cal. 4th at 5-16, 820 P.2d at 1002-09, 2 Cal. Rptr. 2d at 492-99.

27. Id. at 16-25, 820 P.2d at 1010-16, 2 Cal. Rptr. 2d at 500-06 (George, J., concurring). Justice Panelli concurred in this opinion. See infra notes 82-90 and accompanying text. Proposition 62 was passed on November 4, 1986 and added §§ 53720-30 to the California Government Code. See CAL. GOV'T CODE §§ 53720-30 (West Supp. 1992). Of importance here, § 53722 provides that "[n]o local government or district may impose any special tax unless and until such special tax is submitted to the electorate of the local government, or district and approved by a two-thirds vote of the voters voting in an election on the issue." CAL. GOV'T CODE § 53722. Section 53723 provides that "[n]o local government, or district, whether or not authorized to levy a property tax, may impose any general tax unless and until such general tax is submitted to the electorate of the local government, or district and approved by a two-thirds vote of the voters . . . ." CAL. GOV'T CODE § 53723. See also CAL. GOV'T CODE § 53721 (defining general and special taxes).


29. Rider, 1 Cal. 4th at 35, 820 P.2d at 1022-23, 2 Cal. Rptr. 2d at 512-13 (Kennard, J., dissenting). See infra notes 112-13 and accompanying text.
A. Los Angeles County Transportation Commission v. Richmond:30 "Special District"

In 1976, the California legislature created the Los Angeles County Transportation Commission (LACTC) to oversee the public transportation system in Los Angeles county.31 LACTC was authorized to adopt a sales tax of one-half of one percent on the sale, storage, or use of personal property in Los Angeles county if approved by a majority of the county’s voters who voted in the election.32 LACTC had no authority to levy a property tax.33 Although the voters approved the sales tax by a simple majority (but less than two-thirds), LACTC’s executive director refused to implement the tax, believing it was invalid under the requirements of section 4.34 LACTC filed a petition for writ of mandate to compel implementation of the tax.35 The California Supreme Court issued a peremptory writ, finding that the tax could be imposed consistent with Proposition 13.36

Of special importance is the supreme court’s analysis of a “special district” within the meaning of section 4. The court held that a “special district” (in terms of section 4) was one which had the power to levy a property tax. “[T]he goal of article XIIIA is real property tax relief, and a governmental body like LACTC, which does not have the power to levy a property tax, is not the type of 'special district' governed by the section.”37

In addressing the meaning of “special districts,” the court considered the two-thirds voter requirement, the ambiguity of the section 4 provision itself, and uncertain voter intent in passing Proposition 13. “In view of the fundamentally undemocratic nature of the requirement for an extraordinary majority . . . the language of section 4 must be strictly construed and ambiguities resolved in favor of permitting voters of cities, counties and ‘special districts’ to enact ‘special taxes’ by a majority rather than a two-thirds vote.”38 In what appears to be a thorough analysis, the court proceeded to define “special district” as it relates to section 4 and as probably intended

31. Id. at 199, 643 P.2d at 941-42, 182 Cal. Rptr. at 324-25.
32. Id. at 199, 643 P.2d at 942, 182 Cal. Rptr. at 325.
33. Id.
34. Id. at 200, 643 P.2d at 942, 182 Cal. Rptr. at 325. The advice of the Attorney General prompted this refusal. Id.
35. Id.
36. Id. at 208, 643 P.2d at 947, 182 Cal. Rptr. at 330.
37. Id. at 201, 643 P.2d at 943, 182 Cal. Rptr. at 326 (referring to § 4).
38. Id. at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328. The court offered no cases in support of this conclusion. Id.
by the voters. "[T]here are strong policy reasons for holding that if, as here, the intention of the voters to require a two-thirds vote is not clear, a majority is to be deemed sufficient for the valid adoption of a 'special tax.'"

In the Richmond case, no occasion for intentional circumvention of Proposition 13 was presented. The majority, in what arguably was dictum, declined to find this particular taxing activity as intended to avoid the purpose of Proposition 13. The LACTC was created before Proposition 13 was enacted, even though the sales tax was passed following the adoption of Proposition 13. A dissenting opinion by Justice Richardson criticized this aspect of the majority's holding, as well as the rule of strict construction announced by the plurality.

The majority in Richmond held that to come within section 4, a "special district" must have the power to levy a property tax. This definition had been followed by the courts until the recent decision in Rider.

39. Id. at 205-08, 643 P.2d at 945-47, 182 Cal. Rptr. at 328-30. The court reviewed the voter's pamphlet that accompanied initiative Proposition 13 and "some basic facts" about California property taxes. Id. at 205-06, 643 P.2d at 945-46, 182 Cal. Rptr. at 328-29. The court likewise discussed the legislature's interpretation of "special districts" following the enactment of Proposition 13. Id. at 206-07, 643 P.2d at 946-47, 182 Cal. Rptr. at 329-30. The court noted that some subsequently enacted statutes excluded entities which could not levy property taxes from the term "special district," while others specifically defined its coverage. Id.

40. Id. at 208, 643 P.2d at 947, 182 Cal. Rptr. at 330.

41. Id.

Nor are we impressed with a suggestion that our interpretation of section 4 could result in the wholesale avoidance of the purpose of article XIIIA by the Legislature, which could reorganize existing "special districts" to remove their property-taxing power or create new ones without such power, thereby allowing them to adopt a "special tax" by majority vote. We cannot assume that the Legislature will attempt to avoid the goals of article XIIIA by such a device. In any event, that problem can be dealt with if and when the issue arises. The legislation creating LACTC and granting it the power to levy only a sales tax antedated Proposition 13 by two years. Thus, there can be no claim here that the Legislature was attempting to evade the restrictions imposed by section 4.

42. Id. at 199-200, 643 P.2d at 941-42, 182 Cal. Rptr. at 324-25.

43. Id. at 209-19, 643 P.2d at 948-54, 182 Cal. Rptr. at 331-37 (Richardson, J., dissenting). "The majority has cut a hole in the financial fence which the people in their Constitution have erected around their government. Governmental entities may be expected, instinctively, to pour through the opening seeking the creation of similar revenue-generating entities in myriad forms which will be limited only by their ingenuity." Id. at 213, 643 P.2d at 950, 182 Cal. Rptr. at 333.

44. See, e.g., Huntington Park Redevelopment Agency v. Martin, 38 Cal. 3d 100, 695 P.2d 220, 211 Cal. Rptr. 133 (1985); City and County of San Francisco v. Farrell, 32 Cal. 3d 47, 648 P.2d 935, 184 Cal. Rptr. 713 (1982).
B. City and County of San Francisco v. Farrell.46

"Special Taxes"

In Farrell, the California Supreme Court held that tax proceeds which were placed in the city's general fund for general expenditures were not "special taxes" within the meaning of section 4.46 The tax proceeds in this case came from a tax of 1.1 percent on payrolls or gross receipts of businesses operating in the city of San Francisco.47 On May 29, 1980, the mayor approved an appropriation of $1.1 million from the proceeds of this tax to help finance elevator system improvements at the Laguna Honda Hospital.48 The city controller, Farrell, refused to certify that funds were available for that expenditure.49 The city sought a writ of mandate to compel Farrell to certify the funds for the proposed appropriation.50

The supreme court began by discussing and applying the rule of strict construction as developed in Richmond.51 Farrell claimed that "special taxes" meant "extra, additional, or supplemental charge[s] imposed . . . to raise money for public purposes."52 The court responded, "Farrell's claim . . . effectively reads the word 'special' out of the statute, since any taxes imposed by a local entity following adoption of article XIIIA would be encompassed within those descriptive terms."53 "[T]he language of section 4 appears to support the city's assertion that 'special taxes' refers to a particular type of tax rather than to any and all exactions."54

The court addressed the ballot pamphlet accompanying Proposition 13, finding little guidance in it; legislation passed after the enactment of article XIIIA also offered little assistance.55 Faced with this unclear intent, the court stated,

45. 32 Cal. 3d 47, 648 P.2d 935, 184 Cal. Rptr. 713 (1982).
46. Id. at 56-57, 648 P.2d at 940, 184 Cal. Rptr. at 718.
47. Id. at 51, 648 P.2d at 936, 184 Cal. Rptr. at 714. This tax rate was increased to 1.5% and a subsequent initiative measure extending this increase was passed by 55% of the voters. Id.
48. Id. at 51, 648 P.2d at 937, 184 Cal. Rptr. at 715.
49. He contended that the increased tax was a "special tax," thus not meeting the two-thirds voter approval requirement of § 4. Id.
50. The city offered two arguments. First, the city claimed that § 4 did not apply to charter cities. Second, the city claimed that "special taxes" only apply to taxes earmarked for a specific purpose. The court accepted this second argument. Id.
51. Id. at 52-53, 648 P.2d at 937-38, 184 Cal. Rptr. at 715-16. "We recognized [in Richmond] that section 4 is ambiguous in various respects, and that, although its language is framed affirmatively so as to authorize local entities to adopt 'special taxes,' it is actually a limitation on the enactment of such taxes because it requires a two-thirds vote for their approval." Id. at 53, 648 P.2d at 938, 184 Cal. Rptr. at 716. See supra note 38 and accompanying text.
52. Farrell, 32 Cal. 3d at 53-54, 648 P.2d at 938, 184 Cal. Rptr. at 716.
53. Id. at 54, 648 P.2d at 938-39, 184 Cal. Rptr. at 717.
54. Id. at 54, 648 P.2d at 939, 184 Cal. Rptr. at 717.
55. Id. at 54-56, 648 P.2d at 939-40, 184 Cal. Rptr. at 717-18.
Our choice here is not simply between acceptance of one of a number of different meanings of an ambiguous term in a statute, but between disregarding the word “special” altogether in section 4, or affording it some meaning consistent with the intent of the voters in enacting the provision. Application of the rule of strict construction of provisions which require extraordinary majorities for the enactment of legislation is particularly appropriate in these circumstances.

In keeping with these principles, we construe the term “special taxes” in section 4 to mean taxes which are levied for a specific purpose rather than, as in the present case, a levy placed in the general fund to be utilized for general governmental purposes.  

In dissent, Justice Richardson renewed his concern expressed in Richmond. “The majority . . . widens still further the hole which they have cut in that protective fence which the people of California thought they had constructed around their collective purse by adoption of article XIII A, a fence which the majority first breached in Richmond.”

III. RIDER v. COUNTY OF SAN DIEGO

Justice Richardson’s dissenting opinions in Richmond and Farrell received new life when the California Supreme Court reconsidered both the issues of “special districts” and “special taxes” in Rider v. County of San Diego.

A. The Majority Opinion

The majority found the sales tax invalid because it was not approved by two-thirds of the voters in San Diego County as required by section 4. In arriving at its decision, the majority confronted its previous decisions calling for strict construction of article XIII A, both as it related to “special districts” and “special taxes.” By turning to language in Amador Valley Joint Union High School District v. State Board of Equalization, the majority laid a foundation that supported its analysis:

As we stated in Amador . . ., upholding the validity of Proposition 13, “since any tax savings resulting from the operation of sections 1 and 2 [the property tax rate and assessment limitations of the measure] could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, section 3 [providing that increased state taxes require

56. Id. at 56-57, 648 P.2d at 940, 184 Cal. Rptr. at 718.
57. Id. at 57, 648 P.2d at 941, 184 Cal. Rptr. at 719 (Richardson, J., dissenting).
59. See supra notes 38, 51, 56 and accompanying text.
60. 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239 (1978).
legislative approval by a two-thirds vote] and 4 combine to place restric-
tions upon the imposition of such taxes.”

In other words, section 4’s restriction on local taxes is part of an “inter-
locking ‘package’ deemed necessary by the initiative’s framers to assure ef-
effective real property tax relief.”

With this “interlocking package” in mind, the majority proceeded
to redefine section 4’s “special districts” and “special taxes.” Not
surprisingly, the majority re-introduced Justice Richardson’s dissent-
ing opinion concerns about circumvention of Proposition 13’s
supermajority voting requirements. The majority gave strong
weight to the trial court’s determination that “Proposition 13 has
been purposely circumvented” by the act which formed the
Agency. This “purposeful avoidance” of section 4 underlies the
majority’s analysis of the San Diego County sales tax scheme.

The majority first focused on the term “special district,” holding
that “the Agency must be deemed a ‘special district’ under section 4,
despite its lack of power to levy a tax on real property.”

The majority saw the court of appeal’s reliance on Richmond as
an unwarranted extension of that precedent:

The fact that, following Richmond, numerous “special purpose” districts
were created to accomplish aims comparable to LACTC strongly indicates
a large “hole” has indeed been created in Proposition 13, confirming Justice
Richardson’s prediction. In our view, the framers of Proposition 13, and the
voters who adopted it, would not have intended that result.

The majority found Richmond’s limitation of “special districts” to
those possessing property tax powers as unworkable because such an
agency did not exist. “[T]he proposed extension of Richmond to all
districts, whenever created, which lack property tax power would
read section 4’s reference to ‘special districts’ out of existence as ap-
p lied to districts formed after 1978.” Thus, the majority in Rider

61. Rider, 1 Cal. 4th at 7, 820 P.2d at 1003, 2 Cal. Rptr. 2d at 493 (citations
omitted).
62. Id. at 8, 820 P.2d at 1004, 2 Cal. Rptr. 2d at 494. See supra notes 43, 57 and
accompanying text.
63. Id. at 8, 820 P.2d at 1004, 2 Cal. Rptr. 2d at 494. “[T]he
Agency ‘was created solely for the purpose of avoiding the strictures of Proposition 13.’
In addition, . . . the Court of Appeal deemed the Agency ‘an empty shell’ used by the
County to exercise its own fiscal discretion. The record amply supports those findings.”
64. Id. at 10, 820 P.2d at 1005, 2 Cal. Rptr. 2d at 495.
65. Id. See supra notes 37-42 and accompanying text.
66. Rider, 1 Cal. 4th at 11, 820 P.2d at 1006, 2 Cal. Rptr. 2d at 496 (citations
omitted).
67. Id.
presented a new definition: "[W]e hold that 'special district' would include any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restriction of Proposition 13."

The majority found that in this case, the evidence of purposeful circumvention was strong; however, they conceded that proving intentional circumvention could be difficult. Therefore, the majority set forth its "essential control" test as a means of reasonably inferring intention to circumvent Proposition 13. The majority found that in this case, the evidence of purposeful circumvention was strong; however, they conceded that proving intentional circumvention could be difficult. Therefore, the majority set forth its "essential control" test as a means of reasonably inferring intention to circumvent Proposition 13. The majority's "essential control" test is applied to determine if that control exists.

The majority then proceeded to its analysis of a "special tax" within the meaning of section 4, since section 4 requires both a "special district" and a "special tax." The Agency argued that even if it was a "special district," its taxes were not "earmarked for any special purposes within the Agency," but are to be placed in a general fund for the general purposes of the Agency. The majority disagreed, finding instead that the tax revenues were collected for the "special and limited governmental purposes of constructing and operating the County's justice facilities."

The majority analyzed the Farrell case and held that its rationale

68. Id. Presumably, this situation is proved by utilizing the "essential control" test and looking to intentional circumvention of Proposition 13. See infra notes 70-71 and accompanying text.
69. Rider, 1 Cal. 4th at 11, 820 P.2d at 1006, 2 Cal. Rptr. 2d at 496.
70. Id. at 11-12, 820 P.2d at 1006-07, 2 Cal. Rptr. 2d at 496. The majority held: In determining whether such control exists, a variety of considerations may be relevant, including the presence or absence of (1) substantial municipal control over agency operations, revenues or expenditures, (2) municipal ownership or control over agency property or facilities, (3) coterminous physical boundaries, (4) common or overlapping governing boards, (5) municipal involvement in the creation or formation of the agency, and (6) agency performance of functions customarily or historically performed by municipalities and financed through levies of property taxes.
71. Id. at 11-12, 820 P.2d at 1006, 2 Cal. Rptr. 2d at 496.
72. CAL. CONST. art. XIII A, § 4. See supra notes 6-7 and accompanying text.
73. Rider, 1 Cal. 4th at 13, 820 P.2d at 1007-08, 2 Cal. Rptr. 2d at 497-98. See CAL. GOV'T CODE § 26272. "The purposes for which the tax may be imposed are the general governmental purposes of the agency as set forth in Section 26267." Id.
74. Rider, 1 Cal. 4th at 13, 820 P.2d at 1008, 2 Cal. Rptr. 2d at 498. See generally CAL. GOV'T CODE § 26267.
The Agency and county argued that the tax was a "general tax" nonetheless because the legislature expressly designated it a "general tax" and the revenues are to be used for "general governmental purposes." The majority rejected this line of argument, both as to legislative designation and as to the "general purpose" usage. Instead, the majority set out a new definition:

[A] "special tax" is one levied to fund a specific governmental project or program. . . . It is true that, under the foregoing principle, every tax levied by a "special purpose" district or agency would be deemed a "special tax." But this interpretation seems most consistent with the probable intent of the framers of Proposition 13.

The majority, after finding the sales tax violative of Proposition 13, did not address the challenge under Proposition 62. The court likewise refused to rule on the issue of prospective only application of its decision. The majority, in its conclusion, stated its reluctance to interfere with local projects such as this, but emphasized its duty to apply the mandates of Proposition 13.

B. The Concurrence

Justice George wrote a concurring opinion that stressed that the decision should be based on Proposition 62, rather than the constitutional provisions of Proposition 13. This opinion was founded on concepts of judicial restraint and on the avoidance of "re-defining"

75. Rider, 1 Cal. 4th at 14, 820 P.2d at 1008, 2 Cal. Rptr. 2d at 498. See supra notes 51-56 and accompanying text.
76. See CAL. GOV'T CODE § 26251.
77. CAL. GOV'T CODE § 26272. See supra note 56 and accompanying text.
78. Rider, 1 Cal. 4th at 14-15, 820 P.2d at 1008-09, 2 Cal. Rptr. 2d at 498-99. "[S]uch nomenclature is of minor importance in light of the realities underlying its adoption and its probable object and effect." Id. (referring to Douglas Aircraft Co., Inc. v. Johnson, 13 Cal. 2d 545, 550, 90 P.2d 572, 575 (1939) (legislative designation entitled to "some weight" but not conclusive)).
79. Rider, 1 Cal. 4th at 15, 820 P.2d at 1009, 2 Cal. Rptr. 2d at 499. "[I]t would be anomalous if the 'special' tax of one agency could so readily become the 'general' one of another." Id.
80. Id.
81. Id. at 16, 820 P.2d at 1009, 2 Cal. Rptr. 2d at 499. "Proposition 13 and its limitations on local taxation are constitutional mandates of the people which we are sworn to uphold and enforce." Id.
82. Id. at 16-25, 820 P.2d at 1010-16, 2 Cal. Rptr. 2d at 500-06 (George, J., concurring). Justice Panelli concurred in this opinion. See supra note 27.
the term "special district." Justice George was convinced that non-constitutional provisions should furnish the basis of decision if applicable. "[I]n my view, the provisions of Proposition 62 provide a much clearer and more straightforward basis for the decision in this case than the provisions of Proposition 13, on which the majority opinion relies."

Using Proposition 62 to challenge the sales tax, Justice George found section 53722 applicable to the Agency. This analysis would eliminate the need to classify the Agency as a "special district" and would likewise eliminate the necessity of presenting the "essential control" test. In addition, Proposition 62 contains a specific provision defining the term "special tax."

Justice George addressed the Agency’s constitutional challenge to Proposition 62 and held that it survived constitutional attack. Justice George joined the majority decision, however, agreeing that the tax was invalid under Proposition 13 as well.

C. The Dissenting Opinions

Justice Mosk wrote a dissenting opinion that strongly opposed both the result of the case and the majority’s analysis. His dissent fervently advocated the use of stare decisis concerning the Richmond.

83. Rider, 1 Cal. 4th at 16-17, 820 P.2d at 1010, 2 Cal. Rptr. 2d at 500 (George, J., concurring). "In my view, the majority's approach is inconsistent with well-established principles of judicial restraint." Id. at 17, 820 P.2d at 1010, 2 Cal. Rptr. 2d at 500.
84. Id. "It is a well-established principle that this Court will not decide constitutional questions where other grounds are available and dispositive of the issues of the case." See Palermo v. Stockton Theaters, 32 Cal. 2d 53, 66, 195 P.2d 1, 9 (1948) (citing Alma Motor Co. v. Timken-Detroit Axle Co., 329 U.S. 129 (1946); Rescue Army v. Municipal Court, 331 U.S. 549 (1947)).
85. Rider, 1 Cal. 4th at 18, 820 P.2d at 1011, 2 Cal. Rptr. 2d at 501 (George, J., concurring). Proposition 62, set out in CAL. GOV'T CODE § 53722, provides, "No local government or district may impose any special tax unless and until such special tax is submitted to the electorate of the local government, or district and approved by a two-thirds vote of the voters voting in an election on the issue." CAL. GOV'T CODE § 53722.
86. Rider, 1 Cal. 4th at 18, 820 P.2d at 1011, 2 Cal. Rptr. 2d at 501. "[S]ection 53722 applies to all "local government[s]" or "district[s]."" Id.
87. See supra notes 64-71 and accompanying text.
88. CAL. GOV'T CODE § 53721. "General taxes are taxes imposed for general governmental purposes. Special taxes are taxes imposed for specific purposes." Id.
89. Rider, 1 Cal. 4th at 20-24, 820 P.2d at 1012-15, 2 Cal. Rptr. 2d at 502-05 (George, J., concurring). This Note does not discuss the constitutionality of Proposition 62; therefore, this section of the concurring opinion is presented only to summarize Justice George's conclusion.
90. Id. at 25, 820 P.2d at 1015, 2 Cal. Rptr. 2d at 505.
91. Id. at 25-35, 820 P.2d at 1016-22, 2 Cal. Rptr. 2d at 506-12 (Mosk, J., dissenting).
and Farrell decisions. Justice Mosk felt that the California Supreme Court had ruled on the definition of "special districts" and "special taxes" in these two cases and that local governments had relied on their precedential value for over a decade.

Justice Mosk began by stressing Richmond applied to agencies created after Proposition 13 was enacted. According to Justice Mosk, the majority "limit[ed] the holding of Richmond to entities established before Proposition 13 was enacted, a view of the decision no fair-minded reader could accept." Justice Mosk discounted the dictum of Richmond concerning post-Proposition 13 agency creation as not confining the Richmond holding. Equally critical, he argued for continued strict construction of section 4.

The dissenting opinion likewise criticized the use of legislative motivation in invalidating a tax under section 4.

I fail to see how the question whether a governmental body is a "special district" can, as the majority suggest, depend on the intent of the Legislature in its formation, given the general rule that the motivation of the Legislature or its members in passing legislation is immaterial to questions involving the validity of legislation.

"[A]lthough the universal rule forbids inquiry into the motives of the Legislature in enacting a statute, the majority's holding compels an examination of such motives . . . ."

Justice Mosk mentioned the failure of Proposition 36 as indicative

92. Id. at 25, 820 P.2d at 1016, 2 Cal. Rptr. 2d at 506. "Although the majority opinion purports not to do so, it ignores stare decisis and effectively overrules our decisions in Los Angeles County Transportation Com. v. Richmond and City and County of San Francisco v. Farrell." Id. (citations omitted).

93. Id.

We held, without reservation, that the term special district, as used in section 4, refers only to those districts which may levy a tax on real property. All the justices except one in dissent concurred in the principle upon which our conclusion was based . . . because that provision was aimed at prohibiting the "replacement" of "lost" property taxes with other taxes.

Id. at 26, 820 P.2d at 1016, 2 Cal. Rptr. 2d at 506.

94. Id. at 26, 820 P.2d at 1017, 2 Cal. Rptr. 2d at 507. See supra notes 41-42 and accompanying text.

95. Rider, 1 Cal. 4th at 27, 820 P.2d at 1017, 2 Cal. Rptr. 2d at 507 (Mosk, J., dissenting).

[T]he majority recite the holding of Richmond . . . that the elitist requirement for a supermajority is "fundamentally undemocratic," and that the language of section 4 must be strictly construed and ambiguities resolved in favor of permitting voters to enact measures by a majority vote. Nevertheless the majority's construction of section 4 violates this unequivocal rule.

Id. (citations omitted).


97. Rider, 1 Cal. 4th at 28, 820 P.2d at 1018, 2 Cal. Rptr. 2d at 508 (Mosk, J., dissenting).

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of a section 4 reading contrary to the majority’s holding. According to Justice Mosk, the failure of Proposition 36 reinforces the correctness of the Richmond holding in that any redefining of “special districts” could be accomplished most accurately through the initiative process.

The dissenting opinion’s final assault on the majority’s “special district” analysis concerned its newly devised “essential control” test. “[T]he ‘essential control’ test propounded by the majority as the tool to expose circumventive intent is unworkable.” Justice Mosk briefly presented several situations where the majority’s test factors simply would be of little utility, especially in light of past decisions. The use of this new test “will threaten the taxing powers of many, if not most, California districts formed in the last 13 years.”

Turning to the issue of “special taxes,” Justice Mosk was no less critical. “The majority’s conclusion regarding special taxes is, if anything, even more egregious.” Justice Mosk was disturbed by the majority’s treatment of Farrell, suggesting that the majority’s new view on “special taxes” effectively applies section 4’s two-thirds voter approval requirement to any taxes applied by a “special district.” Justice Mosk strengthened his reasoning by pointing to Proposition 62, which statutorily defines special and general taxes. According to the dissent, passage of Proposition 62 reflected the intention of voters in continuing the Farrell definitional scheme.

The dissenting opinion of Justice Mosk concluded by discussing the “profound and unsettling consequences” of the majority’s decision. The billions of dollars at stake and the reliance on Richmond
and Farrell were of special concern. Justice Mosk noted that this decision not only affected the County of San Diego, but also many others who have acted on, contracted with, or financed the Agency’s operations to date.106 Of significance to Justice Mosk, the Rider holding could have a disastrous impact on “numerous local taxing entities that carry out essential governmental functions.”107

Lastly, Justice Mosk felt that the majority’s holding should have been declared prospective only.108 Conceding that it is not inappropriate to apply the majority decision to this case, Justice Mosk expressed great concern about the ruling’s impact on multiple obligations by other agencies.109 “[W]hen we overrule our earlier authority, considerations of fairness may require prospective application of our new holding, particularly when contracts have been made or property rights acquired in accordance with the prior decision.”110 Especially since the majority decided that legislative intent was determinative, Justice Mosk felt that local governmental entities and their contracting parties were justified in relying on Richmond.111

Justice Kennard also dissented, agreeing with Justice Mosk that the Agency was not a “special district” within the meaning of section 4.112 Justice Kennard stated that the majority’s interpretation of “special taxes” was “overbroad,” but expressed no view on prospective application.113

D. Analysis

The California Supreme Court in Rider appears to have discarded two precedents in arriving at its decision.114 Both the Richmond case

106. For example, bondholders, contractors, employees, and others have entered into contracts with the Agency. Justice Mosk also was concerned that matching funds from state and federal governments were jeopardized. Id. at 32, 820 P.2d at 1020, 2 Cal. Rptr. 2d at 510.

107. Id.

108. Id. at 33, 820 P.2d at 1021, 2 Cal. Rptr. 2d at 511.

109. Id. at 34, 820 P.2d at 1022, 2 Cal. Rptr. 2d at 512.


111. Rider, 1 Cal. 4th at 34-35, 820 P.2d at 1022, 2 Cal. Rptr. 2d at 512 (Mosk, J., dissenting).

112. Id. at 35, 820 P.2d at 1022-23, 2 Cal. Rptr. 2d at 512-13.

113. Id. at 35, 820 P.2d at 1023, 2 Cal. Rptr. 2d at 513.

114. See supra notes 64-68, 75-80 and accompanying text. But see Vernon v. State Bd. of Equalization, 4 Cal. App. 4th 110, 5 Cal. Rptr. 2d 414 (1992) (California Supreme Court previously found LACTC not a “special district” under § 4, thus local tax valid even though two-thirds voter approval was not acquired).
and the *Farrell* case defined key terms in section 4; yet, the majority in *Rider*, dissatisfied with the results of using these definitions in this case, redefined "special districts" and "special taxes." Justice Mosk's dissenting opinion criticized this approach, and this Note will address those dissenting concerns by analyzing the precedents and discussing the effects of the *Rider* decision.

### I. Treatment of Precedent

Three separate issues arise in the court's analysis of *Richmond* and *Farrell*; these include the actual holding of those two cases, the use of the rule of strict construction in interpreting section 4, and the introduction of legislative intent into the analysis of "special districts." This Note presents each issue separately to better assist in understanding the *Rider* decision.

The California Supreme Court in *Richmond* held that "a government body like LACTC, which does not have the power to levy a property tax, is not the type of 'special district' governed by [section 4]." At the end of the majority opinion, the court addressed the concern of possible intentional circumvention of Proposition 13. "[T]hat problem can be dealt with if and when the issue arises." This language seems qualified, however, by the majority's reasoning in arriving at its definition of "special districts." The *Richmond* court felt the power to levy a property tax was the determinative factor in being classified a "special district," at least when circumvention motivations were absent.

There can be little doubt that the *Rider* decision changed the definition of "special districts" in terms of section 4. To that extent, the precedential value of *Richmond* was almost entirely eliminated; no

115. *See supra* notes 37, 56 and accompanying text.
116. *See supra* notes 91-111 and accompanying text.
120. *Id.* "To the extent section 4 clearly requires a particular entity to obtain the consent of two-thirds of the voters, it affords the 'effective' property tax relief we discussed in *Amador*... [T]here are strong policy reasons for holding that if, as here, the intention of the voters to require a two-thirds vote is not clear, a majority is to be deemed sufficient for the valid adoption of a 'special tax.'" *Id.*
longer is the power to levy property taxes the decisive factor.121 Likewise, the court's reasoning for arriving at the Richmond definition of "special district" was presumably abandoned.122 In this regard, Justice Mosk's "stare decisis" concern is very real.123 Anyone reading the Richmond opinion would inevitably agree with Justice Mosk that Richmond did not limit itself in the manner the Rider majority subsequently did.124

However, the qualifying language in Richmond suggests that the court did not discount the real possibility of intentional circumvention of Proposition 13.125 Though this language was dictum,126 local governmental entities should not be surprised that Proposition 13 circumvention is a contributing factor in any section 4 analysis.127 As the supreme court stated in Amador, "[t]he literal language of enactments may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers."128 Constitutional enactments "must receive a liberal, practical common-sense construction [which meets the] changed conditions and the growing needs of the people."129 The Rider decision appears to be an attempt to address these concerns.

The Rider majority's treatment of Farrell is much more disturbing. In Farrell, the term "special taxes" was analyzed quite thoroughly and clearly defined.130 The Rider majority's treatment of "special taxes" goes entirely counter to language it presented in its discussion of "special districts."131 In effect, the Rider court read

121. Rider, 1 Cal. 4th at 11, 820 P.2d at 1006, 2 Cal. Rptr. 2d at 496. "It seems evident that Richmond's limitation . . . to those districts possessing property tax power is unworkable as applied to districts formed after the adoption of Proposition 13 . . . . [W]e hold that 'special district' would include any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13." Id. But see Vernon v. State Bd. of Equalization, 4 Cal. App. 4th 110, 5 Cal. Rptr. 2d 414 (1992) (California Supreme Court previously found LACTC not a "special district" under § 4, thus local tax valid even though two-thirds voter approval was not acquired).

122. See supra notes 37-40 and accompanying text.

123. See supra note 92 and accompanying text.

124. See supra notes 64-65, 93-94 and accompanying text.

125. See supra notes 118-19 and accompanying text.

126. The Richmond decision did not address intentional circumvention because the LACTC was established prior to the enactment of Proposition 13. See supra notes 41-42 and accompanying text.

127. The language of Amador clearly expresses the court's desire to give adequate effect to voter initiatives. See Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, 22 Cal. 3d 208, 244-45, 583 P.2d 1281, 1299-1300, 149 Cal. Rptr. 239, 257-58 (1978).

128. Id. at 245, 583 P.2d at 1300, 149 Cal. Rptr. at 258.

129. Id. at 245, 583 P.2d at 1300, 149 Cal. Rptr. at 257 (quoting from Los Angeles Metro. Transit Auth. v. Public Util. Comm'n, 59 Cal. 2d 863, 869, 382 P.2d 583, 586, 31 Cal. Rptr. 463, 466 (1963)).

130. See supra notes 51-56 and accompanying text.

131. Rider, 1 Cal. 4th at 11, 820 P.2d at 1006, 2 Cal. Rptr. 2d at 496. "[T]he
“special taxes” out of section 4 as it relates to “special purpose” districts.\textsuperscript{132} The court used the “probable intent” of the framers and voters of Proposition 13 to justify its conclusion, but its reasoning quite arguably was inconsistent.\textsuperscript{133}

The \textit{Rider} majority felt its new “special tax” definition was consistent with \textit{Farrell},\textsuperscript{134} but this conclusion is questionable. The \textit{Farrell} opinion stated that “an interpretation which would render terms surplusage should be avoided, and every word should be given some significance, leaving no part useless or devoid of meaning.”\textsuperscript{135} The \textit{Farrell} “special tax” definition had been applied in numerous cases without ignoring alleged voter intent.\textsuperscript{136}

The definitional holdings of \textit{Richmond} and \textit{Farrell} were not followed in \textit{Rider};\textsuperscript{137} yet, the \textit{Rider} majority did not clearly indicate to what extent these two decisions were limited. \textit{Rider} offers new definitions for “special districts” and “special taxes” in terms of section 4, while those terms were previously defined in \textit{Richmond} and \textit{Farrell}. When looking at the definitional holding of \textit{Rider}, there is little doubt that the majority presented a new interpretation of section 4.

A second aspect of \textit{Rider} is its apparent abandonment of the rule of strict construction concerning section 4’s supermajority voting requirement.\textsuperscript{138} This rule was first presented in the plurality opinion of

\textsuperscript{132} See supra notes 75-80 and accompanying text. See also \textit{Rider}, 1 Cal. 4th at 15, 820 P.2d at 1009, 2 Cal. Rptr. 2d at 499. “It is true that... every tax levied by a ‘special purpose’ district or agency would be deemed a ‘special tax.’ But this interpretation seems most consistent with the probable intent of the framers of Proposition 13.” \textit{Id.}

\textsuperscript{133} The court was willing to read “special taxes” out of § 4; but in defining “special districts,” the court was concerned that the \textit{Richmond} definition, if applied here, would read “special district” out of § 4.

\textsuperscript{134} \textit{Rider}, 1 Cal. 4th at 15, 820 P.2d at 1009, 2 Cal. Rptr. 2d at 499.


\textsuperscript{137} \textit{See supra} notes 67-68, 75-80 and accompanying text.

\textsuperscript{138} \textit{See supra} notes 38-40, 51-54 and accompanying text.
Richmond and was subsequently accepted by the majority of the court in Farrell. The Rider majority also mentioned this rule; yet, as the dissent correctly points out, the majority ignored this rule in favor of preserving the "probable intent" of the initiative voters.

Since no explanation was presented, analysis of this part of the decision is only speculative. However, the language of the majority opinion suggests that the court decided to return to the principles first announced in Amador. Certainly, the section 4 terms were thoroughly analyzed in Rider, but the supermajority voting requirement was not "strictly construed." Rather than following the "strictly construed" Richmond and Farrell definitions, the Rider court instead seemed to ignore this aspect of the precedents. Alternatively, the court disagreed with the rule and chose to abandon it (though not expressly overruling that part of Richmond and Farrell).

The last issue concerning precedent treatment involves the court's focus on legislative intent. The California Supreme Court first suggested its importance in the Richmond case. The intent of the voters is certainly significant, and even the dissent did not argue against this. The dissent's real dissatisfaction was with the majority's willingness to consider legislative motives.

The California Supreme Court directly addressed the issue of legislative motivation in County of Los Angeles v. Superior Court. There exists a "historically enshrined legal principle that precludes any judicially authorized inquiry into the subjective motives or

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141. Rider, 1 Cal. 4th at 7, 820 P.2d at 1003, 2 Cal. Rptr. 2d at 493.
142. See supra note 95 and accompanying text.
143. One might infer the rule was abandoned as not giving sufficient effect to voter intentions.
144. See supra notes 60-61 and accompanying text.
145. See supra notes 41-42 and accompanying text.
146. Throughout the majority opinion, the court discussed both voter and legislative intent, but it is important to keep these ideas separate.
147. The only aspect of Mosk's dissent concerning voter intent appears to be his disapproval or questioning of "probable" voter intent. Specifically, his discussion of Proposition 36 brings this into issue, but he did not argue against looking at voter intent. See supra note 98 and accompanying text. See also Rider, 1 Cal. 4th at 28, 820 P.2d at 1018, 2 Cal. Rptr. 2d at 508 (Mosk J., dissenting).
148. Id. at 27-28, 820 P.2d at 1017-18, 2 Cal. Rptr. 2d at 507-08. See supra notes 96-97 and accompanying text.
149. 13 Cal. 3d 721, 532 P.2d 495, 119 Cal. Rptr. 631 (1975) (holding that discovery order violated principle precluding judicial inquiry into the motivation or mental processes of legislators in enacting legislation).
mental processes of legislators."\textsuperscript{150} This rule is also invoked when establishing the validity of such legislation. "[T]he validity of a legislative act does not depend on the subjective motivation of its draftsmen but rests instead on the objective effect of the legislative terms."\textsuperscript{151}

The \textit{County of Los Angeles} opinion presents language which seems to support Justice Mosk's criticism.\textsuperscript{152} However, it is important to realize that the court in \textit{County of Los Angeles} was faced with a discovery order that sought to directly inquire into subjective legislative motivations.\textsuperscript{153} The \textit{Rider} decision did not specifically address subjective motivations, but rather sought to infer improper intent from the realities of the enabling legislation and the surrounding circumstances and effects.\textsuperscript{154}

The \textit{Rider} majority did not appear to violate the proscribed "legislative motivation" principle.\textsuperscript{155} In \textit{Rider}, no judicial inquiry into subjective legislative motivation was presented. Rather, the majority considered the effects of the legislation and the factors surrounding it to infer that Proposition 13 circumvention was intended.\textsuperscript{156} Such

\textsuperscript{150} \textit{Id.} at 726, 532 P.2d at 498, 119 Cal. Rptr. at 634. This rule applies to local legislators as well. \textit{Id. See also} People v. Bigler, 5 Cal. 23, 26 (1855).

\textsuperscript{151} \textit{County of Los Angeles}, 13 Cal. 3d at 727, 532 P.2d at 499, 119 Cal. Rptr. at 635. "[A] judiciary must judge by results, not by the varied factors which may have determined legislators' votes." Werner v. Southern Cal. Associated Newspapers, 35 Cal. 2d 121, 129, 216 P.2d 825, 830 (1950) (quoting Daniel v. Family Sec. Life Ins. Co., 336 U.S. 220, 224 (1949)).

\textsuperscript{152} \textit{See generally} County of Los Angeles, 13 Cal. 3d at 723-32, 532 P.2d at 496-502, 119 Cal. Rptr. at 632-38. \textit{See also Rider}, 1 Cal. 4th at 27-28, 820 P.2d at 1017-18, 2 Cal. Rptr. 2d at 507-08.

\textsuperscript{153} \textit{County of Los Angeles}, 13 Cal. 3d at 723, 532 P.2d at 496, 119 Cal. Rptr. at 632.

\textsuperscript{154} \textit{See Rider}, 1 Cal. 4th at 11-13, 820 P.2d at 1006-07, 2 Cal. Rptr. 2d at 496-97. "[W]e believe that courts may infer [circumventional] intent whenever . . . the new tax agency is essentially controlled by one or more cities or counties that otherwise would have had to comply with the supermajority provision of section 4." \textit{Id.} at 11, 820 P.2d at 1006, 2 Cal. Rptr. 2d at 496.

\textsuperscript{155} \textit{See} Mandel v. Hodges, 54 Cal. App. 3d 596, 127 Cal. Rptr. 244 (1975). "[I]t is . . . clear that we do not engage in the proscribed 'inquiry into the motivation' . . . when we perceive its purpose to be obvious on the face of the action itself." \textit{Id.} at 609, 127 Cal. Rptr. at 252.

\textsuperscript{156} \textit{See supra} notes 70-71 and accompanying text. \textit{See also} Soon Hing v. Crowley, 113 U.S. 703, 710 (1885). And the rule is general with reference to the enactments of all legislative bodies that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the acts, or inferences from their operation . . . The motives of the legislators . . . will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments.

\textit{Id.}
2. Practical Effects of the Decision

Whether or not one agrees with the outcome of Rider, the decision breaks new ground that will create effects that can only be addressed by the courts in subsequent decisions. This Note will only discuss three general areas here, those concerning the utility of the "essential control" test, the effects on the doctrine of stare decisis, and the future revenue-raising abilities of local governments.

The Rider court conceded that "marshalling ... evidence of intentional circumvention may be difficult." The majority stated that agency control was the decisive factor in inferring this improper intent when analyzing whether an entity is a "special district" within the meaning of section 4. Thus, the key analysis for future decisions will involve the determination of when that control over the agency is present. To assist courts in their analyses, the Rider majority presented its "essential control" test.

Justice Mosk was quick to jump on this test as impractical and unworkable. "Several of the factors noted as establishing circumventive intent actually apply to most California districts." Some of these over-inclusive factors include common or overlapping governing boards, common boundaries, and municipality involvement in agency formation. Justice Mosk offered examples that showed, at least as far as these factors are concerned, the "essential control"

157. See supra notes 96-97 and accompanying text.
158. See supra notes 118-19 and accompanying text.
159. Rider, 1 Cal. 4th at 28-29, 820 P.2d at 1018, 2 Cal. Rptr. 2d at 508. “Even assuming that a court may ... [inquire] into the Legislature’s motives ..., the ‘essential control’ test propounded by the majority as the tool to expose circumventive intent is unworkable.” Id.
160. Id. at 11, 820 P.2d at 1006, 2 Cal. Rptr. 2d at 496. The court had little difficulty in finding circumventive intent in this case, however.
161. Id.
162. Id. at 11-12, 820 P.2d at 1006-07, 2 Cal. Rptr. 2d at 496. See supra notes 69-71 and accompanying text.
163. See supra notes 99-101 and accompanying text.
164. Rider, 1 Cal. 4th at 29, 820 P.2d at 1018, 2 Cal. Rptr. 2d at 508.
165. Id. at 29, 820 P.2d at 1018-19, 2 Cal. Rptr. 2d at 508-09 (Mosk, J., dissenting).
test is of little assistance. This observation appears accurate, since some agencies found valid in prior decisions could possibly fail this test. As Mosk suggested, certain statutes and schemes actually require the condition the majority's test holds as indicative of intentional circumvention. The weight given each factor in this test is unclear; however, it is obvious that many of the factors would not, by themselves, indicate intentional circumvention of Proposition 13.

Perhaps, when these factors are combined and applied to future cases, the utility of the “essential control” test will become more apparent. As the Rider majority stated, “[t]he ‘essential control’ [test] is not necessarily the functional equivalent of the ‘alter ego’ theory used to ‘pierce the corporate veil.’” Rather, the test “simply affords ground for reasonably inferring an intent to circumvent Proposition 13.” However, given the court's new approach to “special taxes,” the importance of classifying an agency as a “special district” within section 4 takes on added significance.

In light of these considerations, the utility of the “essential control” test is of great concern to those agencies which seek to operate within the mandates of section 4. This uncertainty could seriously jeopardize current and future agency financing efforts and operations, as suggested by Justice Mosk in his dissent. Bondholders, banks, and others who finance agency operations may not accept this new level of risk-taking. Certainly, the risks of financing agencies have increased as a result of the Rider decision.

Perhaps of lesser consequence is Rider's effect on the doctrine of stare decisis. Justice Mosk suggested that the majority ignored this

166. Id.
167. See supra notes 100-01 and accompanying text.
168. Id. For example, many statutes require common boards, and municipalities often are involved in forming these agencies which address issues of local concern.
169. The boundaries of the agency and the city (for instance) suggest little about intent to escape the restrictions of § 4 and the degree of control exercised by the city.
170. Rider, 1 Cal. 4th at 12, 820 P.2d at 1006, 2 Cal. Rptr. 2d at 496. In this regard, the focus of the inquiry is not whether the entities are identical. Id. at 12, 820 P.2d at 1007, 2 Cal. Rptr. 2d at 497.
171. Id.
172. See supra notes 72-80 and accompanying text.
173. Rider, 1 Cal. 4th at 31-33, 820 P.2d at 1020-21, 2 Cal. Rptr. 2d at 510-11.
174. The risk taking referred to involves the chance that the underlying tax is found invalid.
175. Accordingly, if banks or bondholders finance agency operations by relying on the underlying tax for repayment, their financing risks increase if that tax's validity is uncertain. An equally interested group includes those who contract with or are employed by these agencies.
doctrine in arriving at its decision.\textsuperscript{176} Certainly, \textit{Richmond} and \textit{Farrell} were not followed by the \textit{Rider} majority,\textsuperscript{177} but these precedents were not ignored by the majority either. As discussed above, the majority analyzed these precedents considerably before applying them to the \textit{Rider} facts.

The doctrine of stare decisis is quite detailed, and this Note will only discuss a few basic principles concerning it. First, the doctrine "applies only to judicial precedents, \textit{i.e.}, to the ratio decidendi or actual ground of decision of a case cited as authority."\textsuperscript{178} The \textit{Richmond} case did not specifically address intentional circumvention of Proposition 13 since the questioned tax was enacted by a pre-Proposition 13 agency.\textsuperscript{179} The \textit{Richmond} opinion, although in dictum, suggested that its holding may indeed be limited if intentional circumvention factors were present.\textsuperscript{180} The \textit{Farrell} decision did not contain a similar qualifier, and Justice Mosk's dissent concerning it is well-founded.\textsuperscript{181} However, this is not to say the doctrine of stare decisis was erroneously ignored.

The California Supreme Court had previously discussed the stare decisis doctrine in \textit{County of Los Angeles v. Faus}.\textsuperscript{182} Certain language in \textit{Faus} supports the \textit{Rider} majority's analysis:

\begin{quote}
The rule of stare decisis is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each instance by the discretion of the court. Previous decisions should not be followed to the extent that error may be perpetuated and that wrong may result.\textsuperscript{183}
\end{quote}

The court in \textit{Faus} further stated, "[I]t becomes our duty not to follow decisions that we are convinced are erroneous and obsolete."\textsuperscript{184} Obviously, the \textit{Rider} court was disturbed by the "hole in

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{176} \textit{Rider}, 1 Cal. 4th at 25, 820 P.2d at 1016, 2 Cal. Rptr. 2d at 506 (Mosk, J., dissenting).
\item \textsuperscript{177} \textit{See supra} notes 114, 137 and accompanying text.
\item \textsuperscript{179} \textit{See supra} note 42 and accompanying text.
\item \textsuperscript{180} \textit{See supra} notes 41-42 and accompanying text. Equally important, the \textit{Richmond} opinion did not expressly limit its application to future cases. See \textit{supra} notes 93-94 and accompanying text for Justice Mosk's dissenting comments.
\item \textsuperscript{181} \textit{See supra} notes 102-04 and accompanying text.
\item \textsuperscript{182} \textit{County of Los Angeles v. Faus}, 48 Cal. 2d 672, 312 P.2d 680 (1957).
\item \textsuperscript{183} \textit{Id.} at 679, 312 P.2d at 684-85.
\item \textsuperscript{184} \textit{Id.} at 679, 312 P.2d at 684.
\end{itemize}
\end{footnotesize}
the fence" which had emerged following Richmond and Farrell. The Rider majority's treatment of Richmond and Farrell did not rest on the erroneousness of those decisions, but rather appears to suggest those cases have been rendered obsolete in certain respects. This conclusion is evidenced by the Rider court's decision to present new "special district" and "special tax" definitions.

Apparently, Justice Mosk believed the Richmond and Farrell decisions had settled the section 4 definitional problems. Certainly, the definitions developed in those cases will no longer apply to newly created agencies. However, any damage done to the doctrine of stare decisis is lessened by the Rider majority's return to the Amador reasoning and its desire to meet the mandates imposed by the voters in passing Proposition 13. The treatment of "special districts" by the Rider majority seems consistent with the reasoning expressed in the Richmond dictum; however, its treatment of "special taxes" is less supportable. The stronger argument for stare decisis was the Farrell decision and its "special tax" definition; yet, the Rider court appears to have only adjusted the Farrell holding, not completely abandoning it. In terms of stare decisis, the Rider decision did not severely damage this well-entrenched doctrine.

The last issue under this section concerns future revenue-raising
alternatives available to local governments. Under *Rider*, local governments can no longer bypass the section 4 supermajority voting requirements by creating an agency essentially controlled by the local government.192 These newly-created agencies will also be unable to escape the mandates of section 4 by calling their enacted taxes “general taxes”; rather the courts must determine if these revenues are used for special governmental projects or programs.193 Agencies such as the one involved in *Rider* will be unable to raise tax revenues without meeting the two-thirds voting requirements of section 4 when these factors are found. This leaves open the question of how the *Rider* decision will affect future local governmental funding activities.

One area of concern is the effect of *Rider* on currently existing agencies and their taxes.194 The majority felt these agencies may not be affected by the *Rider* decision.195 The majority believed that many case-specific factors, constitutional issues, and policy considerations may require prospective application of *Rider* in certain cases.196 Because the majority was unwilling to limit the *Rider* holding, many agencies may find future litigation concerning their enacted taxes inevitable. At that point, the courts may or may not choose to limit the prospectivity of *Rider*, but this issue is far from settled now. Whatever results are reached concerning now existing agencies and their taxes, the future application of *Rider* to new local governmental revenue-raising attempts is clear.197

This leaves at issue what revenue-raising alternatives still remain. Several obvious choices immediately emerge, the most logical being the acquisition of the required two-thirds vote.198 Assuming the supermajority vote cannot be acquired, other alternatives still exist.

One alternative involves the continued efforts of local governments

192. See supra notes 67-71 and accompanying text.
193. See supra notes 75-80 and accompanying text.
194. The *Rider* majority did not rule on prospective only application of its decision because that issue was not fully briefed in that case. *Rider*, 1 Cal. 4th at 13, 820 P.2d at 1007, 2 Cal. Rptr. 2d at 497.
195. Id. For example, many agencies were established by statutes which contain strict time limitations for challenging their validity. *Id.* See, e.g., CAL. GOV'T CODE § 26282 (covering the agency involved in *Rider*); CAL. CIV. PROC. CODE § 860 (in rem validation procedure); CAL. CIV. PROC. CODE § 863 (60 day statute of limitations for agency action challenge). The reach and extent of these sections, and any others that may apply, are beyond the scope of this Note. See also supra note 114.
196. *Rider*, 1 Cal. 4th at 13, 820 P.2d at 1007, 2 Cal. Rptr. 2d at 497.
197. See supra notes 192-93 and accompanying text.
198. Perhaps this alternative is unavailable since many agencies are formed precisely because the required supermajority approval attempt failed (*Rider* is one such example). Of course, local governments can continue their efforts to gain the required approval, but at some point, these attempts are useless.

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to create their “special agencies,” but with the added focus on meeting the criteria of Rider’s “essential control” test. Perhaps the largest obstacle here is the California Supreme Court’s renewed emphasis on intentional circumvention. If local governments satisfy the “essential control” test, but otherwise appear to intentionally circumvent Proposition 13, the court is quite likely to revise the test and address these new attempts more vigorously. In Rider, the majority addressed intent by focusing on agency control; if future cases prove this focus misplaced, the court can conceivably present a new “intentional circumvention” approach to better fulfill the intent of Proposition 13 voters.

Other financing attempts have been utilized, with some also suffering the same fate as the Rider Agency’s sales tax. Two methods that have realized some success are special benefit assessments and governmental fees. Although these alternatives may assist some service financing, others are clearly inapplicable. Even the use of special assessments and governmental fees may be questioned given the expansive reasoning of Rider.

Although Rider clearly involved a sales tax, the court seemed most concerned with Proposition 13 circumvention and voter intent. Since property tax relief was found affected by the sales tax in 199. The ethics involved here are not endorsed nor condemned. If a true “nonintentional” circumventive agency can exist, local governments are surely free to pursue this option. However, considering the various factors in the test (especially the involvement of municipalities in agency formation), this avenue appears blocked.

201. See supra notes 65-71 and accompanying text.

202. For example, agency formation, property ownership, or some other factor may rise to the top as most determinative, leaving agency control as not decisive. See also supra note 114.


204. Koyama, supra note 203, at 1364. New issues arise with these methods, namely whether there exist enabling statutes and whether the fees are really taxes in disguise. Id. at 1357, 1360.

205. Funding jail facilities with user fees is certainly unlikely and possibly unconscionable.

206. See supra notes 61-63, 66-67, 75-80 and accompanying text.
Rider, other similar fees and assessments might also be reclassified as “Proposition 13 circumvention.” Local governments must surely hope that Rider is not expanded to encompass these other methods of revenue raising.

One final alternative for local governments\(^{207}\) is pursuit, through initiative or otherwise, of legislative clarification. Much of the Rider discussion on voter intent was speculative, though arguably reasoned.\(^{208}\) When voters passed Proposition 13, the focus was on property tax relief; the Richmond decision turned on this reasoning.\(^{209}\) Rider has now appeared to expand Proposition 13’s coverage by eliminating the property tax power requirement and focusing instead on the effects of the “special tax.”\(^{210}\) Property owners certainly gain tax relief, but those not owning property will also benefit.

A clarification of what Proposition 13 actually should and does cover is warranted. However, now that the Rider decision has given relief to all San Diego County taxpayers, reneging that relief through the initiative process appears insurmountable. Since the courts have received little guidance from analyzing the voter pamphlets that accompanied Proposition 13,\(^{211}\) any future statement by the voters can only be prospective.\(^{212}\) Yet, if local governments become dysfunctional because of insufficient funding,\(^{213}\) these same voters will suffer the effects.\(^{214}\) This could be a heavy price to pay for basing court decisions like Rider on the “probable intent” of the voters.\(^{215}\)

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\(^{207}\) The presented alternatives are by no means exhaustive. They have been offered only for example. Local governments have other ideas and some may currently be in use.

\(^{208}\) This whole area of initiative intent is beyond the scope of this Note. However, the Rider case shows one example of the difficulty courts have in interpreting unclear voter intent. One wonders what emphasis should be placed on framers intent (i.e., comments made by H. Jarvis and P. Gann). For further discussion on initiatives and their problems, see generally Marilyn E. Minger, Comment, Putting the “Single” Back in the Single-Subject Rule: A Proposal for Initiative Reform in California, 24 U.C. DAVIS L. REV. 879 (1991); Douglas R. Roach, Note, Zoning by Initiative in Arizona: A Matter of Judicial Philosophy, 32 ARIZ. L. REV. 1003 (1990); James E. Castello, Comment, The Limits of Popular Sovereignty: Using the Initiative Power to Control Legislative Procedure, 74 CAL. L. REV. 491 (1986). For a discussion on pre-election judicial review, see generally James D. Gordon III & David B. Magleby, Pre-Election Judicial Review of Initiatives and Referendums, 64 NOTRE DAME L. REV. 298 (1989).

\(^{209}\) See supra notes 37-40 and accompanying text.

\(^{210}\) I.e., does the new agency enact taxes which replace funds lost due to Proposition 13? See supra notes 65-68 and accompanying text.

\(^{211}\) See supra notes 55-56 and accompanying text.

\(^{212}\) New voters have entered California since Proposition 13 was enacted, and presumably several voters who approved the initiative have deceased or left the state.

\(^{213}\) This suggestion is purely speculative, since this Note does not analyze budgeting activities of local governments.

\(^{214}\) Also consider those who have contracted with, financed, or worked for “invalid” agencies.

\(^{215}\) See supra notes 66, 80 and accompanying text.
Two other issues which concern the Rider case deserve brief discussion. First, the issue remains as to what remedy is warranted in light of the invalidity of the sales tax. Since sales tax revenues were collected,216 tracing these proceeds to the actual taxpayers who paid them would appear impossible. One obvious remedy is an offsetting sales tax reduction until the invalid tax collections are "returned" to the taxpayers of the county. Another possibility is that the Agency may be allowed to retain these tax receipts to meet the obligations entered into in reliance on Richmond and Farrell. This alternative is highly unlikely, given the language in Rider217 and the United States Supreme Court's position in recent years.218 The most likely remedy will be a sales tax rate reduction until the collections are returned to the general taxpayers of San Diego County.

One final issue involves the constitutionality of Proposition 13 itself.219 A California case, Nordlinger v. Hahn,220 is currently pending before the United States Supreme Court. Nordlinger challenges the constitutionality of Proposition 13's acquisition value assessment method.221 Even if the United States Supreme Court finds the assessment method of Proposition 13 unconstitutional in Nordlinger, this would not appear to jeopardize section 4 because of the severability clause in section 6.222

However, the validity of remaining sections of article XIII A should not be assumed. The Nordlinger case could very well affect the future application of Proposition 13 as a whole. Yet, the Rider

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216. See supra notes 19-20 and accompanying text.
217. See supra notes 109, 144, 185-87 and accompanying text.
219. See supra notes 3-4 and accompanying text (discussing Amador and the state constitutional challenge).
222. See CAL. CONST. art. XIII A, § 6. "If any section . . . is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect." Id.
court may have set the stage for another constitutional challenge to Proposition 13 when it gave section 4 an expansive reach (i.e., covering sales taxes). Section 4’s new expansive reading may expose Proposition 13 to constitutional challenge irrespective of the Nordlinger outcome.223

CONCLUSION

The California Supreme Court gave Proposition 13 (specifically article XIIIA, section 4) additional strength when it invalidated the sales tax in Rider v. County of San Diego. Prior to this decision, section 4 had been limited to those “special districts” which had the power to levy a property tax. The supreme court in Rider discarded this requirement and instead offered a new definition of “special districts” by adding intentional circumvention factors into the analysis. In like manner, the definition of “special taxes” was also changed to plug further “holes” that had been created in section 4’s protective fence.

Although the taxpayers of San Diego County may benefit from these new interpretations in the form of lower taxes, those local governmental entities that had relied on the previous section 4 interpretations were caught by surprise. Perhaps the results of Rider v. County of San Diego would be more acceptable if the court had not discarded its past reasoning along with its past definitions. The court expanded the reach of section 4 from property tax relief only to other tax relief that incidentally affects property tax relief.

The “essential control” test was developed to assist courts in analyzing intentional circumvention of Proposition 13 by focusing on agency control. The utility of this test is yet to be determined; however, several of the test factors arguably offer little assistance in showing circumvention motivations.

The consequences of this decision are also yet to be seen, but local governments can be assured that future revenue-raising efforts will become much more difficult. The court plugged “the hole in the fence” that past interpretations of section 4 had created, but in a manner inconsistent with their past reasoning and analyses; the rule of strict construction was ignored.

Nonetheless, the California Supreme Court in Rider has presented new section 4 definitions of “special districts” and “special taxes.” Local governments, for better or for worse, must now adapt their financing activities in light of these new guidelines. No longer will local governments be able to create new “limited purpose” agencies

223. Subsequent to the writing of this Note, the United States Supreme Court affirmed the Nordlinger decision. See Nordlinger v. Hahn, 112 S. Ct. 2326 (1992) (California property tax system did not violate equal protection).
with limited taxing powers without risking the invalidation of their taxes because of Proposition 13 intentional circumvention.

Although this may have been the original intent of the proposition's voters in passing the initiative, ten years of precedent suggested otherwise. The Rider court chose to give Proposition 13 back its teeth, while possibly jeopardizing local governmental financing. The sole justification offered was the enforcement of the “probable intent” of Proposition 13 voters.

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