

1 [Urging the San Francisco City Attorney to appeal the case of *East Bay Asian Local*  
2 *Development Corporation v. State of California* to the US Supreme Court]

3 **Resolution** urging the City Attorney to file a petition for certiorari in the Supreme Court of the  
4 United States, asking that Court to review the judgment of the California Supreme Court in  
5 *East Bay Asian Local Development Corporation v. State of California*, SO 77396, and to hold  
6 that AB 133 violates the Establishment Clause of the First Amendment of the United States  
7 Constitution.

8  
9 WHEREAS, The City and County of San Francisco has recognized that the  
10 preservation of historic buildings from demolition or inappropriate alteration is vital to the  
11 preservation of our cultural heritage and the maintenance of our neighborhood character and  
12 has therefore established municipal codes that allow historic landmarks to be preserved; and

13 WHEREAS, In 1994, the California Legislature enacted AB 133, amending  
14 Government Code sections 25373 and 37361 to permit religious organizations, and only  
15 religious organizations, to declare their noncommercial properties exempt from the application  
16 of local historic preservation ordinances such as Article 10 of the San Francisco Planning  
17 Code; and

18 WHEREAS, on April 3, 1995, this Board of Supervisors adopted Resolution No. 249-25  
19 by a vote of 8-0, urging the City Attorney to file a lawsuit challenging AB 133 on the ground,  
20 among others, that it violated the Establishment Clause of the First Amendment of the United  
21 States Constitution.

22 WHEREAS, In 1995, the City Attorney, along with prominent nonprofit organizations,  
23 jointly filed an action in the Superior Court of the County of Sacramento, *East Bay Asian*  
24 *Local Development Corporation v. State of California* SO 77396, challenging the  
25 constitutionality of AB 133; and

Supervisors Peskin, Newsom, Leno

1           WHEREAS, this case has subsequently been appealed through several levels of the  
2 Courts—most recently in the California Supreme Court, which upheld the constitutionality of  
3 AB 133 on a narrow 4-3 ruling; and,

4           WHEREAS, dissenting justices on the California Supreme Court recognized that  
5 certain groups should not be exempt from local communities' policies and processes  
6 regarding historic preservation and described AB 133 as a "drastically over-broad measure"  
7 that grants "a significant, unjustified and preferential benefit to religious organizations"  
8 regarding historic preservation; now, therefore, be it

9           RESOLVED, that this Board of Supervisors urges the City Attorney to file a petition for  
10 certiorari in the Supreme Court of the United States, asking that Court to review the judgment  
11 of the California Supreme Court in *East Bay Asian Local Development Corporation v. State of*  
12 *California* and to hold that AB 133 violates the Establishment Clause of the First Amendment  
13 of the United States Constitution.

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# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails

### Resolution

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**File Number:** 010126

**Date Passed:**

Resolution urging the City Attorney to file a petition for certiorari in the Supreme Court of the United States, asking that Court to review the judgment of the California Supreme Court in *East Bay Asian Local Development Corporation v. State of California*, SO 77396, and to hold that AB 133 violates the Establishment Clause of the First Amendment of the United States Constitution.

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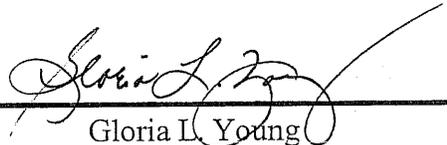
January 29, 2001 Board of Supervisors — ADOPTED

Ayes: 9 - Ammiano, Daly, Gonzalez, Hall, Maxwell, McGoldrick, Leno, Newsom,  
Peskin

Absent: 2 - Sandoval, Yee

File No. 010126

I hereby certify that the foregoing Resolution was ADOPTED on January 29, 2001 by the Board of Supervisors of the City and County of San Francisco.

  
\_\_\_\_\_  
Gloria L. Young  
Clerk of the Board

FEB 08 2001

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Date Approved

  
\_\_\_\_\_  
Mayor Willie L. Brown Jr.