

# Court asked to throw out resolution criticizing church adoption stand

SAN FRANCISCO - A San Francisco Board of Supervisors resolution harshly critical of official Catholic teaching on adoption by same-sex couples crosses the constitutional line between church and state and should be thrown out as unlawful, an attorney for the Catholic League for Religious and Civil Rights told a federal appeals court panel.

The resolution, adopted March 21, 2006, by an 11-0 vote of the city and county governing body, not only condemns Catholic beliefs but urges church subordinates to defy Vatican authority, attorney Robert Muise said during a July 16 hearing in San Francisco.

"It's remarkable," he said. "I've never seen anything like this."

Mr. Muise, who works for the Thomas More Law Center of Ann Arbor, Mich., a public-interest law firm that defends Christian religious beliefs, said later that he expected a ruling within a year.

Letting the resolution stand "would establish a double standard that has no place in our history," Mr. Muise told a three-judge panel of the 9th U.S. Circuit Court of Appeals that is weighing the Catholic league's appeal of a lower court ruling upholding the resolution.

One of the judges, Marsha S. Berzon, posed questions similar to those raised by Mr. Muise during the hearing and in court papers.

"This is clearly calling Catholic teaching ignorant," she said. "It seems gratuitous for one thing, and it seems to have no stopping point."

Berzon called the resolution "quite extraordinary."

"It has two features: One is a direct attack on the doctrine and another is a direct attack on the hierarchy of the church," she said.

Deputy City Attorney Vince Chhabria defended the measure, saying the court should view it in a San Francisco context.

“The purpose is not to condemn the Catholic religion but to condemn the discrimination against gays and lesbians,” he said, adding that the tone of the resolution should not be an issue in deciding its constitutionality under the Establishment Clause of the U.S. Constitution.

The resolution was directed at U.S. Cardinal William J. Levada in his capacity as head of the Vatican’s Congregation for the Doctrine of the Faith. It demanded he “withdraw his discriminatory and defamatory directive that Catholic Charities of the Archdiocese of San Francisco stop placing children in need of adoption with homosexual households.”

On March 9, 2006, then-Cardinal-designate Levada, former archbishop of San Francisco, affirmed a 2003 document from the doctrinal congregation that said it would be “gravely immoral” to let same-sex couples adopt children.

The resolution goes on to label the Vatican as a “foreign country” meddling in what it calls the city’s customs and traditions on same-sex couples’ right to adopt and care for children. It demanded that Archbishop George H. Niederauer of San Francisco and Catholic Charities of the archdiocese “defy all discriminatory directives of Cardinal Levada.”

It closes by stating that the doctrinal congregation was “formerly known as the Holy Office of the Inquisition.”

A second member of the three-judge panel also aimed questions at the resolution, noting that it appears to go beyond making a point about adoption by same-sex couples. The judge also said he was bothered by the closing reference to the Inquisition, calling it “quite prejudicial.”