

# FREEDOM FROM RELIGION *foundation*

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SENT VIA MAIL, E-MAIL & FAX  
(262) 335-5470

President Joe Carlson and  
Board of Education Members  
West Bend Joint School District #1  
735 South Main Street  
West Bend WI 53095

Re: Unconstitutional Charter School

Dear President Carlson and Board Members:

I am writing on behalf of West Bend Joint School District parents, taxpayers and other members of the Freedom From Religion Foundation ("FFRF") who oppose the Crossroads Academy charter school. FFRF is a national nonprofit organization with 16,000 supporters across the country including more than 1,200 in Wisconsin. FFRF works to protect the constitutional principle of separation between church and state.

The West Bend School District Board of Education ("Board") should vote down the Crossroads Academy charter school proposal. The religious aspects of the program raise serious concerns under the U.S. Constitution and Wisconsin law.

## **Hillsdale Academy Model**

We understand that Bruce Dunford, pastor of First Baptist Church, submitted a proposal to the West Bend Joint School District ("District") to establish the Crossroads Academy charter school. We understand that the Crossroads Academy curriculum would be based on curriculum and materials from Hillsdale Academy. Pastor Bruce Dunford provided Hillsdale Academy curriculum materials to the District and the Crossroads Academy strategic plan says that the school will "use the Hillsdale Academy (HA) curriculum."

The Hillsdale Academy student/parent handbook contains a "Statement of Religious Instruction," which says:

Hillsdale College's Judeo-Christian tradition broadly guides the course of study and instruction at Hillsdale Academy. The Academy offers instruction based upon traditional, nondenominational biblical beliefs, principles and virtues that seek to develop those qualities of life characteristic of man's understanding of his relationship to his Creator and his place in the world.

A weekly service conducted by the College chaplain and the headmaster addresses the

spiritual needs of the Academy's students through Scripture, prayer and song. Parents are encouraged to participate in these services.

An introductory video to the school says that the Hillsdale Academy is "spiritually committed" and seeks to "provide our students with a strong moral compass."

Crossroads Academy materials reiterate that the school will focus on spiritual and moral education. The Crossroads strategic plan states that the school's mission is to utilize "a conventional values-centered curriculum stressing the fundamental skills necessary for moral and academic excellence."

### **Crossroads Academy Curriculum**

The Crossroads Academy curriculum includes Christian instructional materials. From the portions of the curriculum that we have reviewed, many of the materials, including history materials, are from *A Beka Book* publications. To use its own words, "At *A Beka Book*, the approach to education is unashamedly Christian and traditional." This is how *A Beka Book* describes the materials:

*A Beka Book* skilled researchers and writers do not paraphrase progressive education textbooks and add biblical principles. They perform primary research in every subject and create textbooks from a biblical world view, built upon the firm foundation of Scriptural truth.

The Crossroads Academy social studies curriculum contains textbooks by *A Beka Book* and author Judy Hull Moore. Some of those materials in the Crossroads Academy curriculum for Grades 1-3 include:

This is My America (Pg 49)  
My America's Flag (Pg 49)  
My America's Freedom (Pg 49)  
Symbol of My America (Pg 50)  
Great People of America (Pg 50)  
My America Grows (Pg 50)  
My America Talks (Pg 51)  
My America Travels (Pg 51)  
My America Is Beautiful (Pg 51)  
My America Sings (Pg 51)  
America, Our Home (Pg 78)  
The people who build America (Pg 79)

Materials from *Our American Heritage* by Judy Hull Moore:

Ben Franklin (Pg 105)  
George Washington (Pg 105)  
Thomas Jefferson (Pg 105)  
Daniel Boone (Pg 105)  
Noel Webster (Pg 105)  
John Greenleaf Whittier (Pg 105)  
Robert E. Lee (Pg 106)  
Abraham Lincoln (Pg 106)

Clara Barton (Pg 106)  
Ulysses S. Grant (Pg 106)  
Louisa May Alcott (Pg 106)  
Booker T. Washington (Pg 106)  
George Washington Carver (Pg 106)  
Laura Ingalls Wilder (Pg 106)

Judy Hull Moore is the author of such books as, “God’s Plan for Weather,” “God’s Plan for Air,” and at least 7 other “God’s Plan” books. We do not know if any of these materials are incorporated into the science curriculum for Crossroads Academy.

It is our understanding that science classes at Crossroads Academy would teach creationism. The West Bend Daily News reports that Ted Caucutt, curriculum consultant for Crossroads Academy, said that “Intelligent Design” would be taught in the school.

The reading curriculum at Crossroads Academy features Christian books. Those include *David and the Giant* (Pg 25), *A Certain Small Shepherd* (Pg 85), *Joel: A Boy of Galilee* (Pg 186).

In addition, the Crossroads Academy strategic plan appears to promote, rather than merely accommodate, religious instruction. The strategic plan states:

Within the organization of a non-sectarian school, Crossroads Academy will also allow students to take advantage of release time for religious education according to Wisconsin State Statute §118.155.

Any promotion of religious activities by Crossroads Academy is problematic under both the Establishment Clause and Wis. Stat. § 118.40(4).

### **Violation of Establishment Clause**

It is well settled that public schools may not advance or promote religion. *See generally, Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 393 U.S. 97 (1967); *Sch. Dist. of Abington Twshp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). The First Amendment requires that the District “pursue a course of ‘neutrality’ toward religion, favoring neither one religion over others nor religious adherents collectively over nonadherents.” *Board of Educ. of Kiryas Joel Village School Dist. v. Grumet*, 512 U.S. 687, 696 (1994) (citations omitted).

If the Board approves the charter for the Crossroads Academy, which appears to be a thinly veiled Christian school, the District will violate the most basic principles of Establishment Clause jurisprudence. A public school system cannot financially or otherwise provide direct aid to schools performing religious instruction. The District cannot take any action that has the primary effect of advancing or endorsing religion, and the District cannot act in ways that result in excessive government entanglement with religion. *See Lemon v. Kurtzman*, 403 U.S. 602 (1971). The process for funding Crossroads Academy is unlike religious school funding schemes that have withstood

constitutional challenges. Here, the District would be providing special approval of the school and would provide direct payments that further religious-based instruction.

The Crossroads Academy curriculum is impermissible for a taxpayer-supported public charter school. The Hillsdale Academy model is a model for Christian instruction. Some of the books to be used by the Crossroads Academy are “unashamedly Christian” and “based on a biblical worldview.”

The plans to teach “intelligent design” are particularly concerning. Courts have routinely found that such teachings are religious. The Supreme Court struck down a requirement that teachers educate students on “scientific creationism.” *Edwards v. Aguillard*, 482 U.S. 578, (1987). Federal courts have consistently rejected the promotion of creationism in the public schools:

- *Epperson v. Arkansas*, 393 U.S. 97 (1968) (School officials may not prohibit the teaching of evolution.)
- *Freiler v. Tangipahoa Parish Bd. of Educ.*, 201 F.3d 602 (5th Cir. 2000)(disclaimer read before teaching evolution violated Establishment Clause);
- *Pelozo v. Capistrano Unified School District*, 37 F.3d 517 (9th Cir. 1994)(School could prohibit teacher from teaching creationism, finding that “to permit him to discuss his religious beliefs with students during school time on school grounds would violate the Establishment Clause.”)
- *Webster v. New Lenox Sch. Dist. No. 122*, 917 F.2d 1004 (7th Cir. 1990)(School board could limit teacher’s comments on creationism because board had the responsibility to ensure that the teacher was not “injecting religious advocacy into the classroom.”)
- *Kitzmiller v. Dover Area Sch. Dist.*, 400 F.Supp. 2d 707 (M.D. Pa 2005)(policy requiring students to hear statement that intelligent design is alternative to Darwin’s theory of evolution violates Establishment Clause).
- *McLean v. Arkansas Bd. of Ed.*, 529 F.Supp. 1255 (D.C.Ark., 1982)(Arkansas Board of Education was permanently enjoined from taking actions that would allow instruction on creationism pursuant to a state statute because to do so violated Establishment Clause)

A charter school in Idaho that was modeled after the Hillsdale Academy has had legal problems with its curriculum. The now-defunct Nampa Classical Academy brought suit against state officials in a dispute over whether the school could use the bible in its curriculum. In dismissing the suit, the district court ruled, “the Plaintiffs are a public charter school which accepts public funds and is organized by, and subject to the same laws as any other public school.... If the Defendants allowed the Plaintiffs' proposed curriculum, they would be in violation of the Establishment Clause.” *Nampa Classical Academy v. Goesling*, 714 F.Supp.2d 1079, 1093 (D. Idaho, 2010).

Given the religious purpose and Christian curriculum of the Crossroads Academy, District involvement with the school would contravene the Supreme Court’s ruling in *Lemon* and would violate the Establishment Clause.

### Violations of Wisconsin Statutes

Wisconsin law requires that a charter school “be nonsectarian in its programs, admission policies, employment practices and all other operations.” Wis. Stat. § 118.40(4)(a)(2). Wisconsin charter schools may not “discriminate in admission or deny participation in any program or activity” based on a person’s religion. Wis. Stat. § 118.40(4)(b)(2). A charter school that violates these provisions may have its charter revoked by the school board. Wis. Stat. § 118.40(5)(d).

The Christian programming planned for Crossroads Academy violates the requirement that all school programs and operations be nonsectarian. Despite claims to the contrary, all indications are that the Crossroads Academy is a sectarian school, which is founded on a Christian curriculum. Doublespeak by Pastor Bruce Dunford regarding “values” cannot hide the nature of the instruction. Since Wisconsin law requires “programs” and “all other operations” of the school to be nonsectarian, approval of Crossroads Academy by the Board would violate Wisconsin law.

The strategic plan for Crossroads Academy references the release of students for religious instruction. This reference is odd to include in the strategic plan for the school; unless, of course, the school plans to make “release” of students for religious instruction a primary component its programming. It is noteworthy that religious instruction in a Minnesota charter school has prompted litigation. The Tarek ibn Ziyad Academy allegedly promoted Islam and held prayer sessions in school. The ACLU’s legal challenge to that school’s programming continues. Most recently, the district court ruled that claims against defendants in their individual capacity were not subject to qualified immunity because the plaintiff’s didn’t seek damages but sought restitution of state funds and injunctive relief. *American Civil Liberties Union of Minn. v. Tarek ibn Ziyad Academy*, No. 09-138, 2010 WL 1840301, at \*4 (D.Minn., 2010).

We are unaware of any of the proposed locations for the Crossroads Academy. Given the school programming, we question whether Pastor Bruce Dunford has sought to house the school in church buildings. Any association between the school and Christian churches raises additional concerns under the nonsectarian operations requirement.

### Conclusion

The Board must reject the proposal to form the Crossroads Academy charter school in the District. The school cannot legally operate as a public charter school. The Establishment Clause and Wisconsin law prohibit it. On behalf of our local complainants, we respectfully request notification in writing of the appropriate actions you are taking.

Sincerely,



Patrick C. Elliott  
Staff Attorney