



**BOARD OF ADVISORS**

August 9, 2007

Hon. William P. Barr  
Former Attorney General  
of the United States

**Via U.S. Mail and Fax**

Prof. Stephen L. Carter  
Yale Law School

Richard Katskee  
Americans United for Separation of Church and State  
518 C Street, N.E.  
Washington, DC 20002  
Fax: (202) 466-2587

His Eminence  
Francis Cardinal George, O.M.I.,  
Archbishop of Chicago

Prof. Mary Ann Glendon  
Harvard Law School

Hon. Orrin G. Hatch  
United States Senator  
(R-Utah)

**Re: Ben Gamla Charter School**

Hon. Henry J. Hyde  
United States Representative  
(R-Illinois)

Dear Richard,

Prof. Douglas Kmiec  
Pepperdine Law School

We represent Ben Gamla Charter School (“Ben Gamla”) in its interactions with the Broward County Public Schools. We are in receipt of your letter dated August 7 regarding the use of the Ha Yesod textbook as a part of the Hebrew language curriculum at Ben Gamla. Unfortunately, your letter is based on several faulty premises, both factual and legal. We wouldn’t want you to remain in ignorance of the facts or the law, so we are writing to provide you with a better understanding of the situation.

Prof. Douglas Laycock  
University of Texas Law School

Rev. Richard John Neuhaus  
President, Institute of Religion  
and Public Life

Eunice Kennedy Shriver  
Founder and Honorary Chairman,  
Special Olympics International

Sargent Shriver  
Chairman of the Board,  
Special Olympics International

Dr. Ronald B. Sobel  
Senior Rabbi, Congregation Emanu-El  
of the City of New York

First, last month, well before you sent us your letter, Ben Gamla notified the School Board that it would not be using the Ha Yesod book as a part of its curriculum. Since the concerns you describe in your letter are based entirely on your understanding that Ha Yesod would be used, those concerns are entirely misplaced.

John M. Templeton, Jr., M.D.  
Bryn Mawr, Pennsylvania

Second, the Ha Yesod book was not Ben Gamla’s choice of textbook, but was instead proposed by the School Board. Broward County Public Schools had previously used Ha Yesod in Hebrew classes at Stoneman Douglas High School, and felt that it would therefore be a good choice of textbook for Ben Gamla’s curriculum. The amendment to the Charter Agreement between the School Board and Ben Gamla was proposed by the School Board. Without having a chance to fully review the Ha Yesod book, Ben Gamla acceded to the School Board’s request in an effort to accommodate the School Board’s wishes. Once Ben Gamla had a chance to make a full review of the Ha Yesod textbook, it decided that it would not use the Ha Yesod textbook and notified the School Board to that effect. No one should hold Ben Gamla responsible for the School Board’s proposed choice of textbook.

1350 Connecticut Avenue, NW  
Suite 605  
Washington, DC 20036-1735  
Phone: 202-955-0095  
Fax: 202-955-0090  
[www.becketfund.org](http://www.becketfund.org)

Third, under Florida law, once a Charter Agreement is in place, the terms of that agreement govern the relationship between the charter school and the local school board. FLA. STAT. ANN. §§ 1002.33(6)(i); 1002.33(7). Therefore the School Board does not have the ability to heed your request that they “disallow the use” of any part of Ben Gamla’s curriculum. The School Board has no right under Florida law to control what curriculum is being used. FLA. STAT. ANN. § 1002.33(5)(b)1.j. The whole point of Florida’s charter school law is to remove local school boards from the day-to-day administration of certain schools, “giving charter schools greater flexibility to meet educational goals.” FLA. STAT. ANN. § 1002.33(6)(i). There is no reason to treat Ben Gamla any differently than the other charter schools Broward County Public Schools sponsors.

Fourth, you may or may not know that there is quite a difference between a textbook and a curriculum. One can use excerpts from a textbook as part of a curriculum without giving the entire textbook to schoolchildren. And as you do know, the only thing that can give cause for concern under the Establishment Clause is something that is actually presented to schoolchildren. Therefore even if a particular textbook might contain something objectionable, as long as the curriculum *actually taught to students* meets Establishment Clause standards, there is no basis for concern. Your objections to Ha Yesod are therefore, at best, premature.

Finally, we are disturbed that you have suggested that the School Board single out Ben Gamla for special disfavor by asking the Board to review all of Ben Gamla’s instructional materials. As you well know, under the Equal Protection Clause of the United States Constitution, Ben Gamla is entitled to no more and no less scrutiny from the School Board than any other charter school in Broward County: “all persons [and entities] similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). *See also Allegheny Pittsburgh Coal Co. v. Webster County*, 488 U.S. 336, 345-46 (1989) (“The equal protection clause . . . protects the individual from state action which selects him out for discriminatory treatment by subjecting him to [burdens] not imposed on others of the same class” (quoting *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946))). Merely teaching Hebrew—which you admit is a perfectly constitutional pursuit—rather than French or Spanish is no basis for subjecting Ben Gamla to burdens of review or monitoring not imposed on other charter schools.

Nor is it permissible for the School Board to create special difficulties for Ben Gamla at the behest of religious groups within Broward County, especially to preserve a religious monopoly over Hebrew instruction. That would itself be a violation of the Establishment Clause. *See Larkin v. Grendel’s Den, Inc.*, 459 U.S. 116, 122 (1982) (government cannot constitutionally give veto power to religious groups). It is also illegal for the School Board to discriminate against Ben Gamla or its employees because one of those employees is of the Orthodox Jewish faith, or because one of those employees is a member of the clergy. *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1238 (11th Cir. 2004) (“government action that specifically targets religion or religious conduct for distinctive treatment can be an impermissible intrusion” on constitutional rights); *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (unconstitutional to “punish[ ] a religious profession with the privation of a civil right”) (quoting 5 WRITINGS OF JAMES MADISON 288 (G. Hunt ed. 1904)). Sadly, members of the School Board have already publicly urged School

Richard Katskee  
August 9, 2007  
Page 3 of 3

Board staff to do just that. As I'm sure you'll agree, it would violate both statutory and constitutional law for the School Board to take adverse action against Ben Gamla based on such discriminatory motives. *See, e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993), (finding First Amendment violation where Florida municipality discriminated on the basis of religion while feigning neutrality).

We hope that this clears up some of your misconceptions.

Very truly yours,

A handwritten signature in black ink that reads "Eric Rassbach". The signature is written in a cursive, flowing style.

Eric Rassbach  
Senior Legal Counsel

cc: School Board members  
Supt. James F. Notter  
Deborah S. Corbishley  
Adam Siegel