ALLIANCE DEFENSE FUND

April 17, 2009

Dr. Jim McBride
Superintendent of Public Instruction
Wyoming Department of Education
Hathaway Building, 2nd Floor
2300 Capitol Ave.
Cheyenne, Wyoming 82002-0050

VIA UPS (Guaranteed for Next Day Delivery) and Facsimile (307-777-6234)

Re: Wyoming's Unconstitutional Burden on Religion

Dear Dr. McBride,

Our client, Nelson Miles of Frontier School of the Bible ("School"), has been informed by Samantha Mills of the Wyoming Department of Education ("Department") that, under state law, his School must become registered or licensed by the Department. This requirement is in direct violation the School's First Amendment rights to free exercise of religion and protection from state establishments of religion. Our client has appreciated the careful thought and guidance the Department, and especially Ms. Mills, has given the School in recent months. We anticipate that careful consideration of these constitutional concerns will allow the Department to recognize that Wyoming's registration and licensure requirements cannot legally be imposed on the School.

By way of introduction, the Alliance Defense Fund ("ADF") is a non-profit legal and educational organization that seeks to educate government officials and others on the subject of constitutional rights, particularly under the First Amendment. When necessary, we do proceed to litigation to protect First Amendment rights.

RELEVANT FACTS

Frontier School of the Bible is a non-profit religious technical school that was founded in 1967 and currently has about 200 students that receive religious instruction at its campus in LeGrange, Wyoming. The school's curriculum is purely religious, aimed solely at training its students for Christian ministry through study of the Bible. Very few non-Bible classes are taught at the School, and these non-Bible classes, like English, are provided only because they are necessary components of effective teaching and interpretation of the Bible. The School's 1,600 alumni are missionaries, pastors, and youth ministry workers serving throughout the world. In

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order to keep costs low for students to allow them to enter these typically low-paying ministry jobs without the weight of debt, the School's faculty and staff are not paid salaries by the School. Each of the faculty and staff serve at the School as missionaries, receiving voluntary financial support from churches and Christian families. The School is intentionally unaccredited as it believes, along with many other similar religious schools, that accreditation would undermine both its emphasis on Biblical training and its ministry-oriented desire to provide students with low-cost Christian training. Also, the School has chosen to forgo state and federal funds to avoid any attendant limitations that could undermine its religious mission.

The School has a strong reputation in the Christian ministry community. Its course credits are accepted at Bible colleges nationwide, including at institutions that feature graduate and seminary-level education. Further, the School's alumni are heavily recruited by domestic and international missionary agencies because of the alumni's combination of strong ministry training and low school debt.

Until 2006, the School, like all other religious schools in Wyoming, was exempted from any sort of licensing, management, oversight, or influence by the state pursuant to Wyoming statutes 21-2-406 and 21-4-101. In 2006, the state amended its statute to remove the religious exemption for post-secondary schools while leaving the exemption intact for elementary and secondary religious education. Accordingly, state law now requires post-secondary schools in Wyoming to become either accredited and registered with the state or licensed by the state.

On October 30, 2008, the School was contacted by Samantha Mills, the Private School Program Manager for the Department, who informed the School of the change in the law and that it must promptly act to seek accreditation. The next day, Ms. Mills contacted the School to report that, after a meeting with state Senator Curt Meier, the Department decided to study the issue further and the school did not need to pursue accreditation in the meantime.

On April 3rd, the School received a letter from Ms. Mills stating that the School had until April 15th to either begin seeking accreditation or to become licensed with the state. The School, faced with less than two weeks to make such an important decision, requested an extension of time to respond through volunteer counsel, Henry Bailey. Assistant Attorney General John Shumway contacted Mr. Bailey on April 13th to advise him that the deadline was extended, but that a response was still needed promptly. On April 15th, Ms. Mills sent the School a letter that extended the deadline until April 30th and reiterated the Department's position that the School must become either registered or licensed with the state.

RELEVANT LAW

Wyoming Statutes and Regulations

W.S. § 21-2-401 through 21-2-407 requires private post-secondary education institutions to become either registered with or licensed by the state in order to "ensure that quality education

is being provided by a private entity" located in Wyoming. *Newprot Int'l Univ., Inc. v. State of Wyoming Dep't of Educ.*, 186 P.3d 382 (2008).

Chapter 30 of the Department's Rules and Regulations, promulgated under W.S. § 21-2-401(c), mandates that degree-granting post-secondary education institutions must pursue registration with the state, and registration will be allowed only after such institutions are accredited with an governmentally recognized accrediting agency. Chpt. 30, § 6(a), (d). Registered institutions are required to pay a $1,000 annual registration fee until becoming accredited and must pay $100 annual registration fees thereafter. *Id.* at § 7(a)(iii), § 8(a)(iii). A performance bond of $10,000 must also be maintained annually. *Id.* at § 8(a)(iv). Registration must be terminated by the state if the institution violates any state or federal rule, regulation, or statute, and if the state determines such termination to be necessary to protect the interests of the state or its citizens. *Id.* at § 10(b)(iv), (v).

Non-degree-granting post-secondary education schools are governed by Chapter 1 of the Department's Rules and Regulations. These schools must submit an initial application fee of $200, pay an annual renewal fee of $200, and maintain performance bonds of $50,000 every year. Chpt. 1, § 7. They must also provide the state with, among other things, copies of each enrollment contract form; of the school's tuition, fees, and charges; of a course outline for each course offered; of attendance records; and of all school catalogs, bulletins, and other published materials. *Id.* at § 7(b)-(h). Such schools also are required to provide personnel data forms on each employee of the school. *Id.* at § 7(i). Schools cannot offer any additional courses outside those licensed by the state and any significant changes in course content must be reported to the state within 30 days. *Id.* at § 9(a). The state has to approve a school's facilities, equipment, instructional material, and instructional personnel as commensurate with course offerings. *Id.* at § 9(b). Also, the state must evaluate whether a school's administrative and instructional staff have sufficient education and experience to meet educational objectives. *Id.* at § 9(c). Schools are barred from discriminating based on, among other things, religious belief in their admission of students. *Id.* at § 9(g).

Failure to either register with or become licensed by the state is punishable criminally by fines and imprisonment for "[e]ach solicitation of enrollment or each transaction of business" conducted without state approval. W.S. § 21-2-407. Also, a non-registered or non-licensed school may be enjoined from operating through proceedings brought by any citizen of Wyoming. *Id.*

W.S. § 21-2-406 (i)-(iv) specifically excepts elementary and secondary religious schools, home-based educational programs, aircraft flight training schools, and schools for outdoor recreation, leadership, ecology, or conservation from having to obtain either registration or licensure. Chapter 1(i)(A)-(B) also excludes both post-secondary training provided by an employer for his employees and instruction institutes sponsored by business, professional,

political, or government organizations for the benefit of their members from the requirement of licensure.

The First Amendment: Free Exercise

Under the First Amendment, a law that burdens religious conduct and is either not neutral or not generally applicable is subject to strict scrutiny. *Employment Div., Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878 (1990). To pass constitutional muster, such laws must serve a compelling government interest and be narrowly tailored to serve that interest. *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993). Underinclusive laws—laws that exempt some practices from their reach that have as much impact on the state's interests supporting the laws as any religious practices within the laws' reach—always fail strict scrutiny. *Lukumi* at 547 ("It is established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an interest of the highest order...when it leaves appreciable damage to that supposedly vital interest unprohibited." (internal quotations omitted)). This is particularly true when categories of exemption are granted. *Lukumi,* 508 U.S. at 542 ("All laws are selective to some extent, but *categories* of selection are of paramount concern when a law has the incidental effect of burdening religious practice.") (emphasis added).

In *Lukumi*, the Supreme Court struck down a series of city ordinances that prohibited the practice of religious animal sacrifice while allowing other forms of animal killings, including those associated with hunting, fishing, meat production, and pest extermination. *Lukumi,* 508 U.S. at 536-537. The Court examined the city's two interests supporting the ordinances, preventing cruelty to animals and protecting public health, and found that the ordinances were "underinclusive for these ends" because they failed to prohibit nonreligious conduct, like hunting or meat production, "that endangers these interests in a similar or greater degree than [religious animal sacrifice]." *Id.* at 543. Since the law was underinclusive and burdened Free Exercise, the Court applied strict scrutiny to the ordinances and found that the absence of narrow tailoring demonstrated by the ordinances' underinclusiveness "suffice[d] to establish the invalidity of the ordinances." *Id.* at 546.

Blackhawk v. Pennsylvania, 381 F.3d 202 (3rd Cir. 2004), a decision authored by then-judge Samuel Alito, further illustrates the *Smith/Lukumi* general-applicability analysis. In it, a Lakota Indian kept two bears on his property to conduct religious ceremonies in keeping with his tribe's traditions. *Id.* at 204. A state law prohibited privately keeping wildlife without paying a fee for a permit. The purported state interest in the law was to discourage "the keeping of wild animals in captivity" and to generate revenue. *Id.* at 211. Nonetheless, zoos and nationally recognized circuses were exempt from the fee requirement. *Id.* As a result, the court found the law not generally applicable under *Smith* and *Lukumi* because the zoo and circus exemptions "work against the Commonwealth's asserted goal of discouraging the keeping of wild animals in captivity," and its interest in generating revenue. *Id.* Thus, Pennsylvania's failure to grant an exemption for religious reasons was subjected to strict scrutiny and declared to be

unconstitutional as a violation of Free Exercise. The court rejected Pennsylvania's argument that the permit scheme did not violate the plaintiff's free exercise rights "because it d[id] not prohibit him from engaging in religiously motivated conduct, but merely obligate[d] him to pay a modest fee." *Id.* at 212. Strict scrutiny was not triggered because of the nature of the limitation on free exercise, but rather because the limitation featured extensive categorical exemptions for non-religious conduct from its requirements. *Id.*

When the Wyoming statutes and regulations being applied to the School are viewed in light of the Free Exercise Clause of the First Amendment, it is clear both that the statues and regulations must be subjected to strict scrutiny and that they will fail such scrutiny.

First of all, Wyoming's new requirements for religious post-secondary schools heavily burden the School's ability to engage in its religious mission. If the School chose to pursue registration, it would have to seek accreditation, a choice it has specifically and publically avoided in order to maintain its Bible-based curriculum, ministry-focused instructors, and ministry-oriented low tuition, room, and board expenses. The Rio Grande Bible Institute, a small Bible school similar to the School, sought accreditation and was told by the accrediting agency to cease its practice of not paying salaries, a change that promises to significantly raise its expenses and limit its ministry. Such accrediting requirements are typical and would deeply undermine the School's religious purpose and training. Further, as a practical matter, the process of accreditation—which takes years and generally costs hundreds of thousands of dollars in agency fees and school changes—would place the School at a significant risk of ceasing to exist altogether. And, in the end, all the School's effort and expenditure would rest on the tenuous hope that the state never determines that termination of its registration is necessary to protect some unknown interest of the state or its citizens. Chpt. 30, § 10(b)(v).

If the School chose to seek licensure instead of accreditation, it would fare no better. Licensure would also entail a substantial blow to the religious identity and mission of the school simply by virtue of the fact that it would no longer be able to limit admission of students based upon their religious beliefs.[1] Just as significantly, the School would be required to submit its entire religious curriculum, religious instructional materials, and private facilities to broad state review and approval. Licensure also requires that the School allow the state to determine whether its missionary faculty is qualified to teach the school's religious courses. Finally, the School would face sizeable financial costs associated with licensure.

In addition to being a severe burden to the School's ability to continue its religious mission, Wyoming's private post-secondary education laws are not generally applicable. A wide

[1] The School already voluntarily refuses to discriminate in its admission practices based on "race, color, national and ethnic origin." It does, though, require that students be professing Christians and in general agreement with the School's doctrinal statement. *See* http://frontierbible.org/frontier/admissions.html (last visited April 16, 2009).

variety of post-secondary education institutions and training is categorically exempted from its scope. Flight schools and schools of outdoor leadership, recreation, ecology, or conservation are explicitly exempted from having to seek either registration or licensure from the state. W.S. § 21-2-406(iii), (iv). Further, Chapter 1(i)(A)-(B) also excludes both post-secondary training provided by an employer for his employees and instruction institutes sponsored by business, professional, political, or government organizations for the benefit of their members from the requirement of licensure.

The purpose of the Wyoming post-secondary education laws is to "ensure that quality education is being provided by" private post-secondary education institutions in the state. *Newport Int'l Univ.*, 186 P.3d at 382. However, that interest is undermined by the plethora of exemptions to the laws. Given these exemptions, the state's laws to protect its interest in quality education are clearly "underinclusive to those ends" because they fail to control other unregulated educational activity "that endangers these interests in a similar or greater degree than [religious post-secondary education]." *Lukumi*, 508 U.S. at 543. This is particularly true since the exemptions for certain secular training are categorical. *Id.* at 542.

Thus, since the Wyoming statutes are not generally applicable and burden religious free exercise, they must be both based on a compelling interest and narrowly tailored to that interest. [2] *Smith*, 494 U.S. at 878; *Lukumi*, 508 U.S. at 546. While Wyoming's interest in ensuring a quality education is certainly a reasonable interest, the many exceptions Wyoming grants to the requirements of registration or licensure prevent it from being a compelling interest. When laws are underinclusive, they necessarily fail to be based on compelling interests. *Id.* at 542. *Lukumi* at 547. "It is established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an interest of the highest order...when it leaves appreciable damage to that supposedly vital interest unprohibited." *Id.* (internal quotations omitted). *See also United States v. Friday*, 525 F.3d 938, 958 (10th Cir. 2008) ("Underinclusive[ness]...suggests that the government's 'supposedly vital interest' is not really compelling.") (internal quotation marks omitted).

Additionally, even if the state had a compelling interest in quality *secular* education, that interest cannot constitutionally extend to *religious* education. "Training for religious professions and training for secular professions are not fungible...Indeed, majoring in devotional theology is akin to religious calling as well as an academic pursuit." *Locke v. Davey*, 540 U.S. 712, 721 (2004). Accordingly, "setting standards for a religious education is a religious exercise for which the State lacks not only authority but also competence, and those deficits are not erased simply because the State concurrently undertakes to do what it *is* able to do—set standards for secular educational programs." *HEB Ministries v. Texas Higher Educ. Coordinating Board*, 235

[2] Also, Wyoming's statutes and regulations arguably burden religion in a non-neutral way. While they were enacted to combat a secular concern with "diploma mills," they achieved this end by targeting religious post-secondary education schools and removing the statutory provision which exempted such schools from state oversight. *See* Wyoming Department of Education Letter, April 15, 2009.

S.W.3d 627, 643 (Tex. 2007) (emphasis in original). For instance, state officials are simply not qualified to determine whether "the education and experience qualifications of administrative and instructional staff are such as will insure that the students will receive" quality religious education. Chpt. 1, § 9(c). State officials cannot, and should not, weigh whether five years of pastoral experience is sufficient experience to teach on Biblical exposition, or whether ten years of missionary service translating Scripture for aboriginal tribes is enough experience to teach Biblical interpretation. Ultimately, "government is...entirely excluded from the area of religious education." *Lemon v. Kurtzman*, 403 U.S. 602, 625 (1971). Wyoming cannot determine what a quality religious education is, and thus it cannot have an interest in ensuring that such an education is delivered by religious schools.[3]

Finally, it is unlikely that the post-secondary education laws are sufficiently narrowly tailored to achieve their purposes. Other much less invasive avenues exist to achieve the state's goal of ensuring quality education. One does not require any legislation at all: the public can ensure a quality education itself "with relatively simple inquiries into the credentials of an educational institution and its graduates." *HEB Ministries v. Texas Higher Educ. Coordinating Board*, 235 S.W.3d 627, 660 (Tex. 2007) (plurality opinion). Another avenue would simply be to require non-accredited or non-licensed institutions to openly disclose their status to the public and particularly to prospective students. *HEB Ministries*, 235 S.W.2d at 660. While that requirement might raise other First Amendment concerns, it certainly would be far less invasive than the current approach that flatly outlaws unregistered or unlicensed schools. And it would be an approach that the School can easily accommodate, as it already advertises its lack of accreditation.[4]

In sum, the Free Exercise protections of the First Amendment bar the application of Wyoming's private post-secondary education rules to the School.

The First Amendment: Establishment Clause

The Establishment Clause forbids government entities from "trolling through...an institution's religious beliefs." *Mitchell v. Helms*, 530 U.S. 793, 828 (2000). As the 10th Circuit recently recognized, this prohibition originated in the context of religious education and has generally "been expressed in terms of a prohibition of 'excessive entanglement' between religion and government." *Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1261 (2008). "Properly understood, the doctrine protects religious institutions from governmental monitoring or second guessing." *Id.*

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[3] Even if the state *did* have an interest in preventing fraudulent or low-quality religious education, that interest is obviously not implicated in this case, as the School is clearly not a diploma mill.

[4] *See* the School's *Academics* webpage at http://frontierbible.org/frontier/academic.html (last visited April 16, 2009).

The Supreme Court has rejected attempts by government entities to regulate teachers and content at religious schools. In *NLRB v. Catholic Bishop of Chicago,* 440 U.S. 490, 499, 502 (1979), the Court declared the National Labor Relation Board's "assertion of jurisdiction over teachers in religious schools" to violate the First Amendment because it would create "excessive entanglement" with the schools' religious mission. Governmental control of a religious school would infringe on school choices that were "mandated by [the school's] religious creeds," which in turn would require inquiry into the relationship of the school's choices "to the school's religious mission." *Id.* at 502. But "this very process of inquiry" could likely "impinge on rights guaranteed by the Religious Clauses" and "presents a significant risk that the First Amendment will be infringed." *Id.*

In *Colorado Christian Univ.*, the 10th Circuit found that a requirement that religious schools demonstrate "a strong commitment to principles of academic freedom" as evaluated by the Colorado Commission on Higher Education was "an excessive entanglement and an intrusion into religious affairs." *Id.*, 534 F.3d at 1266. "If that sort of second-guessing were permitted, state officials would be in a position of examining statements of religious beliefs and determining whether those beliefs are, or are not, consistent with scholarly objectivity." *Id.* As applied to purely religious schools, Wyoming's requirements engender much more intrusion and entanglement because they require state officials to examine the School's religious faculty and curriculum to determine whether it provides a proper *religious* education. Chpt. 1, §9(a)-(b). Thus, Wyoming not only mandates government intrusion into religious practices, but also entangles government officials in deciding whether those religious practices create a state-approved form of religious education.

In a case directly on point, *HEB Ministries, Inc. v. Texas Higher Educ. Coordinating Board*, the Texas Supreme Court recently determined that far less intrusive limitations on religious post-secondary education schools violated the Establishment Clause. *HEB Ministries*, 235 S.W.3d at 649. Like Wyoming, Texas was attempting to ban diploma mills. To this end, Texas prohibited post-secondary education schools from using terms like "degree" to describe their students' course completion awards unless those schools had voluntarily chosen to be certified by the Texas Higher Education Coordinating Board. *Id.* at 633. To become certified, a school had to submit to the Board's determination of whether the "education and experience...of the faculty" was sufficient to "reasonably ensure the students will receive education consistent with the objectives of the course or program of study." *Id.* at 634. The Board also reviewed the school's course content, curriculum, materials, and facilities for similar purposes. *Id.*

The plaintiff in *HEB Ministries*, Tyndale Theological Seminary and Bible Institute[5], is a small Bible school that provids "biblical education in preparation for ministry in churches and missions." *Id.* at 637. Like the School, almost all of Tyndale's classes were in religious

[5] Tyndale is operated by HEB Ministries, a church in Fort Worth, Texas.

subjects and all of its diplomas[6] were expressly religious. Tyndale had also chosen not to seek either accreditation or certification based on "doctrinal reasons," a stance very similar to the School's. *Id.* at 638.

The Court held that, while the Texas statute "does not single out religious programs for special treatment," it did "express[] a preference for one manner of religious education over another." *Id.* at 643-644. This impermissible governmental preference is expressed by taking sides in a hotly-debated issue of religious education:

> Views vary on how post-secondary religious instruction should be provided. For some, the secular education model is preferred, with programs structured like those of any liberal arts school, and accreditation, though expensive, is affordable. For others, religious instruction is more insular, steeped in the doctrine and experience of a specific faith, and limited resources practically preclude obtaining accreditation.

Id. at 645. Because Texas chose to allow only those religious institutions who seek accreditation and certification to use specific terminology to describe its educational completion awards, it "signal[ed] its approval or disapproval of [religious] institution's operation and curriculum as vividly as if it hung the state seal on the institution's front door." *Id.* Such state endorsement clearly fails to be neutral treatment of religions, which is "[t]he clearest command of the Establishment Clause." *Larson v. Valente*, 456 U.S. 228, 244 (1982).[7] Thus, Texas' law improperly endorsed a particular religion or religious belief in violation of the Establishment Clause. *HEB Ministries*, 235 S.W.3d at 647.

Further, the court found that "the statute clearly and excessively entangles the government in matters of religious instruction." *Id.* The court identified as an example of entanglement the statute's requirement that the Board determine the "education and experience...of the faculty [as being] such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study." *Id.* These standards, and the others like it, could not be applied "without a thorough, detailed, and repeated examination of an institution's operations and curriculum." *Id.* Such active involvement in religious instruction is flatly banned by the Establishment Clause. *Id.* at 649 (citing *Walz v. Tax Comm'n*, 397 U.S. 664, 668 (1970) (the Establishment Clause prohibits state "sponsorship...and active involvement" in religious activity).

Wyoming's laws restricting the School create the same kind of entanglement and sponsorship problems identified in *HEB Ministries*. Like the Texas statue, Wyoming law

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[6] While Tyndale did not offer degrees, it advertised its diplomas as being the equivalent of degrees, which was sufficient to trigger application of the Texas statute. Wyoming's regulations, of course, apply both for degrees and diplomas. *See* W.S. § 21-2-401 through 21-2-407.

[7] The Free Exercise clause also forbids discrimination among religions. *Colorado Christian Univ.*, 534 F.3d at 1257 (citing *Larson*, 456 U.S. at 245 and *Lukumi*, 508 U.S. at 532-533).

requires detailed state examination and approval of School faculty, staff, curriculum, academic standards, course content, and instructional materials. *See* Chpt. 1, § 9 (b)-(c). Wyoming, like Texas, also mandates continual surveillance of the School's instructional program. *Id.* at § 9(a) (banning the School from changing courses without state approval and requiring the School to inform the state of any substantive changes in course content).

But Wyoming's regulatory system is far more intrusive and coercive than the system considered in *HEB Ministries.* Unlike Texas, whose system was entirely voluntary, all religious post-secondary education schools in Wyoming must either register with or be licensed by the state to avoid hefty criminal and civil penalties. W.S. § 21-2-407. And while Texas marginalized non-compliant religious schools by restricting what they could call their educational completion awards, Wyoming entirely outlaws such schools. Thus, Wyoming's endorsement of a particular form of religious education is much more pronounced, since only state-approved religious instruction is even allowed in the state. Finally, Texas allowed religious schools to admit only members of their own religions, while Wyoming explicitly bans such necessary discretion on the part of religious schools. Chpt. 1, §9(g). A house divided against itself cannot stand, and a religious school that has non-religious students will soon cease to be a religious school. The Department has attempted to justify this last intrusion by explaining such non-discrimination provisions are standard under Federal law. However, all such Federal laws include exemptions for religious schools. *See, e.g.* 20 U.S.C.A. § 1681(a)(3) (law banning sex discrimination in post-secondary schools providing exemption for religious schools if the law "would not be consistent with the religious tenets of such organization[s]"); 42 U.S.C.A. § 2001(e)(1) (employment discrimination law, applicable in post-secondary education context, provided exception for religious organizations). In fact, it is the practice of many religious schools nationwide to require their students to share the faith of the school in order to be admitted.[8]

CONCLUSION

While Wyoming's regulation of private post-secondary education schools was intended to deal with the problem of diploma mills, it has unfortunately created a significant constitutional problem in its application to religious schools, particularly those religious schools that provide only religious instruction. Perhaps a regulation that required non-accredited or non-licensed institutions to openly disclose their status to the public and particularly to prospective students, as suggested in *HEB Ministries*, 235 S.W.2d at 660, would resolve the dilemma. Regardless of

[8] *See, e.g.* Wheaton College Application at 4, http://www.wheaton.edu/admissions/UndGrad/applying/wheaton_liberal_arts_09.pdf (last visited April 17, 2009); Columbia International University Pastor Reference Form, available at https://www.applyweb.com/apply/ciu/pdf/CIU_Undergrad_Church_Reference.pdf (last visited April 17, 2009). Both Wheaton and CIU are accredited institutions with enrollments of over 1000 students.

what Wyoming ultimately chooses to do to address its concerns with diploma mills, we hope the Department recognizes that application of the current regulations to the School, and other schools like it, would violate clearly established constitutional protections.

As noted initially, our client has appreciated the Department's consistent careful consideration throughout this process, and we hope that same approach will allow this situation to be resolved to the Department's and the School's mutual satisfaction in the near future. If the Department has any questions or concerns regarding the foregoing analysis, we invite you to contact us at your earliest convenience. We look forward to hearing from you.

Sincerely,

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