

APPENDIX

APPENDIX A

**In the
United States Court of Appeals
For the Seventh Circuit**

No. 16-1754

ILLINOIS BIBLE COLLEGES ASSOCIATION, et
al.,

Plaintiffs-Appellants,

v.

LINDSAY K. H. ANDERSON, Chair of the Illinois
Board of Higher Education,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.

No. 1:15-cv-00444 — **Sharon Johnson Coleman**,
Judge.

ARGUED DECEMBER 8, 2016 — DECIDED
AUGUST 29, 2017

MANION, *Circuit Judge*. After graduating from
high school, students who go on to college hope to
receive a degree to qualify for future employment.
The question in this case is what does the State of

Illinois require for post-secondary educational institutions to issue a degree? Three Illinois statutes regulate post-secondary educational institutions. Together, these statutes require private junior colleges, colleges, and universities which offer degrees to obtain a certificate of approval and permission to issue degrees. The Illinois Board of Higher Education enforces these statutes and before authorizing degree-granting institutions to issue degrees, it conducts a review of the operations, programs, faculty, and facilities. The plaintiffs in this case include two associations representing religious institutions of higher education, several individual bible colleges, and a student, Leigh Pietsch. They have sued the Board of Higher Education, alleging the three state statutes violate their First Amendment and Equal Protection rights, as well as the Illinois constitution and Illinois Religious Freedom Restoration Act. The defendants moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The district court granted the motion and the plaintiffs appeal.

On appeal, the plaintiffs pursue only their federal constitutional claims. They first argue the Illinois regulations violate the Establishment Clause by entangling the government with their religious operations. However, the plaintiffs have not sought certification of approval from the State under the applicable statutes. Therefore, there is no basis to believe that the regulations would infringe on their religious beliefs or practices or would unnecessarily entangle the government in religion. Accordingly, the plaintiffs' Establishment Clause claim must fail. Likewise, the plaintiffs' Free Exercise claim fails

because the statutes are neutral laws of general application and apply equally to secular and religious institutions. The plaintiffs' Equal Protection claim fares no better: While the state statutes exempt older educational institutions from the governing mandates, the law is clear that, when no improper discrimination is involved, the government may include a grandfather clause in legislation without violating the guarantee of Equal Protection. Finally, the student-plaintiff alleges a violation of his right to practice a profession of his choice. But the regulations do not impact that choice. Rather, they merely determine whether he may obtain a degree from specific post-secondary institutions. The district court, therefore, properly dismissed the plaintiffs' complaint and we affirm.

I.

The Illinois Association of Bible Colleges, Civil Liberties for Urban Believers, Providence Baptist College, Dayspring Bible College & Seminary, United Faith Christian Institute, and student, Leigh Pietsch, (collectively "the Bible Colleges") sued the Illinois Board of Higher Education, through its chair Lindsay K. Anderson ("the Board"). The individual Bible Colleges involved in this litigation are also affiliated with faith communities and all serve as educational ministries of their churches.

The Bible Colleges alleged that the Private College Act, 110 ILCS 1005/0.01 *et seq.*, the Academic Degree Act, 110 ILCS 1010/0.01 *et. seq.*, and the Private Business and Vocational Schools Act of 2012, 105 ILCS 426/1 *et. seq.*, violate the First Amendment

and Equal Protection Clause of the United States Constitution, as well as the Illinois constitution and the Illinois Religious Freedom Restoration Act. Pietsch alleged the statutes also violate his First Amendment and Equal Protection Clause rights and his constitutional right to pursue the calling of his choice.

The three statutes at issue regulate different aspects of higher education. For instance, the Private College Act regulates the operation of private colleges, junior colleges, and universities that offer “degrees” and requires such institutions to obtain a “certificate of approval” from the Board. 110 ILCS 1005/2. The statute defines a “degree” as “any designation, appellation, series of letters or words, or other symbol which signifies or purports to signify that the recipient thereof has satisfactorily completed an organized academic program of study beyond the secondary school level.” 110 ILCS 1005/1. Decisions by the Board under the Private College Act are subject to judicial review. 110 ILCS 1005/12.

The Academic Degree Act also regulates post-secondary education and prohibits a “degree-granting institution” from “issuing” degrees without Board approval. The Academic Degree Act definition of “degree” mirrors the term’s use in the Private College Act. And like the Private College Act, decisions of the Board under the Academic Degree Act are subject to judicial review. 110 ILCS 1010/10.

The third statute at issue, the Private Business and Vocational Schools Act of 2012, requires vocational schools which issue “certificates” or

“certificates of completion” to obtain approval from the Board. The Private Business and Vocational Schools Act exempts schools which provide entirely religious or theological education. 105 ILCS 426/30.

Before issuing a permit of approval, the Board evaluates post-secondary schools based on a variety of factors, such as “the caliber and content of each course or program of instruction,” the number of credit hours required for undergraduate and graduate degrees, the educational credentials of faculty and applicants, and the institution’s record-keeping. 23 Ill. Adm. Code 1030.30. The Board also looks at the institution’s finances, the appropriateness of the program’s promotional materials, the sufficiency of facilities and equipment, and clear communications concerning tuition and fees charged, among other things. Obviously, this is a very comprehensive review.

The Bible Colleges offer an array of courses outside the sphere of religion and theology, in areas ranging from office skills and cooking, to Spanish, music, and botany. Nonetheless, the Bible Colleges have never sought certification from the Board and claim they are exempt from the statutes. Yet the Bible Colleges wish to offer bachelor, master, and doctorate degrees without government oversight. The plaintiff schools insist that without the ability to issue degrees, they are at a competitive disadvantage in attracting students with out-of-state bible colleges which offer degrees.

After the Board informed the colleges that they were subject to the higher-education statutes and

must submit a series of applications and permits for approval, the Bible Colleges filed this suit. In their complaint, the Bible Colleges alleged the three Illinois statutes violate the Establishment, Free Exercise, and Equal Protection Clauses of the United States Constitution. They also alleged violations of the Illinois constitution and the Illinois Religious Freedom Restoration Act, but they later voluntarily dismissed those state law claims and they are not at issue on appeal.

The Board moved to dismiss the Bible Colleges' complaint pursuant to Rule 12(b)(6). In their response, the Bible Colleges made clear that they were presenting an as-applied challenge—not a facial challenge—and that they sought a blanket exemption from the three Illinois statutes regulating post-secondary education based on their religious opposition to complying with the law. The district court concluded that the Bible Colleges' as-applied challenge failed as a matter of law and granted the Board's motion to dismiss. The Bible Colleges appeal.

II.

On appeal, the Bible Colleges advance the same arguments presented below that the three Illinois statutes governing post-secondary education violate the Establishment, Free Exercise, and Equal Protection Clauses of the Constitution and that the district court erred in dismissing their complaint pursuant to Rule 12(b)(6). Additionally, Pietsch argues the district court erred in dismissing his individual claims premised on his First Amendment

right to association, as well as his constitutional right to pursue the calling of his choice.

To survive a motion to dismiss, a complaint must contain sufficient factual allegations to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). This court reviews a district court’s motion to dismiss *de novo*, accepting all well-pleaded factual allegations in the complaint as true and drawing all reasonable inferences in the plaintiffs’ favor.

A. Establishment Clause

The Bible Colleges first argue that the Illinois higher-education statutes violate the Establishment Clause which, of course, provides that “Congress shall make no law respecting an establishment of religion.” Specifically, the plaintiffs claim that the Board is impermissibly setting standards for religious education without a secular justification. *See Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

However, contrary to the Bible Colleges’ argument, the statutes at issue do not set a standard for “religious” education. Rather, they set criteria under which the Board will review all post-secondary institutions of education and degrees issued by those schools. And states have a valid secular interest in

maintaining standards for post-secondary institutions. *Id.* at 613 (“A State always has a legitimate concern for maintaining minimum standards in all schools it allows to operate.”).

Alternatively, the plaintiffs claim that Illinois defines “degree” so broadly “that the religious colleges in this case cannot describe their students’ achievements in any conceivable way without violating the State’s” licensing statutes. For instance, the plaintiffs “contend that even ‘diplomas’ and ‘certificates,’ which signify or purport to signify completion of an organized academic program of study beyond the secondary school level, fall within the scope of the act.” The Bible Colleges then argue that “[w]ithout the ability to describe student achievement, religious colleges are severely inhibited from pursuing their mission.”

In its brief before this court, the Board argues that “‘degree’ has a longstanding, well-established, and legally recognized meaning: it is a title granted by a college, university, or professional school upon completion of a program of study requiring a minimum number of courses.” But in presenting this definition to the court, the Board ignores the statutory definition of “degree.” As the plaintiffs point out, this raises the specter of unbounded reach by providing that “degree” means: “any designation, appellation, series of letters or words, or other symbol which signifies or purports to signify that the recipient thereof has satisfactorily completed an organized academic program of study beyond the secondary school level.” 110 ILCS 1005/1 and 110 ILCS 1010/2. Accordingly, we agree with the Bible

Colleges that the Illinois statutory definition of “degree” (excerpt above) is so broad that it seemingly bars any denotation of successful completion of the course work at the Bible Colleges. Yet the Bible Colleges must be able to provide some formal recognition to those who have worked and studied in a way their community deems appropriate to join in their church’s mission. The Bible Colleges might have a legitimate Establishment Clause claim if they sought to issue some formal acknowledgment of religious training but were barred from doing so. *See, e.g., HEB Ministries*, 235 S.W. 3d 627, 667 (Tex. 2007) (“To give but one example, subchapter G would not prohibit a religious institution from issuing a document certifying that ‘John Doe has completed an advanced course of study in X and is qualified to minister in Y church.’”). But in presenting their as-applied challenge to the State’s licensing laws, the Bible Colleges seek a blanket exemption from the statutes and the right to issue whatever recognition they desire, including degrees which do have a well-established and understood meaning such as a bachelor’s, master’s, or doctorate degree. *See, e.g., id.* at 668 (Jefferson, C.J., dissenting) (“Words like ‘bachelor’s,’ ‘master’s,’ and ‘doctorate’ have acquired meaning that permits them to stand on their own ... and permit, as here, an unaccredited institution’s graduates to overstate their credentials.”). The Bible Colleges explain that it is more difficult to attract students without the ability to issue such degrees. They oppose seeking State approval for their programs for doctrinal reasons and at the same time want the right to describe their programs of study in any way they deem appropriate.

Because the plaintiffs did not apply for certification, the Board did not evaluate the content of the religious education or the qualifications of their professors. Without such a review, the question is not before this court. It is possible that State officials could apply these statutes to plaintiffs in ways that would pose problems under the Establishment or Free Exercise Clauses. But unless and until plaintiffs seek certifications of approval, plaintiffs cannot plausibly allege that the statutes have been applied to them in unconstitutional ways or that the statutes inhibit (or advance) religion. *See Lemon*, 403 U.S. at 612–13 (a law violates the Establishment Clause if its primary effect advances or inhibits religion).

The Bible Colleges also argue that the statutes entangle the State with religion by requiring the Board to evaluate how religion is taught. But, as just noted, this appeal concerns an as applied challenge to the statute and the Bible Colleges never sought certification from the Board. Thus, at this time, the plaintiffs cannot plausibly allege that the Board became excessively entangled with religion. *See id.* (holding that a law may not excessively entangle the government with religion). Should that happen, the Bible Colleges would have recourse at that point.

Nonetheless, the Bible Colleges argue the Illinois statutes violate the *Lemon* test based on the plurality opinion in *HEB Ministries*, 235 S.W. 3d 627, 647 (Tex. 2007). *HEB Ministries*, of course, is a Texas Supreme Court case and is not controlling. In any event, we find the analysis flawed. The plurality in that case reasoned that “a principal or primary

effect [of the statute] is to advance religious education the State approves and inhibit what it does not.” *HEB Ministries*, 235 S.W.3d at 647.

The plurality further asserted that it is “beyond serious dispute that the statute clearly and excessively entangles the government in matters of religious instruction” because the Board’s standards “cannot be applied without a thorough, detailed, and repeated examination of an institution’s operations and curriculum.” *Id.*

But as Chief Justice Jefferson’s dissent in *HEB Ministries* recognized, “allowing a religious institution to participate in secular regulatory schemes simply does not violate the Establishment Clause.” *Id.* at 666 (Jefferson, C.J., dissenting). Further, like the dissent in *HEB Ministries*, we find the reasoning of *State v. Clarksville School of Theology*, 636 S.W.3d 706 (Tenn. 1982), and *N.J. State Board of Higher Education v. Board of Directors*, 448 A.3d 988 (N.J. 1982), more persuasive. In *Clarksville*, as the Tennessee Supreme Court explained:

[The Tennessee statute] places neither a direct nor indirect burden upon the free exercise of religion by the defendants nor threatens an entanglement between the affairs of church and state [T]he Act does not regulate the beliefs, practices or teachings of any institution; it merely sets forth minimum standards which must be met in order for an institution to be authorized to issue degrees. Moreover, the evidence shows

that the granting of degrees is a purely secular activity. It is only this activity that brings the School under the regulation of the Act.

636 S.W.3d at 709.

Similarly, the Supreme Court of New Jersey held “that the State’s program for licensing institutions of higher education is applicable to sectarian institutions and that facially it does not ... create an excessive state entanglement with religion.” *Shelton College*, 448 A.2d at 997–98. The court reasoned that “[t]he Establishment Clause permits minor, unobtrusive state supervision of religiously oriented schools” and that “[n]one of the education statutes or regulations here in question mandates active involvement of the sovereign in religious activity.” *Id.* at 997 (internal quotation omitted). The court added that the statutes did not require “regulation of the *content* of an educational program.” *Id.*

We agree with *Clarksville* and *Shelton*’s reasoning: The Illinois statutes do not regulate the beliefs of any institution or the content of the education. Further, the Bible Colleges “can choose to not comply with the Act and yet may continue to train ministers as [they choose]; such non-compliance with the Act will simply prohibit the School from granting degrees.” *Id.*

Of course, as we have already stressed, the Board cannot so broadly characterize “degrees” that it effectively prevents the Bible Colleges from signifying that students have successfully completed the minister training. But that is not the Bible

Colleges' complaint, nor the Board's practice. *See, e.g.*, August 26, 2013 Letter from Board to Dayspring Bible College (stating certificates or diplomas may be awarded for courses of study in religion or theology). For these reasons, we conclude that plaintiffs have not plausibly alleged that the Illinois statutes have been applied to them in ways that would violate the Establishment Clause of the First Amendment.

B. Free Exercise Clause

Alternatively, the Bible Colleges argue the Illinois higher education statutes violate the Free Exercise Clause of the First Amendment. The district court rejected this argument and found the Supreme Court's holding in *Employment Division v. Smith*, 494 U.S. 872 (1990), governed. In *Smith*, the Court held: "The right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." *Id.* at 879. Under *Smith*, a neutral law of general applicability is constitutional if it is supported by a rational basis.

Of course, as the Supreme Court recently made clear in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 (2017), a law may not "regulate or outlaw conduct because it is religiously motivated," and "[t]he Free Exercise Clause protects against laws that 'impose[] special disabilities on the basis of ... religious status.'" (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (1993)).

The statutes in this case conform to the strictures of the Free Exercise Clause. First, they are neutral: They do not target religion or religious institutions. There is no allegation of an underlying religious animus. Further, certification of schools is based on the State's review of secular criteria that focuses on the schools' faculty, facilities, and courses. The statutes are also generally applicable, applying equally to secular and religious post-secondary institutions. Likewise, the laws are rationally related to a valid government purpose, namely protecting students and employers from relying on degrees with no true academic value, and protecting legitimate institutions of higher education by safeguarding the value of their degrees. And finally, at least at this point, there is no evidence that regulation of these factors imposes a special disability on religions or religious beliefs and practices.

The Supreme Court's decisions in *Locke v. Davey*, 540 U.S. 712 (2004), and *Trinity Lutheran* support our conclusion. In *Locke*, the plaintiff challenged a Washington law which barred students from using state scholarship funds to pursue a devotional theology degree. The Supreme Court held that Washington's restriction did not infringe on a student's First Amendment Free Exercise right because the law did not require individuals to "choose between their religious beliefs and receiving a government benefit." *Locke*, 540 U.S. at 721.

Conversely, in *Trinity Lutheran* the Supreme Court held that a Missouri law barring religious schools from participating in a state-funded program

violated the Establishment Clause because “Trinity Lutheran is put to the choice between being a church and receiving a government benefit.” 137 S. Ct. at 2024. In reaching this conclusion, the Supreme Court distinguished *Locke*, explaining the student in *Locke* “was not denied a scholarship because of who he was; he was denied a scholarship because of what he proposed to *do*—use the funds to prepare for the ministry.” *Id.* at 2023. The student in *Locke* “was free to use [his] scholarships at ‘pervasively religious schools.’” *Id.* He could “pursue a secular degree at one institution while studying devotional theology at another.” *Id.* A student could also use “scholarship money to attend a religious college and take devotional theology courses there.” *Id.* The only thing a student “could not do was use the scholarship to pursue a degree in that subject.” *Id.* at 2024. In contrast, the State “expressly require[d] Trinity Lutheran to renounce its religious character in order to participate in an otherwise general available public benefit program, for which it [was] fully qualified.” *Id.* at 2024. The Supreme Court thus held in *Trinity Lutheran* that *Locke* did not control.

The Illinois regulatory scheme at issue in this case falls on the *Locke* side of the line. The colleges may teach their faith without interference and use whatever faculty and methods they believe appropriate. And they may communicate their faith in any way they desire. It is only if the Bible Colleges seek to issue degrees that they must comply with the standards of the Illinois statute; only when the colleges venture into the secular sphere is regulatory oversight required. Even then, the Board does not assess the underlying religious belief being conveyed.

Again, the Bible Colleges cite to *HEB Ministries*: In *HEB Ministries*, the Texas Supreme Court plurality stated that “[a] law is not neutral or generally applicable for purposes of applying the Free Exercise Clause merely because it affects everyone; it is important how religion is affected differently because it is religion.” 235 S.W. 3d at 659. The *HEB Ministries* court explained “the fact that [a statute] burdens all private post-secondary institutions does not lessen its significant, peculiar impact on religious institutions offering religious courses of study.” *Id.* at 643.

We disagree. The burdens on post-secondary institutions do not differ based on the religious nature of the institution: Both secular and non-secular institutions must satisfy the same criteria, and there is no basis to conclude that a religious institution would face any peculiar or significant impact.

Alternatively, the Bible Colleges argue the statutes are nonetheless subject to strict scrutiny because following *Smith*, the Supreme Court in *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993) carved out two exceptions to the general holding that such laws need only a rational basis to withstand attack: Neutral and generally applicable laws are still subject to strict scrutiny if (1) the government is allowed to make individualized exemptions from a general requirement, or (2) the claim is a hybrid-rights claim because it triggers additional constitutional rights. *Id.* at 524.

Neither exception to *Smith*'s general rule applies in this case. First, the Illinois statutes do not provide for individualized exemptions to the licensing requirement. They do require the Board to consider individual factors, such as looking to "the caliber and content of each course or program of instruction," and the "education, experience and other qualifications of faculty." But that individualized factors govern the application of a law of general applicability does not render *Smith*'s holding inapplicable. For instance, the majority of circuits, including this one, have concluded that zoning laws which provide the opportunity for individualized variances are neutral laws of general applicability. *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 764-65 (7th Cir. 2003); *Fortress Bible Church v. Feiner*, 694 F.3d 208, 220 (2d Cir. 2012) (collecting cases).

Second, the Bible Colleges have not presented a hybrid-rights claim. While they attempt to tie their free exercise claim to a free speech claim by arguing the regulations impact the "communication of religious beliefs," such an argument is misplaced. As the dissent in *HEB Ministries* explained, the communicative aspect of speech considered by the Court in *Smith* illustrated a "much higher involvement necessary to implicate the freedom of speech analysis." See, e.g., *HEB Ministries*, 235 S.W.3d at 667 (Jefferson, C.J., dissenting).

Further, "in *Smith*, the Supreme Court noted that, in cases implicating the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and freedom of association,

the First Amendment may subject the application to religiously motivated action of a neutral, generally applicable law to a heightened level of scrutiny.” *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d at 764– 65 (citing *Smith*, 494 U.S. at 881–82). But we added: “[A] plaintiff does not allege a hybrid rights claim entitled to strict scrutiny analysis merely by combining a free exercise claim with an utterly meritless claim of the violation of another alleged fundamental right.” *Id.* 765 (quoting *Miller v. Reed*, 176 F.3d 1202, 1207–08 (9th Cir. 1999)).

In this case, the Bible Colleges have merely recast the same Free Exercise Clause objection to the Illinois statutes under a variety of other constitutional clauses. Yet no matter how framed, the Bible Colleges’ claims all lack merit, at least before we see how the statutes are actually applied to the plaintiffs. Accordingly, the heightened scrutiny afforded hybrid claims does not apply here.

The Bible Colleges also attempt to circumvent *Smith* by citing to *Hosanna-Tabor Evangelical Lutheran Church v. Equal Employment Opportunity Commission*, 132 S. Ct. 694 (2012), and arguing the government is infringing on their right to shape their own faith and mission through their appointments of faculty. The Bible Colleges reason that because the Illinois statutes direct the Board to assure that faculty teaching at post-secondary institutions of education hold minimal qualifications, the laws infringe on their right to select those who will personify their beliefs.

Hosanna-Tabor does not support the plaintiffs' argument. The question before the Court in *Hosanna-Tabor* was whether a private Christian school could be sued under the Americans with Disabilities Act ("ADA") after it fired a teacher. After concluding that the teacher served in a ministerial role for the school, the Court held the Establishment Clause prevented the plaintiff from suing under the ADA because "[s]uch action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs."

Unlike the facts in *Hosanna-Tabor*, the Illinois statutes do not require the church sponsors of the Bible Colleges to hire or retain any specific minister. The Bible Colleges are free to hire or fire a faculty member anyone they see fit. They are also free to teach students religion and theology and to incorporate faith-based instruction in all subjects without Board oversight. But what they cannot do is operate entirely without State oversight while issuing whatever degrees they deem appropriate, such as a bachelor's, master's, or doctorate degree. Requiring compliance with the State's secular statutory requirements does not implicate *Hosanna-Tabor's* holding.

C. Remaining Constitutional Claims

The Bible Colleges present several additional constitutional claims but, for the most part, they parallel their Free Exercise and Establishment Clause claims. For instance, the Bible Colleges argue that their allegations were sufficient to support a

Free Speech claim. Here they argue that the statutes infringe on their right to communicate with the students, first by defining “degree” “so broadly that any method of communicating student achievement beyond the secondary school level is foreclosed.” But, as explained above, the Bible Colleges seek a blanket exemption to the regulation—absolutely no oversight—as well as the right to issue bachelor’s, master’s, and doctorate degrees or whatever degree they desire. The Board does not infringe on the Bible Colleges’ right to free speech by regulating degree-issuing post-secondary education; rather, any interference with the Bible Colleges’ speech is at most incidental and within constitutional bounds.

Alternatively, the Bible Colleges claim that their right to free speech is infringed because they are prohibited from issuing a bachelor’s degree to students who complete a “four-year academic program and a rigorous curriculum,” unless they “first disregard[] its religious principles and submit[] to the State intervention of its religious teaching.” But the Bible Colleges never submitted to the State’s review of their degree programs, so any claim that the State applied a “content-based” regulation of their speech based on the Bible Colleges’ “religious principles” or “religious teachings” fails, or is at least premature before the laws are actually applied to them. Accordingly, the district court properly dismissed the Bible Colleges’ Free Speech claims.

The Bible Colleges also argue that the Board violated their constitutional right to freedom of association. Specifically, they argue that the Board’s regulation interferes with their “voluntary

associations which have been organized to assist in the expression and dissemination of religious doctrine.” However, the Board does not limit or interfere with the plaintiffs’ right to associate or disseminate religious doctrine. Rather, if the Bible Colleges wish to issue degrees they must comply with the statutory mandates. While framed differently than their Free Exercise claim, the Bible Colleges’ freedom of association claim is governed by the same analysis and fails for the same reason.

Finally, the Bible Colleges argue that the Academic Degree Act and the Private College Act violate the Equal Protection Clause because they both contain grandfather clauses which exempt educational institutions that had been in existence prior to 1945 and 1961 respectively. 110 ILCS 1005/2 and 110 ILCS 1010/4(a). By exempting older institutes of higher learning from the statutes, the Bible Colleges claim the State is violating “[t]he basic requirement of the Equal Protection Clause [] that ‘all persons similarly situated should be treated alike.’” Appellants Reply Brief at 23 (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)).

The Bible Colleges’ Equal Protection claim is easily resolved. Distinguishing educational institutions by their founding date does not implicate a fundamental right or a protected class. That the Bible Colleges are religious colleges does not alter that result, because the statutes at issue do not distinguish between secular and religious colleges but instead differentiate *all* institutes of higher education equivalently other than those established

before the date the statutes were passed. Thus, we review the statutes for a rational basis. And this court has held that in the absence of some sort of invidious discrimination “[g]randfather clauses—laws that ... curtail the application of new rules to existing entitlements—protect expectation interests, which is enough to make them rational and so defeat challenge under the equal protection clause.” *McCann v. City of Chicago*, 968 F.2d 635, 638 (7th Cir. 1992). Accordingly, the Bible Colleges’ Equal Protection claim cannot succeed and dismissal was appropriate.

In addition to joining the Bible Colleges in their various constitutional claims—which fail—plaintiff Leigh Pietsch adds a claim premised on his constitutional right to work in the profession of his choice. While the Supreme Court has recognized the Constitution protects the right to work, regulating the Bible Colleges does not implicate those rights. Pietsch is free to attend the Bible Colleges and pursue any job desired. The regulations do not impact those rights. But Pietsch does not have a constitutional right to obtain a degree from a college which refuses to comply with State regulations even if that impacts his marketability. Therefore the district court properly dismissed Pietsch’s claims.

III.

The Bible Colleges and student Pietsch seek a complete exemption from the Illinois statutes governing oversight of post-secondary education based on the Free Exercise and Establishment Clauses of the constitution. But the Illinois statutes

apply equally to secular and religious post-secondary institutions and are thus neutral and generally applicable. The State also has several secular reasons for requiring Board oversight of the educational institutions—to safeguard students and employers from sub-standard or fraudulent degrees and to protect legitimate institutions of higher learning from dilution of their degrees. The statutes also do not advance or inhibit religion or excessively entangle the government with religion. Accordingly, the district court properly dismissed the plaintiffs' religious-clause claims.

The plaintiffs' other claims fare no better. Their right to free speech does not include a right to use deceptive language to describe a post-secondary degree, and the Equal Protection Clause recognizes the validity of grandfather clauses. Finally, Pietsch's allegations do not support a constitutional claim based upon his right to work. For these and the foregoing reasons, we AFFIRM.

APPENDIX B

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ILLINOIS BIBLE COLLEGES	)
ASSOCIATION, et al.,	)
	)
Plaintiffs,	)
	) Case No. 15 cv 444
v.	)
	) Judge Sharon
	) Johnson Coleman
	)
LINDSAY K. ANDERSON,	)
Chair of the Illinois Board	)
of Higher Education,	)
	)
Defendant.	)

MEMORANDUM OPINION AND ORDER

Plaintiffs filed a six-count First Amended Complaint against the Illinois Board of Higher Education, through its chairperson, alleging that the Private College Act, 110 ILCS 1005/0.01 *et seq.*, the Academic Degree Act, 110 ILCS 1010/0.01 *et seq.*, and the Private Business and Vocational Schools Act of 2012, 105 ILCS 426/1 *et seq.*, violate the U.S. Constitution and the Illinois Religious Freedom

Restoration Act, 775 ILCS 35/5 *et seq.*. Defendant moves to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. For the reasons stated herein, the Court grants the motion and dismisses the complaint.

Background

Plaintiffs are the Illinois Association of Bible Colleges, Providence Baptist College, Dayspring Bible College & Seminary, United Faith Christian Institute and Bible College, Civil Liberties for Urban Believers, and student Leigh Pietsch (collectively “the Bible Colleges”). The statutes plaintiffs challenge, the Private College Act, 110 ILCS 1005/0.01 *et seq.*, the Academic Degree Act, 110 ILCS 1010/0.01 *et seq.*, and the Private Business and Vocational Schools Act of 2012, 105 ILCS 426/1 *et seq.*, regulate the operations of certain post-secondary and educational institutions. The Illinois Board of Higher Education administers these statutes. The particular provisions at issue impose certain regulatory requirements that must be satisfied in order for a post-secondary educational institution to issue degrees.

The Private College Act governs privately-operated colleges, junior colleges, and universities that offer degrees. To operate such an institution, the Private College Act requires a certificate of approval from the Illinois Board of Higher Education. 110 ILCS 1005/2. According to the Illinois Administrative Code, the Board of Higher Education may evaluate, among other things, “the caliber and content of each course or program of instruction,” the physical plant, the number of credit hours required for

undergraduate and graduate degrees, the educational credentials of faculty and applicants, the institution's finances, and the institution's record-keeping. 23 Ill. Adm. Code 1030.30. The statute defines a "degree" as "any designation, appellation, series of letters or words, or other symbol which signifies or purports to signify that the recipient thereof has satisfactorily completed an organized academic program of study beyond the secondary school level." 110 ILCS 1005/1.

The Academic Degree Act defines degree the same way as the Private College Act. *See* 110 ILCS 1010/2(b). The Academic Degree Act also requires approval by the Board of Higher Education before an institution can be "degree granting." *Id.* at §3. The Act defines a "degree granting institution" as:

an educational facility maintained by any person, partnership, public or private corporation or public body and operating as a school, academy, institute, private junior college, college, university or entity of whatever kind which furnishes or offers to furnish instruction leading toward or prerequisite to an academic or professional degree beyond the secondary school level, and which requires that in order to obtain a degree the recipient thereof satisfactorily complete an appropriate course of class, laboratory or research study in person under a faculty whose members hold appropriate academic degrees or whose members possess appropriate moral, intellectual and technical skill and competence; however, this definition does not apply to Illinois public tax supported

higher education institutions. 110 ILCS 1010/2(a).

Both the Academic Degree Act and the Private College Act contain grandfather clauses, exempting institutions that have been in existence prior to certain dates. See 110 ILCS 1005/2; 110 ILCS 1010/4(a).

The Private Business and Vocational Schools Act of 2012 governs private business and vocational schools and requires approval from the Board of Higher Education. 105 ILCS 426/20. Approved schools may issue “certificates” or “certificates of completion.” 105 ILCS 426/15. Before issuing a permit of approval, the Board of Higher Education evaluates schools subject to this act based: the qualifications of Governing Board Members, Owners, and Senior Administrators, faculty and staff; the quality of program delivery; the sufficiency of the institution’s finances; the accuracy, clarity, and appropriateness of the program’s promotional materials; the sufficiency of the facilities and equipment; the existence of fair and equitable refund policies; the use of appropriate and ethical admissions and recruitment practices; accreditation status; employment in the field of study; legally adequate enrollment agreements; and, clearly communicated tuition and fee charges. Additionally, the institution must explain any legal action against the institution, its owners, board members, etc.; and the school must provide prospective students with a catalog or brochure prior to enrollment. 23 Ill. Adm. Code 1095.40. Schools providing entirely religious or theological education are exempt from the provisions of this Act. 105 ILCS 426/30.

Plaintiffs raise the following allegations in their First Amended Complaint: that the challenged statutes violate the Establishment Clause because mandating approval by the Board of Higher Education to grant “degrees” results in excessive entanglement of government in religious activity (Count I); that the challenged statutes violate the Free Exercise Clause by infringing on plaintiffs’ religious liberty under both the U.S. Constitution and the Illinois Constitution (Count II); that the statutes and rules regulating the granting of degrees violate plaintiffs’ Freedom of Speech guaranteed by the U.S. Constitution and the Illinois Constitution (Count III); that the challenged statutes violate plaintiffs’ First Amendment right to freedom of association (Count IV); that the statutes violate the Illinois Religious Freedom Restoration Act, 775 ILCS 35/5 *et seq.* (Count V); and that the statutes violate the Equal Protection Clause by rendering Bible College students’ education less valuable to the community because their course of study is not approved by the Board of Higher Education and the “grandfather clauses” benefit some schools over others (Count VI). Plaintiffs seek exemptions from the challenged statutes.

Legal Standard

In order to survive a motion to dismiss pursuant to Rule 12(b)(6), a complaint must contain sufficient factual allegations to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rule 8(a)(2) sets forth the minimum pleading requirements of “a short and

plain statement of the claim showing that the pleader is entitled to relief....to give the defendant fair notice of what the ...claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). When reviewing a motion to dismiss the court must accept all well-pleaded factual allegations in the complaint as true, and draw all reasonable inferences in the plaintiff’s favor. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Pisciotta v. Old Nat. Bancorp*, 449 F.3d 629, 633 (7th Cir. 2007).

Discussion

Plaintiffs voluntarily dismiss, without prejudice, their state law claims. Thus, this Court will only consider their claims arising from the U.S. Constitution. Defendant asserts that plaintiffs are making a facial challenge to the statutes. However, as this Court reads the allegations it appears that the plaintiffs do not contend that the statutes at issue can never be applied constitutionally and therefore should not apply to any educational institution, but that the statutes are unconstitutional in their application to the Bible Colleges. *See, e.g., Sabri v. United States*, 541 U.S. 600, 604 (2004); *see also* Alex Kreit, *Making Sense of Facial and As-Applied Challenges*, 18 Wm. & Mary Bill Rts. J. 657 (2010) (Mar. 3, 2016),

<http://scholarship.law.wm.edu/wmborj/vol18/iss3/4>.

However, plaintiffs are incorrect in their assertion that defendants' argument for dismissal is applicable only to a facial challenge to the statutes and their motion should be denied on that basis. This Court will consider each Count in turn.

1. Count I – Establishment Clause

The First Amendment to the U.S. Constitution states that “Congress shall make no law respecting an establishment of religion.” U.S. Const., Amend. 1. Defendant argues that plaintiffs cannot state a claim for a violation of the Establishment Clause because the laws at issue serve the valid secular purpose of insuring that educational institutions, their programs, faculty, and degree granting practices are legitimate based on an evaluation that does not implicate religion. Plaintiffs assert that the statutes mandate state approval to grant degrees and therefore subordinate the Church’s responsibility to God in deciding how to properly educate students in religious teaching and excessively entangle the state in religion by establishing the standards for post-secondary religious education and to recognize student attainment.

Courts have long applied the “*Lemon* test” to determine whether a statute violates the Establishment Clause, and defendant urges this Court to follow suit. Pursuant to *Lemon*, a statute violates the Establishment Clause if (1) it has no secular purpose, (2) its primary effect advances or inhibits religion, or (3) it fosters an excessive entanglement with religion. *Lemon v. Kurtzman*, 403

U.S. 602, 612-13 (1971).¹ The *Lemon* test remains operative in this Circuit. *Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 849 (7th Cir. 2012), *cert. denied*, 134 S. Ct. 2283 (2014).

The statutes at issue here neither advance nor inhibit religion. Maintaining minimum educational standards in all schools constitutes a substantial state interest and secular purpose. *See Wisconsin v. Yoder*, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L. Ed. 1070 (1925); *New Jersey State Bd. of Higher Educ. v. Shelton College*, 448 A.2d 988, 996, 90 N.J. 470 (N.J. 1982). The issuing of “degrees” as opposed to some other articulation of student attainment is not a mandate of religious doctrine. Moreover, the regulatory scheme evaluates educational institutions on secular criteria against the institution’s own stated objectives and thus does not involve excessive entanglement. *See* 23 Ill. Adm. Code 1030.30(a)(1).

Plaintiffs contend that this Court should follow the Supreme Court’s ruling in *Hosanna-Tabor v. Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, et al.*, 132 S.

¹ While lower courts continue to apply the *Lemon* test, *see, e.g., Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 849 (7th Cir. 2012), *cert. denied*, 134 S. Ct. 2283 (2014), members of the Supreme Court have been questioning its continued application, though doing so without articulating a replacement. *See, e.g., Van Orden v. Perry*, 545 U.S. 677, 686 (2005); *Utah Highway Patrol Ass’n v. Am. Atheists, Inc.*, 132 S. Ct. 12, 14 (2011) (Thomas, J., dissenting on denial of writ of certiorari) (noting that “five sitting Justices have questioned or decried the *Lemon*/endorsement test’s continued use”).

Ct. 694, 181 L. Ed. 2d 650 (2012). *Hosanna-Tabor*, however, is not directly on point and does not articulate a bright line rule applicable in this situation. In that case, the Supreme Court allowed a “ministerial exception” to employment discrimination claims because the Establishment Clause prohibits governmental involvement in ecclesiastical decisions such as requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so. *Id.* at 706. The Court reasoned that “[s]uch action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs.” *Id.* The case at bar is distinguishable in that the statutes at issue here do not require a church to retain or discharge any religious personnel. Instead, the statutes at issue here require faculty to have minimum credentials in order for the institution to issue degrees. Such an action does not interfere with the internal governance of the church.

Plaintiffs also rely on *HEB Ministries, Inc. v. Texas Higher Education Coordinating Board et al.*, 235 S.W.3d 627, 50 Tex. Sup. J. 1094 (Tex. 2007), to oppose dismissal. In that case, HEB Ministries was fined for awarding “certificates” and “diplomas” in “Biblical Studies” the court found that the fines violated the Establishment Clause because HEB Ministries was “offering religious instruction and recognizing attainment with certificates clearly reflecting that such instruction is religious.” *Id.* at 649. Significantly for this Court’s purposes, HEB Ministries did not complain of the statute’s restriction on the use of the word “degree” and thus the Texas court did not consider whether the

restriction was permissible. *Id.* at 661. Here, plaintiffs are seeking complete exemption from the statutes so that they may confer “degrees,” which is an entirely different scenario than recognizing student attainment with certificates clearly reflecting that such instruction is religious. Indeed, plaintiffs attached to their First Amended Complaint a letter from the Board of Higher Education specifically stating that they may issue certificates and diplomas.

This case is more closely aligned with *New Jersey State Bd. of Higher Educ. v. Shelton College*, 448 A.2d 988, 996, 90 N.J. 470 (N.J. 1982), relied on by defendant. In *Shelton College*, the Supreme Court of New Jersey rejected an Establishment Clause challenge by a religious college whose power to confer baccalaureate degrees was revoked for noncompliance with the statutory requirements for conferring degrees. There, the court considered the constitutionality of a New Jersey statute similar to the one at issue here, mandating approval by the state prior to issuing degrees. *Id.* The statutes at issue in that case prohibited the granting of baccalaureate degrees by any institution that had not secured a license from the State Board of Higher Education. *Id.* at 932. The court found no Establishment Clause violation, noting that Shelton College had declined to participate in the licensing process, and thus “the allegation of excessive entanglement rests on speculation about the manner in which these statutes and regulations might be applied.” *Id.* at 998. The court observed that “one could imagine an unconstitutional application of this regulatory scheme,” but found no evidence of

unconstitutional application on the facts before the court. *Id.* Here, like in *Shelton College*, the Bible Colleges have not sought approval under the statute, and their allegations of entanglement therefore rest on unfounded speculation. Accordingly, this Court grants defendant's motion with respect to Count I.

2. *Count II – Free Exercise Clause*

Defendant argues the statutes and regulations at issue do not violate the Free Exercise Clause because they are neutral and generally applicable and thus the statutory scheme is subject only to rational basis review. Plaintiffs assert that, even if the statutes and regulations are neutral and generally applicable on their face, strict scrutiny should apply because the statutes call for an individualized assessment of plaintiffs' religious activity and they have alleged a hybrid rights claim. Defendant counters that the two exceptions to rational basis review set forth in *Employment Division v. Smith*, 494 U.S. 872, 884 (1990), do not apply to raise the level of scrutiny.

No Free Exercise violation results where a burden on religious exercise is the incidental effect of a neutral, generally applicable, and otherwise valid regulation, in which case the regulation need not be justified by a compelling governmental interest. *Smith*, 494 U.S. at 885. The regulations at issue here are facially neutral and generally applicable since they apply with equal force to secular and religious institutions. They neither discriminate against some or all religious beliefs nor do they regulate or prohibit conduct "because it is undertaken for religious reasons." *Church of the Lukumi Babalu*

Aye, Inc. v. City of Hialeah, 508 U.S. 520, 532, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993). The Supreme Court has determined that the requirement of general applicability is based on “[t]he principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief.” *Id.* at 543.

In this case, the only educational institutions singled out in the statutes and regulations at issue are those schools exempt from regulation through the grandfather clauses and entirely religious institutions exempt under the Private Business and Vocational Schools Act of 2012. Thus, the statutes are neutral and generally applicable, and only subject to rational basis review.

Plaintiffs contend that the Supreme Court’s opinion in *Hosanna-Tabor*, discussed above, controls this Court’s analysis of the Free Exercise claim. This Court disagrees that *Hosanna-Tabor* provides the controlling analytical framework for the same reasons discussed above regarding the Establishment Clause. A “ministerial exception” is not mandated where the state is not dictating which individuals a religious entity must hire or retain. Because *Hosanna-Tabor* was an employment discrimination case under Title VII, the ultimate result of the litigation, if carried to its logical end, would have been a court dictating that a religious entity must rehire a particular individual. Clearly such an action would violate both the Establishment Clause and the Free Exercise Clause because a court would be mandating internal church governance by forcing the religious institution to employ an

unwanted minister. See *Hosanna-Tabor*, 132 S. Ct. at 706. As the Court reasoned, “[t]he present case, in contrast [to *Smith*], concerns government interference with an internal church decision that affects the faith and mission of the church itself.” *Id.* at 707. Here, the statutes at issue do not interfere with an internal church decision affecting the faith or the mission of the church itself. Instead, by setting a statewide standard for conferring a “degree,” the statutes and regulations incidentally affect one way in which a religious educational institution might elect to describe student achievement.

In *Smith*, the Supreme Court described two exceptions to rational basis review for neutral generally applicable laws: (1) “a hybrid rights claim,” where an individual or organization’s Free Exercise rights are burdened in addition to another constitutionally protected right such as freedom of expression or association; and (2) the statutes call for an individualized governmental assessment of the reasons for the relevant religious conduct. *Smith*, 494 U.S. at 881, 884.² Neither exception applies to the statutes and regulations at issue here.

This Court has already rejected plaintiffs’ Establishment Clause claim and, as set forth below, plaintiffs’ claims under freedom of association, expression, and equal protection are equally inadequate. “[A] plaintiff does not allege a hybrid rights claim entitled to strict scrutiny analysis merely by combining a free exercise claim with an

² *Smith* is relevant only for its analytical framework since it involved a criminal statute regulating the use of peyote, which is not factually instructive for the case at bar.

utterly meritless claim of the violation of another alleged fundamental right.” *Civil Liberties for Urban Believers, et al. v. City of Chicago*, 342 F.3d 752, 765 (7th Cir. 2003) (quoting *Miller v. Reed*, 176 F.3d 1202, 1207-08 (9th Cir. 1999), and collecting cases). The statutes and regulations at issue are not of the type of individualized assessment warranting heightened scrutiny. The evaluation criteria set forth in the statutes are secular and do not require inquiry into the reasons for religious practice. Instead, the criteria seek to determine the institution’s capability to carry out the education that it is purporting to provide based on its finances, transparency, and training. This Court finds that maintaining minimum educational standards for the conferring of degrees is a secular state interest of sufficient importance to pass rational basis review. Accordingly, this Court grants defendant’s motion as to Count II.

3. Count III – Freedom of Speech

Plaintiffs claim that the state is unconstitutionally restricting their ability to accurately describe the nature of the Bible Colleges’ curricula by regulating the use of the terms “Bachelor’s,” “Master’s,” or “Doctorate” degrees. Defendant argues that plaintiffs fail to state a claim for a violation of their Freedom of Speech because the use of the word “degree” is not religious speech activity. Defendant further contends that plaintiffs’ rights to teach, worship, and express religious ideas are unaffected by the statutes at issue.

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the

enactment of laws “abridging the freedom of speech.” U.S. Const., Amend. 1. Plaintiffs cite the Supreme Court’s recent decision in *Reed v. Gilbert*, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015), for the proposition that content-based speech is presumptively unconstitutional and subject to strict scrutiny. In *Reed*, the Supreme Court relied on strict scrutiny to strike down the defendant town’s Sign Code, which restricts and identifies categories of signs based on the type of information they convey. *Id.* In *Reed*, the Supreme Court reiterated that “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or the message expressed.” *Id.* at 2227. The Court in *Reed* reasoned that: “The Town’s Sign Code... singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter... That is a paradigmatic example of content-based discrimination.” *Id.* at 2230.

The statutes and regulations here do not differentiate between subject matter in the same way. This case is more closely aligned with the line of reasoning in *United States v. American Library Ass’n*, where the Supreme Court held that a heightened standard of scrutiny is inapplicable if the government is providing a public service that by its nature requires evaluations of, and distinctions based upon, the content of speech. 539 U.S. 194, 204-05, 123 S. Ct. 2297, 156 L. Ed. 2d 221 (2003). That decision gave public libraries broad discretion to decide what material to provide to their patrons. *Id.* A California District Court applied this reasoning to the University of California admissions process of

approving high school courses to determine student eligibility, finding the regulation constitutional because it was reasonably related to the government's goal of providing the public service and is not the product of government animus. *Association of Christian Schools Int'l v. Stearns*, 679 F. Supp. 2d 1083, 1098 (C.D. Cal. 2008).

The Western District of Texas applied the same reasoning in *Institute for Creation Research Graduate School v. Texas Higher Education Coordinating Board*, 2010 WL 2522529 (W.D. Tex. June 18, 2010), which is closer to the case at bar. In that case, the plaintiff claimed that the Texas Higher Education Coordinating Board violated the Establishment Clause, Free Exercise Clause, and Free Speech Clause by determining that a proposed master of science degree program from a "Biblical scientific creationist viewpoint" could not be designated a "degree." The Texas court rejected all of the claims, finding that "[t]he Board, in order to protect Texas citizens and ensure the reliability of degrees earned within the State's borders, is charged with reviewing the curricula of proposed degrees to be offered by institutions of higher education so that it may determine whether those degrees are substandard or fraudulent." *Id.* at *13.

The use of the terms "bachelor's," "master's," or "doctorate" degree by themselves do not trigger strict scrutiny. Courts, including the Supreme Court, that have considered the use of educational terms similar to the ones at issue here have found them to be commercial speech subject to a lower standard of scrutiny. *See Ibanez v. Florida Dept. of Bus. & Prof.*

Regulation, 512 U.S. 136, 142 (1994) (holding that the use of initials or a designation purporting to indicate educational credentials or professional licensure is a form of commercial speech); *Nova University v. Educational Institution Licensure Commission*, 483 A.2d 1172, 1183 (D.C. Ct. of Appeals, 1994) (finding that degree conferral is business conduct). Here, the factual basis alleged for a free speech violation is the same as for the Religion Clauses and passes constitutional muster for the same reasons. Defendant's motion is granted as to Count III.

4. Count IV – Freedom of Association

The Supreme Court “has recognized that the right to engage in activities protected by the First Amendment implies ‘a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.’” *Board of Dirs. of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 548 (1987) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984)). Plaintiffs contend that they are voluntary religious associations organized to assist in the expression and dissemination of religious doctrine and that the regulations at issue impose penalties and withhold benefits from individuals because of their membership in a group. Defendant counters that if complying with state regulation for issuing degrees implicates religious schools’ freedom of association, then it also implicates secular schools’ freedom of association and, thus every school could claim exemption.

The regulations here do not impede plaintiffs' freedom of association. They do not mandate that plaintiffs employ particular individuals nor do they impede plaintiffs' religious expression. Plaintiffs are free to associate, to maintain anonymity from state intrusion, and to grant diplomas and certificates or otherwise describe their students' academic achievement in a manner that does not involve granting "degrees." *Hosanna-Tabor*, as defendant points out, protects a religious institution's autonomy in deciding who provides its ministry. *See Hosanna-Tabor*, 132 S. Ct. at 706. Neither party directs this Court to any relevant authority nor does this Court's own research reveal any instance where a court has found freedom of association to be implicated in state regulation of the conferring of degrees. Accordingly, this Court grants defendant's motion as to Count IV.

5. Count VI – Equal Protection

Both the Academic Degree Act and the Private College Act contain grandfather clauses, exempting institutions that have been in existence prior to 1945 and 1961, respectively (110 ILCS 1005/2; 110 ILCS 1010/4(a)), which plaintiffs contend creates a disparity of treatment between newer and older religious schools. Plaintiffs assert in Count VI that the grandfather clauses impermissibly convey that older schools are more "legitimate" or "state approved" because those schools can grant degrees. Defendants argue that plaintiffs cannot state a claim under the Equal Protection Clause because no fundamental right and no suspect class are implicated in the grandfather clauses of the statutes at issue. This Court agrees. The Seventh Circuit has

held that “[g]randfather clauses--laws that... curtail the application of new rules to existing entitlements--protect expectation interests, which is enough to make them rational and so defeat challenge under the equal protection clause.” *McCann v. City of Chicago*, 968 F.2d 635, 638 (7th Cir. 1992) (citing *Nordlinger v. Hahn*, 60 U.S.L.W. 4563 (U.S. June 18, 1992), and *New Orleans v. Dukes*, 427 U.S. 297 (1976)). Count VI therefore must be dismissed.

6. Broader Exemption from the Private Business and Vocational Schools Act

Lastly, plaintiffs seek to broaden the exemption allowed under the Private Business and Vocational Schools Act. The Act provides an exemption to institutions devoted entirely to the teaching of religion or theology. 105 ILCS 426/30; 23 Ill. Adm. Code 1095.20(b)(1). Plaintiffs here are essentially seeking to teach any subject in any manner and to describe student achievement in whatever way they choose, entirely free from government oversight, under the auspices of religious freedom. They should seek the exemption through the legislative process rather than by injunction. Such a result simply is not compelled by the First Amendment and plaintiffs’ allegations to the contrary are unpersuasive and not in keeping with this Court’s finding with respect to the remainder of the complaint.

Conclusion

Based on the foregoing, this Court grants defendant’s Motion to Dismiss [24] and dismisses the case in its entirety. Civil case terminated.

43a

IT IS SO ORDERED.

Date: March 28, 2016

Entered: 
SHARON JOHNSON COLEMAN
United States District Judge

APPENDIX C

**United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604**

October 5, 2017

Before

DANIEL A. MANION, *Circuit Judge*
MICHAEL S. KANNE, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*

No. 16- 1754

ILLINOIS BIBLE
COLLEGES
ASSOCIATION, et al.,
Plaintiffs - Appellants,
v.

LINDSAY K. H.
ANDERSON, Chair of
the Illinois Board of
Higher Education,
Defendant - Appellee.

Appeal from the
United States District
Court for the Northern
District of Illinois,
Eastern Division.

No. 15- cv- 00444

Sharon Johnson
Coleman, *Judge.*

ORDER

The opinion released on August 29, 2017, is
amended as follows: page 13, second full

paragraph, line 3, “Establishment” is changed to read “Free Exercise.”

On consideration of the petition for rehearing and suggestion for rehearing en banc filed by plaintiffs- appellants on September 15, 2017, no judge in active service has requested a vote and all judges on the original panel have voted to deny rehearing. The petition is therefore DENIED.

APPENDIX D

HIGHER EDUCATION

(110 ILCS 1010/) Academic Degree Act.

(110 ILCS 1010/0.01) (from Ch. 144, par. 230)

Sec. 0.01. Short title. This Act may be cited as the Academic Degree Act. (Source: P.A. 86-1324.)

(110 ILCS 1010/1) (from Ch. 144, par. 231)

Sec. 1. Declaration of policy.) It is the policy of this State to prevent deception of the public resulting from the offering, conferring and use of fraudulent or substandard degrees. Since degrees are constantly used by employers in judging the training of prospective employees, by public and private professional groups in determining qualifications for admission to and continuance of practice, and by the general public in assessing the extent of competence of persons engaged in a wide range of activities necessary to the general welfare, regulation by law of such evidences of academic achievement is in the public interest. To the same end, the protection of legitimate institutions and of those holding degrees from them is also in the public interest. (Source: P.A. 79-803.)

(110 ILCS 1010/2) (from Ch. 144, par. 232)

Sec. 2. Definitions. As used in this Act:

(a) "Degree granting institution" means an educational facility maintained by any person,

partnership, public or private corporation or public body and operating as a school, academy, institute, private junior college, college, university or entity of whatever kind which furnishes or offers to furnish instruction leading toward or prerequisite to an academic or professional degree beyond the secondary school level, and which requires that in order to obtain a degree the recipient thereof satisfactorily complete an appropriate course of class, laboratory or research study in person under a faculty whose members hold appropriate academic degrees or whose members possess appropriate moral, intellectual and technical skill and competence; however, this definition does not apply to Illinois public tax supported higher education institutions.

(b) "Degree" means any designation, appellation, series of letters or words, or other symbol which signifies or purports to signify that the recipient thereof has satisfactorily completed an organized academic program of study beyond the secondary school level.

(c) "Board" means the Board of Higher Education established under "An Act creating a Board of Higher Education, defining its powers and duties, making an appropriation therefor, and repealing an Act herein named", approved August 22, 1961, as now or hereafter amended. (Source: P.A. 82-622.)

(110 ILCS 1010/3) (from Ch. 144, par. 233) Sec. 3. Award of degrees.) A degree or any object in evidence thereof may be awarded only by a degree granting institution. Anything in this Act to the

contrary notwithstanding, a degree granting institution may award honorary degrees; provided that any such degree be clearly represented to be honorary and that any other tangible object issued or purporting to be in evidence thereof shall state on its face expressly, clearly and conspicuously that the degree is honorary. (Source: P.A. 79-803.)

(110 ILCS 1010/4) (from Ch. 144, par. 234) Sec. 4. Period before award.) (a) Unless a degree granting institution was authorized to operate in Illinois, or was in operation, on August 14, 1961, it shall not award any earned degree until one year after it has filed a written notice with and until such institution has received the authorization and approval of the Board. Except as permitted under Section 5, no educational organization or entity shall be authorized to award any degree nor be approved as a degree granting institution unless it requires an appropriate period of instruction to be in residence. The notice shall be under oath or affirmation of the principal officer of the institution and shall contain: the name and address of the degree granting institution; the names and addresses of the president or other administrative head and of each member of the board of trustees or other governing board; a description of the degree or degrees to be awarded and the course or courses of study prerequisite thereto; and such additional information relevant to the purposes of this Act as the Board may prescribe. An amendment to the notice shall be under oath or affirmation of the principal officer of the institution and shall be filed with the Board prior to the award of any degree not contained in the original notice or prior

amendments thereto. A degree authorized in an amendment shall not be awarded until one year after the filing of the amendment with and the authorization of the Board. The submission of the regular catalog of the institution shall, if it covers the matters hereinabove mentioned, be deemed to constitute compliance herewith.

(b) A degree granting institution shall keep the notice which it shall have filed with the Board current at all times. For this purpose, it shall report annually, by appropriate amendment of the notice, any change in any fact previously reported.

(c) The Board shall not approve any notice or amendment thereto filed pursuant to this Section unless it finds the facts stated therein to be correct and further finds that such facts constitute compliance with the requirements of this Act for degree granting institutions. (Source: P.A. 80-1309.)

(110 ILCS 1010/5) (from Ch. 144, par. 235)

Sec. 5. Degrees by other than residence institutions.) (a) Any educational organization or entity which does not conduct instruction in residence may award degrees and qualify as a degree granting institution upon approval by the Board. Such approval shall be given only if the Board finds that the applicant, organization or entity:

(1) Maintains physical facilities suitable and sufficient to the giving of a program or programs of instruction of degree caliber in the field or fields wherein it proposes to grant degrees;

(2) Maintains a suitable and sufficient faculty for instruction in its degree granting program or programs;

(3) Maintains its student records in a safe and suitable place so that there is reasonable assurance that they are and will remain available for all normal purposes for a reasonable period of time;

(4) Maintains a stability sufficient to carry out its obligations under the enrollment contracts; and

(5) Complies with all provisions of this Act other than the requirement for instruction in residence.

(Source: P.A. 80-1309.)

(110 ILCS 1010/6) (from Ch. 144, par. 236)

Sec. 6. Right of inspection; Penalty for refusal or obstruction. Any duly authorized employee or other representative of the Board may enter upon the premises of any degree granting institution and inspect or otherwise examine the same and any books, papers or other records pertaining to the degree granting program of such institution. For failure to permit such entry, inspection or examination or for obstruction thereof, the Board may invalidate any notice filed with it by the degree granting institution and revoke any authorization made pursuant to Section 4 of this Act and may refuse to accept another notice from or on behalf of such institution or any person connected with the administration thereof until such refusal or obstruction has been withdrawn. Any action taken pursuant to this Section shall be in addition to any other penalty which may be imposed for violation of this Act. (Source: P.A. 80-1309.)

(110 ILCS 1010/7) (from Ch. 144, par. 237)

Sec. 7. Unlawful Representations.) Neither the fact of filing nor the permission to grant any degree or degrees shall be held to mean that the Board has

passed upon the relative merits of a particular course of instruction. Nothing in this Act shall be construed to be a legislative finding with respect to the suitability of instruction given entirely out of residence as a preparation for the granting of degrees. The only statement that may be made is that the institution is authorized to confer academic degrees. Any statement other than the foregoing is unlawful.

No corporate charter shall hereafter be issued to any entity to operate as or maintain a degree granting institution that has not been approved by the Board under this Act; nor shall any foreign corporation be authorized or licensed to operate as or maintain a degree granting institution in this State that has not been approved by the Board under this Act. (Source: P.A. 80-1309.)

(110 ILCS 1010/8) (from Ch. 144, par. 238) Sec. 8. Penalties. Any person, firm, corporation, partnership, association, degree granting institution, or other entity making any false statement in any notice or amendment thereto filed pursuant to Section 4 of this Act is guilty of perjury. Any other violation of this Act shall constitute a Class 4 felony. Each violation shall constitute a separate offense. (Source: P.A. 77-2457.)

(110 ILCS 1010/9) (from Ch. 144, par. 239) Sec. 9. Injunctions. The Board acting through the Attorney General may proceed by injunction against any violation of this Act, but no such proceeding and no order issued therein or as a result thereof shall bar the imposition of any other penalty which may be imposed for violation of this Act.

(Source: P.A. 80-1309.)

(110 ILCS 1010/10) (from Ch. 144, par. 240)

Sec. 10. Judicial review. The provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Board. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.
(Source: P.A. 82-783.)

(110 ILCS 1010/10.5)

Sec. 10.5. Fees. Fees to cover the cost of reviewing applications for authorization to operate and for authorization to grant degrees may be set by the Board by rule.
Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.
(Source: P.A. 95-1046, eff. 3-27-09.)

(110 ILCS 1010/10.10)

Sec. 10.10. Academic Quality Assurance Fund. The Academic Quality Assurance Fund is created as a special fund in the State treasury. All fees collected for the administration and enforcement of this Act must be deposited into this Fund. All money in the Fund must be used, subject to

appropriation, by the Board to supplement support for the administration and enforcement of this Act and must not be used for any other purpose.

Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized. (Source: P.A. 95-1046, eff. 3-27-09.)

(110 ILCS 1010/11) (from Ch. 144, par. 241)

Sec. 11. Exemptions. This Act shall not apply to any school or educational institution regulated or approved under the Nurse Practice Act.

This Act shall not apply to any of the following:

(a) in-training programs by corporations or other business organizations for the training of their personnel;

(b) education or other improvement programs by business, trade and similar organizations and associations for the benefit of their members only; or

(c) apprentice or other training programs by labor unions. (Source: P.A. 95-639, eff. 10-5-07.)

APPENDIX E

HIGHER EDUCATION
(110 ILCS 1005/) Private College Act.

(110 ILCS 1005/0.01) (from Ch. 144, par. 120)
Sec. 0.01. Short title. This Act may be cited as the Private College Act. (Source: P.A. 86-1324.)

(110 ILCS 1005/1) (from Ch. 144, par. 121)

Sec. 1. For the purposes of this Act:

"Post-secondary educational institution" means a privately-operated college, junior college or university offering degrees and instruction above the high school level either in residence or by correspondence.

"Board" means the Board of Higher Education established under "An Act creating a Board of Higher Education, defining its powers and duties, making an appropriation therefor, and repealing an Act herein named", approved August 22, 1961, as now or hereafter amended.

"Degree" means any designation, appellation, series of letters or words, or other symbol which signifies or purports to signify that the recipient thereof has satisfactorily completed an organized academic program of study beyond the secondary school level. (Source: P.A. 80-1309.)

(110 ILCS 1005/2) (from Ch. 144, par. 122)
Sec. 2. After July 17, 1945, no person or group of

persons may establish and operate or be permitted to become incorporated for the purpose of operating a post-secondary educational institution without obtaining a certificate of approval from the Board so to do. Application for such certificate shall be made to the Board upon forms furnished by it.

This amendatory Act of 1978 does not terminate the validity of a certificate of approval issued prior to and in effect on the effective date of this amendatory Act of 1978. (Source: P.A. 80-1309.)

(110 ILCS 1005/3) (from Ch. 144, par. 123) Sec. 3. Applications submitted to the Board for a certificate of approval to operate a post-secondary educational institution shall contain a statement of the following:

1. the proposed name of the institution and its proposed location;
2. the nature, extent and purposes of the courses of study to be given;
3. the fees to be charged and the conditions under which the fees are to be paid;
4. the education and experience of the members of the teaching staff;
5. the degrees to be issued to students upon completion of courses of instruction.

(Source: P.A. 80-1309.)

(110 ILCS 1005/4) (from Ch. 144, par. 124) Sec. 4. Upon the filing of an application for a certificate of approval the Board shall make an

examination to ascertain:

1. That each course of instruction to be offered or given is adequate, suitable, and proper;
2. That the fee to be charged for the courses of instruction, and the conditions and terms under which such fees are to be paid are reasonable;
3. That an adequate physical plant and adequate facilities are provided;
4. That the members of the teaching staff are adequately prepared to fulfill their instructional obligations;
5. That the institution does not promise or agree to any right or privilege in respect to professional examinations or to the practice of any profession in violation of the laws of this State;
6. That the institution does not offer inducements that are designed to deceive the prospective student or make any promises which it does not have the present means or ability to perform.

If the examination shows that the applicant has such qualifications a certificate of approval shall be issued. (Source: P.A. 80-1309.)

(110 ILCS 1005/5) (from Ch. 144, par. 12 Sec. 5.
A certificate of approval of a post-secondary educational institution may be revoked for any of the following:

1. Violation of any of the conditions governing the issuance of the certificate;
2. Failure to comply with any of the rules adopted by the Board;
3. Fraudulent conduct on the part of any person conducting the institution or of any

person, acting within the scope of his employment, employed by the owners or persons conducting the institution, on account of which conduct any student enrolled in the institution has been injured or has suffered financial loss. (Source: P.A. 80-1309.)

(110 ILCS 1005/6) (from Ch. 144, par. 126)

Sec. 6. The Board may upon its own motion and shall upon the verified complaint in writing of any person setting forth facts which if proved would constitute grounds for revocation as set forth in Section 5, investigate the actions of any person holding or claiming to hold a certificate. The Board shall, before revoking any certificate, at least 10 days prior to the date set for the hearing, notify in writing the holder of the certificate of any charges made and shall afford the accused person an opportunity to be heard in person or by counsel in reference thereto. Such notice may be served by delivery thereof personally to the accused person, or by mailing it by registered mail to the place of business last theretofore specified by the accused person in his last notification to the Board. At the time and place fixed in the notice, the Board shall proceed to hearing of the charges and both the accused person and the complainant shall be accorded ample opportunity to present in person or by counsel, such statements, testimony, evidence and argument as may be pertinent to the charges or to any defense thereto. The Board may continue such hearing from time to time. (Source: P.A. 80-1309.)

(110 ILCS 1005/7) (from Ch. 144, par. 127)

Sec. 7. The Board may subpoena and bring before it any person in this State and take testimony either orally or by deposition, or both, with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings in civil cases in circuit courts of this State.

The Board and any employee authorized by it so to do may administer oaths to witnesses at any hearing conducted under this Act. (Source: P.A. 83-338.)

(110 ILCS 1005/8) (from Ch. 144, par. 128) Sec. 8.

Any circuit court, upon the application of the accused person or complainant or of the Board, may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the Board in any hearing relative to the revocation of a certificate, and the court may compel obedience to its order by proceedings for contempt. (Source: P.A. 83-334.)

(110 ILCS 1005/9) (from Ch. 144, par. 129)

Sec. 9. The Board, at its expense, shall provide a stenographer to take down the testimony and preserve a record of all proceedings, at the hearing of any case wherein a certificate is revoked. The notice of hearing, complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the Board and the orders of the Board shall be the record of such proceedings. The Board shall furnish a

transcript of such record to any person interested in such hearing upon payment therefor of 25¢ per 100 words for each original transcript and 8¢ per 100 words for each carbon copy thereof ordered with the original; provided, that the charge for any part of such transcript ordered and paid for previous to the writing of the original record thereof shall be 8¢ per 100 words. (Source: P.A. 80-1309.)

(110 ILCS 1005/10) (from Ch. 144, par. 130)

Sec. 10. The Board shall make a written report of its findings and recommendations. A copy of the report shall be served upon the accused person, either personally or by registered mail as provided in this Act for the service of the citation. Within 20 days after such service, the accused person may present to the Board his motion in writing for a rehearing, which motion shall specify the particular grounds therefor. If the accused person orders and pays for a transcript of the record as provided in this Section, the time elapsing thereafter and before such transcript is ready for delivery to him shall not be counted as part of such 20 days. Whenever the Board is satisfied that substantial justice has not been done, it may order a rehearing. Upon the revocation of the certificate, the certificate shall be surrendered to the Board, and upon the holder's failure or refusal so to do, the Board may seize it. (Source: P.A. 80-1309.)

(110 ILCS 1005/11) (from Ch. 144, par. 131)

Sec. 11. At any time after the revocation of any certificate, the Board may restore it to the accused person. (Source: P.A. 80-1309.)

(110 ILCS 1005/12) (from Ch. 144, par. 132)

Sec. 12. Any person affected by a final administrative decision of the Board may have such decision reviewed judicially by the circuit court of the county wherein such person resides or, in the case of a corporation, wherein the registered office is located. If the plaintiff in the review proceeding is not a resident of this State the venue shall be in Sangamon County. The provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Board hereunder.

The Board shall not be required to certify the record of the proceeding unless the plaintiff in the review proceeding shall first pay to him the sum of 5 cents per 100 words of such record. Exhibits shall be certified without cost. (Source: P.A. 82-783.)

(110 ILCS 1005/14) (from Ch. 144, par. 134)

Sec. 14. The Board may make such rules as it deems necessary to carry out the purposes of this Act. (Source: P.A. 80-1309.)

(110 ILCS 1005/14.5) Sec. 14.5. Fees. Fees to cover the cost of reviewing applications for a certificate of approval to establish or operate a post-secondary educational institution may be set by the Board by rule.

Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized. (Source: P.A. 95-1046, eff. 3-27-09.)

(110 ILCS 1005/14.10)

Sec. 14.10. Private College Academic Quality Assurance Fund. The Private College Academic Quality Assurance Fund is created as a special fund in the State treasury. All fees collected for the administration and enforcement of this Act must be deposited into this Fund. All money in the Fund must be used, subject to appropriation, by the Board to supplement support for the administration and enforcement of this Act and must not be used for any other purpose.

Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized. (Source: P.A. 95-1046, eff. 3-27-09.)

(110 ILCS 1005/15) (from Ch. 144, par.

135) Sec. 15. Any person violating any provision of this Act shall be guilty of a petty offense and fined not less than \$25 nor more than \$100. Each day's violation of any provision of this Act shall constitute a separate offense. (Source: P.A. 84-1308.)

APPENDIX F

**23 ILLINOIS ADMINISTRATIVE CODE 1030
SUBTITLE A**

TITLE: EDUCATION AND CULTURAL
RESOURCES
SUBTITLE A: EDUCATION
CHAPTER II: BOARD OF HIGHER
EDUCATION
PART 1030

**PROGRAM REVIEW
(PRIVATE COLLEGES AND
UNIVERSITIES)**

Section 1030.30 Institutional Approval

The following general rules apply to institutions seeking a Certificate of Approval under the 1945 Act and an Authorization to Operate under the 1961 Act. Section 1030.40 identifies exceptions to these rules for those institutions covered by only the 1945 Act. Section 1030.50 identifies exceptions to the general rules for the institutions covered by only the 1961 Act.

- a) Criteria for Evaluation of the Application for a Certificate of Approval and/or Authorization to Operate

The following criteria are designed to measure the appropriateness of the stated educational objectives to the name and degree programs of a given institution and the extent to which suitable and proper processes have been developed for meeting those objectives:

- 1) For institutions requiring approval, the objectives for the institution and its degree programs must be consistent with what the institutional name and degree program titles imply.
 - A) The term "university" shall only be used in the name of an institution of higher education when the institutional structure includes two or more distinct colleges (e.g., College of Business, College of Education, and College of Liberal Arts and Sciences) providing instruction at the baccalaureate and graduate levels, and is involved in public service activities, scholarship and research.
 - B) The term "college" shall only be used to refer to an institution providing instruction at the postsecondary level.
 - C) Degree program names shall adhere to the Classification of Instructional Programs (CIP) developed by the

National Center for Educational
Statistics.

- 2) The caliber and content of each course or program of instruction, training or study shall be reasonable and adequate for achieving the stated degree objectives for which the course or program is offered.
 - A) Degree program admission policies must include, at a minimum, the following:
 - i) Undergraduate degrees must require a high school diploma or its equivalency, or passage of an ability to benefit test that has been approved pursuant to U.S. Department of Education regulations (see 34 CFR 668.145). Home school students who have obtained a diploma or similar credential under applicable state law are considered to have met this equivalency requirement. Students who do not meet such a standard may be admitted provisionally but may only take non-credit bearing coursework until the student passes an ability to benefit test.

- ii) Graduate degrees must require at least a baccalaureate degree from an accrediting authority recognized by the U.S. Department of Education or the Council for Higher Education Accreditation or degree from another country evaluated for U.S. equivalency, with the exception of degrees for professional practice whose professional standards do not require baccalaureate degrees for entry or for dual degree programs that can demonstrate equivalency of student outcomes at both the undergraduate and graduate levels. For purposes of dual degree programs that allow individuals to complete a bachelor's degree and either a graduate or professional degree within the same program, a student is considered an undergraduate student for at least the first three years of that program.
- B) Institutions must show the capacity to develop, deliver, and support academic programs. Procedures and policies that will assure the effective design, conduct, and evaluation of the degree program under the academic control of the institution

must be developed. Assessment plans must demonstrate that the institution has identified clear and appropriate program and student learning goals and must have defined appropriate outcomes. Appropriate data must be collected and may be requested by the Board to show the level of student learning that has occurred as a result of participation in the institution's programs of study.

- C) Degree programs must meet the following credit hour requirements:
- i) Associate degree requires at least 60 semester credit hours or 90 quarter credit hours.
 - ii) Baccalaureate degree requires at least 120 semester credit hours or 180 quarter credit hours and at least 40 semester credit hours (60 quarter credit hours) in upper-division courses.
 - iii) Master's degree requires at least 30 semester credit hours or 45 quarter credit hours of appropriate post-baccalaureate coursework.
 - iv) Doctor's degree – Professional Practice requires the completion

of the academic requirements to begin practice in the profession; at least 60 semester hours of postsecondary credit required for admission to the program; and a total of at least six academic years of college work to complete the degree program, including prior required postsecondary work plus the length of the professional program itself.

- v) Doctor's degree – Research and Scholarship requires the completion of an organized program of study beyond the master's degree and requires completion of an organized program of study. The program shall demonstrate full understanding of the level and range of doctoral scholarship, the function of a dissertation and its defense, the nature of comprehensive examination, and other standards commonly held for such degrees; at least 2 full time years of advanced academic coursework beyond the master's degree; and an independent performance of basic or applied research at the level of the professional scholar, typically a dissertation, or to perform independently the work of a

profession that involves the highest levels of knowledge and expertise

D) Success in student progression and graduation, and success rates in programs preparing students for certification and licensure, shall be consistent with expectations in higher education and the appropriate related field of study. At a minimum, the Board shall consider the following factors, based on results for similar institutions:

- i) Graduation rates, degree completion rates, retention rates, and pass rates for licensure and certification.
- ii) Success rate, which shall be, at a minimum, higher than that of the lowest quartile of these measures for similar Illinois institutions defined as open versus competitive enrollment institutions and primarily associate versus primarily baccalaureate granting institutions. Exceptions may be made to the lowest quartile if an institution is above the national average for these measures using the same comparison categories of institutions.

E) Additional student success measures shall be considered in the review of applications for authorization. The Board shall establish minimum rates of success based on results for similar institutions.

i) At a minimum these data shall include student loan default rates, student indebtedness rates, job placement rates, student learning measures and other success indicators.

ii) The success rate shall be, at a minimum, higher than that of the lowest quartile of these measures for similar Illinois institutions defined as open versus competitive enrollment institutions and primarily associate versus primarily baccalaureate granting institutions. Exceptions may be made to the lowest quartile if an institution is above the national average for these measures using the same comparison categories of institutions.

F) Requirements for Technologically Mediated Instruction Offered at a Distance. In addition to meeting

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other requirements in this Part, programs offered through electronically mediated distance learning must, at a minimum, meet the following requirements:

- i) The institution assures adequacy of technical and physical plant facilities, including appropriate staffing and technical assistance, to support its electronically offered programs.
- ii) The institution provides students, faculty and staff with effective technical support and training for each educational technology hardware, software and delivery system required in a program. The help desk function is available to students during hours when it is likely to be needed, which shall be, at a minimum, 18 hours a day.
- iii) Appropriate measures for security of systems and adequacy of support are maintained. The selection of technologies is based on appropriateness for the students, faculty and curriculum.

- iv) Faculty are full participants in decisions regarding curricula and program oversight.
- v) Demonstration of student learning and program outcomes are appropriate to the field and degree level and consistent regardless of program delivery method.
- vi) Appropriate admission processes, policies and assessments are used to ensure that students are capable of succeeding in an on-line learning environment. Students are adequately informed of the nature and expectations of on-line learning.
- vii) Assessments of student learning, especially exams, take place in circumstances that include student identification and assurance of the integrity of student work.
- viii) Assessment of electronically offered programs by the institution occurs in the context of the regular evaluation of all academic programs.

- 3) The institution shall have adequate and suitable space, equipment and instructional materials to provide education of suitable quality.
- 4) The education, experience and other qualifications of faculty, staff and instructors shall reasonably ensure that the students will receive education consistent with the objectives of the course or program of study.
 - A) At a minimum, faculty shall have a degree from an institution accredited by a U.S. Department of Education recognized accrediting body or a degree from another country evaluated for U.S. equivalency in the discipline they will teach or for which they will develop curricula at least one level above that of the courses being taught or developed.
 - i) Faculty providing undergraduate general education coursework shall possess, at a minimum, a master's degree in the field of instruction.
 - ii) Faculty engaged in providing technical and career coursework at the associate degree level shall possess, at a minimum, a

bachelor's degree in the field of instruction or equivalent training in the occupational field.

iii) Faculty teaching in a baccalaureate degree program shall have, at a minimum, a master's in the field of instruction.

iv) Faculty teaching in a graduate program shall have a doctorate or terminal degree in the field of instruction.

v) Exceptions may be made for professional experience, equivalent training and other qualifications; however, these should be the exceptions and not the rule in meeting faculty qualification requirements. These exceptions for faculty may be recommended by the Board staff.

B) Faculty to student ratios and full time faculty to part time faculty ratios shall be factors in determining appropriate provision of qualified faculty. Institutions shall have policies in place that serve to ensure equivalency of

instruction and program delivery across faculty members, including methods of measuring equivalency of student learning outcomes across faculty. The Board shall establish minimum rates of success based on data for similar institutions. The ratios shall be, at a minimum, higher than those of the lowest quartile of these measures for similar Illinois institutions defined as open versus competitive enrollment institutions and primarily associate versus primarily baccalaureate granting institutions. Exceptions may be made to the lowest quartile if an institution is above the national average for these measures using the same comparison categories of institutions.

5) Program Information

- A) The institution shall provide to the public upon request a catalog, either in print or electronically, with the information listed in this subsection (a). This information shall be provided in print and on the institution's website without requiring the student to provide contact or other personal information in order to access the information. The catalog or

brochure shall contain the following information:

- i) Descriptions of the degree programs offered, program objectives, length of program and institutional calendars with degree program start and end dates;
- ii) Schedule of tuition, fees and all other charges and expenses necessary for completion of the course of study, and cancellation and refund policies;
- iii) A statement regarding the transferability of college credits, including the fact that the decision to accept transfer credits is currently made by receiving institutions;
- iv) A statement as to how the institution will advise students on the nature of the transfer process, including the importance of consulting with institutions to which the student may seek to transfer;
- v) Evidence of articulation arrangements with institutional counterparts, when these arrangements exist;
- vi) A statement of the institution's most recent graduation rates and the numbers of graduates and enrollments as provided by the institution to the Integrated

Postsecondary Education Data System (IPEDS). There is no exception if the institution does not report data to IPEDS. The State also requires the collection of data on student financial aid and dual credit offerings;

- vii) A statement of the institution's accreditation status with a U.S. Department of Education recognized accrediting body. If no such accreditation exists, the institution must prominently state this in its advertising and published materials; and
- viii) Other material facts concerning the institution and the program or course of instruction as are likely to affect the decision of the student to enroll, together with any other information specified by the Board and defined in this Part.

B) The information listed in subsection (a)(5)(A) shall be available to prospective students prior to enrollment.

- 6) Upon satisfactory completion of the degree program, the student shall be given the appropriate degree by the institution, indicating that a specifically approved course of instruction or study has been satisfactorily completed by the student.

- 7) Adequate records shall be maintained by the institution to show attendance, progress or grades, and consistent standards should be enforced relating to attendance, progress and performance.
- 8) The institution shall be maintained and operated in compliance with all pertinent local, State and national ordinances and laws.
- 9) The institution should be financially stable and capable of assuring the revenues needed for meeting stated objectives and fulfilling commitments to students.
- 10) Neither the institution nor its agents should engage in advertising, sales, collection, credit or other practices of any type that are false, deceptive, misleading or unfair.
- 11) The institution should have a fair and equitable cancellation and refund policy. This policy shall apply equally to all students regardless of whether the student receives federal or State financial aid.
- 12) The faculty, staff and instructors of the institution shall be of good professional reputation and character.

13) If the institution requires the student to sign an enrollment agreement or a similar agreement, the agreement shall provide consumer information including, but not limited to: an explanation of all criteria and requirements for retention, progress towards degree, and graduation of the student; the institution's tuition, cancellation and refund policies; and a statement of the purpose and amount of any fees assessed.

A) No institution shall enter into any enrollment agreement in which the student waives the right to assert against the school or any assignee any claim or defense he or she may have against the school arising under the agreement.

B) Although the school may use an enrollment agreement that sets forth the total cost of the program, no school may have a tuition policy or enrollment agreement that charges a student for multiple periods of enrollment prior to completion of the single semester, quarter, term or other period of enrollment.

14) Any institution applying for a Certificate of Approval or authorization to operate in the State of Illinois must specify its accreditation status. New institutions

without accreditation from an accrediting authority recognized by the U.S. Department of Education or the Council for Higher Education Accreditation shall provide a clearly defined plan to move from candidate to affiliate status. The plan should include the name of the accrediting organization, the basic outline of the accreditation process, and the projected time line for obtaining affiliate status within five years after the date of Board approval, unless the Board waives the original time line because it is found to be an unrealistic expectation.

- b) Procedures for Obtaining a Certificate of Approval and/or Authorization to Operate
Following is a description of the steps in the approval process:

1) Letter of Intent

The Chief Executive Officer of the institution seeking a Certificate of Approval and/or Authorization to Operate a degree-granting postsecondary institution in the State of Illinois should make this intention known by writing to the Board. Following receipt of this letter, the Board staff may arrange a preliminary conference with institutional representatives.

2) Preliminary Conference

The agenda will include a discussion of criteria to be met by the institution and

procedures used in applying for a Certificate of Approval and/or Authorization to Operate.

- 3) Letter of Application and Documentation
Following the preliminary conference, the institutional representatives shall complete the application supplied by the Board. The application requests information and supporting evidence to demonstrate that the institution meets the criteria established.
- 4) Staff Analysis
Following the receipt of the formal application and accompanying documentation, staff will review and analyze all materials.
- 5) Site Visit
 - A) Following completion of documentation and staff analysis of the application, a site visit may be arranged in order to verify and supplement the information provided about the proposed institution. Site visits may be scheduled if:
 - i) the Board is not familiar with the physical facilities;
 - ii) the institution asks for a site visit;

iii) questions have been raised about the veracity of the application; or

iv) for other reasons the proposed institution/program does not lend itself to an in-office analysis.

B) The site visit may include interviews with prospective administrators, students, faculty and/or board members and observations of facilities, record systems, financial data and/or curricular resources.

6) Outside Consultants

The Executive Director of the Board, at his or her discretion, may utilize the services of outside consultants to assist the staff in the verification and/or evaluation of the documentation submitted or obtained through the site visit.

7) Staff Report

A) Following the site visit, Board staff will prepare an analysis of the findings and develop a recommendation to the Board regarding the institutional application. This recommendation will be shared with the applicant.

B) The recommendation will be one of the following:

- i) That the institution be issued a Certificate of Approval and/or Authorization to Operate, subject to annual reporting and the implementation and maintenance of the conditions under which approval/authorization has been granted; or
- ii) That the institution be denied a Certificate of Approval and/or Authorization to Operate.

8) Staff Recommendations to the Board

The Executive Director of the Board will submit the staff recommendation to the Board for action at a regular meeting. The Chief Executive Officer of the applicant institution or a designee will be invited to attend the meeting and comment on the recommendation. In the event the staff recommendation is negative, the applicant shall be given an opportunity to respond in writing. This response shall be transmitted to the Board at the same time as the staff recommendation.

9) Board Action

Following the Board's decision to issue a Certificate of Approval and/or Authorization to Operate or to deny a Certificate of Approval and/or Authorization to Operate, a letter

signifying the action will be sent from the Executive Director of the Board to the Chief Executive Officer of the institution. A letter of approval will serve as the official Certificate of Approval/Authorization to Operate for the institution in the State of Illinois.

- c) Initial authorization to operate in Illinois for institutions new to the State shall be for five years. In the fifth year of operation, the Executive Director of the Board shall instruct staff to conduct a review. The Board may deny a continuation of the initial approval or offer a limited extension if the institution:
 - 1) Has failed to implement and maintain the conditions that were presented in its application and that formed the basis upon which authorizations were granted;
 - 2) Has failed to maintain sound fiscal status;
 - 3) Has failed to achieve accreditation through a U.S. Department of Education recognized accrediting body for degree granting institutions during the initial five year period. Failure to achieve accreditation shall be grounds for immediate revocation of approval. Until accreditation is achieved, the institution shall clearly and appropriately state in all promotional materials and advertisements and on its webpage that it is not accredited; or

- 4) Has failed to demonstrate success in student progression and graduation and success rates in programs preparing students for certification and licensure that are consistent with expectations in higher education and the appropriate related field of study. At a minimum, the Board shall consider the following factors, based on results for similar institutions:
- i) Graduation rates, degree completion rates, retention rates, and pass rates for licensure and certification.
 - ii) Success rate, which shall be, at a minimum, higher than that of the lowest quartile of these measures for similar Illinois institutions defined as open versus competitive enrollment institutions and primarily associate versus primarily baccalaureate granting institutions. Exceptions may be made to the lowest quartile if an institution is above the national average for these measures using the same comparison institutions.
 - iii) At a minimum, the data shall include student loan default rates, student indebtedness rates, job placement rates,

student learning measures and other success indicators.

- iv) The success rate shall be, at a minimum, higher than that of the lowest quartile of these measures for similar Illinois institutions defined as open versus competitive enrollment institutions and primarily associate versus primarily baccalaureate granting institutions. Exceptions may be made to the lowest quartile if an institution is above the national average for these measures using the same comparison categories of institutions.
- d) Nothing in this Section shall be construed to prevent the Board from withdrawing Certification of Approval or Authorization to Operate at any time, including during the first five years of operation, if an institution has failed to implement and maintain the conditions that were presented in its applications and that form the basis upon which its certificate or authorization was granted.
- e) Publications and Information. Institutions shall be scrupulously ethical in all communication with the public and with prospective students. School publications, advertisements and statements shall be

wholly accurate and in no way misleading. Violations of this subsection shall be grounds for immediate investigation of the institution pursuant to Section 1030.70 and, depending on the results of the investigation, may be grounds for revocation proceedings under Sections 1030.70 and 1030.80.

- 1) An institution may state that it is approved or authorized to operate in the State of Illinois only after approval has been officially granted and received in writing from the Board and while authorization is maintained.
 - A) Institutions authorized by the Board may use the authorization in advertising and promotional material and on letterhead stationery only if using the following language: (name of school) is authorized for operation by the Illinois Board of Higher Education. The entire statement must be used with the same size font and font type of print.
 - B) Institutions authorized by the Board that have presence, advertise or offer instruction via internet, world wide web or other electronic telecommunication means must state or have a link on the first page (as registered with standard web/internet search engines) to the following statement that can be readily viewed

by the consumer: (name of school) is authorized to operate as a postsecondary educational institution by the Illinois Board of Higher Education. In the case of an internet site, within the required statement given above, Illinois Board of Higher Education must be an electronic link to the Board's website at www.ibhe.org.

- 2) No statement shall be made that the institution or its courses of instruction have been accredited unless the accreditation is identified as that of an appropriate U.S. Department of Education recognized accrediting agency. An institution shall not advertise or state in any manner that it is "accredited" by the Board.
- 3) No institution shall publish or otherwise communicate to prospective students, faculty, staff or the public misleading or erroneous information about the operating or degree-granting status of a given institution.
- 4) Recruitment and informational materials of an institution that has received only approval and/or authorization from the Board to operate shall indicate that the institution is not yet authorized to award degrees.

- 5) No dollar amount shall be quoted in any advertisement as representative or indicative of the earning potential of graduates.
- 6) Institutions or representatives shall not use a photograph or other such illustration in public documents, sales literature or otherwise in such a manner as to convey a false impression as to size, importance or location of the institution or equipment and facilities associated with that institution.
- 7) Institutions or representatives shall not make deceptive statements concerning other institutional activities in attempting to enroll students.
- 8) No statement or representation shall be made that students will be guaranteed employment while enrolled in the institution or that employment will be guaranteed for students after graduation, nor shall any institution or representative misrepresent opportunities for employment upon completion of any course of study.
- 9) The Board, at any time, may require that an institution furnish proof to the Board of any of its advertising claims. If proof acceptable to the Board cannot be furnished, a retraction of the advertising claims, published in the same manner as

the claims themselves, must be published by the institution and continuation of that advertising shall constitute cause for revocation of the institution's Certificate of Approval and Authorization to Operate.

- 10) Student loans offered to students by the institution or those agents it recommends must clearly state whether the loans are federal student aid loans.
- 11) No statement shall be made by an institution or its representatives that the programs and/or courses or exams are transferable to another institution without current documentation by an authorized official of the receiving institution.
- 12) Each Board authorized institution or institution receiving a Board degree authorization must provide in its catalog and print promotional materials and on its website the Board's mailing address and the Board's website link for reporting complaints. For the website information, there must be an electronic link to the Board's website on the first page (as registered with standard web/internet search engines).