FIRST LIBERTY

September 12, 2025

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Sent via U.S. mail and email

Re: Liberty Military Housing / Little Creek - Compliance

Dear Mr. Rizzo and Mr. Ortiz:

First Liberty Institute is a nationwide nonprofit law firm dedicated to defending religious liberty for all Americans. We represent Lieutenant Commander Levi Beaird, one of your residents who was recently asked to remove his Appeal to Heaven flag for violating the Community Guidelines. Please direct all future communications regarding this matter to us.

Factual Background

LCDR Beaird, his wife, and five young children reside on base at Joint Expeditionary Base ("JEB") Little Creek-Fort Story. On Friday, September 5th, LCDR Beaird was approached by a Liberty Military Housing ("LMH") employee and asked to remove his Appeal to Heaven flag from his property because of alleged complaints that the flag was offensive and racist. The flag, which dates to the American revolutionary period, displays a pine tree and the words "An Appeal to Heaven." As a Christian, LCDR Beaird feels compelled by his religious beliefs to display this flag as a recognition of God's divine authority and control. So LCDR Beaird refused to remove the flag.

On September 10th, LCDR Beaird received a written demand that he remove the flag, alleging violation of his lease with Mid-Atlantic. He was informed that he had 48 hours to comply with the following:

> ALTERATIONS and DECORATING
>
> Any requested alterations to the Premises must be submitted to the Community Manager (CM) in writing. Approval must be granted in writing prior to starting the work or purchasing materials. The approval will specify the terms and conditions for maintenance and liability. Once approval has been granted, Tenant is responsible for the continued maintenance of the improvement. Section 20 includes additional information on alterations and decorating.
>
> All window treatments must show white to the outside. Colored window treatments will not be allowed. Blinds installed by the CM may not be removed or replaced except by CM.
>
> Tenant is permitted to display the United States flag and Military Service flags (no larger than 3'x5') at the Premises. Garden flags are permitted (inappropriate wording/symbols/pictures are prohibited). Sports team flags are permitted on a flag pole and may not exceed a size of 3'x5'. No other flags are permitted. Flags may not be affixed directly to the Premises or in windows. Installation prohibited signage will not be allowed.

Community Guidelines & Policies, Bradford Cove, 6 (Nov. 2023).

Presumably, failure to comply will result in lease termination and eviction of his family. *See* Lease Terms and Conditions, Section 10.I.1(ii).

Legal Analysis

Residents of on-base military housing are protected by the laws of the United States which include, among others, the U.S. Constitution and the Religious Freedom Restoration Act ("RFRA"). The demand that LCDR Beaird remove his Appeal to Heaven flag because it violates the Community Guidelines offends the Free Exercise and Free Speech Clauses of the First Amendment and RFRA. Thus the flag provision, both facially and as applied to LCDR Beaird, is unlawful and unenforceable.

LCDR Beaird's home is owned by Mid-Atlantic Military Family Communities LLC, a public-private venture with the Navy. LMH Property Management LLC, is Mid-Atlantic's agent who performs the day-today management responsibilities of the property. LCDR Beaird's home is on base at JEB Little Creek-Ft. Story and is operated as military housing for servicemembers and their families. Because of the character of its relationship to the Navy and nature of services it provides to sailors, Mid-Atlantic is acting under color of law. Thus, Mid-Atlantic—and its agent, LMH—must comply with the strict demands of constitutional and federal statutory law.

In the context of determining when a private actor can be considered a government actor, *Manhattan Community Access Corporation v. Halleck* instructs that "a private entity may be considered a state actor when it exercises a function 'traditionally

exclusively reserved to the State.'" 587 U.S. 802, 804 (2019) (quoting *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 352 (1974)). *See Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999) (holding that the "ultimate issue" in deciding whether a private defendant can be sued under RFRA is whether "the alleged infringement of federal rights" is "fairly attributable to the government") (cleaned up); *Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731, 738 (7th Cir. 2015) (holding that RFRA may apply to a private defendant when there is "such a close nexus between the State and the challenged action that the challenged action may be fairly treated as that of the State itself") (cleaned up). While "very few functions fall into that category," the United States Supreme Court has found that one such function is "operating a company town." *Manhattan Cmty. Access Corp.*, 587 U.S. at 809–10 (citing *Marsh v. Alabama*, 326 U.S. 501, 505–09 (1946)). Mid-Atlantic and LMH are no different.

Traditionally, housing on military bases was exclusively owned, provided, and maintained by the Department of Defense. In recent decades Congress authorized public-private ventures to provide military housing. *See* National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106, 110 Stat 186; *Federico v. Lincoln Military Housing*, 901 F. Supp. 2d 654, 657–58 (E.D. Va. Oct. 18, 2012). Not every base collaborates with private entities for its servicemember housing needs, but some do. JEB Little Creek-Ft. Story is one of those bases.[1] This means that, like the Navy itself, Mid-Atlantic may not transgress constitutional and federal statutory boundaries vis-à-vis servicemembers' religious rights in its provision and operation of on-base military housing.

Additionally, Mid-Atlantic's military housing is subject to the Fair Housing Act ("FHA"), which prohibits discrimination on the basis of religion. *See* Testimony of Philip J. Rizzo before the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the House Cmte. on Appropriations, 7 (Mar. 31, 2022) ("LMH's … policies adhere to all state and Federal laws pertaining to privatized military housing, including … the Fair Housing Act.").[2]; *see also Diltz v. Ashton*, No. CV BPG-20-266, 2022 WL 2528427, at *5 (D. Md. July 6, 2022) (noting Mid-Atlantic's obligation to comply with the FHA).

1. Fair Housing Act

The Fair Housing Act provides that it is unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of … rental of a dwelling … because of … religion." 42 U.S.C. § 3604(b). In the Fourth Circuit, the FHA applies to post-acquisition

[1] "Your community is one of numerous Navy installations to have privatized their family housing communities. As such, Mid-Atlantic Military Family Communities LLC, a public-private venture between a private developer and the Navy, is proud to assume responsibility for the military family tenants' housing needs. LMH Property Management LLC (the Community Manager), as the agent for Mid-Atlantic Military Family Communities LLC (the Owner), will perform the day-today management responsibilities." Community Guidelines & Policies, Bradford Cove, 4 (Nov. 2023).

[2] Available online at https://www.congress.gov/117/meeting/house/114538/witnesses/HHRG-117-AP18-Wstate-RizzoP-20220331.pdf (last visited Sept. 11, 2025).

conduct. *See Radcliffe v. Avenel Homeowners Ass'n, Inc.*, No. 7:07-CV-48-F, 2013 WL 556380, at *5 (Feb. 12, 2013).

The flag policy found in the Community Guidelines discriminates against LCDR Beaird based on religion both facially and as-applied. The policy is discriminatory on its face because it allows many different types of flags, but not religious flags. It's discriminatory as-applied because Mid-Atlantic invoked the policy to ban LCDR Beaird's religious flag. Clearly, in practice Mid-Atlantic allows other types of flags, but not his. *See* Attachment 1.

LMH's notice provided to LCDR Beaird of his "violation" of the Community Guidelines started the clock found in Section 10.I.1(ii) of the Lease Terms and Conditions. There, the lease details:

> If Tenant (1) is in default under any of the covenants, terms or conditions of this Lease, including the Tenant Responsibilities outlined in Section 7.C. hereof and the rules and regulations contained in the Community Guidelines & Policies, and (ii) if Community Manager has given Tenant written notice of the default and thirty (30) calendar days have expired without cure by the Tenant, unless a greater amount of time for cure of the default is specified in the Community Guidelines & Policies.

The written notice provided to LCDR Beaird constitutes an enforcement action which results in religious discrimination prohibited by the FHA. *See Morris v. West Hayden Estates First Addition Homeowners Association, Inc.*, 104 F.4th 1128, 1140 (9th Cir. 2025) ("discrimination against a member of a protected class in the interpretation and enforcement of HOA rules can violate § 3604(b) of the FHA"). Failure of Mid-Atlantic to rescind the notice provided to LCDR Beaird will culminate in it being held liable under the FHA.

2. Religious Freedom Restoration Act

Congress designed RFRA "to provide very broad protection for religious liberty." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014). Under RFRA the government—or in this case, a government actor—may not substantially burden a person's exercise of religion unless it demonstrates that application of the burden *to the person* furthers a compelling governmental interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1; *see Tanzin v. Tanvir*, 592 U.S. 43, 45 (2020) ("RFRA sought to . . . restore the pre-*Smith* 'compelling interest test' by 'provid[ing] a claim . . . to persons whose religious exercise is substantially burdened by government.'").

Mid-Atlantic and LMH are government actors for the purposes of RFRA. *Tanzin v. Tanvir*, 592 U.S. 43, 48 (2020). RFRA "requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law to . . . the particular claimant whose sincere exercise of religion is being substantially

burdened." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-31 (2006). Neither the U.S. Navy, Mid-Atlantic, nor LMH can demonstrate a compelling government interest in precluding LCDR Beaird from displaying his Appeal to Heaven flag. Further, even if they had a compelling interest, they have not accomplished it using the least restrictive means. *Cf. Moussazadeh v. Texas Dep't of Criminal Justice*, 703 F.3d 781, 795 (5th Cir. 2012) (explaining the government's burden of showing it has met strict scrutiny "is the most demanding test known to constitutional law").

Without a doubt, LCDR Beaird's religious exercise is being substantially burdened. The punishment for failing to comply with the Community Guidelines is termination and eviction. Lease, § 10.I.1(ii). LMH's demand that he remove the flag or face eviction forces him into an impossible choice. *Cf. BST Holdings, LLC v. Occupational Safety & Health Admin., United States Dep't of Labor*, 17 F.4th 604, 618 & n.21 (5th Cir. 2021) (OSHA's Mandate substantially burdened free religious exercise because it forced individuals to choose "between their job(s) and their jab(s)"). This type of choice is the textbook definition of the very endangerment or destruction of religious beliefs that RFRA seeks to prevent. *See Sherbert*, 374 U.S. at 404 (the denial of unemployment benefits "forces [Sherbert] to choose between following the precepts of her religion and forfeiting benefits . . . and abandoning one of the precepts of her religion in order to accept work"); *Wisconsin v. Yoder*, 406 U.S. 205, 218–219 (1972) (compulsory school attendance to age 16 forces the Amish to "either abandon belief and be assimilated into the society at large, or be forced to migrate to some other more tolerant religion").

Because Mid-Atlantic is substantially burdening LCDR Beaird's religious exercise, its application of its restrictive flag policy violates RFRA unless it can prove its restrictions withstand strict scrutiny. 42 U.S.C. § 2000bb-1(b) and § 2000bb-2(3); *see O Centro*, 456 U.S. at 429 ("Here the burden is placed squarely on the Government by RFRA."). Notably, this test requires Mid-Atlantic to demonstrate not just a generalized necessity of applying its discriminatory flag policy to all residents, but rather that imposing its policy on *LCDR Beaird specifically* is the least restrictive means to further a compelling government interest. 42 U.S.C. § 2000bb-1(b) ("Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden *to the person*—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." (emphasis added)); *see Hobby Lobby*, 573 U.S. at 726-27 (explaining that RFRA's "more focused inquiry" requires looking beyond broad interests to "the marginal interest" in substantially burdening the "particular claimants" religion); *O Centro*, 456 U.S. 430–31. A general interest in the abstract—like "curb appeal"—is not compelling.

3. First Amendment

The First Amendment to the U.S. Constitution provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." These clauses "work in tandem. Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities."

Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 523 (2022). The double protection afforded religious speech is by design —"a natural outgrowth of the framers' distrust of government attempts to regulate religion and suppress dissent." *Id.* at 524 (citing A Memorial and Remonstrance Against Religious Assessments, in Selected Writings of James Madison 21, 25 (R. Ketcham ed. 2006)). LCDR Beaird's display of the Appeal to Heaven flag falls squarely under the protection of both clauses. In short, it is "doubly protect[ed]." *Id.* at 523.

Service members do not forfeit their First Amendment rights by virtue of their military service, including when the service member resides in military housing. Even under circumstances during which service members' right of speech and expression may be abridged, the government or a government actor cannot censor such speech in an arbitrary and capricious manner. Yet, that is precisely what occurred here.

A. The prohibition on LCDR Beaird's Appeal to Heaven flag violates his right to free speech.

LCDR Beaird's flag display is expressive communication protected by the First Amendment's Speech Clause. The Supreme Court has recognized the use of flags as symbolic communication for nearly 100 years. *See Stromberg v. California*, 283 U.S. 359, 369-70 (1931). "The use of [a] flag to symbolize some system, idea, institution, or personality, is a [shortcut] from mind to mind." *Texas v. Johnson*, 491 U.S. 397, 405 (1989); *see also W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 632 (1943) (same). "Such adornments have multiple meanings, including but not limited to conveying allegiance to a particular institution or a broad band of convictions, values, and beliefs." *Berner v. Delahanty*, 129 F.3d 20, 29 (1st Cir. 1997).

And most concerningly, the prohibition on LCDR Beaird's Appeal to Heaven flag because of its religious message constitutes viewpoint discrimination in violation of the First Amendment. "It is axiomatic that the government may not regulate speech based on . . . the message it conveys." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995) (citing *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972)). "Viewpoint discrimination is . . . an egregious form of content discrimination," and "[d]iscrimination against speech because of its message is presumed to be unconstitutional." *Id.* at 828–29.

Here, the Community Guidelines specifically allow residents to display "the United States flag and Military Service flags," "[g]arden flags" (so long as they do not include "inappropriate wording/symbols/pictures"), and "[s]ports team flags." Community Guidelines, 6. Mid-Atlantic "must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger*, 515 U.S. at 829. "When a government does not speak for itself, it may not exclude speech based on 'religious viewpoint'; doing so 'constitutes impermissible viewpoint discrimination.'" *Shurtleff v. City of Boston*, 596 U.S. 243, 258 (2022) (*quoting Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 112 (2001)). Allowing

some flags, namely sports team flags, but not a religious flag (and arguably a former military service flag[3]) is viewpoint discrimination. *See* Attachment 1.

In the end, even if other residents are offended by the Appeal to Heaven flag, this does not give Mid-Atlantic grounds to punish LCDR Beaird. *See United States v. Eichman*, 496 U.S. 310, 319 (1990). "Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection." *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 118 (1991); *see also Matal v. Tam*, 582 U.S. 215, 220 (2017) ("Giving offense is a viewpoint.").

B. The prohibition on LCDR Beaird's Appeal to Heaven flag violates his right to freely exercise his religion.

The Free Exercise Clause bars the government—or here, a government actor—from imposing regulations that are hostile to the religious beliefs of individuals, outlawing even "subtle departures from neutrality" on matters of religion. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 584 U.S. 617, 638 (2018). Acts "are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). Here, Mid-Atlantic can only prevail if it shows that its restrictions on religion both "advance interests of the highest order and [are] narrowly tailored in pursuit of those interests." *Id.* (internal quotations omitted).

Mid-Atlantic's prohibition of LCDR Beaird's Appeal to Heaven flag, while allowing comparable messages from a non-religious perspective, i.e., sports team flags, renders the policy non-neutral and non-generally applicable, and, as such, it is subject to strict scrutiny. *See Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993). And just as with RFRA, Mid-Atlantic cannot satisfy the requirements.

Conclusion

LCDR Beaird and his family reside in on-base housing, provided by, and within the jurisdiction of, the United States government through its joint endeavor with Mid-Atlantic and LMH. Because of that, he is entitled to the protection of federal law from violations of his rights. Indeed, because Mid-Atlantic and LMH are government actors, they are subject to the demands of the U.S. Constitution and federal statutory law. Prohibiting LCDR Beaird from displaying his Appeal to Heaven flag under threat of eviction violates the First Amendment and RFRA. And Mid-Atlantic is subject to the demands of the FHA—enforcing this prohibition is to engage in religious discrimination. Thus, the flag policy found in the Community Guidelines is unlawful and unenforceable.

We ask you to rescind, in writing, your September 10, 2025 demand that LCDR Beaird remove his religious flag and confirm that he is not in violation of his lease. Otherwise, we stand prepared to take legal action necessary to safeguard LCDR Beaird's

[3] *See* Press Release, Rep. Chris Miller (Apr. 4, 2019), https://repcmiller.com/2019/04/04/georgewashington-appeal-to-heaven-flag-helps-focus-attention-on-national-day-of-prayer-on-may-2nd/.

constitutional and statutory rights. To that end, we respectfully request that you respond to this letter by Friday, September 26, 2025. Should you find a discussion via phone helpful in the preceding time, feel free to contact us by phone or email.

Thank you for your attention to this matter.

Respectfully,

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ATTACHMENT 1

A home located in JEB Little Creek-Ft. Story shown flying a University of Alabama flag, whose size and location on the residence is comparable to LCDR Beaird's Appeal to Heaven flag.