FIRST LIBERTY

January 6, 2026

Charles Parker
Interim President, Military Housing Operations
Balfour Beatty Military Housing Management LLC
1 Country View Rd.
Malvern, PA 19355
[redacted]

Sent via U.S. mail and email

Re: Malmstrom AFB Privatized housing – religious violation

Dear Mr. Parker:

First Liberty Institute is a nationwide nonprofit law firm dedicated to defending religious liberty for all Americans. We represent Technical Sergeant Robert Durrant, one of your residents who was asked to remove a religiously themed flag for violating the Community Guidelines. Please direct all future communications regarding this matter to us.

Factual Background

TSgt Durrant, his wife, and four children reside on base at Malmstrom Air Force Base ("AFB"). Upon moving there in December 2023, they noticed a wide array of flags displayed on the front of homes in on-base housing. Among them were flags representing "straight ally" LGBTQ pride, various college and professional sports teams, a state, foreign nations, seasons of the year, support for law enforcement, and personal improvement maxims. Within this context, at that time, TSgt Durrant hung his own flag, a hybrid US-Israel flag. When flying that flag he never received any notice of lease violation. Then, mid-year in 2025, he removed this flag and replaced it with a flag displaying the words, "Jesus is my King Trump is my President."

On Friday, September 12th, TSgt Durrant was contacted by a Balfour Beatty ("Balfour") employee via telephone, who asked him to remove his "Jesus is my King" flag from his property, telling him it violated "all sorts of policies." As a Christian, TSgt Durrant feels compelled by his religious beliefs to display this flag in recognition of a duty to publicly acknowledge Christ's divine lordship, and as an expression of loyalty to the commander in chief, so he did not want to remove it and asked for the policy or policies in writing. That same day, TSgt Durrant received via email a demand from the Balfour employee that he remove the flag, alleging violation of his lease. In it, and again in a second email that afternoon, he was informed that he had 48 hours to comply with the following:

> *The display of flag and/or pennants is permitted in the Family Housing areas but must meet the following criteria: Flags or pennants can only be the American Flag, Service Branch flags, or other Installation authorized flags.*

Community Guidelines & Policies, Malmstrom AFB Homes, 35 (October 19, 2023).

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

Balfour's employee also furnished this demand to TSgt Durrant's military chain of command. His military leadership subsequently met with him and ordered him to comply with your demand or risk military discipline. On Monday, September 15, TSgt Durrant removed his Jesus is my King flag so as to not risk eviction or military discipline.

TSgt Durrant raised his matter to members of Congress on September 12 and 13. On September 13, a member of Congress' staff member emailed a Balfour employee about the matter. That employee responded on September 17, "We are conducting further review of this matter and will update you as soon as possible." On September 18, at the encouragement of his commander, TSgt Durrant emailed Balfour employee Tanner Haines to ask for permission to fly his flag and explained the religious basis for his request. He expressed openness to fly another religiously themed flag; for example, displaying scriptures from the Gospel of John, the book of Revelation, or the prophet Joshua. A civilian employee in the military housing office, Kendra Charron, responded to him and told him he needed to make that request through his military chain of command, as he allegedly violated a "DoD policy … not a Housing or Malmstrom AFB policy," in seeming contradiction to the earlier notice that he was in violation of his lease agreement.

On Monday, September 22, TSgt Durrant inquired of Balfour Beatty's employee if the installation had approved any other flags, as that possibility is indicated in the Community Guidelines. He was told it had not approved any other flags. This struck him as inconsistent, as many other flags remained displayed on homes on the base. On Tuesday, September 23, TSgt Durrant began to notice that some, but not all, other flags on base housing began to be removed, including a LGBTQ "pride" flag that had been flying since he first moved to Malmstrom AFB in December 2023. On September 25, 2025, TSgt Durrant received an email from "Malmstrom AFB Homes <no-reply@rentcafe.com>" addressed to "Malmstrom AFB Homes Residents" with the subject line "Flag Policy Reminder." This email provided recipients a copy of the flag policy from the Community Guidelines. It did not specify the penalty or remedy for non-compliance. Many non-compliant flags have continued to be flown, or have been put back up and are being flown.

When TSgt Durrant raised this to the Malmstrom AFB commander, the installation commander disclaimed any responsibility for accommodating TSgt Durrant's religious beliefs or processing his religious accommodation request, explaining that base housing is "managed by Balfour Beatty Military Housing Management," and he should therefore seek relief from Balfour.

Legal Analysis

Residents of on-base military housing are protected by the laws of the United States which include, among others, the Religious Freedom Restoration Act ("RFRA"), and the U.S. Constitution, and the Fair Housing Act ("FHA"). The demand that TSgt Durrant remove his Jesus is my King flag offends RFRA, the Free Exercise and Free Speech Clauses of the First Amendment, and the FHA. The flag provision, as applied to TSgt Durrant, is unlawful and unenforceable.

TSgt Durrant's home is owned by Western Group Housing LP ("Western Group") a public-private venture with the federal government for the purposes of providing military housing. Balfour Beatty Military Housing Management LLC, is Western Group's agent who performs the day-to-day management responsibilities of the property. TSgt Durrant's home is on base at Malmstrom AFB and is operated as military housing for servicemembers and their families. Because of the character of its relationship to the Air Force, Western Group is acting under color of law. Thus, Western Group—and its agent, Balfour Beatty—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)). Malmstrom AFB housing run by Group Housing and Balfour is 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 many do. Malmstrom AFB is one of those bases.[1] This means that, like the Air Force itself, Western

[1] "The military family housing located at, or supporting, the installation (the "Installation") where your home is located is owned by Landlord, and is maintained and operated in partnership with the military. Landlord's property manager (BBC AF Management/Development LLC for Air Force Sites and Balfour

Group and Balfour 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, Western Group's military housing is subject to the Fair Housing Act ("FHA"), which prohibits discrimination on the basis of religion. *See Diltz v. Ashton*, No. CV BPG-20-266, 2022 WL 2528427, at *5 (D. Md. July 6, 2022) (noting privatized military housing owner's obligation to comply with the FHA); *see also Sackman v. Balfour Beatty Communities, LLC*, No. CV 113-006, 2014 WL 4415938, at *5 (S.D. Ga. Sept. 8, 2014) (applying the FHA to a privatized military housing owner and agent).

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 Ninth Circuit, the FHA applies to post-acquisition conduct. *See The Committee Concerning Community Improvement v. City of Modesto*, 583 F.3d 690, 713 (9th Cir. 2009).

The Supreme Court has instructed courts to give the FHA a "broad and inclusive" reading, and a "generous construction" to the Act's complaint-filing provision. *City of Edmonds v. Oxford House, Inc.,* 514 U.S. 725 (1995). Such liberal construction not only protects tenants from eviction, but also from discriminatory actions that would lead to eviction but for an intervening cause. *Hunt v. Aimco Props.*, L.P., 814 F.3d 1213, 1223 (11th Cir. 2016). The written notice provided to TSgt Durrant 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"). The failure of Balfour to accommodate TSgt Durrant will culminate in liability under the FHA.

The flag policy found in the Community Guidelines discriminates against TSgt Durrant based on religion both facially and as-applied. The policy is discriminatory on its face because it allows certain types of flags, but not religious flags. It is discriminatory as-applied because Balfour Beatty invoked the policy to ban TSgt Durrant's religious flag.

The United States Department of Justice ("DOJ") has explained that the FHA's prohibition on religious discrimination applies to both "overt discrimination" as well as that which is "less direct." The Fair Housing Act, THE U.S. DEP'T OF JUST., https://www.justice.gov/crt/fair-housing-act-1 (last updated June 22, 2023). A policy that authorizes some flags—but makes no allowance for religious flags—is not facially neutral. As a DOJ Civil Rights Division report explains, "if people are permitted to put decorations on their apartment doors, religious individuals should be able to put religious items or decorations on their doors, such as a Jewish mezuzah or a cross." U.S. DEP'T

Beatty Military Housing Management LLC for Army and Navy sites) manages the family housing." Community Guidelines & Policies, Malmstrom AFB Homes, 5 (Oct. 19, 2023).

OF JUST., CIVIL RIGHTS DIV., REPORT ON ENFORCEMENT OF LAWS PROTECTING RELIGIOUS FREEDOM, at 17 (2001–2006), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/report.pdf (last visited September 24, 2025).

Western Group's "Community Guidelines" allows other types of flags, but not TSgt Durrant's religious flag. This is the very definition of impermissible discrimination in the terms and conditions of a housing lease, as described by the Department of Justice Civil Rights Division report above.

Yet even if Balfour's policy is neutral, its discriminatory enforcement against TSgt Durrant constitutes a violation of the FHA. In the Ninth Circuit, discriminatory enforcement of a policy, even a facially neutral policy, can violate the FHA. *See Morris*, 104 F.4th at 1155. In this case, Balfour singled TSgt Durrant, and it was only after he complained to Congress that Balfour took meager, short-lived steps to uniformly enforce its policy. Before this month, Balfour did not, by all appearances, enforce its flag policy at all, with this practice of non-enforcement dating to at least December 2023 (the policy is dated Oct. 19, 2023). Yet, in the first known instance of enforcement at Malmstrom, Balfour demanded TSgt Durrant take down his religious flag. There was no indication its demand to him was part of a broader, base-wide corrective; rather, in his first telephone conversation with a Balfour employee, he was given the impression that his flag, and not others, had transgressed policy. The Balfour employee also notified his military chain of command, who then ordered him to comply. By every indication, on September 12, among all the flags flying at residences on base, it was Durrant's religious flag that evoked special concern from the Balfour employee. It was only after a member of Congress contacted the base housing office did the policy apparently begin to be enforced against others. But this later, small, and ineffective attempt at uniform application does not cure the animus from the outset.

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.'").

Western Group and Balfour 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 government, Western Group, nor Balfour can demonstrate a compelling government interest in precluding TSgt Durrant from

displaying his Jesus is my King flag. Further, even if they had a compelling interest, they have not accomplished it by 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, TSgt Durrant's religious exercise is being substantially burdened. The punishment for failing to comply with the Community Guidelines is termination and eviction. Guide to Certain Lease Terms, § 10.I.1(ii). Balfour's demand that he remove the flag or face eviction—backed up by military order—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 Balfour is substantially burdening TSgt Durrant'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 Western Group to demonstrate not just a generalized necessity of applying its discriminatory flag policy to all residents, but rather that imposing its policy on *TSgt Durrant 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," or a desire for homes to reflect unity around the national flag—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)). TSgt Durrant's display of his religious 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 TSgt Durrant's religious flag violates his right to free speech.

TSgt Durrant'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 focus on TSgt Durrant's flag because of its religious message, and delayed attempts at policy enforcement—only after a Congressional inquiry—constitutes viewpoint discrimination in violation of the First Amendment. "It is axiomatic that the government may not regulate speech based on its substantive content or 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," and other flags as might be permitted by the installation. Community Guidelines, 35. "It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995). "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)). Permitting other flags, including "pride" flags and sports teams flags, for nearly two years, but taking swift action against a religious flag is viewpoint discrimination. *See* representative examples at Attachment 1. Indeed, numerous non-compliant flags remain

flying. Even taking into account the delayed enforcement attempt following Congressional attention, some flags are still allowed, but just not a religious flag.

In the end, even if other residents are offended by his flag, this does not give Western Group or Balfour grounds to punish TSgt Durrant. *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 TSgt Durrant's religious 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). "Covert suppression of particular religious beliefs" is likewise prohibited. *Church of Lukumi Babalu Aye, Inc. v. Hialeah,* 508 U.S. 520, 534 (1993). 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). Additionally, a "formal mechanism for granting exceptions … invite[s] the government to decide which reasons for not complying with the policy are worthy of solicitude," and likewise triggers strict scrutiny. *Fulton v. City of Philadelphia*, 593 U.S. 522, 537 (2021) (cleaned up). Here, Western Group and Balfour 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." *Church of Lukumi*, 508 U.S. at 546 (internal quotations omitted).

Western Group and Balfour's comparatively speedy prohibition of TSgt Durrant's religious flag, while having a long-standing *de facto* practice of allowing various messages from a non-religious perspective, and while continuing to permit "Installation authorized" exceptions, 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, Balfour cannot satisfy the requirements.

Conclusion

TSgt Durrant and his family reside in on-base housing, provided by, and within the jurisdiction of, the United States government through its public-private endeavor with Western Group and Balfour. Because of that, he is entitled to the protection of federal law from violations of his rights. Indeed, because Western Group and Balfour are government actors, they are subject to the demands of the U.S. Constitution and RFRA. The proscriptions of the FHA also apply. Prohibiting TSgt Durrant from displaying his religious flag under threat of eviction violates the First Amendment, RFRA, and the FHA. Thus, the flag policy found in the Community Guidelines is unlawful and unenforceable.

We ask you to rescind, in writing, your September 12, 2025 demand that TSgt Durrant remove his religious flag and confirm that you will not find him in violation of his lease for flying a religious flag. Otherwise, we stand prepared to take legal action necessary to safeguard TSgt Durrant's constitutional and statutory rights. To that end, we respectfully request that you respond to this letter by Monday, January 19, 2026. 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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cc: Leslie Cohn, SVP and General Counsel, Balfour Beatty Communities, LLC
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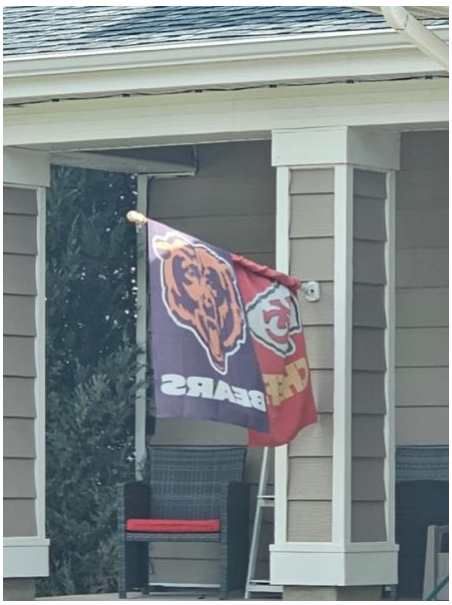
ATTACHMENT 1



Homes located on Malmstrom AFB shown flying a “straight ally” LGBTQ pride flag and sports team flags whose size and location on the residence is comparable to TSgt Durrant’s religious flag.