LIBERTY COUNSEL

DISTRICT OF COLUMBIA
109 Second Street NE
Washington, DC 20002
Tel 202-289-1776
Fax 407-875-0770
www.LC.org

FLORIDA
PO Box 540774
Orlando, FL 32854
Tel 407-875-1776
Fax 407-875-0770

VIRGINIA
PO Box 11108
Lynchburg, VA 24506
Tel 407-875-1776
Fax 407-875-0770
Liberty@LC.org

REPLY TO FLORIDA

July 3, 2025

Via Email Only

Sheena Comer Winterer, President
Missoula Organization of Realtors
724 Burlington
Missoula, MT 59801
sheena@inkmt.com
mor@missoularealestate.com

Kevin Sears, President
National Association of Realtors
430 N. Michigan Ave.
Chicago, IL 60611
ksears@nar.realtor

RE: Unlawful Religious Discrimination Against [redacted]

Dear Presidents Winterer and Sears:

Liberty Counsel writes to the Missoula Organization of Realtors ("MOR") and National Association of Realtors ("NAR") on behalf of Pastor [redacted], a former real estate agent in Montana, and at all relevant times, the lead pastor of [redacted] in Clinton, Montana. Based on standards adopted by the NAR in 2020, the MOR disciplined [redacted] in July 2022 and levied fines against him for allegedly violating the NAR's Code of Ethics due to religious statements made in his pastoral capacity. For the reasons set forth below, Liberty Counsel requests that the NAR and MOR (1) rescind the 2022 findings and discipline, (2) cancel any financial or remedial penalties, and (3) immediately reinstate [redacted] good standing as a Realtor. **Please provide a response by July 30, 2025** or Liberty Counsel will take additional action to prevent continuing irreparable harm.

LIBERTY COUNSEL BACKGROUND

By way of introduction, Liberty Counsel is a national non-profit litigation, education, and public policy organization with an emphasis on First Amendment liberties, including religious freedom and the sanctity of human life. Liberty Counsel has successful vindicated the free speech rights of counselors, pastors, and other individuals who were unlawfully subjected to discrimination for expressing their viewpoints regarding LGBT issues and other issues of sexuality and morality. *See, e.g.*, *Otto v. City of Boca Raton*, 41 F.4th 1271 (11th Cir. 2022); *Vazzo v. City of Tampa,* No. 19-14387, 2023 WL 1466603, (11th Cir. Feb. 2, 2023).

In *Otto*, the Court ordered Palm Beach County and the City of Boca Raton to financially compensate our two counselor clients, which totaled **$175,000 in damages**, not including attorneys' fees and costs. And in *Vazzo,* after the City of Tampa lost a related First Amendment speech and religious free exercise case, the City of Tampa paid a **$950,000** settlement to Liberty Counsel. Other examples of our pro-bono work on behalf of the religious free exercise rights of our clients include the following:

In 2020 and 2021, our groundbreaking lawsuits coast-to-coast freed houses of worship in numerous states, including Kentucky, Illinois, Maine, Virginia, and California, from discriminatory COVID-19 restrictions. Several of these cases reached the United States Supreme Court and resulted in injunctions prohibiting discriminatory COVID-19 restrictions on religious worship. For example, our case against California and its Governor Gavin Newsom resulted in a permanent injunction against them, *see Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 1289 (2021), and a subsequent final judgment requiring them to pay Liberty Counsel $1,350,000 in attorney's fees and costs. *See Harvest Rock Church, Inc. v. Newsom*, No. 2:20-cv-06414, C.D. Cal. (May 14, 2021).

In 2022, Liberty Counsel achieved a settlement, amounting to $10,300,000, on behalf of employees of NorthShore Health who had been subjected to unlawful discrimination on the basis of their religious beliefs about the COVID injections. *See Jane Does 1-13 v. NorthShore University HealthSystem*, No. 1:21-cv-05683, N.D. Ill. (December 23, 2022). The basis for our lawsuit against NorthShore Health was the business's religious discrimination – that they permitted medical exemptions but not religious ones.

That same year, Liberty Counsel successfully defended Marines and other military service members from the Biden Administration's discriminatory vaccination mandates – orders which forced service members to choose between betraying sincerely held religious beliefs or facing substantial threat of serious discipline or discharge from the military. *See, e.g., Colonel Fin. Mgmt. Officer v. Austin*, 622 F. Supp. 3d 1187 (M.D. Fla. 2022); *Navy Seal 1 v. Austin*, 556 F. Supp. 3d 1180 (M.D. Fla. 2022).

Finally, also in 2022, Liberty Counsel achieved a 9-0 unanimous Supreme Court victory against the City of Boston, in connection with its religious discrimination against Christians. *See Shurtleff v. City of Boston*, 142 S. Ct. 1583 (2022) and Adam Liptak, *Supreme Court Rules Against Boston in Case on Christian Flag*, New York Times (May 2, 2022) https://www.nytimes.com/2022/05/02/us/supreme-court-boston-flag-free-speech.html (last visited Jan. 10, 2025). You can read about these and our other legal cases here: https://www-.lc.org/cases.

FACTUAL BACKGROUND

Pastor [redacted] has served at [redacted] Church ([redacted] since 2019 and as lead pastor from 2021 to 2023. [redacted] believes in the Holy Bible and holds historic Christian doctrines on a variety of issues. *See, e.g.*, [redacted]. The Statement of Faith contains a number of core doctrines, including the Person and work of Jesus Christ, the Holy Spirit, Salvation, the Great Commission, and the created nature of humanity. [redacted] believes that "there are only two genders male and female (Genesis 1:27; Matthew 19:4; Mark 10:6) and we also believe that marriage should only be between man and woman (Genesis 2:24; Matthew 19:5-6; Mark 10:7-8)." Pastor [redacted] was pastor of [redacted] during the relevant period relating to the spurious ethics and licensing complaints detailed further below.

Pastor [redacted] is a "bi-vocational" pastor, meaning that he maintains outside sources of income to support his religious ministry work as a pastor. Pastor [redacted] currently pastors at [redacted] holds similar religious beliefs as [redacted], including beliefs about human sexuality and morality.

In June 2020, Pastor [redacted] posted a letter on social media explaining that [redacted] was ending its relationship with the Missoula Food Bank because the food bank was placing LGBT "Pride" coloring book materials in the lunches that had been distributed by [redacted] for area children. These

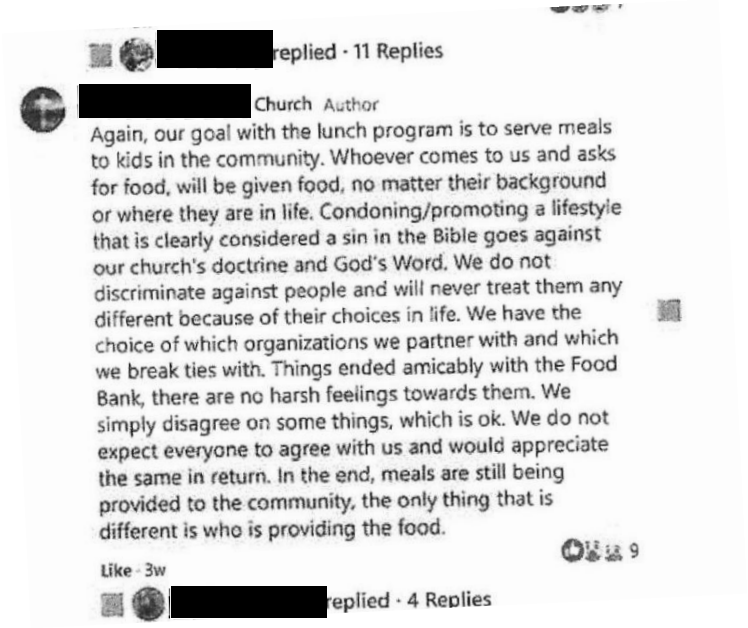
materials promoted homosexuality in contradiction to the church's religious beliefs and teachings about morality and sexuality. The letter included the following:

> This past week we found printed material in the lunches that we were handing out, that went against our biblical doctrine. After conversations with the food bank, we have found that our beliefs and that of the Missoula Food Bank do not align. Due to this [redacted] Church has decided to end our partnership with the Missoula Food Bank effective today July 2, 2021.

(Attachment 3, p. 4.)

Pastor [redacted] letter concluded with the following: "[redacted] Church wants our community to know that **we love and support each and every one of you, no matter your background or where you are in life**. As a church **we strive to show the love of Jesus** in all we do throughout this community, **while standing up for biblical principles, biblical truths, and our beliefs**." (Emphasis added). (*Id.*)

In other social media comments, Pastor [redacted] elaborated on the church's rationale for removing the materials, including that "promoting a lifestyle that is considered a sin in the Bible goes against God's word", but that "we do not discriminate against people and will never treat them any different because of their choices in life:"



A number of community members supported Pastor [redacted] position and that of [redacted]. A number of community members did not. One community member found out that Pastor [redacted] was a licensed Realtor and decided to file a licensing and "ethics" complaint.

Pastor [redacted] was a licensed real estate agent in Montana and member of both the MOR and NAR since on or around 2020. The MOR, as an NAR Member Board, is charged with enforcing the NAR's Code of Ethics, in accordance with the NAR's due process procedures. According to the NAR's Constitution and Bylaws:

> Member Boards shall consist of (1) local real estate boards or associations or Boards or Associations of REALTORS® (hereinafter referred to as local Boards), which shall

> include city, county, inter-county or inter-state Boards, and also (2) state associations as provided in Section 5 of this Article, all of the REALTOR® Members and REALTOR-ASSOCIATE® Members of which shall hold membership in the National Association through such local board, or state association, as the case may be.

(Attachment 1, p. 2.)

The NAR's bylaws require Member Boards, like the MOR, to "adopt the Code of Ethics of the National Association as part of its governing regulations for violation of which disciplinary action may be taken." (*Id.* at p. 16.) The MOR enforces the NAR's Code of Ethics, including Standard of Practice 10-5, according to its agreement with NAR.

In November 2020, the NAR amended Article 10 of its Code of Ethics and Standards of Practice by adding Standard of Practice 10-5, which states: "Realtors must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin**, sexual orientation**, or **gender identity**." (Attachment 2, p. 3.) (Emphasis added). An appendix to the Ethics Code offers an interpretation for terms contained in Standard of Practice 10-5.

> "Harassment" includes inappropriate conduct, comment, display, action, or gesture based upon another's sex, color, race, religion, national origin, age, disability, sexual orientation, gender identity, and any other protected characteristic.
>
> Hate speech: speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability).
>
> Epithet: a characterizing word or phrase accompanying or occurring in place of the name of a person or thing; a disparaging or abusive word or phrase.
>
> Slur: an insulting or disparaging remark or innuendo: ASPERSION; a shaming or degrading effect: STAIN, STIGMA.

(*Id.* at pp. 3-4.)

While no statement made by Pastor [redacted] ever met NAR's own definitions of "harassment," "hate speech," "epithet," or "slur," nevertheless, on June 29, 2021, a resident of Clinton County filed an "ethics" complaint with the MOR against Pastor [redacted]. (Attachment 3.) The complainant asserted that Pastor [redacted] statements about homosexuality will cause him to be biased in the real estate profession towards people who identify as LGBT. (*Id.* at p. 8.) The complainant's extensive (later hand-numbered with paragraphs 1-39) letter included the following complaints:

> 1. "I became aware that the person I knew as Realtor [redacted] [food bank volunteer] made a statement" about "a pride coloring page…."
>
> 2. "**He made this statement as Pastor** [redacted] of [redacted], on Facebook in a private group…I have screenshotted all of my post."
>
> 3."**I was unaware that Realtor** [redacted] **was also a Pastor** until this post was made…He never introduced himself as Pastor [redacted] in the two years I have known him."
> …
> 7. "…How did I not know this was a church run thing on public school property? **Are realtors even allowed to be Pastors too?** Where is the ethics of discrimination in a situation like this?..."
> …

27. "**While I cannot give you a particular post on my thread that is actual hate speech**, you will see that others in the community read his comments in his deleted thread as well and refer to it throughout.…"

28. "…It is clear **to me** that the Realtor [redacted]…**cannot separate his religious bias from his entire person** and will continue to be **inherently biased** against the LGBTQIAS+ [sic] community **in any and all circumstance**."

…

32. "**I was unaware it was actually 'Pastor [redacted], his wife and congregation organizing and volunteering a church run program**, with food supplied by the foodbank…I am wary of food programs 'run by a church' and I do not feel the same way about community food bank programs…."

…

33. "**I did not knowingly go to church-run organizations** to get food assistance. I don't want to accept the marketing material that I would assume they provide with their programs, such as [Vacation Bible School] and Bible study. **I don't want the chance of them slipping their scripture defilement or gay abomination propaganda into my food box (or mail box)**…I would assume they would include it…."

(*Id.* at pp. 3, 6, 8-9 [Emphasis added].)

The complainant's statements evince anti-Christian bias against Pastor [redacted] religious activities and religious speech made in his official capacity as a pastor of a church, none of which had anything to do with his endeavors as a Realtor. Pastor [redacted] never violated the NAR and MOR ethical standards.

Nonetheless, on August 10, 2021, the MOR reviewed the "ethics" complaint and determined that "the complaint constituted potentially unethical conduct and will be forwarded to the Professional Standards Committee." (Attachment 4.) The MOR Grievance Committee found that the complaint's allegations, if taken as true on their face, were sufficient to potentially constitute unethical conduct and referred the matter to the MOR's Professional Standards Committee.

On April 18, 2022, another complainant filed an "ethics" complaint against Pastor [redacted], claiming he engaged in "hate speech" in November 2021 for posting on his Facebook page an announcement of an upcoming rally at his church. (Attachment 5.) The Flyer was titled "The God, Country, Family Tour" and included the following description: "JD Hall will Expose the LGBTQ Agenda that Controls our Lives and Kills our Liberty." (*Id.* at p. 9.) The flyer did not demean any individual or any group but instead highlighted a discussion about Cancel Culture and censorship on free speech. [redacted] discussed the retaliation he faced by the MOR for expressing his biblical beliefs about sexuality and morality in his official capacity as a pastor.

In July 2022, the MOR Professional Standards Committee subjected Pastor [redacted] to an ethics hearing concerning the ethics complaints lodged against him. The MOR disciplined Pastor [redacted] for purportedly violating Article 10 of the Code of Ethics. The MOR ordered Pastor [redacted] to pay a $5,000 fine and take a fair housing class, and he has lost access to the multiple-listing service. Pastor [redacted] has been unable to engage in the business of real estate for several years because his is no longer in good standing with the MOR, and he has suffered financially as a result.

On or around November 28, 2024, Pastor [redacted] sent an application form and license information for membership into the Bitterroot Valley Board of Realtors ("BVBOR"). On December 10, 2024, the BVBOR responded via letter to [redacted], informing him that the Executive Committee would not approve his application without a letter of good standing from the MOR. Specifically, the

BVBOR letter says, "based on our by-laws as well as the by-laws of MAR (Montana Association of REALTORS), and NAR (National Association of REALTORS) we are not able to approve the application without a letter of good standing from any prior Real Estate Associations or Boards you have belonged to in the past." (Attachment 6.)

On June 5, 2025, the NAR Board of Directors voted to approve new policy language related to Standard of Practice 10-5. The new language in the Standard of Practice 10-5 includes a specific definition of "harassment" which is defined as "unwelcome behavior directed at an individual or group based on one or more of the protected characteristics where the purpose or effect of the behavior is to create a hostile, abusive, or intimidating environment **which adversely affects their ability to access equal professional services or employment opportunities**." (Attachment 7, p. 9 [emphasis added].) This language follows several high-profile religious speech cases involving Realtors in Florida, Virginia,[1] [2] Arizona[3] and Texas. Some of these cases involves pastors who were also subjected to frivolous ethics complaints and discipline. In 2025, the Texas Legislature introduced legislation that aims to prevent member associations from disciplining Realtors for engaging in protected religious speech.

On June 17, 2025, Pastor [redacted] sent the MOR a letter requesting it reconsider and reverse the 2022 disciplinary action and imposition of fines in light of the changes to the scope of Standard of Practice 10.5. (Attachment 8.) On June 25, 2025, the MOR responded, claiming that the decision was valid and binding and would not be reconsidered. (Attachment 9.) The letter clarified that the changes to the application of Standard of Practice 10.5 did not invalidate the disciplinary actions taken prior to the revisions, nor do they "nullify previous case outcomes made under the version of the Code in effect at the time." (*Id.* at p. 1.)

LEGAL ARGUMENT

I. The MOR And NAR Have Violated The Federal Fair Housing Act

The federal Fair Housing Act (FHA) makes it unlawful, among other things, "to deny any person access to or membership or participation in any multiple-listing service, real estate broker's organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin." 42 U.S. Code § 3606. The statute defines the term "residential real estate-related transaction" to include "[t]he selling, brokering, or appraising of residential real property." *Id.* § 3605(b)(2). The FHA establishes a process by which persons who have experienced unlawful discrimination can file a complaint with the U.S. Department of Housing and Urban Development (HUD).

Moreover, the Secretary of HUD is a member of the Task Force to Eradicate Anti-Christian Bias, created by President Trump's Executive Order 14202 of February 6, 2025, Eradicating Anti-Christian Bias.[4] This Task Force is within the Department of Justice, chaired by Attorney General Pam Bondi, and includes "the Secretary of Housing and Urban Development." The Task Force has been ordered to meet and take appropriate action to "review the activities of all executive departments and

[1] https://www.christianpost.com/news/realtors-change-rule-after-pastor-found-guilty-of-hate-speech.html

[2] https://wrenews.com/virginia-realtor-faces-license-loss-over-9-year-old-social-media-posting-of-bible-verse/.

[3] https://arizonasuntimes.com/news/arizona-court-allows-first-case-in-states-history-to-pursue-a-constitutional-damages-claim-against-a-private-organization/ralexander/2025/07/01/

[4] https://www.whitehouse.gov/presidential-actions/2025/02/eradicating-anti-christian-bias/

agencies," including HUD. The Task Force shall "recommend to the President, through the Deputy Chief of Staff for Policy and the Assistant to the President for Domestic Policy, any additional Presidential or legislative action necessary to rectify past improper anti-Christian conduct, protect religious liberty, or otherwise fulfill the purpose and policy of this order."

In ratifying the continuing denial of Pastor [redacted] request for reinstatement as a Realtor, where Pastor [redacted] was suspended for communicating sincere religious beliefs, the MOR and NAR have violated and are violating the FHA. The MOR and NAR also violated the FHA by discriminating against Pastor [redacted] and denying him membership and access to the MLS because of his religious beliefs.

II. The MOR And NAR Have Violated The Montana Human Rights Act

Like the FHA, the Montana Human Rights Act (MHRA) makes it an unlawful discriminatory practice to "deny a person access to or membership or participation in a multiple-listing service [or] real estate brokers' organization…because of…religion…" *See* Mont. Code Ann. § 49-2-305(8). The Act also makes it an unlawful discriminatory practice to "coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of the person having exercised or enjoyed…a right granted or protected by this section." *Id.* § 49-2-305(9). The Act also makes it unlawful "to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so." *Id.* § 49-2-302.

In adopting the previous version of Standard of Practice 10-5, the MOR has aided, abetted, and incited religious discrimination against Christian realtors premised on their private religious speech on matters of sexuality and morality. Indeed, that section functioned exactly as intended: to provide a mechanism to discriminate against Christian realtors who speak on subjects disfavored by members of the public.

The MOR's past findings were premised on Pastor [redacted] protected religious beliefs and right to freely exercise his religious beliefs. Pastor [redacted] is a Christian whose religion requires him to uphold principles established by the Bible concerning sexuality and morality. Pastor [redacted] statements regarding homosexuality were made in his official capacity as a pastor. The first complaint references the letter Pastor [redacted] sent out to his congregation. The second complaint references a rally at Pastor [redacted] church where he discussed the discrimination he experienced by the MOR. During an ethics hearing in July 2022, the MOR concluded that Pastor [redacted] speech violated Standard of Practice 10-5 and ordered that he take educational classes and pay a $5,000 penalty. As a result of the 2022 findings, Pastor [redacted] is no longer in good standing with the MOR and NAR and has been denied access to the MLS.

The MOR violated the MHRA by preventing Pastor [redacted] from accessing the MLS and participating in the real estate profession because of his religious beliefs, regardless of the MOR's claims of "ethics." The MOR's characterization of Pastor [redacted] speech as hateful and harassing contradicts the teaching of *Obergefell v. Hodges*, where the Supreme Court held that "those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned." 576 U.S. 644, 679 (2015). The First Amendment "ensures that religious organizations are given protection as they seek to teach the principles that are so fulfilling and central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered." *Id.* at 679-80.

The NAR also violated the MHRA by promulgating Standard of Practice 10-5 and requiring the MOR and other Member Boards to enforce it against protected religious speech unrelated to Pastor [redacted] practice as a Realtor. Indeed, the NAR's recent revisions to Standard of Practice 10-5 is a tacit

admission that the provision was overbroad and intruded on constitutionally protected speech and conduct. The NAR has since clarified and narrowed the scope of Standard of Practice 10.5 to ensure that neither the NAR nor its Member Boards, like the MOR, can discriminate against its members because of religion. In order for Pastor [redacted] religious speech to violate Section 10-5, as amended, the MOR and NAR would have to show that Pastor [redacted] conduct and speech "create[d] a hostile, abusive, or intimidating environment which adversely affect[ed] their ability to access equal professional services or employment opportunity." (Attachment 7, p. 9.)

Pastor [redacted] speech has not violated any version of Section 10-5. He has never discriminated against any group or denied services to anyone because of their race, religion, or sexuality. His speech was made in his capacity as a pastor and outside the scope of the real estate profession. The NAR Code of Ethics does not require (nor could it) a member to abstain from expressing their religious beliefs on their private social media account or in church. The MOR and NAR have violated the MHRA, and Pastor [redacted] is therefore entitled to damages.

III. The MOR And NAR Have Violated Due Process

[redacted] is entitled to judicial protection from unfair or arbitrary actions of the MOR and NAR because they are considered quasi-public professional organizations, and he was a member of the MOR and NAR. United States Circuit Courts of Appeal recognize that "quasi-public" professional organizations have a common law duty to employ fair procedures when making decisions affecting their members. *See, e.g., Prof'l Massage Training Ctr., Inc. v. Accreditation All. of Career Schs. & Colleges,* 781 F.3d 161, 172 (4th Cir. 2015); *Foundation for Interior Design Educ. Research v. Savannah Coll. of Art & Design*, 244 F.3d 521, 527–28 (6th Cir. 2001); *Hosp. v. Accreditation Council for Graduate Med. Educ.*, 24 F.3d 519, 534-35 (3rd Cir. 1994); *Chicago School of Automatic Transmissions, Inc. v. Accreditation Alliance of Career Schools and Colleges*, 44 F.3d 447, 450 (7th Cir. 1994); *Wilfred Acad. of Hair & Beauty Culture v. Southern Ass'n of Colls. & Schools*, 957 F.2d 210, 214 (5th Cir.1992); *Medical Inst. of Minnesota v. National Ass'n of Trade & Technical Schools*, 817 F.2d 1310, 1314 (8th Cir.1987).

Courts developed the right to common law due process as a check on organizations that exercise significant authority in areas of public concern such as accreditation and professional licensing. *See Marjorie Webster Junior Coll., Inc. v. Middle States Ass'n of Colls. & Secondary Sch., Inc.*, 432 F.2d 650, 655–56 (D.C.Cir.1970); *Falcone v. Middlesex County Medical Soc.*, 34 N.J. 582, 170 A.2d 791, 799 (1961); *see also Foundation for Interior Design Educ. Research*, 244 F.3d at 527–28 (recognizing the development of this right). In *Marjorie*, the District of Columbia, in a landmark case, found where membership in an organization is a significant requirement to practice in a given profession, courts will scrutinize the standards and procedures by the organization to select its membership. 432 F.2d at 655-56.

In *Professional Massage Training Center*, the Fourth Circuit astutely observed that "due process claims dovetail nicely with administrative law concepts of substantial evidence and arbitrary and capricious review because the prominent point of emphasis of due process is one of procedure." 781 F.3d at 172. The Fourth Circuit further observed that "[w]hen adjudicating common law due process claims against accreditation agencies, court should 'focus primarily on whether the accrediting body's internal rules provide[d] a fair and impartial procedure and whether it [followed] its rules in reaching its decision.'" *Id.* (quoting *Wilfred. Acad. of Hair & Beauty Culture*, 957 F.2d at 214).

The Supreme Court has also held that a "fair trial in a fair tribunal" remains a basic requirement of due process. *Withrow v. Larkin*, 421 U.S. 35, 46–47 (1975) (internal quotations and citations omitted) (applying the due process requirement of an unbiased tribunal to administrative agencies). An administrative decisionmaker is entitled to a "presumption of honesty and integrity." *Id.* However,

"various situations have been identified in which experience teaches that the probability of actual bias on the party of the [agency] is too high" to allow the adjudicator to consider the case. *Id.* at 47.

Moreover, it is a "basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). As the United States Supreme Court explained in *United States v. Williams*:

> Vagueness doctrine is an outgrowth . . . of the Due Process Clause of the Fifth Amendment. A conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement. . . . What renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is. Thus, we have struck down statutes that tied criminal culpability to whether the defendant's conduct was "annoying" or "indecent"—wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings."

553 U.S. 285, 304, 306 (2008).

The MOR and NAR are quasi-governmental entities because they have exclusive control over Plaintiff's access to the multiple-listing service ("MLS") – a service necessarily relied upon by real estate agents in Montana to practice their profession. For Plaintiff and those who engage in residential real estate, membership in the MOR is an economic necessity. MOR has an exclusive monopoly over the MLS system. Each local association is obligated to submit all ethics complaints to the MOR for processing pursuant to the NAR's due process procedures. There are no other organizations available to Plaintiff that can provide similar access to the MLS.

The MOR and NAR violated due process by enforcing vague terms and thereby failing to adequately notify that they considered Pastor [redacted] speech impermissible. The terms in Standard of Practice 10.5 such as "hate" and "harassing" are vague and incapable of an objective interpretation. (Attachment 2, pp. 3-4.) These vague terms also invite arbitrary enforcement and subject Pastor [redacted] to the biased, subjective opinions of the MOR and NAR. The arbitrary discipline of Pastor [redacted] is evidenced in the complaints lodged against him.

For instance, in the June 2021 ethics complaint, the complainant questioned whether a realtor license should even be given to a religious leader ("**Are realtors even allowed to be Pastors too?"**). The complainant also asserted that Mr. [redacted]'s decision to no longer partner with the Missoula Food Bank because of its promotion of LGBT viewpoints "did nothing but hurt our community *in my opinion*." (Attachment 3, p. 6 [emphasis added].) The complainant surmised that [redacted] could not be unbiased towards persons identifying as LGBT because of his decision to dissociate his church from partnering with a food bank that supported ideals in contradiction to his religious beliefs.

The April 2022 ethics complaint is equally unavailing in demonstrating any evidence of "hate" speech or "harassing" speech. The complaint references a rally [redacted] attended at his own church where he discussed issues like free speech and the MOR's attempts to silence his religious speech on LGBT issues. That complainant stated that Pastor [redacted] speech at his church in his capacity as a pastor "makes me feel both as an LGBTQ+ [sic] individual and as a Realtor, that I, or my clients, would not be welcome to do business with [redacted]." (Attachment 5, p. 3.)

Vague standards force potential speakers to " 'steer far wider of the unlawful zone' ... than if the boundaries of the forbidden areas were clearly marked," thus silencing more speech than

intended. *Baggett v. Bullitt,* 377 U.S. 360, 372 (1964) (quoting *Speiser v. Randall*, 357 U.S. 513, 526 (1958)). The Supreme Court has long recognized that free speech concerns are implicated with vague laws and statutes. *See, e.g., Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 871–72 (1997); *Winters v. New York*, 333 U.S. 507, 509 (1948) ("It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment.").

This concern is pronounced here. Neither complaint explains how Pastor [redacted] speech is hateful or harassing. Instead, the complainants simply describe how Pastor [redacted] speech made them feel. The language in Standard of Practice 10-5, coupled with the complaints directed towards Pastor [redacted] demonstrate that Pastor [redacted] was never put on notice as to what speech or conduct was permitted because harassing speech or "conduct that annoys some people does not annoy others." *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971). Instead, Pastor [redacted] was subject to the arbitrary whims of annoyed and disgruntled residents and members of the MOR and NAR.

In sum, the MOR and NAR have unconstitutionally deprived Pastor [redacted] of his fundamental right to due process by punishing him for actions that he took without prior notice that such actions were impermissible. *See Walker v. Birmingham*, 388 U.S. 307 (1967) (finding that due process is violated when an adjudicatory body abandons established procedural practices without notice and, thereby, forecloses a litigant's rights through a novel procedural bar); *Shelley v. Kraemer*, 334 U.S. 1 (1948) (holding that an adjudicatory body may not deprive a party of substantive rights without adequate notice and opportunity for a hearing). By arbitrarily punishing Pastor [redacted] for expressing his viewpoints in his official capacity as a pastor, the MOR and NAR have violated Pastor [redacted] right to due process.

CONCLUSION

Liberty Counsel requests that the NAR and MOR 1) rescind the 2022 findings and discipline, 2) cancel any financial or remedial penalties, and 3) immediately reinstate Pastor [redacted] good standing as a Realtor. **Please provide a response by July 30, 2025** or Liberty Counsel will take additional action to prevent continuing irreparable harm. Such action may include filing a complaint with the U.S. Department of Justice to vindicate Pastor [redacted] statutory rights under the FHA, as well as the rights of Christian Realtors nationwide against what appears to be a pattern and practice of discrimination against Christian religious speech and religious free exercise. Pastor [redacted] reserves the right to seek all damages available to him under both the MHRA and FHA.

[redacted] rely,

[redacted]

Attachments
CC

Via Email

[redacted]