



October 19, 2012  
*VIA FACSIMILE AND U.S. MAIL*

Osborne Apartments  
Attn: Ms. Kate Edrey  
659 Osborne Road N.E.  
Spring Lake Park, MN 55432  
(763) 780-5795

Ebenezer Corporate Offices  
2722 Park Ave. S  
Minneapolis, MN 55407

**Re: Censorship of Religious Speech at Osborne Apartments**

Dear Ms. Edrey:

Ruth Sweats contacted Alliance Defending Freedom regarding her desire to read the Bible, pray, and discuss her faith in private conversations with other residents in the commons area at Osborne Apartments. By way of introduction, Alliance Defending Freedom defends the rights of citizens to exercise their religious liberties, and that includes the right to pray and engage in religious speech in public. Ms. Sweats alerted Alliance Defending Freedom to the religious discrimination taking place at Osborne Apartments through its policy banning religious discussion or other religious expression in the commons area. We write to inform you that this censorship of the religious expression of the residents is not required by the Constitution, nor by Osborne Apartments' receipt of government funding.

The relevant facts are as follows. Osborne Apartments is a non-profit, independent living apartment complex managed by Ebenezer and subsidized by the Department of Housing and Urban Development (HUD). Ms. Sweats is a resident who lives in Osborne Apartments and desires to express her religious beliefs by talking about her religious beliefs in casual conversation with other residents in the commons area, praying privately, and reading the Bible. Recently, Ms. Sweats was engaged in a private conversation about the Bible with another resident at a corner table in the commons area when she was approached by Rachelle Henkle, the property social worker. Ms. Henkle interrupted the conversation and told Ms. Sweats that she could not talk about religion or the Bible in the commons area. Ms. Sweats explained that the discussion was a private conversation and that she should be allowed to discuss her religious beliefs. Ms. Henkle responded that Osborne Apartments is a HUD building and Ms. Sweats does not have First Amendment rights because HUD does not allow religious discussion to occur in the commons area. Because of this policy banning religious speech, Ms. Sweats is concerned that

she will be punished or even evicted from the Apartments for engaging in private religious speech.

It is our opinion that Osborne Apartments' belief that it is required to suppress religious speech as a condition of its government funding is incorrect and unwise. The Establishment Clause states, "*Congress shall make no law respecting an establishment of religion . . .*" U.S. Const. amend. I. The Establishment Clause is a restriction on *government*, not on *private speakers*. Because Osborne Apartments is a private, non-profit corporation—not a government controlled entity—it is not bound by the Establishment Clause's prohibition on the government endorsement of religion. Indeed, Osborne Apartments is free to allow the residents to engage in religious discussion and prayer.

Furthermore, HUD does not prohibit discussion about religion in the facilities to which it provides funding. Over 10 years ago, then HUD Secretary Mel Martinez publicly affirmed that it is not HUD's policy to discriminate against religious expression in facilities that it funds and that such discrimination would perhaps violate "the religious exercise rights of the residents." Secretary Martinez even affirmed the right of religious community organizations to use HUD funded facilities:

I want to affirm that HUD follows a fundamental constitutional principle regarding faith-based organizations, articulated by the Supreme Court: to the extent the common areas and meeting rooms are made available to any organization for the purpose of conducting residential programs, faith-based organizations may not be denied the equal right of access because of their religious character. **To do so is to engage in viewpoint discrimination, in violation of the free speech rights of the organization - and perhaps the religious exercise rights of the residents as well.**

*Available at <http://archives.hud.gov/news/2002/pr02-029.cfm> (emphasis added).* Simply because the government provides a benefit with public funds does not mean that all "mention of religion or prayer" must be whitewashed from the use of the benefit. Thus, in *Church on the Rock v. City of Albuquerque*, 84 F.3d 1273, 1280 (10th Cir. 1996), the Tenth Circuit Court of Appeals struck down a policy at a Senior Center that restricted religious speech, holding that "the Establishment Clause does not compel the City to bar sectarian instruction and religious worship from its Senior Centers."

The actions of the Osborne Apartments employees are also likely improper under federal and state anti-discrimination laws. The Civil Rights Act, Public Accommodations Law, that prohibits places of public accommodation from restricting access to services or limiting services based on a person's religion. 42 U.S.C. § 2000a. 42 U.S.C. § 2000a(b)&(c) defines a place of public accommodation as an establishment involved in interstate commerce that includes the service of food that has traveled in commerce. Osborne Apartments meets this definition. Likewise, the Minnesota Human Rights Act, Minn. Stat. § 363 A *et seq.* prohibits discriminating against an individual based upon her religion in the terms, conditions, or privileges off the sale, rental, or lease of property. Officials at Osborne Apartments likely violate these laws when they

prohibit residents at Osborne Apartments from praying or discussing religious topics in private conversation.

In sum, neither federal law nor the U.S. Constitution require Osborne Apartments to silence the private religious expression of its residents. Osborne Apartments is a private, non-profit organization, and it is free to recognize and permit religious expression at the facility. The right thing to do out of respect for the senior citizens—many of whom fought or saw their spouses fight in wars to defend our nation and the freedoms upon which it is built—is to remove the ban on religious expression in the commons area. Given that your justifications for disallowing religious expression are your misunderstanding that you are required to ban them based upon your receipt of government funding from HUD, we hope that this letter will clear up these issues and that you will do away with this terrible policy. We ask that you respond to this letter and provide written confirmation by October 26, 2012 that you have restored the freedom of the residents to pray, discuss, the Bible, and engage in other forms of religious expression.

Cordially,



J. Matthew Sharp  
Legal Counsel

CC: Ruth Sweats

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