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7-17-2014

July 17, 2014: A Good Letter on Discrimination

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Ledewitz, B. (2014). July 17, 2014: A Good Letter on Discrimination. Retrieved from <https://dsc.duq.edu/ledewitz-hallowedsecularism/848>

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Title: A Good Letter on Discrimination

Date: 2014-07-17T07:06:00.002-04:00

7/17/2014—A few days ago, 50 prominent law and religion experts sent a letter to President Obama urging him not to put expansive religious exemption language into an expected executive order banning discrimination based on sexual orientation and gender identity. The letter compares discrimination in this context to Title VII accommodation cases. The letter discusses matters with which, frankly, I am not familiar. Fortunately, I am too small a fish to have been asked to sign. So, I will be sending my own letter to President Obama, also urging him not to add expansive religious exemption language. But my reasons are simpler. The Religious Freedom Restoration Act as interpreted by the Supreme Court in the Hobby Lobby case contains a bizarre incentive. In that case, the government's exemption was used against it to suggest that if a religious exemption could be offered in some contexts, there could be no reason not to offer it everywhere. In other words, offering religious exemptions now is interpreted to lessen the government's interest in banning discrimination, or whatever goal the government is pursuing. Until RFRA is clarified, no administrative exemptions can safely be offered, especially not in the area of discrimination.