

The Honorable David G. Estudillo

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

PAUL D. ETIENNE, et al.,

Plaintiffs,

v.

ROBERT W. FERGUSON, et al.,

Defendants.

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STATE OF WASHINGTON,

Defendant.

NO. 3:25-cv-05461-DGE

STIPULATED MOTION TO
ENTER PERMANENT
INJUNCTION AND FINAL
JUDGMENT

AND

[PROPOSED] ORDER

NOTE ON MOTION CALENDAR:
Friday, October 10, 2025

I. STIPULATION

Plaintiffs Paul D. Etienne, Joseph J. Tyson, Thomas A. Daly, Frank R. Schuster, Eusebio L. Elizondo, Gary F. Lazzeroni, Gary M. Zender, Robert Pearson, Lutakome Nsubuga, Jesús Mariscal, Michael Kelly (Plaintiffs); Intervenor-Plaintiff United States of America; Defendants Robert W. Ferguson and Nicholas W. Brown (State Defendants); and Defendants Leesa Manion, Preston McCollam, Joseph Brusica, Randy Flyckt, Curt Liedkie, Eric Eisinger, Robert Sealby, Mark Nichols, Tony Golik, Dale Slack, Ryan Jurvakainen, Sean Lewis, Michael Golden, Shawn

1 Sant, Mathew Newberg, Kevin McRae, Norma Tillotson, Gregory Banks, James Kennedy, Chad
 2 Enright, Gregory Zempel, David Quesnel, Jonathan Meyer, Ty Albertson, Michael Dorcy, Albert
 3 Lin, Michael Rothman, Dolly Hunt, Mary Robnett, Amy Vira, Rich Weyrich, Adam Kick, Jason
 4 Cummings, Erika George, Jon Tunheim, Dan Bigelow, Gabe Acosta, Eric Richey, and Denis
 5 Tracy, in their official capacities (County Prosecutor Defendants), jointly move the Court,
 6 pursuant to Local Rule 7(d)(1) and Federal Rules of Civil Procedure 54 and 65(d), to enter a
 7 Permanent Injunction and Final Judgment, subject to the parties' agreement to be bound by the
 8 terms of this Stipulation and Proposed Order, including Exhibit A attached hereto.¹

9 On May 29, 2025, Plaintiffs filed a Complaint (Dkt. # 1) against the State Defendants
 10 and the County Prosecutor Defendants. The Complaint alleges that Section 26.44.030(1)(a) and
 11 (b) of the Revised Code of Washington (RCW), as amended by Senate Bill 5375 (2025), violates
 12 the First and Fourteenth Amendments to the U.S. Constitution, as well as Article I, Section 11
 13 of the Washington Constitution. On June 5, 2025, Plaintiffs filed a Motion for Preliminary
 14 Injunction against all defendants (Dkt. # 65) seeking to preliminarily "block the investigation
 15 and enforcement of RCW § 26.44.030, as amended by Senate Bill 5375, to the extent it applies
 16 to information learned by Catholic clergy through the Sacrament of Confession." Dkt. # 65 at
 17 23.

18 On July 15, 2025, the Court entered a stipulated order subjecting the County Prosecutor
 19 Defendants to a preliminary injunction and staying proceedings against the County Prosecutor
 20 Defendants until entry of a final judgment (Dkt. # 224). As part of that stipulated order, the
 21 County Prosecutor Defendants agreed to "consent to the Court's final judgment against the
 22 remaining defendants and . . . not appeal any such judgment." Dkt. # 224 at 7.

23 On July 18, 2025, the Court entered a preliminary injunction against the State Defendants
 24 (Dkt. # 227), concluding that Plaintiffs are likely to succeed on the merits of their Free Exercise
 25

26 ¹ Since the complaint was filed, Dale Slack has been replaced by Jennine Christensen as Columbia County
 Prosecutor, and Kevin McCrae has been replaced by Brandon Guernsey as Grant County Prosecutor.

1 Clause challenge, that “there are serious questions going to the merits” of their Church
 2 Autonomy Doctrine and Establishment Clause claims, and that Plaintiffs otherwise met the
 3 requirements for the issuance of a preliminary injunction. Accordingly, the Court enjoined the
 4 State Defendants “from enforcing SB 5375 as to the Sacrament of Confession against the
 5 Plaintiffs in this action and all Roman Catholic priests in Washington who fall directly under the
 6 administration of Plaintiffs Etienne, Daly, and Tyson.” Dkt. # 227 at 25.

7 Intervenor-Plaintiff United States also filed a Motion for Preliminary Injunction
 8 (Dkt. # 138). In its papers in Opposition to the Preliminary Injunction, State Defendants
 9 represented to the Court that if Plaintiffs’ preliminary injunction was granted, the State would
 10 not seek to enforce RCW § 26.44.030 (2025) to information disclosed in the Catholic Sacrament
 11 of Confession or sacred confidences shared with any clergy while that order remains in force.
 12 Dkt. # 226. Because of those representations specifically, the United States later withdrew its
 13 Motion for Preliminary Injunction (Dkt. # 229).

14 The stipulating parties seek to avoid the costs and burdens of further litigation and
 15 conclusively resolve this matter, including by making permanent the Court’s Preliminary
 16 Injunction order (Dkt. # 227). Accordingly, the parties agree as follows:

17 1. Plaintiffs, the United States, the State Defendants, and the County Prosecutor
 18 Defendants stipulate to entry of the proposed Permanent Injunction attached hereto, enjoining
 19 all Defendants from enforcing RCW § 26.44.030 (2025), as to the Catholic Sacrament of
 20 Confession and/or any other privileged communication under RCW § 5.60.060(3).

21 2. State Defendants and County Prosecutor Defendants agree not to appeal the
 22 Preliminary Injunction order (Dkt. # 227), or to appeal from or otherwise challenge the
 23 enforceability or validity of this Stipulated Permanent Injunction Order and Final Judgment, or
 24 any other rulings entered to date in this matter by this Court, in this or any other proceeding.
 25
 26

3. State Defendants and County Prosecutor Defendants agree that the Court's Stipulated Permanent Injunction Order and Final Judgment in this matter has the same force and precedential effect as if it had been entered following a dispositive motion or trial on the merits.

4. All stipulating parties agree that they will not seek costs and attorneys' fees against any other stipulating party.

IT IS SO STIPULATED by and between the Parties.

I certify that this memorandum contains 818 words, in compliance with the Local Civil Rules.

DATED this 10th day of October 2025.

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[PROPOSED] ORDER

PURSUANT TO THE FOREGOING STIPULATION, IT IS SO ORDERED:

This matter is before the Court on the Stipulated Motion to Enter Permanent Injunction and Final Judgment. Having reviewed the Motion, the docket and all related material, and good cause appearing therefrom, the Court ORDERS as follows:

1. The Court finds that: (i) Plaintiffs have pre-enforcement standing and their claims satisfy the constitutional component of ripeness; (ii) Plaintiffs' claims are prudentially ripe; (iii) RCW § 26.44.030 (2025) infringes Plaintiffs' free exercise of religion in violation of the First Amendment to the U.S. Constitution as applied to the Catholic Sacrament of Confession and/or any other privileged communication under RCW § 5.60.060(3); and (iv) there are serious questions going to the merits of whether RCW § 26.44.030 (2025) infringes Plaintiffs' rights under the U.S. Constitution's Establishment Clause and the Church Autonomy Doctrine.

2. In light of the findings and legal conclusions set out in paragraph 1 above, State Defendants and County Prosecutor Defendants are hereby subject to and bound by Exhibit A to this Order.

3. Plaintiffs, the United States, State Defendants, and County Prosecutor Defendants agree not to appeal the Court's ruling on Plaintiffs' Motion for Preliminary Injunction (Dkt. # 65) and agree not to appeal from or otherwise challenge the enforceability or validity of the Court's Stipulated Permanent Injunction Order and Final Judgment, or any other rulings entered to date in this matter by this Court, in this or any other proceeding.

4. This Stipulated Permanent Injunction Order and Final Judgment has the same force and precedential effect as if it had been entered following a dispositive motion or trial on the merits.

5. All parties are responsible for their own attorneys' fees and costs, and shall not be entitled to attorneys' fees and/or costs from any other party.

6. This order constitutes the Court's final judgment in this matter.

1 IT IS SO ORDERED.

2 DATED this __ day of October 2025.

3
4 Hon. David G. Estudillo
5 UNITED STATES DISTRICT JUDGE

6 Presented by:

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EXHIBIT A

Pursuant to the Stipulated Motion of all Plaintiffs, Plaintiff-Intervenor, and all Defendants, IT IS HEREBY ORDERED that Defendants and their agents, servants, employees, attorneys, and successors, are permanently enjoined, pursuant to Federal Rule of Civil Procedure 65, from enforcing or attempting to enforce RCW § 26.44.030 (2025) as applied to information disclosed solely in the Catholic Sacrament of Confession and/or any other privileged communication under RCW § 5.60.060(3).

It is further hereby ordered that Defendants and their agents, servants, employees, attorneys, and successors, are permanently enjoined, pursuant to Federal Rule of Civil Procedure 65, from enforcing RCW § 26.44.030(1)(b) (2025) to deny members of the clergy the benefit of any privileged communication exception provided in RCW § 5.60.060 that RCW § 26.44.030(1)(b) allows for other reporters.