

The Honorable David G. Estudillo

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

ORTHODOX CHURCH IN AMERICA,
et al.,

Plaintiffs,

v.

ROBERT W. FERGUSON, et al.,

Defendants.

NO. 2:25-cv-01537-DGE

STIPULATED MOTION TO
ENTER PERMANENT
INJUNCTION AND FINAL
JUDGMENT

AND

[PROPOSED] ORDER

NOTE ON MOTION CALENDAR:
Friday, October 10, 2025

I. STIPULATION

Plaintiffs Orthodox Church in America, Antiochian Orthodox Christian Archdiocese of North America, Romanian Orthodox Metropolis of the Americas, Western American Diocese of the Russian Orthodox Church Outside of Russia, and Timothy Wilkinson (Plaintiffs); Defendants Robert W. Ferguson and Nicholas W. Brown (State Defendants); and Defendants Leesa Manion, Preston McCollam, Joseph Brusic, Randy Flyckt, Curt Liedkie, Eric Eisinger, Robert Sealby, Mark Nichols, Tony Golik, Dale Slack, Ryan Jurvakainen, Sean Lewis, Michael Golden, Shawn Sant, Mathew Newberg, Kevin McRae, Norma Tillotson, Gregory Banks, James Kennedy, Chad Enright, Gregory Zempel, David Quesnel, Jonathan Meyer, Ty Albertson, Michael Dorcy, Albert Lin, Michael Rothman, Dolly Hunt, Mary Robnett, Amy Vira, Rich

Weyrich, Adam Kick, Jason Cummings, Erika George, Jon Tunheim, Dan Bigelow, Gabe Acosta, Eric Richey, and Denis Tracy, in their official capacities (County Prosecutor Defendants), jointly move the Court, pursuant to Local Rule 7(d)(1) and Federal Rules of Civil Procedure 54 and 65(d), to enter a Permanent Injunction and Final Judgment, subject to the parties' agreement to be bound by the terms of this Stipulation and Proposed Order, including Exhibit A attached thereto.¹

On June 16, 2025, Plaintiffs filed a Complaint (Dkt. # 1) in the Eastern District of Washington against the State Defendants and the County Prosecutor Defendants. The Complaint alleges that Section 26.44.030 of the Revised Code of Washington (RCW), as amended by Senate Bill 5375 (2025), violates the First and Fourteenth Amendments to the U.S. Constitution. On June 20, 2025, Plaintiffs filed a Motion for Preliminary Injunction against all defendants (Dkt. # 20).

On July 25, 2025, the Eastern District of Washington entered a stipulated order subjecting the County Prosecutor Defendants to a preliminary injunction and staying proceedings against the County Prosecutor Defendants until entry of a final judgment (Dkt. # 175). As part of that stipulated order, the County Prosecutor Defendants agreed to "consent to the Court's final judgment against the remaining defendants and not to appeal any such judgment." Dkt. # 175 at 2.

On July 18, 2025, this Court entered a preliminary injunction against the State Defendants in the related case *Etienne v. Ferguson*, No. 3:25-cv-05461-DGE. *See* 2025 WL 2022101, at *3 (W.D. Wash. July 18, 2025). In that case, Catholic clergy also brought First and Fourteenth Amendment challenges to SB 5375. The Court ruled that the *Etienne* plaintiffs are likely to succeed on the merits of their Free Exercise Clause challenge, that "there are serious questions going to the merits" of their Church Autonomy Doctrine and Establishment Clause

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 claims, and that the plaintiffs otherwise met the requirements for the issuance of a preliminary
 2 injunction. Accordingly, the Court enjoined the State Defendants “from enforcing SB 5375 as to
 3 the Sacrament of Confession against the Plaintiffs[.]” *Etienne*, 2025 WL 2022101, at *11.

4 On July 24, 2025, the day before oral argument on Plaintiffs’ motion for preliminary
 5 injunction, Plaintiffs and State Defendants agreed to the entry of a preliminary injunction in this
 6 case. Dkt. # 172. On July 25, 2025, the Eastern District of Washington entered a stipulated
 7 preliminary injunction enjoining State Defendants “from enforcing or attempting to enforce
 8 Senate Bill 5375 against the Plaintiffs in this action and their priests as to the Sacrament of
 9 Confession and other sacred confidences, until such time as final judgment is entered in this
 10 case.” Dkt. # 176 at 3.

11 Plaintiffs and State Defendants then stipulated to transfer this case to this Court.
 12 Dkt. 177. Once in this Court, Plaintiffs moved to consolidate this case with *Etienne*. Dkt. # 185.

13 The stipulating parties seek to avoid the costs and burdens of further litigation and
 14 conclusively resolve this matter, including by making permanent the Court’s Preliminary
 15 Injunction order (Dkt. # 176). Accordingly, the parties agree as follows:

16 1. Plaintiffs, the State Defendants, and the County Prosecutor Defendants stipulate
 17 to entry of the proposed Permanent Injunction attached hereto, enjoining all Defendants from:
 18 (1) enforcing RCW § 26.44.030 (2025), as applied to information communicated solely in the
 19 Sacrament of Confession, and to information communicated solely in other sacred confidences
 20 made to a clergy member in the clergy member’s professional character for which disclosure is
 21 prohibited in the course of discipline by the church to which the clergy member belongs; and (2)
 22 enforcing RCW § 26.44.030(1)(b) to deny members of the clergy the benefit of any privileged
 23 communication exception provided in RCW § 5.60.060 that RCW § 26.44.030(1)(b) allows for
 24 other reporters.

25 2. State Defendants and County Prosecutor Defendants agree not to appeal the
 26 Preliminary Injunction order (Dkt. # 176), or to appeal from or otherwise challenge the

1 enforceability or validity of this Stipulated Permanent Injunction Order and Final Judgment, or
 2 any other rulings entered to date in this matter by this Court, in this or any other proceeding.

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

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

8 IT IS SO STIPULATED by and between the Parties.

9 I certify that this memorandum contains 854 words, in compliance with the Local Civil
 10 Rules.

11 DATED this 10th day of October 2025.

12 NICHOLAS W. BROWN
 13 Attorney General

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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 Sacrament of Confession or other sacred confidences to which the privilege in RCW § 5.60.060(3) applies; 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, State Defendants, and County Prosecutor Defendants will not appeal the Court's ruling on Plaintiffs' Motion for Preliminary Injunction (Dkt. # 176), and will not 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.

IT IS SO ORDERED.

DATED this ____ day of October 2025.

Hon. David G. Estudillo
UNITED STATES DISTRICT JUDGE

Presented By:

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EXHIBIT A

Pursuant to the Stipulated Motion of all Plaintiffs and all Defendants, IT IS HEREBY ORDERED that Defendants and their agents, servants, employees, and attorneys, 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 communicated solely in the Sacrament of Confession, and to information communicated solely in other sacred confidences made to a clergy member in the clergy member's professional character for which disclosure is prohibited in the course of discipline by the church to which the clergy member belongs.

It is further hereby ordered that Defendants and their agents, servants, employees, and attorneys, 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.