

March 18, 2025

House Human Services, Youth & Early Learning Committee
Washington State Legislature
260A John L. O'Brien Building
P.O. Box 40600
Olympia, WA 98504-0600

Re: Public Comment on Senate Bill 5375

Dear Chair Bergquist and members of the House Human Services, Youth and Early Learning Committee,

Thank you for the opportunity to offer comment on Senate Bill 5375,¹ now pending before your committee.

I write to you as a Fellow with the Ethics and Public Policy Center in Washington, DC, where my work focuses on protecting rights of conscience and religious liberty. The views expressed in my testimony are my own and do not represent any official position of EPPC. I have also been a civil rights lawyer for twenty years, helping vindicate the First Amendment and statutory rights of religious organizations and helping governmental bodies advance their interests without violating their constituents' rights.

Over the past three years, I have provided public comment and offered legal analysis regarding the Washington State Legislature's proposals to make clergy mandatory reporters.² This is a

¹ SB 5375 (2025), <https://lawfilesexternal.wa.gov/biennium/2025-26/Pdf/Bills/Senate%20Bills/5375.pdf?q=20250317102226>. SB 5375 (2025) is identical to HB 1211 (2025).

² See

- Eric Kniffin, Public Comment in Opposition to SHB 1098 (Feb. 24, 2023), <https://eppc.org/publication/eppc-scholar-urges-washington-state-not-to-violate-seal-of-the-confessional/>;
- Eric Kniffin, Public Testimony in Opposition to SB 5280 (March 21, 2023), <https://eppc.org/publication/eppc-scholar-urges-washington-state-not-to-pressure-clergy-to-violate-seal-of-the-confessional/>;
- Eric Kniffin, Attacks on the Seal of the Confessional, First Things (March 30, 2023), <https://firstthings.com/attacks-on-the-seal-of-the-confessional/>; and
- Eric Kniffin, Public Comment Regarding SB 6298 (Feb. 12, 2024), <https://eppc.org/wp-content/uploads/2024/02/Public-Comment-SB-6298-Kniffin-EPPC-Feb.-12-2024.pdf>.
- Eric Kniffin, Public Comment in Opposition to HB 1211 (Feb. 4, 2025), <https://eppc.org/publication/eppc-scholar-urges-washington-state-not-to-pressure-clergy-to-violate-seal-of-the-confessional-2/>.

good goal, endorsed by Washington’s three Catholic dioceses, each of which already requires priests to report suspected child abuse and neglect.³

However, *it won’t do Washington children any good to pass a bill with obvious constitutional problems.* And, as I warned this committee last month, the bill before you is deeply flawed.⁴

Instead of repeating again the legal analysis I have provided in previous comments, I would like to respond briefly to some of the public testimony you heard on March 14.⁵ I hope this helps you as you consider how best to advance the State’s goal of protecting children.

A. The Washington State Catholic Conference has urged the Legislature not to pass a law that burdens religious exercise.

Jean Welch Hill, Executive Director of the Washington State Catholic Conference, frequently testifies before the Legislature on behalf of the State’s Catholic bishops. Last Friday she told the Committee that while the Catholic Conference “support[s] including clergy as mandatory reporters,” she urges the Legislature not to pass a bill that “provide[s] no exception from reporting for a [religious] confidential communication such as during the Sacrament of Confession.”⁶ Ms. Hill noted that SB 5375 burdens the religious exercise of Catholic priests, who have a religious obligation, reflected in Canon Law, not to reveal what is said in confession. Ms. Hill also noted that that SB 5375 would burden the religious exercise of Washington State Catholics, who will be injured if the State tells them that Confession is not a “uniquely safe space for parishioners to share their complex situations without fear of being reported to any authorities or enforcement agencies.” She correctly noted that “[b]ringing the state into the confessional infringes on the absolute freedom” of religion, which the Legislature has “recognized in other contexts.”

Ms. Hill urged the Committee to pass a “narrow exception” that would make Catholic priests mandatory reporters in every situation except for when they are administering the Sacrament of Confession, just as the vast majority of states have done.⁷

B. As Luke Esser testified, SB 5375 creates a double-standard that treats the clergy-penitent privilege worse than comparable secular privileges.

As Luke Esser testified at the hearing, SB 5375 carves up the State’s privileged communications statute and singles out the clergy-penitent privilege for disfavor:

³ Kniffin, Feb. 12, 2024 Public Comment at 2 n.4 (citing diocesan policies).

⁴ Kniffin, Feb. 4, 2025 Public Comment.

⁵ Hearing on SB 5375 Before the Wash. St. H. Human Serv’s, Youth & Early Learning Comm. (March 14, 2025, 8:00 A.M.), <https://tvw.org/video/house-early-learning-human-services-2025031189/?eventID=2025031189>.

⁶ *Id.* at 1:39:28.

⁷ Kniffin, Feb. 24, 2023 Public Comment at 21–26 (summarizing other states’ mandatory reporting laws).

RCW 5.60.060 codifies eleven testimony privileges, ten related to secular vocations or relationships, and one related to a religious vocation: clergy. The state's existing mandatory reporter law provides equal protection for all eleven privileges, but the current version of 5375 singles out clergy for inequitable treatment, eliminating only the clergy-penitent privilege while leaving the other ten intact.... 5375 will create a double standard that leaves the ten secular testimonial privileges untouched while eliminating the one testimonial privilege based on religious speech and the free exercise of religion. We urge you to not adopt that double standard.⁸

Mr. Esser is correct. RCW 26.44.030(b) now states:

No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

SB 5375 would change this sentence as follows:

Except for members of the clergy, no one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Washington State's mandatory reporter law currently treats all privileged communications the same. But if SB 5375 passes, it would create two tiers: most privileged communications covered by RCW 5.60.060 would still be protected; but the clergy-penitent privilege, recognized in RCW 5.60.060(3), would be tossed to the side.

SB 5375 overtly "targets religious conduct for distinctive treatment" and "advances legitimate governmental interests only against conduct with a religious motivation." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). Laws that meet this description are presumably unconstitutional under the First Amendment's Free Exercise Clause. They "will survive strict scrutiny only in rare cases." *Id.* See also *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 486 (2020) (laws that burden religious exercise are unconstitutional if their "proffered objectives are not pursued with respect to analogous nonreligious conduct").

Judges (who are themselves, of course, lawyers) will be most keen on the fact that SB 5375 keeps the attorney-client privilege but sacrifices the clergy-penitent privilege. Washington's position seems to be that a child abuser can safely confess to his lawyer, but not his priest. *The bill would make it official State policy that its good for **lawyers** to keep confessions confidential for **secular** reasons, but it's bad for **priests** to keep confessions secret for **religious** reasons.*

⁸ March 14, 2025 Hearing on SB 5375 at 1:41:04.

To survive strict scrutiny, Washington State would have to show that SB 5375 (1) advances a compelling government interest and (2) restricts religious exercise no more than necessary to advance this government interest. *Carson v. Makin*, 596 U.S. 767, 780 (2022).

C. Senator Frame is pushing a bill that burdens religious liberty because she doesn't "feel like" compromising any more.

At the beginning of the March 14 hearing, Senator Noel Frame, the lead sponsor for SB 5375, told you that this bill advances an important secular legislative purpose.⁹ That is of course true—no one doubts that the government has a compelling interest in protecting children from abuse and neglect.

However, Senator Frame made no effort to explain why her bill would survive the back half of the strict scrutiny test. The “exceptionally demanding” “least-restrictive-means standard” requires the State to “show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion.” *Holt v. Hobbs*, 574 U.S. 352, 364–65 (2015) (cleaned up).

First, as in *Holt v. Hobbs*, Washington State would lose because it has made no effort to explain why the approach adopted by the “vast majority of states,” *id.*, protecting kids *and* respecting religious liberty,¹⁰ won't work here. *Id.*

Second, closer to home, Senator Frame has not explained why she has rejected the win-win proposal she pushed for in 2024. Last year, Senator Frame testified she was “trying to thread a very important needle” so that the State would “not put[] [Catholic] priests in a position of breaking their vows but rather provid[es] an avenue to interrupt the abuse of children that they reasonably believe is imminent.”¹¹ I commended Senator Frame for advancing a “narrowly crafted exemption for the penitential communications privilege” that would advance the State's interest without infringing on religious exercise.¹²

But this year, Senator Frame has abandoned this approach. Why? She hasn't explained why the compromise she fought for last year won't work. It seems she's just tired of working on a legislative compromise:

So I have tried really hard over the last couple of years to find a balance and to strike a careful compromise. And I'm just here to say for those who I've tried to work with I'm really sorry that **I don't feel like I can make a compromise for you anymore and I stand by the bill with no exemption.** I believe we've gotten to the point... this, this bill has been in consideration in some way, shape or

⁹ *Id.* at 10:45.

¹⁰ Kniffin, Feb. 24, 2023 Public Comment at 21-26 (surveying states' mandatory reporter laws).

¹¹ Hearing on SB 6298 Before the Wash. St. S. Human Serv's Comm. (Jan. 25, 2024, 8:00 A.M.) at 1:06:47, available at <https://tvw.org/video/senate-human-services-2024011403/?eventID=2024011403>.

¹² Kniffin, Feb. 12, 2024 Public Comment.

form, for 20 years, and I really wonder about all the children who have been abused and neglected and have gone unprotected by the adults in their lives because we didn't have a mandated reporter law, and that we continue to try to protect this in the name of religious freedom. **So the bill before us says that if you're a member of the clergy, that you have to report child abuse and neglect when you learn about it, no matter the scenario in which you obtain that information.**¹³

I understand that this bill means a lot to Senator Frame and appreciate that it has been disappointing to see her efforts come to naught each of the last two years. But the fact that Senator Frame is done compromising will not help Washington State defend the constitutionality of a bill that, as Senator Frame acknowledges, would make it illegal for Catholic priests to perform a sacrament the way the Catholic faith requires.

Nothing in Senator Frame's testimony, nothing in the legislative record, comes close to justifying Washington State's decision to invade the clergy-penitent privilege but leave secular privileged communications alone.

D. A narrowed privilege, along the lines of those proposed in each of the past three years, would guard against abuses identified by witnesses without infringing religious liberty.

Some witnesses at last Friday's hearing claimed that SB 5375's blunt approach is necessary because some religious groups will otherwise abuse the clergy-penitent privilege. For example, Marino Harden claimed that the "broad wording around confessional exemption allows any religious organization to adjust their policies to require that all investigations be kept secret as part of their customs."¹⁴ This is a valid concern.

Harden referenced InvestigateWest's 2022 report into how the Jehovah's Witnesses leadership evades mandatory reporting laws. According to the article,

In Jehovah's Witnesses congregations worldwide, child abuse allegations remain hidden due both to the religion's beliefs and a hierarchical structure that demands secrecy.

If there are two witnesses, or if the abuser makes an admission to elders, a congregational body of elders forms a "judicial committee" to investigate the allegations. But this committee must remain strictly confidential, according to the manuals issued to each elder and obtained by InvestigateWest.

¹³ Hearing on SB 5375 Before the Wash St. Sen. Human Serv's Comm. (Jan. 28, 2025, 1:30 P.M.) at 1:07:40 (emphasis added), <https://tvw.org/video/senate-human-services-2025011502/?eventID=2025011502>.

¹⁴ March 14, 2025 Hearing at 1:51:58.

Elders ... are not instructed to call authorities. Instead, they are instructed to call the Watchtower headquarters in New York.... The elder's manual ... acknowledges that some elders "may be obligated by law to report the allegation to secular authorities." But the manual does not encourage elders to do so unless required.

That makes each state's mandatory reporter law important. In a majority of states, clergy are mandated to report child abuse, and in 18 states any person suspecting child abuse must report it. But many of those states have laws that contain "clergy-penitent privilege," exempting religious leaders from reporting suspected abuse or neglect, according to a federal agency tracking the state laws.¹⁵

This is obviously personal for Mr. Harden, who mentions that he was raised Jehovah's Witnesses and participated as a whistleblower in InvestigateWest's investigation. He claims that "Jehovah's Witnesses ... require that [elders] investigate every sin, form a panel and report it back to headquarters." It seems Mr. Harden fears that if you give certain religious groups an inch, they'll take a yard, and expand their definition of what counts as a "penitential communication" to completely insulate themselves from public accountability.

That is an important concern. But I disagree with Mr. Harden that there's no other way to address this fear than to erase the clergy-penitent privilege entirely. I want to remind this Committee that in each of the last three years the Legislature has been presented with ways of narrowing the clergy-penitent privilege to address concerns like those Mr. Harden raised. In 2023¹⁶ and 2024,¹⁷ the Legislature went beyond RCW 5.60.060(3) to narrow what counts as a "penitential communication" or "sacred confidence" (must be "communicated through a spoken word," "made privately to a member of the clergy," or "intended by the communicant to be an act of contrition of a matter of conscience"). The same 2024 bill and an amendment introduced this year¹⁸ offer a different approach, describing communications that fall outside the privilege (excluding "group therapy," "activity related to human relations or personnel management," "internal judicial proceedings," or "any written communication"). Either way works.

¹⁵ Wilson Criscione, Jehovah's Witnesses covered up child sexual abuse in Washington state for decades, lawsuit alleges, InvestigateWest, Oct, 2022, <https://www.investigatwest.org/investigatwest-reports/jehovahs-witnesses-covered-up-child-sexual-abuse-in-washington-state-for-decades-lawsuit-alleges-17692697>.

¹⁶ 5280 AMH WALJ WICM 606, Proposed Am. to SB 5280 (2023) by Rep. Walsh (not adopted 4/11/2023), <https://lawfilesexxt.leg.wa.gov/biennium/2023-24/Pdf/Amendments/House/5280%20AMH%20WALJ%20WICM%20606.pdf>.

¹⁷ SB 6298 (2024), <https://lawfilesexxt.leg.wa.gov/biennium/2023-24/Pdf/Bills/Senate%20Bills/6298.pdf?q=20250317150636>.

¹⁸ 5375 AMS FORT S1993.1, Proposed Am. to SB 5375 (2025) by Sen. Fortunato (withdrawn 2/28/2025), <https://lawfilesexxt.leg.wa.gov/biennium/2025-26/Pdf/Amendments/Senate/5375%20AMS%20FORT%20S1993.1.pdf>.

Mr. Harden is right: the clergy-penitent privilege shouldn't be so broad that religious groups can fashion it into a free pass. But he is wrong to suggest that the only way to curtail abuses is to pass a mandatory reporter law that gets rid of the privilege altogether. The proposals that have been before the Legislature each of the last three years point the way. The First Amendment requires that Washington State take them seriously and reject them only if it can demonstrate that defining the penitential privilege more narrowly wouldn't work.

E. No court has ever held that government may coerce or punish a Catholic priest for upholding his religious vow to keep confessions private.

Finally, I would like to address comments from Tim Law, who scoffed at the notion that SB 5375 would "jail priests." He called it "fear mongering" and said, "The truth is no priest has been arrested, let alone jailed in any of the six states that have this reporting law, and that includes Texas."¹⁹

As far as I am aware, Mr. Law is correct:²⁰ no Catholic priest has ever been charged or convicted for failing to tell the government about someone's confession.²¹ However, I suggest that Mr. Law is taking this fact the wrong way. He seems to presume this means Texas has successfully intimidated priests into breaking one of their most sacred promises. That inference is unwarranted. As I have documented in previous public comments,²² and as Theresa Schrempff testified on March 14, "over the centuries priests have been executed because they have refused to break the seal of the confessional."²³ Priests in Texas are not made of weaker stock.

I suggest, rather, that the lack of any prosecution against priests shows that Catholic priests can protect children and report predators without violating the seal of the confessional. As I have demonstrated on other occasions, priests are trained in seminary and beyond to encourage penitents to speak to them outside of the confessional in such cases.²⁴ When someone speaks to a priest about child abuse outside of the confessional, priests are free to report that abuse to the authorities. As noted above, priests are already required to do so by their bishops and the bishops are encouraging the Legislature to make clergy mandatory reporters under Washington law. The fact that Mr. Law cannot identify any arrests does not prove that priests have bowed

¹⁹ March 14, 2025 Hearing at 1:43:06.

²⁰ On other matters, however, Mr. Law is clearly wrong. He told this committee that "no church law excommunicates a priest for sexually abusing a child." That is incorrect. Canon law has, of course, always considered the sexual abuse of a minor to be a grave crime and grievous sin. Canon 1395 § 2 rebuts Mr. Law's claim. Pope Francis has repeatedly asserted that bishops must have "zero tolerance" for clergy who sexually abuse children.

²¹ Kniffin Feb. 24, 2023 Public Comment at 25 ("[I]t does not appear that any of these six states have drawn attention to their laws against the penitential privilege by trying to enforce them. We are not aware of any effort to enforce any of these laws against a Catholic priest. Had there been any such efforts, it is a near certainty that Catholic priests would have refused to break their vow and that the Catholic Church would have mounted a significant campaign, including legal challenges, to defend its priests and its sacraments.").

²² Kniffin Feb. 24, 2023 Public Comment at 14–16.

²³ March 14, 2025 Hearing at 1:50:03.

²⁴ Kniffin Feb. 24, 2023 Public Comment at 16–18.

under state pressure; to the contrary, it is further evidence that Washington does not need to violate the First Amendment to keep its children safe.

* * *

I hope this response to the testimony presented on March 14 helps you better understand the issues at stake and carry out your responsibilities related to SB 5375. You should act to protect Washington State's children. You must at the same time ensure that you honor your obligation to respect religious liberty and infringe on that right only when you find that you can advance the government's interests no other way.

Here, it is plain that SB 5375's approach, which would override the clergy penitent privilege entirely, is not necessary to protect children. As such, the bill violates the First Amendment's Free Exercise Clause. I encourage Washington State to review again alternatives that both protect children and protect religious exercise.

As in previous years, I would be happy to work together with anyone on the Committee to develop a better bill that would protect children and respect constitutional rights.

Sincerely,



Eric N. Kniffin

Fellow, Ethics & Public Policy Center

CC: Committee counsel Luke Wickham and Omeara Harrington;
SB 5375 Sponsor Senator Noel Frame; and
Jean Welch Hill, Executive Director, Washington State Catholic Conference