

February 5, 2025

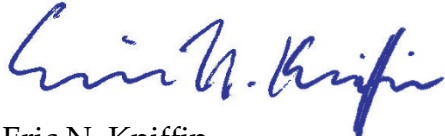
House Human Services, Youth & Early Learning Committee
Washington State Legislature
260A John L. O'Brien Building
P.O. Box 40600
Olympia, WA 98504-0600

Re: Written version of Public Testimony on HB 1211

Dear Chair Bergquist and Members of the Committee:

Below is the written version of the testimony I gave before your Committee on February 4 regarding House Bill 1211.

Sincerely,



Eric N. Kniffin
Fellow, Ethics & Public Policy Center

Public Testimony on HB 1211
House Human Services, Youth & Early Learning Committee
February 4, 2025

Good afternoon. My name is Eric Kniffin. I am here today as a fellow with the Ethics and Public Policy Center, a think tank in Washington, DC. I am also a civil rights attorney.

For the past three years, I have been monitoring and commenting on Washington efforts to make clergy mandatory reporters.¹ This is a good goal, endorsed by

¹ See,

Washington's three Catholic dioceses, each of which already requires priests to report suspected child abuse and neglect.²

However, *it won't do Washington children any good to pass a bill with obvious constitutional problems.*

Two years ago, I warned that Substitute House Bill 1098, were it enacted,

. . . would make Washington State's mandatory reporter law the most radical in the country. By explicitly overruling the clergy penitent privilege, while leaving the attorney client privilege untouched, Washington State would go where no state has gone before, setting the State up for a civil rights lawsuit I am confident it would lose.³

The same is true of this year's HB 1211. *The bill is clearly unconstitutional and would be enjoined and struck down before it ever went into effect.*

As I have warned the Washington State Legislature each of the last two years, favoring secular privileged communications over religious privileged communications is a huge constitutional red flag. Targeting religious conduct like this makes a law unconstitutional unless it can survive "strict scrutiny," the most stringent test in constitutional law. Washington would fail that test because HB 1211 fundamentally misunderstands the problem it is purporting to address in three critical ways.

First, the bill incorrectly presumes that government could coerce clergy into reporting what people confess. For Catholic priests, there are fewer promises more sacred than his vow that he will never, ever repeat what he hears in confession. Kings and military

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- Eric Kniffin, Public Comment in Opposition to SBH 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>.

² Archdiocese of Seattle, *Policy for the Prevention and Response to Sexual Abuse, Sexual Misconduct, and Sexual Harassment* at 5, <https://archseattle.org/wp-content/uploads/2021/08/Safe-Environment-Program-Policy-Prevention-Response-Eng-8.31.2021.pdf>; Diocese of Spokane, *Excerpt from the Diocese of Spokane Administrative Policies/Procedures: Prevention, Education, and Reporting of Abuse*, <https://files.ecatholic.com/6397/documents/2021/11/The%20Duty%20to%20Report.pdf?t=1637774089000>; Diocese of Yakima, *Policy Regarding Sexual Abuse of Minors by Clerics, Men and Women Religious, Seminarians, Employees, and Volunteers* at §2003, <https://yakimadiocese.org/wp-content/uploads/2015/12/Sexual-Abuse-Policies-2017-English-with-VAC-protocol.pdf>.

³ Kniffin, Public Comment on SHB 1098, *supra*, at 1.

dictators have learned over the centuries that you can't coerce priests into breaking the seal of the confessional. They'll be martyrs, not state witnesses, if you try.⁴

Second, HB 1211 incorrectly presumes that the clergy-penitent privilege hurts children. Since 2002, more than a dozen grand jury or attorney general reports have carefully reviewed decades of heartbreaking stories about child abuse at the hands of Catholic priests. But none of these reports have ever pointed to the sacrament of confession as a contributing factor. No independent auditor and none of the reports from the John Jay College of Criminal Justice has ever suggested that trying to force priests to divulge confessions would keep children safe.⁵

Third and finally, HB 1211 would be unconstitutional because it discriminates against religion by failing to target comparable secular privileges. *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.* It's hard to think of a more blatantly unconstitutional policy.

For all these reasons, proposals to invade the clergy penitent privilege are unwise, unnecessary, and unconstitutional.

Finally, I would like to speak to Washington State Catholic Conference Jean Hill's comment that six other states have passed laws that prioritize clergy's duties as a mandatory reporter over the clergy-penitent privilege. That is my count as well, but even this number is misleading.⁶

All six of these laws were passed before 2000, before the nation was focused on the issue of clergy sexual abuse. I have looked at these laws and scoured conversations around their passage and have found no evidence that any of these states understood it was infringing on the clergy penitent privilege. Since the Catholic abuse crisis emerged in 2002, dozens of bills have been proposed that would, like HB 1211, invade the clergy-penitent privilege, but all have failed. It is also important to note that, contrary to some of the testimony before the committee, none of these laws have been tested in court.

The bottom line is that none of these laws would give any cover to Washington should it enact HB 1211 as law. *If Washington were to proceed on this bill, it would become the first state to knowingly and explicitly favor secular privileges over religious privileges in this context.*

⁴ *Id.* at 14-16.

⁵ *Id.* at 21.

⁶ For my survey of these laws, see *id.* at 21-26.

Washington should instead follow the approach that other states have taken in recent years, making clergy mandatory reporters while respecting religious liberty. That is what Hawaii did in 2020, when it made clergy mandatory reporters except with respect to information “gained solely during a penitential communication.”⁷

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.

Thank you.

⁷ See *id.* at 22.