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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ORTHODOX CHURCH IN  
AMERICA, *et al.*,

Plaintiffs,

v.

ROBERT W. FERGUSON, *et al.*,

Defendants.

CASE No. 2:25-cv-00209-RLP

**UNITED STATES CONFERENCE OF  
CATHOLIC BISHOPS' *AMICUS  
CURIAE* BRIEF IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

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## INTERESTS OF *AMICUS CURIAE*

The United States Conference of Catholic Bishops (USCCB) is the assembly of Catholic Bishops of the United States and the Virgin Islands who jointly exercise certain pastoral functions entrusted to them by the Lord Jesus of sanctifying, teaching, and governing. Its mission is to support the ministry of the bishops, including by offering appropriate assistance to each bishop in fulfilling his particular ministry in the local Church of his diocese. See Pope Saint John Paul II, *Apostolos suos* (1998), <https://t.ly/6qW8r>. In addition to the harms Plaintiffs raise, the USCCB, as *amicus curiae*, seeks to inform the Court of Senate Bill 5375's (SB 5375) drastic effects on Catholic priests and the laity. The law impinges on values common to Christians who view the Sacrament of Confession as indispensable to their faith, undermines the priests and bishops entrusted with administering it, and imbues theological doctrines dating back to Christ himself with the State's current policy views.

## INTRODUCTION

In the late fourteenth century in Bohemia (modern-day Prague), King Wenceslaus IV threw Father John Nepomucene into prison, then had the priest tortured and drowned in the river. The priest's crime? Refusing to reveal what the queen had said in confession. The priest chose to be martyred rather than break the seal of the confessional and face a consequence worse than death—automatic excommunication and the very real risk of eternal damnation. Nearly 700 years later, priests still take the sacramental seal—a core component of the Catholic Church's doctrine on the confession and forgiveness of sins—just as seriously. And the Church's penalty for breaking the seal remains the same. Yet Washington's new law, SB 5375, forces priests to break that seal

1 or else face civil and criminal liability, including possibly incarceration. As a court in  
2 the Western District of Washington recently held, this affront to a core tenet and  
3 essential practice of the Catholic faith blatantly violates the First and Fourteenth  
4 Amendments to the United States Constitution, as well as binding Supreme Court and  
5 Ninth Circuit precedent. *See Etienne v. Ferguson*, No. 3:25-cv-05461 (W.D. Wash. July  
6 18, 2025), slip op. 14–22.

7 First, SB 5375 violates the church autonomy doctrine by significantly interfering  
8 with the ability of ecclesiastical authorities to regulate and ensure the proper  
9 administration of the sacraments. The Constitution forbids such governmental  
10 interference in “strictly ecclesiastical” matters. *Hosanna-Tabor Evangelical Lutheran*  
11 *Church & Sch. v. EEOC*, 565 U.S. 171, 194–95 (2012) (citation omitted). Under the  
12 church autonomy doctrine, which flows from the Free Exercise and Establishment  
13 Clauses of the First Amendment, religious institutions such as the Catholic Church must  
14 be free “to decide for themselves, free from state interference, matters of church  
15 government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral of*  
16 *Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). This is especially true  
17 “with respect to internal management decisions,” including those concerning “faith and  
18 doctrine,” “that are essential to the institution’s central mission.” *Our Lady of*  
19 *Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020). As confession is central  
20 to the Church’s teaching on and mission of healing and saving souls, Washington’s new  
21 law squarely runs afoul of the church autonomy doctrine, at its core.

22 Second, if allowed to take effect, SB 5375 will also severely impair the free  
23 exercise of religion (especially for the Catholic faithful and other Christians like

1 Plaintiffs) throughout the State of Washington, harming both the priests and the  
2 parishioners they serve. The law subjects “members of the clergy” (SB 5375, § 2(1)) to  
3 a Hobson’s choice of either suffering automatic excommunication or criminal and civil  
4 penalties (including incarceration in jail). Either way, there would be fewer clergy to  
5 care for the faithful—even though Washington, like other States and jurisdictions,  
6 already suffers from a significant and growing shortage of clergy. Those who stand to  
7 lose the most are people in rural, impoverished, or low-population areas, who already  
8 struggle to find clergy to provide pastoral care and administer the sacraments to them.

9 The USCCB’s objections to SB 5375 do not stem from an unwillingness to deal  
10 resolutely and firmly with the scourge of child abuse, which the Christian faith abhors.  
11 The USCCB and the broader Catholic Church, for example, condemn such abuse in the  
12 strongest terms possible, and have taken strong measures to eradicate that evil. *See* Pope  
13 Francis, *Vos Estis Lux Mundi* (Mar. 25, 2023), <https://t.ly/y9gnP>, (noting the “physical,  
14 psychological and spiritual damage to the victims and harm [to] the community of the  
15 faithful” caused by sexual abuse, and extending procedures for “prevent[ing] and  
16 combat[ing] these crimes”). The USCCB publishes an annual report of findings and  
17 recommendations on the implementation of its Charter for the Protection of Children  
18 and Young People, *see* 2024 Annual Report: Findings and Recommendations,  
19 <https://t.ly/6U8Ri>, including cooperating with civil authorities responding to, and  
20 investigating allegations of abuse, and disciplining and removing offenders from  
21 ministry and from any positions of contact with youth. And the Essential Norms which  
22 accompany the Charter (and are binding ecclesial law in all dioceses throughout the  
23 United States) require each diocese to “comply with all applicable civil laws with respect

1 to the reporting of allegations of sexual abuse of minors to civil authorities and [to]  
2 cooperate in their investigation.” *Id.* at 68.

3 Even a cursory examination of SB 5375 and the devastating effects it will have  
4 on the free exercise and practice of Christians in the State of Washington reveals layer  
5 upon layer of constitutional defects that cannot be squared with the Constitution’s broad  
6 protections for church autonomy and religious freedom. The Court should therefore  
7 follow the Western District of Washington’s lead and grant the prayed-for preliminary  
8 injunction in full, safeguard the constitutional rights of Plaintiffs and those whom they  
9 serve, and enjoin Defendants from enforcing this newly enacted revision of a religious  
10 sacrament, and a giant carve-out from the time-honored priest-penitent privilege, both  
11 of which predate statehood and America’s founding by several centuries.

## 12 BACKGROUND

13 The Sacrament of Confession and the other six sacraments—baptism,  
14 confirmation, Eucharist, anointing of the sick, holy orders, and matrimony—play a  
15 central, foundational role in the Catholic faith and comprise the “whole liturgical life of  
16 the Church.” *Catechism of the Catholic Church* ¶ 1113 (2d ed.), <https://t.ly/-JdS7>.  
17 Instituted by Jesus Christ himself, the sacraments “manifest and communicate to men  
18 . . . the mystery of communion with the God who is love, One in three persons.” *Id.*  
19 ¶ 1118. The sacraments are far more than mere symbols of God’s grace; they “bear fruit  
20 in those who receive them with the required dispositions” and “are *necessary for*  
21 *salvation.*” *Id.* ¶¶ 1129, 1131. Through the sacraments, the faithful receive “the grace  
22 of the Holy Spirit, given by Christ,” so that they may be “faithful partakers in the divine  
23 nature” and united “in a living union with the only Son, the Savior.” *Id.* ¶ 1129.



1 The Sacrament of Confession—also known as Penance or Reconciliation—  
2 carries out a core mission of reuniting congregants with Christ by allowing the faithful  
3 to repent and be forgiven by God of grievous sins that sever their communion with God  
4 and the Church. *Catechism, supra*, ¶¶ 1423–24. That forgiveness is administered  
5 through a priest, who works “*in persona Christi*” (in the person of Christ) to hear the  
6 confessions of contrite sinners and absolve them of their sins. During the sacrament, a  
7 contrite sinner privately confesses his or her sins to a priest, repents of those sins, and  
8 receives absolution from God through the priest—but only after promising “to sin no  
9 more and to avoid the near occasions of sin.” USCCB, *Act of Contrition* (from the Order  
10 of Penance, nos. 45 and 92), <https://t.ly/QB3tG>.

11 While the ultimate authority to forgive sins rests with God, Jesus entrusted to His  
12 apostles the authority to forgive sins in His name when, following His resurrection, He  
13 “breathed on them and said to them, ‘Receive the holy Spirit. Whose sins you forgive  
14 are forgiven them, and whose sins you retain are retained.’” *John* 20:21–23 (New  
15 American Bible, Revised Edition). In doing so, “Christ instituted the sacrament of  
16 Penance for all sinful members of his Church: above all for those who, since Baptism,  
17 have fallen into grave sin, and have thus lost their baptismal grace.” *Catechism, supra*,  
18 ¶ 1446.

19 Since the Sacrament of Confession was included in the first comprehensive  
20 codification in 1917 of the law of the Catholic Church, it has remained largely  
21 unchanged—a steadfast refuge for those seeking to redeem their souls and restore their  
22 unity with God. See *Codex Iuris Canonici* (*Code of Canon Law*), 1917 CIC cc.870–91.  
23

1 The Catholic Church has long taught that God “confers the same transmissible  
2 power to the apostles and also upon their successors to continue their work as announcers  
3 of the gospel and as ministers of the redemptive work of Christ.” Pope Saint John Paul  
4 II, *Reconciliatio et Paenitentia* ¶ 29 (Feb. 12, 1984), <https://t.ly/REDdq>; *accord Codex*  
5 *Iuris Canonici* (*Code of Canon Law*), 1983 CIC c.375, § 1 (“Bishops . . . by divine  
6 institution succeed to the place of the Apostles through the Holy Spirit who has been  
7 given to them”), <https://t.ly/leBAY>. That understanding accords with the Catholic  
8 Church’s longstanding view that She and Her members, “though many, are one body in  
9 Christ.” *Romans* 12:4–5. Bishops carry the responsibilities entrusted to them by the  
10 successors to Saint Peter, to whom Jesus said, “you are Peter, and upon this rock I will  
11 build my church.” *Matthew* 16:18.

12 “Since ancient times” within the Catholic Church, the bishop has been viewed as  
13 the “visible head of a particular Church,” and has “rightfully been considered to be the  
14 one who principally has the power and ministry of reconciliation.” *Catechism, supra*,  
15 ¶ 1462. Seen as “moderators of the penitential discipline,” Catholic bishops oversee the  
16 administration of confession within their respective dioceses. Pope Saint Paul VI,  
17 *Lumen Gentium: Dogmatic Constitution of the Church* ¶ 26 (Nov. 21, 1964),  
18 [https://t.ly/\\_8dNt](https://t.ly/_8dNt). They entrust priests with their shared mission to “fulfill[] the ministry  
19 of the Good Shepherd who seeks the lost sheep, of the Good Samaritan who binds up  
20 wounds, of the Father who awaits the prodigal son and welcomes him on his return, and  
21 of the just and impartial judge whose judgment is both just and merciful.” *Catechism,*  
22 *supra*, ¶¶ 1461, 1465. “In hearing confessions the priest is to remember that he is equally  
23 a judge and a physician and has been established by God as a minister of divine justice

1 and mercy, so that he has regard for the divine honor and the salvation of souls.” 1983  
2 CIC c.978, § 1. The ability to hear confessions may be granted to those found by a  
3 bishop “to be suitable through an examination or whose suitability is otherwise evident,”  
4 1983 CIC c.970, and only those to whom bishops give the ability to hear confessions  
5 (confessors) may “forgive all sins ‘in the name of the Father, and of the Son, and of the  
6 Holy Spirit,’” *Catechism, supra*, ¶ 1461.

7 Catholic bishops also entrust priests to uphold the integrity of the Sacrament of  
8 Confession in all respects—including by not breaking or violating “the sacramental seal  
9 of confession.” Anthony Cardinal Bevilacqua, *Confidentiality Obligation of Clergy*  
10 *from the Perspective of Roman Catholic Priests*, 29 Loy. L.A. L. Rev. 1733, 1734  
11 (1996); *see also* 1983 CIC c.392, § 2 (bishops must “exercise vigilance so that abuses  
12 do not creep into . . . the celebration of the sacraments”). The sacramental seal binds  
13 confessors to “keep absolute secrecy regarding the sins that his penitents have confessed  
14 to him” and to “make no use of knowledge that confession gives him about penitents’  
15 lives.” *Catechism, supra*, ¶ 1467. “The sacramental seal is inviolable,” meaning “it is  
16 absolutely forbidden for a confessor to betray in any way a penitent in words or *in any*  
17 *manner* and *for any reason*.” 1983 CIC c.983, § 1 (emphases added). Confessors are  
18 also “prohibited completely from using knowledge acquired from confession to the  
19 detriment of the penitent.” *Id.* c.984, § 1.

20 The seal of confession has been recognized throughout the Catholic Church’s  
21 history and was codified into canon law in 1215 by the Fourth Lateran Council (well  
22 before America’s founding). *See* Bevilacqua, *supra*, 1734 n.4. The seal is currently  
23 codified in Canon 983 of the *Codex Iuris Canonici* (Code of Canon Law), 1983 CIC

1 c.983, § 1, which is “the principal legislative document of the Church.” Pope Saint John  
2 Paul II, *Sacrae Disciplinae Leges* (Jan. 25, 1983), <https://t.ly/w7JyA>. The Code of  
3 Canon Law is an “indispensable instrument to ensure order . . . in the Church’s activity”  
4 and contains “the fundamental elements of the hierarchical and organic structure of the  
5 Church as willed by her divine Founder, or as based upon apostolic . . . tradition.” *Id.*

6 With “deep historical roots in the theology, canon law, pastoral practice, and  
7 tradition of the Church,” Bevilacqua, *supra*, 1734, the sacramental seal has long been  
8 considered “indispensable.” Pope Francis, *Address of His Holiness Pope Francis to*  
9 *Participants at the Course Organized by the Apostolic Penitentiary* (Mar. 29, 2019),  
10 <https://t.ly/KSeKn>. “Although it is not always understood by the modern mentality, [the  
11 sacramental seal] is indispensable for the sanctity of the sacrament and for the freedom  
12 of conscience of the penitent, who must be certain, at any time, that the sacramental  
13 conversation will remain within the secrecy of the confessional.” *Id.* “[N]o human  
14 power has jurisdiction over it,” nor can human power “lay any claim to it.” *Id.*; *see also*  
15 1983 CIC c.750, § 2 (teachings of the Church “concerning the doctrine of faith and  
16 morals” must be “firmly embraced and retained,” and “one who rejects” them “is  
17 opposed to the doctrine of the Catholic Church”). Indeed, the “inviolable secrecy of  
18 Confession comes directly from the revealed divine right and is rooted in the very nature  
19 of the Sacrament, to the point of not admitting any exception in the ecclesial sphere, nor,  
20 least of all, in the civil one.” Cardinal Mauro Piacenza et al., *Note of the Apostolic*  
21 *Penitentiary on the Importance of the Internal Forum and the Inviolability of the*  
22 *Sacramental Seal* (June 21, 2019). For that reason, “the defence of the sacramental seal  
23 by the confessor . . . represents not only an act of dutiful ‘allegiance’ towards the

1 penitent,” but also a “martyrdom” that is “rendered directly to the uniqueness and  
2 salvific universality of Christ and the Church.” *Id.*

3 Given the seal’s sacrosanctity, violating it carries grave consequences under  
4 Catholic canon law. “A confessor who directly violates the sacramental seal incurs a  
5 *latae sententiae* [i.e., automatic] excommunication.” 1983 CIC c.1386, § 1.  
6 Excommunication cuts one off from full communion with the Church and the  
7 sacraments, imperiling one’s salvation, and a priest who has been excommunicated is  
8 not only forbidden from “celebrating the Sacrifice of the Eucharist and the other  
9 sacraments,” but also from even “*receiving* the sacraments” himself. *Id.* c.1331, §§ 1–  
10 2 (emphasis added). Bishops are required to ensure that all those performing the  
11 sacraments within their dioceses have the proper faculties to validly do so. *E.g.*, 1983  
12 CIC c.392, § 2, c.969, § 1.

13 According to Catholic teaching, just as Jesus entrusted the apostles, the apostles  
14 passed down to the bishops the primary responsibility of administering the holy  
15 Sacrament of Reconciliation, so that whatever they “bind on earth shall be bound in  
16 heaven,” and whatever they “loose on earth shall be loosed in heaven.” *Matthew* 18:18.

## 17 ARGUMENT

### 18 I. SB 5375 violates the Catholic Church’s right to self-governance.

19 Born of “the Religion Clauses” of the First Amendment, the church autonomy  
20 doctrine “protect[s] the right of churches and other religious institutions to decide  
21 matters ‘of faith and doctrine’ without government intrusion.” *Our Lady of Guadalupe*  
22 *Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020). The doctrine is fundamental to a  
23 cohesive and enduring relationship between civil courts and religious institutions

1 because it preserves for those institutions “an independence from secular control or  
2 manipulation” and the “power to decide for themselves, free from state interference,  
3 matters of church government as well as those of faith and doctrine.” *Kedroff v. St.*  
4 *Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).  
5 Because the “structure of the Church is a matter of faith, not mere administrative  
6 convenience,” *Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm’n*,  
7 145 S. Ct. 1583, 1600 (2025) (Thomas, J., concurring), the church autonomy doctrine  
8 safeguards from governmental interference the right of Catholic bishops to freely and  
9 fully exercise the authority and solemn responsibilities bestowed on them by the  
10 Church’s Canon Law.

11 SB 5375 falls squarely within this constitutional prohibition by fundamentally  
12 altering the authority of clergy on core matters of faith and doctrine. For two millennia,  
13 Catholic bishops have exercised the authority to regulate the administration of the  
14 sacraments within their dioceses, 1983 CIC c.392, § 2, including the Sacrament of  
15 Confession, *id.* c.969, § 1, c.974, § 2. This authority includes determining which priests  
16 are “suitable” to hear confessions, *id.* c.969, § 1, c.970, and “exercis[ing] vigilance so  
17 that abuses do not creep into . . . the celebration of the sacraments,” *id.* c.392, § 2. But  
18 now, through its new law, the State of Washington purports to override that authority by  
19 imposing a new qualification for suitable confessors—that they be willing to break the  
20 sacramental seal in circumstances prescribed by SB 5375. By imposing criminal and  
21 civil penalties for failing to comply with SB 5375, the State effectively exerts some  
22 measure of control, as a practical matter, over which priests may hear confessions and  
23 which may not. *See* RCW §§ 26.44.080, 9A.20.021(c)(2) (authorizing incarceration of

1 up to 364 days in jail or a fine of up to \$5,000 for each violation, or both); *see also Beggs*  
2 *v. State*, 247 P.3d 421, 425 (Wash. 2011) (holding that Washington’s mandatory  
3 reporting law has an implied civil remedy). Because Christ left the power to bind and  
4 loose to the apostles (succeeded by the bishops)—and not the State of Washington—the  
5 State’s intrusion on core matters of faith and Church self-governance is unconstitutional.

6 Worse still, SB 5375 demands that any faith that observes the sacramental seal—  
7 including the Catholic Church—administer core sacraments in clear violation of its  
8 ancient theological teachings. Such interference by the State of Washington has no place  
9 in our constitutional design. The Constitution provides religious institutions with  
10 “independence in matters of faith and doctrine and in closely linked matters of internal  
11 government.” *Our Lady of Guadalupe*, 591 U.S. at 747. The changes in the teachings,  
12 doctrine, and governance of church matters common to both traditions wrought by  
13 SB 5375—including the regulation of the administration of the sacraments within their  
14 dioceses—fall squarely within these recognized categories. *See id.* “Legislation that  
15 regulates” these matters—such as SB 5375—is anathema to the Constitution’s promises  
16 of free exercise and freedom from government-established religion. *Kedroff*, 344 U.S.  
17 at 107; *see also Our Lady of Guadalupe*, 591 U.S. at 746.

18 The State Defendants’ insistence (at 22–23) that the law doesn’t implicate church  
19 governance is directly refuted by the very cases they say are distinguishable: By forcing  
20 priests to break the sacramental seal or face criminal and civil penalties, the State  
21 arrogates to itself the authority to alter or regulate the administration of the Sacrament  
22 of Confession and to change its core features. Even under the State Defendants’  
23 description of the church autonomy doctrine—explaining that it “is based on the



1 principle that churches must be able to make internal management decisions ‘essential  
2 to’ their ‘central mission’”—the law gives rise to textbook interference with religion.  
3 State Defendants’ Response to PI Mot. 23 (quoting *Our Lady of Guadalupe*, 591 U.S. at  
4 746); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S.  
5 171, 189–90 (2012).

6 SB 5375 both purports to fundamentally alter how and by whom a core sacrament  
7 of the Catholic faith is administered, and also directly intrudes upon the “relationship  
8 between an organized church and its ministers”—a vital component of Christ’s Mystical  
9 Body on Earth. *See McClure v. Salvation Army*, 460 F.2d 553, 559 (5th Cir. 1972); *see*  
10 *also 1 Corinthians 12:27* (“Now you are Christ’s body, and individually parts of it.”).  
11 Because SB 5375 violates centuries of precedent protecting religious institutions such  
12 as the Catholic Church from such governmental interference, it raises “serious  
13 questions” and should be declared unconstitutional and its enforcement enjoined. *See*  
14 *Etienne*, slip op. 24.

15 **II. SB 5375 will have devastating impacts on the free exercise of religion by**  
16 **Catholic practitioners—and other Christians—throughout the State of**  
**Washington.**

17 As the court in the Western District of Washington recently recognized, “[t]here  
18 is no question that SB 5375 burdens [the] free exercise of religion.” *Etienne*, slip op.  
19 15. Indeed, the “consequences for violating the law are serious” and “the implications  
20 of violating the Sacramental Seal are more serious still.” *Id.* That’s because “[m]embers  
21 of the clergy” (SB 5375, § 2(1)) face an impossible choice: Change their faith to abide  
22 by SB 5375’s demands, administering a new sacrament contrary to their faith, and facing  
23 removal and the risk of eternal damnation, or stay true to a faith and to sacraments that



1 long predate statehood and America’s founding and risking incarceration in jail, as well  
2 as other criminal and civil liability. Either result—which will deprive priests of their  
3 constitutional rights—would also be catastrophic for Catholics who will be left with  
4 fewer clergy to administer the Sacrament of Confession to them and be deprived of their  
5 rights under the Constitution. Catholics will also face another obstacle: the fear that  
6 their priest will break the seal of the confessional, chilling their access to sacraments  
7 necessary for their salvation. Neither result is tolerable as a matter of faith or  
8 constitutional law.

9 The Supreme Court has left no doubt that the First and Fourteenth Amendments  
10 protect religious institutions not only from outright prohibitions on the free exercise of  
11 religion, but also from substantial burdens on religion and religious practices imposed  
12 through laws or policies, like SB 5375, targeted at religion. *See Kennedy v. Bremerton*  
13 *School Dist.*, 597 U.S. 507, 524–25 (2022); *see also Etienne*, slip op. 17–18 (holding  
14 that “SB 5375 is neither neutral nor generally applicable” and “explicitly singled out”  
15 clergy). And it is just as constitutionally infirm for a law to make a “sincere religious  
16 practice” significantly more difficult to engage in as it is for a law to ban the religious  
17 practice outright. *See id.* at 525; *see also Church of the Lukumi Babalu Aye, Inc. v. City*  
18 *of Hialeah*, 508 U.S. 520, 533, 543–46 (1993). Here, by burdening the administrability  
19 of the sacrament through exposing clergy to criminal and canonical sanctions no matter  
20 *what* they do—and by imposing a chilling effect on laity who seek to confess—SB 5375  
21 does just that, and on a much larger scale than the State Defendants admit.

22 More than that, SB 5375’s frontal assault on the seal of confession will have the  
23 deleterious effect of discouraging Christians from taking part in the Sacrament of

1 Confession altogether. “An obvious purpose of the sacramental seal is the good of the  
2 penitent,” because there is “an implicit contract of silence between confessor and  
3 penitent not to expose the reputation of the penitent to detraction.” *See* Bevilacqua,  
4 *supra*, 1736. “Were the Sacrament rendered difficult or odious to the faithful they would  
5 be deterred from approaching it, thereby undermining the Sacrament itself to the great  
6 spiritual harm of the faithful, as well as to the entire Church.” *Id.*

7 Thus, one of the earliest religious liberty cases recognized that “[s]ecrecy is of the  
8 essence of penance. The sinner will not confess, nor will the priest receive his  
9 confession, if the veil of secrecy is removed.” *People v. Phillips*, N.Y. Ct. Gen. Sess.  
10 (1813), *as reprinted in Privileged Communications to Clergymen*, 1 Catholic Lawyer  
11 199, 207 (1955). In *Phillips*, it did not matter that the government may have “had a  
12 legitimate need” for the testimony because “that need did not outweigh the interference  
13 with the relationship between priests and penitents in the Roman Catholic Church” that  
14 would occur if the priest was forced to violate the confidentiality of confession. Michael  
15 W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*,  
16 103 Harv. L. Rev. 1409, 1411–12 (1990). *Phillips*’s discussion about the seal of  
17 confession—and the importance of protecting it—is equally applicable to any church  
18 that celebrates this ancient sacrament.

19 The Ninth Circuit has also recognized the importance of the seal of confession.  
20 In *Mockaitis v. Harclerod*, 104 F.3d 1522 (9th Cir. 1997), *overruled on other grounds*  
21 *by City of Boerne v. Flores*, 521 U.S. 507 (1997), the Court of Appeals explained that  
22 the sacramental seal is vital to the Sacrament of Confession itself, because “the  
23 knowledge, belief, or suspicion that freely-confessed sins would become public would

1 operate as a serious deterrent to participation in the sacrament and an odious detriment  
2 accompanying participation.” *Id.* at 1530. By “decid[ing] that the [priest] shall  
3 promulgate what he receives in confession,” SB 5375 effectively “declare[s] that there  
4 shall be no penance; and this important branch of the Roman catholic religion would be  
5 thus annihilated.” *Id.* at 1532.

6 Yet enforcement of SB 5375 will have this soul-crushing effect. That is because  
7 it is not just “members of the clergy” (SB 5375, § 2(1)) who face a Hobson’s choice here  
8 (excommunication or jail). Parishioners face a similarly impossible dilemma. Because  
9 Jesus told *everyone*—from murderers to those “angry with [a] brother”—that they “will  
10 be liable to judgment,” *Matthew* 5:21-22, the circumstances that move people to confess  
11 their sins are many. Penitents will be forced to think twice before communicating their  
12 sins fully and freely in the confessional, given SB 5375’s broad scope and vague  
13 parameters.

14 For instance, SB 5375’s newly imposed duty on clergy to report, without  
15 exception, neglect could encompass reporting anything from “sudden changes in [a  
16 child’s] behavior or school performance,” “learning problems (or difficulty  
17 concentrating) that cannot be attributed to specific physical or physiological causes,”  
18 and even “com[ing] to school or other activities early [or] stay[ing] late.” Washington  
19 State Department of Social and Health Services, *A Guide for Recognizing & Reporting*  
20 *Child Abuse & Neglect* 3 (Revised April 2018), [https://t.ly/Oug\\_T](https://t.ly/Oug_T). So children’s  
21 caretakers must now decide whether partaking in the Sacrament of Confession—and  
22 encouraging their children to do likewise—is worth the risk of the State’s investigatory  
23 and prosecutorial arms reaching into the confessional and the home and forcing the

1 disclosure of matters bearing on their conscience that they have confessed to God  
2 through His Church’s priests. Such a risk may chill many from practicing their religion  
3 freely by confessing their sins fully and freely, and seeking absolution, healing, and  
4 guidance from God and his ministers here on Earth.

5 SB 5375 will also make the Sacrament difficult to obtain by limiting the already  
6 dwindling number of priests who can validly administer it. The Catholic Church in the  
7 United States, for example, faces a well-documented and growing shortage of priests.  
8 Between 2000 and 2024, the total number of priests decreased by 26%, while the number  
9 of parishes without a resident priest has increased by 22%. *See* Center for Applied  
10 Research in the Apostolate, *Frequently Requested Church Statistics*, <https://t.ly/mbNjb>  
11 (last accessed July 16, 2025). The shortage has forced parishes in western Washington,  
12 in particular, to consolidate from 136 to 60 “parish families.” Sophia Gates, *Whatcom*  
13 *Catholics Adjust to Church Consolidation as Priests, Parishioners Decline*, *Cascadia*  
14 *Daily News* (Mar. 17, 2025), <https://t.ly/1-sD7>.

15 Regrettably, those who partake in the sacraments in more rural or remote parts of  
16 Washington State will bear the brunt of SB 5375’s devastating effects. Rural or remote  
17 parishes cannot combine as easily with other parishes as urban parishes can, and even  
18 then, such combinations are only a stopgap or band-aid measure that makes it more  
19 burdensome on congregants to practice their faith and receive the sacraments. And rural  
20 access to the Sacrament of Confession, as well as other sacraments, including the  
21 Eucharist and baptism, will only dwindle more, if SB 5375 is allowed to go into effect.

22 Thus, whether by stripping the Sacrament of Confession of its essential, centuries-  
23 old attributes or by making it more difficult to validly receive, SB 5375 will have

1 outsized adverse impacts on the free exercise of religion by many Christians throughout  
2 the State of Washington. Because those dire consequences can only be avoided by  
3 ensuring that the law does not go into effect, the Court should grant Plaintiffs' motion  
4 in full, declare SB 5375 unconstitutional, and enjoin the enforcement of SB 5375.

### 5 CONCLUSION

6 SB 5375 interferes with the ability of many Catholic—and other Christian  
7 churches who share the same views on the Sacrament of Confession—to regulate and  
8 ensure the proper administration of the sacraments to the faithful entrusted to their care  
9 and forces churches to administer their centuries-old Sacrament of Confession in  
10 violation of their core beliefs and teaching. The law will thus devastate the free exercise  
11 of religion by these practitioners throughout the State of Washington. This Court should  
12 grant Plaintiffs' motion for injunctive relief in full and enjoin the State from enforcing  
13 this blatantly unconstitutional mandate.

14  
15  
16 Dated: July 23, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 23, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

Executed on July 23, 2025.

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