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Confessional Secrecy in child abuse cases abolished in Washington State (USA)

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On 2 May 2025, Washington State Governor Bob Ferguson signed Senate Bill 5375, the bill that introduces a significant reform in the legal framework of child protection. The new law, which will take effect on 27 July 2025, eliminates the exemption that until now allowed clergy members not to report child abuse learned during sacramental confession.

Specifically, by amending Revised Code of Washington (RCW) chapters 26.44.020 (which defines key terms relating to child abuse and neglect) and 26.44.030 (which establishes mandatory reporting for certain professional categories), the reporting obligation is extended to all religious figures, including priests, pastors, rabbis, imams and other spiritual figures, regardless of their institutional status or the formality of religious recognition.

The break with the US legal tradition is quite evident, since the latter has hitherto been characterised by the protection of sacramental communications by virtue of the principle of the confessional seal, recognised as inviolable in canon law (can. 983, can. 1388), and protected as an integral part of the religious freedom guaranteed by the First Amendment of the United States Constitution and the Religious Freedom Restoration Act (RFRA) of 1993[1].

Prior to the enactment of Senate Bill 5375, the Washington State legal system provided a mandatory reporting regime for certain professional categories, including physicians, psychologists, teachers and social workers, in accordance with RCW 26.44.030.

However, chapter RCW 5.60.060 granted a specific exemption for information learned by members of the clergy during sacramental confessions, recognizing the privilege of confidentiality of religious communications as an essential component of freedom of worship.

This principle, rooted in the common law system and historically protected in countries of Anglo-Saxon tradition, is based on the idea that the relationship between the faithful and the priest must be protected in order to guarantee religious freedom and the protection of the spiritual conscience, and is also reflected in important decisions of the United States Supreme Court (the case Watson v. Jones, 80 U.S. 679 (1871) in

[1] Archdiocese of Seattle, Office of the Archbishop, 'Clergy: Answerable to God or State', Archbishop Paul D. Etienne May 4, 2025, https://www.wacatholics.org/_ui/img/heros/Archbishop-Paul-Etienne-on-On-Clergy-Reporting-05-04-25.pdf.

which the autonomy of religious communities to regulate their own internal affairs without state interference was essentially affirmed).

With the passage of Senate Bill 5375 and the extension of mandatory reporting to religious figures with no exception for sacramental communications, this historic protection is formally eliminated, the result of a representative choice of the expansion of the concept of 'mandatory reporting' (the legislative obligation for certain categories of persons to report suspected cases of child abuse and neglect to government authorities) which in the United States has deep roots in the common law legal system and which, over the past decades, has been progressively expanded to include more and more professional categories and specific situations of risk for children.

The news from Washington has provoked reactions from religious communities, especially the Catholic Church, with the criticism of the Archbishop of Seattle, Paul D. Etienne, who called the new law a violation of canon law, which considers the sacramental seal absolutely inviolable and essential to guarantee the religious freedom and spiritual security of the faithful, providing for the automatic excommunication latae sententiae (can. 1388) for any priest who reveals what he has learned in confession.

But there is more: the new Washington law could raise complex constitutional issues in relation to the religious freedom guaranteed by the First Amendment of the United States Constitution, a legal tension already examined by the Supreme Court in Employment Division v. Smith (1990) and City of Boerne v. Flores (1997).

In Employment Division v. Smith, the Court ruled that laws of general application, which do not specifically aim to restrict the exercise of religion, do not violate the First Amendment, even if they impose an indirect burden on religious practices.

In particular, this principle applies when the law is considered to be 'neutral' and of 'general application', i.e. not intended to discriminate against or favour any particular faith, but to regulate in a uniform manner the conduct of citizens regardless of their beliefs. Consequently, a law requiring priests to report information learned during confession to the authorities could be considered constitutionally valid, as long as it is formulated in neutral terms and applicable to all, without specifically aiming to restrict religious practices.

In response to the 1990 decision, Congress passed the Religious Freedom Restoration Act (RFRA) in 1993, precisely to restore a higher standard of protection for religious freedom. RFRA requires that any law substantially affecting the exercise of religion must pass strict scrutiny, demonstrating that such a restriction is the least restrictive means of pursuing a compelling government interest.

However, the scope of RFRA was significantly limited by the Court in City of Boerne v. Flores (1997), in which it ruled that Congress could not extend RFRA to impose constitutional obligations on the states beyond what is required by the Fourteenth Amendment.

This means that although RFRA still applies at the federal level, state laws such as Washington's could be exempt from such strict scrutiny, as long as they respect the principles of neutrality and general application as defined in Employment Division v. Smith.

Thus, if the new confessional secrecy law in Washington is structured as a rule of general application and does not specifically target religious practices, it could pass constitutional scrutiny based on the principles outlined in the 1990 ruling and confirmed in part by the 1997 ruling.

However, the Washington reform is part of an international context characterised by a growing debate on the responsibility of religious figures in the prevention of abuse.

A relevant precedent is certainly that of the Australian Royal Commission in 2017, which recommended the elimination of denominational exemptions for child abuse cases, causing a clash with the Australian Bishops' Conference, which rejected such recommendations as incompatible with the Catholic faith and contrary to religious freedom.

While in Australia, however, the Commission's proposal remained largely unimplemented, the Washington decision represents a concrete step towards the elimination of these protections, setting an example for other jurisdictions that might follow the same path, such as Canada and the United Kingdom[2].

2] At this point, a reflection arises spontaneously in considering how the new Washington legislation, while pursuing the noble and indispensable objective of protecting minors, has chosen to limit the confessional secrecy of religious ministers in cases of abuse, while leaving intact that of other professional categories such as doctors, lawyers and psychologists.

This regulatory choice raises questions about the unequal treatment of different professional contexts.

If, on the one hand, the need to protect the most vulnerable justifies a rethinking of traditional guarantees, on the other hand, the risk emerges of compromising fundamental values such as constitutionally sanctioned religious freedom by implicitly placing the spiritual dimension on a lower level than health or legal freedom.

[2] M. CARNI', *Confessional secrecy and jurisdictionalist drifts in the Australian Royal Commission report,* in *Diritto e Religioni,* 2019, pp. 46 ss.

Such an approach could be read as a devaluation of the role of religious denominations in people's lives, raising the question of whether, in the balancing of constitutional values, religious freedom is destined to play a less protected role than other fundamental rights.

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