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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 JOHN DOE 1, JOHN DOE 2, JANE  
8 DOE 1, JANE DOE 2, JANE DOE 3,  
and all persons similarly situated,

9 Plaintiffs,

10 v.

11 WASHINGTON STATE  
12 DEPARTMENT OF CORRECTIONS,  
and STEPHEN SINCLAIR, Secretary  
13 of the Department of Corrections, in  
his official capacity,

14 Defendants.

NO: 4:21-CV-5059-TOR

ORDER DENYING DEFENDANTS'  
MOTION TO CERTIFY STATE LAW  
ISSUES TO THE WASHINGTON  
SUPREME COURT

15 BEFORE THE COURT is Defendants' Motion to Certify State Law Issues  
16 to the Washington Supreme Court (ECF No. 75). This matter was submitted for  
17 consideration without oral argument. The Court has reviewed the record and files  
18 herein, the completed briefing, and is fully informed. For the reasons discussed  
19 below, Defendants' Motion to Certify State Law Issues to the Washington  
20 Supreme Court (ECF No. 75) is **DENIED**.

ORDER DENYING DEFENDANTS' MOTION TO CERTIFY STATE LAW ISSUES  
TO THE WASHINGTON SUPREME COURT ~ 1

## BACKGROUND

This matter concerns three records requests that Defendants received pursuant to Washington’s Public Records Act seeking information related to incarcerated and formerly incarcerated transgender<sup>1</sup> individuals. Plaintiffs filed a Complaint on April 7, 2021, alleging violations of federal and state law. ECF No. 1. The Court has subject matter jurisdiction over Plaintiffs’ federal constitutional and statutory claims pursuant to 42 U.S.C. § 1983, as well as 28 U.S.C. §§1331 and 1343. The Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiffs’ state law constitutional and statutory claims, which arise out of the same basis of operative facts as Plaintiffs’ federal claims.

In the present motion, Defendants request that the Court certify the following questions to the Washington State Supreme Court:

1. “Whether a request for an injunction under RCW 42.56.540 can seek to enjoin records that have not been identified as responsive to a PRA request?
2. Whether article I, section 7 of the Washington state Constitution exempts an individual’s gender identity under RCW 42.56.070(1) as “other statute?”

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<sup>1</sup> For purposes of this Order, the Court uses the term “transgender” as an umbrella term to include transgender, non-binary, gender non-conforming, and intersex individuals.

- 1 3. Whether an individual's gender identity is exempt under RCW  
2 42.56.240(1) as specific intelligence information?  
3  
4 4. Whether an individual's gender identity is exempt under RCW 70.02 as  
5 protected health care information?  
6  
7 5. Whether an individual's voluntary disclosure of their gender identity  
8 outside of records authored by DOC employees are exempt under RCW  
9 42.56?"

6 ECF No. 75 at 4.

7 Defendants argue that Plaintiffs' claims raise either novel or unresolved state  
8 law issues. *See generally*, ECF No. 75. Plaintiffs assert certification to the state  
9 supreme court is premature, particularly because Plaintiffs' claims are  
10 fundamentally about federal constitutional rights. ECF No. 84 at 2.

### 11 DISCUSSION

12 Where state law permits, a federal court may exercise its discretion to certify  
13 a question to the state's highest court. *Murray v. BEJ Minerals, LLC*, 924 F.3d  
14 1070, 1071 (9th Cir. 2019) (citing *Lehman Bros. v. Schein*, 416 U.S. 386, 391  
15 (1974)). Washington law allows certification to the Washington Supreme Court:

16 When in the opinion of any federal court before whom a proceeding is  
17 pending, it is necessary to ascertain the local law of [Washington] in  
18 order to dispose of such proceeding and the local law has not been  
19 clearly determined, such federal court may certify to the supreme  
20 court for answer the question of local law involved and the supreme  
court shall render its opinion in answer thereto.

RCW 2.60.020; *see also* Wash. R. App. P. 16.16(a).

1 Certification is not considered lightly, rather courts consider: “(1) whether  
2 the question presents ‘important public policy ramifications’ yet unresolved by the  
3 state court; (2) whether the issue is new, substantial, and of broad application; (3)  
4 the state court’s caseload; and (4) ‘the spirit of comity and federalism.’” *Murray*,  
5 924 F.3d at 1072. The certification process, when appropriate, helps to “save time,  
6 energy, and resources and helps build a cooperative judicial federalism.” *Lehman*  
7 *Bros.*, 416 U.S. at 391. The use of the process “rests in the sound discretion of the  
8 federal court.” *Id.*

9 The Court declines to certify Defendants’ proposed questions because  
10 Plaintiffs’ claims rest primarily in federal law. ECF No. 1 at 20, ¶¶ 6.1–6.4; *see*  
11 *also* ECF No. 70 at 2. Moreover, the federal law claims are wholly independent of  
12 the state law claims, and resolution of the federal claims will terminate the  
13 litigation. Alternatively, if the Court ultimately dismisses the federal claims, the  
14 Court will then make a discretionary determination of whether to exercise  
15 supplemental jurisdiction over the state law claims. *See* 28 U.S.C. § 1367(c).  
16 Thus, it is unnecessary at this time “to ascertain the local law of [Washington] in  
17 order to dispose of [the] proceeding,” and the certification process would only  
18 compound and delay the litigation. RCW 2.60.020.

19 Additionally, Defendants’ proposed questions mischaracterize the issues  
20 underpinning this case. Defendants seek certification of questions relating to an

1 individual's "gender identity." ECF No. 75 at 4. Plaintiffs do not assert privacy  
2 interests in their gender identity. ECF No. 84 at 6. Rather, the privacy interests at  
3 issue relate to an individual's transgender status, which is a separate and distinct  
4 issue. *Id.* Therefore, the Washington Supreme Court's interpretation of an  
5 individual's privacy rights in their gender identity would not resolve, or materially  
6 advance, this matter. Similarly, the state supreme court's analysis regarding the  
7 contours of injunctive relief under RCW 42.56 has no bearing on the permissibility  
8 of injunctive relief for federal law claims.


9 **ACCORDINGLY, IT IS HEREBY ORDERED:**

10 Defendants' Motion to Certify State Law Issues to the Washington Supreme  
11 Court (ECF No. 75) is **DENIED**.

12 The District Court Executive is directed to enter this Order and provide  
13 copies to counsel.

14 **DATED** July 1, 2021.



  
THOMAS O. RICE  
United States District Judge