

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN THE COUNTY OF THURSTON**

Rebecca Faust,

Proponent

In re: Recall of Bob Ferguson

Case No. 25-2-02476-34

Hearing Date: June 9, 2025

Judge: Skinder

Opening Brief

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Recall Proponent's Opening Brief

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1) Rebecca Faust, recall proponent, filed charges against Governor Robert Watson

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Ferguson (Bob Ferguson) on June 9, 2025.

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2) According to state statute, the Court must determine the sufficiency of the recall

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charges. The Court does not determine the factual accuracy of the charges. (See

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RCW 29A.56.140.)

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3) In addition to determining the sufficiency of the charges, this court determines the

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final ballot synopsis. (See RCW 29A.56.140.)

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4) The charges are legally and factually sufficient. Therefore, the recall should be

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allowed to move forward.

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5) The ballot synopsis proposed by the Attorney General's office appears mostly

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adequate and recall proponent Rebecca Faust does not request any changes to

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it.

1 6) The recognition of holidays by the State of Washington is done through
2 legislative fiat. While SB 5106 (2025) recognizes two major Islamic holidays (i.e.
3 Eid al-Adha & Eid al-Fitr), it does not provide the same recognition for other
4 religion's holidays.

5 7) There is no process through which any religion's practitioners could automatically
6 have their holiday(s) recognized as part of this list in RCW 1.16.050 (the list Eid
7 al-Adha & Eid al-Fitr are being added to). Recognizing additional holidays would
8 require legislative action. Selectively recognizing some religion's holidays under
9 such a scheme is unconstitutional.

10 8) From the lists of holidays recognized in RCW 1.16.050, two of them (Christmas &
11 Thanksgiving) perhaps deserve some commentary. These two can be legally
12 distinguished from Eid al-Adha and Eid al-Fitr. Neither Christmas nor
13 Thanksgiving is exclusively religious in its celebration, nor are either of these two
14 holidays (Christmas & Thanksgiving) celebrated exclusively or nearly-exclusively
15 by members of one religion or sect in the United States.

16 9) Even if, for the sake of argument, recognizing Christmas and/or Thanksgiving
17 were unconstitutional, the solution to the State selectively recognizing some
18 religious holidays would not be selectively recognizing two more religious
19 holidays, it would be to unrecognize all religious holidays.

20 10) Christmas is distinguishable from Eid al-Adha and from Eid al-Fitr because,
21 although Christmas is celebrated by some people as a religious holiday, it is also
22 widely celebrated in a secular manner in the United States, including by non-
23 Christians.

1 11)Regarding Thanksgiving Day, it is distinguishable because, while some use it as
2 an opportunity to give thanks to whatever god (or gods) they worship, thanks
3 could be given to any god(s) or goddess(es) an individual chooses to thank (not
4 just those of a particular religion or sect), to the universe, or even to each other.

5 12)Outside of these two (Eid al-Adha & Eid al-Fitr), or four (Eid al-Adha, Eid al-Fitr,
6 Christmas & Thanksgiving), holidays, no religious holidays are included in RCW
7 1.16.050 or SB 5106 (2025). No recognition for Easter. No recognition of any
8 Jewish holidays (e.g. Passover, Hannukah, Yom Kippur). No recognition of Hindu
9 (e.g. Holi) or Buddhist (e.g. Bodhi Day) holidays. Note: Faust also recognizes
10 that some of the holidays here mentioned as not being recognized in state law,
11 may also have secular elementsⁱ.

12 13)Unlike a display of various holiday symbols, recognizing a specific, religious
13 holiday tradition is unconstitutional. (See *Allegheny County v ACLU*, 492 US 573
14 (1989).)

15 14)The Supreme Court of the United States established a three-part test to consider
16 for First Amendment Establishment Clause challenges in *Lemon v Kurtzman*.

17 15)Senate Bill 5106 fails the three-part *Lemon* test.

18 16)Senate Bill 5106 lacks a secular purpose. Honoring a particular religious tradition
19 is not a secular undertaking.

20 17)Senate Bill 5106 has the primary effect of promoting religion. Eid al-Adha & Eid
21 al-Fitr are Islamic religious holidays. They are not widely celebrated in the USA,
22 outside of Islam. (It should be emphasized that Islam is a religion. This is
23 distinguishable from recognizing a holiday of importance to a minority ethnic

1 culture, for instance.) Encouraging religious practices is unconstitutional for our
2 government.

3 18)By recognizing some (especially selectively recognizing some, but not all)
4 religious holidays, Senate Bill 5106 entangles the government in religion. It gives
5 government endorsement to religious celebrations. Furthermore, it puts the
6 legislature (and, to some extent, governor) in a place of deciding case-by-case
7 what religions and religious holidays are worthy of celebration.

8 19)Recognizing Eid al-Adha and Eid al-Fitr is not supported by history and tradition.
9 Washington would be the first state to recognize either of these holidays,
10 something which Ferguson himself mentioned at the bill signing.ⁱⁱ

11 20)This situation is unlike the Kennedy v Bremerton School District case, in which
12 an individual public employee exercised his Free Exercise rights by praying.
13 While individual citizens employed by the government retain their rights to Free
14 Exercise, the government itself must not take a religious position. To do so would
15 violate the Establishment Clause. This is what is happening in the case of SB
16 5106.

17 21)A reasonable governor or attorney (and especially a reasonable governor who is
18 an [inactive] attorney) would know better than to approve such an act as SB
19 5106. Furthermore, signing an act for a non-secular purpose is, in itself,
20 malfeasance and/or misfeasance.

21 22)The use of a mosque as a location for a public bill signing entangles the
22 government in religion. It favors one religious group over others and gives the
23 appearance of a government endorsement of that religion.

1 23) There are other locations where a bill signing could be held. The primary effect
2 and apparent purpose of choosing a mosque is to favor and/or honor a particular
3 religion.

4 24) Signing a bill at a mosque is unprecedented and a stark break with tradition. The
5 historically unprecedented nature of the location was even mentioned by Gov.
6 Ferguson himself at the bill signing.ⁱⁱⁱ

7 25) The Free Exercise and Establishment Clauses are complimentary. Government
8 must neither prohibit individual exercise of religion; nor endorse or compel
9 religion. This precludes, for example, the use of government functions to transmit
10 religious speech to a captive audience. See discussion of these issues in
11 Kennedy v Bremerton School District (2022).

12 26) Holding a government function within the context of a mosque is not an act of
13 individual free exercise. Ferguson is free to attend whatever temple, church or
14 mosque he wishes individually, of course. But by holding a government function
15 within a religious venue, an official endorsement was implied; and by limiting
16 attendance to those within such a religious venue, the First Amendment was
17 further infringed. The government must not favor certain religious beliefs or
18 practices over another, nor give preference to those who follow one religion over
19 another.

20 27) As a governor and [inactive] attorney, a reasonable person in Ferguson's position
21 would know that such an action (as signing the bill at a mosque) was
22 unconstitutional. Furthermore, the apparent intent of favoring and/or honoring a
23 religion by an official action is itself misfeasance and/or malfeasance.

1 28)The fact that Gov. Ferguson signed SB 5106 is shown on both the governor's
2 official website^{iv} and the legislature's website.^v

3 29)The fact that Gov. Ferguson signed SB 5106, and the venue at which he did so,
4 has been reported in the news online.^{vi}

5 30)Video footage from the bill signing (of SB 5106) is available on the TVW
6 website.^{vii}

7 31)Ferguson's status as an inactive attorney is accessible on the Washington State
8 Bar Association's website.^{viii}

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Rebecca J. Faust

12 June 30, 2025

14 Rebecca Faust

ⁱ "Chanukah, like Christmas, is a cultural event as well as a religious holiday" *Justice Blackmun's opinion, Part I, Allegheny County v. ACLU, 492 US 573 (1989).*

ⁱⁱ TVW: <https://twv.org/video/governor-bob-ferguson-bill-signing-2025041217/> (accessed June 30, 2025).

ⁱⁱⁱ TVW: <https://twv.org/video/governor-bob-ferguson-bill-signing-2025041217/> (accessed June 30, 2025).

^{iv} Web: https://governor.wa.gov/official-actions/bill-actions?year=1&chamber=All&governors_action=All&combine=5106&items_per_page=25 (accessed June 30, 2025).

^v Web: <https://app.leg.wa.gov/billsummary?BillNumber=5106&Year=2025&Initiative=false> (accessed June 30, 2025).

^{vi} Washington Standard: <https://washingtonstatestandard.com/2025/04/09/new-washington-law-recognizes-two-islamic-holidays/> (accessed June 30, 2025).

^{vii} TVW: <https://tvw.org/video/governor-bob-ferguson-bill-signing-2025041217/> (accessed June 30, 2025).

^{viii} WSBA: https://www.mywsba.org/PersonifyEbusiness/LegalDirectory/LegalProfile.aspx?Usr_ID=000000026004 (accessed June 30, 2025).