

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

Rebecca Faust,

Proponent

Case No. 25-2-02476-34

Hearing Date: July 9, 2025

Judge: Skinder

In re: Recall of Bob Ferguson

Proponent's Reply

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Recall Proponent's Reply Brief

3 1) Any state government, including the legislative branch, is without authority to go

4 against the US Constitution, so that even if the legislature passes and the

5 governor signs an unconstitutional act, it is still null and void. See *Norton v.*

6 *Shelby County*, 118 US 425 (1886).

7 2) "This Constitution, and the Laws of the United States which shall be made in

8 Pursuance thereof; and all Treaties made, or which shall be made, under the

9 Authority of the United States, shall be the supreme Law of the Land". (US

10 Constitution, from Article VI)

11 3) The US Constitution, through the 14th Amendment, places the limits of the Bill of

12 Rights on state officials, including those adopting state laws.

13 4) The Governor's oath of office includes an oath to uphold the U.S. Constitution.

14 This is a federal, as well as state, requirement. "The Senators and

15 Representatives before mentioned, and the Members of the several State

Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution” (US Constitution, from Article VI). (See also RCW 43.01.020.).

- 5) State law allows for recall based on violation of oath of office, which includes violation of federal law (such as the US Constitution), which is the supreme law of the land.
- 6) Actions of a legislative nature are not immune from recall if they exceed their legislative authority by conflicting with a superior law. See *In re: Recall of Bird, et al.*
- 7) Similar to municipal law being subject to state law, state law is subject to federal law. The US Constitution is supreme.
- 8) Thanksgiving is not sectarian in the way that Eid al-Adha and Eid al-Fitr are. (Faust discussed this in her opening brief.)
- 9) While government recognition of secular elements of a holiday (such as Christmas) has been permitted, a distinctly religious display was not. In *Allegheny County v. ACLU*, the US Supreme Court thus enjoined a nativity scene display, which was too religiously focused. See *Allegheny County v. ACLU*, 492 US 573 (1989).
- 10) The case *Town of Greece v Galloway* is inapposite. In *Town of Greece* various local religious leaders were given the opportunity to offer prayers. Yet the Court indicated that the potentially sectarian nature of some such prayers should be understood as a function of the freedom of individuals offering the prayers; it was not dictated by the government (and could not Constitutionally be). “To hold that

1 invocations must be nonsectarian would force legislatures sponsoring prayers
2 and courts deciding these cases to act as censors of religious speech, thus
3 involving government in religious matters to a greater degree than under the
4 town's current practice of neither editing nor approving prayers in advance nor
5 criticizing their content after the fact. . . . The relevant constraint derives from the
6 prayer's place at the opening of legislative sessions, where it is meant to lend
7 gravity and reflect values long part of the Nation's heritage . . . If the town
8 maintains a policy of nondiscrimination, the Constitution does not require it to
9 search beyond its borders for non-Christian prayer givers to achieve religious
10 balance." *Town of Greece v Galloway*, 572 US 565 (2014). "Once it invites prayer
11 into the public sphere, government must permit a prayer giver to address his or
12 her own God or gods as conscience dictates, unfettered by what an administrator
13 or judge considers to be nonsectarian." *Town of Greece v Galloway*, 572 US 565
14 (2014).

15 11)The sectarian nature of Eid al-Adha and Eid al-Fitr is inherent in the holidays
16 themselves and their selection is by the state.

17 12)Critically, the recognition given to these two holidays (Eid al-Adha & Eid al-Fitr) is
18 given by legislative fiat and is not available equally to all-comers of all religious
19 persuasions. Contrastingly, in *Town of Greece*, the nature of the prayers was
20 determined by the members of the public who offered them.

21 13)The First Amendment requires a secular, rather than religious, purpose for
22 legislation. However, Governor Ferguson's stated purpose for SB 5106 involves
23 "honoring" religious practices. (See Ferguson's response brief, Part II.)

1 14)Senate Bill 5106, and Ferguson's intent in signing it, violated the Constitution.

2 15)Signing a bill in order to promote and/or honor religious practices is an untenable
3 reason.

4 16)Washington State Grange v. Locke was not a recall case. It involved a procedural
5 challenge to legislation and the cited section (from Ferguson's response brief)
6 acknowledged limits to the Courts looking into legislative procedures. It did not
7 involve a bill violating the First Amendment. Separation of powers does not
8 prevent the courts from adjudicating First Amendment, or other Constitutional,
9 challenges, nor does it preclude the public from recalling officials who violate
10 their oath of office. Senate Bill 5106 is facially unconstitutional.

11 17)In his response brief, Ferguson's legal team claims: "Beyond mere recognition of
12 religious holidays, the Founders understood "establishment" of religion "
13 'necessarily [to] involve actual legal coercion.' " Van Orden, 545 U.S. at 69
14 (alteration in original) (citation omitted)." (See Response, page 10).But based on
15 Faust's research, it appears the citation does not come from the Supreme Court's
16 ruling in Van Orden, but from Justice Thomas' concurring-in-judgement opinion in
17 Elk Grove Unified School District V. Newdow.

18 18)In Van Orden, the Court recognized a Ten Commandments display as having a
19 secular facet to it, not purely religious. "But Moses was a lawgiver as well as a
20 religious leader. And the Ten Commandments have an undeniable historical
21 meaning, as the foregoing examples demonstrate." *Van Orden v. Perry*, 545 U.S.
22 677 (2005).

1 19) Recognizing a historic figure in our state's history is inapposite, even if that figure
2 was a devout Roman Catholic. "Mother Joseph Day" is not even a recognized
3 Roman Catholic feast day.ⁱ Furthermore, even if it were a religious holiday, the
4 solution to improper selective recognition of some religious holidays would not be
5 selectively recognizing two additional religious holidays.

6 20) It is reasonable to infer that an individual trained as an attorney would be familiar
7 with First Amendment law. Ferguson, as stated in the charges, is an inactive
8 attorney.

9 21) On at least one occasion, an opponent of legislation (Tim Eyman) attended a bill
10 signing. This was during Ferguson's governorship. Governor Ferguson seemed
11 surprised by his attendance, asking him if he was really going to do this. But Mr.
12 Eyman insisted that he was just standing in respectful opposition.ⁱⁱ

13 22) There is a Constitutionally significant difference between merely limiting services
14 (or attendance) due to limited space, versus limiting services (or attendance) on
15 the basis of religion. See *Rosenberger v University of Virginia*, 515 US 819
16 (1995).

17 23) The question is not whether the Governor could restrict attendance at a bill
18 signing. The question is whether he may do so on the basis of religion.

19 24) Allowing a religious institution to decide who attends the event, as Ferguson
20 seems to indicate that he did (see response brief), does not remedy the religious
21 discrimination. If anything, it exacerbates the government entanglement with
22 religion.

1 25)Expecting non-Muslim citizens to visit a mosque to attend a government function
2 such as a bill signing is unreasonable.

3 26)Recognizing Islamic holidays without giving equal recognition to other religious
4 holidays is a form of religious discrimination.

5 27)Recognizing some holidays, not others, is giving a favored status to the
6 recognized holidays. The purpose of the recall synopsis is to summarize the
7 charges. The Attorney General's use of the language "favored status" reflects the
8 charges submitted. It is silly to suggest that only those facts and conclusions
9 acknowledged as accurate by the official being recalled can be included, under
10 the guise of being "neutral." Therefore, the Attorney General's proposed ballot
11 synopsis is preferred.

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Rebecca J. Faust

15 July 6, 2025

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ⁱ Web: <https://www.catholicapostolatecenterfeastdays.org/april> (accessed July 6, 2025).

ⁱⁱ TVW: <https://tvw.org/video/governor-bob-ferguson-bill-signing-2025051156/> (accessed July 6, 2025).