

FILED

May 20, 2013

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A13-0845

In re Proposed Petition to Recall
Representative John Ward, House District 10A.

O R D E R

A proposed petition for recall of Representative John Ward has been filed with the Office of the Minnesota Secretary of State. The Secretary of State has determined that the proposed petition meets the requirements of Minn. Stat. §§ 211C.03-.04 (2012) and on May 13, 2013, forwarded the proposed petition to the Clerk of Appellate Courts in accordance with that statute. Minnesota Statutes § 211C.05, subd. 1 (2012) provides for review of the proposed petition, supplemented by any supporting and opposing materials, by the Chief Justice of the Minnesota Supreme Court within 10 days of receipt of the proposed petition. On May 14, 2013, the court issued an order allowing the petitioners and Representative Ward to submit any materials in support of or opposition to the petition. No filings were received.

An elected state official “may be subject to recall for serious malfeasance or nonfeasance during the term of office in the performance of the duties of the office.” Minn. Stat. § 211C.02 (2012); *see also* Minn. Const. art. VIII, § 6 (stating recall can be

based on “serious malfeasance or nonfeasance”). The petition states the following as the basis for Representative Ward’s proposed recall:

House Representative voted against the will of his constituents who voted for marriage amendment (62.5%) in his district, another percentage were told [and] believed nothing would change if voting no—as it is already protected, (during the last election). Under our constitution, John voting for redefining marriage not only infringes on what we believe in his district, but it will change our freedom of religion, as Sunday school teachers [and] a bible study leader[]. Teaching something as simple as honour your father [and] mother will be politically incorrect [and] considered possible hate spe[e]ch under this vote made against the[] will of the majority of his constituents. We are glad he voted to protect our pastors on this amendment.

This statement addresses Representative Ward’s affirmative conduct and thus falls within the scope of alleged malfeasance, rather than nonfeasance. *See In re Hatch*, 628 N.W.2d 125, 126 (Minn. 2001) (noting that malfeasance “focus[es] . . . on action taken by the official” while nonfeasance “focuses on the official’s failure to act”).

“Malfeasance” is defined as “the intentional commission of an unlawful or wrongful act by a state officer . . . in the performance of the officer’s duties that is substantially outside the scope of the authority of the officer and that substantially infringes on the rights of any person or entity.” Minn. Stat. § 211C.01, subd. 2 (2012) (internal quotation marks omitted). Applying this definition to the allegations of the petition, there are no specific facts alleged that, if proven, would constitute malfeasance. *See In re Ventura*, 600 N.W.2d 714, 717 (Minn. 1999) (“Allegations in a proposed recall petition must be made with sufficient precision and detail to enable the challenged

official and the electorate to make informed decisions in the recall process.” (citing *Matter of Lee*, 859 P.2d 1244, 1247 (Wash. 1993)).

Representative Ward’s vote on an issue of interest to the constituents of his district is not “unlawful or wrongful” conduct. See Minn. Stat. § 211C.01, subd. 2. Representative Ward is obligated to “support the Constitution of the United States, the [Minnesota] constitution . . . and to discharge faithfully the duties of his office to the best of his judgment and ability.” Minn. Const. art. IV, § 8. Merely because “a legislator supports or sponsors legislation that is opposed by some of his constituents . . . does not constitute a violation of the oath of office or any legal standard established by law, rule or case law.” *In re Murphy*, No. A03-0594, Order at 4 (Minn. filed June 5, 2003).

In addition, Representative Ward’s vote does not constitute action “that is substantially outside the scope of” the Representative’s “authority.” See Minn. Stat. § 211C.01, subd. 2. The oath that our state legislators take “contemplates the exercise of discretion” by legislators “based on the considered judgment of individual legislators.” *In re Murphy*, Order at 6. Constituent disagreement with votes taken by their elected representative does not equate to malfeasance by the representative. As the supreme court has recognized, the remedy for constituents who disagree with an elected representative’s positions or voting record is not in the recall procedures. See *Jacobsen v. Nagel*, 255 Minn. 300, 305, 96 N.W.2d 569, 573 (1959) (noting that constituents can “voice their disapproval [of an elected representative’s official actions] at the polls,” but “political criticisms” are not “sufficient to show any malfeasance or nonfeasance”).

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the proposed petition to recall Representative John Ward be, and the same is, dismissed for failure to allege specific facts that, if proven, would constitute grounds for recall.

Dated: May 20, 2013

/s/ _____

Lorie S. Gildea
Chief Justice