

STATE OF MINNESOTA IN SUPREME COURT

A13-0829

In re Proposed Petition to Recall Representative Joe Radinovich, House District 10B.

ORDER

A proposed petition for recall of Representative Joe Radinovich 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 9, 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 9, 2013, the court issued an order allowing the petitioners and Representative Radinovich 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 Radinovich's proposed recall:

Joe Radinovich's district has a majority of constituents (62.5% last election) who are in favor of traditional marriage, and another 38% who were told marriage was already protected under our current constitution [and] did not need to be added to [an] amendment, as marriage would not change after the election with a 'no' vote. Joe Radinovich has publicly stated he will not do the will of the constituents in his district (over 62%). He was sent to represent his constituents, he is not representing 10B [and] needs to be removed.

This statement addresses Representative Radinovich'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 Radinovich's public statements regarding an issue of interest to constituents in his district, or his vote on that issue, are not "unlawful or wrongful" conduct. *See* Minn. Stat. § 211C.01, subd. 2. Representative Radinovich 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, Radinovich's public statements regarding an issue of interest to constituents in his district, or his vote on that issue, do 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 how their elected representative exercised discretion, through public statements made or votes taken, 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 Joe Radinovich be, and the same is, dismissed for failure to allege specific facts that, if proven, would constitute grounds for recall.

Dated: May 20, 2013

<u>/s/</u>

Lorie S. Gildea Chief Justice