

FILED

April 3, 2023

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A23-0353

A23-0354

A23-0355

A23-0356

A23-0357

In re Proposed Recall Petition to Request the
Recall of Timothy James Walz, Governor of the
State of Minnesota. (A23-0353)

In re Proposed Recall Petition to Request the
Recall of State Senator Aric Putnam. (A23-0354)

In re Proposed Recall Petition to Request the
Recall of State Senator Rob Kupec. (A23-0355)

In re Proposed Recall Petition to Request the
Recall of State Representative Heather Keeler. (A23-0356)

In re Proposed Recall Petition to Request the
Recall of State Representative Dan Wolgamott. (A23-0357)

O R D E R

Five proposed petitions for the recall of elected officials were filed with the Office of the Secretary of State by the same petitioner. The proposed petitions seek to recall Governor Timothy Walz, State Senator Aric Putnam, State Senator Rob Kupec, State Representative Heather Keeler, and State Representative Dan Wolgamott. The Secretary of State has determined that the proposed petitions meet the requirements of Minn. Stat.

§ 211C.04 (2022) and forwarded the proposed petitions to the Clerk of Appellate Courts in accordance with that statute. Minnesota Statutes § 211C.05, subd. 1 (2022), provides for review of the proposed petitions, supplemented by any supporting and opposing materials, by the Chief Justice of the Supreme Court. On March 9, 2023, an order was issued allowing the petitioner and the elected officials to submit any materials in support of or opposition to the petitions. They all filed such materials.

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 (2022); *see also* Minn. Const. art. VIII, § 6 (stating recall can be based on “serious malfeasance or nonfeasance”).

The proposed petitions state the same basis for recall: the elected officials “vot[ed] in the Affirmative” for the Protect Reproductive Options Act. *See* Act of Jan. 31, 2023, ch. 4, § 1, 2023 Minn. Laws __ (to be codified at Minn. Stat. § 145.409). They allege that “[o]ver 85% of Constituents in this District believe” this act “needed restrictions on 3rd trimester/partial birth abortions in Minnesota” and that the affirmative vote “chang[es] Minnesota’s existing laws” and “[a]bridges the babies [sic] privileges to life, by removing born alive protections, guaranteed under the US Constitution’s 14th Amendment for a US born Citizen in Minnesota.”

The grounds for recall address the elected officials’ affirmative conduct, and thus fall 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 (2022). Applying this definition to the allegations of the petitions, there are no specific facts alleged that, if proven, would constitute malfeasance.

A legislator’s vote on an issue of interest to constituents, or the governor signing a bill on an issue of interest to constituents, is not “unlawful or wrongful” conduct. *Id.* Minnesota legislators and governor are obligated to “support the Constitution of the United States, the [Minnesota] constitution . . . and to discharge faithfully the duties of [their] office to the best of [their] judgment and ability.” Minn. Const. art. IV, § 8; *see also* Minn. Const. art. V, § 6. The fact that “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); *see also In re Ward*, No. A13-0845, Order at 3–4 (Minn. filed May 20, 2013) (dismissing proposed recall petition when basis for recall was the legislator’s vote on an issue); *In re Radinovich*, No. A13-0829, Order at 2–3 (Minn. filed May 20, 2013) (dismissing proposed recall petition when basis for recall was that the legislator was not doing the will of his constituents).

In addition, a legislator’s vote on an issue of interest to constituents, or the governor signing a bill on an issue of interest to constituents, does not constitute action “that is substantially outside the scope of” the legislator or the governor’s authority. Minn. Stat.

§ 211C.01, subd. 2. To the contrary, the oath that our state legislators and governor take “contemplates the exercise of discretion” by them “based on the considered judgment of individual legislators” or the governor. *Murphy*, Order at 6. Constituent disagreement with legislative action taken by their elected representatives does not equate to malfeasance. 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*, 96 N.W.2d 569, 573 (Minn. 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”).

Significantly, petitioner concedes this, recognizing that it is impermissible to “recall due to a vote.” Instead, petitioner claims that “when their votes allow or codifies [sic] a way for criminal activity to operate under current laws, that is malfeasance.” This argument, however, raises issues of statutory interpretation as to the interplay between the Protect Reproductive Options Act and various criminal statutes. But as has been previously recognized, “ ‘a recall proceeding should not be the forum for resolving the statutory interpretation issue the parties’ arguments present.’ ” *In re Walz*, No. A20-1231, Order at 8 (Minn. filed Oct. 12, 2020) (quoting *In re Walz*, No. A20-0984, Order at 7 (Minn. filed Aug. 13, 2020)). Accordingly, petitioner’s argument fails to allege that “malfeasance” has occurred under the recall petition requirements.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petitions for the recall of Governor Timothy Walz, State Senator Aric Putnam, State Senator Rob Kupec, State Representative Heather Keeler, and State Representative Dan Wolgamott are dismissed for failure to allege specific facts that, if proven, would constitute grounds for recall.

Dated: April 3, 2023

A handwritten signature in black ink, appearing to read "Lorie S. Gildea". The signature is fluid and cursive, with the first name "Lorie" being the most prominent.

Lorie S. Gildea
Chief Justice