

Meeting of the Board

Monday, February 8, 2016

1:00 P.M.

Agenda
Open Session

Teleconference Meeting

Government Accountability Board Offices
212 East Washington Avenue, Third Floor
Madison, Wisconsin

Monday, February 8, 2016**1:00 P.M.****Page****A. Call to Order****B. Director's Report of Appropriate Meeting Notice****C. Election Administration - Ballot Access Report****1. Roque "Rocky" de la Fuente Presidential Preference Petition****D. Per Diem****E. Director's Report****F. Closed Session**

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|--------------------------------|---|
| 5.05 (6a) and
19.85 (1) (h) | The Board's deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session. |
| 19.85 (1) (g) | The Board may confer with legal counsel concerning litigation strategy. |
| 19.851 | The Board's deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session. |
| 19.85 (1) (c) | The Board may consider performance evaluation data of a public employee over which it exercises responsibility. |

The Government Accountability Board has scheduled its next meeting for Tuesday, March 1, 2016 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m. The meeting may be relocated to the State Capitol to accommodate participation by newly appointed commissioners for the Elections and Ethics Commissions.

The Government Accountability Board may conduct a roll call vote, a voice vote, or otherwise decide to approve, reject, or modify any item on this agenda.

State of Wisconsin\Government Accountability Board

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JUDGE VICTOR MANIAN
Chair

KEVIN J. KENNEDY
Director and General Counsel

DATE: For the February 8, 2016 Special Board Meeting
TO: Members, Wisconsin Government Accountability Board
FROM: Kevin J. Kennedy, Director and General Counsel

Prepared and Presented by:

Michael Haas, Elections Division Administrator
David Buerger, Elections Specialist

SUBJECT: Ballot Access Petition of Roque De La Fuente

This memorandum summarizes the review by Government Accountability Board (G.A.B.) staff of the election petition seeking to place the name of Roque De La Fuente on the ballot for the Wisconsin Presidential Preference Primary on April 5, 2016. Based upon the staff's determination that the petition does not contain sufficient valid signatures, staff recommends that the Board deny ballot access to Mr. De La Fuente.

A. Background

As provided in Wis. Stat. § 8.12(1)(a) and (b), the Presidential Preference Selection Committee met on January 5, 2016 to choose the candidates that will appear on the April 5 Presidential Preference ballot. The committee is charged with placing the names of all candidates whose candidacy is generally advocated or recognized in the national news media on the ballot. The committee may place the names of other candidates on the ballot as well. Wis. Stat. § 8.12(1)(b). The Selection Committee chose 12 Republican candidates and 3 Democratic Candidates.

A candidate who was not selected by the committee may petition the G.A.B. to have his or her name placed on the Presidential Preference ballot. On January 26, 2016, the Government Accountability Board received a petition from Roque "Rocky" De La Fuente of San Diego, CA, seeking to place his name on the Democratic Presidential Preference ballot. Mr. De La Fuente has qualified for the presidential primary in approximately 25 other states.

The deadline for filing challenges to the petition is 4:30 p.m. on Friday, February 5. The G.A.B. is not aware of any individual or party that is considering filing a challenge. Under federal and state law, ballots for the Presidential Primary must be available for military and permanent overseas electors by February 18, 2016. Therefore, it is important that the ballot status of Mr. De La Fuente be determined by the Board so that the list of certified candidates and ballot order can be finalized and ballots can be printed.

B. Legal Standards for Petition

The G.A.B.'s review of the petition submitted on behalf of Mr. De La Fuente is governed by Wis. Stat. § 8.12(1)(c), which states as follows:

No later than 5 p.m. on the last Tuesday in January of each presidential election year, any person seeking the nomination by the national convention of a political party filing a certification under this subsection for the office of president of the United States, or any committee organized in this state on behalf of and with the consent of such person, may submit to the board a petition to have the person's name appear on the presidential preference ballot. The petition may be circulated no sooner than the first Tuesday in January of such year, or the next day if Tuesday is a holiday, and shall be signed by a number of qualified electors equal in each congressional district to not less than 1,000 signatures nor more than 1,500 signatures. The form of the petition shall conform to the requirements of s. 8.40. *All signers on each separate petition paper shall reside in the same congressional district. Emphasis added.*

This section requires a minimum of 8,000 valid signatures because Wisconsin has eight congressional districts, including 1,000 valid signatures in each of the congressional districts.

GAB 2.09, Wis. Adm. Code, states that the standards for determining the sufficiency of signatures on nomination papers are to be used in the review of other election petitions. While the G.A.B.'s review of the De La Fuente petition follows the process of reviewing nomination papers, the petition is distinguished from nomination papers by the above statutory language citing "petition" and also by its reference to Wis. Stat. § 8.40, which describes basic requirements of an election petition (including requirements for the header as well as addresses, printed names and dates for each signature).

Pursuant to applicable statutes and administrative rules, signatures must be struck for a variety of deficiencies. For example, a signer's address is outside of the State of Wisconsin, or the signature is not accompanied by a legible printed name, or the date of the signature is outside of the permitted circulation period. The De La Fuente petition contained 8,990 total signatures and G.A.B. staff determined that 1,676 must be struck due to defects in individual signatures, defects in the circulator's certification which invalidated all signatures on specific petition pages, or because an address did not establish that the signer resided in any Wisconsin congressional district. Based on this review alone, staff determined that the De La Fuente petition does not contain sufficient valid signatures.

The Board's practice has been to make a finding as to a specific number of valid signatures, for the benefit of the parties involved and to create a clear record for any potential court review. Determining this specific figure for the De La Fuente petition is complicated by the requirement of 1,000 signatures in each congressional district and the last sentence of Wis. Stat. § 8.12(1)(c): "All signers on each separate petition paper shall reside in the same congressional district."

The last sentence of Wis. Stat. § 8.12(1)(c) has not been previously interpreted by the Board and staff is requesting the Board's direction in applying the correct interpretation for purposes of evaluating the De La Fuente petition as well as for providing guidance to candidates seeking such ballot access in the future. In practice and specifically regarding the De La Fuente petition,

this provision has several possible interpretations, each of which results in a different calculation of the total number of valid signatures. Staff calculated the number of valid signatures using five possible interpretations. Because the petition does not include 8,000 valid signatures, and because it lacks at least 1,000 valid signatures of residents in at least five congressional districts, the petition is not valid under any possible interpretation of the language requiring petition signers on each separate page to reside in the same congressional district.

C. Possible Interpretations of Congressional District Requirement

As with candidate nomination papers, the De La Fuente petition indicated in the header of each petition page the congressional district in which the signers purportedly resided. While this was not a requirement of the petition under Wis. Stat. § 8.40, the designation was intended to organize the petition into congressional districts and to facilitate the calculation of the number of valid signatures in each congressional district. However, many of the petition pages included all addresses in congressional districts other than the district indicated in the header, or a mix of addresses in congressional districts that may or may not include the district indicated in the header of the petition page. Attached are sample pages from the De La Fuente petition.

Given the statutory language and the variety of the petition pages, G.A.B. staff developed five different interpretations of the requirement that all signers on a separate petition page must reside in the same congressional district, depending on how literally and strictly the requirement was applied. For example, the requirement may be viewed as a strict substantive requirement in which every signature on a petition page is struck if all of the signatures on the page are not from the same congressional district listed in the header. Or it may be viewed as a technical requirement in which substantial compliance with the statutes is satisfied by apportioning each signature to the appropriate congressional district, even if the petition page contained a mix of addresses from various districts and the header did not indicate a district matching any of the signature addresses on the page.

Attached is a chart summarizing the staff's review of the number of valid signatures after applying each interpretation. The chart indicates that the De La Fuente petition contains at least 3,435 valid signatures and at most 7,314 valid signatures, and that it lacks 1,000 valid signatures in at five congressional districts and possibly in all congressional districts, depending upon the interpretation which is used.

For shorthand reference, staff assigned a designation to each of the plausible interpretations, and the guidelines for applying each interpretation are summarized as follows:

Interpretation A (Strict Compliance – Header Irrelevant):

- If all signers on the page are from the same Congressional District, count all otherwise valid signatures.
- If all signers on the page are NOT from the same Congressional District, strike all signatures on the page.

Interpretation B (Strict Compliance – Header Matters):

- If all signers on the page are from the same Congressional District AND the Congressional District of the header is the same as the Congressional District of the signers, count all otherwise valid signatures.
- If all signers on the page are from the same Congressional District but the Congressional District of the header is NOT the same as the Congressional District of the signers, strike all signatures on the page.

Interpretation C (Substantial Compliance – Header Irrelevant/Majority Only):

- If all signers on the page are from the same Congressional District, count all otherwise valid signatures.
- If signers on the page are a mix of two or more Congressional Districts, count all otherwise valid signatures of the majority Congressional District and reject otherwise valid signatures of the minority Congressional Districts.
- If there is an equal number of signatures of two or more Congressional Districts on a page, count any otherwise valid signatures matching the district of the header and strike all other signatures.

Interpretation D (Substantial Compliance – Header Matters):

- If all signers on the page are from the same Congressional District AND the Congressional District of the header is the same as the Congressional District of the signers, count all otherwise valid signatures.
- If signers on the page are a mix of two or more Congressional Districts but the Congressional District of the header is the same as at least one signer, count all otherwise valid signatures whose Congressional District matches the header and reject all other signatures.

Interpretation E (Substantial Compliance – Header Irrelevant/Count All)

- Count all otherwise valid signatures. If signers on the page are a mix of two or more Congressional Districts, assign each valid signature to the appropriate Congressional District, irrespective of the District listed in the header.

While an argument can be made for each of the possible interpretations, staff recommends that the Board adopt Interpretation A as the proper application of Wis. Stat. § 8.12(1)(c). This interpretation requires striking all signatures on a page if all of the signers do not reside in the same congressional district, and counts all signatures if the addresses are in the same congressional district even if that district is different than the district noted in the header. This recommendation is based upon a literal interpretation of the last sentence of Section 8.12(1)(c) which states that “All signers on each separate petition paper shall reside in the same congressional district.”

Interpretation A also recognizes that the designation of the congressional district in the header is not a requirement of an election petition under Wis. Stat. §8.40 as it would be for nomination papers. The congressional district noted in the header of each page does not designate Mr. De La

Fuente's residence or the office which he is seeking. The consensus of staff, therefore, is that the format of the header is acceptable under GAB 2.05(5), Wis. Adm. Code, which states that "Where any required item of information on a nomination paper is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law." This principle applies to other election petitions as well under GAB 2.09(1), Wis. Adm. Code.

D. Determination of Valid Signatures

As noted, G.A.B. staff determined whether individual signature or entire petition pages were disqualified based upon standards applicable to nomination papers and other election petitions. Staff then calculated whether any remaining signatures should be struck under each interpretation of Wis. Stat. § 8.12(1)(c). As illustrated more fully on the attached chart, the total number of valid signatures under each Interpretation, in ascending order, is as follows:

Interpretation B: 3,435 valid signatures
Interpretation D: 4,568 valid signatures
Interpretation A: 5,503 valid signatures
Interpretation C: 7,011 valid signatures
Interpretation E: 7,314 valid signatures

Under any interpretation of Wis. Stat. §8.12(1)(c) considered by staff, the De La Fuente petition does not contain the required minimum of 8,000 valid signatures. In addition, the attached chart documents that under each of the interpretations, the petition also lacked the required minimum of 1,000 valid signatures in either the majority of or all of the congressional districts. Staff recommends that the Board find the petition filed on behalf of Roque De La Fuente to be insufficient for those two reasons. Staff also recommends that the Board specifically find that the petition contains 5,503 valid signatures based upon the review conducted pursuant to Interpretation A as described above.

E. Recommended Motions

Based upon the above summary and analysis, Board staff recommends the following motions:

MOTION 1: The Board determines that the proper application of Wis. Stat. 8.12(1)(c) requires counting otherwise valid signatures if all signers on the page are from the same Congressional District, and striking all signatures on the petition page if all signers on the page are not from the same Congressional District, irrespective of the Congressional District designated in the header of the petition page.

MOTION 2: The Board finds that the election petition filed on behalf of Rocque De La Fuente contains 5,503 valid signatures rather than the required total of 8,000 valid signatures, and does not contain the required 1,000 valid signatures in each of Wisconsin's eight congressional districts. Therefore the petition is insufficient and Mr. De La Fuente is denied ballot access for the Democratic Party Presidential Preference Primary.

PETITION FOR PLACEMENT ON PRESIDENTIAL PREFERENCE BALLOT

Candidate's name as it will appear on the ballot; no abbreviations or titles may be used. **700 Front Street, apt. 2106** Street, fire, or rural route number; box number (if rural route); and name of street or road

Name of municipality for mailing purposes **CA 92121** State Zip Code

Name of municipality for voting purposes **San Diego** Name of municipality

5440 Morehouse Drive, Suite 3600 Name of Presidential Preference Primary **Democratic** Name of Party

Wisconsin Congressional District Number **5**

I, the undersigned, request that the candidate whose name and address are listed above, be placed on the presidential preference ballot at the election to be held on the date indicated above, as a candidate representing the above-named party, so that voters will have the opportunity to express their preference for him or her as a candidate for President of the United States. I am eligible to vote in the Wisconsin Congressional District indicated above. I have not signed the nomination paper of any other candidate for this office at this election.

The municipality used for mailing purposes, when different than municipality of residence, is not sufficient. The name of the municipality of residence must always be listed.

Signatures of Electors	Printed Name of Electors	Street and Number or Rural Route Rural address must also include box or fire no	Municipality of Residence Provide name of municipality	Date of Signing
	Sergio Alvarez	121 1/2 Avenue	Waukesha	1-25-16
	Linda Lee	655 Mackinac Cir	Brookfield	1-25-16
	Christina Faria	357 Emeraldy Avenue	Aurora	1-25-16
	Kalin Espinoza	11605 S	Sussex	1-25-16
	Kathleen Mullen	A734 R4375	Waukesha	1-25-16
	Jacob Vander Gooten	531 W 25th	Waukesha	1-25-16
	Dan Beresini	1225 5th St	Waukesha	1-25-16
	Conner Ludwig	197 Madison Ave	Waukesha	1-25-16
	Rosemary Miller	331 Buchner Ct	Waukesha	1-25-16
	Michael Radloff	4760 N Dale Crest Dr	Waukesha	1-25-16

CERTIFICATION OF CIRCULATOR
 I, VINCENT MORRIS (Name of circulator) certify: I reside at 621 Oaklawn #77 Det Mich (Circulator's residence - include number, street and municipality.)

I further certify I am either a qualified elector of Wisconsin, or a U.S. citizen, age 18 or older who, if I were a resident of this state, would not be disqualified from voting under Wis. Stat. § 6.03. I personally circulated this petition and personally obtained each of the signatures on this petition. I know that the signers are electors of the congressional district listed above. I know that each person signed the paper with full knowledge of its content on the date indicated opposite his or her name. I intend to support this candidate. I am aware that falsifying this certification is punishable under Wis. Stat. § 12.13(3)(a).

1-25-16 (Date) Vincent Morris (Signature of circulator)

PETITION FOR PLACEMENT ON PRESIDENTIAL PREFERENCE BALLOT

Candidate's name as it will appear on the ballot; no abbreviations or titles may be used.
 Street, fire, or rural route number; box number (if rural route), and name of street or road
 Name of municipality for mailing purposes
 State
 Zip Code
 Name of municipality for voting purposes
 Name of municipality for mailing purposes
 Name of municipality for voting purposes
 Name of municipality for voting purposes

Roque "Rocky" De La Fuente
 700 Front Street, apt. 2106
 CA 92121
 San Diego

Name of Presidential Preference Primary
 Date of Presidential Preference Primary
 Name of Party
 Wisconsin Congressional District Number

5440 Morehouse Drive, Suite 3600
 April 5, 2016
 Democratic
 7

I, the undersigned, request that the candidate whose name and address are listed above, be placed on the presidential preference ballot at the election to be held on the date indicated above, as a candidate representing the above-named party, so that voters will have the opportunity to express their preference for him or her as a candidate for President of the United States. I am eligible to vote in the Wisconsin Congressional District indicated above. I have not signed the nomination paper of any other candidate for this office at this election.

The municipality used for mailing purposes, when different than municipality of residence, is not sufficient. The name of the municipality of residence must always be listed.

Signatures of Electors	Printed Name of Electors	Street and Number or Rural Route Rural address must also include box or fire no	Municipality of Residence Provide name of municipality	Date of Signing
1. Maggie Grace	Maggie Grace	5251 H 90th St Milwaukee Keyway 53226	Milwaukee	1-15-16
2. Renee Malone	Renee Malone	3255 2046th St Milwaukee WI 53216	Milwaukee	1-15-16
3. Bronnys Hawthorne	Bronnys Hawthorne	3938th 39th St Milwaukee WI 53216	Milwaukee	1-15-16
4. Wilma Bell	Wilma Bell	3520 A North 39th	Milwaukee	1-15-16
5. Peggy Ealy	Peggy Ealy	4408 W. Eggert Pl 53218	Milwaukee	1-15-16
6. Deborah W. Weber	Deborah W. Weber	5001 W. Becher St 53210	Milwaukee	1-15-16
7. Elmer Washington	Elmer Washington	2174 W Concord 53206	Milwaukee	1-15-16
8. Louise Hatched	Louise Hatched	4466 W 58th 53218	Milwaukee	1-15-16
9. Robert E. Lee	Robert E. Lee	3425 N 60 53216	Milwaukee	1-15-16
10. Stella Lee	Stella Lee	5541 N Weston Ave 53209	Milwaukee	1-15-16

CERTIFICATION OF CIRCULATOR
 certify: I reside at
 612 Hedden Ave
 AKRON OH 44307

(Name of circulator)
 I further certify I am either a qualified elector of Wisconsin, or a U.S. citizen, age 18 or older who, if I were a resident of this state, would not be disqualified from voting under Wis. Stat. § 6.03. I personally circulated this petition and personally obtained each of the signatures on this petition. I know that the signers are electors of the congressional district listed above. I know that each person signed the paper with full knowledge of its content on the date indicated opposite his or her name. I intend to support this candidate. I am aware that falsifying this certification is punishable under Wis. Stat. § 12.13(3)(a)
 1-15-16
 Signature of circulator
 (Date)

PETITION FOR PLACEMENT ON PRESIDENTIAL PREFERENCE BALLOT

Candidate's name as it will appear on the ballot; no abbreviations or titles
 Street, fire, or rural route number; box number (if rural route); and name of street or road
Roque "Rocky" De La Fuente
 700 Front Street, apt. 2106

Name of municipality for mailing purposes
5440 Morehouse Drive, Suite 3600
 State **CA** Zip Code **92121**

Name of municipality for voting purposes
 Town Village City
San Diego
 name of municipality

Wisconsin Congressional District Number
7

Name of Party
Democratic

Date of Presidential Preference Primary
April 5, 2016

I, the undersigned, request that the candidate whose name and address are listed above, be placed on the presidential preference ballot at the election to be held on the date indicated above, as a candidate representing the above-named party, so that voters will have the opportunity to express their preference for him or her as a candidate for President of the United States. I am eligible to vote in the Wisconsin Congressional District indicated above. I have not signed the nomination paper of any other candidate for this office at this election.

The municipality used for mailing purposes, when different than municipality of residence, is not sufficient. The name of the municipality of residence must always be listed.

Signatures of Electors	Printed Name of Electors	Street and Number or Rural Route Rural address must also include box or fire no	Municipality of Residence Provide name of municipality	Date of Signing
1. Kyle Salzman	Kyle Salzman	210 Strongs Ave Stevens Post 54481	Stevens Post 3	1/26/2016
2. Tara Wenzel	Tara Wenzel	3931 Dickland Hill Dr 54494	Stevens Post 3	1-26-16
3. Donald Rex	Donald Rex	3901 McCulloch	S.P. 3	1/26/16
4. Mark Allen	Mark Allen	4511 Ruthelca	Wausau	1/26/16
5. Timothy Thuber	Timothy Thuber	5231 Whitman Ave 54494	Wor 3	1-26-16
6. Betty Jones	Betty Jones	330 Wausau Stills	Wausau	Jan/26/16
7. Jason Jones	Jason Jones	3610 KANTON PL 54467	Plover WI	1/26/16
8. Perry Clark	Perry Clark	1729 Plum Dr Wausau 54401	Wausau	1.25.16
9. Kaylan Maxwell	Kaylan Maxwell	3931 Coach Lantern Dr 54494	Wausau 3	1/25/16
10. Cory [Signature]	Cory [Signature]	3743 N. 6th St 54403	Wausau	1/24/16

CERTIFICATION OF CIRCULATOR
 certify: I reside at 2086 Beaverfield Est Pt M4802
 (circulator's residence - include number, street and municipality.)

I further certify I am either a qualified elector of Wisconsin, or a U.S. citizen, age 18 or older who, if I were a resident of this state, would not be disqualified from voting under Wis. Stat. § 6.03. I personally circulated this petition and personally obtained each of the signatures on this petition. I know that the signers are electors of the congressional district listed above. I know that each person signed the paper with full knowledge of its content on the date indicated opposite his or her name. I know their respective residences given. I intend to support this candidate. I am aware that falsifying this certification is punishable under Wis. Stat. § 12.13(3)(a).

Adam Arsenault
 (Name of circulator)
1-26-16
 (Date)

[Signature]
 (Signature of circulator)

Roque "Rocky" De La Fuente Petition Results

(In ascending order by number of valid signatures under that interpretation)

Interpretation B (Strict Compliance – Header Matters):	3435
Interpretation B - Congressional District 1	639
Interpretation B - Congressional District 2	362
Interpretation B - Congressional District 3	784
Interpretation B - Congressional District 4	530
Interpretation B - Congressional District 5	96
Interpretation B - Congressional District 6	168
Interpretation B - Congressional District 7	381
Interpretation B - Congressional District 8	475

Interpretation D (Substantial Compliance – Header Matters):	4568
Interpretation D - Congressional District 1	770
Interpretation D - Congressional District 2	448
Interpretation D - Congressional District 3	990
Interpretation D - Congressional District 4	679
Interpretation D - Congressional District 5	233
Interpretation D - Congressional District 6	242
Interpretation D - Congressional District 7	602
Interpretation D - Congressional District 8	604

Interpretation A (Strict Compliance – Header Irrelevant):	5503
Interpretation A - Congressional District 1	1083
Interpretation A - Congressional District 2	733
Interpretation A - Congressional District 3	827
Interpretation A - Congressional District 4	1651
Interpretation A - Congressional District 5	185
Interpretation A - Congressional District 6	168
Interpretation A - Congressional District 7	381
Interpretation A - Congressional District 8	475

Interpretation C (Substantial Compliance – Header Irrelevant/Majority Only):	7011
Interpretation C - Congressional District 1	1248
Interpretation C - Congressional District 2	913
Interpretation C - Congressional District 3	1084
Interpretation C - Congressional District 4	1967
Interpretation C - Congressional District 5	373
Interpretation C - Congressional District 6	238
Interpretation C - Congressional District 7	584
Interpretation C - Congressional District 8	604

Interpretation E (Substantial Compliance – Header Irrelevant/Count All):	7314
Interpretation E - Congressional District 1	1306
Interpretation E - Congressional District 2	918
Interpretation E - Congressional District 3	1147
Interpretation E - Congressional District 4	2011
Interpretation E - Congressional District 5	422
Interpretation E - Congressional District 6	260
Interpretation E - Congressional District 7	628
Interpretation E - Congressional District 8	622