ALAN WILSON
ATTORNEY GENERAL

August 5, 2011

Marci Andino, Executive Director
SC Election Commission
PO Box 5987
Columbia, SC 29250

Dear Ms. Andino:

We received your letter requesting an opinion of this Office concerning any legal concerns we find with the new electronic signature system. You explained that the SC Election Commission is in process of developing a new statewide voter registration system where electronic signatures will be used in all county boards of registration and elections. The system will contain records for each registered voter in the state. When a voter appears in person to vote absentee, the required application for an absentee ballot, as required under S.C. Code § 7-15-330[1] and § 7-15-340,[2] will be presented electronically and the voter will sign a digitized signature pad to complete the transaction. If early voting legislation passes, the oath from the poll list, as found in S.C. Code § 7-13-710,[3] would be displayed on the signature pad above the area for the voter's signature. In both cases, the signature of the voter would be stored on the system and available for retrieval, if needed.

While the Election Code, Title 7 of the South Carolina Code of Laws, does not expressly address electronic signatures, this Office has found no prohibition or restriction on the use of electronic signatures by the SC Election Commission in the new voter registration system.

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[1] S.C. Code § 7-15-330 states that "[t]o vote by absentee ballot, a qualified elector or a member of his immediate family must request an application to vote by absentee ballot . . . and must sign an oath . . . . This signed oath must be kept on file with the board of registration until the end of the calendar year or until all contests concerning a particular election have been finally determined, whichever is later."

[2] S.C. Code § 7-15-340 states that, " . . . [t]he application must contain the following information: name, registration certificate number, address, absentee address, election of ballot request, election date, runoff preference, party preference, reason for request, oath of voter, and voter's signature. The oath must be as follows: 'I do swear or affirm that I am a qualified elector, that I am entitled to vote in this election, and that I will not vote again during this election. The information above is true in all respects, and I hereby apply for an absentee ballot for the reason indicated above.'"

[3] S.C. Code § 7-13-710 states that, ". . . [t]he signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary."

**Law/Analysis**

In an opinion of this Office dated May 12, 2009, we concluded that "county registration and election offices complying with the provisions under the [Uniform Electronic Transaction Act of 2004][4] may receive applications for voter registration via facsimile or email." Op. S.C. Atty. Gen., May 12, 2009. We further explained as follows:

> Section 26-6-30 of the South Carolina Code indicates that the Act applies to all electronic records and signatures except for a limited number of specified transactions listed in subsection (B) of this provision. This list does not include voter registration. Therefore, we presume that the Act applies to applications for voter registration made through electronic means. Nonetheless, we note that the Legislature, in enacting the Act, clarifies that transactions subject to the Act are "also subject to other applicable substantive law." S.C. Code Ann. § 26-3-30(D). Moreover, throughout the Act, the Legislature carefully notes that the provisions of the Act are to be consistent with other applicable law. S.C. Code Ann. §§ 26-6-50(E) ("Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable laws."); 26-6-60 ("This chapter must be construed and applied to: . . . facilitate electronic transactions consistent with other applicable law . . . ."). Thus, we also must consider the law governing voter registration when considering whether applications for voter registration may be sent via facsimile or email.

Op. S.C. Atty. Gen., May 12, 2009. While neither the use of fax nor email are at issue here, the analysis from the 2009 opinion remains relevant. So long as the use of electronic signatures under the new voter registration system complies with the Uniform Electronic Transaction Act, S.C. Code § 26-6-10 *et seq.*, and the Elections Code, Title 7 of the South Carolina Code of Laws, then such use would be found lawful.

In a 2005 opinion of this Office, we addressed the legality of recording deeds, mortgages or other land transactions by electronic means. As explained above we mentioned that South Carolina has adopted the Electronic Transaction Act and codified it as S.C. Code § 26-6-10 *et seq.* Specifically, S.C. Code § 26-6-70(D) governs the legality of electronic signatures:

> (D) An electronic signature satisfies a law requiring a signature.

Op. S.C. Atty. Gen., October 31, 2005 (*quoting* S.C. Code § 26-6-70(D)). We found that executing and recording of deeds and mortgages by electronic means is not recognized in this State. However, we distinguished such method of execution and recording from the provisions of the Uniform Electronic Transaction Act.

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[4] S.C. Code § 26-6-10 *et seq.*

The State of Alabama has also adopted the Uniform Electronic Transaction Act. The Alabama Attorney General was asked to opine as to whether the Secretary of State was authorized to promulgate rules that would allow the development and use of an online voter registration system for overseas military and defense contractors and their family members. Their Office explained that "[b]ecause the Secretary of State is authorized to promulgate rules regarding voter registration, the Uniform Electronic Transaction Act authorizes the Secretary of State to promulgate rules that would allow the development and use of an online voter registration system," including the use of electronic records and electronic signatures. Op. Ala. Atty. Gen., June 23, 2009.

It is also worth noting that the Iowa Code expressly states that "[e]lectronic signatures shall be accepted. However, before the use of electronic signatures is accepted on voter registration forms, the state voter registration commission shall prescribe by rule the technological requirements for guaranteeing the security and integrity of electronic signatures." I.C.A. § 48A.13.

In Anderson v. Bell, the Supreme Court of Utah addressed whether a candidate may use electronic signatures to satisfy the Utah's signature requirement for those running in a statewide election. The Court found that an electronic signature satisfies the signature requirement and explained as follows:

> While one's signature is usually made by writing his name, the same purpose can be accomplished by placing *any writing, indicia or symbol* which the signer chooses to adopt and use as his signature and by which it may be proved: e.g., by finger or thumb prints, by a cross or other mark, or by *any type of mechanically reproduced* or stamped facsimile of his signature, as effectively as by his own handwriting.
> Hanson, 425 P.2d at 774 (emphasis added); *see also* State v. Montague, 671 P.2d 187, 191 (Utah 1983) (finding an imprinted name of a judge made by a court clerk a signature); 17A Am. Jur. 2d. *Contracts* § 176 (2004) ("[A] signature is whatever mark, symbol, or device one may choose to employ to represent oneself, and may include fingerprints.... 'Electronic' signatures are valid, and legislation has been enacted specifically to authorize them.") (footnotes omitted); Blacks Law Dictionary 1415 (defining a signature as "[a]ny name, mark, or writing used with the intention of authenticating a document").
> Thus, with the foregoing discussion of section 68-3-12, the UETA, the common law articulation that mirrors these statutory provisions, and the legislature's liberal-construction mandate in mind, we conclude that the plain language of section 20A-9-502 is not limited to handwritten signatures. It is true that the legislature designed the Election Code with a paper-format in mind; an electronic format would not have been available at the time the scheme was designed. But the legislature also left open the possibility that a signor may lend his name to a certificate for nomination in a way other than by putting pen to paper when it enacted section 68-3-12(2) and the UETA. Indeed, the legislature focused in those provisions on the intent of the signor, not the form of the signature. We cannot see how the manner the signor elects to place his name on an unaffiliated

> candidate's petition for nomination has any impact on the signor's intent to support the petitioner's candidacy. Moreover, we cannot see how section 68-3-12(2) can be viewed as contradicting the legislative intent of section 20A-9-502, when the legislature itself demands that we liberally construe the provisions governing unaffiliated candidates to give them "every reasonable opportunity to make their candidac[ies] effective." Utah Code Ann. § 20A-9-501(3) (2009). Thus, we hold that the signature requirement of section 20A-9-502 includes electronic signatures.

Bell, 234 P.3d 1147, 1152-53 (2010).

While the First District, Division 1 Court of Appeals in California held that electronic signatures were not authorized for initiative petitions, the Court acknowledged that the Uniform Electronic Transaction Act provides that "[i]f a law requires a signature, an electronic signature satisfies the law." Ni v. Slocum, 196 Cal. App. 4th 1636, 5 (2011). Specifically, the Court explains:

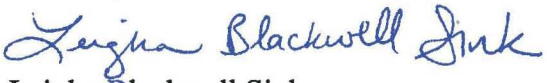
> While we acknowledge the Legislature has, through these provisions, expressed general approval of the use of electronic signatures in commercial and governmental transactions, we conclude neither statute requires the acceptance of electronic signatures for the endorsement of initiative petitions.

Ni v. Slocum, 196 Cal. App. 4th 1636, 5.

**Conclusion**

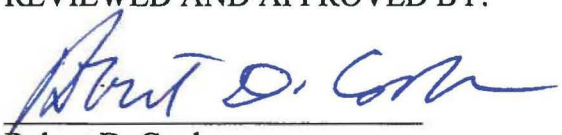
It is the opinion of this Office that the use of electronic signatures when a voter appears absentee or for early voting[5] would be permitted. We have found no restriction in the Uniform Electronic Transaction Act, codified as S.C. Code § 26-6-10 *et seq.*, nor the Elections Code, Title 7 of the South Carolina Code of Laws, that would prohibit the use of electronic signatures in the new statewide voter registration system.

Sincerely,



Leigha Blackwell Sink
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

[5] One should note that early voting legislation is pending; however, it is anticipated that the legislation will pass.