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Linda McCulloch
Secretary of State

February 7, 2011

Attorney General Steve Bullock
Department of Justice
P.O. Box 201401
Helena, MT 59620-1401

RE: Request for Attorney General Opinion

Dear Attorney General Bullock:

The Secretary of State has received several requests asking whether signatures can be gathered electronically for ballot issue measures and candidate petitions. My Chief Legal Counsel's research indicates that the Utah Supreme Court issued an opinion in June 2010 that determined that an electronic signature, as defined in the Uniform Electronic Transactions Act (UETA), satisfies the signature requirement under the election code. See *Anderson v. Bell*, 2010 UT 47. This opinion relies heavily on the purpose and scope of the UETA and the language that states that "[i]f a law requires a signature, an electronic signature satisfies the law." Montana adopted the UETA in 2001. See Mont. Code Ann. §§ 30-18-101, *et seq.*

However, a similar question recently arose in California and the San Mateo Superior Court reached the opposite conclusion. In that case, *Ni v. Slocam*, Case No. Civ. 492074, Superior Court of California, County of San Mateo (April 2, 2010), the Superior Court judge ruled that a flash drive containing one electronic signature in support of an initiative petition did not substantially comply with the requirements of the election code. That ruling was appealed on June 4, 2010, and is currently pending before the California Court of Appeal, First Appellate District. California adopted UETA in 1991.

Therefore, I am seeking your advice as to whether an "electronic signature" would satisfy the requirement for an "original signature" on a ballot issue petition sheet pursuant to Mont. Code Ann. § 13-27-301 and the signature gathering requirements for minor parties and independent and minor party candidates in Title 13, chapter 10, Montana Code Annotated. A copy of the draft legal memorandum prepared by my office is enclosed for your reference. Since minor party officials and independent and minor party candidates could already be collecting signatures, a timely response to this request would be appreciated. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in cursive script that reads "Linda McCulloch".
Linda McCulloch
Secretary of State

Enclosure