

May 15, 2018

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Via Federal Express

The Honorable Linda H. Lamone
State Administrator
Maryland State Board of Elections
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***Re: Petition for Declaratory Ruling Regarding Use of Electronic
Signatures on Petition for an Unaffiliated Candidate for Federal
Office***

Dear Administrator Lamone:

On behalf of our client, Steve Gladstone, we respectfully submit this request for a declaratory ruling under the Code of Maryland Regulations § 33.01.02. Steve Gladstone intends to run as an unaffiliated candidate in 2018 for the U.S. Senate in Maryland. As part of the petition process to place his name on the ballot as an unaffiliated candidate, Mr. Gladstone intends to circulate his petitions online and may obtain some electronic signatures instead of “wet” signatures manually placed on a paper petition. Once completed, a printed version of the petitions will be submitted to the State Board of Elections (“Board”) on or before any relevant deadline in the format that is consistent with the approved state forms. This process is consistent with Maryland election law and the Uniform Electronic Transactions Act (“UETA”). There is no greater risk of fraud or abuse than with “wet” signatures—under either method circulators submit signatures under penalties for false statements—and allowing such a process will make it easier for Maryland’s citizens to participate in the political process.

I. Question Presented

Is an electronic signature a “signature” under the Maryland Election Law Code for purposes of signing a petition to place an individual’s name on a ballot as an unaffiliated candidate and signing the circulator’s affidavit?

The Honorable Linda H. Lamone
May 15, 2018
Page 2

II. The Proposed Petitions

A. Signer Data

Mr. Gladstone has developed an online system to collect the signatures necessary to qualify for the ballot.¹ Consistent with prior Board-approved petitions, Mr. Gladstone will collect information electronically from those who wish to sign his petitions, including the signer's name, address, date of birth, and date of signing as required by Election Law Article § 6-203(a), COMAR § 33.06.03.06(2), and the current general election nominating petition available from the Board.² The web form will include the following:

- Text boxes into which users may input their name (one box each for first, middle, and last) and address (one box each for street number, street name, apartment number, city or town, and zip code)
- A drop-down box will serve as the county field that will include each county and Baltimore City;
- Another drop-down box will allow users to select their birth month, day, and year; The birth year field will specify that a person must be 18 years old to complete the petition, so as to comply with Election Law Article § 6-204(c) requirements for a circulator.
- The form will also request the person's telephone number as required by COMAR § 33.06.03.06(B)(3) for the affidavit circulator.³

B. Electronic Signatures

Mr. Gladstone proposes to allow petition signers to sign electronically, as both the signer and the circulator. This would eliminate the need to first print the form, sign it, and then send it to Mr. Gladstone. To effectuate the electronic signature process, the web form will include all of the statements required by Election Law Article §§ 6-203(a)(2) and 6-204(b).

¹ See Attachment 1. The proposed URL is <https://mypartyispurple.com/petition>, and the website will be an EC2 instance hosted on Amazon Web Services.

² http://www.elections.state.md.us/forms/documents/candidate_petition_form_FINAL.pdf.

³ This last part of the process, *i.e.*, allowing the same individual to serve as the signer and the circulator of the petition, is consistent with what the Board has allowed in the past, and has been approved by the Maryland Court of Appeals. *Whitley v. Maryland Bd. of Elections*, 55 A.3d 37, 56 (Md. 2012).

The Honorable Linda H. Lamone
May 15, 2018
Page 3

Specifically, for petition signing purposes, the web page will include the following statement:

By signing this petition, you agree that the aforementioned candidate(s) should be placed on the ballot for the office indicated and that, to the best of your knowledge, you are registered to vote in Maryland and are eligible to have your signature counted for this petition.

Under that statement, there will be a check-box that says “Accept,” and then a text box to accept the person’s typed name that says:

By entering my name in this box, checking the “Accept” box above, and clicking the “Submit” button below, I hereby provide my electronic signature to petition the Board to add Mr. Gladstone to the ballot for United States Senate.

C. Circulator’s Affidavit

In addition, the website will include a circulator’s affidavit as required by Election Law Article § 6-204. The affidavit may be signed by the same person who is the petition signer.⁴ It will state:

Circulator’s Affidavit. Under penalties of perjury, I swear (or affirm) that: (a) I was at least 18 years old when each signature was obtained; (b) the information given above identifying me is true and correct; (c) I personally observed each signer as he or she signed this page; and (d) to the best of my knowledge and belief: (i) all signatures on this page are genuine; and (ii) all signers are registered voters of Maryland. (Sign and Date when signature collection is completed).

There will be another “Accept” check box below this statement, as well as a text box for the person’s typed name that says: “By entering my name in this box, checking the ‘Accept’ box above, and clicking the ‘Submit’ button below, I hereby provide my electronic signature swearing or affirming the statements in the Circulator’s Affidavit above.”

Below this, there will be a “Submit” button. Forms cannot be submitted without entering information in all required fields. Once submitted, the data is stored in database tables on a

⁴ *Id.*

The Honorable Linda H. Lamone
May 15, 2018
Page 4

secured server in an encrypted format.⁵ The tables will include the exact date and time the form was submitted.

D. Submission of the Petitions

On or before any appropriate filing date, Mr. Gladstone will generate hard-copy petitions using the data compiled from the web forms.⁶ Each signer's information will be printed on a form that matches the official form provided by the Board. In the signature line for the petition, as well as for the affidavit, the printed version will include the person's name as typed in the signature fields and a notation: "Electronically signed on {date/time}," which will reflect the date and time the person clicked submit on the form. These printed forms will be organized by county and delivered to the Board for processing. Should the Board desire, Mr. Gladstone can also provide Excel files with all of the information to counties to simplify the verification process.⁷

Once the election cycle is over, every database with petitioner info will be securely deleted to maximize privacy and protect signers' personal information. Moreover, all downloaded PDF files will be securely deleted using software compliant with both the Department of Defense's and National Institute of Standards and Technology's standards for data sanitation.⁸ Under no circumstances will names, addresses, or telephone numbers be kept for any future use. Data will only be retained if the Board of Elections mandates it. The website will contain a privacy policy that explains the scope of use of any submitted data to the website user.

III. Electronically Signing Nominating Petitions is Permissible under Maryland Law

The Board and the Court of Appeals have recognized the importance of technology to simplify and facilitate the collection of signatures in the election process. The online data-

⁵ The values in the form are encrypted with strong AES encryption. Those encrypted values are then stored in a secure MySQL database hosted with Amazon RDS Web Service. Mr. Gladstone will be the only one with IP and login access to the AWS systems using 16+ character passwords (numbers/letters/symbols) together with 2-factor authentication requirements to open the control panel.

⁶ See Attachment 2.

⁷ The Excel files can be provided in encrypted format, and Mr. Gladstone can provide the Board with the decryption key (i.e., a password to open the file), or in an unencrypted format, whichever is preferred for convenience and security.

⁸ See DoD 5220.22-M; NIST 800-88 Guidelines for Media Sanitization.

The Honorable Linda H. Lamone
May 15, 2018
Page 5

collection process has already been approved.⁹ Mr. Gladstone's proposal to obtain electronic signatures is consistent with Maryland law under the Maryland Uniform Electronic Transactions Act ("UETA") as applied to the Election Law. And it will further public participation in the election process by eliminating the need for a legion of circulators. At the same time, use of electronic signatures will make the petition more broadly available to the public, including those confined to their homes, hospitals, or rehab facilities, as well as Maryland citizens serving overseas in the military.

The Maryland Election Law requires signatures for two purposes on a petition: (1) for the signer to indicate he or she supports placing the candidate on the ballot and (2) for the circulator to attest to the authenticity of the information collected. The proposed petitions satisfy both requirements, and are addressed in order.

A. Electronic Signatures Satisfy the Petition Signature Requirements

1. The signer requirements are all satisfied with the web form

The Election Law provides that a person must "sign the individual's name as it appears on the statewide voter registration list or the individual's surname of registration and at least one full given name and the initials of any other names."¹⁰ Thus, the statute requires either the signature provided must match the signature on file or the signature include a full given name and initials. A signature need not match the original version on file on the voter registration list. The signature "shall be validated and counted" if the following six criteria are satisfied:

- (1) The requirements of subsection (a) of this section have been satisfied [the name is signed as described above and the information about the signer is collected];
- (2) The individual is a registered voter assigned to the county specified on the signature page and, if applicable, in a particular geographic area of the county;
- (3) The individual has not previously signed the same petition;
- (4) The signature is attested by an affidavit appearing on the page on which the signature appears;

⁹ *Whitley*, 55 A.3d at 56.

¹⁰ Md. Elec. Law Code Ann. § 6-203(a)(1).

The Honorable Linda H. Lamone
May 15, 2018
Page 6

- (5) The date accompanying the signature is not later than the date of the affidavit on the page; and
- (6) If applicable, the signature was affixed within the requisite period of time, as specified by law.¹¹

The proposed petition satisfies all six criteria:

- (1) The electronic signature provided satisfies the UETA and all of the identifying information is collected;
- (2) Signers' voter registrations will be validated at the time the signatures are submitted, although Mr. Gladstone may use registration data to validate the data submitted on the web form before he submits the signature;
- (3) Mr. Gladstone will verify that no duplicate signatures are submitted to satisfy the third criterion;
- (4) There will be a valid affidavit;
- (5) The date and time the web form is submitted will be recorded to reflect the date of the signature, which will, by definition, be the same date on which it the affidavit is signed: and
- (6) The date-stamp will demonstrate the date on which the signature was affixed electronically.

2. The Uniform Electronic Transactions Act specifies that an electronic signature satisfies the Election Act

Turning now to whether the web form creates a "signature," the UETA says that it does. The UETA provides, among other things, that "[i]f a law requires a signature, an electronic signature satisfies the law."¹²

The UETA applies to "electronic signatures relating to a transaction."¹³ A transaction is defined as an "action or set of actions occurring between two or more persons relating to the

¹¹ *Id.* § 6-203(b).

¹² Md. Com. Law Code Ann. § 21-106(d).

¹³ *Id.* § 21-102(a).

The Honorable Linda H. Lamone
May 15, 2018
Page 7

conduct of business, commercial, or *governmental affairs*.”¹⁴ The term “governmental affairs” is not addressed in the statute, but “governmental agency” is defined as “an executive, legislative, or judicial agency, department, board, commission, authority, institution, unit, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.”¹⁵ The collection of an electronic signature would therefore undoubtedly qualify as a “transaction” between the signor and Mr. Gladstone under the UETA because it “relat[es] to governmental affairs.” The UETA also includes a list of excluded transactions, such as a divorce, an adoption, wills, and certain Uniform Commercial Code transactions.¹⁶ The UETA does not exclude transactions under the Election Law, and nothing in the Election Law suggests the UETA does not apply. As such, electronic signatures are valid signatures for purposes of the Maryland Election Law.

The UETA defines an electronic signature as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”¹⁷ As described above, a signer of the petition must affirmatively check a box that says he or she agrees with the statements about signing the petition, and also type his or her name into a box for the signature line. There is specific language saying that “[b]y entering my name in this box, checking the “Accept” box above, and clicking the “Submit” button below, I hereby provide my electronic signature to petition the Board to add Mr. Gladstone to the ballot for United States Senate [or other office sought].” This action includes both an electronic symbol (the person’s typed name, as well as the record of checking the box) and manifests a clear intent to sign the petition. The database stores all of this information to record both the person’s act of signing the petition, and the date-stamp of when it is done. As such, the web form generates an electronic signature under the UETA.

Furthermore, the “transaction” occurs between two consenting parties—the petition signer and Mr. Gladstone.¹⁸ The UETA “applies only to transactions between parties, each of which has agreed to conduct transactions by electronic means.”¹⁹ Section 21-117 of the

¹⁴ *Id.* § 21-101(q) (emphasis added).

¹⁵ *Id.* § 21-101(j).

¹⁶ *See id.* § 21-102(b).

¹⁷ *Id.* § 21-101(i).

¹⁸ *See supra* note 13.

¹⁹ *Id.* § 21-104(b)(1).

The Honorable Linda H. Lamone
May 15, 2018
Page 8

Maryland Commercial Law “does not require a governmental agency of this State to use or permit the use of electronic records or electronic signatures,” but this provision only applies when the governmental agency serves as a party to a UETA transaction. If the governmental agency is a party, that agency has discretion over whether to use or permit electronic signatures. Where the governmental agency does not serve as a party, however, the agency cannot nullify a valid transaction between two consenting parties who use electronic signatures.

The “transaction” here involves a signer affixing his or her electronic signature to Mr. Gladstone’s petition. This transaction occurs between the Maryland voter and Mr. Gladstone. The Board is not a party to this transaction. The Board merely accepts the completed transaction—the signed petition. So long as the signatory and Mr. Gladstone “agree[] to conduct [the] transaction[] by electronic means,” the Board should effectuate this legal agreement. The Utah Supreme Court reached a similar conclusion in *Anderson v. Bell* where it held that:

The circulator does not turn the petition for nomination over to the county clerks for verification until after the petition is “completed by” [the requisite number of] registered voters... [w]e take the term “completed” to mean the transaction is closed. Moreover, treating the transaction as between the circulating nominee and the signor makes the most logical sense; it is an authentication that the signee supports the circulator's bid to have his name on the ballot as a candidate for statewide office. We fail to see how including the [state] as a party to this agreement has an impact on this transaction and the authentication of the signor's support.²⁰

The Board should therefore recognize the electronic signature as valid.²¹ As explained below, the supreme courts of two states have held that their state UETAs require this result. Moreover, the one court to hold differently was interpreting a very different statutory scheme.

²⁰ 234 P.3d 1147, 1155 (Utah 2010).

²¹ The Board should not be considered to be a party to the transaction. Nevertheless, if the Board concludes that it is a party to the transaction effectuated by an electronic signature, it should accept such signatures in its discretion. Md. Com. Law Code Ann. § 21-117(a) (“[E]ach governmental agency shall determine whether, and the extent to which, it will send and accept . . . electronic signatures . . .”).

The Honorable Linda H. Lamone
May 15, 2018
Page 9

3. Two state supreme courts have found that their states' UETA allow electronic signatures to satisfy their ballot-access signature requirements

Two courts have considered the effect of their states' identically worded Uniform Electronic Transactions Act in the context of ballot access and allowed electronic signatures to be used for that purpose.

In *Anderson v. Bell*, the Utah Supreme Court held that electronic signatures are a permissible way to sign a petition.²² At the time, Utah election law included provisions similar to those in Maryland, which required unaffiliated candidates to obtain signatures from a certain number of registered voters.²³ An independent candidate collected several electronic signatures, but the election official rejected their validity on the basis that they were not “holographic” or physical signatures.²⁴ The candidate challenged the rejection, and the Utah Supreme Court found the electronic signatures permissible.²⁵

Among other things, the Utah Supreme Court looked to the Utah Uniform Electronic Transactions Act, which included the same operative language as the Maryland UETA: “If a law requires a signature, an electronic signature satisfies the law.”²⁶ The Court noted that the law included several types of exempted transactions (the list was narrower than the Maryland list of exemptions), but, like Maryland, the election laws were not part of the exempted list.²⁷ Thus, the Utah Supreme Court found that the Act controlled and allowed the use of electronic signatures on the petition.²⁸

Similarly, just last year, the West Virginia Supreme Court held that the West Virginia Uniform Electronic Transactions Act permitted electronic signatures for purposes of

²² *Id.* at 1147.

²³ *Id.* at 1148.

²⁴ *Id.*

²⁵ *Id.* at 1155–56.

²⁶ *Id.*

²⁷ *Id.* The Utah legislature has since amended the Uniform Electronic Transactions Act and removed electronic signatures from the Utah Election Code's purview. However, as the West Virginia Supreme Court noted: “The fact that *Anderson* was subsequently overridden by new legislation does not indicate that the court's reasoning was flawed.” *Benjamin v. Walker*, No. 16-0228, 2016 W. Va. LEXIS 308, at *35 (W. Va. Apr. 19, 2016).

²⁸ *Anderson*, 234 P.3d at 1156.

The Honorable Linda H. Lamone
May 15, 2018
Page 10

qualifying for that state's public financing program.²⁹ Like Maryland and Utah, West Virginia had adopted the Uniform Electronic Transactions Act, which included the same language as the Utah and Maryland UETA that electronic signatures satisfy the requirement for a signature.³⁰ Like the Utah Supreme Court, the West Virginia Supreme Court looked to the list of excluded transactions and found the election laws were not in the list.³¹ As such, the court stated that "as in *Anderson*, the statutory provisions at issue could not be more straightforward" and thus allowed the acceptance of electronic signatures.³²

4. The Maryland law is different from the California law that was not amenable to electronic signatures under the California UETA

On the other hand, as the West Virginia court noted, a California intermediate court of appeals held that electronic signatures did not fulfill California election law.³³ The California court expressed several reasons why it rejected the argument that California's Uniform Electronic Transactions Act would allow electronic signatures in the petition process.³⁴ The West Virginia court explained that the California law was substantively different from the West Virginia law; thus, the California intermediate court's decision was not persuasive authority when the West Virginia Supreme Court interpreted the West Virginia statute.³⁵ Nor should it be with respect to the Maryland law.

(a) The Maryland Election Law does not have limiting language like the California law

In *Ni v. Slocum*,³⁶ the California court found that the California election law specifically stated that its provisions are mandatory, based on the introductory phrase, "notwithstanding any other provision of law . . .," which meant that the election law, and not the Uniform Electronic Transactions Act, controlled.³⁷ The Maryland Election Law does

²⁹ *Benjamin v. Walker*, No. 16-0228, 2016 W. Va. LEXIS 308, at *35 (W. Va. Apr. 19, 2016).

³⁰ *Id.* at *28.

³¹ *Id.*

³² *Id.* at *35.

³³ *Ni v. Slocum*, 127 Cal. Rptr. 3d 620, 633 (Cal. App. 1st Dist. 2011).

³⁴ *Id.* at 625–33.

³⁵ *Benjamin v. Walker*, No. 16-0228, 2016 W. Va. LEXIS 308, at *35 (W. Va. Apr. 19, 2016).

³⁶ 127 Cal. Rptr. 3d 620 (Cal. App. 1st Dist. 2011).

³⁷ *Id.* at 627.

The Honorable Linda H. Lamone
May 15, 2018
Page 11

not include such language. Moreover, the court found that the California law required election officials to verify the residence of every voter signing a petition, and that this would be impossible where the voter signed the petition electronically since electronic receipts contain identifying information but not a residential address.³⁸ The process Mr. Gladstone proposes will require signers to enter their physical address, which means the same information will be collected on this petition as would be collected on a hard-copy form.

(b) The Maryland Court of Appeals has already made changes to the circulator requirements

The California court also noted that the law required every voter's signature on a petition to be witnessed and thereafter certified by a "circulator."³⁹ The court held that such a requirement could not be met where voters used phones, tablets, and computers to sign the petition online.⁴⁰ Relatedly, the court held that allowing electronic signatures on a petition would completely eliminate the function of the "circulator," thus substantively changing the law.⁴¹ Although Maryland requires circulators to witness petitions, the Maryland Court of Appeals has already held in *Whitley* that the person signing the petition may be the same as the person who signs the circulator affidavit.⁴² As such, these concerns raised by the California court are not relevant when considering the Maryland law.

(c) The Maryland law does not require a person to "affix" a signature like the California law

Finally, the California court looked at the law's use of the words "personally affix" with respect to the signature requirement. Ultimately, the Court found that one meaning of the word "affix" would require a physical signature, but that another definition would allow an electronic signature to be used.⁴³ The court decided that it did not have to consider which definition controlled for the other reasons discussed above.

³⁸ *Id.* at 627.

³⁹ *Id.* at 631

⁴⁰ *Id.* at 632

⁴¹ *Id.*

⁴² *Whitley*, 55 A.3d at 37.

⁴³ *Slocum*, 127 Cal. Rptr. 3d at 631.

The Honorable Linda H. Lamone
May 15, 2018
Page 12

Maryland Election Law uses the phrase “affix” in a few limited instances, but the operative and active parts of the statute do not use the phrase personally affix or even the verb “affix” in the context of a person signing a petition. First, the law specifies that an unaffiliated candidate:

[W]ho seeks nomination by petition may not have the candidate’s name placed on the general election ballot unless the candidate files with the appropriate board petitions signed by not less than 1% of the total number of registered voters who are eligible to vote for the office for which the nomination by petition is sought, except that the petitions shall be signed by at least 250 registered voters who are eligible to vote for the office.⁴⁴

Second, it says that “[t]o sign a petition, an individual shall: (1) sign the individual’s name as it appears on the statewide voter registration list or the individual’s surname of registration and at least one full given name and the initials of any other names”⁴⁵ Thus, the key phrases talk about signing a petition or petitions that have been signed by a person; they do not talk about a person “affixing” a signature.

The phrase “affixed” appears in three places. First, in the requirements for a signature, the law says the petitions will be accepted, “if applicable, the signature was affixed within the requisite period of time, as specified by law.” Here, the word “affixed” discusses the time when the signature was made, not the act of placing the signature on the page. The second and third uses are in the same sentence, which provides:

Each signature page shall contain an affidavit made and executed by the individual in whose presence all of the signatures on that page were *affixed* and who observed each of those signatures being *affixed*.⁴⁶

Again, this is a reference to the signatures already made, not to a requirement that a person “personally affix” his or her signature, as was the case in the California law. These words describe the signature—which can easily be described as an electronic signature—and do not require the person to do anything more than affix an electronic signature.

⁴⁴ Md. Elec. Law Code Ann. § 5-703(e)(1).

⁴⁵ *Id.* § 6-203(a)(1).

⁴⁶ *Id.* § 6-204(a).

The Honorable Linda H. Lamone
May 15, 2018
Page 13

Thus, the Maryland Election Code does not, by itself, require a “wet” signature to satisfy the requirements that the signatures are “affixed.” And in the context of the Maryland Code, the absence of such a requirement suggests that an electronic signature may be affixed in the same manner as a “wet” one. In fact, the Maryland Code uses the term “affix” with respect to signatures in other contexts, and when it does a “wet” or “manual” signature is explicitly required. For example, a municipal clerk or secretary must “manually affix” his or her signature to a bond, even though other signatures or seals may be placed by facsimile.⁴⁷ And in the one instance where a Maryland court required a “wet” signature, a regulation clearly mandated the submission of a hard-copy document with a manual signature.⁴⁸ Thus, the General Assembly of Maryland knows how to require a “wet” or “manual” signature where one is needed, and it did not do so in the Election Code.

Even if the Board concluded that a signature must be “personally affixed,” in spite of there being no statutory support for doing so, it could follow the lead of the Maryland Court of Appeals and conclude that the term “personally affix” encompasses the use of electronic signatures. Rule 20-107 of the Maryland Rules of Procedures, for example, states that a judge “shall sign a submission electronically by . . . personally affixing the judge’s . . . digital signature. . . .”⁴⁹ And under the same Rule, filers are held to a similar standard: “An electronic signature on an electronically filed submission constitutes and has the same force and effect as a signature required under Rule 1-311.”⁵⁰ If electronic signatures can be “affixed” by judges and are binding on litigants, then electronic signatures should also constitute a legally binding signature when used by Maryland’s citizens in placing a candidate on the ballot.

5. Allowing the use of electronic signatures effectuates the legislative intent

Allowing electronic signatures would advance the General Assembly’s intent of “inspir[ing] public confidence and trust by assuring that citizen convenience is emphasized in all

⁴⁷ Md. Housing and Comm. Dev. Code Ann. § 4-231(a)(7)(ii).

⁴⁸ See *Hranicka v. Chesapeake Surgical*, 116 A. 3d 507, 514, citing COMAR 14.09.02.02A(9)(a)-(b) (“A claim that is submitted electronically is not considered filed until the signed claim form . . . is received by the Commission. [] The Commission’s date of receipt is determined by the date stamp affixed on the claim form.”).

⁴⁹ Maryland Rules of Proc., Rule 20-107(b).

⁵⁰ Rule 20-107(a). Electronic signatures are also sufficient in the context of “Verified Submissions,” which include documents submitted under oath. Rule 20-107(f).

The Honorable Linda H. Lamone
May 15, 2018
Page 14

aspects of the election process.”⁵¹ When interpreting statutory schemes, courts first look at the legislature’s intent.⁵² The Maryland Court of Appeals has already held that computer-generated petitions properly prioritize citizen convenience.⁵³ Allowing electronic signatures logically flows from permitting computer-generated petitions.

The Maryland legislature enacted the Election Code in order to “inspire public confidence and trust by assuring that . . . all persons served by the election system are treated fairly and equitably.”⁵⁴ Accepting electronic signatures serves this purpose. In *Anderson*, Utah’s UETA gave discretion to the state over electronic signatures through a rulemaking procedure.⁵⁵ The state board, however, rejected electronic signatures after they were submitted without any formal rule in place.⁵⁶ The Utah Supreme Court found this practice contrary to the statutory purpose.⁵⁷ The statute “does not authorize government agencies to make informal decisions on what type of transactions cannot be supported by electronic signatures outside of the rulemaking process”⁵⁸ Although Maryland’s UETA does not call for a rulemaking process, the statute does require the Board to “determine” the extent to which the agency will accept electronic signatures.⁵⁹ The Board, however, has a mechanism for such a “determination”: the declaratory ruling process.⁶⁰ Here, a ruling that electronic signatures may be collected and submitted will ensure that unaffiliated candidates, such as Mr. Gladstone, are treated “fairly and equitably” in the only process by which they may appear on the ballot—through signature gathering. It also ensures

⁵¹ *Id.* § 1-201(5).

⁵² *Montgomery Cty. Volunteer Fire-Rescue Ass’n v. Montgomery Cty. Bd. of Elections*, 15 A.3d 798, 802 (Md. 2011) (“In statutory interpretation, our primary goal is always ‘to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision’”) (quoting *Doe v. Montgomery Cty. Bd. of Elections*, 962 A.2d 342, 350 (Md. 2008)).

⁵³ *Whitley*, 55 A.3d at 51 (Md. 2011).

⁵⁴ Md. Election Law Code Ann. § 1-201(1).

⁵⁵ 234 P.3d at 1154.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 1154–55.

⁵⁹ Md. Com. Law Code Ann. § 21-117(a). Even though this section does not govern, *see supra* note 19, Mr. Gladstone has nonetheless sought the Board’s opinion in the matter.

⁶⁰ Code of Maryland Regulations § 33.01.02

The Honorable Linda H. Lamone
May 15, 2018
Page 15

Maryland citizens are treated “fairly and equitably” by allowing greater access to the ballot nominating process.

Finally, the Maryland election code specifically accommodates technological advances. In Section 6-203—outlining petition signatories’ specific requirements—the code states that signatories must: “include the following information, printed or *typed*”⁶¹ Like the election code in Utah, the Maryland code contemplates using an electronic interface when completing a petition. Additionally, the Maryland election code already allows electronic signatures in other contexts.⁶² Because the legislative language contemplates technological accommodations, permitting electronic signatures effectuates the legislative intent underlying the language.

In sum, the signature requirements of the Maryland Election Law can be satisfied with an electronic signature. Neither the UETA nor the Election Law contain any language prohibiting or exempting electronic signatures from ballot petitions. As such, the UETA allows electronic signatures. The proposed petitions clearly satisfy the requirements of the UETA for creating an electronic signature.

B. The Affidavit May Also be Satisfied by an Electronic Signature

In addition to the signature requirement for the person signing the petition, there is also a signature required by the circulator:

Each signature page shall contain an affidavit made and executed by the individual in whose presence all of the signatures on that page were affixed and who observed each of those signatures being affixed.⁶³

The Court of Appeals has already established that the person who signs the petition may also sign this affidavit.⁶⁴ Mr. Gladstone’s proposed online system has the person check a box that affirms he or she agrees to the language of the affidavit and that says: “By entering my name in this box, checking the ‘Accept’ box above, and clicking the ‘Submit’ button below, I hereby provide my electronic signature swearing or affirming the statements in the Circulator’s Affidavit above.” Under the UETA, this creates a binding electronic signature

⁶¹ *Id.* § 6-203 (emphasis added).

⁶² *See id.* § 13-104 (permitting electronic signatures for campaign finance disclosures).

⁶³ *Id.* § 6-204(a).

⁶⁴ *Whitley*, 55 A.3d at 37.

The Honorable Linda H. Lamone
May 15, 2018
Page 16

that satisfies this statutory requirement. As such, the entire petition can be submitted with electronic signatures.

IV. Allowing Electronic Signatures is in the Public Interest Supported by the Maryland Election Law

Allowing electronic signatures would greatly expand the citizenry's ability to participate in the process of adding a candidate to the ballot. People can sign the petition from the convenience of their homes; they do not have to find a circulator out on the street. Or, as is more likely the case, people who want to sign the petition can do so without being interrupted by circulators in their homes. Moreover, allowing electronic signatures would allow some groups—such as the disabled and elderly—access that they would not otherwise have. By contrast, requiring a wet signature might disenfranchise some voters (such as military personnel serving abroad) who cannot physically sign during the petition window. Requiring a wet signature may burden these groups so much that such a mandate would violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.⁶⁵

The online form ensures complete, accurate, and legible information will be included on the petitions. The Maryland Court of Appeals has already endorsed the concept of online petitions, and allowing electronic signatures is the next logical step in simplifying the petition process. Indeed, a person who has a computer, phone, or tablet, but not a printer, can now sign a petition.

Because the statute allows people to sign names differently than they appear on the voter registration forms, there is no ability to check signatures against the form for validity.⁶⁶ Thus, nothing is lost in the process by using electronic signatures.

⁶⁵ The United States Supreme Court has developed a balancing test when election laws burdens voter (even incidentally through a candidate's ballot access). First, the court examines the severity of the burden. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 205 (2008) (Scalia, J., concurring) (“Thus, the first step is to decide whether a challenged law severely burdens the right to vote.”). If the law imposes a “severe” burden, courts analyze the law under strict scrutiny. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). The Court has not defined a “severe” burden, however. In his concurring opinion in *Crawford*, Justice Scalia said a severe burden must go beyond “mere inconvenience.” If the election law imposes only a minimal burden, courts apply a standard “akin to rational basis.” *Ohio Council 8*, 2016 U.S. App. LEXIS 2338, at *18. Laws falling between these extremes receive an intermediate standard. *Id.* at *9. Courts weigh the burdens imposed on voters against the interests asserted by the State. *Id.*

⁶⁶ Md. Elec. Law Code Ann. § 6-203(a)(1).

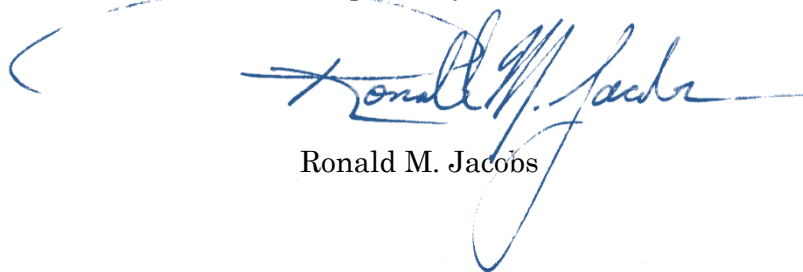
The Honorable Linda H. Lamone
May 15, 2018
Page 17

Finally, there is little or no risk of fraud, given that people who falsely sign the affidavit are subject to penalties for submitting a false statement. In fact, by having each signer attest to his or her own signature, compliance may be enhanced; in the traditional format, a circulator is subject to the penalty for false statements, but it is not clear that the signer is.

V. Conclusion

Mr. Gladstone respectfully requests a declaratory ruling that the web form he has created to collect electronic signatures fully satisfies the Election Law requirements to collect signatures for access to the ballot as an unaffiliated candidate for United States Senate or Representative in Maryland. Should you have any questions or need additional information, please do not hesitate to contact me at 202-344-8215 or rmjacobs@venable.com. Thank you very much for your time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, reading "Ronald M. Jacobs", is written over a large, light blue circular scribble. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ronald M. Jacobs

The Honorable Linda H. Lamone
May 15, 2018
Page 19

DREAMTOGETHER Log out **PARTICIPATE**

Home | Vision | Issues | About | News | Contact Q

PETITION

Home > Petition

First Name *

Last Name *

Middle Name

County *

Address Street Number *

Address Street Name *

Address Apartment Number

City or Town *

Zipcode *

Telephone (including area code) *

Birth Month *

Birth Date *

Birth Year (must be 18 or older) *

UNITED WE STAND

Keep up with the latest news and happenings in the campaign. We promise not to spam you (emails are expensive).

Enter your email

Zip code Submit

STAY SOCIAL

77 FANS 67 FOLLOWERS 6 SUBSCRIBERS 0 FOLLOWERS

By signing this petition, you agree that the aforementioned candidate, Steve Gladstone, should be placed on the ballot for the office indicated (United States Senator) and that, to the best of your knowledge, you are registered to vote in Maryland and are eligible to have your signature counted for this petition.

Accept

By entering my name in this box, checking the "Accept" box above, and clicking the "Submit" button below, I hereby provide my electronic signature to petition the Board to add Mr. Gladstone to the ballot for United States Senate.

Type your name here to digitally sign this petition *

Circulator's Affidavit. Under penalties of perjury, I swear (or affirm) that: (a) I was at least 18 years old when each signature was obtained; (b) the information given above identifying me is true and correct; (c) I personally observed each signer as he or she signed this page; and (d) to the best of my knowledge and belief: (i) all signatures on this page are genuine; and (ii) all signers are registered voters of Maryland. (Sign and Date when signature collection is completed).

Accept

By entering my name in this box, checking the "Accept" box above, and clicking the "Submit" button below, I hereby provide my electronic signature swearing or affirming the statements in the Circulator's Affidavit above.

Type your name here to digitally sign this petition *

Submit

Please note: The information you provide on this petition is public information and may be used to change your voter registration address.

Attachment 1

The Honorable Linda H. Lamone
 May 15, 2018
 Page 20

State of Maryland - General Election Candidate Nomination Petition

We, the undersigned voters of Dorchester County or Baltimore City, hereby nominate the candidate(s) named below to appear on the General Election ballot.

Candidate Information:

Party Affiliation: _____
(not a recognized party in Maryland)
 or check for Unaffiliated
 Name: Steve Gladstone
 Address: P.O. Box 6565, Timonium, MD 21094
 Office and District: US Senate

NOTICE TO SIGNERS: Sign and print your name (1) as it appears on the voter registration list, OR (2) your surname of registration AND at least one full given name AND the initial of any other names. Please print or type all information other than your signature. Post Office Box addresses are not generally accepted as valid. By signing this petition, you agree that the aforementioned candidate(s) should be placed on the ballot for the office indicated and that, to the best of your knowledge, you are registered to vote in Maryland and are eligible to have your signature counted for this petition.

If Applicable, Lt. Governor Information:

Name: _____
 Address: _____

SBE 6-201-2C (Rev 7-2011)

Please Note: The information you provide on this petition is public information and may be used to change your voter registration address.

	Print Name:	First Name	Middle Name	Last Name	Birth Date:	Month	Date	Year	
1	Name:	Jon	Stark	Snow	06	07	1908		
	Signature:	/s/ Jon Snow, electronically signed on 6/13/2016 21:53:09						Date of Signature:	6 13 2016
	Maryland Residence Address:	Street Number	Street Name	Apt. No.	City or Town	Zip	123 Winterfell Rivendale 99112		
2	Name:								
	Signature:							Date of Signature:	
	Maryland Residence Address:	Street Number	Street Name	Apt. No.	City or Town	Zip			
3	Name:								
	Signature:							Date of Signature:	
	Maryland Residence Address:	Street Number	Street Name	Apt. No.	City or Town	Zip			
4	Name:								
	Signature:							Date of Signature:	
	Maryland Residence Address:	Street Number	Street Name	Apt. No.	City or Town	Zip			
5	Name:								
	Signature:							Date of Signature:	
	Maryland Residence Address:	Street Number	Street Name	Apt. No.	City or Town	Zip			

Attachment 2

Jon Snow
 Individual Circulator's printed or typed name
 123 Winterfell
 Residence Address
 Rivendale MD 99112
 City State Zip
 (410) 123-9988
 Telephone (including area code)

Circulator's Affidavit Under penalties of perjury, I swear (or affirm) that: (a) I was at least 18 years old when each signature was obtained; (b) the information given to the left identifying me is true and correct; (c) I personally observed each signer as he or she signed this page; and (d) to the best of my knowledge and belief: (i) all signatures on this page are genuine; and (ii) all signers are registered voters of Maryland. (Sign and Date when signature collection is completed)
 /s/ Jon Snow, electronically signed on 6/13/2016 21:53:09
 Circulator's Signature Date (mm/dd/yy)