



State of North Carolina
Department of Justice

ROY COOPER
ATTORNEY GENERAL

P.O. Box 629
RALEIGH, NC
27602-0629

REPLY TO:
SUSAN KELLY NICHOLS
ELECTIONS SECTION
PHONE: (919) 716-6890
FAX: (919) 716-6755
E-MAIL: SNICHOLS@NCDOJ.GOV

January 29, 2013

Ms. Susan Myrick
Election Policy Analyst
The Civitas Institute
100 South Harrington St.
Raleigh, NC 27603

Dear Ms. Myrick:

This letter is in response to your public records request of January 16, 2013. You requested two categories of documents. Your request was triggered by a 2009 document produced by the State Board of Elections in response to your earlier request of that agency.

First, you request "all documents, emails, or files ever produced in relation to the issue of electronic/online voter registration whether directed to the N.C. State Board of Elections, the N.C. General Assembly or any other organization or person." No advisory opinions or similar documents were ever produced for another agency by me or anyone in this office in response to a written request from Mr. Bartlett on September 11, 2009 because he orally withdrew his request before a response was prepared. I did locate a copy of email correspondence between me and David Becker, Director of Election Initiatives for the Pew Center on the States, seeking contact with other states that had adopted the Uniform Electronic Transactions Act ("UETA"), as has North Carolina, but chose to also adopt new legislation to facilitate electronic voter registration. Also attached is a copy of the Utah Supreme Court decision in *Anderson v. Bell*, 2010 UT 47 (June 22, 2010), dealing with UETA and electronic signatures in an elections context, that I shared with the staff at the State Board of Elections.

Second, you request "any documents emails or files that reference 'wet signatures.'" Attached are emails and one article responsive to that request. I am separately sending you by email another article referencing "wet signatures" that I was unable to print.

Sincerely,

A handwritten signature in cursive script that reads "Susan Kelly Nichols".

Susan Kelly Nichols
Special Deputy Attorney General

Nichols, Susan

From: Wright, Don [don.wright@ncsbe.gov]
Sent: Tuesday, September 18, 2012 12:49 PM
To: Nichols, Susan; Degraffenreid, Veronica; Bartlett, Gary; McLean, Johnnie; Burris, Marc
Subject: RE: Opinion: Remote Signing of Voter Registration Applications
Attachments: remote signing.pdf

Susan,

See the attached to refresh your memory on your input on the issue. I note the change that says you had "reviewed and concurred" as opposed to "consulted". I do not recall why the final wording was used. I will make sure not to use that wording again.

Don

From: Nichols, Susan [mailto:snichols@ncdoj.gov]
Sent: Tuesday, September 18, 2012 12:33 PM
To: Degraffenreid, Veronica; Bartlett, Gary; McLean, Johnnie; Wright, Don; Burris, Marc
Subject: RE: Opinion: Remote Signing of Voter Registration Applications

Don,

As you know, the AG's office ended the procedure of allowing attorneys to state they concur in an opinion they did not author before I became a member of the staff. While Charlie Hensey used to do that with some regularity, I have tried to avoid it per my instructions. In the future, I would appreciate it if opinions don't state "Special Deputy Attorney General Susan Nichols has reviewed and concurs in this opinion."

I know we talked about the issue of the remote signing and I agreed with your analysis, although I don't specifically recall reviewing the final opinion. Could your opinions state instead: "Special Deputy Attorney General Susan Nichols was consulted in the preparation of this opinion." ? Then it won't sound as if your opinion is in fact one of the AG when it hasn't been run through the process for an AG Opinion.

Thanks,

Suzanne Kelly Nichols

Special Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602-0629

Telephone: 919/716-6890
Facsimile: 919/716-6755

Note: Pursuant to Executive Order No. 150, all electronic mail messages in connection with State business which are sent to or received by this address are subject to the Public Records Law and may be disclosed to third parties.

From: Degraffenreid, Veronica [mailto:Veronica.Degraffenreid@ncsbe.gov]
Sent: Tuesday, September 18, 2012 11:38 AM
To: Bartlett, Gary; McLean, Johnnie
Cc: Wright, Don; Burris, Marc; Nichols, Susan
Subject: FW: Opinion: Remote Signing of Voter Registration Applications

From: David Becker [DBecker@pewtrusts.org]
Sent: Tuesday, April 13, 2010 3:12 PM
To: Nichols, Susan
Subject: RE: UETA and Online Voter Registration

That's probably a better idea. Here are the states where I have contacts you could talk to (though I can't guarantee they'll know the answer):

Arizona: Amy Bjelland, state election director, Abjelland@azsos.gov (I don't think she's a lawyer – AZ implemented online registration 8 years ago, and she wasn't there then)

California: Evan Goldberg, deputy secretary of state, EGoldberg@sos.ca.gov

Colorado: Hilary Rudy, attorney in secretary of state's office, Hilary.Rudy@SOS.STATE.CO.US

Indiana: none

Kansas: Brad Bryant, state election director, BradB@kssos.org (I don't know if he's a lawyer)

Louisiana: none

Oregon: Steve Trout, state election director, steve.trout@state.or.us (I think he's a lawyer)

Utah: Mark Thomas, he does policy in the Lt. Gov's office, Mjthomas@utah.gov (don't know if he's a lawyer)

Washington: Nick Handy, state election director, nhandy@secstate.wa.gov

Like I said, many of these folks might not know what UETA is, or have direct knowledge, but they'd be a good place to start. Good luck!

David

David J. Becker
 Project Director, Election Initiatives
 The Pew Center on the States
 901 E Street NW | 10th Floor
 Washington, DC 20004
 p: 202.552.2136 | f: 202.552.2299
 e: dbecker@pewtrusts.org | www.pewtrusts.org

From: Nichols, Susan [mailto:snichols@ncdoj.gov]
Sent: Tuesday, April 13, 2010 11:44 AM
To: David Becker
Subject: RE: UETA and Online Voter Registration

Maybe we shouldn't do it as a call at all. Could you share the names and contact info of attorneys in any of the states familiar with the implementation of on-line registration that I could contact just to discuss this issue? That would allow me to talk with them and see if UETA was a factor at all in their implementation strategy. What do you think?

Susan Kelly Nichols

Special Deputy Attorney General
 N.C. Department of Justice
 P.O. Box 629
 Raleigh, N.C. 27602-0629

Telephone: 919/716-6890
 Facsimile: 919/716-6755

From: David Becker [mailto:DBecker@pewtrusts.org]

Sent: Tuesday, April 13, 2010 11:22 AM
To: Nichols, Susan
Subject: RE: UETA and Online Voter Registration

That's a lot of states. It might be particularly challenging to arrange for a call with all these states for so soon. In particular, it might be very difficult to find if there's anyone in each of these states who knows why they didn't rely upon UETA, or if they even thought about it. Does this call have to happen this month?

David J. Becker
 Project Director, Election Initiatives
 The Pew Center on the States
 901 E Street NW | 10th Floor
 Washington, DC 20004
 p: 202.552.2136 | f: 202.552.2299
 e: dbecker@pewtrusts.org | www.pewtrusts.org

From: Nichols, Susan [<mailto:snichols@ncdoj.gov>]
Sent: Tuesday, April 13, 2010 10:02 AM
To: David Becker
Subject: RE: UETA and Online Voter Registration

I'll check on Tuesday with Gary Bartlett. He is out today, but I will get back with you as soon as I can. All the states you listed have adopted UETA except California, which adopted a substantially similar version, and Washington, which had not adopted it as of September 30, 2009.

Thanks for your help.

Susan Kelly Nichols
 Special Deputy Attorney General
 N.C. Department of Justice
 P.O. Box 629
 Raleigh, N.C. 27602-0629

Telephone: 919/716-6890
 Facsimile: 919/716-6755

From: David Becker [<mailto:DBecker@pewtrusts.org>]
Sent: Tuesday, April 13, 2010 9:28 AM
To: Nichols, Susan
Subject: RE: UETA and Online Voter Registration

Susan,

Hi – my apologies for not getting back to you sooner – I've been traveling up a storm lately. Can't schedule a call this week – I'm traveling most of the week. I might be able to schedule something for next Tuesday, April 20, if we can get everyone on the line. I'm going to need some help identifying the states – as I mentioned we didn't look into the UETA issue at all. The states that have currently passed online registration legislation are: Arizona, California, Colorado, Indiana, Kansas, Louisiana, Oregon, Utah, and Washington. Which of these adopted UETA?

David

David J. Becker
 Project Director, Election Initiatives
 The Pew Center on the States

901 E Street NW | 10th Floor
Washington, DC 20004
p: 202.552.2136 | f: 202.552.2299
e: dbecker@pewtrusts.org | www.pewtrusts.org

From: Nichols, Susan [mailto:snichols@ncdoj.gov]
Sent: Monday, April 12, 2010 4:28 PM
To: David Becker
Subject: UETA and Online Voter Registration

David,

Gary Bartlett and his staff would like to take you up on your offer to arrange a conference call of other states that had adopted UETA, but chose to adopt new legislation to facilitate online voter registration. Could you suggest some dates from Wednesday-Friday this week and next week when you would be available for such a call?

Thanks,

Susan Kelly Nichols

Special Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602-0629

Telephone: 919/716-6890
Facsimile: 919/716-6755