

Steven G. Maxfield (*pro se*)
P.O. Box 179
Kanosh, Utah 84637
Phone: 801-803-3289
Email: Steve@SteveMaxfield.com

IN THE UTAH STATE SUPREME COURT

STEVEN G. MAXFIELD (<i>pro se</i>)	:	
	:	Petition for
Petitioner	:	Extraordinary Writ of Emergency Relief
vs.	:	
	:	
LT. GOVERNOR GREG BELL,	:	Case: _____
ATTORNEY GENERAL MARK	:	
SHURTLEFF	:	
Respondents.	:	
	:	

1. Comes now Steven G. Maxfield, a Utah registered voter, and hereby complains against Respondents, who are elected officials in the State of Utah, responsible for fair and unbiased elections in the state and seeks the extraordinary emergency relief as stated below.

STATUTORY BASIS

2. This action is brought pursuant to Utah Rules of Appellate Procedure 19, Utah Rules of Civil Procedure 65B (c) and Utah Rules of Appellate Procedure 8A, in that Respondents as state officers have failed to comply with multiple provisions of the Utah elections code, including but not limited to, Utah code 20A-1-703.

JURISDICTIONAL BASIS

3. This action is appropriately brought before the Utah Supreme Court pursuant to Utah Rules of Appellate Procedure 19 and Utah Rules of Civil Procedure 65B (c). The violations are a

blatant refusal by the Lt. Governor (LG) and the Attorney General (AG) to investigate and appoint special counsel on two separate verified petitions brought by Petitioner against the AG and also against Governor Herbert and the LG, alleging election law violations, which have serious legal consequences for the upcoming general election.

4. This action is appropriately brought before the Utah Supreme Court pursuant to Utah Rules of Appellate Procedure 8A emergency relief, based on Respondents' failure to act on the verified petitions as required under Utah code 20A-1-703, which also violates the Utah State Constitution Article 1 Sec 1, Sec 17, and the First amendment Bill of Rights included in the United States Constitution, specifically the right to free elections and the right to petition government for a redress of grievances. As a registered voter, no other means is available to the Petitioner other than through an Extraordinary Writ before this Court. The issues alleged in the verified petitions could potentially disqualify a gubernatorial candidate for governor for the 2010 Elections. That election is now less than 30 days away.
5. Utah Election Code sections 20A-1-609, 20A-1-704, and 20A-11-206 provide an array of penalties for violations of Utah Election Code including invalidating the election, removal from office and ordering the LG not to count the votes of a disqualified candidate(s). The matter before this Court not only threatens Petitioner's (and all other registered voters') right to free elections, but also may disenfranchise hundreds of thousands of Utah voters who may mistakenly cast a ballot for a candidate who may ultimately be disqualified. It is in the interest of all Utah voters, all Utah candidates, and in the best interest of the state, to address this issue with all haste and judicial impartiality.
6. Under the Utah Rules of Appellate Procedure 8A, Petitioner requests that the Respondents file all responses in compliance with subpart (d) within three days and that this court make its decision as early as possible.

7. As to the jurisdictional basis, Petitioner incorporates *Anderson v. Bell*, Utah Supreme Court case No. 20100237, as the plaintiffs and defendants are substantially similar, and the underlying basis is nearly identical, to wit: the named state officers have again acted outside the scope and authority of their offices by determining that a political action committee (PAC) can be used in conjunction with or as a replacement for a personal campaign committee, in direct violation of applicable statutory provisions. This determination is self-serving in an attempt to cover-up alleged elections law violations by elected officials, including their own campaigns. This is also compounded by Respondents acting in concert to deny Petitioner his constitutionally guaranteed right to petition the government, and, upon an adequate showing of probable cause, obtain appointment of special counsel to investigate these allegations, as provided by statute. The objections and arguments as to plain interpretation, venue and standing will be substantially similar, and Petitioner defers to the Utah Supreme Court's decision on those matters.

STATUTORY INTENT -- SPECIAL CONSIDERATION

8. At this point, Petitioner is not asking this Court to try or convict any candidate under Utah Code Section 20A-1-703. Petitioner understands and agrees that is the responsibility of the District Court.
9. The evidence and allegations as pertaining to state office candidates below are to show the controversy surrounding the plain interpretation of Utah Election Law as regarding political action committees (PAC) and personal campaign committee (PCC) candidate or office holder accounts. This is included to show that the Respondents, specifically the LG and the AG, acting in their official capacity, have not fulfilled their statutory duties as required by law. If this is the ultimate finding, then Petitioner will ask this Court for specific remedies including judicial determination of the underlying controversy.

10. As to the actual verified petition filed by the Petitioner against Governor Herbert and LG Bell and the verified petition against the AG Shurtleff, they were filed against the above-named parties as state office candidates, not in their official capacity. This petition only names as Respondents the LG and the AG in their official capacities.
11. While Governor Gary Herbert's and AG Shurtleff's conduct as candidates are not at issue here, the LG's and the AG's decisions not to act on Petitioner's underlying petitions are properly before this Court.

INTRODUCTION

12. During the last quarter of 2009, Petitioner was doing research on election law and current candidate reports or office holder reports on Utah elected officials.
13. The Purpose of this investigation was for the Anti-Bribery Initiative that the Petitioner later sponsored. This was the first initiative to attempt to place contribution limits on all candidates in the State of Utah.
14. During the investigation, besides discovering large amounts of money flowing in and out of campaign-office holder accounts, Petitioner noticed many possible violations of current elections laws by current office holders, including but not limited to, the current Utah State AG, Shurtleff.
15. In January, 2010, Petitioner contacted the Utah State LG's Office, and spoke with Mark Thomas, elections director for the LG's office, about these concerns. These contacts were made through email, phone calls and personal visits to the LG's office.
16. On or about January 30, 2010, Petitioner also discovered the 2009 year-end report filed by Representative Carl Wimmer, current legislature, House District 52. The last line of page 7 of this report shows an expenditure to "The Friends of Carl Wimmer PAC" for the sum of \$5,352.50. This amount effectively zeroed out his campaign account and then Wimmer

closed his campaign-office holder account. The reason listed for the purpose of the transfer was listed as “CONSOLIDATION OF CAMPAIGN ACCOUNTS”.

17. On or about Jan 30, 2010, Petitioner called Wimmer and asked why he had closed his campaign accounts. Wimmer told the Petitioner that maintaining multiple campaign accounts with different reporting standards and frequency of reporting was too burdensome, and that the LG’s office had told him that he did not need to have a campaign account or office holder account, and that using a PAC for campaigning purposes was legally permissible.
18. On January 30, 2010 at 7:44 p.m., Petitioner sent an email to Thomas asking if he advised a state office candidate, “That they did not need a personal campaign account ... that a PAC would suffice.” Petitioner also included Utah Code 20A-11-101(27), which states that a PAC is not a personal campaign committee. Petitioner also included Utah Code 20A-11-202 which requires each state office candidate to have a Personal Campaign Committee (PCC). There was no written response from Thomas.
19. On or about February 1, 2010, Petitioner spoke with Thomas on the phone about the email. Thomas responded to the effect that he had talked to Wimmer who was no longer a candidate for public office and did not need a PCC. When pressed about an office holder account, which is usually the same as the candidate account, Thomas agreed that it was a valid point.
20. During the same conversation Thomas was asked about the issues raised about the AG and his “PAC for Utah’s Future” possibly being in violation of multiple election laws. Thomas responded it was “too political” to do anything unofficially with those questions. Consequently, the only way to have those questions answered was to file a complaint against the AG.
21. On or about February 8, 2010, Petitioner followed the procedures contained in 20A-1-703 (1) and filed a verified petition alleging elections law violation by AG Mark Shurtleff.

22. In the petition brought against the AG, Petitioner claims the “PAC for Utah’s Future,” controlled by the AG and the candidate PCC, also controlled by the AG, equate to two separate campaign accounts in possible violation of Utah Code sections 20A-11-101(27)(c)(vi), 20A-11-201, 20A-11-202, 20A-11-203, 20A-11-204, 20A-11-205, 20A-11-401, and 20A-11-402.
23. In the petition against the AG, the Petitioner raised a separate claim pertinent to this action, that the “PAC for Utah’s Future” is controlled by and acting in concert with the AG’s PCC. Utah code 20A-1-703 (3) provides that ***“If it appears from the petition or otherwise that sufficient evidence is obtainable to show that there is probable cause to believe that a violation has occurred, the attorney general shall: (a) grant leave to bring the proceeding; and (b) appoint special counsel to conduct the proceeding.”*** Emphasis added. This section of Utah Code states if from the petition or otherwise, evidence is obtainable that a violation has occurred the AG *shall* bring criminal proceedings. Obviously, the AG has a conflict of interest in that matter.
24. In the complaint as filed against the AG, one example used to see if the limited test of evidence and probable cause are met, were the 2008-2009 public disclosures of the “PAC for Utah’s Future” and the office holder or candidate account maintained by Mark Shurtleff. In the 2008 PCC the AG shows 12 payments to Guidant Strategies for a Total of \$ 285,584.80, and the purpose listed was bulk reimbursement for “Campaign Expenses/Personnel.” Guidant Strategies is a DBA (doing business as) of Jason Powers, Mark Shurtleff’s campaign manager. In 2009 the AG’s PCC showed no payments to Guidant Strategies, however in 2009 the “PAC for Utah’s future” shows at least eight payments to Guidant Strategies totaling over \$35,000. The payments to Guidant Strategies were transferred from his PCC to his PAC. Petitioner believes this alone shows evidence of probable cause the AG violated election laws by using his PAC in conjunction with his PCC.

25. Prior to September 17, 2010, Petitioner again had various email and phone conversation with Thomas for the LG's office regarding these matters. In regards to the AG complaint Thomas said to the effect: *"This office does not consider it a violation of Utah code to have a campaign account and a PAC, however on some other issues you raised such as detailed reporting we are concerned and would like to make some policy changes before we respond to your petition."*
26. On or about September 19, 2010, Petitioner met with Thomas at the LG's office. The Petitioner again inquired about the specific allegations of simultaneously using a PAC and a PCC in regard the AG complaint. Thomas responded that, while he agreed a candidate may not use a PCC and a PAC, there was much internal debate about it in the office. The Petitioner also enquired why this process had taken so long and was given the response: *"It has not been a priority of this office."*
27. On or about September 20, 2010, Petitioner sent an email inquiry to Thomas enquiring about the status on the AG complaint, and received the following response: *"I am working on it. However, our usual process is to circulate the draft response among a handful of folks, including the Lt. Governor for feedback, etc. Depending on people's schedule and possible changes to the draft, it could take a couple of weeks. I will try and keep you in the loop once I get a better time frame. In the meantime, I will work as quickly as possible to get the draft circulated."*
28. The email response by the director of elections from the LG's office is prima facie evidence that the LG and his staff are acting outside their permitted scope and authority under Utah Code, to wit: the only authority of the LG under Utah Code 20A-1-703 is to gather information and make a determination of whether an investigation is warranted. When that determination is made the only action required of the LG is to forward the verified petition to the AG. The only other explanation would be a determination by the LG's office that using a

PAC as a PCC is not prohibited by State Law. Petitioner argues that determination requires judicial review reserved in this case to the district courts.

29. Similarly, in *Anderson v. Bell* the LG and the AG had determined e-signatures were not permitted under the elections statute. In this case, the underlying issue is whether Utah Election Law permits the use of PAC accounts by candidates or office holders either working in concert with a PCC or as stand-alone campaign accounts. By the LG's and AG's actions and inactions it is apparent on its face this is the operating position of both the LG and the AG.
30. On or about September 21, 2010, Petitioner filed a verified petition with the LG's office against Governor Herbert and LG Greg Bell. This petition alleged the "Friends of Gary Herbert PAC" also known as the FOG PAC, and the 2010 PCC, also controlled by Governor Herbert, are in direct violation of the simple and express meaning of Utah Code 20A-11-202, which requires all state candidates to select a single PCC to accept donations and spend funds related to the campaign. Petitioner also claims that to use a PAC as a PCC is in direct violation of 20A-11-101(27)(c)(vi), which states a PAC cannot be a PCC. Again, Thomas accepted the petition for the LG's office. Petitioner explained the nature and the inherent conflict of interest of the LG as to these issues, and explained that in the petition, the Petitioner has requested the LG to recuse himself and immediately deliver the petition to the AG for investigation and appointment of special counsel. Petitioner also requested this take place within 72 hours. There has been no response from the LG or AG on this petition.
31. As to the petition against Herbert-Bell, some of the evidence available to meet the burden of probable cause is best demonstrated by the case of Joe Demma, Governor Herbert's campaign manager. Demma is quoted in the *Salt Lake Tribune* on September 15, 2010, "Independent candidate filed PAC-related complaint" by Robert Gehrke; *Maxfield's allegations are "baseless and completely without merit" ... He (Demma) said Herbert uses*

the PAC for things ... like ... air fare for the first lady ... Christmas parties ... decorations ... things that are not part of the campaign.” One need to look no further than the website for the Gary Herbert for Governor Campaign located at www.garyherbert.com in which is printed the following disclosure at the footer of the page: “*Paid for by Friends of Gary R. Herbert PAC and Authorized by Herbert for Governor.*” The only logical conclusion from looking at the respective disclosures, is that the website is paid for by the PAC and the Campaign, run by Gary Herbert’s PCC “Herbert for Governor,” in turn approves of the website. Utah Code 20A-11-202 prohibits any other person acting in concert with or knowledge of the state office candidate to raise money or expend funds related to the candidate’s campaign.

32. As to the petition against Herbert/Bell, it is interesting to note *how* the campaign manager, Demma, is paid for his services. In 2010 his total remuneration as reported from Herbert’s PCC is \$762.86 for office expenses. On the other hand, Demma was paid \$66,670.25 from the FOG PAC for “staff support” and “office expenses.” Demma’s own statement shows the inherent conflict between the evidence submitted in the petition and his statements as reported in the *Salt Lake Tribune*.

33. On or about September 23, 2010, Petitioner sent an email to Thomas inquiring into the status of the complaint against Herbert/Bell. The Petitioner received this email response from Thomas, which was copied to Paul Neuenschwander, Chief of Staff of the LG’s office, and to Thom Roberts, LG’s legal counsel from the AG’s office: “*The lieutenant governor is obviously aware of the complaints and is currently reviewing the law as it applies to the complaints. He is also reviewing the law to determine his legal duties and options available to him.*”

34. On or about September 23, 2010, Petitioner sent response email to Thomas, Neuenschwander and Roberts asking for clarification, as the only action required by the LG is to determine if a special investigation is necessary. There has been no response to this inquiry.
35. On or about September 27, 2010, Petitioner left voicemail messages, and sent an email again to Thomas, Neuenschwander and Roberts asking three simple yes or no questions: *“1) Did the LG recuse himself as requested and forward the petition to the AG? 2) Has the LG made a determination whether a special investigation is warranted by the petition? 3) Has the petition been forwarded to the AG for investigation and appointment of special counsel?”* The Petitioner has received no response.
36. In summary, Utah law has specific reporting requirements in place to protect the integrity of the elections process and provide the transparency necessary for ethical and lawful conduct of political candidates.

RELIEF SOUGHT

37. Petitioner seeks a declaratory order from the Utah Supreme Court that Utah Code 20A-11-202, 20A-11-101(27), 20A-11-101(27)(c)(vi), 20A-11-201, 20A-11-202, 20A-11-203, 20A-11-204, 20A-11-205, 20A-11-401, 20A-11-402 mean what they plainly say: that a political action committee (PAC) cannot be used in conjunction with or as a replacement for a personal campaign committee (PCC).
38. Petitioner seeks an order from the Utah Supreme Court directing the LG to forward the petitions, filed under Utah Code 20A-1-703, to the AG’s office for appointment of special counsel as required by Utah code 20A-1-703(2).
39. Petitioner seeks an order from the Utah Supreme Court directing the AG’s office to appoint mutually agreeable outside counsel as required by Utah code 20A-1-703(3) to bring separate actions against the AG and Governor Herbert in the district court. As a private citizen who is not a lawyer, Petitioner lacks the financial resources and legal expertise to pursue such an

action independently, which is why the Legislature provided for a special counsel to be appointed upon a showing of probable cause. Unless the Supreme Court orders these Respondents to appoint the counsel required by law, a substantial injustice will have been wrought by these State officers against the voters of Utah and all other candidates for the office of Governor.

STATEMENT UNDER RULE 19 (b)(4)

40. As state office candidates or office holders, Governor Herbert and Attorney General Mark Shurtleff are required to file candidate or office holder account reports under Utah Code Section 20A-11-203, 204, and 206, as well as 20A-11-401 and 402. These statutes require state office candidates to file up to five financial reports associated with the campaign each year including, yearend by January 10, seven days before the convention, seven days before the primary election, August 31, and seven days before the general election. These reports must contain all contributions and expenditures made for the PC. These reports are the only means for voters to know who is giving money to candidates and in what amounts, and it is only through these reports that voters can know the extent to which a candidate may be financially beholden to special interests prior to voting. By running campaigns through PACs, candidates can get through the critical convention and primary election cycles without ever having to file a disclosure report, which is unfair, illegal, and a disservice to voters.
41. Both Governor Herbert and AG Mark Shurtleff are also in control of PACs associated with their campaigns: Governor Herbert's "Friends of Gary R Herbert" and the AG's "P.A.C. for Utahs Future." Utah Code 20A-11-602 only requires three filings per year by a PAC: yearend, August 31, and seven days before the election. The first filing for the FOG PAC this year was Aug 31, 2010. With the late filing the alleged violations as it pertains to Governor Herbert and Lt. Governor Bell were not discovered until after such filing.

42. On September 21, 2010, Petitioner filed a verified petition as a registered voter with the LG, including voluminous exhibits demonstrating probable cause of violations of election law, as provided under Utah Code 20A-1-703.
43. Under Utah Code 20A-1-703(3), Petitioner claims that the allegations in the petition taken with the exhibits that are public record have exceeded the probable cause standard, and as such the LG and the AG have no discretion in this matter. The law requires the LG to forward the complaint the AG. It then requires the AG to appoint special counsel.
44. The LG and his staff have predetermined to ignore the petitions and as chief elections officer have violated multiple sections of Utah's elections laws by refusal to enforce them.
45. The AG and his staff have been aware of the first complaint for seven months and have provided legal counsel to the LG's office on this matter through their representative Roberts. Roberts of the AG's office is also believed to have viewed the verified petition against Herbert/Bell and has been copied on the email exchanges between the Petitioner and the Respondents. No response has been received from Roberts nor any one else from the AG's office.
46. Taken individually or in concert, the AG and the LG have violated elections laws, and violated the constitutional rights of all Utah voters to have free and unbiased elections, as well as a number of specific statutory provisions.
47. Due to the late nature of the PAC filing reports, at least in the case of Herbert/Bell, the Petitioner, as a Utah registered voter, has no other recourse but to ask this Court for an emergency extraordinary writ. Even if there were some other option available, the time frame alone merits that the Court consider this writ.
48. The Supreme Court is the only court with the jurisdiction to hear and the authority to grant the Petitioner's relief as indicated herein.

PETITION FOR EXTRODINARY RELIEF

Therefore, Petitioner respectfully asks this Utah Supreme Court to issue a Writ of Extraordinary Relief granting the relief sought herein and/or a hearing on the matter.

DECLARATION PURSUANT TO SECTION 78B-5-705

I declare under criminal penalty of the State of Utah that the foregoing is true and accurate to the best of my understanding and recollection, and do so swear.

DATED this _____ day of October, 2010.

Steven G. Maxfield, Petitioner

Exhibits Attached to Initial Petition

Exhibit A	Verified Petition with Exhibits against Herbert - Bell
Exhibit B	Verified Petition with Exhibits against Mark Shurtleff
Exhibit C	Additional Exhibits reports supporting the Verified Petitions.
Exhibit D	Email Exchanges between the LG and the Petitioner.
Exhibit E	Anderson v. Bell
Exhibit F	Emails, Reports Carl Wimmer
Exhibit H	Tribune Article September 15, 2010

Certificate of Service

I hereby certify that I, Steven G. Maxfield, hand delivered a true and correct copy of the above petition for an extraordinary writ of relief along with all exhibits to the following this _____ day of October, 2010.

Respondents Served:

Lt. Governor Greg Bell
Office of the Lt. Governor
Utah State Capitol Complex
350 North State Street Suite 220
Salt Lake City, UT 84114-2320

Attorney General Mark Shurtleff
Office of the Attorney General
Utah State Capitol Complex
350 North State Street Suite 220
Salt Lake City, UT 84114-2320
