

**VERIFIED PETITION REQUESTING APPOINTMENT OF SPECIAL  
COUNSEL TO PROSECUTE ELECTION LAW VIOLATIONS**

Comes now Steven G. Maxfield of 95 East 700 South, Kanosh, Utah, a registered Utah voter; and in accordance with Utah Code Ann. § 20A-1-703, I, *pro se*, hereby request that an investigation be conducted to determine whether there is probable cause to conclude that Governor Gary Herbert and Lieutenant Governor Greg Bell have violated and subverted the election laws of the State of Utah. In the event such probable cause is found to exist, as I have alleged herein, then I request that the Attorney General appoint special counsel, from outside that office, to conduct the judicial proceeding provided by statute. While the statute provides for an initial determination by the Lieutenant Governor as to whether an investigation by the Attorney General is necessary, and because the range of penalties prescribed in the event of such violations include removal from office, I further request that the Lieutenant Governor and his office recuse themselves from conducting that initial determination and submit this Verified Petition directly to the Attorney General.

I state, the following facts or allegations to be true to the best of my knowledge, and so swear under penalty of perjury:

- Gary R. Herbert is currently the Governor of the State of Utah.
- Herbert served as Lt. Governor from January, 2005 to August, 2009.
- As Lt. Governor, Herbert was directly responsible for oversight and enforcement of all elections laws found in Utah Code, Title 20A.
- In 2009, then Governor Huntsman resigned, and Herbert was sworn in as the Governor of Utah on or about August 11, 2009.
- In 2004, Herbert was a candidate for Governor before he agreed to be Huntsman's running mate.
- During the 2004 campaign, Herbert maintained a candidate campaign account "Herbert 2004." Exhibit A
- In 2007, Herbert then the Lt. Governor, created the Friends of Gary Herbert PAC (FOG PAC). Exhibit B
- In Exhibit B, Herbert is listed as an officer with the occupation of Lt. Governor.

- In 2008, Herbert maintained an officeholder or candidate account as Lt. Governor. The end of year report shows a \$3,000 positive balance. Exhibit C
- In 2009 no reports were filed on the Lt. Governor's candidate or officeholders account.
- In 2010, Herbert opened an officeholder/candidate account for Governor. The first deposit on 1/1/2010 was \$3,000 from the 2008 Lt. Governor account. Exhibit D
- In 2008, while Herbert maintained a candidate or office holder account he accepted through his FOG PAC \$9,002.07 in political donations not reported on his candidate account. These include \$1,500 from the Utah Credit Union PAC, \$1,000 from ACEC, \$5,000 from Ruland J. Gill, etc. Exhibits E, F, and G
- From January 1, 2009 thru August 11, 2009, the FOG PAC received \$10,535.81 in political contributions. Note that this was before then Lt. Governor Herbert was sworn in as Governor. Exhibit H
- From January 1, 2009 thru August 11, 2009, the FOG PAC spent \$11,935.15 on political expenses, including but not limited to, \$2,500 for a booth at the Utah Republican Convention, donations to other candidates, and consulting fees. Exhibit H
- After Herbert was sworn in, between August 12, 2009 thru December 31, 2009, the FOG PAC received an additional \$1,326,892.91 in contributions. Among those contributions is \$20,000 from the Workers Compensation Fund for the 2009 Governor's Gala. Based on information and belief, the only cause for the increased activity in this PAC is that Herbert was then Governor. Many of these proceeds originated from donations made by attendees of the 2009 Governor's Gala. Exhibit I
- In 2010, Herbert maintained a candidate/officeholder account. The August 31, 2010 campaign report, signed by Herbert, shows \$1,661,416.61 in contributions and \$588,079.58 in expenses. This report includes \$5,000 from the Workers Compensation Fund for the 2010 Governor's Gala. Exhibit J
- Exhibit J, schedule A, shows contributions to Governor Herbert's Campaign account, some of which are reported here <http://www.garyherbert.com/donor-list>. These donations do not appear on the FOG PAC records.

- Schedule B of Exhibit J, page 27, lines 7-9, shows a June 22, 2010 payments to Brian Maxwell, office expense, \$124.49; Carl Downing, office expense, \$68.30; and Caroline Updike, office expense, \$301.51
- The FOG PAC's August 31, 2010 report, schedule B, page 36, line 10, shows a June 3, 2010 payment to Brian Maxwell, office expense, \$218.82. Page 36, line 20, shows a June 15, 2010 payment to Brian Maxwell, staff support, \$ 2,030.80. Exhibit K
- Exhibit K, page 37, lines 1-2 show a June 15, 2010 payments to Carl Downing, staff support, \$1,384.62; and Caroline Updike, staff support, \$1,384.62.
- The Foregoing examples are just a few that show the FOG PAC paying actual salaries while the campaign account reimburses expenses. Other examples include the FOG PAC paying rent for office space for the campaign, while the candidate account pays for other office expenses, such as utilities.
- Hebert's own campaign report, signed by himself, on August 31, 2010, schedule B, page 30, lines 12-17, acknowledges over \$110,000 of in-kind contributions from his FOG PAC for staff support, consulting, advertising, taxes, etc., to his campaign account. Exhibit J
- Governor Herbert maintains a personal campaign website at [www.garyherbert.com](http://www.garyherbert.com). He also maintains a donor list on that website located at <http://www.garyherbert.com/donor-list>, titled "Friends of Gary R. Herbert: Donor List," with the tag line, "Keeping Utah's Elections Open and Transparent." Exhibit L
- The Donor list obtained on September 19, 2010, 8:00 p.m., shows donors from June 28, 2009 to September 10, 2009. There are approximately 1,200 donors with contributions totaling \$2,398,408.75. This list does not represent a single campaign account; rather it is a intermingling of contributions received for the purpose of electing Herbert as Governor of Utah, deposited into at least two separate entities: Herbert's personal 2010 campaign account, and Herbert's PAC "Friends of Gary R Herbert" or FOG PAC. Exhibit M

Referencing the above allegations with supporting documentation, Exhibits A-M, petitioner refers to the following sections of Utah Election Code for probable violations. Utah Code 20A-11-202, 20A-11-101, 20A-1-609 .

### **First probable election violation:**

Utah Election Code section 20A-11-202 requires each state office candidate to have a “campaign committee.”

**20A-11-202. State office candidate -- Personal campaign committee required**

(1)(a)(i) Each state office candidate shall select **no more than one personal campaign committee**, consisting of one or more persons, to receive contributions, make expenditures, and file reports connected with the candidate's campaign.

Referencing the above section of code and the allegations outlined in the complaint, there are two separate entities operating in concert. Both are receiving campaign contributions for Herbert and Bell, making campaign expenditures for Herbert and Bell, and filing separate reports in association with Herbert’s campaign for Governor and Bell’s campaign for Lieutenant Governor. These two separate entities are “The Friends of Gary R. Herbert PAC” or FOG PAC, listing Herbert as a member and Ron Hawkins as treasurer or financial officer; and the 2010 candidate account of Governor Gary R. Herbert, with Herbert filling the reports for the candidate account and Ron Hawkins filling the reports for the PAC.

This is a clear violation of 20A-11-202(1)(a)(i).

### **Second probable election violation:**

**20A-11-202 (1) (b) Except for expenses made by a registered political party to benefit a party's candidates generally, a state office candidate or other person acting in concert with or with the knowledge of the state office candidate may not receive any contributions or make any expenditures on behalf of a state office candidate other than through a personal campaign committee established under this section.**

Referencing the above section of code and the allegations outlined in the complaint, only those expenses by a registered political party that benefit a party’s candidate are generally allowed. All others acting in concert or knowledge may not receive contributions or make expenditures on the state office candidate’s behalf. As the above referenced allegations

and exhibits show, the FOG PAC is not a registered political party. The disclosures, as well as the principle make-up of both the FOG PAC and the 2010 campaign account of Gary R. Herbert, irrefutably show a direct connection. Therefore, the above referenced allegations are in violation of 20A-11-202(1)(b).

### **Third probable election violation:**

**20A-11-101 (c) "Political action committee" does not mean:  
(vi) a personal campaign committee.**

Referencing the above section of code and the allegations outlined in the complaint and incorporating the first probable election violation, state office candidates, such as Herbert and Bell, cannot have more than one campaign committee to expend funds or solicit donations for a gubernatorial campaign. The above section of code, under the definition of a "political action committee," specifically precludes a PAC from operating as a campaign committee, but their campaign is being run out of both entities. The above referenced allegations and supporting documents, taken in concert, clearly show a consistent pattern of both Herbert's campaign committee and Herbert's FOG PAC, acting in concert and union to support his bid for governor. Therefore the PAC and all principal officers, including Governor Gary R. Herbert and Greg Bell, are in violation of Utah Code 20A-11-101(c)(vi).

### **Remedies Sought:**

I hereby request the Lt. Governor's office to recuse itself because of that office's inherent conflict of interest, and to forward this Verified Petition to the Attorney General, and for the Attorney General to appoint outside special counsel within 72 hours.

### **Mitigating circumstances:**

1. On February 8, 2009 I filed a similar verified petition with the Lt. Governor's (LG) office requesting an investigation into the PAC for Utah's Future, and Mark Shurtleff

campaign accounts, both which are controlled by, or act in concert with, Mark Shurtleff, who is the current Attorney General of Utah (AG).

2. The complaint against the AG on the issues of whether a PAC can be a campaign account is substantially similar to this complaint.
3. The LG and AG have had in excess of seven months to make a determination, but have taken no action whatsoever.
4. I am an Independent candidate for Lt. Governor and deserve a speedy and unbiased conclusion, as these allegations have direct bearing on the November elections.

If these allegations prove to be substantiated by a court of law, and if the following penalties apply, I respectfully request that the Herbert/Bell gubernatorial candidates be removed from the November ballot and that such other sanctions be imposed as provided by law, to include removal from office.

I, Steven G. Maxfield hereby claim that these allegations, taken individually and collectively, show a clear pattern of violations of the elections code by Mr. Herbert and Mr. Bell. These violations began with the creation of the “Friends of Gary R. Herbert PAC” or FOG PAC in 2007, while Mr. Herbert was then Lt. Governor. That pattern has continued to wit; depositing political contributions made to a current office holder in a PAC account in violation of Utah Law. Those violations have been continually in effect and have increased in scope and nature since Mr. Herbert became Governor of the State of Utah. Those violations are ongoing and violate the scheme of open disclosure set up by Utah Law. As there are possible conflicts of interest within the Lt. Governor’s office and the Attorney General’s office, I respectfully request mutually agreeable outside counsel be appointed to bring this matter forward.

I, Steven G. Maxfield, a registered Utah Voter, state I have caused to bring these matters forward. I was eligible and did vote for the office of Governor in the State of Utah.

X\_\_\_\_\_ Steven G. Maxfield Petitioner

Subscribed and sworn to before me this \_\_\_\_\_

X\_\_\_\_\_ Notary Public

## **Table of Exhibits:**

**Exhibit A: Herbert 2004 Governor Year end campaign report**

**Exhibit B: Statement of organization Friends of Gary Herbert PAC**

**Note: This PAC also referred to as the FOG PAC**

**Exhibit C: Lt. Governor 2008 Year end Office holder Report**

**Exhibit D: FOG PAC 2010 convention report**

**Exhibit E: FOG PAC 2008 General Election report.**

**Exhibit F: FOG PAC 2008 Aug 31 report.**

**Exhibit G: FOG PAC 2008 Year End report.**

**Exhibit H: FOG PAC 2009 Aug 31 report.**

**Exhibit I: FOG PAC 2009 Year end report.**

**Exhibit J: Herbert 2010 Aug 31 campaign report**

**Exhibit K: FOG PAC 2010 Aug 31 report.**

**Exhibit L: Screen shot Gary Herbert.com donors page**

**Exhibit M: Donor list from Gary Herbert.com**

Note: all exhibits are public information.

They can be found at the Utah Elections Office Public Disclosures,

<https://gva1.utah.gov/disclosures/>

and

<http://www.garyherbert.com/donor-list>