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## PRESS RELEASE

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## ACLU of Utah Plaintiffs Granted Major Victory in Weber County Gang Injunction Case

Federal Court's Ruling Vindicates Plaintiffs' Rights, Raises Serious Questions Regarding  
Weber County Officials' Statements to Court

In a recent ruling, the federal District Court for the District of Utah awarded a major victory to Leland McCubbin and Daniel Lucero in a case involving Weber County's actions in obtaining and serving a so-called gang injunction on them.

In a strongly and clearly reasoned order, Judge Clark Waddoups held that Weber County violated Plaintiffs' constitutional due process rights and granted them a judgment on their claims for that violation without the need to go to trial. This type of victory is rare for plaintiffs in civil rights cases and is only appropriate when all of the undisputed facts establish a clear violation of rights.

"Obtaining this judgment reflects the strength of the Plaintiffs' procedural due process claim, and we are thrilled with the results." said John Mejia, Legal Director of the ACLU of Utah.

In the order, the Court also raised serious questions about representations made by the Weber County District Attorney and others in the legal proceedings, as explained below.

This case stems from an injunction Weber County brought against the Ogden Trece gang in 2010. While the County only sued the gang, the injunction it obtained applied to

individual people who were purportedly gang members and was effectively immediately when the person was handed a copy. Under the terms of the injunction, those served with the injunction could be criminally prosecuted for legal, constitutionally-protected activities while in Ogden such as being seen in public with other alleged members, including family, friends, and co-workers. The injunction also imposed an Ogden-wide curfew and banned engaging in any conduct that police, in their unfettered discretion, considered “annoying.”

In 2013, the Utah Supreme Court vacated the injunction, ruling that the gang had not been properly served, meaning that the lower court never had jurisdiction in that case. Public records located by Plaintiffs during the case indicate that Ogden City and Weber County initiated hundreds of prosecutions involving charges of violating the injunction before it was vacated.

“The Court held that because the County took actions that lead to severe restrictions on Mr. McCubbin and Mr. Lucero’s protected interests without any providing meaningful process beforehand, the County violated their rights,” said Mejia. “The Court’s ruling is a powerful vindication of the years of effort we have put in this case and sends a strong and clear message that the government needs to respect everyone’s rights.”

In addressing claims about the potential for a future injunction and gang lists, the Court took the highly unusual step of declining to credit sworn statements by the defense witnesses, including the Weber County Attorney. In explaining why it had done so, the court stated that the County Attorney and others submitted declarations to the Court categorically denying that the county keeps or shares gang documentation. The Court, however, said that it had become aware of information that contradicted those statements in another unrelated court proceeding and through a search of publicly available records. In light of this conflicting evidence, the Court stated that it had reason to believe that the County Attorney may have been “attempting to deceive the court” in his factual representations. It is important to note that a court questioning the truthfulness of a witness, particularly of a public official, is extremely rare.

“The prospect of witnesses swearing to false statements strikes at the heart of the fairness of the legal process,” explained Mejia. “The Court, the Plaintiffs, and the public are all entitled to accurate information in court proceedings. Particularly in the case of attorneys, all we have is our credibility,” he continued. “We are enormously troubled by the questions the Court raised and will actively participate in helping to answer them.” The consequences for making purposely false statements under oath include criminal prosecution and losing one’s license to practice law. Such potential sanctions would be apart from any repercussions for the case itself.

While the Court stated that it would grant the County Attorney a hearing to explain the apparent discrepancies should the attorney seek one, the County Attorney has yet to ask for such a hearing during the several weeks that have elapsed since the order was issued.

The Court also ruled that the plaintiffs, McCubbin and Lucero, may seek monetary damages for the due process claim and any other claims they also prevail on. Plaintiffs, moreover, are now the prevailing parties on their due process claim, meaning all their reasonable past and future attorney fees on that claim will be awarded to their legal team.

Mejia estimates the Plaintiffs' attorney fees in this case overall are already in the hundreds of thousands of dollars and have the potential to grow considerably higher given how much time is required for trial. "We are in this case for the long haul. We look forward to the protracted and painstaking preparations we need to undertake for trial. Since we are already prevailing parties on our one of our claims, the County will be responsible for paying our considerable future fees to prepare for that claim." commented Mejia.

Several events are pending in this case in the wake of this ruling.

- First, the court has stated it would have a hearing on the factual issues it raised should the county attorney request one.
- Second, the court will schedule a hearing on a motion for sanctions previously raised by Plaintiffs regarding defense counsel.
- Finally, a trial will be held to determine damages on the claim Plaintiffs have already won, and the merits of the remaining claims.

"We look forward to pushing forward all of our claims and making sure that the government is accountable in a meaningful way for violating the Plaintiffs rights," concluded Mejia.

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