



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
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BY FACSIMILE (801.395.1045) AND FIRST-CLASS MAIL

The Honorable Ernest W. Jones
District Court, Weber County
2525 Grant Avenue
Ogden, Utah 84401

Re: *Weber County v. Ogden Trece, et al.*, No. 100906446

Dear Judge Jones:

The American Civil Liberties Union of Utah Foundation, Inc. (“ACLU of Utah”) has serious concerns about the constitutionality of the “permanent injunction” requested by Weber County in the above case. It is unclear from the publicly available docket whether tomorrow’s hearing will address only whether the ex parte temporary restraining order entered on August 20, 2010, should remain in place, or whether a preliminary (or even permanent) injunction should issue. Given the significant First Amendment and due process rights at issue, however, we strongly urge the Court to permit full briefing—including from the ACLU of Utah as amicus curiae—before deciding whether to enter a preliminary injunction in this matter.

The ACLU of Utah is a non-partisan, non-profit organization working to protect the civil rights and civil liberties of the people of the State of Utah. In its “Amended Complaint for Permanent Injunction to Abate a Public Nuisance” Weber County asks, among other things, for the Court to enjoin alleged “members, agents, servants, and all persons acting under or in concert with” the Ogden Trece from associating with “any known member of Ogden Trece” anywhere within the City of Ogden. Complaint at p. 6. “Associating” is defined to include “[d]riving, standing, sitting, walking, gathering or appearing, anywhere in public view or anyplace accessible to the public.” *Id.* Weber County admits that not all members of the Ogden Trece are known to it, but alleges that there are “several hundred” members. *Id.* at ¶ 5.

In an apparent attempt to address the obvious First Amendment concerns with such a broad restriction on the freedom to associate, Weber County relies on the California Supreme Court’s holding in *People v. Acuna*, 929 P.2d 596, 609 (Cal. 1997), that the “[f]reedom of association, in the sense protected by the First Amendment, does not extend to joining with others for the purpose of depriving third parties of their lawful rights.” (Internal quotation marks omitted.) In *Acuna*, however, the court was considering only a four-block area known as “Rocksprings.” Here, by contrast, Weber County is seeking to define what appears to a significant portion of the City of Ogden to be a “safety zone” in which all alleged members of the Ogden Trece, some known and some admittedly unknown, would be precluded from associating.

That is but one of the myriad concerns the ACLU of Utah has with the “permanent injunction” sought by Weber County. We are also concerned with, among other things, the vagueness and overbreadth of the proposed injunction, the manner in which the alleged “members, agents, servants, and all persons acting under or in concert with” the Ogden Trece have been and will be identified, the apparently limited number of the “several hundred” alleged Ogden Trece members who have been served with the temporary restraining order and notice of tomorrow’s hearing, and the difficulty such a vast class of defendants will have in obtaining counsel on such short notice for representation at tomorrow’s hearing.

For these and other reasons, the ACLU of Utah urges the Court to permit time for full briefing—including from the ACLU of Utah as amicus curiae—before deciding whether to enter a preliminary injunction in this matter. Certainly, abating a public nuisance and curbing illegal behavior is a laudable goal for any public entity, including the County of Weber. But doing so at the expense of the Constitution would set a dangerous precedent. Careful consideration and weighing of the important interests at stake is necessary to protect the rights of all parties involved.

Although I am traveling until tomorrow night, and thus cannot personally be present at tomorrow’s hearing, I would be happy to attend by telephone if the Court thinks it would be helpful or necessary. In the alternative, I can endeavor to find another attorney who can appear tomorrow on the ACLU of Utah’s behalf.

Respectfully submitted,



Darcy M. Goddard
Legal Director*
ACLU of Utah

cc: Dee W. Smith, Weber County Attorney (by facsimile, 801.399.8304)

*Admitted in New York and Colorado; Utah admission pending.