

## ACLU opposes Weber County's effort to have judge kicked off gang injunction case

By MARK SHENEFELT Standard-Examiner

<https://www.standard.net/users/profile/markshenefelt/>



SALT LAKE CITY — A civil liberties group is opposing an effort to disqualify a judge who ruled that Weber County violated the constitutional rights of two Ogden men who were served with an anti-gang injunction.

County Attorney Chris Allred and his predecessor, Dee Smith, filed declarations Oct. 23 requesting that U.S. District Judge Clark Waddoups be removed from further hearing the civil case as it heads toward trial.

They said Waddoups inferred they lied in 2018 court documents when they said the county does not collect information on local gangs.

The judge recently ruled in favor of plaintiffs Leland McCubbin Jr. and Daniel Lucero, sustaining their argument that the county violated their constitutional due process rights when they were charged under the injunction.

The judge wrote that he could not rely on the attorneys' previous sworn statements that the county did not keep a gang member database. He did his own research and relayed in his ruling that Weber County Jail employees kept gang lists.

Allred and Smith said the jail information was not a gang database, but an informal gathering of notes to help jailers keep inmates from rival gangs separate.

But in documents filed Tuesday, the American Civil Liberties Union of Utah urged that Waddoups stay on the case.

“Nowhere in the decision ... does the judge say that he believes Mr. Allred or Mr. Smith lied, only that questions have arisen as to whether that might be the case,” the ACLU wrote. The ACLU represents McCubbin and Lucero in the suit.

■ ACLU attorneys Leah Farrell, left, and John Mejia, right, pose with Leland McCubbin Jr., a plaintiff in a gang injunction lawsuit, on Wednesday, May 24, 2017, in Salt Lake City.

“Outside of their own speculation ... Weber offers no reason that the judge would suddenly be interested in harming their reputation,” the ACLU said. “A reasonable person knows that judges remain impartial even if they are being tough on a party, a proposition affirmed by the Supreme Court.”

The ACLU noted that Waddoups offered Allred a chance to schedule a hearing to explain the apparent contradictions about gang data, but instead Allred and the county filed a motion to oust the judge.

The case is now four years old, and it seems that the county is trying to “delay and discredit” after it lost the major ruling about constitutional violations, the ACLU document said.

Waddoups has referred the disqualification motion to another district judge to decide.

The Weber County Attorney’s Office, working with the Ogden Police Department, filed the public-nuisance injunction against the Trece gang in 2nd District Court in 2010 after the authorities cited escalating gang-related crime in the city.

Smith was county attorney at the time and Allred was a deputy attorney who worked on the gang injunction. Smith left office in 2015 and Allred was elected to replace him. Smith now works as a deputy attorney in Allred’s office.

Ogden police had a gang member database, adding names to it based on criteria including style of dress, hand signs, tattoos and association with known gang members.

Those served with the injunction were subjected to a curfew, banned from associating with other gang members, even family members in gangs, and other restrictions.

The McCubbin-Lucero suit also named Ogden City as a defendant, but those parties reached an out of court settlement in 2018.

The Utah Supreme Court threw out the injunction in 2013. The McCubbin-Lucero suit was filed in 2015.