

The Right to Boycott

Olympia Food Co-op Board Sued for Constitutionally-Protected Activity

The Olympia Food Co-op is a nonprofit corporation that was formed in Olympia, Washington in 1976. The Co-op is committed to making good food accessible to more people while encouraging economic and social justice. It has had a long and active history of engagement in social, human rights, ecological, community welfare, as well as peace and justice issues.

On July 15, 2010, the Co-op's Board passed a resolution by consensus to enact a peaceful boycott of Israeli goods. Annual Board elections were held in November 2010, in which a number of members ran on an anti-boycott ticket and lost. The five candidates endorsed by Olympia BDS (boycott, divestment, and sanctions) won overwhelmingly. Some of the losing members subsequently sued the Board members of the Co-op, seeking to punish these individual Board members for their constitutionally protected activity.

The boycott of Israeli-made products is part of a long-history of social justice work carried out by the Co-op in accordance with their mission. In addition to “provid(ing) wholesome foods and other goods and services” the Co-op “strive(s) to make human effects on the earth and its inhabitants positive and renewing and to encourage economic and social justice.”

- *Co-op's July 21, 2010 statement, quoting the Co-op's Mission Statement*

What is the boycott policy about?

The Co-op's Board is, according to its bylaws, expressly vested with the duty to “adopt policies which promote achievement of the mission statement and goals of the Cooperative.” The Co-op adopted a boycott policy in the early 1990's. The Co-op has boycotted products from: China, because of its human rights abuses; Norway, for its

whaling abuses; the State of Colorado, for its anti-gay legislation; and companies like Gardenburger for farmworker abuses.

In March 2009, the Co-op was called on to boycott Israeli goods as part of the international “Boycott, Divestment, Sanctions” (BDS) movement called for by Palestinian civil society.

In the spirit of the Co-op's active commitment to community and global welfare, the Board enacted the boycott to encourage Israel to end its occupation of Palestine and comply with international law.



Supporters of Co-op's Right to Boycott outside Olympia courthouse

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Boycotts have long played a significant role in history. The United States itself was born out of a 1774 colonial boycott of British, Irish and West Indian goods. The Montgomery bus boycott was an important milestone in the civil rights movement. Boycotts, divestment, and sanctions also played a critical role in ending apartheid in South Africa.

The Supreme Court has held that peaceful political boycotts are protected under the First Amendment. In the landmark civil rights case *NAACP v. Claiborne Hardware Co.*, a local branch of the NAACP boycotted white merchants in Claiborne County,

Mississippi to pressure elected officials to adopt racial justice measures. The merchants fought back, suing NAACP for interference with business. Ultimately, the Supreme Court found that “the boycott clearly involved constitutionally protected activity” through which the NAACP “sought to bring about political, social, and economic change.” Justice Stevens concluded that the civil rights boycott constituted a political form of expression protected under the speech, assembly, association and petition clauses of the First Amendment.

Despite this recognition, many opponents attempt to fight such expression with retaliatory litigation (otherwise known as a “SLAPP”). In response, many states have enacted anti-SLAPP statutes so that such constitutionally protected activity remains protected.

What is a SLAPP?

Strategic Lawsuits against Public Participation, or SLAPPs, are civil complaints or counterclaims in which the alleged injury was the result of petitioning or free speech activities protected by the First Amendment of the U.S. Constitution and by Washington State law. While many cases that qualify as SLAPPs are without legal merit, they can effectively achieve their principal purpose: to chill public debate on specific issues. Defending against a SLAPP requires substantial money, time, and legal resources, and can divert attention away from the public issue and intimidate and silence others. Washington has an anti-SLAPP statute to deter such lawsuits.

The Special Motion to Strike requires parties who bring a lawsuit to demonstrate that it is not a Strategic Litigation Against Public Participation (SLAPP) targeting constitutionally-protected free speech.

What is the Lawsuit About?

On May 31, 2011, plaintiffs’ lawyer sent the Co-op board members a letter indicating that plaintiffs would bring a “complicated, burdensome, and expensive” legal action if the Co-op did not end the boycott.

On September 2, 2011, rather than utilizing the Co-op’s member initiated ballot procedure, which allows any member to put an issue to a full membership vote by collecting signatures from 300 members, five Co-op members sued the board members in court. The lawsuit seeks to prevent enforcement of the boycott and to collect monetary damages against sixteen past and current Board Members, claiming that the Board did not have the authority to enact the boycott.

On November 2, 2011, lawyers from the Center for Constitutional Rights and Davis Wright Tremaine LLP filed a motion to strike the lawsuit under Washington’s anti-SLAPP statute, which provides for early termination of claims targeting free speech and petition activity protected by the First Amendment. In February 2012, in a victory for the First Amendment, the court determined the lawsuit was indeed a SLAPP and the co-op board members could not be sued for their boycott. Furthermore, later that year, the court ruled that plaintiffs are liable for the costs and fees of the suit and \$160,000 in statutory damages. The plaintiffs appealed, and on April 7, 2014, the Washington State Court of Appeals affirmed the trial court’s decision to dismiss the case under Washington’s Anti-SLAPP statute and upheld the constitutionality of the anti-SLAPP statute. Plaintiffs then petitioned the Washington State Supreme Court for review, which it granted. Oral argument will be January 20, 2015.

For more information about the case, see <http://ccrjustice.org/ourcases/current-cases/davis-v-cox>.

For more information about the Co-op, visit www.olympiafood.coop

For more information about the BDS movement, visit: www.bdsmovement.net