

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, and 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 them 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 "Boycott, Divestment, and Sanctions" (BDS) call 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 the 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,” or Strategic Lawsuit Against Public Participation). In response, many states have enacted Anti-SLAPP statutes so that such constitutionally protected activity remains protected.

What is a SLAPP?

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 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 issue and intimidate and silence others.

What is the Lawsuit About?

On May 31, 2011, plaintiffs’ lawyers sent 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 sought to prevent enforcement of the boycott and to collect monetary damages against past and current board members, claiming that the board did not have the authority to enact the boycott.

In November 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, dismissing the case and ordering that plaintiffs pay fees and costs. The plaintiffs appealed, and in April 2014, the Washington State Court of Appeals affirmed the trial court's decision. Plaintiffs then petitioned the Washington State Supreme Court for review. In May 2015, without addressing the merits of the case, the Washington Supreme Court struck down the constitutionality of Washington’s Anti-SLAPP law and remanded the case to the superior court.

Defendants moved to dismiss the case in September 2015, and the parties entered into discovery. Judge Murphy denied the motion to dismiss at a hearing in February 2016. In December 2017, the board members moved for summary judgment, arguing that the board had the authority to approve the boycott, they cannot be held liable for protected expression, and none of them are Co-op board members any longer. Additionally, they noted that plaintiffs essentially abandoned prosecution of the case. The former board members also included a resolution passed by the then-Co-op board stating that the lawsuit is not in the interest of the Co-op and should be dismissed, as well as an e-mail between plaintiffs demonstrating that they celebrated the fact that their lawsuit had chilled other food co-ops from supporting BDS.

On March 9, 2018, Judge Murphy granted the board members’ motion for summary judgment from the bench, finding that plaintiffs had failed to demonstrate any injury to the Co-op. Plaintiffs have since appealed to the Washington State Court of Appeals.

For more information about the case, see: <https://ccrjustice.org/home/what-we-do/our-cases/davis-et-al-v-cox-et-al>

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

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