

Court of Appeals listens to arguments in Olympia Food Co-op's Israeli boycott case

By JEREMY PAWLOSKI

Staff writer

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Janet Clark, a muslim from Everett, explains to a fellow shopper why she and her family came to Olympia to support the "shop-in" at the eastside Olympia Food Co-op on Wednesday, Sept. 1, 2010. The Olympia BDS organized supporters to "spend money to support the Olympia Food Co-op, " said Amirah Ziada of Olympia. Co-op member Noah Sochet of Olympia, who originally proposed the Israel boycott to the co-op board of directors, said "There are a lot of people excited and proud of the store for the stand they've taken. This (shop-in) is one way of showing support." TONY OVERMAN/STAFF PHOTOGRAPHER

CLARIFICATION: Of the 16 defendants sued in the lawsuit seeking to overturn the Olympia Food Co-Op's lawsuit, 10 were co-op board members at the time the boycott was adopted, and six defendants subsequently became co-op board members.

PREVIOUS STORY: An attorney representing five Olympia Food Co-op members argued Monday to the state Court of Appeals that an Olympia judge erred in 2012 when he dismissed their lawsuit seeking to overturn the co-op's boycott of Israeli goods.

In 2012, now-retired Thurston County Superior Court Judge Thomas McPhee ruled that it was illegal for the co-op members to sue the 16 defendants who voted unanimously to enact the co-op's boycott of Israeli goods in July 2010.

McPhee had ruled that the lawsuit seeking to end the boycott of Israeli goods was an illegal Strategic Lawsuit Against Public Participation, or SLAPP.

SLAPPs are defined as nuisance lawsuits designed to stifle free speech and create onerous legal costs for those who choose to exercise their free-speech rights. SLAPPs are illegal under a state law that the food co-op defendants' attorney, Bruce Johnson, and another staff attorney at the law firm of Davis Wright Tremaine helped draft.

As a result of the co-op's boycott, Israeli products were removed from the co-op's two stores, one in northeast Olympia and the other on Olympia's west side. Boycotted products included gluten-free crackers, ice cream cones and a moisturizing cream.

On Monday, Robert Sulkin, the attorney representing the five co-op members who sued in 2012, made his case before an Appeals Court panel in Seattle that McPhee's ruling was in error.

At stake is the \$160,000 in damages that McPhee ordered Sulkin's clients to pay as part of a mandatory "anti-SLAPP penalty," along with more than \$60,000 in attorney's fees.

As part of McPhee's ruling, he ordered the five plaintiffs represented by Sulkin to pay a total of \$10,000 to each of the 16 defendants named in the lawsuit.

On Monday, Sulkin and Johnson each made brief statements to the three-judge Court of Appeals panel in Seattle, and were peppered with questions by the judges.

Sulkin reiterated his earlier arguments that the co-op board violated its own policies by not reaching consensus among co-op members in arriving at the decision to boycott.

"This case is about five members of the Olympia Food Co-op trying to force the co-op to follow its own procedures," Sulkin told the Court of Appeals on Monday. "The board passed a resolution in violation of these procedures."

Sulkin also said that the co-op's boycott is not "nationally recognized," as required under the food co-op's own policies.

Johnson, on the other hand, noted that the co-op's "own bylaws confer on the board the plenary authority to manage and direct the affairs of the corporation."

"They're the people that have to make a decision if somebody stymies the process," Johnson said.

Reached by telephone Tuesday, Olympia Food Co-op member Andrew Meyer said the initial boycott proposal came from a working member of the co-op. Meyer added that the Olympia Food Co-op staff were involved in a subsequent continuing discussion with the co-op board

before the board voted unanimously in favor of the boycott. He also said that the co-op's staff did not reach consensus either in favor of adopting the boycott, or rejecting it.

"The board has power through its bylaws and mission statement to make that decision," Meyer added. "There was consensus among the board."

Meyer, who also is a member of the Olympia Boycott, Divestment and Sanctions movement, said that the purpose of the boycott is "to force Israel to recognize the inalienable self-determination and civil rights of Palestinians."

The three-judge state Court of Appeals panel must arrive at a majority decision in ruling to either affirm or overturn McPhee's earlier judgment. The Court of Appeals is expected to issue a written decision on the matter in the near future.

To listen to audio of Monday's argument to the Court of Appeals in Seattle click [here](#). After clicking on the link, click on the fourth listed case: Davis v. Cox.

Jeremy Pawloski: 360-754-5445; jpawloski@theolympian.com

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