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Co-op boycott lawsuit tossed

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Israeli products ban: Complaint ruled illegal; penalties are possible

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A judge has dismissed a lawsuit that sought to overturn the Olympia Food Co-op's boycott of Israeli goods, ruling that the lawsuit was an illegal strategic lawsuit against public participation, or SLAPP.

Thurston County Superior Court Judge Thomas McPhee ruled Monday that plaintiffs who sought to overturn the boycott failed to show that the co-op's board acted outside its authority.

Nine of the co-op's 10 board members voted to remove Israeli products from store shelves in July 2010.

McPhee also ruled that the issue of whether consensus was necessary among co-op staff in enacting the boycott was not material to the case, as had been argued by the plaintiffs. McPhee ruled the co-op's board never exempted itself as the final authority with respect to the right to enact a boycott.

McPhee also addressed the plaintiffs' contention that the boycott was not "nationally recognized," as is required under the co-op's policy saying the Boycott, Divestment and Sanctions movement, or BDS, "is a national movement."

Members of Olympia's BDS movement have supported boycotts, divestment and sanctions against Israel "until it ends occupation of Palestine, respects the right of return of Palestinian refugees, and gives equal rights to Palestinians living inside of Israel," according to its website.

McPhee also ruled the defendants' speech in enacting the boycott was protected free speech involving an issue of public concern. He also ruled the SLAPP statute itself is not unconstitutional, as had been argued by the plaintiffs' attorney, Bob Sulkin.

The plaintiffs are five co-op members who opposed the boycott. The defendants are 16 current or former co-op board members.

Sulkin said he will appeal McPhee's opinion.

McPhee said he will consider a written order awarding damages. Under Washington's SLAPP statute, each defendant in the lawsuit is potentially entitled to an "anti-SLAPP penalty" of \$10,000, in addition to attorney's fees.

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

In McPhee's concluding remarks, he recognized his opinion will likely be appealed. He suggested one way to avoid more costly litigation by both sides might be to put the question of the boycott to a vote by the co-op's full membership. McPhee added in his remarks, however, that he has no authority to require a vote..

Bruce Johnson, an attorney for the defendants, said following the judge's ruling that SLAPP lawsuits are illegal under an enhanced anti-SLAPP statute he and another attorney at Davis Wright Tremaine in Seattle helped draft.

Johnson said that last year the co-op board offered to facilitate a member-initiated vote on the boycott for the co-op's full membership, but that Sulkin refused.

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