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McNaul Ebel Nawrot & Helgren Announces Victory in *Davis v. Cox*: Washington State Supreme Court Unanimously Declares Anti-SLAPP Act Unconstitutional

In an opinion published today in the case of *Davis v. Cox*, the Washington State Supreme Court ruled unanimously that Washington’s “Anti-SLAPP Act” violates the right to a jury trial under the Washington State Constitution. (SLAPP stands for “Strategic Lawsuit Against Public Participation.”) This is the first time any state supreme court in the United States has declared such a law unconstitutional. Bob Sulkin and Avi Lipman of McNaul Ebel Nawrot & Helgren represented the prevailing plaintiffs, five Olympia residents who challenged the adoption of a boycott of Israel by the Board of Directors of the Olympia Food Co-op.

Twenty-eight states currently have “anti-SLAPP” laws, which are intended to dispose of lawsuits that target activity protected by the First Amendment. McNaul Ebel argued, however, that Washington’s Anti-SLAPP Act – RCW 4.24.525 – improperly restricts and punishes plaintiffs for bringing valid claims. The Court agreed. Justice Debra Stephens, who wrote for the Court, concluded the Anti-SLAPP Act “violates the right of trial by jury under ... the Washington Constitution because it requires a trial judge to invade the jury’s province of resolving disputed facts and dismiss – and punish – nonfrivolous claims without a trial.”

In their lawsuit, the plaintiffs had alleged that the Olympia Food Co-op’s Board of Directors failed to follow the Co-op’s governing rules, procedures, and principles when it enacted the boycott of Israel. They argued the boycott was invalid and cannot be lawfully maintained.

The defendants filed a motion to dismiss the lawsuit under the Anti-SLAPP Act. Judge Thomas McPhee of the Superior Court of Thurston County granted the motion, dismissed the case, and awarded \$232,325 in fees and sanctions against the plaintiffs. The Court of Appeals upheld the Superior Court’s decision. The plaintiffs then appealed to the Washington State Supreme Court.

Oral argument in *Davis v. Cox* was held on January 20, 2015. Avi Lipman of McNaul Ebel, argued on behalf of the plaintiffs. A video recording of oral argument is available on-line at: http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2015010007

The full title of the case is *Kent L. Davis, et ux., et al. v. Grace Cox, et al*, Washington State Supreme Court Case # 90233-0.

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