

No. 90233-0

SUPREME COURT OF THE STATE OF WASHINGTON

KENT L. AND LINDA DAVIS ET AL.,

Petitioners,

v.

GRACE COX ET AL.,

Respondents.

***CORRECTED BRIEF OF AMICI CURIAE JEWISH VOICE FOR
PEACE, PALESTINE SOLIDARITY LEGAL SUPPORT,
NATIONAL LAWYERS GUILD, AMERICAN MUSLIMS FOR
PALESTINE, INTERNATIONAL JEWISH ANTI-ZIONIST
NETWORK***

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I. INTRODUCTION

Amici curiae offer this brief to show that this case is about the use of a meritless lawsuit to impede full and frank discussion about an issue of national and international importance – Israel’s human rights abuses against Palestinians. The Olympia Food Co-op’s decision to boycott Israeli goods in response to a global call for boycott, divestment and sanctions (“BDS”) against Israel for its violations of international law was in accordance with the Co-op’s mission and in the spirit of other historic social justice movements, including the U.S. civil rights movement and the South Africa anti-apartheid movement. The decisions by the courts below applied the law as it was intended to be applied, recognizing that plaintiffs’ lawsuit was, indeed, a Strategic Lawsuit Against Public Participation (SLAPP).

Evidence in the record and in the public record supports the finding that this lawsuit is an archetypal SLAPP, as it appears to be a project of an uncritically and aggressively pro-Israel organization, StandWithUs (“SWU”), supported by the Israeli government, both of whom have identified BDS initiatives like that of the Co-op as threatening to Israel and therefore necessary to root out by any means. (See Sec. IV.B. below.) Whether SWU ultimately was technically behind this lawsuit or not is not an issue that this Court needs to resolve, but the Court should be

aware of the role of such organizations in filing lawsuits and engaging in other activities that are aimed at suppressing speech on this critical issue of public concern.

The trial court and Court of Appeals correctly recognized Petitioners' claims as the meritless suppression of speech protected by the First Amendment of the United States Constitution and article I, Sections 4 and 5 of the Washington Constitution, applying Washington's anti-SLAPP statute to dismiss the case and imposing the law's mandatory remedies. Amici accordingly urge this Court to affirm the decisions, as a constitutional application of legislative prerogative to balance competing interests in favor of protecting First Amendment free speech.

II. INTEREST OF AMICI CURIAE

Jewish Voice for Peace ("JVP") is a national nonprofit organization inspired by Jewish tradition to promote a U.S. policy that seeks peace in Israel and Palestine through justice and equality for Palestinians and Israelis. As explained in the accompanying motion, JVP focuses its efforts on boycott and divestment campaigns that target Israel's occupation of the West Bank and East Jerusalem and its blockade of the Gaza Strip. **Palestine Solidarity Legal Support ("PSLS")**, a project of the Tides Center, is an independent non-profit organization that protects people in the United States who advocate for Palestinian rights against

efforts to suppress their lawful activism and protected speech. PSLS provides legal advice and representation to attacks on advocates for Palestinian rights. **The National Lawyers Guild** is a non-profit voluntary bar association. Since 1937, the Guild has been at the forefront of efforts to develop and ensure respect for the rule of law and basic rights. The Guild supports efforts to expose Israeli human rights violations, and supports U.S. activists advocating for justice for Palestinians against attacks on their constitutional rights. **The American Muslims for Palestine (AMP)** is a national, nonprofit education and advocacy organization whose mission is to educate the public and media about Palestine and its rich cultural and historical heritage. **The International Jewish Anti-Zionist Network (IJAN)** is an international network of Jews who are committed to struggles for human emancipation, of which the Palestinian struggle is an indispensable part. IJAN has signed onto the Palestinian 2005 call for boycott, divestment and sanctions against Israel by Palestinian grassroots groups, towards an end to the occupation and the colonization of Palestine and the right of return for its refugees.

III. STATEMENT OF THE CASE

The volunteer board members of the Olympia Food Co-op, a Washington non-profit corporation, voted to boycott Israeli goods in 2010 in support of the human rights goals of the global BDS movement. In

September 2011, after fruitless demands for rescission of the boycott and threats of burdensome and expensive litigation if their demands were not met, (CP 303-05), five of the Co-op's 22,000 members filed this lawsuit against sixteen past and then-board members to enjoin and rescind the boycott and sought damages from the members personally.

Because the lawsuit asked the court to enjoin and order rescission of the Co-op's boycott, a lawful action to implement protected political advocacy, Respondents filed a motion to dismiss pursuant to RCW 4.24.525, Washington State's anti-SLAPP (Strategic Lawsuit Against Public Participation) statute, in November 2011. In 2012, the trial court granted the motion, dismissed the case, and awarded \$10,000 to each Respondent plus attorneys' fees, as the anti-SLAPP statute requires. The court found that: 1) the legal and human rights issues raised by Israel's long-term occupation of Palestine was an "issue of public concern," 2) Respondents had met their burden to demonstrate the suit fell within the scope of the anti-SLAPP statute, and 3) Petitioners had failed to meet their subsequent burden of showing a probability of prevailing on the claim. (CP 1195-96.) The Court of Appeals affirmed the decision upon remand by this Court following the Petitioners' direct appeal, and Petitioners now ask this Court to review the case.

IV. ARGUMENT

A. This Lawsuit Appears to Be an Effort by a Pro-Israel Group and the Israeli Government to Silence Israel's Critics.

Although Petitioners cast their lawsuit as one about corporate governance, Pets.' Brief, at 26, Pets.' Supp. Brief, at 1, events leading up to filing of suit and during its litigation contradict this assertion and suggest instead that the lawsuit was conceived, filed, and litigated as an attack against BDS. It appears that it was a project of StandWithUs a/k/a Israel Emergency Alliance ("SWU"), a pro-Israel organization that has partnered with the Israeli government. (CP 261-62.)

Soon after the Co-op's board voted to adopt the boycott, a counter-boycott against the Co-op was begun, with the support of Petitioners Kent and Linda Davis. (CP 179, ¶5; 188, 190, 192.) The logo posted on the boycott against the Co-op was the logo for BuyIsraelGoods, which on its own Facebook page described itself as a joint project of the America-Israel Chamber of Commerce and StandWithUs. (CP179, ¶6; 192.)

Meeting notes from SWU's website record that the Northwest SWU regional director (Robert S. Jacobs) and one of Petitioners' attorneys in this lawsuit met with the Israeli consul General for the Pacific Northwest (Akiva Tor) and "Olympia activists" during the week of March 5 – 11, 2011, months before suit was filed, to discuss "[p]resentation of

legal case, discussion of strategies to counter activism at Evergreen University and Olympia community speaker opportunities.” (CP 199.)¹

The Northwest SWU executive committee meeting agenda for September 27, 2011, following the September 2, 2011 filing of the complaint in this case, shows a “project status” report for “[t]he lawsuit against the Olympia Food Co-op.”(CP 200.)² SWU later published a statement boasting of its filing of this lawsuit and its collaboration with the Israeli government:

In 2011, StandWithUs filed a lawsuit against the Olympia Food Co-op in Olympia, Washington, to nullify its boycott of Israeli-made products. The lawsuit was the byproduct of the partnership between StandWithUs and the Israeli Ministry of Foreign Affairs, spearheaded by Israeli Deputy Foreign Minister Danny Ayalon, and brought against the Olympia Food Co-op and its board for violating their own policies.³

¹ Ali Abunimah, *Uncovered: Israel's role in Planned US Lawsuit to Fight BDS*, Electronic Intifada (September 6, 2011), <http://electronicintifada.net/content/uncovered-israels-role-planned-us-lawsuit-fight-bds/10350>.

² Rob Jacobs, *Scheduling Executive Meetings and Weekly Report*, StandWithUs Northwest (July 27, 2011), *available at* <http://cld.bangpound.org/470R3e3u2n0E0c2P0u1S/o>.

³ Phan Nguyen, *Appeals Court Upholds Dismissal of anti-BDS Lawsuit Against Olympia Food Co-op*, Mondoweiss (April 8, 2014), <http://mondoweiss.net/2014/04/appeals-dismissal-against>. This statement is no longer on the StandWithUS website. *See also* Abunimah, *supra* n. 1.

In addition, when asked by the Israeli media whether the Israeli Ministry of Foreign Affairs was involved in the lawsuit, Ayalon acknowledged that Israel was using SWU.⁴

SWU also produced and posted to its website an anti-BDS video featuring four of the five petitioners, entitled “Why BDS Scars Don’t Heal: A StandWithUs Production.” (CP 180, ¶10⁵; 195.) Indeed, Petitioners acknowledged receiving assistance from SWU. (CP 298, 341, 345, 355, 358, 372, 376.)

B. SWU Is Dedicated to the Intimidation and Destruction of BDS Activism in the United States.

SWU is an international non-profit organization founded in 2001, with 16 offices in the United States, Canada, Israel, and the United Kingdom. It occupies the right wing of pro-Israel advocacy, supporting Israel uncritically.⁶ It aggressively challenges criticism of the policies or actions of the Israeli government in the United States, even when that

⁴ See *An Olympian Struggle*, Moment Magazine (July-August 2012) <http://www.momentmag.com/an-olympian-struggle/>; Nathan Guttman, *StandWithUs Draws Sharp Line on Israel*, Forward (November 27, 2011) <http://forward.com/articles/146821/standwithusdrawslineonisrael/?p=all>; Phan Nguyen, *Who’s Who Behind the Olympia Food Co-op Lawsuit*, Mondoweiss (Feb. 22, 2012), <http://mondoweiss.net/2012/02/whos-who-behind-the-olympia-food-co-op-lawsuit-2>.

⁵ The video has been removed from the YouTube web page cited in Paragraph 10 of Ms. Kaszynski’s declaration. However, it may now be viewed here: [Youtube] *Why BDS Scars Don’t Heal: A StandWithUs Production* (uploaded June 24, 2011), https://www.youtube.com/watch?v=S6vnPTTr_iCw&spfreload=10.

⁶ Guttman, *Supra* n. 4.

criticism comes from J Street, a pro-Israel Zionist PAC.⁷ It is a major promoter of official Israeli positions around the world, has partnered with Israel's Ministry of Foreign Affairs,⁸ and has been promoted by Israeli Prime Minister Netanyahu.⁹ It has significant financial resources, ending 2012 with nearly \$9 million in revenue.¹⁰

SWU's activities in the U.S. have been dominated by attacks against and efforts to intimidate BDS campaigns, and it is a major recipient of funding from the Israel Action Network, a coalition of Zionist organizations dedicated to the destruction of the U.S. BDS movement.¹¹ SWU aggressively promotes Prime Minister Netanyahu's casting of BDS

⁷ *Id.*; See also Cnaan Liphshiz, *StandWithUs Takes anti-J Street Stand*, Haaretz (Oct. 23, 2009), <http://www.haaretz.com/standwithus-takes-anti-j-street-stand-1.5542>.

⁸ See, for example, StandWithUs, *Israel Fellowship*, www.standwithus.co.il/fellowship/ (SWU fellowship program endorsed by the Israel Ministry of Foreign Affairs) (accessed Dec. 3, 2014); StandWithUs, *EL AL Ambassadors*, <http://www.standwithus.co.il/elal/> (El Al Ambassadors Program co-sponsored by SWU, the Ministry of Foreign Affairs and The Jewish Agency for Israel) (accessed Dec. 3, 2014); and StandWithUs, *New Video with Danny Ayalon Explains the West Bank*, <https://www.standwithus.com/news/article.asp?id=1935> (accessed Dec. 3, 2014); JPost.com Staff, *Ayalon Airs 'Hasbara' Youtube Video on Peace Process*, Jerusalem Post (Sept. 14, 2011), <http://www.jpost.com/Diplomacy-and-Politics/Ayalon-air-hasbara-YouTube-videon-peace-process> (a series of propaganda videos featuring Danny Ayalon, Deputy Directory of Ministry of Foreign Affairs, produced in partnership with SWU).

⁹ [Youtube Video] *Prime Minister Netanyahu Salutes StandWithUs* (uploaded Dec. 30, 2010), <https://www.youtube.com/watch?v=FdCZwYHaxBY&list=PL7DBBC1B4BEEC75AF&spfreload=10>.

¹⁰ Guidestar, *Israel Emergency Alliance*, <http://www.guidestar.org/organizations/01-0566033/israel-emergency-alliance.aspx#financials> (accessed Dec. 2, 2014).

¹¹ Israel Action Network, *Hot Topics*, <http://israelactionnetwork.org/hot/>, (accessed Oct. 19, 2014).

as anti-Semitism, despite the fact that many members of Jewish communities around the world are supporters of BDS. This is a potentially coercive and intimidating accusation that pervades SWU's depictions of BDS and other Palestine activism with potentially damaging legal and reputational consequences to the targets of such accusations. Examples include:

- According to Roz Rothstein, founder and CEO of SWU, "BDS is the newest form of anti-Semitism."¹²
- SWU published a comic book "to reach younger audiences" titled "The Venomous BDS." In it, BDS is an acronym for "Barbaric Destroyer Snake," with graphics that depict BDS as a blood-drenched reptile. The text associates BDS with the most infamous anti-Semitic atrocities through the ages, including the Spanish Inquisition, the Russian Pogroms, the Protocols of Zion, the Nazi regime, and the Holocaust itself.¹³
- SWU produced a film, "Say No to BDS," in which the concluding voice-over intones: "[T]he true nature of BDS: a venomous, deceitful, anti-peace, anti-coexistence movement that will settle for nothing short of the annihilation of Israel."¹⁴

¹² David's Star Magazine, *Boycotting Israeli Goods*, (September/October 2014), <http://davidsstar.net/#/septoct-2014/boycotting-israeli-goods>.

¹³ StandWithUs and Arlene Schumer, *Capt. Israel BDS-No. 2* http://www.captisrael.com/issue_2/.

¹⁴ [Video] *Say No to BDS-Boycott, Divestment, and Sanctions*, (Uploaded April 15, 2012), <http://www.standwithus.com/video/?wc=50> ; Also available at <https://www.youtube.com/watch?v=ifZLk6Ei9-U&list=PLE9A97E1B1025E965>.

- Immediately after the Olympia Food Co-op voted to boycott Israeli goods, SWU issued an action alert urging people to call for the rescission of “this destructive and anti-Semitic decision.”¹⁵
By using the rhetoric of anti-Semitism to smear BDS proponents,

SWU exploits the serious and destructive history of anti-Semitism throughout the world to undermine a non-violent movement using First Amendment speech to achieve Palestinian rights and self-determination where political, diplomatic and even violent resistance have all failed over a period of 67 years.

SWU has engaged in anti-BDS campaigns in many other instances, including against BDS proponents in other food co-ops across the country. It has touted its expertise in combating BDS campaigns based on its experience in the instant case, such as when it organized strategy sessions between its Northwest regional director and campaign coordinators in New York when they attempted to shut down debate on BDS at the Park Slope Coop in Brooklyn, New York: “We arranged a conference call between Co-op members and Rob Jacobs, our Northwest Regional Director who had countered similar campaigns at Port Townsend and

¹⁵ StandWithUs, *Action of the Week: The Olympia Food Co-op in Olympia, Washington, voted on Friday July 16th to boycott Israeli products*, <http://www.standwithus.com/news/article.asp?id=1539> (accessed Dec. 3, 2014).

Olympia, Washington, to plan an effective strategy.”¹⁶ In a similar campaign in Port Townsend, Washington, SWU proudly touts “working closely” with the Israeli Consulate in San Francisco in attacking the attempt of the Port Townsend Co-op to adopt a BDS resolution.¹⁷

Amici have themselves been the target of SWU’s tactics. When members of *amici* JVP and IJAN speak openly against Israel’s human rights violations and do so explicitly as members of the Jewish community, it undermines one of SWU’s key tenets, i.e., that criticism of Israel is anti-Semitic. SWU has threatened JVP’s supporters and verbally assaulted its protesters.¹⁸ On one occasion, about a dozen SWU members forcibly disrupted a JVP community meeting in the Bay Area in 2010, and one pepper-sprayed two JVP members.¹⁹ A SWU campaign in 2009 against JVP for sponsoring a film about activist Rachel Corrie (who was killed by an Israeli bulldozer in Gaza in 2003) at the San Francisco Film

¹⁶ StandWithUs, *StandWithUs Welcomes Brooklyn’s Park Slope Co-op’s Defeat of Anti-Israel Boycott Measure*, StandWithUs (March 28, 2011) <https://www.standwithus.com/news/article.asp?id=2236>

¹⁷ Rob Jacobs, *Co-op Board Rejects ‘Boycott Israel’ Resolution*, StandWithUs, <https://www.standwithus.com/news/article.asp?id=1597> (accessed Dec. 3, 2014).

¹⁸ Muzzlewatch, *StandWithUs/SF Voices for Israel Shout Pigs for Palestine, Threaten Activists in San Francisco* (June 7, 2010), <http://muzzlewatch.com/2010/06/07/>.

¹⁹ Sydney Levy, *Right-Wing Advocacy Group Member Pepper Sprays Jewish Voice for Peace Members*, Jewish Voice for Peace (Nov. 15, 2010), <https://jewishvoiceforpeace.org/blog/right-wing-israel-advocacy-group-pepper-sprays-jewish-voice-peace-jvp-members>.

Festival, on the rationale that the Corrie family and JVP supported BDS, ultimately resulted in the banning of all persons and organizations who support BDS from appearing or using venues funded by the SF Jewish Federation.²⁰ This latter action harkens back to the intolerance and anti-democratic character of the McCarthy era.

In addition to these attacks on JVP, PSLS has documented numerous instances in which SWU has sued, threatened, attacked, or attempted to intimidate students on university campuses who support Palestinian rights, or the universities themselves. For example:

- At DePaul University in 2014, SWU worked to undermine the Students for Justice in Palestine (SJP) club's divestment referendum campaign. SWU created a video alleging that the campaign for university divestment, which included peaceful sit-ins, rallies, and distributing literature, was making all Jewish students feel unsafe, and falsely painting BDS and the students campaigning for divestment as anti-Semitic.²¹
- Also in early 2014, it was revealed that SWU had launched a new website (access to which required references and employment/school verification) containing a blacklist: detailed information on over 100 speakers on Palestinian rights.²²

²⁰ StandWithUs, *A Disturbing Addition to the Jewish Film Festival in San Francisco*, StandWithUs Action of the Week, <https://www.standwithus.com/news/article.asp?id=1123> (accessed Dec. 3, 2014).

²¹ Paul Miller, *Jewish DePaul Student: I No Longer Felt Safe on this Campus*, Breitbart (May 23, 2014), <http://www.breitbart.com/national-security/2014/05/23/jewish-depaul-student-i-no-longer-felt-safe-on-this-campus/>.

²² Alex Kane, *Israel Lobby Group Compiles Secret Dossiers on pro-Palestinian Speakers*, Mondoweiss (February 25, 2014), <http://mondoweiss.net/2014/02/compiles-palestinian-speakers>.

- In 2012, SWU members assaulted and later harassed an undergraduate member of Students for Justice in Palestine at the University of New Mexico. The student was peacefully protesting at a university event, where she was assaulted. Later, SWU members repeatedly went to her workplace to intimidate her and deter her from filing a police report.²³
- In 2011, SWU advocated for legal action and the filing of a complaint with the Department of Education against Evergreen College in Olympia, Washington in an attempt to interfere with a student BDS campaign.²⁴

These examples reflect only a fraction of SWU's activities to intimidate and thwart activism for Palestinian rights around the country.

C. This Lawsuit Is Part of a Growing Effort to Silence Advocates for Palestinian Rights.

Notably, this is not an isolated example of attempts to silence Israel's critics. At the behest of Israeli officials--who view the BDS movement as an existential threat to Israel--myriad private organizations in the United States have for years worked to undermine the movement, supporting Israeli policies that reinforce the subjugation of Palestinians both in Israel and the Occupied Palestinian Territory. These organizations

²³ Sami Kishawi, *Israel's 'Gandhi' Clearly Absent from Israel Alliance Event at U of New Mexico*, Sixteen Minutes to Palestine (February 24, 2012) <http://smpalestine.com/tag/university-of-new-mexico/>.

²⁴ Abunimah, *supra* n. 1.

include lobbying groups, policy think tanks, watchdog groups, and public-relations campaigns working to silence dissent on this issue.

For example, in October 2010, major Zionist organizations launched the Israel Action Network, a \$6 million national campaign managed by the Jewish Federations of North America and the Jewish Council for Public Affairs, and dedicated to destroying the BDS movement in the U.S.²⁵ Divestment Watch, the Israel on Campus Coalition, the AMCHA Initiative, Campus Watch, the David Project, Stopbds.com, and Boycott Watch are among many organizations focusing on or dedicated solely to this work on college campuses. And organizations such as the Louis Brandeis Center, the Anti-Defamation League (ADL), the American Israel Public Affairs Committee (AIPAC), the Zionist Organization of America (ZOA), Hillel, Scholars for Peace in the Middle East (SPME), and the Committee for Accuracy in the Middle East Reporting in America (CAMERA) spend considerable time and

²⁵ Until recently, the IAN described itself as an organization that “aims to protect Israel against any campaign that seeks to delegitimize and/or isolate the Jewish state in the international arena, and which uses boycotts, divestment, and sanctions (BDS) as its principal tool.” See Israel Action Network, cached Facebook page, <http://webcache.googleusercontent.com/search?q=cache:3cNi7R2o1L4J;https://www.facebook.com/IsraelActionNetwork/info+&cd=2&hl=en&ct=clnk&gl=us>. See also Jewish Federation of Central Massachusetts, *The Launch of the Israel Action Network*, Jewish Central Voice (February 2011) <http://jewishcentralvoice.com/2011/02/the-launch-of-the-israel-action-network/>.

resources combating the work of peace and justice organizations which they regard as “delegitimizing” Israel.²⁶

Amici PSLs has documented incidents that reflect the variety of tactics these groups use to hinder activism for Palestinian rights, ranging from lawsuits such as this one,²⁷ to legal complaints,²⁸ to smear campaigns

²⁶ A strategy report released by the right-wing think tank, the Reut Institute in 2010 discussed ways to meet the “delegitimization challenge,” which many of these US-based pro-Israel organizations use. The report labels virtually all criticism as an effort to “delegitimize” Israel; it posits that criticism of the state of Israel is intended to undermine its very existence as a Jewish state. For a summary, see Reut Institute, *The Delegitimization Challenge: Creating a Political Firewall* (February 14, 2010) <http://reut-institute.org/Publication.aspx?PublicationId=3769>. The full document is Reut Institute, *Building a Political Firewall Against Israel's Delegitimization*, paper submitted to the 10th Herzliya Conference, March 2010, <http://reut-institute.org/data/uploads/PDFVer/20100310%20Delegitimacy%20Eng.pdf>.

²⁷ See, e.g., Yonah Jeremy Bob, *Shurat Hadin Criticized for Threatening to Sue ASA over Israel Boycott*, Jerusalem Post (January 12, 2014), <http://www.jpost.com/National-News/Shurat-Hadin-criticized-for-threatening-to-sue-ASA-over-Israel-boycott-337927> (describing the lawsuit threatened by an Israeli legal organization against the American Studies Association for its endorsement of an academic boycott resolution). The organization, Shurat HaDin, or the Israel Law Center, boasts ties with the Israeli security establishment, with which it cooperates to gather intelligence for lawsuits around the world. See Tom Griffin & David Miller, *BDS campaigner targeted by law firm with links to Israeli intelligence*, Spinwatch (Oct. 5, 2013) available at <http://www.spinwatch.org/index.php/issues/more/item/5550-bds-campaigner-targeted-by-law-firm-with-links-to-israeli-intelligence>.

²⁸ Several Israel advocacy groups have filed a barrage of complaints with the Department of Education (DOE) claiming a violation of Title VI of the Civil Rights Act by universities that tolerate a “hostile anti-Semitic environment” because they allow students to support Palestinian rights. The DOE’s Office for Civil Rights (OCR) has dismissed all such complaints so far. See OCR Decision on Title VI Complaint – Rutgers University, available at <https://www.documentcloud.org/documents/1300803-ocr-decision-on-title-vi-complaint-7-31-14.html> (accessed Dec. 3, 2014); OCR Decision on Title VI Complaint – University of California at Berkeley, available at http://newscenter.berkeley.edu/wp-content/uploads/2013/08/DOE.OCR_.pdf (accessed Dec. 3, 2014); OCR Decision on Title VI Complaint – University of California at Santa Cruz, available at http://news.ucsc.edu/2013/08/images/OCR_letter-of-findings.pdf (accessed Dec. 3, 2014); OCR Decision on Title VI Complaint – University of California at Irvine, available at <http://ccrjustice.org/files/OCR->

falsely portraying advocates for Palestinian rights as anti-Semites and terrorist sympathizers and encouraging law enforcement scrutiny and criminal prosecutions by the U.S. government,²⁹ to pressure campaigns on universities and other institutions to cancel events,³⁰ punish activists,

UCIrvine_Letter_of_Findings_to_Recipient.pdf (accessed Dec. 3, 2014). Despite OCR's confirmation that the activism complained of is overwhelmingly protected First Amendment speech, does not target anyone based on their race or national origin, is political in nature, and takes place in an environment (e.g., college campuses) where a degree of discord and debate is expected and critical learning is supposed to take place, Israel advocacy groups continue to threaten universities with Title VI complaints, often leading universities to punish or otherwise curtail activism for Palestinian rights.

²⁹ See, e.g., Morton A. Klein, *ZOA Urges Justice Department To Investigate UC Irvine's Muslim Student Group For Possible Illegal Fundraising For Terrorist Group Hamas*, Zionist Organization of America (Oct. 6, 2009) <http://zoa.org/2009/10/102517-zoa-urges-justice-department-to-investigate-uc-irvines-muslim-student-group-for-possible-illegal-fundraising-for-terrorist-group-hamas/#ixzz3L3Bm6Kjv> (on the Zionist Organization of America's (ZOA) report to the US Department of Justice about a fundraising event by students at UC-Irvine). The ZOA pressured UC Irvine for years to investigate and punish the speech activities of the Muslim Student Union, and condemned the University when its investigations found no evidence of wrongdoing. See Morton A. Klein, *ZOA Condemns UC Irvine For Continued Whitewashing of Muslim Student Union's Wrongdoing, Despite Evidence of Fundraising For Terrorist Group Hamas*, Zionist Organization of America, (June 10, 2010), <http://zoa.org/2010/06/102672-zoa-condemns-uc-irvine-for-continued-whitewashing-of-muslim-student-unions-wrongdoing-despite-evidence-of-fundraising-for-terrorist-group-hamas/>. The ZOA applauded the University when it punished the student group, and Orange County prosecutors who undertook an unprecedented prosecution and conviction of 10 students for their protest of former Israeli Ambassador to the US, Michael Oren. Omar Kurdi, *U.C. Irvine's Message: Criticize Israel, Get Suspended*, Los Angeles Times (June 22, 2010), available at <http://articles.latimes.com/2010/jun/22/opinion/la-oe-0622-kurdi-uci-muslim-20100622>.

³⁰ See, e.g., Center for Constitutional Rights, *Brooklyn College Students for Justice in Palestine Vindicated After 2 Month CUNY Investigation into BDS Event*, April 15, 2013, <http://ccrjustice.org/newsroom/press-releases/brooklyn-college-students-justice-palestine-vindicated-after-2-month-cuny-investigation-bds-event> (regarding attacks on CUNY-Brooklyn College in early 2013 by pro-Israel advocates and New York politicians calling for the University to cancel a student event on BDS, and even threatening the withdrawal of funds from the University). While the BDS event occurred, under intense security and media scrutiny, allegations of discrimination and a Title VI complaint were lodged by attorneys affiliated with the Brandeis Center when four pro-Israel students were removed

condemn advocacy critical of Israel,³¹ and generally hinder activism by scrutinizing and differentially treating those who engage in it.³²

These tactics are complementary, serving to paint a narrative that portrays Jewish people who uncritically support Israel as victims of anti-Semitic activities, and those who support Palestinian rights, which in fact include many people who identify as Jewish, as motivated not by a genuine concern for human rights, but by a hatred of Jewish people and an illogical desire to destroy the state of Israel. They ignore entirely and even

from the event. The same day, CUNY launched an investigation, which found that there was no evidence of religious discrimination and insufficient evidence to find viewpoint discrimination. There are countless other examples. *See generally*, Radhika Sainath, *Does SJP Have the Right to Free Speech?*, Mondoweiss, October 31, 2014, available at <http://mondoweiss.net/2014/10/does-right-speech>.

³¹ *See, e.g.*, Ali Abunimah, *Leaked Email Reveals ADL Advice to Universities Urging Crackdown*, Electronic Intifada (Sept. 16, 2014) <http://electronicintifada.net/blogs/ali-abunimah/leaked-email-reveals-adl-advice-universities-urging-anti-palestine-crackdown> (revealing a letter from the ADL to university administrators urging the monitoring, discipline, and condemnation of student speech activities supporting Palestinian rights, including BDS campaigns).

³² *See, e.g.*, Lois K. Solomon, *Mock Eviction Notices from Palestinian Group Rile FAU Students*, Sun Sentinel, April 4, 2012, http://articles.sun-sentinel.com/2012-04-04/news/fl-fau-palestinian-hillel-20120404_1_fau-s-students-fau-students-student-affairs (relating attack by the Anti-Defamation League (ADL) in spring of 2012 against Students for Justice in Palestine (SJP) at Florida Atlantic University (FAU) for posting mock eviction notices approved by university officials on dorm-room doors to raise awareness about the Israeli state's practice of evicting Palestinians from their homes and demolishing them to create space for Israeli settlers). The ADL and other pro-Israel groups complained that the notices were anti-Semitic and falsely accused SJP of targeting Jewish students' doors with the notices. Administrators investigated and concluded the notices were not intended to intimidate or target Jewish students but were randomly posted. After the incident, SJP students received emails with racially charged language and death threats. *See also* Lois K. Solomon, *FAU Takes 'Corrective Steps' with Staff that Approved Eviction Notices*, Sun Sentinel, April 12, 2012, http://articles.sun-sentinel.com/2012-04-12/news/fl-fau-investigation-conclusion-20120412_1_fliers-eviction-notices-anti-israel.

deny the long and irrefutable international record of systematic international law and human rights violations committed by Israel that provide the motivation for these advocates. Moreover, these campaigns, by falsely conflating criticism of Israeli policies with anti-Semitism, minimize the role of the many Jewish individuals and organizations such as *amici* JVP and IJAN that believe all parties will benefit when Israel recognizes and respects the rights of Palestinians.

The effect of legal and other efforts to silence those who speak out in favor of Palestinian rights cannot be understated. Innumerable individuals and groups, like Respondents, have been subjected to prolonged and relentless legal campaigns, public smear campaigns, and even criminal prosecutions that distract from the human rights issues to which they peacefully and lawfully bring attention, deplete emotional and other resources, and have a palpable chilling effect upon those wishing to engage in advocacy for Palestinian rights. Anti-SLAPP statutes are one of the few mechanisms that exist to mitigate the burdensome effects of litigation aimed squarely at thwarting lawful First Amendment activities.

D. The Anti-SLAPP Law Was Appropriately Used in This Case

As noted, whether or not SWU is funding or otherwise directly supporting the lawsuit in this case is a question that this Court need not

answer. *Amici* raise SWU's activities and the evidence suggesting SWU's involvement in this case to illustrate that the type of lawsuit that was filed here is representative of a broader effort by Israel advocacy groups to thwart the efforts of both Jews and non-Jews who dare to criticize Israeli policies. The strategy of using "lawfare" to try to silence critics of Israeli human rights abuses is clear.

The Olympia Food Co-op case is demonstrative of this strategy. This case involves a small community whose food cooperative decided to take a stand on an issue of pressing national and international significance – the human and legal rights of the Palestinian people. By engaging in a boycott, the Co-op adopted a widely used non-violent tactic, protected by the First Amendment of the United States Constitution and Washington Const., art. I, §§ 4, 5. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982). This action is completely appropriate, no less than those of many institutions throughout the United States that boycotted South African goods during the apartheid period or have been encouraged to divest from Sudanese investments.³³ This is all part of the political process, and protected advocacy under the First Amendment and article I, sections 4 & 5.

³³ See National Council of Jewish Women, *NCJW Supports Targeted Divestment from Sudan*, http://www.ncjw.org/content_828.cfm (accessed Dec. 4, 2014).

However, here, opponents of the BDS campaign went one step further. Instead of respecting the democratic process of the Co-op and letting the people of Olympia decide whether to support it, the Petitioners filed a lawsuit against, not the Co-op, but its directors in their personal capacity. The directors of a local food co-op should not have to be threatened to reverse a policy decision made in accordance with the law and corporate bylaws, or else suffer a “burdensome” and “expensive” lawsuit directed against them on a personal level. (CP 303-05.) Given the trial court’s holding, it was entirely appropriate to strike the complaint and deny discovery.

V. CONCLUSION

The Co-op’s boycott in this case is undeniably protected by the First Amendment rights to speech and related action to implement protected speech, and the Petitioners’ claims are clearly unmeritorious. Amici respectfully ask the Court to affirm the Court of Appeals decision, in its entirety.

DATED this 19 day of December 2014.

Respectfully submitted,

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