

# SUPREME COURT OF THE STATE OF WASHINGTON

## Davis v. Cox, 180 Wn. 2d 934

329 P.3d 1196 (2015) · No. 90233-0 · Decided May 28, 2015

### SUMMARY

The Washington Supreme Court held that Washington's 2010 anti-SLAPP statute, RCW 4.24.525, violated the state constitutional right to trial by jury. The court concluded that the statute required trial courts to resolve factual disputes and adjudicate the likelihood of success on claims without a trial, rather than applying a summary-judgment standard. The court invalidated the statute, reversed the Court of Appeals, and remanded for further proceedings.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of Washington                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Stephens, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| JURISDICTION          | Washington                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| DECIDED               | May 28, 2015                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| DOCKET                | 90233-0                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Plaintiffs brought a derivative action against current and former directors of Olympia Food Cooperative alleging that the directors acted ultra vires and breached fiduciary duties by adopting a boycott without staff consensus. The superior court granted defendants' special anti-SLAPP motion to strike, rejected plaintiffs' constitutional challenges, and awarded statutory damages, attorney fees, and costs. The Court of Appeals affirmed, and the Washington Supreme Court granted review. |
| STANDARD OF REVIEW    | De novo review of statutory interpretation; constitutional validity of the statute reviewed as a legal question.                                                                                                                                                                                                                                                                                                                                                                                        |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| PARTIES               | Kent L. Davis, Linda Davis, Jeffrey Trinin, Susan Trinin, Susan Mayer, derivatively on behalf of Olympia Food Cooperative v. Grace Cox, Rochelle Gause, Erin Genia, T.J. Johnson, Jayne Kaszynski, Jackie Krzyzek, Jessica Laing, Ron Lavigne, Harry Levine, Eric                                                                                                                                                                                                                                       |

## TOPICS

constitutional law first amendment statutory interpretation civil procedure free speech

## PRACTICE AREAS

constitutional law civil procedure statutory interpretation nonprofit corporate law

## QUESTIONS PRESENTED

1. Whether RCW 4.24.525(4)(b) requires a trial court to weigh evidence and determine whether a plaintiff has shown by clear and convincing evidence a probability of prevailing, rather than applying a summary-judgment standard.
2. Whether RCW 4.24.525(4)(b) violates article I, section 21 of the Washington Constitution by requiring a trial judge to resolve disputed material facts without a jury trial.
3. Whether the unconstitutional portion of RCW 4.24.525 is severable from the remainder of the anti-SLAPP statute.
4. Whether the court should resolve the plaintiffs' additional challenges under separation of powers, access to courts, the First Amendment petition clause, and vagueness principles.

## HOLDINGS

1. RCW 4.24.525(4)(b) requires the trial court to weigh the evidence and make a factual determination whether the responding party has established by clear and convincing evidence a probability of prevailing; it does not establish a summary-judgment procedure.
2. RCW 4.24.525(4)(b) violates article I, section 21 of the Washington Constitution because it requires a trial judge to resolve disputed material facts and dismiss nonfrivolous claims without a jury trial.
3. The unconstitutional provisions of RCW 4.24.525 are not severable, so the anti-SLAPP statute is invalid as a whole.

## KEY QUOTATIONS

*“Because RCW 4.24.525(4)(b) requires the trial judge to adjudicate factual questions in nonfrivolous claims without a trial, we hold RCW 4.24.525 violates the right of trial by jury under article I, section 21 of the Washington Constitution and is invalid.” (at 2)*

*“In sum, we hold RCW 4.24.525(4)(b) requires the trial judge to weigh the evidence and dismiss a claim unless it makes a factual finding that the plaintiff has established by clear and convincing evidence a probability of prevailing at trial.” (at 18)*

*“We hold RCW 4.24.525(4)(b) violates the right of trial by jury under article I, section 21 of 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” (at 27)*

## FACTUAL BACKGROUND

Olympia Food Cooperative's board adopted a boycott of goods produced by Israel-based companies without staff consensus, although the Cooperative's written boycott policy required staff consensus for nationally recognized boycotts. Five Cooperative members filed a derivative action alleging that the board acted ultra vires and breached fiduciary duties, seeking declaratory, injunctive, and monetary relief. The defendants invoked Washington's anti-SLAPP statute, and the superior court resolved disputed evidence in their favor and dismissed the claims.

## PROCEDURAL HISTORY

The superior court granted defendants' special motion to strike under RCW 4.24.525 and ordered plaintiffs to pay \$221,846.75. The Court of Appeals affirmed on all issues. The Washington Supreme Court reversed, held RCW 4.24.525 unconstitutional and nonseverable, and remanded for further proceedings.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The case was remanded to the superior court for further proceedings following invalidation of RCW 4.24.525.

## CASES CITED

- Dillon v. Seattle Deposition Reporters, LLC, 179 Wn. App. 41, 86-90, 316 P.3d 1119 (2014)
- Eubanks v. Brown, 180 Wn.2d 590, 596-97, 327 P.3d 635 (2014)
- State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003)
- Department of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)
- State v. Jackson, 137 Wn.2d 712, 723, 976 P.2d 1229 (1999)
- State v. Abrams, 163 Wn.2d 277, 282, 285-86, 178 P.3d 1021 (2008)
- State v. Hirschfelder, 170 Wn.2d 536, 543, 242 P.3d 876 (2010)
- Leiendecker v. Asian Women United of Minn., 848 N.W.2d 224, 231-33 (Minn. 2014)
- Sofie v. Fibreboard Corp., 112 Wn.2d 636, 644, 656, 771 P.2d 711, 780 P.2d 260 (1989)
- LaMon v. Butler, 112 Wn.2d 193, 200 n.5, 770 P.2d 1027 (1989)
- Bill Johnson's Restaurants, Inc. v. National Labor Relations Board, 461 U.S. 731, 741, 743-45 (1983)
- Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc., 508 U.S. 49, 60-61 (1993)
- BE&K Construction Co. v. National Labor Relations Board, 536 U.S. 516, 523-26, 532, 537 (2002)
- United States v. Salerno, 481 U.S. 739, 745 (1987)
- United States v. Stevens, 559 U.S. 460, 472-73 (2010)
- Opinion of the Justices, 134 N.H. 445, 641 A.2d 1012, 1015 (1994)

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