

## Against The Anchorman: California Court Of Appeal Deems Hiring Young, Female Weather Anchors A Protected Exercise Of Free Speech

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In a recent opinion, a California Court of Appeal held that a television broadcasting company's decisions to hire young, female weather anchors constituted free speech in connection with a matter of public interest and was thus protected by California's anti-Strategic Lawsuit Against Public Participation ("anti-SLAPP") statute. Like anti-SLAPP statutes in other states, California's anti-SLAPP statute was enacted to stop lawsuits brought to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.

In [Hunter v. CBS Broadcasting, Inc., Cal. App. 2d No. B244832 \(2013\)](#) ("*Hunter*"), plaintiff Kyle Hunter filed a complaint alleging age and gender discrimination after two CBS Broadcasting, Inc. ("CBS") television stations refused to hire him and hired young, female weather new anchors instead. Hunter claimed that the stations adopted policies of filling vacant prime time on air weather news anchor positions with attractive females under the age of 40, and of refusing to hire men over the age of 40 to permanently fill those positions.

In response to Hunter's complaint, CBS filed a special motion to strike under California's anti-SLAPP statute, contending that Hunter's claims were based on CBS's selection of on air weather news anchors, and that this conduct was protected by the anti-SLAPP statute because it was in furtherance of the company's free speech rights.

The trial court dismissed CBS's motion, but the Court of Appeal reversed. In its decision, the Court reasoned that the selection of news anchors, as opposed to some underlying discriminatory motive or hiring policy, was the basis of the complaint, and that this act constituted protected conduct in furtherance of the CBS's free speech rights in connection with a matter of public interest. The Court explained that CBS's conduct was "in connection" with a matter of public interest, because weather reporting was a matter of public interest, and CBS's decisions as to who would present the weather to the public were necessarily "in connection" with that matter. Thus, according to the Court, CBS's selection of news anchors constituted conduct in furtherance of free speech protected by the anti-SLAPP statute.

Finding that CBS had successfully demonstrated that Hunter's complaint arose from protected free speech activity, the Court then remanded so that the trial court could determine whether Hunter could establish a reasonable probability of prevailing on the merits, which is the second step required for determining whether an anti-SLAPP motion should be granted. If the trial court rules in Hunter's favor, he will be permitted to pursue his discrimination claims against CBS even though they were found to be predicated on protected conduct in furtherance of free speech. If the trial court rules against Hunter, however, his complaint will be dismissed.

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The Court in *Hunter* not only calls attention to the broad scope of California's anti-SLAPP statute, but also provides employers, in particular those in the news, media, and entertainment industries, with a first line of attack when faced with complaints of employment discrimination—at least for now. Unless and until the decision is reviewed by the California Supreme Court, *Hunter* establishes that if an employer can demonstrate that a complaint is predicated on protected free speech conduct, the plaintiff will be forced to bear the burden of demonstrating a reasonable likelihood of success on the merits and must do so at the outset of the litigation. As a result, where free speech conduct is at issue, an anti-SLAPP motion can be a powerful tool for employers to get unmeritorious discrimination claims dismissed before incurring the costs of lengthy litigation.