

CLIENT NEWS BRIEF

California Supreme Court Clarifies Use of Anti-SLAPP Motions

A new California Supreme Court ruling clarifies how litigants may use a tool intended to fight lawsuits filed to chill free speech. In *Park v. Board of Trustees of the California State University* (May 4, 2017, No. S229728) __Cal.5th__ (*Park*), the Court clarified and simplified the analysis for determining whether a plaintiff's cause of action is one "arising from" constitutionally protected activity for purposes of a motion to strike a civil complaint on the basis that it constitutes a "strategic lawsuit against public participation" (SLAPP).

Anti-SLAPP motions are intended to dispose of malicious or frivolous lawsuits filed to chill protected activities like speech and petition rights in the early stages of litigation. In addition to ending a case quickly, a successful anti-SLAPP motion carries the potential for recovery of attorney fees.

An anti-SLAPP analysis is a two-step process. First, the defendant must establish that the challenged claim arose from the defendant's protected activity. If so, the burden shifts to the plaintiff to show that his or her claim has at least "minimal merit." Because the Court found that the plaintiff's lawsuit did not arise from the university's protected activity, it did not reach the second step in the analysis.

Plaintiff Sungho Park was a tenure-track assistant professor at California State University. After Park's application for tenure was denied, he filed a civil lawsuit alleging discrimination. The university moved to strike Park's complaint, arguing that the decision to deny tenure, and the numerous communications that led up to and followed the decision, are constitutionally protected communications. Because the tenure decision arose from these communications, the university argued, Park would have to show there was merit to his claim to overcome the motion.

The trial court denied the university's motion and allowed the lawsuit to continue, but a divided Court of Appeal reversed. The Supreme Court reversed the Court of Appeal opinion, noting that although certain aspects of the tenure process are constitutionally protected, Park's claim did not arise from those activities but from the act of denying tenure. The communications may have provided evidence of discrimination, the Court determined, but they were not an essential element of Park's claim.

The Supreme Court, which found the Court of Appeal's decision to be "symptomatic of ongoing uncertainty" over how to determine when a cause of action arises from protected activity under the anti-SLAPP statute, directed courts deciding anti-SLAPP motions to consider the elements of a plaintiff's claim, and what actions by the defendant form the basis for liability. If a protected activity is nothing more than evidence in support of a claim, an anti-SLAPP motion will fail. If it is an actual element of a claim, the first step of the anti-SLAPP analysis may be satisfied.

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An anti-SLAPP motion remains a powerful tool for fighting lawsuits in which a plaintiff bases his or her claim on protected speech or petitioning activity (typically, litigation). But the party filing a motion to strike must be assured that the protected activity is the basis for a plaintiff's claims.

For more information on the *Park* decision or the potential uses of an anti-SLAPP motion, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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