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The Need for Uniform Exemptions in State Anti-SLAPP Statutes

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Strategic lawsuits against public participation (SLAPPs) are baseless lawsuits that weaponize the judicial system to chill critics' exercise of free speech on matters of significant public concern by burdening them with pointless litigation and escalating legal costs. Many states have rightly recognized the danger of SLAPP suits to citizens' First Amendment rights of free speech and expression and have responded by passing laws, called anti-SLAPP statutes, that allow for the swift dismissal of these frivolous suits. These statutes protect citizens' right to free speech in any type of forum on any issue of public importance by providing mechanisms for expedited dismissals of SLAPP suits for defendants and imposing mandatory penalties of attorney fees or litigation costs for plaintiffs who cannot meet the burden of proving their claims have a valid legal foundation.

But while some state anti-SLAPP statutes are intended to protect First Amendment interests, they can paradoxically have the effect of preventing people who need to turn to the courts to vindicate legal interests from doing so. Some of the anti-SLAPP statutes' broad definitions of protected activity may inadvertently discourage plaintiffs with meritorious claims from utilizing the courts, as the scope of protected activities appears to leave little room for plaintiffs to raise a valid complaint and lends the statute to misuse by opportunistic defendants. For example, in Hunter v. CBS Broadcasting, Inc., the defendants eluded a legitimate employment discrimination claim by exploiting the California anti-SLAPP statute's broad requirement that protected activity must be of interest to the public. In response to Hunter's contention that CBS had not hired him for a weatherman position because he was older and a male, CBS was able to misuse the anti-SLAPP statute to argue that a television station's selection of weather news anchors qualified as an issue of public interest because weather reporting itself was an issue of public interest. The California appellate court accepted this interpretation of the statute to hold that CBS' activity was protected by the First Amendment and remanded the case for the trial court to consider whether Hunter had demonstrated a reasonable probability of prevailing on the merits of his claims.

The Hunter case is not the only instance of defendants misusing anti-SLAPP motions. Indeed, one California Supreme Court decision observed that the anti-SLAPP motion would soon be used as a cure-all to circumvent legitimate cases in which the motion was never intended to apply. Thus, this note compares various state anti-SLAPP statutes to analyze how successfully they protect defendants from frivolous lawsuits and the extent to which they unwittingly prevent plaintiffs with legitimate civil claims from pursuing redress. Drawing on this analysis, the note proposes a uniform set of exemptions that seeks to protect financially insecure litigants who are most vulnerable to SLAPP suits and who do not have the resources to defend themselves from baseless claims.

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