

# Can a worker be fired for participating in controversial protest?

By Dan Eaton

February 15, 2021 | 6:00 AM

The First Amendment shields from government-imposed punishment those who engage in lawful efforts “to petition the government for a redress of grievances,” including peaceful protest.

May an at-will California employee, however, be terminated for participating in a political protest that later degenerates into a riot where the employee’s participation, though nonviolent, draws unwanted social media attention to her employer?

Leah Snyder’s 20 years of employment with Illinois-based Alright Solutions, a human resources consulting firm, involuntarily ended after she posted pictures of herself at the assault on the U.S. Capitol Jan. 6 after attending a nearby rally with then-President Donald Trump.

Snyder, an Orange County resident, filed a federal lawsuit late last month claiming that Alright fired her, with no investigation or written explanation, because she participated in that protest, violating laws prohibiting employers from coercing their employees’ political activities. She seeks \$10 million in compensatory damages plus unspecified punitive damages. She also is seeking reinstatement.

In her complaint, Snyder admits she was in the crowd that proceeded to the Capitol after Trump’s speech, but denies participating in the ensuing rampage, denies entering the U.S. Capitol, and denies engaging in, or even being aware of, any unlawful activity. When she returned to California, “uplifted by virtue of her participation in a peaceful protest,” she posted two “selfies” of herself at the Capitol on Facebook to a thread with negative comments about the episode. She captioned one such picture: “It was a peaceful and fun day!” Snyder claims she intended to join the online debate over the nature of the protest. Someone later tagged her as an Alright employee.

Alright has not responded to the lawsuit yet. A spokesman told legal news service Law 360 that the company “unequivocally condemn[s] the actions taken by the rioters at the insurrection in Washington, D.C. Lawlessness and violence have no place in our democracy and are firmly against our corporate policies.”

Snyder claims Alright violated these California laws in firing her.

## The Tom Bane Act

This law, Civil Code section 52.1, prohibits any person from interfering or attempting to interfere “by threat, intimidation, or coercion, ... with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state. ...”



A California employee was terminated for participating in a political protest that later degenerated into a riot where the employee’s participation, though nonviolent, drew unwanted social media attention to her employer. She files a lawsuit. (San Diego Union-Tribune Community Press File Photo)

The Act prohibits an employer from saying “If you participate in this political protest, you will be fired.” It is less clear the law prohibits an employer from firing an employee who insists she participated peacefully in a protest that turned violent. Two California federal courts have ruled that it indeed may be a form of coercion prohibited by the Act for an employer to terminate or otherwise discipline an employee for having engaged in free speech or other protected activity.

### **Statutory bans on employer controls on employee political activity**

Labor Code section 1101 prohibits an employer from adopting or enforcing any rule or policy “controlling or directing, or tending to control or direct” its employees’ political activities or affiliations. Labor Code section 1102 makes it illegal for an employer to use the threat of discharge to coerce an employee into adopting or following, or refrain from adopting or following, a “particular course or line of political action or political activity.”

These statutes prohibit an employer from discharging, or threatening to discharge, an employee for participating in political activity inconsistent with a company’s values. But these laws do not immunize employees who engage in political protest from being discharged for any other legitimate reason.

Snyder additionally claims it was contractual bad faith for Alright to fire her on the baseless pretext she had engaged in rioting or trespass.

Snyder does not allege Alright warned her she would be fired if she went to D.C. Assuming after-the-fact termination may be a form of actionable coercion, whether Snyder — or the participant in a political protest of any kind who later loses their at-will job — prevails depends largely on the answer to two questions: Was the employee’s participation unconnected to illegal activity? The employee’s conduct matters. If the employee’s participation was lawful, was the employee terminated merely *because* she participated in the protest? The employer’s motive matters. A “yes” to both questions ups her odds of winning; a “no” to either question probably means she loses.

**Dan Eaton** is a partner with the San Diego law firm of Seltzer Caplan McMahon Vitek where his practice focuses on defending and advising employers. He also is an instructor at the San Diego State University Fowler College of Business where he teaches classes in business ethics and employment law. He may be reached at [eaton@scmv.com](mailto:eaton@scmv.com). His Twitter handle is [@DanEatonlaw](https://twitter.com/DanEatonlaw).