



## **Special legislative session in Florida pits Gov. DeSantis, GOP lawmakers against Biden**

*Caught in the middle: Businesses feeling 'whipsawed,' one expert says*

John Kennedy

November 12, 2021

Dismissed mostly as political theater by opponents, Florida lawmakers return Monday to the Capitol for a special session demanded by Gov. Ron DeSantis to break with the Biden administration's push for larger businesses to assure that their employees are vaccinated.

DeSantis has condemned Biden's actions as unconstitutional and a federal overreach. But Florida businesses are privately uneasy about the move by their staunch Republican allies – fearing it forces companies to choose between following federal or state law.

The supremacy clause of the U.S. Constitution prohibits states from interfering with valid federal laws.

“Businesses are feeling whipsawed,” said Walter Olson, a senior fellow at The Cato Institute, a libertarian policy organization that advocates for limited government.

“They’re being told to do two opposite things: do they follow the red light or green light? And they fear being sued if they choose the wrong one,” he added.

Others sense the Republican governor is using the session primarily to gain national attention by defying the White House.

“He’s just trying to get into a fight with Joe Biden, publicly,” said House Democratic Co-Leader Evan Jenne of Dania Beach. “It all goes back to presidential aspiration. He’s using the full weight of Florida government as a campaigning tool.”

DeSantis doesn't see it that way.

“We have got to stand up for people and protect their jobs and protect their livelihoods,” DeSantis said at a Zephyrhills rally on Monday where he promoted his call for the session.

Still, Olson and several other legal experts have said a state’s course for challenging a federal rule or law is through the courts.

### Lawsuits underway

Florida and more than two-dozen mostly Republican-led states are already suing to block the new Occupational Safety and Health Administration rule, which has been put on hold temporarily by a federal appeals court.

The rule requires that companies with 100 or more employees ensure by Jan. 4 that workers are fully vaccinated or test negative for COVID-19 at least once a week.

Despite the federal injunction, DeSantis is intent on forging ahead with the session to enact competing Florida laws. What Republican leaders are calling the “keep Florida free” agenda of bills even includes early steps that could result in a longshot attempt at withdrawing from OSHA and creating a Florida-only workplace safety agency.

The legislation expected to be approved in party-line votes also would bolster DeSantis’ legal position in long-running battles with counties and school boards over COVID-19, and includes hefty fines for businesses that violate state vaccine opt-out procedures.

Still, the governor has been forced to eliminate even tougher punishments he wanted to hand out to companies that continue with mandatory vaccine policies. The Walt Disney Company is among several prominent Florida firms with a vaccine requirement for employees.

The governor’s retreat, which so far he has refused to acknowledge, has helped assure him of no public criticism from business associations, which almost never push-back against this governor but seemed earlier to be teetering in that direction.

### Texas law failed

In Texas, where Gov. Greg Abbott vies with DeSantis for a similar conservative base of support nationally, more than two dozen health care and business groups last month fought the governor’s attempt to strengthen his executive order banning vaccine mandates with a new state law.

The legislation failed in a Texas special session that ended just days before DeSantis announced his own plans for a session in Florida.

Some Florida business leaders are guaranteeing that the Legislature isn't opening the door to more lawsuits against businesses, a concern many had when the session was unveiled last month.

“We are encouraged the Legislature is not adding private causes of actions, which would only serve to hurt jobs and make Florida less competitive,” Mark Wilson, president and CEO of the Florida Chamber of Commerce, said in a memo to members on Wednesday.

Indeed, some question whether the barriers to the federal vaccine rule expected to be set up this week really amount to much of anything. Still, many contend they will at least bring a layer of confusion and new regulations to Florida companies – actions that seem contrary to the traditional direction of a Legislature dominated by small government Republicans.

“The Republican philosophy has always been, ‘less regulation is good,’” Jenne said. “But here they’re going ahead with changes that are going to create problems in workplaces, and they certainly won’t do anything to slow COVID-19.”

#### 'Stage' for DeSantis

Jenne said the session is primarily a stage for DeSantis, who already has sued the Biden administration three times – twice over vaccine mandates and once over immigration policy.

DeSantis on Monday formally announced his bid for re-election next year and is seen as a potential White House contender in 2024.

Most of his attacks on Biden -- legally, legislatively or rhetorically -- have been followed immediately with an email fund-raising pitch to supporters. The governor is sitting on \$62 million in his political spending account, Friends of Ron DeSantis.

While the OSHA rule could result in a worker being fired for not following the vaccine mandate, it does allow medical and religious exemptions to the vaccine requirement that parallel opt-outs Florida lawmakers plan to enact this week.

But state lawmakers also want to add exemptions the federal rule doesn't directly address. Pregnancy or the expectation of becoming pregnant would be a qualifying Florida medical opt-out, as would achieving COVID-19 “immunity,” supported by a lab test, that is based on having had the virus.

Those opt-outs echo disputed anti-vaccination claims that the shots can interfere with fertility and that having had COVID-19 largely frees someone from the risk of carrying the virus again.

“We are here because President Biden has decided to use the heavy hand of government in an unprecedented demonstration of presidential power, unconstitutional presidential power to try to dictate to Floridians . . . that they’ve got to have a vaccine or they’ll lose their jobs,” said House Speaker Chris Sprowls, R-Palm Harbor, who with Senate President Wilton Simpson, R-Trilby, joined DeSantis at his Zephyrhills event.

Bills expected to be approved also affirm what DeSantis says is an existing state law banning governments or school districts from requiring vaccines as a condition of employment.

Similarly, the legislation would clarify the state’s Parents Bill of Rights, used by DeSantis to fight mask requirements in several county school districts.

Lawmakers plan to underscore that parents have the sole authority to ask children to wear masks and ban districts from requiring vaccines for kids, which none have yet advanced.

Another bill would repeal a longstanding law – never used – that allows state health officers to order vaccinations.

DeSantis says the target of the proposal is solely COVID-19 vaccinations, with lawmakers saying it does not affect the array of childhood immunizations now required for school kids.

The legislation empowering the state-ordered vaccines was approved unanimously by the 2002 Republican-led Legislature, as a response to the 9/11 attacks and the mailing of anthrax spores to the National Enquirer offices in Boca Raton, which killed a company employee.

While concerns about terrorism fueled the law, Florida Republicans now are concerned about government-ordered vaccines. But the Legislature moving to defy federal law is concerning to many.

“I’m not sure how you gloss over the fact that the Legislature is now giving people the right to ignore federal law,” said David Davis, a history professor at Tallahassee Community College. “As a citizen, you don’t get a right to pick and choose what law you want to follow.”