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Feud between DeSantis, Disney could have profound implications on corporate speech

Douglas Soule

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The friction between Gov. Ron DeSantis and Disney could spark the nation's next landmark free speech case.

Suing him in federal court, the theme park giant alleges DeSantis took retaliatory action after it spoke out against one of his policies.

In interviews, writings and at the podium, DeSantis has repeatedly connected the legislative crackdown on Disney with what he calls their "woke" criticism of his signature parents rights law. But at other times and in his legal arguments, he said those efforts were focused on fairness, putting Disney on "a level playing field with every other business in Florida."

A recent survey by Florida Atlantic University shows there's no public consensus on the battle, at least not in the state it's waging in. There's a partisan split, with 81% of surveyed Florida Republicans pro-DeSantis and 76% of Democrats siding with Disney. Of independents, 42.2% backed DeSantis' and 41.8% were on Disney's side.

Public opinion, though, is not judicial opinion. And legal experts interviewed by the USA TODAY NETWORK-Florida say how the court rules could also send shockwaves across the United States, with big implications for corporate speech and how governments respond to it.

"Other corporations are remaining silent, because Disney is one of the most powerful corporations in the world," said Lyriisa Lidsky, the University of Florida's Raymond and Miriam Ehrlich Chair in U.S. Constitutional Law. "If you can target Disney, who's next?"

The legislative 'shot heard 'round the world'

DeSantis devoted a whole chapter to the Disney feud in his book "The Courage to Free," which came out several months before he announced his presidential run.

That chapter's titled "The Magic Kingdom of Woke Corporatism." The governor takes a victorious tone in the text, calling one of his actions against Disney "the Florida equivalent of the shot heard 'round the world."

"Leaders must be willing to stand up and fight back when big corporations make the mistake, as Disney did, of using their economic might to advance a political agenda," DeSantis wrote.

Legal experts told the USA TODAY NETWORK-Florida that the chapter is part of the reason why the case against DeSantis and the other defendants named in the suit is a strong one.

"What is unheard of, just unprecedented, is the amount of evidence," said Gary Edinger, a Florida First Amendment lawyer. "It's not just a smoking gun. It just comes out of the mouths of Gov. DeSantis and members of the Legislature."

In the lawsuit filed in the U.S. District Court for the Northern District of Florida this past spring, Disney accuses DeSantis of retaliation and violating the company's free speech rights after it spoke out last year against the Parental Rights in Education Act, dubbed "Don't Say Gay" by critics, which restricts instruction on sexual orientation or gender identity in schools.

The lawsuit extensively cited DeSantis' own statements, including in the book, as evidence of its claim.

"Having exhausted efforts to seek a resolution, the Company is left with no choice but to file this lawsuit to protect its cast members, guests, and local development partners from a relentless campaign to weaponize government power against Disney in retaliation for expressing a political viewpoint unpopular with certain State officials," the lawsuit reads.

After Disney criticized the policy, DeSantis, with the help of legislative Republicans, stripped Disney's control of its special taxing district and gave it to himself. He changed the name, too, from the Reedy Creek Improvement District to the Central Florida Tourism Oversight District.

But, before that happened, the board approved development agreements that kept the company in command of its 25,000-acres in Orange and Osceola counties.

DeSantis' handpicked board overseeing the district filed a state lawsuit in response. And lawmakers this year passed and DeSantis signed a bill to nullify those agreements. Also passed: legislation allowing the state Department of Transportation to inspect Walt Disney World's monorail system, singling out the company for an exception to state law that allows Florida's largest theme parks to conduct their own safety inspections.

"Had they approached it differently, so as to blur and disguise their motivation, rather than come right out and say it, they might have been in a better position," said Walter Olson, a senior fellow at the libertarian Cato Institute's Robert A. Levy Center for Constitutional Studies.

Disney's lawsuit also listed acting Secretary of the Department of Economic Opportunity Meredith Ivey and the Central Florida Tourism Oversight District board and administrator as defendants. A company spokesperson didn't respond to a media request for this story.

'High stakes': What this case may mean for the country

Disney is not the first corporation to draw the ire of Republicans for speaking out about social issues.

In Georgia, for example, companies like Delta Air Lines and Coca-Cola slammed a sweeping 2021 elections law, saying it was based on a lie about widespread voting fraud in the 2020 presidential election and accusing it of being used to restrict Black voting rights. That led some conservative lawmakers, and former President Donald Trump, to call for boycotts of the brands.

Conservatives have also called on federal lawmakers to punish corporations with “radical left policies” such as paying travel costs for employee abortions or supporting the Black Lives Matter movement.

While believing Disney's argument is "formidable," Olson from the Cato Institute said that doesn't necessarily mean Disney will prevail, and the case making its way up the ladder to the Supreme Court shouldn't be ruled out.

"Interesting, unresolved [First Amendment] issues, high stakes and litigants who want to fight rather than settle often gets you to high-profile verdicts," he said.

And Olson said those "high stakes" affect more than just big companies.

"If there's a strong judicial protection of the First Amendment against retaliation then that protection goes all the way down to Main Street where someone is worried about what might happen to them if they criticize how the mayor is doing his job," Olson said.

Rebecca Tushnet, a First Amendment professor at Harvard Law School, cautioned that the case is in its early stages.

"What's hard about the early stages is there's ways it can end with a bang and ways it can end with a whimper," Tushnet said.

Still, Tushnet said that if DeSantis wins, "legislatures that share his views are going to accelerate this, unquestionably, in any way they can." If he loses, it could avert future similar retaliation across the country, she said.

Edinger mentioned the possibility that DeSantis gets dismissed from the case, which is something his attorneys are currently trying for. Regardless, he predicts Disney will prevail on the First Amendment grounds.

"The written opinion is not going to be making new law, it's just going to tread in the footsteps of other cases," he said. "But, when you step back and you look at the political implications, what happens in the real world at the end of that case, if Disney loses it will definitely embolden aggressive politicians to retaliate directly."

DeSantis' defense

Disney is not only alleging First Amendment injury.

The company also claims the defendants stepped on the Constitution by violating its contract with it and taking its property without adequate compensation. Disney accuses them of doing this without "legitimate state interest," thus violating the 14 Amendment's Due Process clause.

DeSantis' attorneys call all this "meritless."

DeSantis, Disney debate dates: DeSantis requests Disney trial to be held after the 2024 election

Pence criticizes DeSantis on Disney: 'In the footsteps of the radical left': Pence attacks DeSantis for Disney feud

How it happened: Graphics timeline illustrates the length, bitterness of Disney-DeSantis dispute

In a recent filing urging the court to dismiss the case, they say the actions were not about retaliation but rather about making "overdue" reform on special taxing district that gave the company "unprecedented power to govern itself."

"Special districts in Florida typically operate for limited governmental purposes — water-management services, for example," the defendants wrote. "RCID's powers, however, gave Disney carte blanche to govern itself."

They called the lawsuit a "last-ditch power grab."

In response to a media request, Jeremy Redfern, the governor's press secretary, emailed back a quote from DeSantis: "Allowing a corporation to control its own government is bad policy."

"The Reedy Creek Improvement District (RCID) was an extraordinary benefit given to one corporation," Redfern wrote. "It existed outside many Florida laws with little to no oversight."

In a June legal filing, the governor and presidential candidate's attorneys requested a trial date slated for Aug. 4, 2025, more than two years from now and nearly a year after the November election DeSantis may appear in if he can overcome Trump's commanding lead.

The defendants also contended it's "premature" to set a case schedule and that the discovery process should be held off until the judge makes a decision on whether the case should be thrown out.

Disney, meanwhile, wants the trial to start on July 15, 2024, which happens to be the first day of the Republican National Convention in Milwaukee, Wisconsin, where Republicans will nominate their presidential ticket.

Edinger, the Florida First Amendment lawyer, mentioned the possibility that DeSantis' successor could take over and settle the case.

"But not while DeSantis is governor; I don't see it getting settled," he said.