

## Is Florida at War with the Mouse or Free Speech: Understanding the Dissolution of Disney's Reedy Creek and the Threat to Corporate First Amendment Rights

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# Is Florida at War with the Mouse or Free Speech: Understanding the Dissolution of Disney’s Reedy Creek and the Threat to Corporate First Amendment Rights

Julia Gibson\*

*On April 22, 2022, Florida Governor Ron DeSantis signed Florida Senate Bill 4C, which stripped Walt Disney World of its status as an “independent special district,” with its Reedy Creek Improvement District. The legislation was passed in response to the corporation’s public criticism of the Parental Rights in Education Act. After months of speculation regarding the solution to the grave tax and debt consequences of the bill, the Governor signed Florida House Bill 9B to reinstate the district under a State elected board and under a new name—the Central Florida Tourism Oversight District.*

*This Comment delves into the longstanding history between the Walt Disney corporation and the State of Florida, outlining the unique powers that Disney acquired through its independent special district status. The once symbiotic relationship between the Sunshine State and the “Most Magical Place on Earth” has now sparked immense public attention for not so enchanting reasons.*

*In the midst of the feud between one of the nation’s largest corporations and one of its largest emerging political leaders, the question turns to a principle deeply ingrained in American*

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*history—the First Amendment. This Comment analyzes the series of Florida legislation following Disney’s public condemnation of the “Don’t Say Gay Bill” and determines whether the consequences could lead policymakers and courts to turn a blind eye to retaliatory acts on large corporations or if the action was necessary to address corporate power disparities.*

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## INTRODUCTION

For over 50 years, the Walt Disney Corporation (“Disney”) has admirably settled itself into Central Florida, transforming once-vacant swamp lands into the world’s most visited vacation resort.<sup>1</sup> Spanning over 27,000 acres, the resort boasts four theme parks, two waterparks, and twenty-two hotels, attracting an estimated 58 million visitors annually to Orlando, Florida.<sup>2</sup> From its inception, Disney has been renowned for its innovation in development, technology, and engineering. However, many park-goers are unaware of Disney’s innovative legislative ideas and relationships that have played a significant role in shaping the resort we

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<sup>1</sup> *Walt Disney World Statistics*, MAGIC GUIDES (2022), <https://magicguides.com/disney-world-statistics/> (last visited Feb. 3, 2023).

<sup>2</sup> *Id.*

know today.<sup>3</sup> With the help of Florida legislators, Disney was granted autonomy over the acquired area through the creation of the Reedy Creek Improvement District (“Reedy Creek”), affording it authority generally reserved for municipal and county governments.<sup>4</sup> The entire development of the Walt Disney Resort thus far has been governed by this independent special district.<sup>5</sup> This Comment delves into the history surrounding special independent districts and the origins of the Reedy Creek Improvement District.

Disney’s unchecked authority under the Reedy Creek Improvement District catapulted the company into public discourse in April 2022 after then-CEO, Bob Chapek, broke silence on the corporation’s stance on the Parental Rights in Education Bill and announced Disney’s decision to halt all political contributions in the state.<sup>6</sup> Facing internal pressures to publicly condemn the bill, Chapek released a statement on March 28, 2022, stating: “Our goal as a company is for this law to be repealed by the legislature or struck down in the courts, and we remain committed to supporting the national and state organizations working to achieve that.”<sup>7</sup> Less than a month later, Florida Governor Ron DeSantis proposed Florida Bill 4-C, which amended the Uniform Special District Accountability Act to dissolve all districts established before the ratification of the Florida Constitution in 1968 that had not been reestablished, re-ratified, or reconstituted by other means.<sup>8</sup>

In January 2023, the Governor hinted at plans to reinstate Reedy Creek under a new set of restrictions that would limit Disney’s prior-held

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<sup>3</sup> See generally Chad D. Emerson, *Merging Public and Private Governance: How Disney’s Reedy Creek Improvement District “Re-Imagined” the Traditional Division of Local Regulatory Powers*, 36 FLA. ST. U. L. REV. 176 (2009).

<sup>4</sup> See *id.* at 178.

<sup>5</sup> See *id.*

<sup>6</sup> See Press Release, The Walt Disney Co., Statement On Disney’s Support For The LGBTQ+ Cmty. (Mar. 11, 2022), <https://thewaltdisneycompany.com/statement-on-disneys-support-for-the-lgbtq-community/>; see also Christopher Palmeri, *Disney’s \$578 Million Tax Break Left Untouched in DeSantis Feud*, BLOOMBERG TAX (Apr. 23, 2022, 1:00 PM), <https://news.bloombergtax.com/tax-insights-and-commentary/disneys-578-million-tax-break-left-untouched-in-desantis-feud?context=article-related>.

<sup>7</sup> Press Release, The Walt Disney Co., Statement From The Walt Disney Co. On Signing Of Fla. Legis. (Mar. 28, 2022), <https://thewaltdisneycompany.com/statement-from-the-walt-disney-company-on-signing-of-florida-legislation/>; see also Julia Boorstin, *Disney Creative Leaders Express Frustration to CEO Chapek over ‘Don’t Say Gay’ Bill Response*, CNBC, <https://www.cnbc.com/2022/03/17/disney-creative-leaders-express-frustration-to-ceo-chapek-over-dont-say-gay-bill-response.html> (Mar. 17, 2022, 5:27 PM).

<sup>8</sup> See generally STAFF OF COMM. ON CMTY. AFFAIRS, BILL ANALYSIS AND FISCAL IMPACT STATEMENT ON SB 4-C (Comm. Print 2022).

authority.<sup>9</sup> In efforts to minimize tax consequences and to essentially gain control of Disney’s governing body, DeSantis passed House Bill 9B (“HB-9B”) on February 27, 2023, which dissolved Reedy Creek and restructured the district to be named the Central Florida Tourism Oversight District (“CFTOD”).<sup>10</sup> Additionally, HB-9B reduces the district’s capabilities and strips the power of the previous board, which consists of members elected by landowners within the district.<sup>11</sup> Under the new regime, the board is now comprised of five (5) members, appointed by the governor, with final approval from the State Senate.<sup>12</sup>

This Comment analyzes the potential effects of Florida Senate Bill 4-C on Disney and the residents of the surrounding counties if it had taken effect in June 2023, as well as the consequences of the district’s reinstatement under the Governor’s new regime. Furthermore, this Comment addresses Disney’s First Amendment claim against the State of Florida and the challenges that Disney may face in substantiating its claims at the appellate level and potentially the Supreme Court. Finally, it discusses whether such actions were necessary to prevent a large corporation from garnering too much power or simply were hasty measures encroaching on corporate First Amendment rights.

## I. BACKGROUND OF SPECIAL DISTRICTS

Dating back to December 1736, legislators have formed special districts to further the growth goals of emerging communities and provide resources for the communities’ residents efficiently and precisely.<sup>13</sup> Benjamin Franklin enacted the first special district by founding the Union Fire Company of Philadelphia, establishing a precedent for the utilization of special districts throughout the course of U.S. history.<sup>14</sup> The districts’ primary purpose was to promote infrastructure development without burdening general-purpose governments.<sup>15</sup> Special districts had the authority to issue bonds to fund the improvements, thus avoiding increased

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<sup>9</sup> See Skyler Swisher & Jeffrey Schweers, *DeSantis Wants State to Take Control of Disney World’s Reedy Creek District*, ORLANDO SENTINEL, <https://www.orlandosentinel.com/2023/01/06/desantis-wants-state-to-take-control-of-disney-worlds-reedy-creek-district/> (Jan. 6, 2023, 10:13 PM).

<sup>10</sup> H.R. 9B, 2023 Leg., 2023B Sess. (Fla. 2023).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See FLA. DEP’T CMTY. AFFAIRS DIV. OF HOUS. AND CMTY. DEV., Fla. Special Dist. Handbook (2006), <https://whhassociates.com/assets/specialdistricthandbook.pdf> [hereinafter Handbook] (providing a history of special district).

<sup>14</sup> *Id.*

<sup>15</sup> Emerson, *supra* note 3, at 179.

taxation on local residents when projects budgets were sizable.<sup>16</sup> Over time, national political leaders and legislators often turned to special districts in periods of economic hardship.<sup>17</sup> For example, President Franklin D. Roosevelt sought to counter the impact of the Great Depression by “promot[ing] the use of public authorities and special districts to accomplish many public aims.”<sup>18</sup> From 1950 onwards, the nation saw a large shift from special district development by national leaders to development driven by local executives and entrepreneurs.<sup>19</sup> The growing demand for infrastructure development throughout local communities was matched with a reduction in federal aid.<sup>20</sup> This drought led to state and local leaders’ increased reliance on special districts to achieve necessary results without incurring large debts or raising taxes for the surrounding citizens.<sup>21</sup>

The popularity of such policy enactments first expanded into Florida over 180 years ago when legislators recognized the need for a special district to establish and maintain the public road systems.<sup>22</sup> This movement led to the establishment of the Road, Highway, and Ferry Act of 1822, soon followed by numerous special districts created by special acts throughout the nineteenth century.<sup>23</sup> With Florida’s population substantially growing, numerous special districts were enacted to supplement the subsequent land boom.<sup>24</sup> Some of these districts consisted of the standard road, bridge, and drainage districts, but also included more niche areas of development such as aviation authorities, mosquito eradication, as well as beach, fire, and hospital control districts.<sup>25</sup>

Based on Florida leaders’ longstanding use of special districts, there are significant advantages of such use to counties, local governments, municipalities, and local residents. One of the most well-accepted benefits of a special district is its ability to relieve taxpayers or governments from the financial obligations of development when those individuals are not direct beneficiaries of the service.<sup>26</sup> Instead of imposing increased taxes on individuals or local governments, the responsibility falls on those

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<sup>16</sup> *See id.*

<sup>17</sup> *See id.* at 180.

<sup>18</sup> *Id.* (citing Jerry Mitchell, *Public Enterprises in the United States*, in PUBLIC ENTERPRISE MANAGEMENT: INTERNATIONAL CASE STUDIES 68, 69 (Ali Farazmand ed., 1996)).

<sup>19</sup> Emerson, *supra* note 3, at 180.

<sup>20</sup> *See id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Handbook*, *supra* note 10, at 3.

<sup>23</sup> *Id.*

<sup>24</sup> *See id.*

<sup>25</sup> *Id.* at 4.

<sup>26</sup> *See id.*

managing or operating the district.<sup>27</sup> Similarly, the governing boards of such districts benefit from the policy because they are permitted to manage, own, construct, and finance all operations of the special district.<sup>28</sup> This decentralization ensures that the governing boards can provide necessary resources to serve the limited purpose of the district efficiently, without having to rely on general-purpose governments.<sup>29</sup> Despite these clear advantages, the Florida Legislature found that special districts would benefit from the enactment of a uniform framework for policymakers to abide by in the future.<sup>30</sup> In 1989, Florida lawmakers passed the Uniform Special District Accountability Act into legislation to provide the “general provisions for the definition, creation, and operation of special districts” in the state of Florida.<sup>31</sup>

#### A. *Uniform Special District Accountability Act of 1989*

Under Chapter 189 of the Florida Statutes, the Uniform Special District Accountability Act (the “Act”), grants special districts authority equivalent to a county government, which includes self-governance, and the power to collect taxes and issue bonds to fund the projects internal to the district.<sup>32</sup> The Act maps out various legislative regulations governing special districts and distinguishes between dependent and independent special districts.<sup>33</sup> Dependent special districts are created by general-purpose governments and governed by members of the governing body of the respective county or city.<sup>34</sup> In contrast, independent special districts are created to provide specific functions not typically covered by the local government and can be governed by any individuals chosen by the property owners of the district.<sup>35</sup> Additionally, independent special districts are fiscally autonomous, allowing them to budget without government approval.<sup>36</sup> Independent special districts must comply with

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<sup>27</sup> See generally *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See generally *id.*

<sup>30</sup> See generally Unif. Special Dist. Accountability Act of 1989, ch. 189, FLA. STAT. § 189.401 (1989).

<sup>31</sup> *Id.*

<sup>32</sup> See generally *id.*

<sup>33</sup> See generally *id.*

<sup>34</sup> Matt Kelly & Tyler Worthington, *Special Districts in Florida*, DEVOE L. MOORE CTR. (May 9, 2016), <https://devoelmoorecenter.com/2016/05/09/special-districts-in-florida/>; see also FLA. STAT. § 189.02 (1989) (laying out the various ways that a dependent special district can be chartered, and explaining the state legislature’s ability to create a district by “special act at the request or with the consent of the local government upon which the special district will be dependent”).

<sup>35</sup> Kelly & Worthington, *supra* note 34.

<sup>36</sup> *Id.*

the transparency standards set forth in Florida Statutes section 189.03 and can only be created by the Legislature unless otherwise authorized by general Florida law.<sup>37</sup>

Today, the Act governs over 1,918 special districts across the state of Florida.<sup>38</sup> Of these 1,918 districts, 1,303 are independent and are therefore fiscally and administratively autonomous from local and state government authority.<sup>39</sup> Since an independent special district has such autonomy, the Act lays out the procedural implications for both voluntarily and involuntarily dissolution.<sup>40</sup> The Act also provides that “the dissolution of a special district government shall transfer the title to all property owned by the preexisting special district government to the local general-purpose government, which shall also assume all indebtedness of the preexisting special district.”<sup>41</sup> This means that upon dissolution, all the existing debt of the district will be assumed by the local government in which the district is located.<sup>42</sup>

### B. *History of Reedy Creek Improvement District*

The mid-1960’s marked a groundbreaking period for Central Florida and the Walt Disney World Corporation.<sup>43</sup> Despite its global recognition, Disney’s name alone offers little insight into how the corporation established such a significant presence in the Sunshine State. The undeveloped swamp land that now houses the multi-billion-dollar resort was once so remote that neither Orange nor Osceola county had the resources to make use of the land.<sup>44</sup> In 1963, Walt Disney first picked the land southwest of Orlando as the ideal home for the resort after flying over numerous potential sites across the state.<sup>45</sup> Ultimately, the area’s abundant real estate opportunities and accessibility outweighed the yearly hurricane threats, humid rainy summer season, and the insect problems that were

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<sup>37</sup> See FLA. STAT. § 189.03 (1989).

<sup>38</sup> FLORIDA DEPARTMENT OF ECONOMIC DEVELOPMENT, OFFICIAL LIST OF SPECIAL DISTRICTS (2024).

<sup>39</sup> See *id.*

<sup>40</sup> See FLA. STAT. § 189.072(2)(a) (1989) (“In order for the Legislature to dissolve an active independent special district created and operating pursuant to a special act, the special act dissolving the active independent special district must be approved by a majority of the resident electors of the district or, for districts in which a majority of governing body members are elected by landowners, a majority of the landowners voting in the same manner by which the independent special district’s governing body is elected.”).

<sup>41</sup> *Id.* § 189.076(2).

<sup>42</sup> See generally *id.*

<sup>43</sup> See generally *About*, CENT FLA. TOURISM OVERSIGHT DIST., <https://www.oversightdistrict.org/about/> (last visited Feb. 21, 2023) [hereinafter Reedy Creek].

<sup>44</sup> See *id.*

<sup>45</sup> Emerson, *supra* note 3, at 183.



notorious to the environment.<sup>46</sup> By June 1965, Walt Disney had acquired over 25,000 acres of land spanning nearly thirty-eight square miles of Central Florida for a little over \$5 million.<sup>47</sup> To maintain secrecy, Disney acquired title to the various parcels under five Florida corporations: Reedy Creek Ranch, Inc., Bay Lake Properties, Inc., Tomahawk Properties, Inc., Ayefour Corporation, and Latin American Development and Management Corporation.<sup>48</sup>

Once Disney had overcome the hurdle of purchasing the large sum of land for the project, Disney officials researched how the two controlling counties would assess and tax the project during the resort's construction.<sup>49</sup> This need, along with Walt Disney's desire to have unrestrained control over the area for development, inspired Disney's attorneys to suggest creating its own municipality for the project.<sup>50</sup> The idea evolved into forming what we now know as an independent special district—a familiar concept, but one that had never been attempted on such a great scale or by a large corporation.<sup>51</sup> Creating an independent special district gained immense support from Disney and government officials because it created a mutually-beneficial relationship between the corporation and Orange and Osceola counties.<sup>52</sup> Disney would be able to privatize many of the traditional local regulatory responsibilities, maintaining sole governance over its property and project.<sup>53</sup> The counties would avoid the immense financial burden of providing resources for such a large project and would also protect their residents from higher taxation.<sup>54</sup>

The first step in this legislative goal occurred on May 13, 1966, when the Circuit Court of the Ninth Judicial District created the Reedy Creek Drainage District, allowing Disney to begin draining the wetlands and prepping the land for construction.<sup>55</sup> Although a small step, this drainage district was codified in 1967 and expanded in scope and name to become

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<sup>46</sup> *See id.* at 184-85.

<sup>47</sup> *Id.* at 187; *see also* Reedy Creek, *supra* note 43.

<sup>48</sup> Emerson, *supra* note 3, at 187 (“Title to the property was held by five Florida corporations, and the stock for each was owned by a Disney-controlled Delaware corporation known as Compass East Corporation”) (citing Summary of Project Future Seminar 11 (June 17, 1965)) (on file with the Special Collections and University Archives, University of Central Florida) [hereinafter June 17 Summary]).

<sup>49</sup> Emerson, *supra* note 3, at 188.

<sup>50</sup> *Id.* at 189.

<sup>51</sup> *See id.* at 191.

<sup>52</sup> *See id.*

<sup>53</sup> *See id.* at 195.

<sup>54</sup> *See id.* at 191.

<sup>55</sup> *Id.* at 194 (citing Minutes of the Board of Supervisors of Reedy Creek Drainage District 3 (June 6, 1966) (on file with author)).

the Reedy Creek Improvement District under the authority of Florida Statutes section 298.<sup>56</sup> The legislators of the Reedy Creek Improvement District proposed in the special Act that:

WHEREAS, it is the intention of the Legislature through the within enactment to supplement, expand and otherwise modify the powers, functions and authorities of the Reedy Creek Drainage District, which shall hereafter be known as the Reedy Creek Improvement District, so as to enable that district to undertake the improvements herein provided for, to promote and create favorable conditions for the development and practical application of new and advanced concepts, designs and ideas for a recreation-oriented community and to undertake, and enable enterprises conducted within the District to undertake, a broad and flexible program of experimentation and development[.]<sup>57</sup>

In the seventy-five-page piece of legislation, a variety of enumerated powers were granted to the District.<sup>58</sup> These powers included granting the District free discretion to finance projects and activities through bonds, the furnishing of proprietary services, and various management procedures.<sup>59</sup> Other powers granted include those common to a municipality such as “land reclamation, water and flood control, waste collection and disposal, pest control, fire protection, issuance of bonds, land use, and building regulations.”<sup>60</sup>

Disney anticipated opposition to the novel legislative decision, expecting opponents to try to prevent the District from coming into fruition. In 1968, the State challenged the constitutionality of its own action in *Florida v. Reedy Creek Improvement District*.<sup>61</sup> The State’s first contention was that the issuance of bonds constituted use of public funds for the benefit of a private enterprise, violating the State Constitution.<sup>62</sup> The court found this argument untenable, holding that the “general welfare and prosperity of Florida depends in a large measure upon tourism, [and] recreation . . . “and that the programs fostered by the special improvement

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<sup>56</sup> See Reedy Creek, *supra* note 43; see also Act effective May 12, 1967, ch. 67-764, 1967 Fla. Laws 75 [hereinafter Charter].

<sup>57</sup> Reedy Creek, *supra* note 43, at 5.

<sup>58</sup> See *id.* at 1.

<sup>59</sup> See *id.* at 1-4.

<sup>60</sup> Emerson, *supra* note 3, at 196.

<sup>61</sup> *Florida v. Reedy Creek Improvement Dist.*, 216 So. 2d 202 (Fla. 1968).

<sup>62</sup> *Id.* at 205.

district served a valid public purpose.<sup>63</sup> Disney's benefits were simply incidental to the overarching purpose of encouraging and developing tourism and recreation for the citizens and visitors of the state.<sup>64</sup>

Secondly, the State questioned the constitutionality of the legislative enactment of a multi-county, multi-purpose special district with such a wide scope of powers.<sup>65</sup> The court found that this contestation had no merit, and the diverse powers granted were necessary to fulfill the primary purpose of the District.<sup>66</sup> The provisions in Chapter 67-764 were not an abuse of legislative authority, as they provided sufficient limitations to prevent an overwhelming delegation of authority.<sup>67</sup> The State objected to the establishment and operation of the District on other grounds as well, but the court ultimately found that the District was constitutional and should be enacted to allow Disney to begin its improvements on its acquired land.<sup>68</sup>

## II. FLORIDA SENATE BILL 4-C

The longstanding relationship between Disney and the state of Florida has allowed the corporation to operate for over 50 years with the benefits of an independent special district.<sup>69</sup> The symbiotic relationship allowed Disney to have autonomy in its business-making decisions while removing the tax burden on the surrounding counties' residents.<sup>70</sup> In April 2022, Florida Governor Ron DeSantis signed a bill that would remove Disney of its special status, effective June 1, 2023.<sup>71</sup> The action came after Disney's then Chief Executive, Bob Chapek, spoke out against the Parental Rights in Education Bill, colloquially known as the "Don't Say Gay Bill."<sup>72</sup> The

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 205-06.

<sup>65</sup> *Id.* at 206.

<sup>66</sup> *Reedy Creek Improvement Dist.*, 216 So. 2d at 206.

<sup>67</sup> *Id.* ("Nor can we accept the view advanced by the State that the enabling act embraces an unlawful attempt to delegate the taxing power of the state or that the same is tantamount to a gross abuse of legislative authority.")

<sup>68</sup> *Id.* ("The State next contends that Ch. 67-764 does not comply with Section 16, Article III, State Constitution, requiring each law to embrace but one subject and such subject to be briefly stated in the title.")

<sup>69</sup> See *The Happiest Place on Earth? A Look Inside Disney's Tax and Non-Tax Battle with the State of Florida*, N.C. STATE UNIV: POOLE THOUGHT LEADERSHIP (Apr. 28, 2022), <https://poole.ncsu.edu/thought-leadership/article/the-happiest-place-on-earth-a-look-inside-disneys-tax-and-non-tax-battle-with-the-state-of-florida/> [hereinafter *The Happiest Place*].

<sup>70</sup> See Emerson, *supra* note 3, at 191.

<sup>71</sup> *The Happiest Place*, *supra* note 69.

<sup>72</sup> Ronald K. L. Collins, *Robert Corn-Revere, 'Punishing Disney for opposing Fla.'s 'Don't Say Gay' law poses serious First Amend. problems' — FAN 336.1*, THE FIRE (Apr.

new state law restricted discussion of LGBTQ+ topics in Florida classrooms, ultimately outraging many LGBTQ+ community members employed by Disney in the state.<sup>73</sup> The public feud led to the signing of Florida Senate Bill 4-C, with DeSantis describing its passage as creating an even playing field for the businesses in Florida, stating that “the state certainly owes no special favors to one company.”<sup>74</sup> House sponsor Randy Fine acknowledged that “the controversy about Disney’s stance on the gender-identity and sexual-orientation law helped spur the Legislature to look at the special districts.”<sup>75</sup> The hastily drafted legislation amended Florida Statutes section 189.0311 “to dissolve all independent special districts established by a special act prior to the ratification of the Florida Constitution on November 5, 1968, if those districts have not been reestablished, re-ratified, or otherwise reconstituted by special act or general law after such date.”<sup>76</sup>

The bill allowed for an independent special district affected by the bill to be re-established on or after June 1, 2023, pursuant to the requirements and limitations of Chapter 189 of the Florida Statutes.<sup>77</sup> As the bill stood, it left the door open for potential reinstatement but initially dissolved the following independent special districts across the state of Florida: Bradford County Development Authority (Bradford County), Sunshine Water Control District (Broward County), Eastpoint Water and Sewer District (Franklin County), Hamilton County Development Authority (Hamilton County), Reedy Creek Improvement District (Orange and Osceola Counties), and Marion County Law Library (Marion County).<sup>78</sup> In any event, allowing for a district to be re-established allowed the Florida legislature to target Reedy Creek while, on the other hand, minimizing the effect on the districts not involved in the public feud. Champions of the bill found that its passing would give local politicians the opportunity to

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25, 2022), <https://www.thefire.org/news/blogs/ronald-kl-collins-first-amendment-news/robert-corn-revere-punishing-disney-opposing>.

<sup>73</sup> See Christopher Grimes, *Fla. prepares U-turn on Disney’s ‘Don’t Say Gay’ punishment*, FIN. TIMES (Dec. 2, 2022), <https://www.ft.com/content/64162abf-e0bd-4a6f-968a-cb4872e5c4f5>.

<sup>74</sup> *Id.* (“The Reedy Creek legislation was drafted hastily this spring, just as DeSantis began making national headlines for his war on ‘woke’ Disney—an unprecedented attack from a Florida governor on the state’s largest employer. Disney’s economic clout, along with a team of 38 lobbyists, has allowed it to largely get its way in Florida for more than half a century.”).

<sup>75</sup> CBS Miami, *Fla. Senate Votes To End Walt Disney World’s Reedy Creek Improvement Dist.*, CBS NEWS (Apr. 21, 2022, 5:10 AM) <https://www.cbsnews.com/miami/news/florida-senate-votes-walt-disney-world-reedy-creek-improvement-district/>.

<sup>76</sup> THE PRO. STAFF OF COMM. ON CMTY. AFF., BILL ANALYSIS AND FISCAL IMPACT STATEMENT ON SB 4-C, at 5-6 (Fla. 2022).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

exercise their home rule powers and to regain control over their surrounding territory.<sup>79</sup> Whereas, opponents of the bill expressed concerns that its passage was out of revenge, rather than for a greater public purpose.<sup>80</sup>

### III. PREDICTED FISCAL IMPACTS OF SENATE BILL 4-C

The dissolution of Reedy Creek was set to go into effect June 1, 2023, but was ultimately overruled by the current Florida administration's passage of HB-9B to minimize the fiscal impact on the citizens of the surrounding counties.<sup>81</sup> The State Senate's analysis concluded that the original plan under SB-4C would have an "indeterminate fiscal impact" on residents and businesses in special districts, as well as on local governments that would assume debts and assets.<sup>82</sup> The largest concern among the bill's critics was the debt and taxes predicted to be transferred to Orange and Osceola county residents.<sup>83</sup> Additionally, the method by which surrounding counties provide typical municipal services and resources would be impacted, along with the overall real estate environment of the area. Finally, Disney itself would also have felt significant fiscal impacts if Reedy Creek was dissolved as planned by the bill.

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<sup>79</sup> See Christie Zizo, *Special district bill will leave Orange, Osceola taxpayers with Disney debt, Democrats say*, CLICK ORLANDO (Apr. 19, 2022, 11:27 PM), <https://www.clickorlando.com/news/local/2022/04/20/special-district-bill-will-leave-orange-osceola-taxpayers-with-disney-debt-democrats-say/> (explaining what State Rep. Randy Fine, said about the bill: "You know what, it's a great opportunity for local politicians in Orange and Osceola county to exercise those home rule powers to rule over territory that they haven't been able to because the state preempted them 55 years ago").

<sup>80</sup> See CBS Miami, *supra* note 75 ("To govern by revenge, to govern for punishment is not governing. It's authoritarianism. It's fascism," said Sen. Tina Polsky, D-Boca Raton, during a meeting of the Senate Community Affairs Committee.").

<sup>81</sup> THE PRO. STAFF OF COMM. ON CMTY. AFF., BILL ANALYSIS AND FISCAL IMPACT STATEMENT ON SB 4-C, at 5-6 (Fla. 2022); see Eric Levenson et al., *Why Disney Has its Own Government in Florida and How Control of it Could Change*, CNN, <https://www.cnn.com/2022/04/21/us/reedy-creek-walt-disney-florida/index.html> (Feb. 7, 2023, 12:48 AM); see H.R. 9B, 2023 Leg., 2023B Sess. (Fla. 2023).

<sup>82</sup> Bill Chappell, *DeSantis Wanted to Punish Disney. Repealing its Tax Status May Hurt Taxpayers Instead*, NPR, <https://www.npr.org/2022/04/22/1094316591/disney-world-de-santis-florida-counties-taxes> (Apr. 22, 2022, 4:07 PM).

<sup>83</sup> Robert Frank, *Florida Taxpayers Could Face a \$1 Billion Disney Debt Bomb if its Special District Status is Revoked*, CNBC, <https://www.cnbc.com/2022/04/21/disney-special-district-florida-taxpayers-could-face-a-1-billion-debt-bomb-if-dissolved.html> (Apr. 21, 2022, 8:14 PM) ("If the special district is dissolved, Orange and Osceola counties would have to provide the local services currently provided by Reedy Creek. And, the \$105 million in revenue would disappear, meaning county and local taxpayers would be on the hook for part or all of the added costs.").

### A. *Transferred Debt*

One of the grave concerns among opponents to the bill was the financial allocations of the debts incurred during Reedy Creek's fifty-four-year tenancy. Absent language in Senate Bill 4-C, the Uniform Special District Accountability Act laid out the financial allocations of the debts and assets of a dissolved independent special district.<sup>84</sup> Pursuant to Chapter 189 of the Florida Statutes, "Unless otherwise provided by law or ordinance, the dissolution of a special district government shall transfer the title to all property owned by the preexisting special district government to the local general-purpose government, which shall also assume all indebtedness of the preexisting special district."<sup>85</sup> In sum, all of Disney's debts would be placed on the local general-purpose governments of Orange and Osceola counties.<sup>86</sup>

From its creation, Reedy Creek granted Disney the authority to borrow money by issuing bonds, which in turn can be purchased by investors.<sup>87</sup> The kind of bonds vary, but most important are those that promise to pay from the unique property taxes collected by the district and those that pay from the present utility system revenue.<sup>88</sup> In granting Reedy Creek the power to issue bonds, the Florida legislature included its own promise to bond holders, stating:

The State of Florida pledges to the holders of any bonds issued under this Act that it will not limit or alter the rights of the District to own, acquire, construct, reconstruct, improve, maintain, operate, or furnish the projects or to levy and collect the taxes, assessments, rentals, rates, fees, tolls, fares and other charges provided for herein . . . until all such bonds together with interest thereon, and all costs and expenses in connection with any action or proceeding

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<sup>84</sup> Unif. Special Dist. Accountability Act, FLA. STAT. § 189.076 (2023).

<sup>85</sup> *Id.*

<sup>86</sup> See Frank, *supra* note 83 ("Tax experts say that in order for the counties to collect additional revenue from Disney to pay the bond debt, the counties would have to create a new special tax district of their own. Even if they created a new special 'Disney' tax district, the tax rate would be capped below that of the current district rate, leaving Orange and Osceola counties with Reedy Creek's debt service but with less revenue to pay it off.").

<sup>87</sup> Jacob Schumer, *The Contractual Impossibility of Unwinding Disney's Reedy Creek*, BLOOMBERG TAX (Apr. 26, 2022, 4:45 AM), <https://news.bloombergtax.com/tax-insights-and-commentary/the-contractual-impossibility-of-unwinding-disneys-reedy-creek> ("Its property-tax-based bonds discuss that the district can tax up to 30 mills and promise to tax at a rate high enough to pay the bonds. Its utility revenue bonds discuss the district's various powers to generate utility revenue and promises to fix fees and charges sufficient to generate sufficient revenue to pay the bonds.").

<sup>88</sup> *Id.*

by or on behalf of such holders, are fully met and discharged.<sup>89</sup>

The dissolution of Reedy Creek would lead to unprecedented consequences as SB-4C altered the rights afforded to the District in the statement above.<sup>90</sup> By dissolving the District, the legislature altered its promise made in the initial bond offering and “instead of bonds backed by a special district with the power to levy up to 30 mills in taxes, the property tax bonds will be backed jointly by two governments that can only generate a maximum of 10 mills in taxes.”<sup>91</sup> The unified utility system with unique taxing powers would be replaced by two counties that are subject to substantial spending restrictions and additional taxing.<sup>92</sup> Not only would the bond holders be impacted by this decision, Orange and Osceola County would assume upward of \$1 billion in shared bond debt.<sup>93</sup> It was also foreseeable that the enormous debt assumed by the counties would require assistance by the State, affecting every taxpayer in Florida.<sup>94</sup>

Supporters of Reedy Creek’s dissolution argued that the bonds being transferred to the counties would not have a drastic impact on taxpayers, as the tax revenue that funded the bond payments would also be transferred.<sup>95</sup> Florida state Representative Randy Fine, explained that this process would actually benefit taxpayers, as the tax revenue would be transferred to the local government and also require Disney to pay for any added service.<sup>96</sup> Tax experts continued to express their concerns with Fine’s hypothesis, as they believed that to collect the additional revenue from Disney, the counties would need to form a whole new special district.<sup>97</sup> Even with this special tax district in place, the counties would not be able to reach a comparable tax rate to what Reedy Creek allowed.<sup>98</sup> It is still unknown the extent of Disney’s bond debts or the amount that

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<sup>89</sup> *Id.*; Charter, *supra* note 56, at 67.

<sup>90</sup> *See* Schumer, *supra* note 87.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Frank, *supra* note 83 (“State Senate Minority Leader Gary Farmer, D-Fort Lauderdale, tried to amend the bill to include further study of the bond debt, but the amendment failed on a voice vote.”).

<sup>95</sup> *See id.*

<sup>96</sup> *Id.* (“‘Those taxes will continue to be paid,’ he said. ‘They will just be paid to Orange and Osceola county instead of this special improvement district. The taxpayers could end up saving money because you’ve got duplicative services that are being provided by this special district that are already being done by those municipalities.’”).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

taxpayers would have been responsible for, but Reedy Creek's liabilities continued to rise as June 2023 approached.<sup>99</sup>

### B. *Increased Taxes*

Reedy Creek enabled Disney to levy taxes on itself to fund essential services typically provided by local governments.<sup>100</sup> With its special tax status, Disney collected nearly \$105 million in general revenue annually to ensure that Reedy Creek could operate effectively and to repay its various outstanding bonds.<sup>101</sup> This revenue allowed Disney to independently govern its entire property and maintain crucial services like water, sewer, power, roads, and emergency services across the 27,000 acres.<sup>102</sup> Public records show that Disney has served as the largest property taxpayer in Central Florida, "paying over \$280 million in property taxes to the counties between 2015 and 2020."<sup>103</sup> If the district was dissolved, the additional revenue usually collected by Disney would no longer exist.<sup>104</sup> Orange and Osceola County would each "absorb their respective portions of the district's land area,"<sup>105</sup> and would each assume the responsibility of administering the area without any increased assistance from Disney.<sup>106</sup> While Disney would still be obligated to pay local property taxes, the counties would be unable to raise taxes solely on Disney to offset increased costs.<sup>107</sup> Florida law requires uniform taxation within a county, meaning any property tax increase would be distributed among Disney and all residents of the two counties.<sup>108</sup> Orange County Mayor Jerry Demings expressed concerns over the dissolution, describing

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<sup>99</sup> *See id.*

<sup>100</sup> *See id.*

<sup>101</sup> *See id.*

<sup>102</sup> *See generally* Shusree Mukherjee, *How Many Acres Is Disney World and How Big Is Each Park?*, DISNEY WIRE (Feb. 16, 2022), <https://disneywire.com/2022/02/16/how-many-acres-is-disney-world/>; *see also* Zizo, *supra* note 79 ("The district, which was formed in 1967 and allows Disney to self-govern its properties, also handles water and sewer, power, roads and fire services for the district. It also pays Orange County Sheriff's Office for law enforcement services. All of those services would also have to be assumed by the counties, if the district is dissolved.")

<sup>103</sup> Frank, *supra* note 83.

<sup>104</sup> *See* Zizo, *supra* note 79.

<sup>105</sup> Jacqueline Bozzuto, *Dissolving Disney's Reedy Creek Improvement District: The Impacts of SB 4-C*, LOWNDES, [https://lowndes-law.com/article-detail/post\\_detail/dissolving-disneys-reedy-creek-improvement-district-the-impacts-of-sb-4-c](https://lowndes-law.com/article-detail/post_detail/dissolving-disneys-reedy-creek-improvement-district-the-impacts-of-sb-4-c) (last updated May 17, 2022).

<sup>106</sup> Nick Papantonis, *End of Reedy Creek: Disney Won't Pay More Taxes, But You Might*, WFTV (Apr. 21, 2022, 11:24 PM), <https://www.wftv.com/news/local/end-reedy-creek-disney-wont-pay-more-taxes-you-will/3TK6ASNJT5EXHICW3DQ3ZHEZYA/>.

<sup>107</sup> Bozzuto, *supra* note 105.

<sup>108</sup> *Id.*



it as being a “net sum loss” for taxpayers within his county.<sup>109</sup> It was estimated that a property tax increase of around 20% to 25% would be necessary to cover the added administrative costs associated with Reedy Creek’s dissolution.<sup>110</sup>

### C. *Impact on Walt Disney Corporation*

Reedy Creek granted Disney the authority typically reserved for municipal and county governments.<sup>111</sup> Disney’s choice to establish its footprint in Central Florida served as a “boon” to both Florida and local economies.<sup>112</sup> Similarly, Disney benefited immensely from the establishment of Reedy Creek because it gained developmental control over its projects and the privileges of a local government to fund its own municipal services.<sup>113</sup> If the district were ultimately dissolved, consumers would feel the impact on pricing associated with the corporation’s services.<sup>114</sup> Disney, on the other hand, would receive a \$163 million yearly tax break if the bill were executed as it currently stands, no longer having to tax itself or shoulder its own debt.<sup>115</sup>

Under Reedy Creek, Disney had autonomous developmental control of its projects within the District, bypassing the need for local government approval.<sup>116</sup> This autonomy allowed Disney to greenlight numerous projects and continue to develop its theme parks and resort at an expedited

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<sup>109</sup> Alison Durkee, *Disney World Losing Its Special District Status Could Be ‘Catastrophic’ For Local Taxpayers*, FORBES (Apr. 22, 2022, 11:24 AM), <https://www.forbes.com/sites/alisondurkee/2022/04/22/disney-world-losing-its-special-district-status-could-be-catastrophic-for-local-taxpayers/?sh=3fe141c71b1a> (explaining that the county will likely now have to pay for emergency and law enforcement services that Disney previously reimbursed it for).

<sup>110</sup> Bozzuto, *supra* note 105.

<sup>111</sup> Emerson, *supra* note 3, at 178.

<sup>112</sup> *Id.* at 204-05.

<sup>113</sup> Jack Witthaus, *How the Unraveling of Walt Disney World’s Special Tax Status in Florida Affects Commercial Property*, CoSTAR (Apr. 22, 2022, 10:23 PM), <https://www.costar.com/article/1481840466/how-the-unraveling-of-walt-disney-worlds-special-tax-status-in-florida-affects-commercial-property> (“Given its autonomy, Disney is able to greenlight construction projects within the improvement district, speeding the development process for billions of dollars of projects including the Epcot, Hollywood Studios, Animal Kingdom and Star Wars: Galaxy’s Edge theme parks that have opened since Disney World opened its doors in October 1971.”).

<sup>114</sup> Hannah Sampson, *Disney’s Special Tax District in Florida, Explained*, WASH. POST (Apr. 25, 2022, 5:53 PM), <https://www.washingtonpost.com/travel/2022/04/25/disney-special-tax-district-explained/> (explaining the fact that Disney could face a slower process when trying to build attractions and could face obstacles while transitioning service providers) (explaining the expenses of the bill placed on the bill could trickle down to consumers).

<sup>115</sup> Durkee, *supra* note 109.

<sup>116</sup> Witthaus, *supra* note 113.

pace.<sup>117</sup> Reedy Creek's ability to provide its own building codes and permits cuts out the obstacles of construction bidding and allows Disney to have more creative freedom with its attractions.<sup>118</sup> The District "is exempt from all Orange County and Osceola County regulations regarding building, zoning, construction, safety, sanitation, and more."<sup>119</sup> However, if the District was dissolved, Disney would no longer have complete control over its developmental plans and would have to strictly follow the various regulations set forth by the counties. Additionally, Disney would need to seek approval from the governing counties before any developmental plans were set in motion.<sup>120</sup> This loss of control would impact the timeframe of all future construction projects and the local contractors and businesses who rely on the frequent work required by the large corporation.<sup>121</sup> A slower timeframe for construction projects would lead to less business for these local workers.<sup>122</sup>

Another benefit that Disney reaped from the Reedy Creek Improvement District was its ability to fund and control its own operational services that would normally be provided by the local government.<sup>123</sup> These services include road maintenance, fire department services, trash collection, and flood control, among others.<sup>124</sup> It is estimated that the District spends more than \$160 million a year on public services.<sup>125</sup> As of now, "Reedy Creek historically operates at a loss of approximately \$5 to \$10 million per year, per its financial reports . . . .The current arrangement renders that meaningless since Disney is able to subsidize its own operations with theme park revenue."<sup>126</sup> Without this arrangement, Disney would rely solely on the local governments to provide the same caliber of services to the district.<sup>127</sup> It is probable that the quality of services provided by the local governments would not be

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<sup>117</sup> *Id.*

<sup>118</sup> Isaac Barzso, *Disney's Construction Habits Could Take a Hit if Reedy Creek Improvement District is Dissolved*, LEVELSET (June 9, 2022), <https://www.levelset.com/news/disneys-construction-habits-reedy-creek-dissolved/> (highlighting that if the district doesn't exist any longer, that level of control leaves Disney's hands).

<sup>119</sup> *Id.*; see also Schumer, *supra* note 87.

<sup>120</sup> See Witthaus, *supra* note 113.

<sup>121</sup> Barzso, *supra* note 118 (explaining how the new regulations could change the way that Disney interacts with contractors in the bidding and building process, and the amount of work that Disney can supply contractors with paying jobs).

<sup>122</sup> *See id.*

<sup>123</sup> Emerson, *supra* note 3, at 198, 203 ("Quite simply, it is unlikely that the existing counties would have had the personnel and financial resources to govern such a massive and complex project.").

<sup>124</sup> *Id.* at 195-96; see also Sampson, *supra* note 114.

<sup>125</sup> Witthaus, *supra* note 113.

<sup>126</sup> Papantonis, *supra* note 106.

<sup>127</sup> *See id.*

adequate to attend to the heightened needs of the District unless taxpayers are charged a premium tax. Past instances have shown public resistance to tax-payer funded theme park construction projects.<sup>128</sup> A \$150 million renovation of Kirkman Road to accommodate one of Universal Studio's parks was highly contested and called "a waste" by angry taxpayers.<sup>129</sup> The consequences of the bill would show that the "local governance structures every state relies on to provide necessary—some may even say mundane—services like water and sewer or fire protection [were] no longer insulated from charged political battles."<sup>130</sup> It was foreseeable that Disney would feel the public's resistance to such projects through the quality and quantity of services it receives from the counties.

#### IV. CURRENT STATE OF THE ISSUE

Governor DeSantis has not shied away from expressing his opposition to what he perceives as "woke corporations" taking stances on relevant political issues pertaining to racial justice, voting rights, and LGBTQ+ rights. Today, Disney and the State of Florida continue to fight this battle both in the legislative and the judicial arenas. This section of the Comment begins with an explanation of the current state of the issue by discussing the legislative timeline since Senate Bill 4-C. Then, it addresses the constitutional issues Disney has raised and whether such claims are likely to prevail in a formal judicial setting. Finally, this Comment addresses the State's potential justifications for its actions and considers whether the perceived threat of corporate power disparities is adequate grounds to uphold its actions.

##### A. *Reedy Creek Reinstatement*

Although the Bill was passed in April 2022, Reedy Creek, along with the five other special districts, was not set to dissolve until June 1, 2023.<sup>131</sup> As the countdown to June continued, lawmakers patiently awaited the Florida Governor's next steps amidst his re-election campaign and leadership changes at Disney.<sup>132</sup> On January 6, 2023, Governor DeSantis

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<sup>128</sup> See Barzso, *supra* note 118.

<sup>129</sup> See Papantonis, *supra* note 106 ("Taxpayers would also be on the hook for items the company currently pays for, such as road improvements.").

<sup>130</sup> John D. Ratliff, *Florida's Anti-Disney Law is Poised to Hurt Surrounding Communities*, BROOKINGS (May 11, 2022), <https://www.brookings.edu/blog/the-avenue/2022/05/11/floridas-anti-disney-law-is-poised-to-hurt-surrounding-communities/>.

<sup>131</sup> *Id.*

<sup>132</sup> Douglas Soule, *DeSantis plan: Disney could lose power over its special district, while assuming its debts*, TALLAHASSEE DEMOCRAT (Jan. 6, 2023, 2:06 PM), <https://www.tallahassee.com/story/news/politics/2023/01/06/desantis-administration-wants-control-of->

gave notice that his administration planned to reinstate Reedy Creek as a special independent district, but under entirely new conditions.<sup>133</sup> At the time, Reedy Creek was led by a five-person Board of Supervisors selected by Disney, “all of whom had to own land within the District and a majority of which had to be residents of Osceola, Orange, or an adjoining county.”<sup>134</sup>

On February 27, 2023, Governor DeSantis signed HB-9B to reinstate the district as the Central Florida Tourism Oversight District and appointed Martin Garcia, Bridget Ziegler, Brian Aungst Jr., Michael A. Sasso, and Ron Peri to serve as the board of directors.<sup>135</sup> HB-9B retains the district’s power to adopt its planning, zoning, building, and safety codes, as well as continue to distribute bonds, but it ultimately takes the decision-making out of Disney’s hands.<sup>136</sup> In addition, the bill removes the district’s ability to own and operate airport facilities, certain types of recreational facilities (such as stadiums, civic centers, and convention halls), and “novel and experimental” facilities (such as a nuclear fission power plant).<sup>137</sup> Disney no longer wields control over the district; instead, it is now overseen by the state-appointed board, which pledged to

[I]ncreas[e] state oversight, accountability, and transparency; revis[e] the selection process, membership qualifications, and compensation for the governing body; ensur[e] debts and bond obligations held by the district remain with the district and are not transferred to other governments; revis[e] the district’s regulatory framework and structure; and institute[e] reporting requirements, including a review of the district’s remaining powers.<sup>138</sup>

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disney-reedy-creek-district-florida/69785049007/ (explaining that Bob Iger, Disney’s former CEO of fifteen years, was brought back in the entertainment company’s attempt to boost investor confidence and profits at its streaming media unit).

<sup>133</sup> *Id.* (“Chapek was ousted from Disney in November, and his predecessor, Bob Iger, was brought back to run the company. Soon after his return, Iger said he was ‘sorry to see us get dragged into’ a political fight, adding, ‘the state of Florida has been important to us for a long time and we have been very important to the state of Florida.’”).

<sup>134</sup> Emerson, *supra* note 3, at 197.

<sup>135</sup> *Governor Ron DeSantis Appoints Five to the Central Florida Tourism Oversight District*, FLA. GOV. (Feb. 27, 2023), <https://www.flgov.com/2023/02/27/governor-ron-desantis-appoints-five-to-the-central-florida-tourism-oversight-district/>.

<sup>136</sup> STAFF OF H. COMM. ON STATE AFFAIRS, BILL ANALYSIS AND FISCAL IMPACT STATEMENT ON HB-9B (Fla. 2023).

<sup>137</sup> *Id.*

<sup>138</sup> Christie Zizo & Mike DeForest, *New Details Emerge in DeSantis-Disney’s Reedy Creek District Battle*, CLICK ORLANDO, <https://www.clickorlando.com/news/local/2023/01/06/new-details-emerge-in-desantis-disneys-reedy-creek-district-battle/> (last updated Jan. 6, 2023, 6:30 PM).

In summary, Reedy Creek is now under the governance of a board handpicked by Governor DeSantis, as opposed to Disney's self-appointed board as it was for all prior years.<sup>139</sup> Critics of the idea have expressed concerns that the Florida Governor is using the legislation to gain control over one of the nation's largest companies rather than removing any special treatment afforded to the company by the State.<sup>140</sup>

In anticipation of HB-9B, Reedy Creek board members entered into a thirty-year development agreement (the "Development Agreement") and declaration of restrictive covenants to insulate Disney from government regulation.<sup>141</sup> The contracts were enacted before DeSantis' appointees took control over the district, allowing Disney to maintain its special status and governmental control for the next three decades.<sup>142</sup> Consequently, Disney's move significantly limits the authority of the CFTOD board when making critical decisions regarding the district. What seemed like a victory for Disney, ignited an even more complicated legal feud. The Development Agreement was soon challenged by the newly appointed CFTOD board in a complaint filed in Florida's Ninth Judicial Circuit on May 1, 2023, seeking to invalidate the contracts.<sup>143</sup> In addition to the lawsuit, Governor DeSantis signed Senate Bill 1604 ("SB-1604") on May 5, 2023, barring the new board from complying with the Development Agreements and restrictive covenants.<sup>144</sup>

### B. Constitutional Challenges

Disney took matters into its own hands by filing a suit in the U.S. District Court for the Northern District of Florida, naming the Governor, the Secretary of Florida's Department of Commerce, and all members of CFTOD's board as defendants.<sup>145</sup> The complaint alleges several violations

<sup>139</sup> *See id.*

<sup>140</sup> Soule, *supra* note 133.

<sup>141</sup> Corrected Complaint for Declaratory and Injunctive Relief at 8, Cent. Fla. Oversight Dist. v. Walt Disney Parks & Resorts U.S., Inc., No. 2023-CA-011818-0 (9th Cir. Fla., May 9, 2023).

<sup>142</sup> *Id.*

<sup>143</sup> Complaint at 2, Cent. Fla. Oversight Dist. v. Walt Disney Parks & Resorts U.S., Inc., No. 2023-CA-011818-0 (9th Cir. Fla., May 1, 2023) (The Central Florida Tourism Oversight Board is seeking a declaratory judgment against Disney, the defendant, for the following complaints: failure to provide notice of a public hearing, *ultra vires* act in violation of Fla. Stat. § 163.3223, Reedy Creek Improvement District lacked authority and jurisdiction to enter into Development Agreement, violation of Article VII, Section 12 of the Florida Constitution, failure to comply with Fla. Stats. § § 166.041 and 163.321, unlawful delegation of governmental authority to private entity, void as against public policy, void as unconscionable, and lack of consideration).

<sup>144</sup> S.B. 1604, 2023 Sess. at 12 (Fla. May 5, 2023).

<sup>145</sup> Complaint, Walt Disney Parks v. DeSantis, No. 4:23CV00163 (N.D. Fla., Apr. 26, 2023). Disney sought declaratory and injunctive relief declaring SB-4C, HB-9B, and the

of Disney's rights under the U.S. Constitution, most notably the State's infringement on the corporation's First Amendment right.<sup>146</sup> The First Amendment states that "Congress shall make no law . . . abridging the freedom of speech."<sup>147</sup> It is important to note that the issue is not whether Disney has a right to the special taxing district established in 1967, but instead whether the government officials in Florida can use legislative power to punish a corporation for exercising its right to free speech under the First Amendment.<sup>148</sup> The Supreme Court has expressly extended the First Amendment right of free speech to corporations,<sup>149</sup> and any negative governmental action resulting from a corporation exercising its free speech right is considered First Amendment retaliation.<sup>150</sup>

The issue of First Amendment retaliation is well-established in Supreme Court precedent. Historically, the Court has dealt with other issues of government retaliation, involving contractual obligations for employees, contractors, and even independent contractors. In *Board of County Commissioners v. Umbehr*, the Court allowed a contractor to bring a First Amendment claim of retaliation after his contract was terminated following his public criticism of the county board.<sup>151</sup> Similarly, the Court allowed a college professor the same right, extending First Amendment retaliation claims to independent contractors.<sup>152</sup> The reasoning behind these Court decisions is not that the individuals had a right to the contractual relationship or right to employment, but rather that the government cannot use indirect means to punish an individual for expressing a constitutional right to free speech.<sup>153</sup>

On January 31, 2024, nearly a year after the CFTOD was formed, U.S. District Court Judge Allen Winsor issued an opinion dismissing Disney's First Amendment case against the State.<sup>154</sup> Judge Winsor dismissed the claims against the Governor and the Secretary for lack of standing and

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legislative declaration unlawful and unenforceable, declaring that Disney's Contracts remain in effect and are enforceable, and enjoining Defendants from enforcing SB-4C, HB-9B, and the legislative declaration.

<sup>146</sup> *Id.*

<sup>147</sup> U.S. CONST. amend. I.

<sup>148</sup> Collins, *supra* note 72.

<sup>149</sup> *Citizens United v. Fed. Election Comm'n*, 558 U.S. 319 (2010).

<sup>150</sup> *See* Collins, *supra* note 72.

<sup>151</sup> *Bd. of Cnty, Comm'rs v. Umbehr*, 518 U.S. 668, 671, 673 (1996).

<sup>152</sup> *Perry v. Sindermann*, 408 U.S. 593, 597-98 (1972) ("It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited.")

<sup>153</sup> Collins, *supra* note 72.

<sup>154</sup> *Walt Disney Parks v. DeSantis*, No. 4:23-CV-00163, 2024 WL 442546, at \*1 (N.D. Fla., Jan. 31, 2024).

dismissed the claim against the CFTOD board members on the merits for failure to state a claim.<sup>155</sup> It is important to note that we are still witnessing the earliest stages of this controversy because Judge Winsor dismissed the case without prejudice, meaning that Disney can re-file the suit by establishing proper standing.<sup>156</sup> A spokesperson for Disney stated that “if left unchallenged, this would set a dangerous precedent and give license to states to weaponize their official powers to punish the expression of political viewpoints they disagree with. We are determined to press forward with our case.”<sup>157</sup> Regarding standing, Disney will need to establish three elements: “(1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision.”<sup>158</sup> To overcome the standing obstacle on appeal, Disney needs to allege facts to support each element.

Assuming Disney establishes standing on appeal, it will face a tougher time establishing the merits of its retaliation claims in its amended complaint. The District Court’s dismissal for failure to state a claim relied on two major themes: (1) the State’s actions, collectively, were facially constitutional and therefore a plaintiff cannot prevail by claiming the lawmakers passed the laws with a constitutionally impermissible purpose,<sup>159</sup> and (2) the actions did not explicitly single out Disney as a discrete group.<sup>160</sup> The Supreme Court, most recently, has concentrated more on the materiality of the retaliatory actions, citing authorities that conduct a fact intensive inquiry to “focu[s] on the status of the speaker, the status of the retaliator, the relationship between the speaker and the retaliator, and the nature of the retaliatory acts.”<sup>161</sup> In this case, Disney could still prevail if it can prove that the State’s actions were materially adverse based on all the facts.<sup>162</sup> Additionally, Disney should highlight that if its claims were to fail despite clear evidence of State retaliation, the court would be setting a concerning precedent by condoning government action that targets corporations for publicly expressing with dissenting opinions.

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<sup>155</sup> *Id.* at \*3.

<sup>156</sup> Mark Osborne, *Federal Judge Dismisses Disney Lawsuit Against Gov. Ron DeSantis*, ABC NEWS (Jan. 31, 2024, 5:01 PM), <https://abcnews.go.com/Business/judge-dismisses-disney-lawsuit-gov-ron-desantis/story?id=106840357>.

<sup>157</sup> *Id.*

<sup>158</sup> *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)).

<sup>159</sup> *In re Hubbard*, 803 F.3d 1298, 1312 (11th Cir. 2015).

<sup>160</sup> *See generally* *Ga. Ass’n of Educators v. Gwinnett Cnty. Sch. Dist.*, 856 F.2d 142 (11th Cir. 1988).

<sup>161</sup> *See Hous. Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 477-78 (2022) (citing *Suarez Corp. Indus. v. McGraw*, F.3d 676, 686 (4th Cir. 2000)).

<sup>162</sup> *See id.* at 479.

Prevailing on a First Amendment retaliation claim is no easy task. Under 42 U.S.C. § 1983, an individual will need to prove by the preponderance of the evidence that:

(1) the plaintiff was engaged in a constitutionally protected activity; (2) the defendant's actions against the plaintiff would chill a person of ordinary firmness from continuing to engage in the protected activity; and (3) the plaintiff's protected activity was a substantial or motivating factor in the defendant's conduct."<sup>163</sup> Even if the elements are satisfied, the defendant can still prevail if it proves by a preponderance of the evidence that the defendant "would have taken the action(s) in question, even in the absence of any motive to retaliate against the plaintiff."<sup>164</sup>

### 1. Constitutional Protected Activity

To satisfy the first element under 42 U.S.C. § 1983, Disney must show that it engaged in a constitutionally protected activity.<sup>165</sup> In the landmark case *Citizens United v. Federal Election Commission*, a large non-profit corporation challenged two prior Supreme Court decisions that limited corporations from engaging in political speech and electioneering communications.<sup>166</sup> Federal law, 2 U.S.C. § 441(b) prohibited corporations from "using their general treasury funds to make independent expenditures for speech defined as an 'electioneering communication' or for speech expressly advocating the election or defeat of a candidate."<sup>167</sup> Citizen's United initially released a documentary about a political candidate and planned to make the film available through video-on-demand and promote it with a 10-second and a 30-second video advertisement within thirty days of the 2008 primary election.<sup>168</sup> The corporation did not follow through with the on-demand-film nor the advertisements, out of fear that both would be covered by the federal ban on corporate-funded independent expenditures.<sup>169</sup> This case reached the Supreme Court and in a majority opinion written by Justice Kennedy, the Court decided to address the overarching First Amendment issue rather

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<sup>163</sup> See MANUAL OF MODEL JURY INSTRUCTIONS FOR DISTRICT COURTS OF THE NINTH CIRCUIT § 9.11 (2023).

<sup>164</sup> *Id.*

<sup>165</sup> See *id.*

<sup>166</sup> *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 318-19 (2010).

<sup>167</sup> *Id.* (citing 2 U.S.C. § 441(b)).

<sup>168</sup> *Id.* at 319-21.

<sup>169</sup> See *id.* at 321.



than focus solely on the facial validity of 2 U.S.C. § 441(b).<sup>170</sup> The Court established a new premise in the case—“the permissibility of restricting corporate political speech.”<sup>171</sup> The Court ultimately held that the Government could not suppress the corporation’s political speech “on the basis of the speaker’s identity as a nonprofit or for-profit corporation.”<sup>172</sup> Justice Kennedy goes on to explain that “[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people,” and the speaker’s identity—a corporation—should not be preclude it from this constitutional right.<sup>173</sup> The holding in *Citizens United* changed the way corporations interact and communicate in the political realm.

Applying the precedent established in *Citizens United*, Disney has a constitutional right to engage in political speech as a corporation.<sup>174</sup> Disney is one of the nation’s largest and most influential corporations and has the protected power to “point out errors or fallacies in speech of all sorts, including the speech of candidates and elected officials.”<sup>175</sup> Disney did not engage in the same type of political speech that was addressed in *Citizens United* but rather made a public statement condemning the “Don’t Say Gay Bill” passed by the Florida Legislatures.<sup>176</sup> Although differing in that aspect, the First Amendment protects Disney from State retaliation even if we view the corporation’s statement as overly critical of the Governor’s political agenda.<sup>177</sup>

One of the four theoretical underpinnings of the First Amendment is dissent—“speech that criticizes customs, habits, traditions, institutions or authorities.”<sup>178</sup> For time immemorial, the Court has reiterated the constitutional value of dissenting speech and its power to “communicate the fears, hopes and aspirations of the less powerful to those in power . . .

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<sup>170</sup> *Id.* at 329.

<sup>171</sup> *Id.* at 331.

<sup>172</sup> *Id.* at 365.

<sup>173</sup> *See id.* at 339 (citation omitted).

<sup>174</sup> *See id.* at 342 (collecting cases).

<sup>175</sup> *See id.* at 364.

<sup>176</sup> *See* The Walt Disney Co., *supra* note 7. (“Florida’s HB 1557, also known as the ‘Don’t Say Gay’ bill, should never have passed and should never have been signed into law. Our goal as a company is for this law to be repealed by the legislature or struck down in the courts, and we remain committed to supporting the national and state organizations working to achieve that. We are dedicated to standing up for the rights and safety of LGBTQ+ members of the Disney family, as well as the LGBTQ+ community in Florida and across the country.”).

<sup>177</sup> *See Citizens United*, 558 U.S. at 342.

<sup>178</sup> Ronald J. Krotoszynski Jr., *Dissent, Free Speech, and the Continuing Search for the “Central Meaning” of the First Amendment*, 98 MICH. L. REV. 1613, 1618 (2019).

chill[ing] the abuse of power.”<sup>179</sup> Disney’s free speech in this case is a classic example of dissent, as it condemned a bill that adversely affected a large class of the corporation’s employees.<sup>180</sup> In response, Florida lawmakers worked to suppress Disney’s dissenting speech by passing numerous bills that undoubtedly had negative impacts on the corporation.<sup>181</sup> The Court has routinely relied on the idea that corporations are similarly situated to individuals, and their contribution to the “discussion, debate, and the dissemination of information and ideas” is critical to the underlying values of the First Amendment.<sup>182</sup>

## 2. “Chill a Person of Ordinary Firmness”

Next, Disney will need to satisfy the second element of a § 1983 claim by proving that the State’s passing of Florida SB 4-C, HB-9B, and SB-1604 would “chill a person [or corporation] of ordinary firmness” from continuing to exercise the right to free speech.<sup>183</sup> The question of whether the State’s actions reach this standard is a classic mixed question of fact and law and is generally determined through the process of case-by-case adjudication.<sup>184</sup> Judge Richard Posner commented on the standard, stating that a chilling effect can result from “a continued and heightened regulatory scrutiny . . . regardless of whether it ultimately results in sanctions being imposed.”<sup>185</sup> Unfortunately, the Court has not addressed this issue pertaining to such a large corporation. This means that satisfying the second element will be more of a challenge because there is little to no precedent to predict how a court would rule on it. Even so, the State’s actions and the severity of the consequences of those actions could be enough to prove by a preponderance of the evidence that Disney and any

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<sup>179</sup> STEVEN H. SHIFFRIN, *THE FIRST AMENDMENT, DEMOCRACY, AND ROMANCE* 100-101 (1990).

<sup>180</sup> See *The Walt Disney Co.*, *supra* note 7.

<sup>181</sup> See generally Shiffirin, *supra* note 179 (explaining that “dissent and the threat of dissent make hierarchy less oppressive”).

<sup>182</sup> *Citizens United*, 558 U.S. at 343 (quoting *First Nat’l Bank v. Bellotti*, 435 U.S. 765, 783 (1978)).

<sup>183</sup> MANUAL OF MODEL JURY INSTRUCTIONS FOR DISTRICT COURTS OF THE NINTH CIRCUIT § 9.11 (2023).

<sup>184</sup> See Brief Amici Curiae of Nine Law Professors Who Write About Appellate Review in Support of Petitioner at 11, *Bennie v. Munn*, 822 F.3d 392 (2016) (No. 16-452) (“Whether a government official’s actions suffice to chill a speaker of ordinary firmness is a classic mixed question of fact and law—and a question that is part of the test for what constitutes unconstitutional retaliation.”).

<sup>185</sup> Abigail E. Williams, *It’s Dispositive: Considering Constitutional Review for First Amendment Retaliation Claims*, 82 MO. L. REV. 1235, 1241 (2017) (quoting *Bennie v. Munn*, 822 F.3d 392, 399 (8th Cir. 2016)).

other similarly situated corporation would be “chilled” from engaging in analogous behavior.<sup>186</sup>

The State’s first plan to dissolve Reedy Creek had many potential negative repercussions for the way Disney operates its facilities, plans for developmental projects, and ultimately manages its entire municipal system.<sup>187</sup> The Governor’s move to reinstate the special district subject to a variety of restrictions—the largest being that the new named district’s board members are state-appointed—leaves Disney with substantially less autonomy than it had before speaking out about the Parental Rights in Education Bill.<sup>188</sup> The entirety of the legislation is thought to deprive Disney of the unique, symbiotic relationship with the citizens and lawmakers of Florida that has functioned efficiently for over 50 years.<sup>189</sup> Proof of such negative consequences would surely deter other corporations from publicly opposing political agendas, especially those looking to invest in the state of Florida.<sup>190</sup>

### 3. Causation

Finally, Disney must prove that the Corporation’s public criticism of the Parental Rights in Education Bill was a “substantial or motivating factor” in the Governor’s decision to sign the string of legislation impacting Reedy Creek.<sup>191</sup> The dissolution of Reedy Creek was announced just short of a month following Disney’s release of its statement condemning the Parental Rights in Education bill.<sup>192</sup> This led to the widespread presumption that Florida Senate Bill 4-C was passed to punish the corporation. Governor DeSantis supported this presumption when he made the statement: “You’re a corporation based in Burbank, California, and you’re [going to] marshal your economic might to attack the parents in my state. We view that as a provocation, but we’re [going to] fight back.”<sup>193</sup> Additionally, DeSantis’ lieutenant governor, Jeanette Nunez

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<sup>186</sup> See generally Katie Glueck & Frances Robles, *Punishing Disney, DeSantis Signals a Lasting G.O.P. Brawl with Business*, N.Y. TIMES (April 22, 2022), <https://www.nytimes.com/2022/04/22/us/politics/desantis-disney-florida.html>.

<sup>187</sup> See *supra* text accompanying notes 121-23.

<sup>188</sup> See *supra* text accompanying note 129.

<sup>189</sup> See *supra* Part III.C.

<sup>190</sup> See Glueck & Robles, *supra* note 186 (“‘How is this not blackmail?’ said Scott Randolph, the Orange County tax collector. ‘Why would a business want to invest in Florida when the entire rules can change in 72 hours? To me this sends a scary message about the business environment in Florida.’”).

<sup>191</sup> See MANUAL OF MODEL JURY INSTRUCTIONS FOR DISTRICT COURTS OF THE NINTH CIRCUIT § 9.11 (2023).

<sup>192</sup> See generally Glueck & Robles, *supra* note 186.

<sup>193</sup> Amanda Dukes, *Constitutional Law Experts Question if Disney’s First Amendment Rights Were Violated*, WESH, <https://www.wesh.com/article/disney-reedy-creek/3981>

entertained the idea that the State could reverse the course of the SB-4C if Disney changed its stance on the contested education bill.<sup>194</sup> Looking at the correlation between Disney’s critical statement of the “Don’t Say Gay Bill” and the attacks on Disney’s special taxing district, Disney will have a strong argument that its actions substantially motivated the dissolution of Reedy Creek based on timing alone.<sup>195</sup> Similarly, the process for the passing of HB-9B was also clear to be retaliatory in nature, as Senator Doug Broxson said during the Senate’s floor session that the legislation was the result of Disney’s decision to go from “apolitical” to being “involved in public policy.”<sup>196</sup> Add in comments by the Governor and Disney should have a slam dunk.

Despite this clear correlation and the assumption that all the foregoing elements are met, the State will have the opportunity to prove that it would have dissolved the special district even if Disney did not publicly condemn the “Don’t Say Gay Bill.”<sup>197</sup> The mere connection of lawmaker retaliation here could still be ignored if courts do not recognize the constitutional relevance of the situation.<sup>198</sup> A similar scenario played out in the recent Supreme Court decision *Trump v. Hawaii*, where the Court found that President Donald Trump’s travel ban targeting several majority-Muslim nations was based on legitimate purposes.<sup>199</sup> The Trump administration justified the contested legislation on a premise of national security.<sup>200</sup> The Supreme Court majority opinion written by Justice Roberts supported Trump’s executive activity and supported his conclusion “that it was necessary to impose entry restrictions on nationals of countries that do not

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8830# (Apr. 25, 2022, 8:58 PM); Elizabeth Nolan Brown, *Florida Faces First Amendment, Contract, and Budget Issues in Dissolving Disney District*, REASON (Apr. 27, 2022, 9:30 AM), <https://reason.com/2022/04/27/florida-faces-first-amendment-contract-and-budget-issues-in-dissolving-disney-district/>.

<sup>194</sup> Morgyn Joubert, *Florida Wants to Strip Disney World of its Special Status. Does it Violate First Amendment Rights?*, NE. GLOB. NEWS (Apr. 29, 2022), <https://news.northeastern.edu/2022/04/29/florida-disney-first-amendment/>.

<sup>195</sup> See Brown, *supra* note 193.

<sup>196</sup> Hannah Demissie, *Florida Senate Approves Bill to Give DeSantis Control of Disney Special District*, ABC NEWS (Feb. 10, 2023, 3:24 PM), <https://abcnews.go.com/Politics/florida-senate-approves-bill-give-desantis-control-disney/story?id=97039504>.

<sup>197</sup> See MANUAL OF MODEL JURY INSTRUCTIONS FOR DISTRICT COURTS OF THE NINTH CIRCUIT § 9.11 (2023).

<sup>198</sup> Joubert, *supra* note 194 (“They [Disney] can say, ‘Look, this was really close in time and that makes it more likely that it was actually targeted at our message.’ But again, you still have the same problem whether potentially the court will even pay attention to that or not.”).

<sup>199</sup> See *Trump v. Hawaii*, 585 U.S. 667 (2018); see also Ian Millhiser, *Ron DeSantis’s Attack on Disney Obviously Violates the First Amendment*, VOX (Apr. 23, 2022, 8:00 AM), <https://www.vox.com/23036427/ron-desantis-disney-first-amendment-constitution-supreme-court>.

<sup>200</sup> See *Trump*, 585 U.S. at 706.

share adequate information for an informed entry determination, or that otherwise present national security risks.”<sup>201</sup> Here, Florida lawmakers will need to justify their actions and will likely be able to present many policy justifications for why a corporation should no longer have special treatment or “corporate perks.”<sup>202</sup> The State’s biggest obstacle will be proving by a preponderance of the evidence that there were legitimate reasons for the restructuring of Reedy Creek and the change would have occurred even if Disney had chosen silence.<sup>203</sup>

### C. *Legitimate State Concerns*

Even if Disney can establish standing and also meet the elements of retaliation as illustrated above, the dispute is far from an open-and-shut case. In order to resolve the controversy at hand, the court must also consider the merits of the State’s justifications for its actions against the corporation. DeSantis, the spokesperson of the feud, has rooted the State’s actions in the need to resolve the unfair advantage that Disney has over other businesses in Florida.<sup>204</sup> Viewing the controversy under a theory of corporate power disparity, one similar to the progressive mindset of the influential Supreme Court Justice Louis Brandeis, tends to weaken some of the arguments favoring Disney in this dispute.<sup>205</sup> But even if the power disparity that Disney possesses in Florida is proven to be of public concern, it is crucial to look to the means the DeSantis administration employed to reach its end goal. The analysis turns on whether the State’s actions actually placed the power back into the affected constituents, or merely placed it into a different set of hands equally as powerful as Disney as a corporation.<sup>206</sup>

Throughout our nation’s history, government actors have grappled with concerns of concentrated corporate power and to what is the appropriate action to ensure that the prosperity of American citizens is not undermined by such organizations. Supreme Court Justice Louis Brandeis had been a famous advocate for corporate accountability, and since the early days of his career, used his platform to critique the social, political,

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<sup>201</sup> *Id.* at 675.

<sup>202</sup> See Glueck & Robles, *supra* note 186.

<sup>203</sup> See MANUAL OF MODEL JURY INSTRUCTIONS FOR DISTRICT COURTS OF THE NINTH CIRCUIT § 9.11 (2023).

<sup>204</sup> Jesus Jiménez & Brooks Barnes, *What We Know About the DeSantis-Disney Dispute*, N.Y. TIMES (May 19, 2023), <https://www.nytimes.com/article/disney-florida-desantis.html>.

<sup>205</sup> See Louis D. Brandeis, *A Curse of Bigness*, HARPER’S WKLY., Jan. 10, 1914, at 18.

<sup>206</sup> See generally K. Sabeel Rahman, *Policymaking as Power-Building*, 27 S. CAL. INTERDISC. L. J. 315 (2017-2018).

and economic dangers of corporate “bigness.”<sup>207</sup> Before his nomination to the Supreme Court, Brandeis published a collection of papers expressing his progressive ideology and distrust of concentrations of power as threats to the democratic process.<sup>208</sup> His use of the phrase “the curse of bigness” propelled political conversations about the accountability of private actors to the public, and whether or not their disparate power was being used for the benefit of society as a whole.<sup>209</sup> Brandeis’ support for small businesses, and his advocacy for workers, consumers, and citizens more broadly, helped coin him as the “people’s attorney” in his fight against unchecked corporate power.<sup>210</sup> More directly, Brandeis’ criticism of private power contributed to the formation of the various models of corporate regulation we see today such as antitrust laws, corporate governance principles, and public utility regulations.<sup>211</sup>

Brandeis’ focus on the concept of public utility raises important and valid points in this controversy between Disney and the State. The Justice frequently argued that when large corporations are responsible for providing goods or services that are necessities of life, they should be held to a higher form of regulation, essentially to “ensure that the production and distribution of these goods were managed in accordance with the public good.”<sup>212</sup> Legal Scholar K. Sabeel Rahman has continued to analyze and apply the public utility theory as it relates to modern forms of corporate power disparities.<sup>213</sup> In his publications, Rahman points out that there are some kinds of private power that are more troubling than others, and those that are unique and distinctive demand “a heightened level of public oversight and regulation than that applied to other more ordinary market participants.”<sup>214</sup> Even if Disney cannot be said to produce goods or services that are necessities of life, it does possess unique and distinct powers that no other corporation of its kind has. With this, it could be said that Governor DeSantis’ actions align his views with those of Brandeis’ progressive mindset and his overall attack on corporate power disparities.

As Rahman also suggests, clear attacks on corporate power disparities must be backed up with clear identification of the affected constituents.<sup>215</sup>

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<sup>207</sup> See, e.g., Brandeis, *supra* note 205, at 18.

<sup>208</sup> See *id.*

<sup>209</sup> K. Sabeel Rahman, *The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept*, 39 CARDOZO L. REV. 1621, 1628 (2018).

<sup>210</sup> See Richard P. Adelstein, “Islands of Conscious Power”: Louis D. Brandeis and the Modern Corporation, 63 BUS. HIST. REV. 614, 615 (1989).

<sup>211</sup> See Rahman, *supra* note 209, at 1631-32.

<sup>212</sup> *Id.* at 1632-3.

<sup>213</sup> See generally *id.*

<sup>214</sup> See *id.* at 1639; see Rahman *supra* note 206, at 318.

<sup>215</sup> See Rahman *supra* note 206, at 321 (explaining the importance of identifying a “key stakeholder community that is historically undermanned and less influential than the more

Whether that class is confined to other corporations operating in the state, residents of Orange and Osceola County, or citizens of Florida in general, Governor DeSantis has neglected to identify those who have been harmed by Disney's overwhelming power. Additionally, his actions have failed to provide these constituents with "real hooks and levers through which they can exercise effective countervailing power."<sup>216</sup> DeSantis' control of Disney's independent district's board surely was purposeful in stripping Disney of its unique powers, action which seems to be what Rahman describes as "ad hoc or at the whim of the policymaker."<sup>217</sup> This means that even if Florida had a legitimate concern over the power Disney possessed, its actions did nothing to empower or include those who may have actually been impacted by Disney's immense corporate powers. The DeSantis' administration continues to target large corporations. But the true question is whether the attacks are out of the State's legitimate concern for a less empowered class of people, or simply because the corporations continue to publicly express their disapproval of the policies being enacted in the state.

#### CONCLUSION

It is evident that much of Disney's longstanding success is attributed to its strong relationship with the state of Florida and the unique capabilities granted by the Reedy Creek Improvement District.<sup>218</sup> The creation of Reedy Creek allowed the theme park powerhouse to turn 39 square miles of land spanning over Central Florida's Orange and Osceola counties into the destination that we know today. The use of special independent districts remains a valuable tool across the U.S. to promote development, innovation, and ultimately, strong municipal relationships.<sup>219</sup> Even though it seems the special powers of the district will not be erased entirely, Disney's autonomous authority will and has already been significantly altered.

Overall, Disney has the potential to prevail on its First Amendment retaliation claim depending on how a court interprets the facts pertaining to the case and the loosely established precedent on how constitutional

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resourced and sophisticated industry players residents and labor groups against developers, or consumers against the financial sector-benefiting from institutions and policies designed in part to place these constituencies on more equal footing[.]").

<sup>216</sup> *See id.* at 363.

<sup>217</sup> *See id.* ("So long as participation remains ad hoc or at the whim of the policymaker, it will necessarily be thin, disempowered, less likely to serve as a mode of empowerment or inclusion.").

<sup>218</sup> *See generally* Emerson, *supra* note 3.

<sup>219</sup> *See id.* at 214.

protections apply to corporations. If Disney does make it to the Supreme Court with this claim, the State's continuing legislative actions will be subject to strict scrutiny to determine if its overarching goal was for a legitimate purpose or solely to retaliate against Disney for its stance on the State's current administration.<sup>220</sup> First Amendment rights must not be confined to individuals, as corporate free speech is also required to promote prosperous public disclosure, which is the foundation of American democracy.<sup>221</sup>

On all accounts, Disney and the State will likely remain tied up in this feud and litigation for the foreseeable future. Despite Reedy Creek's dissolution and materially modified reinstatement, the impacts of the conflict between Disney and the State are far greater than the potential tax, debt, and authoritative consequences laid out here. The public feud that is still unfolding will have an impact on the way government actors leverage power over large, similarly situated corporations. Concerns over corporate power disparities are relevant, but it is important to recognize that those concerns should be balanced with a corporation's rights under the First Amendment. Corporations, today more than ever, are using their platforms to tailor their messages to ignite social change. With such a definitive freedom granted under the First Amendment comes many opportunities of resistance. The First Amendment does not discriminate based on political views, and neither shall the government actors who work to uphold its value. This string of legislation could be just the beginning of authoritarian power plays to hinder corporations from speaking out in opposition to certain political agendas.

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<sup>220</sup> See Brown, *supra* note 193.

<sup>221</sup> See *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 373 (2010) (Roberts, J., concurring).