NO MORE HOUSE FOR MICKEY MOUSE: THE PROSPECTIVE DISSOLUTION OF THE REEDY CREEK IMPROVEMENT DISTRICT

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I. INTRODUCTION

On April 22, 2022, Governor Ron DeSantis signed SB 4-C into law, creating a cascade of constitutional dilemmas and expanding government overreach by prospectively dissolving nearly fifty-five years of established governmental control of the Reedy Creek Improvement District ("Reedy Creek") by the Walt Disney Company ("Disney").[1] The creation of these privileges provided to Disney under Chapter 67-764 of the Laws of Florida was unprecedented.[2] The original provision granting governmental powers to Disney led to disagreement over whether the special district violated the Florida Constitution.[3] Now, the prospective dissolution of this unique special district raises serious concerns about whether federal and state constitutional provisions have been violated.

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1. *See Governor Ron DeSantis Signs Legislation to Create Lawful Congressional Districts and Remove Special Interest Carveouts*, FLA. GOV. (Apr. 22, 2022), [hereinafter DeSantis Signs Legislation to Remove Carveouts] https://www.flgov.com/2022/04/22/governor-ron-desantis-signs-legislation-to-create-lawful-congressional-districts-and-remove-special-interest-carveouts/.

2. Kent Wetherell, *Florida Law Because of and According to Mickey: The "Top 5" Florida Cases and Statutes Involving Walt Disney World*, 4 FLA. COASTAL L.J. 1, 3 (2002) ("Potentially the most significant piece of legislation passed by the Florida legislature in the twentieth century was the special act. . . .").

3. *See* State v. Reedy Creek Improvement Dist., 216 So. 2d 202, 205 (Fla. 1968).

The purpose of this Article is to review the constitutionality of the prospective dissolution of Reedy Creek by the enactment of SB 4-C and government overreach of the administration of private corporations by Governor DeSantis. This Article begins with background on Florida law governing special districts and a historical overview of the early relationship between Disney and Reedy Creek. A short summary will be provided regarding the heated exchange between Disney and Governor DeSantis due to the corporation's criticism of HB 1557, Parental Rights in Education Bill (i.e., the "Don't Say Gay" legislation).

After considering the relationship between Disney's criticism of HB 1557 and Governor DeSantis's direction to dissolve Reedy Creek, this Article will analyze whether the State of Florida's action violated the First Amendment and satisfies the elements of a § 1983 retaliation claim. Similarly, this Article will analyze whether SB 4-C alters the rights and terms of Reedy Creek bonds in violation of the Contract Clauses of the United States and Florida Constitutions.

II. RELEVANT HISTORICAL AND LEGAL BACKGROUND

The primary governing source for taxation and regulatory actions stem from federal, state, and local municipal governments.[4] However, in recent years, a new structure of government has become popular—special districts.[5] According to Florida law, a "'[s]pecial district' means a local unit of special government" created pursuant to general or special law for the purposes of performing prescribed, specialized functions within limited boundaries.[6] In 2002, the U.S. Census Bureau determined there were approximately 35,000 special districts in the United States.[7] In Florida alone, over 1,000 special districts have been established.[8] Special districts in the State of Florida have existed since Territorial Governor William P. DuVal signed legislation establishing the authority and procedures for their creation in

4. 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. 177, 178 (2009).

5. *Id.* at 178–89.

6. FLA. STAT. § 165.031(7) (2023); FLA. STAT. § 189.012(6) (2023).

7. Emerson, *supra* note 4, at 180–81.

8. David M. Hudson, *Special Taxing Districts in Florida*, 10 FLA. ST. U. L. REV. 49, 49 (1982).

1822.[9] President Franklin Delano Roosevelt's objective to reverse the financial turmoil of the Great Depression in the 1930s led to the popularization of special districts across the United States.[10] In addition, approximately a decade before the establishment of Reedy Creek, special districts gained further popularity for redeveloping infrastructure in the United States after World War II.[11]

The State of Florida is unique in that the state legislature passed two statutes in 1974 defining the practices and protocols for establishing special districts.[12] However, Reedy Creek was established in 1967 through a special state enactment designated for property owned by Disney near Orlando.[13] The decision to build a Disney resort in Central Florida was confirmed by an aerial tour Walt Disney took on November 22, 1963.[14] After undertaking an economic analysis of the region, the corporation decided Orlando best suited its future expansion plans.[15]

Disney's new Florida amusement park faced challenges unlike its counterpart in Anaheim. By comparison, the Orlando site would not have a steady stream of visitors from local residents.[16] In addition, Walt Disney believed the corporation needed control of the area to ensure "that it does not become the jungle of signs, lights and fly-by-night operations that have 'fed' on Disneyland's audience."[17] Walt Disney believed a special district would favor his corporation and Orange and Osceola counties.[18] Disney would achieve control of their theme parks and resorts, while the local counties would not incur debt for developing the park's infrastructure.[19]

By 1965, Disney owned 27,000 acres of undeveloped land for its new project and in May 1966 successfully advocated in the

9. *Id.* at 51–52.
10. Emerson, *supra* note 4, at 180.
11. *Id.*
12. Hudson, *supra* note 8, at 59.
13. Emerson, *supra* note 4, at 195.
14. *Id.* at 183.
15. *Id.* at 184.
16. *Id.* at 189.
17. *Id.* (quoting *Preliminary Planning Parameters for Project X, June 14, 1965*, Folder 21, Box 2, *Disney World Land Purchase/RCID Collection*, SC-092, *Summary of Project Future Seminar* at 4, UCF SPECIAL COLLECTIONS, https://scua.library.ucf.edu/repositories/4/archival_objects/47172 (last visited, Feb. 16, 2024)).
18. *See id.* at 191.
19. *Id.*

Ninth Judicial Circuit to establish the Reedy Creek Drainage District.[20] The purpose of this special district was to provide Disney with the authority to drain and reclaim property—much of which was undeveloped swampland.[21] In 1967, the Florida legislature passed special legislation under Chapter 67-764 of the Laws of Florida, establishing a new special district to succeed the Reedy Creek Drainage District.[22] The creation of the Reedy Creek Improvement District was unique, and its enabling statute is over one hundred pages in length.[23] According to one scholar, "the breadth of authority delegated to the District effectively makes it Florida's sixty-eighth county."[24]

The Florida legislature established that Reedy Creek would be controlled by five supervising board members, elected by the majority of landowners in the district.[25] One vote is accorded to every acre of land owned by property owners in the special district.[26] Functionally, Disney has absolute control over the special district since it owns most of the land within Reedy Creek.[27] Only twenty-four acres in the district are privately owned, further establishing Disney's total control over appointing the Reedy Creek supervising board.[28]

Chapter 67-764 endows the Reedy Creek Improvement District with broad municipal powers.[29] This includes the power to establish airport, recreation, and parking facilities, provide fire protection and transportation, maintain public utilities, and issue bonds.[30] In the preamble of the statute, the Florida legislature described its motive and purpose in offering these extensive governmental powers to Disney:

> WHEREAS, in order to assure the future welfare and continued prosperity of Florida and its people, Florida must continue to attract temporary visitors, permanent residents and new industries and offer to the public outstanding

20. *Id.* at 187, 194.
21. *Id.* at 194.
22. Wetherell, *supra* note 2, at 3–4.
23. Emerson, *supra* note 4, at 195.
24. Wetherell, *supra* note 2, at 6.
25. 1967 Fla. Laws 284–85.
26. *Id.* at 285.
27. Wetherell, *supra* note 2, at 4.
28. *Id.* at 3 n.11.
29. 1967 Fla. Laws 290.
30. *See id.* at 294–96.

> vacation, sports and recreation facilities and residential communities; and . . .
>
> WHEREAS, the Legislature further finds and declares that the purposes of this Act cannot be realized except through a special taxing district having the powers hereinafter provided. . . .[31]

The Florida legislature recognized the substantial financial benefits tourism offered the state with Disney's establishment of a park and resort in Orlando.[32] Therefore, the Reedy Creek Improvement District was created to ensure the success of Disney's business operations in Orlando and the construction of large-scale infrastructure.[33] The State legislature also reasoned that delegating these municipal powers would ensure local counties and residents were not financially overburdened.[34] This decision has had a long-term positive impact on the economy of the State of Florida. According to one scholar, "[Disney] annually attracts more than forty million visitors to the state, pays hundreds of millions of dollars in taxes, and is one of the state's largest employers."[35]

Following the enactment of Reedy Creek in November 1968, the State of Florida challenged its newly established special district in the Osceola County Circuit Court to determine "the constitutionality of this unique privatization of governance."[36] The legal issue was whether the drainage bonds issued by Reedy Creek for the development of Disney's property were valid.[37] The trial court held the drainage bonds were valid, which the Florida Supreme Court affirmed.[38] In *State v. Reedy Creek Improvement District*, the Florida Supreme Court validated the legislative enactment of Reedy Creek and the broad municipal powers of the special district as having a justified public purpose.[39] Focusing on the benefits the special district provided, the court recognized the:

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31. *Id.* at 261, 263.
32. *Id.*
33. *See* Emerson, *supra* note 4, at 191.
34. *See id.*
35. Wetherell, *supra* note 2, at 2.
36. Emerson, *supra* note 4, at 199.
37. *See* State v. Reedy Creek Improvement Dist., 216 So. 2d 202, 204 (Fla. 1968).
38. *Id.* at 202–07.
39. *Id.* at 205.

> Successful completion and operation of the District no doubt will greatly aid the Disney interest and its contemplated Disneyworld project. However, it is obvious that to a lesser degree the contemplated benefits of the District will inure to numerous inhabitants of the District in addition to persons in the Disney complex.[40]

The Florida Supreme Court's decision in *Reedy Creek Improvement District* ensured there were no future legal challenges to the validity of municipal powers granted to the special district and further confirmed the benefit Disney provided to the State of Florida.[41]

Reedy Creek is a unique privatization of municipal government that benefits Florida's economy and removes financial burdens from local counties in and around Orlando.[42] The history of the development of Reedy Creek reflects its distinct legal and economic status in the State of Florida. However, current events have led to a potential crisis with the prospective dissolution of Disney's special district.

III. THE PROSPECTIVE DISSOLUTION OF REEDY CREEK BY GOVERNOR DESANTIS AND THE FLORIDA LEGISLATURE

On March 28, 2022, Governor DeSantis signed HB 1557 into law, which according to the Governor's office, "reinforces parents' fundamental rights to make decisions regarding the upbringing of their children."[43] The new legislation provides that "[c]lassroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in prekindergarten through grade 8."[44] The passage of this state legislation led Disney to publicly declare its opposition to the "Don't Say Gay" bill.[45] Disney's then CEO, Bob Chapek, announced "[o]ur goal as a company is for this law to be repealed by the legislature or struck

40. *Id.*
41. *See* Emerson, *supra* note 4, at 201.
42. *Id.* at 191.
43. *DeSantis Signs Legislation to Remove Carveouts*, *supra* note 1.
44. FLA. STAT. § 1001.42(8)(c)(3) (2023).
45. Robert Corn-Revere, *Punishing Disney for Opposing Florida's 'Don't Say Gay' Law Poses Serious First Amendment Problems*, FIRST AMEND. WATCH (Apr. 25, 2022), https://firstamendmentwatch.org/punishing-disney-for-opposing-floridas-dont-say-gay-law-poses-serious-first-amendment-problems/.

down in the courts, and we remain committed to supporting the national and state organizations working to achieve that."[46]

Such action was not well received by Governor DeSantis. Viewing Disney's public criticism as a threat, he responded, "[y]ou're a corporation based in Burbank, Calif., and you're gonna marshal your economic might to attack the parents of my state? . . . We view that as a provocation, and we're going to fight back against that."[47] On April 22, 2022, immediately after signing SB 4-C and prospectively dissolving the Reedy Creek Improvement District, Governor DeSantis commented, "I'm just not comfortable having that type of agenda get special treatment in my state."[48]

It appears the Florida legislature and Governor DeSantis were revoking Disney's special powers over the Reedy Creek Improvement District as retaliation for the corporation's stance on HB 1557. However, a spokeswoman for Governor DeSantis responded to this accusation, and stated, "Gov. DeSantis has consistently supported a more level playing field for all businesses in Florida. . . . It is not 'retaliatory' to pass legislation that gets rid of carve-outs and promotes a fairer environment for all companies to do business."[49]

In response to Disney's public statements, SB 4-C was signed into law on April 22, 2022, which would have prospectively dissolved Reedy Creek on June 1, 2023.[50] This recent legislation poses significant issues of constitutional jurisprudence. The relevant background of the dispute between Disney and Governor DeSantis regarding HB 1557 indicates there may be an actionable claim for retaliation under the First Amendment.[51] In addition, the revocation of Disney's special district may alter

46. *Id.*; *see also* Marie-Amélie George, *Expanding LGBT*, 73 FLA. L. REV. 243, 246 (2021) (discussing the recent trend of national corporations promoting gay, lesbian, transgender, queer, intersex, and asexual causes).

47. Emily L. Mahoney & Bianca Padró Ocasio, *Florida's Disney District Crackdown May Violate First Amendment*, TAMPA BAY TIMES (Apr. 23, 2022), https://www.tampabay.com/news/florida-politics/2022/04/23/floridas-disney-district-crackdown-may-violate-first-amendment-legal-experts-say/; *see also* Corn-Revere, *supra* note 45 (alteration in original) (commenting further on Disney's social position, Governor DeSantis stated that "[i]f Disney wants to pick a fight, they chose the wrong guy. I will not allow a woke corporation based in California to run our state").

48. Corn-Revere, *supra* note 45.

49. Mahoney & Ocasio, *supra* note 47.

50. *Id.*

51. *See* Black Lives Matter D.C. v. Trump, 544 F. Supp. 3d 15, 46 (D.D.C. 2021).

bonds issued by Reedy Creek, which could violate the Contract Clauses of the United States and Florida Constitutions.[52] Against this backdrop, it is critical to review the constitutionality of SB 4-C and the adverse economic effects of dismantling the Reedy Creek Improvement District.

IV. PROCEDURAL BARRIERS TO THE WALT DISNEY COMPANY FILING SUIT AGAINST THE STATE OF FLORIDA

Following the enactment of SB 4-C, taxpayers from Orange and Osceola Counties filed a lawsuit against Governor DeSantis and the State of Florida in the United States District Court for the Southern District of Florida.[53] The taxpayers claimed on behalf of Disney that the State of Florida retaliated against the corporation in violation of the First Amendment.[54] In addition, the taxpayers alleged constitutional harm due to the impairment of contractual rights and obligations secured by Chapter 67-764 of the Laws of Florida.[55] However, the federal district court dismissed the lawsuit.[56]

The federal judge presiding over the lawsuit stated the taxpayers "allege what is in essence a First Amendment retaliation claim on Disney's behalf. And First Amendment retaliation claims do not qualify for watered-down third-party standing standards."[57] Therefore, a successful claim against the State of Florida for any form of retaliation must be filed by Disney. In addition, the taxpayers did "not plausibly allege they have suffered any concrete injury as a result of the alleged violation of Disney's First Amendment rights, and nothing in the Complaint shows Plaintiffs have a close relationship with

52. *See, e.g.*, Vesta Fire Ins. Corp. v. Florida, 141 F.3d 1427, 1433 (11th Cir. 1998); Sarasota County v. Andrews, 573 So. 2d 113, 115 (Fla. 2d Dist. Ct. App. 1991).

53. James Call, *DeSantis Scores Win in Disney Reedy Creek Battle; Lawsuit Dismissed as "Highly Speculative"*, TALLAHASSEE DEMOCRAT (May 11, 2022, 5:32 PM), https://www.tallahassee.com/story/news/politics/2022/05/11/desantis-disney-florida-taxpayer-lawsuit-thrown-out-court-reedy-creek/9733488002/; Complaint for Declaratory and Injunctive Relief at 1, Foronda v. Florida, No. 1:22-cv-21376, 2022 WL 1404863 (S.D. Fla. May 3, 2022).

54. Katie Sivco, *Judge Dismisses Lawsuit Against Gov. Ron DeSantis Over Reedy Creek's Dissolve*, WESH 2 (May 10, 2022, 6:14 PM), https://www.wesh.com/article/reedy-creek-lawsuit/39959849.

55. *Id.*; *see also* 1967 Fla. Laws 296 (granting Reedy Creek the power to issue bonds).

56. Sivco, *supra* note 54.

57. *Id.*

Disney."[58] Any First Amendment retaliation claim against the State of Florida will require a concrete and particularized injury and should be filed by Disney, not Orange or Osceola County residents.

If Disney chooses to challenge the actions of Governor DeSantis and the state legislature, it must first devise a procedural claim by which the corporation can sue the State of Florida. As described above, many commentators believe Governor DeSantis and the Florida legislature enacted retaliatory legislation to punish Disney for publicly opposing HB 1557.[59] Therefore, Disney must allege a particularized injury to sue the State of Florida for claims of First Amendment retaliation and impairment of rights under the Federal Contracts Clause.

A. Standing Requirements

Standing exists to prevent a floodgate of litigation in federal courts. Accordingly, Disney must have standing to file a suit in federal court against the State of Florida.[60] Disney, as the plaintiff in the suit, "must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief."[61] Disney is not permitted to litigate its claims to merely "vindicate their own value preferences through the judicial process."[62] As a matter of fact, Disney remains committed to repealing social legislation like HB 1557.[63] Therefore, Disney cannot file this suit to enforce or validate their social preferences.

However, the interactions between Disney and the State of Florida involve a judicially cognizable interest. Under the First Amendment, Disney has a constitutional interest in the free exercise of its own speech and protection from any state action limiting this right.[64] The main concern is whether Disney can

58. Call, *supra* note 53.

59. Corn-Revere, *supra* note 45.

60. *See* Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 11 (2004) ("In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975))).

61. Allen v. Wright, 468 U.S. 737, 751 (1984).

62. Sierra Club v. Morton, 405 U.S. 727, 740 (1972).

63. Corn-Revere, *supra* note 45.

64. *See* U.S. CONST. amend. I; *see also* Gitlow v. New York, 268 U.S. 652, 666 (1925) (holding that the rights secured by the First Amendment apply to state governments through incorporation under the Fourteenth Amendment).

allege an injury-in-fact that is "concrete and particularized" and an "actual or imminent" "invasion of a legally protected interest."[65] Due to the implication of the First Amendment, a "legally protected interest"[66] has already been established.

As discussed above, the requirements for standing have not been satisfied by Florida taxpayers. However, the enactment of SB 4-C particularly, and specifically, harmed Disney. This legislation eliminates government benefits provided to the corporation since 1967.[67] The harm is concrete because the state legislation will identifiably remove benefits from Disney in June 2023.[68] However, the issue is whether the retaliatory harm caused by the State of Florida is "actual or imminent." The taxpayers in the federal lawsuit dismissed in May 2022 did not satisfy the standing requirements because the retaliatory harm affected Disney and not the third-party residents.[69] However, there was another standing issue in that particular suit. The benefits provided by Reedy Creek will not be revoked until June 2023.[70] Therefore, at least for taxpayers, any actionable harm caused by the enactment of SB 4-C, such as increased tax liability, is too speculative or premature.

Alternatively, the First Amendment retaliation caused by the State of Florida against Disney is an actual harm since it was in reaction to the corporation's public position on HB 1557. Yet, any economic harm related to the dissolution of the special district or the impairment of contractual obligations under the Federal Contracts Clause is probabilistic. With the possibility of losing government benefits, Disney must show either "substantial risk" that it will occur, or that such harm is "certainly impending."[71]

Most notably, Disney may have barriers to their suit because Governor DeSantis and the Florida legislature are presently proposing a "compromise bill," which will leave Reedy Creek primarily intact.[72] Preserving most of the benefits secured by

65. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992) (citations omitted).
66. *Id.*
67. 1967 Fla. Laws 256, 358; Mahoney & Ocasio, *supra* note 47.
68. *See* Mahoney & Ocasio, *supra* note 47.
69. Call, *supra* note 53.
70. *See* Mahoney & Ocasio, *supra* note 47.
71. *See* Clapper v. Amnesty Int'l USA, 568 U.S. 398, 414 n.5 (2013).
72. Alison Durkee, *DeSantis Denies Reports That Florida Lawmakers Are Backtracking on Punishing Disney*, FORBES (Dec. 2, 2022, 1:50 PM), https://www.forbes.com/sites/alisondurkee/2022/12/02/desantis-denies-reports-that-florida-lawmakers-are-backtracking-on-punishing-disney/?sh=1a33f7b78278.

Chapter 67-764 may ensure that Disney does not experience any economic injuries and that Reedy Creek bonds are not impaired. Aside from this recent development, the likelihood SB 4-C will prospectively dissolve Reedy Creek in June 2023 is "certainly impending."[73] Depending on the effect of a "compromise bill," Disney may have sufficient standing to file claims for future economic damages under the Federal and Florida Contracts Clauses. However, more definitively, Disney can file a retaliation suit under the First Amendment because the alleged harm is actual, concrete, and particularized.

B. The Restrictions of State Sovereign Immunity

Standing is not the only obstacle to filing a lawsuit. State sovereign immunity may also preclude Disney from filing a lawsuit against Governor DeSantis and the Florida legislature. The Eleventh Amendment provides that federal judicial authority does not "extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State."[74] Following the United States Supreme Court's decision in *Hans v. Louisiana*, all private suits against a state are barred under the Eleventh Amendment, including suits filed by a citizen against its own state.[75] In this instance, Disney could be considered a citizen of either the State of Florida or California.[76] In either case, according to the Supreme Court's interpretation of state sovereign immunity in *Hans*, Disney could not file a suit against the State of Florida.

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73. *See Clapper*, 568 U.S. at 414 n.5.

74. U.S. CONST. amend. XI; *see also* Sharon E. Rush, *Oh, What a Truism the Tenth Amendment Is: State Sovereignty, Sovereign Immunity, and Individual Liberties*, 71 FLA. L. REV. 1095, 1103–04 (2019) (footnotes omitted) ("[The Eleventh Amendment] bars federal courts from hearing certain diversity suits brought against a state. It was adopted to overrule the Supreme Court's 1793 decision in *Chisholm v. Georgia*, in which the Court upheld its jurisdiction to hear a suit against Georgia for money damages and rejected Georgia's defense of sovereign immunity.").

75. 134 U.S. 1, 10–11 (1890); *see also* THE FEDERALIST NO. 81 (Alexander Hamilton) ("It is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent. . . . [T]he exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union.").

76. 28 U.S.C. § 1332(c)(1) ("[A] corporation shall be deemed to be a citizen of every State . . . by which it has been incorporated and of the State or foreign state where it has its principal place of business."). In this case, Disney is headquartered in Burbank, California, but has a significant presence and amount of business in Orlando, Florida.

While there are exceptions to the doctrine of state sovereign immunity, none are applicable in the instant case. The first exception is that a state can waive its right to state sovereign immunity and consent to a lawsuit.[77] However, due to the animosity directed by Governor DeSantis towards Disney, it is unlikely the State of Florida would waive its right to state sovereign immunity.

The second exception is that Disney could sue Governor DeSantis for injunctive relief under the legal doctrine described in *Ex parte Young*.[78] Under the *Young* doctrine, Governor DeSantis would not be considered a state actor under the Eleventh Amendment because a state official cannot violate the United States Constitution under the guise of state authority.[79] Therefore, Disney would seek to enjoin Governor DeSantis from enforcing SB 4-C because the prospective dissolution of the Reedy Creek Improvement District will violate the Federal Contracts Clause.[80]

However, Disney could not use the *Young* doctrine to allege First Amendment retaliation against Governor DeSantis because the alleged harm has already occurred and will not be repeated.[81] Therefore, injunctive relief would not be available to Disney. Moreover, there are limitations to the *Young* doctrine. According to the United States Supreme Court's holding in *Edelman v. Jordan*, monetary damages under the *Young* doctrine can only be granted if the relief is prospective and "ancillary."[82] Disney cannot request a "retroactive award of monetary relief" from the State of Florida's treasury for any economic harms caused by the enactment of SB 4-C.[83] Any form of monetary relief must be crafted to relieve harm caused by the future, prospective enactment of SB 4-C in June 2023.

The third and final exception is the congressional abrogation of state sovereign immunity.[84] This issue goes beyond the scope of

77. *Hans*, 134 U.S. at 17.
78. 209 U.S. 123, 168 (1908).
79. *See id.* at 159–60.
80. *See* Energy Rsrvs. Grp. v. Kan. Power & Light Co., 459 U.S. 400, 416 (1983).
81. *See* O'Shea v. Littleton, 414 U.S. 488, 495–96 (1974) ("Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.").
82. Edelman v. Jordan, 415 U.S. 651, 668 (1974).
83. *Id.*
84. *See* Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 55–56 (1996).

this Article because it is not within the control of Disney to annul Florida's sovereign immunity and grant their corporation the authority to sue Governor DeSantis and the Florida legislature. Disney could attempt to lobby the United States Congress to abrogate Florida's immunity if the state action violated conduct that was congruent and proportional to conduct prohibited under the Fourteenth Amendment.[85]

C. Constitutional Accountability Under § 1983

Disney has another procedural avenue whereby it can file equitable and legal claims against Governor DeSantis and the Florida legislature. The primary issue with the *Young* doctrine is that Disney cannot file a First Amendment claim against the State of Florida because the retaliatory action has already occurred.[86] Accordingly, the claim will be barred by the doctrine of state sovereign immunity. However, under 42 U.S.C. § 1983, plaintiffs can seek the redress of state "constitutional tort" violations, including First Amendment retaliation claims.[87] The statute ensures that federal civil rights are protected by holding state officials responsible for their actions.[88]

Under 42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .[89]

85. *See id.* at 59; *see also* Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank, 527 U.S. 627, 639 (1999).

86. *See Ex parte* Young, 209 U.S. 123, 125 (1908).

87. Charles F. Abernathy, *Section 1983 and Constitutional Torts*, 77 GEO. L.J. 1441, 1441 (1989); *see also* Katherine Mims Crocker, *Reconsidering Section 1983's Nonabrogation of Sovereign Immunity*, 73 FLA. L. REV. 523, 525 (2021) ("Section 1983 provides a cause of action for so-called constitutional-tort suits against every '*person*' who 'subjects, or causes to be subjected' someone else 'to the deprivation of [federal] rights, privileges, or immunities' while acting 'under color of' state law.").

88. Abernathy, *supra* note 87, at 1447; Shannon Roesler, *State-Created Environmental Dangers and Substantive Due Process*, 73 FLA. L. REV. 685, 736 (2021).

89. 42 U.S.C. § 1983.

Under § 1983, Disney can hold Governor DeSantis and the Florida legislature accountable for any actions that deprived the corporation of its rights secured by the United States Constitution. In this case, the controverted rights are protected by the First Amendment and the Federal Contracts Clause.

However, every person cannot be sued under this statute since it requires that the deprivation is caused by a "person" acting under the color of state law. [90] As per the statutory definition, that person is considered any state or local official.[91] Governor DeSantis and the Florida legislature would satisfy the "person" requirement under § 1983. The United States Supreme Court has established that an action "under color of" state law is the "[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law."[92] Acting under the color of state law, Governor DeSantis and the Florida legislature abused their authority by removing government benefits in an attempt to retaliate against Disney for criticizing HB 1557.

Under § 1983, Disney can file a First Amendment retaliation suit for monetary damages as "an action at law."[93] In addition, Disney can file a "suit in equity" to enjoin Governor DeSantis from enforcing SB 4-C because the prospective state enactment

90. Crocker, *supra* note 87, at 528 (discussing "that the language referencing conduct occurring 'under color of enumerated state authority' reaches acts committed in the course of a state or local official's employment even if state law made them illegal. Section 1983 was intended . . . to 'override certain kinds of state laws,' but also to 'provide[] a remedy where state law was inadequate' and 'where the state remedy, though adequate in theory, was not available in practice'").

91. Shannon v. Gudino, No. 2:22-cv-01065, 2022 U.S. Dist. LEXIS 212062, at *4 (E.D. Cal. Nov. 22, 2022) ("'Persons' who may be sued under Section 1983 are 'state and local officials sued in their individual capacities, private individuals and entities which acted under color of state law, and local governmental entities.'" (quoting Vance v. County of Santa Clara, 928 F. Supp. 993, 995–96 (N.D. Cal. 1996))); *see also* Crocker, *supra* note 87, at 525 ("The Court has long held that the key word 'person' does not include state governments. Instead, the Court has concluded, it includes only state and local officials and local governments.").

92. United States v. Classic, 313 U.S. 299, 326 (1941).

93. § 1983; Powell v. Alexander, 391 F.3d 1, 16 (1st Cir. 2004) (explaining that "[c]laims of retaliation for the exercise of First Amendment rights are cognizable under § 1983"); *see also* Ann Woolhandler & Michael G. Collins, *State Jurisdictional Independence and Federal Supremacy*, 72 FLA. L. REV. 73, 114 (2020) (discussing that a § 1983 claim must be heard in a state court venue, because "[s]tate courts apparently are required to entertain § 1983 claims whether or not the state supplies different but constitutionally adequate remedies, whether or not the § 1983 remedies in the particular case are constitutionally required, and even though the federal courts are clearly available to hear the claims under § 1983").

would impair Reedy Creek bonds in violation of the Federal Contracts Clause.[94] Because these claims involve federal questions under the First Amendment and the Federal Contracts Clause, a federal district court will have original jurisdiction over the Disney suit.[95]

D. State Law Claims and Jurisdictional Issues

Federal claims are not the only actionable claims Disney can file. In addition, Disney could assert state allegations against Governor DeSantis and the Florida legislature. Under Article I, Section 4 of the Florida Constitution, "[e]very person may speak, write and publish sentiments on all subjects."[96] Therefore, under Article I, Section 4, Disney can allege a constitutional violation for the abridgment of their "liberty of speech."[97] In addition, the Contracts Clause of the Florida Constitution provides that "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."[98] Disney can state the potential impairment of Reedy Creek bonds caused by the prospective enactment of SB 4-C violates the Florida Constitution.

If Disney files their federal claims in a federal forum, that court can potentially exercise supplemental jurisdiction over state claims arising under the Florida Constitution.[99] Disney's federal lawsuit would most likely arise under federal question jurisdiction as opposed to diversity jurisdiction due to the involvement of two constitutional provisions. However, if Disney is considered a citizen of California, then the lawsuit could be heard by a federal court if the corporation alleges more than $75,000 in damages.[100]

If a federal court maintains federal question jurisdiction over Disney's lawsuit, the state law claims can be heard if they "are so related to claims in the action . . . that they form part of the same case or controversy."[101] In this case, the factual allegations

94. § 1983.
95. 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.").
96. FLA. CONST. art. I, § 4.
97. *Id.*
98. FLA. CONST. art. I, § 10.
99. *See* 28 U.S.C. § 1367.
100. *See* 28 U.S.C. § 1332.
101. § 1367(a).

against Governor DeSantis and the Florida legislature in the federal and state claims are related. Each set of claims involve the same retaliatory act and future contractual impairment.

Suppose a federal court invokes diversity jurisdiction over Disney's lawsuit. In that case, there will not be any issues with § 1367(b) because the potential corporate plaintiff would not seek to join third-party taxpayers. However, there may be issues with extending supplemental jurisdiction over the state claims under § 1367(c).

The State of Florida may allege that claims under Sections 4 and 10 of Article I of the Florida Constitution will "raise[] a novel or complex issue of State law."[102] The issue with this argument is that the factual basis underlying the federal and state claims are decidedly related. In addition, state precedent would clearly inform a federal court's decision on these issues. In opposition, the State of Florida could argue that joining state law claims may "substantially predominate[]"[103] over Disney's federal claims. However, as discussed below, Disney's state and federal claims assert and seek commensurate judicial relief.

Therefore, under Federal Rule of Civil Procedure 18, Disney could request the joinder of these state law claims in their federal lawsuit.[104] After the federal court dismissed the lawsuit filed by residents from Orange and Osceola Counties, the case was refiled in the Eleventh Judicial Circuit of Florida.[105] Disney has a much stronger suit in federal court than local taxpayers who might bear the burden of potential economic liability. However, due to the construction of the Florida Constitution, Disney may have access to greater constitutional protections in state court rather than a federal venue.[106] Like the residents from Orange and Osceola Counties, Disney could file its state law claims in a state forum.

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102. § 1367(c)(1).

103. § 1367(c)(2).

104. FED. R. CIV. P. 18(a) ("A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.").

105. Jackie Gailey, *Previously Dismissed Reedy Creek Lawsuit Against Florida Governor Has Been Refiled*, WALT DISNEY WORLD NEWS (June 7, 2022), https://www.wdwinfo.com/news-stories/previously-dismissed-reedy-creek-lawsuit-against-florida-governor-has-been-refiled/.

106. *See, e.g.*, State v. Globe Commc'ns, 622 So. 2d 1066, 1074 (Fla. 4th Dist. Ct. App. 1993); Sarasota County v. Andrews, 573 So. 2d 113, 115 (Fla. 2d Dist. Ct. App. 1991).

In filing a state or federal lawsuit against the State of Florida, Disney would meet and satisfy the procedural requirements of standing, jurisdiction, and venue. It is apparent Disney could use the statutory vehicle of § 1983 to assert substantive claims under the First Amendment and Contracts Clause. Therefore, without any issues of state sovereign immunity, Disney can successfully allege substantive state and federal claims against Governor DeSantis and the Florida legislature.

V. GOVERNOR DESANTIS AND THE FLORIDA LEGISLATURE VIOLATED THE FIRST AMENDMENT BY RETALIATING AGAINST THE WALT DISNEY COMPANY

The recent enactment of SB 4-C raises substantive issues of law, which Disney can assert in a § 1983 lawsuit against the State of Florida. One primary substantive issue is whether Governor DeSantis and the Florida legislature violated the First Amendment of the United States Constitution in retaliating against Disney by revoking its special governmental privilege to the Reedy Creek Improvement District. A key concept of "[m]odern First Amendment law provides robust protection for freedom of speech in the general marketplace," which includes corporate criticism of state social legislation.[107]

The First Amendment protects a citizen's right to free speech from any enactment or encroachment by the United States Congress.[108] In the early nineteenth century, in *Barron v. Baltimore*, the United States Supreme Court held the Free Speech Clause did not apply to state governments.[109]

However, following the American Civil War, the Fourteenth Amendment to the United States Constitution was enacted, ensuring that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law."[110] Accordingly,

107. Rodney A. Smolla, *Regulating the Speech of Judges and Lawyers: The First Amendment and the Soul of the Profession*, 66 FLA. L. REV. 961, 963 (2015); *see also* Enrique Armijo, *Reasonableness as Censorship: Section 230 Reform, Content Moderation, and the First Amendment*, 73 FLA. L. REV. 1199, 1227 n.136 (2021) (discussing the purpose of the First Amendment as "enabling self-autonomy, ensuring a marketplace of ideas, and facilitating democratic self-governance").

108. U.S. CONST. amend. I ("Congress shall make no law . . . abridging the freedom of speech.").

109. 32 U.S. 243, 250–51 (1833).

110. U.S. CONST. amend. XIV, § 1.

in 1925, the United States Supreme Court in *Gitlow v. New York* held that the Free Speech Clause applied to state governments through incorporation under the Fourteenth Amendment.[111] The Court reasoned:

> For present purposes we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the States.[112]

The Court's decision in *Gitlow* to incorporate the First Amendment is critically important to our discussion of Reedy Creek. The First Amendment protects Disney from any abridgment of their free speech by the State of Florida.[113] Therefore, "[t]he First Amendment requires the [State of Florida] to refrain from retaliating against speakers because of their protected speech."[114] This provides Disney with a fundamental constitutional right, which is enforceable in a suit filed under § 1983.[115]

The next issue is whether the Free Speech Clause, which protects individual rights, applies to corporate entities. Nearly a hundred years after the *Gitlow* decision, the United States Supreme Court held in *Citizens United v. Federal Election Commission* that "First Amendment protection extends to corporations."[116] The *Citizens United* Court further clarified that "political speech does not lose First Amendment protection 'simply because its source is a corporation.'"[117] Therefore, despite its status as a corporation, the State of Florida cannot suppress Disney's speech because corporate criticism against HB 1557 is protected under the Free Speech Clause.[118]

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111. 268 U.S. 652, 666 (1925).

112. *Id.*

113. *See id.*

114. Jordan E. Pratt, Note, *An Open and Shut Case: Why (and How) The Eleventh Circuit Should Restrain the Government's Forum Closure Power*, 63 FLA. L. REV. 1487, 1503–04 (2011).

115. *Id.* at 1504 ("One who suffers governmental retaliatory action in response to his exercise of protected speech may bring suit under § 1983 of the Civil Rights Act.").

116. Citizens United v. FEC, 558 U.S. 310, 342 (2010) (citations omitted).

117. *Id.* (quoting First Nat'l Bank of Bos. v. Bellotti, 435 U.S. 765, 784 (1978)).

118. *See id.* at 365 ("[T]he [g]overnment may not suppress political speech on the basis of the speaker's corporate identity.").

Applying *Gitlow* and *Citizens United*, it is apparent Disney has a fundamental right to free speech under the First Amendment, which cannot be abridged by the State of Florida. The next relevant issue is whether Disney can successfully allege that its fundamental right to free speech was violated when the State of Florida effectively punished the corporation for its social position on HB 1557.

Disney would need to file a substantive lawsuit against Governor DeSantis and the Florida legislature for violating its First Amendment rights. Under § 1983, a plaintiff can file a lawsuit against a state official if the individual acted with "the intent to retaliate against, obstruct, or chill the plaintiff's First Amendment rights."[119] The First Amendment restricts "government officials from subjecting an individual to retaliatory actions . . . for speaking out."[120] Therefore, due to the state action of Governor DeSantis and the Florida legislature, Disney's § 1983 lawsuit would arise under a First Amendment claim for retaliation.[121]

Under Federal law, a plaintiff must satisfy three elements to successfully allege a claim for retaliation under the First Amendment:

> (1) [H]e or she engaged in conduct protected under the First Amendment; (2) the defendant took some retaliatory action sufficient to deter a person of ordinary firmness in plaintiff's position from speaking again; and (3) a causal link between the exercise of a constitutional right and the adverse action taken against him or her.[122]

An analysis of these three elements indicates Disney would have a successful First Amendment retaliation claim.

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119. Ariz. Students' Ass'n v. Ariz. Bd. of Regents, 824 F.3d 858, 867 (9th Cir. 2016).

120. Hartman v. Moore, 547 U.S. 250, 256 (2006); *see also* Suarez Corp. Indus. v. McGraw, 202 F.3d 676, 685 (4th Cir. 2000) ("The First Amendment right to free speech includes not only the affirmative right to speak, but also the right to be free from retaliation by a public official for the exercise of that right.").

121. *See* Powell v. Alexander, 391 F.3d 1, 16 (1st Cir. 2004) (explaining that "[c]laims of retaliation for the exercise of First Amendment rights are cognizable under § 1983").

122. Black Lives Matter D.C. v. Trump, 544 F. Supp. 3d 15, 46 (D.D.C. 2021) (citations omitted).

A. Whether Disney Exercised Speech Constitutionally Protected Under the First Amendment

First, Disney must prove that their corporation engaged in an activity protected under the First Amendment when it criticized the State of Florida's enactment of HB 1557. As noted earlier, under the First Amendment, corporations have the fundamental right to freely speak on social issues and are provided with the same protections as private citizens.[123]

The purpose of the First Amendment is to protect the free and open discussion of opinions, including criticism of government policies and officials.[124] In *First National Bank of Boston v. Bellotti*, the United States Supreme Court reviewed a Massachusetts statute that prohibited corporations from expressing political speech unless it affected the "property, business or assets of the[ir] corporation."[125] The Court recognized the issue was not whether corporations have rights under the First Amendment but whether the Massachusetts statute violated the broad protections of the Free Speech Clause.[126] This constitutional provision protects the "public interest in having free and unhindered debate on matters of public importance."[127] In reference to the prohibition of corporate speech described in the Massachusetts statute, the *Bellotti* Court noted:

> It is the type of speech indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual.[128]

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123. *Citizens United*, 558 U.S. at 343 ("The Court has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not 'natural persons.'" (quoting First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 776 (1978))).

124. *See* Thornhill v. Alabama, 310 U.S. 88, 101–02 (1940) ("The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment."); *see also* Mills v. Alabama, 384 U.S. 214, 218 (1966) ("[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs.").

125. *Bellotti*, 435 U.S. at 767–68.

126. *Id.* at 776.

127. Pickering v. Bd. of Educ., 391 U.S. 563, 573 (1968).

128. *Bellotti*, 435 U.S. at 777.

Conduct protected under the First Amendment includes any discussion of public concern, including the "free discussion of governmental affairs."[129] The classification of the person or corporation engaging in the speech does not affect whether the protections are available to a plaintiff under the First Amendment.[130]

In this case, Disney is a corporation that publicly criticized Governor DeSantis and the Florida legislature's decision to enact HB 1557.[131] The public criticism included a resolution by the corporation to actively lobby for the reversal of this social legislation.[132] Disney's stance is protected under the First Amendment because the corporation is at liberty "to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment."[133] The issues of education and transgender policies are "matters of public importance" within Florida communities.[134] Moreover, state action violates the First Amendment when "it identifies certain preferred speakers."[135] Governor DeSantis was very clear that he was "not comfortable having [Disney's] agenda get special treatment in [his] state."[136] In addition, Governor DeSantis patently disapproved of Disney's position on HB 1557 and preferred those who supported this recent legislation.

The State of Florida cannot offer any "sufficient governmental interest"[137] to justify revoking Disney's privileges and the removal of benefits is inextricably connected to the corporation's public stance. The status of Disney as a corporation rather than a private individual does not decrease the protection it receives under the First Amendment.[138] "[P]olitical [s]peech is an essential mechanism of democracy,"[139] and Disney's engagement in constitutionally protected speech must be protected. Therefore, Disney's public opposition of the Florida

129. *Mills*, 384 U.S. at 218.
130. *Bellotti*, 435 U.S. at 777.
131. Corn-Revere, *supra* note 45.
132. *Id.*
133. Thornhill v. Alabama, 310 U.S. 88, 101–02 (1940).
134. Pickering v. Bd. of Educ., 391 U.S. 563, 573 (1968).
135. Citizens United v. FEC, 558 U.S. 310, 312 (2010).
136. Corn-Revere, *supra* note 45.
137. *Citizens United*, 558 U.S. at 365.
138. *See id.* at 342.
139. Minn. Citizens Concerned for Life v. Swanson, 640 F.3d 304, 320 (8th Cir. 2011) (citation omitted).

legislation satisfies the first element of a First Amendment retaliation claim.

B. Whether Governor DeSantis and the Florida Legislature Took Significant Adverse State Action That Would Chill a Corporation of Ordinary Firmness from Continuing to Speak

Second, to prevail on a First Amendment retaliation claim, Disney must "prove that the government took significant adverse action against [the corporation]."[140] The retaliation must "chill a person of ordinary firmness from continuing to engage in that activity."[141] Otherwise, "it would trivialize the First Amendment to hold that harassment for exercising the right of free speech was always actionable no matter how unlikely to deter a person of ordinary firmness from that exercise."[142] Disney must demonstrate that Governor DeSantis and the Florida legislature took retaliatory government actions, which would deter an ordinary corporation in Disney's position from continuing to publicly advocate against the state legislation.

The government's action must be retaliatory to satisfy the second element of a First Amendment retaliation claim.[143] A spokeswoman for Governor DeSantis has argued, "[i]t is not 'retaliatory' to pass legislation that gets rid of carve-outs and promotes a fairer environment for all companies to do business."[144] In this case, Governor DeSantis would argue a state legislative mandate has the authority to revoke the benefits provided to Disney under Chapter 67-764, even in the context of private corporate criticism.[145] However, for a First Amendment retaliation claim, "[m]any government actions will satisfy this second element."[146] The issue is that "otherwise lawful government action" can still violate the First Amendment if the action is "motivated by retaliation for having engaged in activity protected under the First Amendment."[147] Lawful state action resulting in the revocation of government benefits can still chill

140. Pratt, *supra* note 114, at 1505.
141. Adair v. Charter Cnty. of Wayne, 452 F.3d 482, 492 (6th Cir. 2006).
142. Naucke v. Park Hills, 284 F.3d 923, 928 (8th Cir. 2002).
143. Black Lives Matter D.C. v. Trump, 544 F. Supp. 3d 15, 46 (D.D.C. 2021).
144. *See* Mahoney & Ocasio, *supra* note 47.
145. *See* Hudson, *supra* note 8, at 92–93.
146. Pratt, *supra* note 114, at 1506.
147. Ariz. Students' Ass'n v. Ariz. Bd. of Regents, 824 F.3d 858, 869 (9th Cir. 2016).

speech conveyed by a person or corporation of ordinary firmness.[148]

In addition, the United States Supreme Court has made it clear:

> [T]hat even though a person has no "right" to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. 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.[149]

Prior to the enactment of Chapter 67-764, Disney did not have any special privilege to govern the Reedy Creek Improvement District with quasi-municipal authority.[150] However, Governor DeSantis and the Florida legislature cannot remove this special grant as a reaction to Disney's decision to speak out against social legislation.

Federal courts have held that valuable government benefits include business licenses.[151] Further, courts have reasoned that government officials cannot revoke these licenses in reaction to a person's adverse political speech.[152] The government grant provided to Disney in 1967 is similar to a business license since it provided the corporation with the requisite authority to govern the special district.[153] Therefore, according to the preceding federal precedent, the State of Florida cannot strip Disney of valuable government benefits provided to this corporation for over fifty-five years because of its public stance on HB 1557.

The State of Florida has the authority to dissolve a special district through the passage of a special act by the state

148. *See* Bd. of Cnty. Comm'rs v. Umbehr, 518 U.S. 668, 674 (1996).

149. Perry v. Sindermann, 408 U.S. 593, 597 (1972); *see also Ariz. Students' Ass'n*, 824 F.3d at 869 ("A state, division of the state, or state official may not retaliate against a person by depriving him of a valuable government benefit that that person previously enjoyed, conditioning receipt of a government benefit on a promise to limit speech, or refusing to grant a benefit on the basis of speech. Those limitations apply even if the aggrieved party has no independent or affirmative right to that government benefit.").

150. *See generally* 1967 Fla. Laws 256–358.

151. *See, e.g.*, Hof v. Nye County, No. 2:18-cv-01492, 2018 U.S. Dist. LEXIS 146508, at *17 (D. Nev. Aug. 28, 2018).

152. *Id.*

153. 1967 Fla. Laws 290.

legislature.[154] However, this action is retaliatory when a government official deprives a person or corporation of benefits due to its engagement in free speech.[155] Therefore, the decision to prospectively dissolve Reedy Creek was a retaliatory state action because Governor DeSantis and the Florida legislature removed Disney's privilege due to its public opposition to HB 1557.

The substantial issue in the second element of a First Amendment retaliation claim is whether the state action satisfies the ordinary firmness test.[156] The purpose of the test is "to weed out trivial matters from those deserving the time of the courts as real and substantial violations of the First Amendment."[157] The ordinary firmness test is an objective inquiry, and a plaintiff's action may inform whether an ordinary person would have been deterred, but that factual history is not outcome determinative.[158]

Governor DeSantis and the Florida legislature dissolved the largest and most powerful grant of authority ever conferred upon a special district in this state. Due to Disney's ownership of most of the land in Reedy Creek, it has maintained absolute control over the administration of this region.[159] Objectively, an ordinary corporation in Disney's position would have been silenced by the State of Florida's decision to punish criticism of state legislation. Consequently, the action taken by Governor DeSantis and the Florida legislature to revoke a valuable government benefit would "chill a [corporation] of ordinary firmness from further participation in the protected activity."[160]

C. Whether the State Action of Governor DeSantis and the Florida Legislature was a Motivating Factor in Retaliating Against Disney's Public Opposition of HB 1557

The final element is whether the retaliatory action taken by Governor DeSantis and the Florida legislature was causally motivated by Disney's public decision to speak out against HB

154. Hudson, *supra* note 8, at 92.

155. Hartman v. Moore, 547 U.S. 250, 256 (2006) ("[A]s a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out.").

156. *See* Pratt, *supra* note 114, at 1506.

157. Garcia v. City of Trenton, 348 F.3d 726, 728 (8th Cir. 2003).

158. Bennie v. Munn, 822 F.3d 392, 400 (8th Cir. 2016).

159. Wetherell, *supra* note 2, at 3.

160. Pratt, *supra* note 114, at 1505.

1557.[161] For the third element, there must be "a causal link between the exercise of a constitutional right and the adverse action taken against him or her."[162] Direct or circumstantial evidence can establish the motivation for an adverse action undertaken by a state official.[163] Another important factor is the "[t]emporal proximity between the protected speech and the retaliatory conduct."[164]

Recently, the United States Supreme Court further clarified the third element of a retaliation claim, stating "[i]t is not enough to show that an official acted with a retaliatory motive and that the plaintiff was injured—the motive must *cause* the injury . . . [I]t must be a 'but-for' cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive."[165]

In support of Disney's claim, Governor DeSantis's retaliatory motivation will be "easy to allege and hard to disprove."[166] Specifically, Governor DeSantis signed HB 1557 on March 28, 2022, which led to Disney's public opposition to the "Don't Say Gay" law.[167] With respect to the "[t]emporal proximity,"[168] less than a month passed between Disney's public announcement and the passage of SB 4-C by the state legislature. Since Disney's announcement preceded SB 4-C, this alleged "retaliatory conduct"[169] resulted in the dissolution of a special governmental grant Disney has possessed for the last fifty-five years.

In addition, while signing the legislation, Governor DeSantis commented, "I'm just not comfortable having that type of agenda get special treatment in my state."[170] "[B]ut for"[171] Governor DeSantis's belief that "liberal" corporations should not receive special state benefits, Disney's quasi-municipal authority to govern Reedy Creek would not have been revoked. Moreover,

161. *See* Black Lives Matter D.C. v. Trump, 544 F. Supp. 3d 15, 46 (D.D.C. 2021).
162. *Id.* (citations omitted).
163. *See* Ulrich v. City & Cnty. of San Francisco, 308 F.3d 968, 979 (9th Cir. 2002).
164. Hof v. Nye County, No. 2:18-cv-01492, 2018 U.S. Dist. LEXIS 146508, at *19 (D. Nev. Aug. 28, 2018).
165. Nieves v. Bartlett, 139 S. Ct. 1715, 1722 (2019).
166. *Id.* at 1725.
167. *DeSantis Signs Legislation to Remove Carveouts*, *supra* note 1; Corn-Revere, *supra* note 45.
168. *Hof*, 2018 U.S. Dist. LEXIS 146508, at *19.
169. *Id.*
170. Corn-Revere, *supra* note 45.
171. *Nieves*, 139 S. Ct. at 1722.

even if the prospective dissolution of Reedy Creek does not ultimately harm Disney, Governor DeSantis's intention to directly interfere with the corporation's First Amendment rights satisfies the third element of a retaliation claim.[172]

In addition to protecting free speech, the First Amendment secures the right to expressive association or, rather, the "freedom not to associate."[173] Here, the First Amendment protects Disney's right "to be free from discrimination on account of one's political opinions or beliefs."[174] Therefore, in addition to its retaliation claim, Disney can allege Governor DeSantis and the Florida legislature violated its right to expressive association under the First Amendment.

Specifically, the First Amendment "protect[s] against [some] deprivations arising out of an act of association," including "speaking out on matters of public interest."[175] In this instance, Disney voiced opposition to the enactment of HB 1557 and asserted it would "remain committed to supporting the national and state organizations working to achieve [the reversal of that legislation]."[176] The corporation chose to associate with other "liberal" organizations who are collectively committed to opposing the Florida legislation. Disney's public opinion was that the removal of education on sexual orientation and gender identity in kindergarten through eighth grade would be harmful to Florida communities.[177]

Expressive association secures Disney's right to associate with other liberal organizations opposed to HB 1557 to effectively increase the public's knowledge of these controversial issues.[178] The association of Disney with other advocacy organizations in

172. *See* Mendocino Env't Ctr. v. Mendocino County, 192 F.3d 1283, 1300 (9th Cir. 1999).

173. Roberts v. U.S. Jaycees, 468 U.S. 609, 623 (1984).

174. Galloza v. Foy, 389 F.3d 26, 28 (1st Cir. 2004).

175. Rosaura Bldg. Corp. v. Municipality of Mayagüez, 778 F.3d 55, 67 (1st Cir. 2015) (internal quotation marks omitted) (quoting Correa-Martinez v. Arrillaga Belendez, 903 F.2d 49, 57 (1st Cir. 1990)).

176. Corn-Revere, *supra* note 45.

177. *See id.*; *see also* FLA. STAT. § 1001.42(8)(c)(3) (2023) (instituting an absolute prohibition in providing instruction on sexual orientation and gender identify in elementary and middle schools).

178. *See* Alex B. Long, *The Troublemaker's Friend: Retaliation Against Third Parties and the Right of Association in the Workplace*, 59 FLA. L. REV. 931, 937 (2007) ("The ability to associate . . . is essential because 'collective effort on behalf of shared goals' actually enhances '[e]ffective advocacy of both public and private points of view, particularly controversial ones.'" (quoting NAACP v. Alabama, 357 U.S. 449, 460 (1958))).

opposition to HB 1557 will "promote important but sometimes controversial ideas . . . [as] a way of amplifying . . . individual[] voice[s] in the marketplace of ideas."[179] Therefore, Disney could allege its right to expressive association was violated when Governor DeSantis and the Florida legislature discriminated against its corporation for their social values.

D. State Claim of Retaliation under the Florida Constitution

In addition to the federal claims of free speech and expressive association, Disney can claim the enactment of SB 4-C violated Article I, Section 4 of the Florida Constitution.[180] Consistent with the analysis offered earlier, the state action undertaken by Governor DeSantis and the Florida legislature violates the Free Speech Clause of the First Amendment. In Florida courts, federal precedent on the First Amendment has been discussed "interchangeably" with Florida precedent on Article I, Section 4.[181] This practice led the Fourth District Court of Appeal to recognize that Article I, Section 4 provides protections that are "at least as broad as that provided by the First Amend[ment]."[182] Therefore, if the state action of Governor DeSantis and the Florida legislature violated the First Amendment of the United States Constitution, that action has also invariably violated Article I, Section 4 of the Florida Constitution.[183]

The dissolution of Reedy Creek by SB 4-C was a retaliatory action taken by Governor DeSantis and the Florida legislature to punish Disney for speaking out against HB 1557. Disney can most likely assert a successful § 1983 claim alleging retaliation under the Free Speech Clause of the First Amendment. In addition, if Disney's federal claim is successful, the corporation can assert that Governor DeSantis and the Florida legislature violated commensurate free speech rights under Article I, Section 4 of the Florida Constitution.

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179. *Id.*

180. *See* FLA. CONST. art. I, § 4 ("Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.").

181. State v. Globe Commc'ns, 622 So. 2d 1066, 1075 (Fla. 4th Dist. Ct. App. 1993).

182. *Id.*

183. *See id.*

VI. THE PROSPECTIVE DISSOLUTION OF REEDY CREEK WOULD VIOLATE THE CONTRACTS CLAUSES OF THE UNITED STATES AND FLORIDA CONSTITUTIONS

The prospective dissolution of Reedy Creek poses constitutional issues under the Contracts Clauses of the United States and Florida Constitutions. However, these constitutional issues are coupled with substantial financial issues. With the pending dissolution of this special district, Orange and Osceola counties will inherit roughly one billion dollars in bond debt.[184] The future economic impact on residents in Reedy Creek is unknown and may substantially burden Orange and Osceola counties.[185] According to Florida law, the dissolution of a special district should only occur when the county or municipality demonstrates they can provide the previous services offered to their residents and assume any bond debt.[186] In particular, Orange County will assume nearly $105 million in annual costs for Disney's services and $58 million in bond debt.[187]

Chapter 67-764 of the Laws of Florida grants Reedy Creek the authority to issue bonds for financing Disney's services and infrastructure.[188] This statute specifically guarantees that:

> 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. . . .[T]hat it will not in any way impair the rights or remedies of the holders, and that it will not modify in any way the exemption from taxation provided in the Act, until all such bonds together with interest thereon, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.[189]

The prospective dissolution of Reedy Creek has violated the State of Florida's pledge to neither limit nor alter the bonds issued by

184. Mary Ellen Klas, *Disney's Special District Suggests Florida Can't Dissolve It Without Paying Debt*, TAMPA BAY TIMES (Apr. 27, 2022), https://www.tampabay.com/news/florida-politics/2022/04/26/disney-suggests-florida-cant-dissolve-special-district-without-paying-debt/.

185. *See id.*

186. Hudson, *supra* note 8, at 92–93.

187. Klas, *supra* note 184.

188. 1967 Fla. Laws 347 ("This Act constitutes full and complete authority for the issuance of bonds and the exercise of the powers of the District provided herein.").

189. *Id.* at 347–48.

this special district.[190] The impairment of the Reedy Creek bonds will create nearly $58 million in debt for Orange County, and the DeSantis administration has not finalized a proposal to "fully me[e]t and discharge" the obligations of this debt.[191]

A. Analysis of the Impairment of Reedy Creek Bonds under the Federal Contracts Clause

The impairment of bonds issued by Reedy Creek due to its pending dissolution in June 2023 raises significant legal issues under the Contracts Clause of the United States Constitution. The provision states, "[n]o [s]tate shall . . . pass any . . . [l]aw impairing the [o]bligation of [c]ontracts."[192] The primary analysis in considering a Federal Contracts Clause issue is "whether the change in state law has 'operated as a substantial impairment of a contractual relationship.'"[193] However, determining whether a state has unconstitutionally impaired contractual obligations must take into consideration the reasonable exercise of the state's police powers to protect the public health, safety, morals, and general welfare.[194]

The specific analysis of a Federal Contracts Clause claim considers three factors: "(1) whether the law substantially impairs a contractual relationship; (2) whether there is a significant and legitimate public purpose for the law; and (3) whether the adjustments of rights and responsibilities of the contracting parties are based upon reasonable conditions and are of an appropriate nature."[195]

The three factors, when analyzed in tandem, demonstrate the impairment of bonds issued by Reedy Creek by SB 4-C will violate the Contracts Clause of the United States Constitution. The first factor is whether the prospective dissolution of Reedy Creek by SB 4-C will substantially impair the contractual obligations of bonds issued by the special district.[196] An important factor to consider is the expectations of the parties to the

190. *See id.*
191. Klas, *supra* note 184.
192. U.S. CONST. art. I, § 10, cl. 1.
193. Gen. Motors Corp. v. Romein, 503 U.S. 181, 186 (1991) (quoting Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 244 (1978)).
194. Vesta Fire Ins. Corp. v. Florida, 141 F.3d 1427, 1433 (11th Cir. 1998).
195. *Id.*
196. *See id.*

contract, specifically the bondholders.[197] In this case, the bondholders received a pledge from the State of Florida that their bonds would not be limited or altered.[198] In addition, neither Governor DeSantis nor the Florida legislature have finalized a municipal solution for validating and discharging the financial obligations created by the Reedy Creek bonds.[199]

An additional consideration in analyzing substantial impairment is whether the parties to the contract operated in a "heavily regulated industry."[200] If the parties operated in a heavily regulated industry, they would expect government impairment to their contractual obligations.[201] Reedy Creek has existed for over fifty-five years and the special district was granted substantial discretionary, quasi-municipal authority.[202] Reedy Creek bondholders would not expect the State of Florida to dissolve the special district, which is not heavily regulated by state or municipal authorities. Therefore, the passage of SB 4-C would substantially impair the contractual obligations of bonds issued by Reedy Creek.

The second factor is whether the State of Florida had a legitimate public purpose in dissolving Reedy Creek and potentially impairing bonds issued by the special district.[203] The restriction on state impairment of contractual obligations is strict.[204] However, "its prohibition must be accommodated to the inherent police power of the State to safeguard the vital interests of its people."[205] Governor DeSantis and the Florida legislature would argue the prospective dissolution of Reedy Creek provides a more fair economic market and ensures that Disney's "liberal agenda" does not receive special treatment.[206] However, despite any potential state interest to protect Florida's public morals or general welfare, Governor DeSantis does not

197. *See* Energy Rsrvs. Grp. v. Kansas Power & Light Co., 459 U.S. 400, 411 (1983).
198. 1967 Fla. Laws 347.
199. *See id.* at 347–48 ("The State of Florida pledges to the holders of any bonds issued under this Act that . . . all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.").
200. Mercado-Boneta v. Administracion del Fondo de Compensacion al Paciete, 125 F.3d 9, 13 (1st Cir. 1997).
201. *See Energy Rsrvs. Grp.*, 459 U.S. at 416.
202. 1967 Fla. Laws 291–92.
203. *See* Vesta Fire Ins. Corp. v. Florida, 141 F.3d 1427, 1433 (11th Cir. 1998).
204. *See id.*
205. *Id.* (quoting *Energy Rsrvs. Grp.*, 459 U.S. at 410).
206. Corn-Revere, *supra* note 45.

have the right to violate Disney's First Amendment rights through the enactment of SB 4-C.[207] The impairment of bonds issued by Reedy Creek is potentially within the police powers of the State of Florida. Nonetheless, the state cannot violate fundamental personal rights to accommodate another public interest. Therefore, the State of Florida lacked a "significant and legitimate public purpose" for dissolving Reedy Creek.[208]

The final factor is whether the potential impairment of bonds issued by Reedy Creek through the prospective dissolution of the special district is appropriate and reasonable.[209] As stated above, the dissolution of Reedy Creek will cause Orange County to assume nearly $58 million in bond debt.[210] The taxation and financial issues facing bondholders are unknown and therefore inappropriate. Currently, no concrete economic solutions exist to remedy any impairment to bonds issued by Reedy Creek. Therefore, it is apparent the State of Florida's actions were neither financially reasonable nor appropriate. Upon the prospective dissolution of the special district, the impairment of Reedy Creek bonds will violate the Contracts Clause of the United States Constitution.

B. Analysis of the Impairment of Reedy Creek Bonds under the Florida Contracts Clause

Similar to the federal claim, the future impairment of Reedy Creek bonds will violate the Contracts Clause of the Florida Constitution. The provision states, "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."[211] To determine whether the Contracts Clause of the Florida Constitution has been violated, Florida courts "must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy."[212] Florida courts often consider whether the impairing legislation was enacted to remedy a social

207. *See* Perry v. Sindermann, 408 U.S. 593, 597 (1972).
208. *Vesta Fire Ins. Corp.*, 141 F.3d at 1433.
209. *See id.*
210. Klas, *supra* note 184.
211. FLA. CONST. art. I, § 10.
212. Pomponio v. Claridge of Pompano Condo., Inc., 378 So. 2d 774, 780 (Fla. 1979).

issue and whether the contractual obligations were not previously subject to state regulation.[213] Finally, compared to the Federal Contracts Clause, Florida courts offer far more extensive contractual protections.[214]

The State of Florida took action to revoke a special grant provided to Disney as retaliation for its public opposition to HB 1557. The purpose of the legislation was to publicly remedy Disney's stance on social issues. However, this approach violated a fundamental constitutional right, and the "evil which it seeks to remedy" is not a valid state interest under the Florida Contracts Clause.[215] In addition, Reedy Creek bonds have not been previously subject to state regulation; therefore, any impairment of these contractual obligations would not have been expected by the bondholders. The quasi-municipal discretion granted to the special district indicates the State of Florida should not have impaired the rights of Reedy Creek bondholders.

Lastly, assume the enactment of SB 4-C and the pending dissolution of Reedy Creek violates the Federal Contracts Clause. In that instance, the potential contractual impairment of Reedy Creek bonds would necessarily violate the Contracts Clause of the Florida Constitution.[216] The prospective dissolution of the Reedy Creek Improvement District under SB 4-C will impair bonds issued by the special district in violation of the Contracts Clauses of the United States and Florida Constitutions.

VII. THE APPROACH GOVERNOR DESANTIS AND THE FLORIDA LEGISLATURE HAVE TAKEN WITH THE REEDY CREEK CONSTITUTIONAL VIOLATIONS AND AN APPROPRIATE SOLUTION TO THESE ISSUES

Recently, Governor DeSantis and the Florida legislature proposed new legislation to maintain the existence of the Reedy Creek Improvement District.[217] The proposed legislation was

213. Cohn v. Grand Condo. Ass'n, 26 So. 3d 8, 10 (Fla. 3d Dist. Ct. App. 2009).

214. *See* Sarasota County v. Andrews, 573 So. 2d 113, 115 (Fla. 2d Dist. Ct. App. 1991); *see also* Coral Lakes Cmty. Ass'n v. Busey Bank, N.A., 30 So.3d 579, 584 (Fla. 2d Dist. Ct. App. 2010) ("In this state, it is a 'well-accepted principle that virtually no degree of contract impairment is tolerable.'" (citation omitted)).

215. *See Pomponio*, 378 So. 2d at 780.

216. *See Sarasota County*, 573 So. 2d at 115.

217. *See* Skyler Swisher & Jeffrey Schweers, *DeSantis Wants State to Take Control of Disney World's Reedy Creek District*, ORLANDO SENTINEL (Jan. 6, 2023, 5:13 PM),

passed by the Florida Senate and awaits Governor DeSantis's signature.[218] The new legislation will ensure that Reedy Creek "continues in full force and effect under its new name," the Central Florida Tourism Oversight District.[219]

Under the legislation, control and governance of the special district will be transferred from Disney to state authorities.[220] The legislation will repeal Chapter 67-764 of the Laws of Florida, and "remov[e] and revis[e] powers of the District."[221] As per the establishment of Reedy Creek, the special district has been governed by a Board of Supervisors selected at the sole discretion of Disney.[222] However, the new legislation would transfer appointment of the Board of Supervisors from Disney to the Governor. The purpose of this amendment is to "increase[e] state oversight, accountability, and transparency of the District."[223]

Yet, it is unclear whether this legislation will rectify the unconstitutional state action taken by Governor DeSantis and the Florida legislature. Under § 1983, it is apparent Disney can still assert a First Amendment claim for retaliation against the State of Florida if Reedy Creek is reinstated. The claim for redressability will encompass monetary damages for the concrete and particularized harm of state retaliation taken against Disney in the form of the loss of a valuable government benefit.[224] As the retaliation has already occurred, Disney can only pursue and obtain a remedy for the First Amendment injury in a judicial forum.

In addition, any transfer of governance from Disney to the State of Florida will still be considered retaliation as evidenced by recent statements from the DeSantis administration directed against the "liberal" corporation. Addressing the legislation, a spokeswoman for Governor DeSantis stated, "[t]he corporate kingdom has come to an end. Under the proposed legislation,

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https://www.orlandosentinel.com/2023/01/06/desantis-wants-state-to-take-control-of-disney-worlds-reedy-creek-district/.

218. Gail Paschall-Brown & Greg Fox, *Florida Senate Passes Bill to Appoint New Reedy Creek Governing Board*, WESH 2 (Feb. 10, 2023, 11:20 PM), https://www.wesh.com/article/reedy-creek-board-senate-passes-bill/42829527.

219. H.R. 9B, 2023 Leg., 2023B Reg. Sess. (Fla. 2023).

220. *Id.*

221. *Reedy Creek Improvement District Notice*, OSCEOLA CNTY. (Jan. 6, 2023), https://apps.osceola.org/Apps/PublicNotices/Content/Files/RCID%20Notice.pdf.

222. 1967 Fla. Laws 284–85; Swisher & Schweers, *supra* note 217.

223. *Reedy Creek Improvement District Notice*, *supra* note 221.

224. Ariz. Students' Ass'n v. Ariz. Bd. of Regents, 824 F.3d 858, 869 (9th Cir. 2016).

Disney will no longer control its own government, will live under the same laws as everyone else, will be responsible for their outstanding debts, and will pay their fair share of taxes."[225] It is apparent that Governor DeSantis continues to view Disney as a corporate threat, one that should not receive any special state benefits.[226] The issue is that the removal of these benefits is directly connected to Disney's criticism of HB 1557. The introduction of this proposed legislation will not change the preceding analysis discussing a retaliation claim under the First Amendment and Article I, Section 4 of the Florida Constitution.[227]

It is uncertain whether the proposed legislation will change the analysis of the State's action under the Contracts Clauses of the United States and Florida Constitutions. The proposed legislation "ensur[es] debts and bond obligations held by the District remain with the District and are not transferred to other governments by retaining the District's authority related to indebtedness and taxation."[228] One of the main concerns with the prospective dissolution of Reedy Creek is the impairment of bonds issued by the special district. However, the solution offered by Governor DeSantis ensures the Reedy Creek bonds are guaranteed and requires Disney (as opposed to counties and their residents) to pay nearly $700 million in debts directed toward the bonds.[229]

Nonetheless, many concerns still remain. It is unknown what actions the state-controlled Board of Supervisors will undertake in managing the special district. The board's future actions could potentially impair the Reedy Creek bonds. Therefore, it is unclear whether the new legislation will change the proposed analysis under the Contracts Clauses of the United States and Florida Constitutions.

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225. Taryn Fenske (@tarynfenske), TWITTER (Jan. 6, 2023, 12:10 PM), https://twitter.com/tarynfesnke/status/1611409993147813888; Swisher & Schweers, *supra* note 217.

226. *See* Mahoney & Ocasio, *supra* note 47.

227. *See* Paschall-Brown & Fox, *supra* note 218 (discussing state Senator Victor Torres's comment on the legislation that "[t]his bill just wants to show other private companies if you say something wrong that I (Governor DeSantis) don't like, I am going to go after you.") (alteration in original)).

228. *Reedy Creek Improvement District Notice*, *supra* note 221.

229. Alexandra Steigrad, *DeSantis Reignites Fight to End Disney World's Self-Governing Powers*, N.Y. POST (Jan. 9, 2023, 1:06 PM), https://nypost.com/2023/01/09/desantis-reignites-fight-to-end-disney-worlds-self-governing-powers/.

The recent legislation proposed by Governor DeSantis and the Florida legislature may offer significant benefits. There is a possibility the legislation corrects the potential unconstitutional impairment of Reedy Creek bonds caused by the prospective dissolution of that special district. In addition, the legislation ensures debt accumulated by Reedy Creek is satisfied by Disney as opposed to residents from Orange and Osceola counties. Despite these potential benefits, the conveyance of control from Disney to state authorities is detrimental to continued economic growth and free speech in Florida.

Reedy Creek is considered an independent special district. This form of special district is normally governed by a board "that serves independent from other government agencies, providing the board members with a high degree of autonomy to fulfill the mission of the district."[230] The absence of state oversight ensures that special districts, like Reedy Creek, maintain administrative and fiscal independence. The land encompassing Reedy Creek is primarily owned by Disney.[231] It would be reasonable to presume a special district governing that land should be accountable only to the voters and landowners they serve.[232] However, Governor DeSantis has decided to transfer this accountability to a board of state-appointed members, who will not understand the unique fiscal and administrative issues created by a 27,000-acre "theme park."[233]

Under the proposed legislation, any member appointed to the Board of Supervisors cannot work in the "theme park or entertainment business."[234] Therefore, state-appointed board members will not have an intimate knowledge of the processes required to smoothly manage Reedy Creek with its dozens of theme parks and millions of annual tourists. Therefore, the experience of these tourists may be diminished, thereby decreasing the economic benefits supplied by Disney to the State of Florida. In addition, the safety of these tourists may be affected by a group of board members who are unfamiliar with Disney's protocols.

230. *What is a Special District?*, FLA. ASS'N OF SPECIAL DISTS., INC., https://www.fasd.com/what-is-a-special-district- (last visited Feb. 10, 2024).
231. Wetherell, *supra* note 2, at 3.
232. *What is a Special District?*, *supra* note 230.
233. Emerson, *supra* note 4, at 178.
234. Paschall-Brown & Fox, *supra* note 218.

Besides administrative and fiscal issues, state control of Reedy Creek poses a significant threat to political freedom and local autonomy. The state takeover proposed by the new legislation is offered under the guise that a corporate kingdom has been toppled. However, despite any apprehensions about colossal corporations, residents of Florida should prioritize our traditional concepts of American liberty and democracy and fear the overreaching hand of state government.

Governor DeSantis's control over Reedy Creek may lead to significant government abuse and corruption, while damaging the economic benefits Disney provides to the State of Florida. Former President Ronald Reagan claimed "[t]he nine most terrifying words in the English language are: I'm from the government and I'm here to help."[235] Governor DeSantis and the Florida legislature declared that residents of Florida should fear the corporate kingdom Disney has established and trust that a board composed of inept state-appointed members will more responsibly administer Reedy Creek. However, it is crucial to remember the principle memorably described by Lord Acton: "Power tends to corrupt and absolute power corrupts absolutely."[236] The State of Florida's ability to wield sole control over a special district containing theme parks and hotels owned by a $200 billion company is a substantial degree of power.[237]

The management of Reedy Creek should be controlled by local officials familiar with the daily operation of Disney and its theme park business.[238] William Borah, a former United States Senator from Idaho, stated "[a] democracy must remain at home in all matters which affect the nature of her institutions."[239] It is a common truth that citizens generally place greater trust in local government. This principle applies to Reedy Creek. A special district governed by a Board of Supervisors and selected by a

235. *News Conference – I'm Here to Help*, RONALD REAGAN PRESIDENTIAL FOUND. & INST., https://www.reaganfoundation.org/ronald-reagan/reagan-quotes-speeches/news-conference-1/ (last visited Feb. 10, 2024).

236. *Lord Acton Quote Archive*, ACTON INST., https://www.acton.org/research/lord-acton-quote-archive (last visited Feb. 10, 2024).

237. *Total Assets of The Walt Disney Company in the Fiscal Years 2006 to 2023*, STATISTA, https://www.statista.com/statistics/193136/total-assets-of-the-walt-disney-company-since-2006/ (last visited Jan. 7, 2024).

238. *Cf.* Paschall-Brown & Fox, *supra* note 218 (discussing the prohibition of appointing board members familiar with the entertainment business under the proposed legislation).

239. William Borah, Idaho Senator, Broadcast Address (Feb. 22, 1936), *in* 4 SPEECHES AND DOCUMENTS IN AMERICAN HISTORY 171, 177 (Robert Birley ed. 1942).

local organization would foster trust. Disney is intimately familiar with the issues facing local communities resulting from its presence in Orange and Osceola counties. Transferring control of Reedy Creek from Disney to Tallahassee disconnects the state-appointed Board of Supervisors from the residents affected by their decisions and lessens trust.

The police power of the State of Florida should be limited to restricting violations of harmful actions instead of controlling the management of a financially beneficial corporation. Christopher Tiedeman, an American legal scholar from the late nineteenth century, discussed that "[t]he police power of the government [should] be confined to the detailed enforcement of the legal maxim, *sic utere tuo, ut alienum non lædas* ['use your property so as not to damage another's']."[240] Governor DeSantis should apply this legal maxim to the circumstances surrounding Reedy Creek. The State of Florida is concerned there is no "oversight, accountability, and transparency [over] the District."[241] However, in accordance with state property laws and regulations, the main issue is ensuring Disney uses its property in "a manner as not to injure that of another."[242] These protections have already been enshrined in Florida jurisprudence and control of Reedy Creek by government officials in Tallahassee is clearly excessive and dangerous.

Governor DeSantis should give serious consideration to fully reinstating Reedy Creek. Simply put, state administration of the special district should be discarded. The regulation and maintenance of the district should remain local. The economic benefits provided by Disney should not be tampered with by state appointed-board members. Furthermore, the creation of state control over corporate administration invites the dangers of abuse and corruption. Therefore, the proposal offered to the state officials seated in Tallahassee is to simply maintain the status quo. The State of Florida provided these privileges to Disney over fifty-five years ago and our economy has greatly benefited ever since. The possibility of increasing state control over local matters must be abandoned.

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240. 1 CHRISTOPHER G. TIEDEMAN, A TREATISE ON STATE AND FEDERAL CONTROL OF PERSONS AND PROPERTY IN THE UNITED STATES vii (2d ed. 1900) (citation omitted); *sic utere tuo, ut alienum non lædas*, BLACK'S LAW DICTIONARY (11th ed. 2019).

241. *Reedy Creek Improvement District Notice*, *supra* note 221.

242. TIEDEMAN, *supra* note 240.

VIII. CONCLUSION

Governor DeSantis and the Florida legislature have jointly pursued a policy of enacting socially conservative legislation in the State of Florida. This includes the recent adoption of HB 1557, known as the "Don't Say Gay" law. Reacting to these policies, Disney took a stand and publicly opposed the legislation and supported its repeal.

Governor DeSantis and the media chose to paint the picture of this situation with a broad stroke of political disagreement. On the surface, this is a cultural and social war between a conservative state government and a liberal corporation. However, despite these political differences, the State of Florida took an unprecedented path. Governor DeSantis and the Florida legislature decided to revoke over fifty-five years of government benefits provided to the Walt Disney Company. The spokeswoman for Governor DeSantis attempted to argue that abrogating these benefits was a valid government activity.[243] She would have been correct if Disney had not publicly criticized HB 1557 and the State of Florida was not apparently punishing this corporation for their position on social issues.

The issues discussed in this Article are not themselves conservative or liberal, Republican or Democrat. Rather, the pivotal issue is that freedom of expression is fundamental to maintaining a free and open society and must be protected at all costs. Disney asserted its fundamental right under the First Amendment to speak freely against allegedly harmful legislation. Governor DeSantis responded by retaliating against the corporation and "fight[ing] back against" their liberal stance.[244]

Governor DeSantis appears concerned that Disney's decision to publicly oppose HB 1557 is harmful and any government benefits provided to this corporation should be revoked. However, Justice Louis Brandeis wisely provides the State of Florida with a better option: "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."[245] If Governor DeSantis and the Florida legislature are

243. *See* Mahoney & Ocasio, *supra* note 47.
244. *Id.*
245. Whitney v. California, 274 U.S. 357, 377 (1927).

concerned that Disney's public opinion will morally harm the children of their state, the response should be "more speech," not retaliation.

Governor DeSantis and the Florida legislature should seriously consider legislation fully reinstating the authority granted to Reedy Creek, specifically leaving the appointment and control of the Board of Supervisors to Disney and not the State. The repeal of SB 4-C would ensure continued economic growth in the State of Florida. The state legislature granted quasi-municipal authority to Disney because of the economic benefits the corporation provides to Florida.[246] Arguments for leaving Disney in complete control of Reedy Creek are not liberal accusations. Instead, these arguments promote the principles of capitalism, protect contractual rights, and enhance free speech. The State of Florida should not revoke economic benefits because of the political opinions of a corporation. To the contrary, the State of Florida should allow Disney to openly exercise its fundamental right to speak freely and ensure that the hand of the government does not overreach, harm our state economy, and curtail constitutional rights.

IX. ADDENDUM

Since writing this Article, the unfortunate conflict between Governor DeSantis and Disney continues to escalate, including a pending lawsuit in the United States District Court for the Northern District of Florida.[247] In an attempt to limit Governor DeSantis's authority over the Reedy Creek Improvement District, the original Board of Supervisors signed a Declaration of Restrictive Covenants (the "Agreement") with Disney in March 2023.[248] The Agreement "stripped" the Board of Supervisors of "the majority of its ability to do anything beyond maintain the roads and maintain basic infrastructure." [249] Beyond restricting the Board's authority under Chapter 67-764, the Agreement provides that Disney will have the "final say on any alterations to

246. *See* Emerson, *supra* note 4, at 191.

247. Complaint for Declaratory and Injunctive Relief, Walt Disney Parks & Resorts U.S., Inc. v. DeSantis, No. 4:23-cv-00163, 2023 WL 3098088 (N.D. Fla. Apr. 26, 2023).

248. Emily Olson, *Disney Blocked DeSantis' Oversight Board. What Happens Next?*, NPR (Mar. 30, 2023), https://www.npr.org/2023/03/30/1167042594/disney-desantis-board-reedy-creek-charles.

249. *Id.*

the property and requires the board to inform Disney of plans for such alterations without conditions or delays." [250] The restriction is further established by invoking the Rules Against Perpetuities stating that the Agreement will continue "until twenty-one . . . years after the death of the last survivor of the descendants of King Charles III." [251] The validity of the Agreement has not been tested in a court of law, but is yet another example of the legal combat between Disney and Governor DeSantis. The contractual action taken by Disney and the Board of Supervisors further comports with the analysis of this Article advocating for local control of the Reedy Creek Improvement District.

On April 26, 2023, Disney filed a lawsuit against Governor DeSantis, the Central Florida Tourism Oversight Board, and Meredith Ivey, the acting secretary of the Florida Department of Economic Opportunity in the United States District Court for the Northern District of Florida.[252] The complaint alleged that the actions taken by Governor DeSantis "now threatens Disney's business operations, jeopardizes its economic future in the region, and violates its constitutional rights." [253] Disney filed five claims under the First Amendment, Contracts Clause, Takings Clause, and Due Process Clause. [254] Disney's Fifth Cause of Action claims First Amendment retaliation under § 1983 and alludes to similar arguments discussed in Parts IV and V of this Article. Therefore, the analysis presented in this Article will be further vindicated as the claim is presently pending in federal court. In addition, Disney's First Cause of Action alleges that the Central Florida Tourism Oversight District abrogated contractual rights in violation of the federal Contracts Clause. [255] However, as of September 2023, Disney amended its complaint by removing claims filed under the Contracts Clause, Takings Clause, and Due Process Clause. [256] Unfortunately, the analysis discussed in

250. *Id.*
251. *Id.*
252. Eric Bradner & Steve Contorno, *Disney Sues DeSantis and Oversight Board After Vote to Nullify Agreement with Special Taxing District*, CNN POL. (Apr. 27, 2023, 5:46 AM), https://www.cnn.com/2023/04/26/politics/disney-desantis-reedy-creek-power/index.html.
253. *Id.*
254. Complaint for Declaratory and Injunctive Relief, *supra* note 247, at 59, 63, 65–66.
255. *Id.* at 59.
256. Kevin Breuninger, *Disney Drops All but Free Speech Claim in Political Retaliation Suit Against DeSantis*, CNBC (Sept. 7, 2023, 4:21 PM), https://www.cnbc.com/2023/09/07/disney-drops-all-but-free-speech-claim-in-political-retaliation-suit-against-desantis.html.

Part VI on the Contracts Clauses of the United States and Florida Constitutions will not be validated in the pending federal litigation. This issue of great state importance concerning constitutional rights and local control will continue to evolve. In fact, the Central Florida Tourism Oversight Board will provide reports of the economic burden Disney caused the greater Orlando community in an effort to invalidate Disney's statutory right to the Reedy Creek Improvement District. Yet, the evolution of the conflict between Governor DeSantis and Disney continues to validate the need to protect free speech in the State of Florida and leave the resolution of local issues to the Reedy Creek Improvement District.