

## Delaware Court of Chancery Issues Decision on Disney Board's Obligations in the DeSantis Dispute



### CONTRIBUTORS



Amy L. Simmerman



David J. Berger



Brad Sorrels



Ryan J. Greecher



James G. Griffin-Stanco



William B. Chandler III

### ALERTS

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On June 27, 2023, Vice Chancellor Lori Will of the Delaware Court of Chancery issued a much-anticipated decision addressing the obligations of the board of directors of The Walt Disney Company (Disney) in overseeing Disney's response to Governor Ron DeSantis and the "Don't Say Gay" bill, or HB 1557. In particular, the court rejected a books and records demand by a Disney stockholder seeking to investigate wrongdoing on the basis that the Disney board had breached its fiduciary duties by placing its own personal beliefs ahead of the interests of the corporation and its stockholders and taking positions that impaired the company's value. The litigation reflects the pressures increasingly confronting corporations, and the landmark decision provides valuable guidance to boards in navigating environmental, social, and governance (ESG) issues and controversies.

The court conducted a trial on a paper record, and that record reflected an appropriately engaged and deliberative board. As the controversy first flared, the Disney board convened a special meeting and, shortly thereafter, held a regularly scheduled meeting to discuss the issues. Board minutes captured the board's engagement. The record showed that Disney leadership took an increasingly public stance in the face of intensifying criticism from its employees and creative partners. Accordingly, the court noted, the board's decision did not come "at the expense of stockholders." Rather, the board was motivated by an understanding that "a positive relationship with employees and creative partners is crucial to Disney's success." As such, the court determined that "[i]t is not for this court to question rational judgments about how promoting non-stockholder interests—be it through making a charitable contribution, paying employees higher salaries and benefits, or more general norms like promoting a particular corporate culture—ultimately promote stockholder value." Meanwhile, no evidence supported the plaintiff's allegation that the directors' personal beliefs or their support of organizations that opposed HB 1557 swayed them to act contrary to the interests of the company and its stockholders.

Accordingly, the plaintiff did not clear the relatively low bar of stating a proper purpose for the inspection to investigate wrongdoing because the plaintiff's complaint expressed simple disagreement with a board decision, not an allegation of wrongdoing by the board. The court further rejected the stockholder's demand for two additional noteworthy reasons. One was that the evidence revealed that the stockholder's stated purpose was not actually his own and was pretextual: he did not personally object to the Disney board's decisions, and instead the litigation was instigated and funded by counsel and an organization that supported HB 1557. The court observed that such counsel and organizations "are entitled to their beliefs. They are also entitled to pursue litigation in support of those beliefs. But [a books and records] suit, which is designed to address the plaintiff's interests as a stockholder, is not a vehicle to advance them." Second, the court noted that in response to the stockholder's initial demand before litigation commenced, Disney provided relevant board minutes and its policies on charitable and political donations to the stockholder, and that even if the



Joseph R. Slights III



Allurie Kephart



Amanda N. Urquiza



Daniyal M. Iqbal



Sarah Hand

stockholder had stated a proper purpose in bringing the demand, the company provided him the appropriate documents.

At its core, the decision affirms the wide latitude that boards have under Delaware law in setting strategy and advancing the value of the corporation for stockholders. As the court remarked: “Delaware law vests directors with significant discretion to guide corporate strategy—including on social and political issues. Given the diversity of viewpoints held by directors, management, stockholders, and other stakeholders, corporate speech on external policy matters brings both risks and opportunities. The board is empowered to weigh these competing considerations and decide whether it is in the corporation’s best interest to act (or not act).” These principles provide important protection for directors, at least as to stockholder litigation, as they navigate increasingly sensitive issues. The decision also reflects the value of boards acting in an engaged and deliberative manner, with good board minutes, and responding wisely to stockholder demands.

For more information on the Delaware Court of Chancery’s decision, please contact Wilson Sonsini attorneys [Amy Simmerman](#), [David Berger](#), [Brad Sorrels](#), [Ryan Greecher](#), [James Griffin-Stanco](#), [Bill Chandler](#), [Joseph Slights](#), [Allurie Kephart](#), [Amanda Urquiza](#), [Dan Iqbal](#), [Sarah Hand](#), or any member of the corporate or litigation practices at Wilson Sonsini.