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Defamation bills' defeat only bright spot

By Bobby Block

FAF Executive Director

From the perspective of the First Amendment, the best thing about Florida's 2023 legislative session is that it is now over.

On Friday morning, senators and representatives congratulated themselves for their slavish efforts to the governor's agenda, packed up their bags and went home.

The annual 60-day get together of Florida's lawmakers generated huge amounts of controversy, polarization and headlines, from support for six week abortion bans to weakening voting laws to expanding limits on gender discussion and sexuality to high schools to more fights with the Walt Disney Company.

But from our knothole here at the First Amendment Foundation, the 2023 session was especially notable as one of the worst for free speech, free press, open government and access to public records, which were once again eroded by a slew of exemptions.

Even before lawmakers debated the first batch of bills of the 2023 political season, Floridians' constitutional right to speak and demonstrate took a hit when it was announced at the start of the session that the Department of Management Services changed the rules for demonstrations at the Capitol.

The agency, which manages the grounds, decided that people could be given permission to hold an event at the Capitol only if they had a government sponsor and if their purpose aligned with "the mission of the state."

Such content and viewpoint discrimination is patently unconstitutional under the First Amendment, but that did not stop DMS from denying the League of Women voters from holding a rally at the Capitol in response to new moves by the legislature

to weaken election laws.

The group managed to get around the rejection by calling a press conference instead. It was a clever move, but the new rules still managed to have such a chilling effect that people who later sought to protest new abortion restrictions moved their protest across the street at Tallahassee's City Hall rather than apply to hold their demonstration on state property.

Free speech was not the only right lawmakers and the Governor's Office targeted. On tap were some of the most outrageous expansions of public record exemptions that have been seen in years. Among them, legislators threw a cloak of secrecy over official travel by the governor and other top state officials.

Citing unspecified threats to Gov. DeSantis, they exempted all travel records and visitor logs at the governor's mansion so that citizens can no longer know whom the governor is meeting, where he is traveling to and who is picking up the tab for the trips. In the past, these records have uncovered abuses by at least two governors and a Senate President.

In all, the legislature created 23 new public record exemptions and reinstated nine others that were due to sunset. This made the 2023 session the worst for public records rule since 2014 when the legislature introduced 22 exemptions.

As events drew to a close Friday, House Speaker Paul Renner, R-Palm Coast, called it "a session like no other." He wasn't wrong.

On the bright side, perhaps the biggest threat to free speech and free press before the legislature – a proposed law to make it easier to sue newspapers, broadcasters, bloggers and social media users – was defeated.

The First Amendment Foundation helped create a national coalition of free speech groups and legal experts as well as helped galvanize conservative and Christian broadcasters' opposition to fight the defamation bills. The voices of conservative and Christian talk radio audiences in particular played a key role in stalling the bills despite the fact that they were a priority for the governor.

DeSantis called for the legislation to crack down on the use of anonymous sources by the media as well as to overturn the "actual malice" standard for defamation lawsuits set by the U.S. Supreme Court nearly six decades ago.

But the broadness of the proposed laws and the realization that rather than bringing the mainstream corporate media to heel it would more likely be used against conservative media outlets led to the bills' ultimate demise. After a few committee hearings in the House and the Senate, the bills stalled and died.

But the victory might only be temporary. Lawmakers and DeSantis are saying they will be back to try again.

Just a day before session was over, DeSantis ranted about journalists' use of anonymous sources, as Rep. Alex Andrade, R-Pensacola, the House bill sponsor, denied that conservative criticism had anything to do with the bill dying, vowing it would be back at the next session that starts in January.

During his closing remarks, DeSantis signaled there would be another attempt at defamation legislation after "a little bit more work" is done to reshape it.

"Clearly, I don't want to incentivize frivolous lawsuits. That is totally unacceptable and I think there were concerns about initially there were some other things and so it was just the type of thing that probably needs a little bit more work, because you know you want to do this all in a thoughtful way and you want to have something that actually makes sense," added DeSantis.

Regardless of how the defamation bill is being spun, the measure was a colossal failure, and it will take a very heavy lift to frame any new defamation bill in a way that plaintiffs will not feel emboldened to sue their critics. Nonetheless, Florida lawmakers are going to try anyway.

The fight for robust public discourse, free speech and open government looks set to continue, and we will be here confronting these efforts. Your donations helped us secure a big legislative victory this year. Please help us continue to beat back these efforts to deny our rights to speak out and to know.

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The First Amendment Foundation is a non-profit organization created in 1985 to safeguard free speech, free press, and open government in Florida from being undermined or diluted during changing times. Our purpose is to protect and advance the public's constitutional right to open government and access to public records for an informed citizenry and strong democracy. Please support our mission with a donation at FloridaFAF.org