

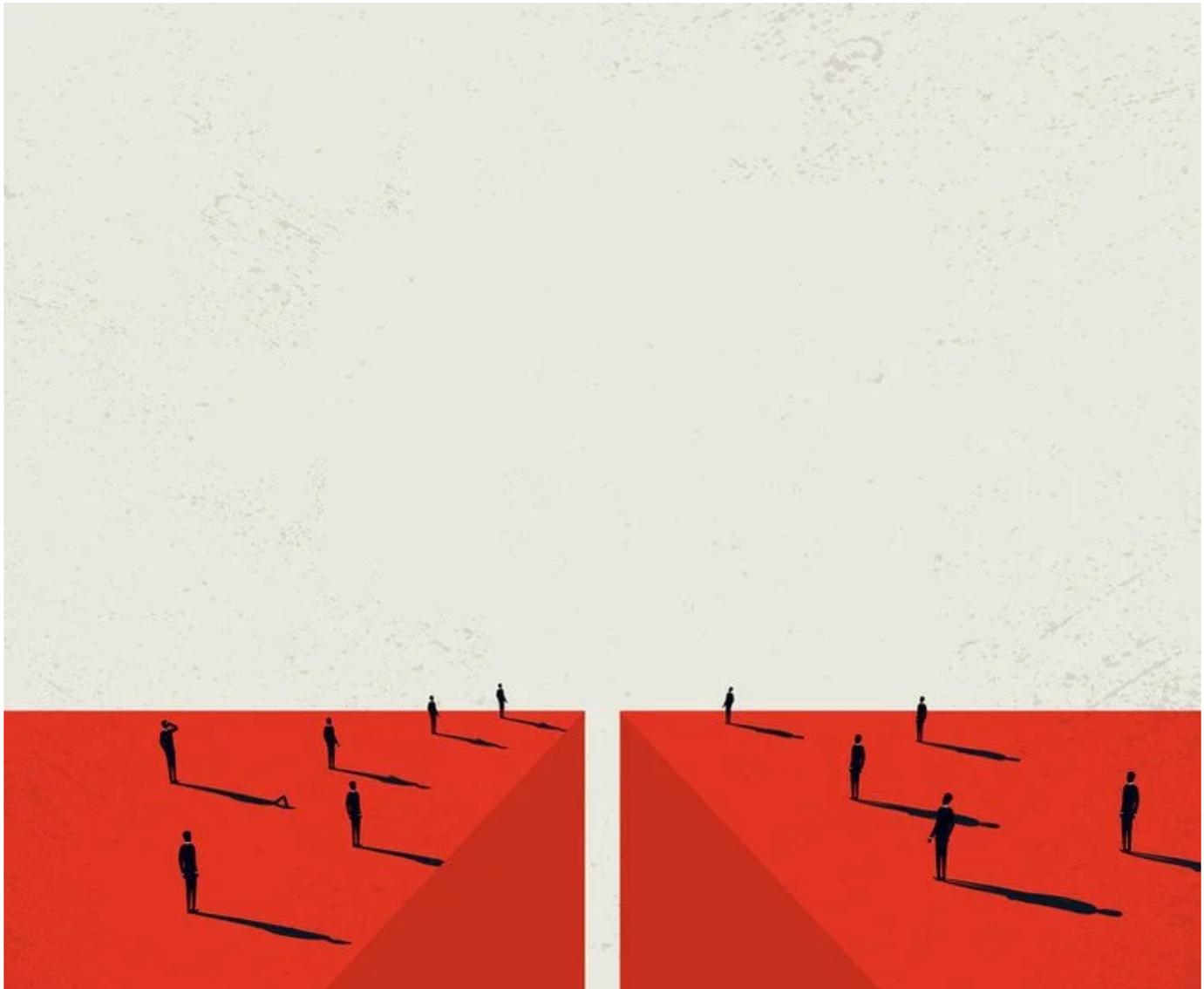
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On Polarizing Issues, Internal Division Threatens Firms More Than External Criticism

Big Law firms are seldom absorbed with the opinions of politicians and activists, but unavoidable issues like election fraud, gun violence, and reproductive rights could drag them into the melee.

By Dan Roe | July 21, 2022



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The Texas Freedom Caucus' threatening letter to Sidley Austin over the firm's abortion health care benefits may have failed to strike fear into the hearts of Big Law managing partners, but they know that its basis—the reversal of *Roe v. Wade*—has the potential to divide firms along deeply held ideological lines.

Almost no law firm has unanimity on the issue of abortion, said the managing partner of a Houston law firm who asked not to be identified because his firm has also pledged to continue health benefits for out-of-state abortions.

"I think that is a much bigger impediment to the policies as opposed to what some politicians think," he added. "You're not too concerned about their opinion, but you are concerned about the opinions of your fellow partners."

Several Big Law managing partners at firms with Texas offices said they had similar concerns. One Am Law 100 managing partner said his firm errs on the side of offending the fewest people, having turned down 2020 post-election litigation work for that reason.

But in today's political climate, the old norms that allowed firms to take any pro bono case, donate to any politician, and not take sides on social and human rights issues are changing.

Polarization on the Rise

Last month, Kirkland & Ellis cut ties with former U.S. Solicitor General Paul Clement on the day Clement won a U.S. Supreme Court case for the New York State Rifle & Pistol Association that effectively deregulated concealed carry laws in the state. In a statement that made no mention of recent mass shootings in Uvalde, Texas, and Buffalo, New York, that killed a combined 32 people, the firm said it would no longer take Second Amendment cases.

The 2020 post-election election and Jan. 6 insurrection also caused firms to cut ties with former President Donald Trump and his organization. Snell & Wilmer and Porter Wright Morris & Arthur withdrew from post-election litigation after public criticism, with The New York Times reporting that one Porter Wright lawyer quit in protest of the firm's representation. In the wake of the Capitol Riot, Seyfarth Shaw dropped Trump companies as clients.

The managing partner of the Texas regional firm said the issue is certain to divide partnerships. "And ultimately that can cause retention issues," he said. "It's too soon to tell how that manifests itself, but it's not too soon to tell that it can lead to division. There are partners with very strong views on both sides of the issue."

Another managing partner with Texas offices said he knows his firm's decision to communicate the availability of abortion benefits rubbed some lawyers and staff the wrong way at a time when firms' cultures are more defined by their stated priorities than in-office relationships. "It's much more about what are the core values of the firm and how do my values align with theirs," he said.

And while firms have always had to answer for representing unpopular clients or being affiliated with shady people, the past several years are forcing firm leaders to go off-script.

"After 27 years in the market, I can't think of any law firm taking a political position on any type of issue," said Dallas recruiter Randy Block.

This year, however, he encountered his first quasi-political lateral: a California lawyer whose firm required vaccines and didn't accept his medical exemption. "They're definitely the most political issues, between vaccines and health care access for women, that I can recall. Usually the hot-button issue is compensation and nothing else makes the news."

Managing Divisions Proactively

Law firms can start by finding out how polarized their partners and firms are on controversial issues, said former Orrick, Herrington & Sutcliffe chair and CEO Ralph Baxter. "You could do it any number of ways: You could have a leadership team or some committee of the firm that seems appropriate, you could take their temperature or have it raised at firm-wide meetings. There are many ways to do it depending on the nature of the issue and how much feedback you wanted."

To the extent that law firms work on polarizing pro bono matters, University of Illinois law professor Robin Fretwell Wilson said conscience clauses have for years allowed law firms to absolve conscientious objectors of their involvement in issues like same-sex marriage. "Firms can say we don't want people working on things where they're not committed to the outcome they're pursuing."

And some firms—likely smaller firms—may choose to openly lean right or left, letting lawyers self-select into and out of the firm, said one Am Law managing partner.

"I think it will be an identity marker and an opportunity for firms to grab parts of the market," Wilson said, adding that most firms are unlikely to take that approach.

Ultimately, being proactive about avoiding involvement in divisive issues is the best way to avoid internal divisions, even if that isn't always possible.

"You have to be careful that you're not getting to a place where you're a firm that has a political position," Baxter said. "But these are tricky issues, they are really important issues, and they are issues that call upon leaders and law firms to act in a way that's consistent with their cultures and, fundamentally, the rule of law."

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