

The Handmaid's Tale



*“Unhappy is the land that needs a hero.”
– Bertolt Brecht, Life of Galileo*

We are an over-pollled society, a fact which subsequently influences politicians to prefer to follow rather than lead. Yet, how is it possible that up until U.S. Supreme Court Justice Samuel Alito’s draft in *Dobbs v. Jackson Women’s Health Organization* leaked, only 20% of Americans thought *Roe v. Wade* was in danger of being overturned? It is like looking at a Monopoly game board and not recognizing that it is a square.

It is time for companies to think deeply about their positions on reproductive rights, health care as a political issue, same sex marriage and related matters. History sometimes moves backwards—one court watcher referred to the leaked opinion as being akin to overturning *Brown v. Board of Education* with *Plessy v. Ferguson*—and it is going to be ever more difficult for companies to stand on the sidelines.

While few companies have yet to see this as “a business imperative,” as Levi Strauss uniquely argued immediately after the leak, they will soon. Taking sides on the most problematic issues of the day may not be advisable, but it may also be unavoidable. Companies should be using their peacetime wisely to plan and determine what and when to implement. Ten recommendations follow to help start the process:

- 1. Understand these times:** For the foreseeable future—likely at least for a generation—understand that the Court will not be shy about overturning long-held norms nor concerned about winning popularity contests (historically this has often been a virtue). Surrounding yourself with decision makers who habitually look backwards is not going to be helpful in making critical decisions during these unprecedented times. You may choose to say and do nothing on choice, birth control, same sex marriage, etc., but do so out of a careful, multi-disciplined analysis, not because “it is the way we have always done things here.”
- 2. Where to locate?** Where you open your next establishment is no longer limited to the tax and regulatory rubric. Anti-choice states that criminalize currently legal behavior will not only impact your current work force but your future one as well. Since the “Pill” was approved by the Food and Drug Administration almost exactly 52 years ago, women have entered the workforce at 11 times the rate they did prior to its approval. While access to birth control and abortion are by no means the only reasons why women entered the workforce in large numbers, their impact cannot be underestimated. Already college age students and their parents are evaluating their college choice on whether their daughters might become a criminal. Consider recruitment in the coming years.
- 3. Understand your workforce:** Levi’s acted in part because of its substantial female workforce and large female

customer base. Unionized or not—and increasingly employee activism is coming as wildcat actions rather than organized labor—understand the thoughts and feelings of your employees. You may not always be able to lean in, but the more accommodating you are on other issues the more room you will have with reproductive matters.

4. **Where is the market going?** Nike embraced Colin Kaepernick because they understood where the market was going and were willing to leave smaller groups of traditional customers behind. The question for you is not where your market is now, but where it is going. Sacrifices will be required. No matter your position or whether you take no position at all, some constituencies will be offended. In this day and age, threats of boycotts are seldom realized, but neither is the hope of pleasing everyone. There will be no unanimity amongst employees, customers or critics, so do not let the perfect be the enemy of the good.
5. **Your political contributions are transparent:** Most corporate political contributions are no longer opaque. It is increasingly difficult to stake out positions while simultaneously funding politicians with opposing views. There is a 100% chance you will be exposed for contributions inconsistent with publicly expressed corporate views as there are now publications and NGOs that study these political contribution records and make them public. Traditional journalists closely follow their work.
For as little as companies receive in return for political contributions, rethink your strategy. Either align your political contributions or make none at all, like IBM. Never has doing the right thing been less expensive.
6. **Plan for the long haul:** The division over *Roe* is five decades old; the division in the country is a fifth of that, but both will get worse before they get better.

This is not a “lipstick on a pig” moment. Neither play Whac-A-Mole with this issue nor think that you can get away with hypocritical or superficial positioning. Whatever you do, build it as part of a long term strategy.

7. **Listen:** In these challenging days, conversations between people with sincerely held pro-life and pro-choice positions finding common ground are among the most inspiring moments. Explore this common ground and see if it can provide you platform to remain both neutral and helpful, if that is the position you want to stake out. There are lots of ways to carve out these issues. Have robust conversations with diverse leaders in your firm, including HR, diversity, legal, insurance, brand, medical, employees and more to determine what is the very best way to address reproductive rights and sexual preference issues and carve out a strategy that works best for your company. Build a communications strategy around it, rather than vice versa. This is not just a legal or political issue and should not be internally addressed as if it is.
8. **Your brand will be defined by these decisions:** Why is your company in business? It is no longer just for shareholder profit and customer satisfaction. The more senior executives understand *why* they are in business the more easily they can carve out positions on these challenging issues. Starbucks has always been “the third place.” Apple was always for the creative in us. Understanding who you are has never been more important. If you have not already after DEI, ESG, #MeToo, global warming and more, it is time for a 360 degree review of the totality of your brand.
9. **Don’t be first or last unless you want notoriety:** If you want to get noticed –and there can be great value in that–then be first to win the media coverage. Otherwise, be anywhere but last.
10. **Be sincere and authentic:** Chick-fil-A’s since-largely-

abandoned anti-LGBTQ positions never inspired organized resistance because they were based on authentic and sincerely held as well as well-articulated religious beliefs. Sincerity and authenticity may not be Kevlar, but they go a long way in defining who activists are going to target.

Whatever you do, *Dobbs* will not be the end of challenging public **issues** for corporations. Plan for a series of challenging decisions over the coming years, build your strategy comprehensively, and be forward-looking. What you do next is going to have more impact than all of your advertising, marketing and political contributions combined.

There is a *non-scaling fence* around the Supreme Court of the United States. It is a shocking admission of where we are as a country. A country, that just a century and a half ago had erected a monument on its shores as a beacon to “Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door!” Unless you’re pregnant.

Enjoy the listen.

Richard Levick

Listen to ***Overturning Roe v. Wade***



About the Author: Richard Levick, Esq. is Chairman & CEO of LEVICK, representing countries and companies in the highest-stakes global communications matters – the Venezuelan crisis; Qatar; the Chinese trade war; the Gulf oil spill; Guantanamo Bay, the Catholic Church

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He and his firm have represented more than 300 of the world's largest law firms, hundreds of companies and over 30 countries, providing heads of state with intelligence, access and insight into Washington. Mr. Levick and his team provide the communications "air cover" for CEOs, boards, lawyers and lobbyists to maximize efficiency, solve conflicts and re-emerge stronger and better positioned.