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# BANKS AND GUNS: SOCIAL ACTIVISM FOLLOWING THE PARKLAND, FLORIDA SHOOTING

## I. INTRODUCTION

In the wake of the significant number of recent mass shootings in our country, social activism on the part of corporate America is on the rise in an attempt to bring about change in the legislature regarding gun control.<sup>1</sup> Following a deadly school shooting at Marjory Stoneman Douglas High School in Parkland, Florida in February 2018, several financial institutions, including a handful of banks—Bank of America, Citigroup, and JP Morgan Chase—unveiled new policies affecting their relationships and activities with gun manufacturers and retailers.<sup>2</sup>

This Note examines the policies put in place by these financial institutions and the response by the gun industry. Additionally, it surveys the arguments from both sides and whether or not courts would be likely to find that the policies violate the right to bear arms as guaranteed by the Second Amendment. This Note argues that the banks' policies are not in violation of the Second Amendment despite harsh criticism from gun advocates and that the banks are permitted to institute such policies. While subject to extensive federal regulation, there are no regulations preventing banks from implementing these corporate social responsibility policies.

Part II discusses the mass shooting epidemic that has occurred in the United States over the last several decades and outlines statistics

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1. Lisa Marie Pane, *Banks Endanger 2nd Amendment Freedoms, Gun Rights Advocates Say*, THE ASSOCIATED PRESS (June 24, 2018, 11:07 AM), <https://www.reviewjournal.com/news/nation-and-world/banks-endanger-2nd-amendment-freedoms-gun-rights-advocates-say/> (addressing how corporate America, including banks and retailers have “tak[en] a stand against the firearms industry amid a lack of action by lawmakers on gun control”) [hereinafter *Banks Endanger 2nd Amendment*].

2. Alan Rappeport, *Banks Tried to Curb Gun Sales. Now Republicans Are Trying to Stop Them*, N.Y. TIMES (May 25, 2018), <https://www.nytimes.com/2018/05/25/us/politics/banks-gun-sales-republicans.html> (addressing the policy implemented by Citigroup); Kevin McCoy & Adam Shell, *Gun Clients and Banks: JPMorgan Limits Firearms Clients, Wells Fargo Keeps Them*, USA TODAY (Apr. 13, 2018), <https://www.usatoday.com/story/money/2018/04/13/jpmorgan-chase-limits-business-gunmakers-while-wells-fargo-continues/515430002/> (discussing JPMorgan adding limits to the gunmakers with which they are currently doing business).

related to guns in the United States.<sup>3</sup> Part III provides the framework for the Second Amendment and how courts have addressed the right to bear arms since the Framers authored the Constitution.<sup>4</sup> Additionally, Part III briefly discusses the structure of the current law regarding the sale of firearms.<sup>5</sup> Part IV discusses both the social activist response by corporate America, including financial institutions in the wake of these recent mass shootings, and the response from the gun industry.<sup>6</sup> Part V addresses whether the gun control policies set forth by banks violate the Second Amendment or federal bank regulations and discusses the role of banks' corporate social responsibility in implementing such policies as a reflection of the desires of the shareholders and consumers in the marketplace.<sup>7</sup> Additionally, Part VI concludes this Note with a reminder of the personal nature of the gun control debate and roles banks may play in generating real change.<sup>8</sup>

## II. MASS SHOOTINGS IN THE UNITED STATES

Mass shootings are becoming all too commonplace.<sup>9</sup> Most often, these occur in public places, claiming victims who were simply in the wrong place at the wrong time.<sup>10</sup> These victims range in age from unborn children to those approaching the century mark, coming from “nearly every imaginable race, religion and socioeconomic background.”<sup>11</sup> The types of guns used in the shootings vary from handguns to semi-automatic rifles.<sup>12</sup> Many of the notable mass shootings over the last twenty

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3. *See infra* Part II.

4. *See infra* Part III.

5. *See infra* Part III.

6. *See infra* Part IV.

7. *See infra* Part V.

8. *See infra* Part VI.

9. See Michael Hiltzik, *If You Think Mass Shootings Are Becoming More Frequent, and Worse—You're Right*, L.A. TIMES (Nov. 20, 2017, 10:10 AM), <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-mass-shootings-20171120-story.html> (describing the increase in frequency in the number of mass shootings occurring in the United States).

10. Bonnie Berkowitz et al., *The Terrible Numbers That Grow with Each Mass Shooting*, WASH. POST (Dec. 7, 1993, updated Sept. 14, 2018), [https://www.washingtonpost.com/graphics/2018/national/mass-shootings-in-america/?noredirect=on&utm\\_term=.873421006b54](https://www.washingtonpost.com/graphics/2018/national/mass-shootings-in-america/?noredirect=on&utm_term=.873421006b54) (“The places change, the numbers change, but the choice of weapon remains the same. In the United States, people who want to kill a lot of other people most often do it with guns.”).

11. *Id.*

12. *Id.*

years include the Columbine High School Shooting in 1999,<sup>13</sup> the Virginia Tech Massacre in 2007,<sup>14</sup> the Fort Hood shooting in 2009,<sup>15</sup> the Gabrielle Giffords shooting in 2011,<sup>16</sup> the Aurora Movie Theater Shooting in 2012,<sup>17</sup> the Sandy Hook Elementary Shooting in 2012,<sup>18</sup> the Charleston, South Carolina church shooting in 2015,<sup>19</sup> the San Bernardino shooting in 2015,<sup>20</sup> the Orlando Night Club Shooting in 2016,<sup>21</sup> the Las Vegas Shooting in 2017,<sup>22</sup> the Texas Church Shooting in 2017,<sup>23</sup> and most recently as of this writing in the Fall of 2018, the shootings at the Tree of

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13. Los Angeles Times Staff, *Deadliest U.S. Mass Shootings 1984-2017*, L.A. TIMES (Oct. 2, 2017), <http://timelines.latimes.com/deadliest-shooting-rampages/> (describing the timeline of mass shootings occurring in the United States over the last few decades including the Columbine High School shooting, where two students killed twelve fellow students and a teacher and injured twenty-four others before taking their own lives).

14. See Emily Cohen, *Va. Tech Shooter Seung-Hui Cho's Mental Health Records Released*, ABC NEWS (Aug. 19, 2009), <https://abcnews.go.com/US/seung-hui-cho-mental-health-records-released/story?id=8278195> (discussing the mental health records released in connection with the Virginia Tech Massacre gunman); see also Los Angeles Times Staff, *supra* note 13 (describing the Virginia Tech Massacre, where a college student killed thirty-two students and injured seventeen others, ending the rampage by taking his own life).

15. Los Angeles Times Staff, *supra* note 13 (describing the Fort Hood shooting involving an Army psychiatrist, with alleged Muslim extremist ties, who shot and killed thirteen and injured thirty-two people).

16. Los Angeles Times Staff, *supra* note 13 (describing the shooting where U.S. House of Representative Gabrielle Giffords was shot but survived at a rally in her home state; six more were left dead and ten others were injured).

17. Los Angeles Times Staff, *supra* note 13 (describing the Aurora, Colorado movie theater shooting where a lone gunman entered a crowded movie theater, opened fire, and killed twelve individuals and injured fifty-eight).

18. Los Angeles Times Staff, *supra* note 13 (describing another devastating school shooting occurring in Newtown, Connecticut, when a lone gunman, allegedly suffering from mental issues, entered Sandy Hook Elementary and killed twenty children and seven adults).

19. Los Angeles Times Staff, *supra* note 13 (describing the Emanuel African Methodist Episcopal Church shooting where a suspected white supremacist shot and killed nine worshippers in Charleston, South Carolina).

20. Los Angeles Times Staff, *supra* note 13 (describing the San Bernardino shooting where a married couple opened fire on a holiday party in San Bernardino, killing fourteen and injuring twenty-two individuals).

21. Los Angeles Times Staff, *supra* note 13 (describing the shooting at the Pulse Night Club in Orlando, Florida, where a lone gunman killed forty-nine and injured fifty-eight when he opened fire in a crowded night club).

22. Los Angeles Times Staff, *supra* note 13 (describing the Las Vegas Shooting, where a gunman opened fire on a country music festival, shooting from the thirty-second floor of a nearby hotel, killing fifty and injuring more than 500 concert-goers).

23. Dakin Andone et al., *At Least 26 People Killed in Shooting at Texas Church*, CNN (Nov. 6, 2017 4:20 AM), <https://www.cnn.com/2017/11/05/us/texas-church-shooting/index.html> (describing the church shooting in Sutherland Springs, Texas, where a shooter, a former member of the military, entered Sunday worship and killed twenty-six people and injured twenty others before taking his own life).

Life Jewish Synagogue in Pittsburgh<sup>24</sup> and the Borderline Bar & Grill in Thousand Oaks, California.<sup>25</sup> However, it was another school shooting, one on Valentine's Day in 2018 at Marjory Stoneman Douglas High School in Parkland, Florida, that empowered some of the surviving students to advocate for change.<sup>26</sup> Several corporations, industries, and banks are responding to their message.<sup>27</sup>

The United States leads the world in mass shootings.<sup>28</sup> Experts suggest there is a strong correlation between this statistic and the fact that the United States also has the highest per capita gun ownership in the world.<sup>29</sup> A recent survey showed that the United States accounts for 4.4% of the world's population and owns about 42% of the world's guns.<sup>30</sup> Other polls indicate that approximately 30% of Americans own guns,<sup>31</sup> which equates to gun ownership in about 42% of American households.<sup>32</sup>

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24. Campbell Robertson et al., *11 Killed in Synagogue Massacre; Suspect Charged with 29 Counts*, N.Y. TIMES (Oct. 27, 2018), <https://www.nytimes.com/2018/10/27/us/active-shooter-pittsburgh-synagogue-shooting.html> (detailing the Pittsburgh Synagogue shooting, where a shooter using an AR-15 style assault rifle and handguns killed eleven worship attendees).

25. Kanya Whitworth et al., *Thousand Oaks Shooting: 12 Dead Including Officer, Suspect Identified*, ABC NEWS (Nov. 9, 2018, 12:47 AM), <https://abcnews.go.com/US/multiple-people-injured-reported-mass-shooting-california-bar/story?id=59050130> (describing the shooting at the Borderline Bar & Grill in Thousand Oaks, California, where a shooter likely suffering from PTSD killed twelve, including a sheriff's deputy).

26. Nicole Chavez & Steve Almasy, *What Happened, Moment by Moment, in the Florida School Massacre*, CNN (Mar. 8, 2018, 9:17 PM), <https://www.cnn.com/2018/02/15/us/florida-school-shooting-timeline/index.html> (detailing the events of the Parkland, Florida school shooting, where a lone gunman with alleged mental health issues used a legally-obtained AR-15 rifle, killing fourteen students and three teachers).

27. *Banks Endanger 2nd Amendment*, *supra* note 1.

28. Melissa Healy, *Why the U.S. is No. 1—in Mass Shootings*, L.A. TIMES (Aug. 24, 2015, 3:45 PM), <http://www.latimes.com/science/sciencenow/la-sci-sn-united-states-mass-shooting-20150824-story.html> (discussing the statistics surrounding mass shootings in the United States).

29. *Id.* (reporting that the U.S. leads the world in mass shootings as a result of leading in per-capita gun ownership and “poorly managed mental illness.” Research has shown an association between ownership and mass shootings with “clear statistical significance”).

30. Charlotte Alter, *The School Shooting Generation Has Had Enough*, TIME (Mar. 22, 2018), <http://time.com/longform/never-again-movement/> (citing a comprehensive 2007 Small Arms Survey).

31. Kim Parker et al., *The Demographics of Gun Ownership*, PEW RESEARCH CENTER (June 22, 2017), <http://www.pewsocialtrends.org/2017/06/22/the-demographics-of-gun-ownership/> (detailing a recent survey conducted by the Pew Research Center).

32. See Christopher Ingraham, *There Are More Guns Than People in the United States, According to a New Study of Global Firearm Ownership*, WASH. POST (June 19, 2018), [https://www.washingtonpost.com/news/wonk/wp/2018/06/19/there-are-more-guns-than-people-in-the-united-states-according-to-a-new-study-of-global-firearm-ownership/?utm\\_term=.d2d6cd7bb3aa](https://www.washingtonpost.com/news/wonk/wp/2018/06/19/there-are-more-guns-than-people-in-the-united-states-according-to-a-new-study-of-global-firearm-ownership/?utm_term=.d2d6cd7bb3aa) (describing the recent surveys showing the estimated high rate of gun ownership in the United States).

Some attribute this high rate of gun ownership to the right to bear arms protected by the Second Amendment of the United States Constitution.<sup>33</sup>

### III. THE SECOND AMENDMENT

The Second Amendment of the United States Constitution is a point of contention among gun control and gun rights advocates in the United States and has been a source of political division for more than a century.<sup>34</sup> Each side has championed the text of the Constitution, consideration of the Framers' intent in drafting the Second Amendment, the traditions developed over time, and public policy concerns to support their views.<sup>35</sup>

#### A. *Second Amendment – The Framers to Today*

The Second Amendment of the United States Constitution reads: “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>36</sup> When considering the original intent of the Framers in drafting the Constitution, scholars have developed two competing schools of thought: the Collective Rights theory, which focuses on the phrase “a well-regulated militia,” and the Individual Rights theory, which places emphasis on the

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33. See generally Ron Elving, *Repeal the Second Amendment? That's Not So Simple. Here's What It Would Take*, NPR (Mar. 1, 2018, 5:00 AM), <https://www.npr.org/2018/03/01/589397317/repeal-the-second-amendment-thats-not-so-simple-here-s-what-it-would-take> (discussing the likelihood of repealing the Second Amendment and the steps that would be necessary for such a repeal to occur); see Max Fisher & Josh Keller, *What Explains U.S. Mass Shootings? International Comparisons Suggest an Answer*, N.Y. TIMES (Nov. 7, 2017), <https://www.nytimes.com/2017/11/07/world/americas/mass-shootings-us-international.html> (suggesting the right to bear arms has increased the number of guns in the United States leading to high rates of mass shootings and gun violence); see also Brennan Weiss, *Only 3 Countries in the World Protect the Right to Bear Arms in Their Constitutions*, BUSINESS INSIDER (Nov. 5, 2017, 12:16 PM), <https://www.businessinsider.com/2nd-amendment-countries-constitutional-right-bear-arms-2017-10> (discussing the three countries in the world that guarantee the right to bear arms through a constitution).

34. See Erwin Chemerinsky, *Putting the Gun Control Debate in Social Perspective*, 73 FORDHAM L. REV. 477, 478 (2004), (“[s]ociety is obviously deeply divided over the issue of gun control and the meaning of the Second Amendment. There appears to be no bridge between the two sides.”).

35. Chemerinsky, *supra* note 34, at 479.

36. U.S. CONST. amend. II. (“A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”).

latter clause of the Amendment, spotlighting instead the “right of the people to keep and bear arms.”<sup>37</sup>

Collective Rights theorists argue citizens had the right to bear arms primarily in order to support the militia.<sup>38</sup> Following the Revolutionary War, the colonials had just fought against an established military and were wary of the new United States Government forming a military,<sup>39</sup> therefore, they developed the militia as an alternative intended to reduce the need for a full-time military.<sup>40</sup> Additionally, Collective Rights scholars argue the Framers’ intention in drafting the Second Amendment was to “prevent Congress from regulating those firearms in a manner that would keep states from adequately protecting themselves . . . [and] rejects the idea that the Second Amendment bestows on individuals a right to have guns.”<sup>41</sup>

Under the Individual Rights theory, however, scholars argue that the Framers intended the phrase “bear arms” to be construed as an individual fundamental right.<sup>42</sup> Individual Right theorists believe the Framers drafted the Second Amendment to enable citizens to “protect themselves from domestic insurgency, foreign invasion, and the possibility of a tyrannical government,” as the militia was comprised of “ordinary citizens.”<sup>43</sup> Individual Right theorists argue that the individual right to bear arms is guaranteed in the Constitution and allows citizens to defend and protect themselves.<sup>44</sup>

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37. Chemerinsky, *supra* note 34.

38. See Erwin Chemerinsky, *A Well-Regulated Right to Bear Arms*, WASH. POST (Mar. 14, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/13/AR2007031301508.html> (describing the two competing approaches to the interpretation of the Second Amendment); see also *Militia*, COLLINS ENGLISH DICTIONARY, <https://www.collinsdictionary.com/us/dictionary/english/militia> (last visited Jan. 28, 2019) (defining militia as “an organization that operates like an army but whose members are not professional soldiers”).

39. Daron Taylor & Joyce Koh, *How Should We Interpret the Second Amendment?*, WASH. POST (Apr. 3, 2018), [https://www.washingtonpost.com/video/national/how-should-we-interpret-the-second-amendment/2018/04/03/16786d44-376c-11e8-af3c-2123715f78df\\_video.html?utm\\_term=.e78e26d67ef0](https://www.washingtonpost.com/video/national/how-should-we-interpret-the-second-amendment/2018/04/03/16786d44-376c-11e8-af3c-2123715f78df_video.html?utm_term=.e78e26d67ef0) (detailing the history of the Second Amendment).

40. Chemerinsky, *supra* note 38.

41. Chemerinsky, *supra* note 38.

42. Hannah Fry, *Scholars Debate the Meaning of the Second Amendment*, L.A. TIMES (Sept. 16, 2015, 5:51 PM), <http://www.latimes.com/tn-dpt-me-0917-constitution-day-20140916-story.html> (summarizing a debate between Erwin Chemerinsky and John Eastman over the meaning of the Second Amendment).

43. *Id.*

44. *Id.*

The debate over the interpretation of the Second Amendment was addressed by the Supreme Court in 1939 when it decided *U.S. v. Miller*.<sup>45</sup> In a unanimous decision, the Court held that the Second Amendment does not guarantee an individual right to bear arms when the type of firearm does not have a “reasonable relationship to the preservation or efficiency of a well-regulated militia.”<sup>46</sup> In *Miller*, the Court adopted the Collective Rights theory because the particular weapon—a sawed-off double barrel shotgun—was not the type of weapon used by the militia contemplated by the Framers.<sup>47</sup>

The ruling in *Miller* was left untouched for more than seventy years until 2008, when the Supreme Court heard *D.C. v. Heller*,<sup>48</sup> in which the plaintiff argued that he had the right to bear arms for self-defense under the Individual Right theory.<sup>49</sup> The District of Columbia’s argument was based on the Collective Rights theory: that the Second Amendment affords the right to possess guns necessary only for military service, not as an individual right to self-defense.<sup>50</sup> Without identifying the level of scrutiny it employed,<sup>51</sup> the Court recognized both arguments: the first clause concerns the militia and the second clause concerns the individual right.<sup>52</sup> The Court concluded that “the former does not limit

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45. 307 U.S. 174 (1939) (reversing the District Court’s dismissal of the case in which two suspects argued the National Firearm Act of 1934, which requires firearms to be registered, violated their Second Amendment right to bear arms; the Supreme Court held the Second Amendment is not a guarantee of an individual right to bear arms, specifically a sawed-off double barrel shotgun does not “have a reasonable relationship to the preservation of a well-regulated militia” as this weapon is not ordinary military equipment used for the common defense).

46. *Id.* at 178 (holding the Second Amendment is not a guarantee of an individual right to bear arms, specifically a sawed-off double barrel shotgun does not “have a reasonable relationship to the preservation of a well-regulated militia” as this weapon is not ordinary military equipment used for the common defense).

47. Chemerinsky, *supra* note 38 (discussing the types of weapons an individual may possess must have reasonable relationship with the preserving the militia).

48. 554 U.S. 570 (2008) (holding the Second Amendment does guarantee an individual the right to bear arms and therefore statutes banning handgun possession in the home are a violation of the Second Amendment).

49. *Id.* at 571 (detailing the plaintiff’s challenge of the constitutionality of a stringent hand gun ban in Washington, D.C., where the plaintiff, a Washington, D.C. special police officer applied for a registration permit to keep his weapon at home when off duty but was refused due to a city-wide ban on handgun possession in the home).

50. *Id.* (detailing the complaint, where plaintiff, a Washington, D.C. special police officer applied for a registration permit to keep his weapon at home when off duty but was refused due to a city-wide ban on handgun possession in the home).

51. Aryn Carpenter, *Moving Targets: Roving Standards of Review in Second Amendment Cases*, 11 J. MARSHALL L.J. 60 (discussing the court’s intentional lack of identifying the level of scrutiny in *Heller*).

52. *Heller*, 554 U.S. at 571.

the latter grammatically, but rather announces a purpose.”<sup>53</sup> The Court held the Second Amendment established an individual right to own guns, but concluded that right is not unlimited.<sup>54</sup> The Second Amendment does “protect an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.”<sup>55</sup> However, the Court went on to say it “does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes,” carving out the *Miller* exception that certain types of guns may be regulated.<sup>56</sup> The Court also went on to note the following limitations on the right to bear arms, stating, “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places . . . or laws imposing conditions and qualifications on the commercial sale of arms.”<sup>57</sup> In the end, the Washington, D.C. handgun ban was found unconstitutional, and the Court’s opinion changed the interpretation of the Second Amendment from a “collective right regarding militia to an individual right to own guns,” and has come to define the modern day federal interpretation of the Second Amendment.<sup>58</sup>

### B. *Laws Regulating Guns*

The current federal law that regulates the legal purchase of firearms includes a required background check and minimum age

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53. *Id.*

54. *Id.* at 626-627. The Court stated in the opinion:

Like most rights, the right secured by the Second Amendment is not unlimited . . . the right was not a right to keep and carry any weapon whatsoever and for whatever purpose . . . Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

*Id.*

55. Taylor & Koh, *supra* note 39 (citing *D.C. v. Heller*).

56. *Heller*, 554 U.S. at 626.

57. *Id.* at 627.

58. Taylor & Koh, *supra* note 39.

requirement.<sup>59</sup> First, under the Brady Handgun Violence Prevention Act of 1993, gun sellers are required to run a background check on individuals interested in purchasing guns using the National Instant Criminal Background Check (“NICBC”).<sup>60</sup> The NICBC is a database maintained by the FBI, containing the names and birthdates of individuals who are not eligible to purchase guns.<sup>61</sup> Secondly, federal law requires gun purchasers to be at least twenty-one years of age to purchase a handgun from a dealer, or at least eighteen years of age to purchase “long guns,” like rifles and shotguns.<sup>62</sup> However, the federal laws set these ages as minimum standards, so states may impose more stringent requirements.<sup>63</sup>

Previous federal law restricted the types of weapons that retailers could sell.<sup>64</sup> The 1986 Firearm Owners Protection Act restricted civilian ownership of machine guns.<sup>65</sup> In 1994, the Public Safety and

59. 18 U.S.C. § 922(t) (2012); see David Shortell, *How Do Laws Prevent Mentally Ill People From Buying Guns?*, CNN POLITICS (Feb. 15, 2018), <https://www.cnn.com/2018/02/15/politics/mental-health-gun-possession-explainer/index.html> (describing the background check procedure for gun retailers).

60. § 922(t); see Sarah Gray, *Here's a Timeline of the Major Gun Control Laws in America*, TIME (Feb. 22, 2018), <http://time.com/5169210/us-gun-control-laws-history-timeline/> (outlining the major gun control laws enacted in the United States); Shortell, *supra* note 59.

61. See *Citizen's Guide To Federal Firearms Laws – Summary*, NRA-IRA (Mar. 24, 2004), <https://www.nraila.org/articles/20040324/citizen-s-guide-to-federal-firearms-law> (summarizing the federal restrictions on purchase, sale, possession and transportation of firearms and ammunition providing the following individuals as ineligible to purchase firearms: individuals convicted of felonious crimes punishable by imprisonment for over a year, individuals convicted of a misdemeanor crime of domestic violence, fugitives, individuals with mental defect, illegal aliens and non-U.S. citizens, military servicemen with dishonorable discharge, as well as individuals not meeting determined age limits); Shortell, *supra* note 59 (describing the background check procedure for gun retailers to use for potential gun purchasers including individuals who have been committed to a mental health facility or deemed mentally incompetent by a governmental agency are entered into the NICBC system).

62. § 922 (b)(1). The statute provides the age requirements for the sale of weapons:

“It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to an individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.”

*Id.*

63. Lydia Wheeler, *What Are the Legal Ages for Buying Guns?*, THE HILL (Feb. 22, 2018, 4:56 AM), <http://thehill.com/homenews/politics-101/375154-what-are-the-current-age-restrictions-on-guns> (detailing the age requirements for legal gun purchases).

64. See Gray, *supra* note 60 (outlining the history of gun controls laws in the U.S.).

65. 18 U.S.C. § 926 (2012); see Gray, *supra* note 60 (“[T]he bill prohibit[ed] civilian ownership or transfer of machine guns made after May 19, 1986.”).

Recreational Firearms Use Protection Act, more commonly known as the Federal Assault Weapons Ban, was a temporary measure which prohibited the manufacture and sale of semi-automatic firearms for civilian use; however, the ban expired in 2004 and numerous attempts to renew it have failed.<sup>66</sup>

Today, controversy surrounds whether military-style or semi-automatic weapons should be available to ordinary citizens and whether lawmakers should again restrict the manufacture and sale of these weapons to Americans.<sup>67</sup> The AR-15 is one of the more common semi-automatic weapons,<sup>68</sup> and is the weapon used in many of the recent mass shootings.<sup>69</sup>

Current gun laws have not stopped mass shootings in the United States, and while no gun control law will prevent all mass shootings, studies in other countries have shown that stricter gun control laws are linked

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66. § 922; see Jeff Daniels, *Definition of What's Actually an Assault Weapon is Highly Contentious Issue*, CNBC (Feb. 21, 2018, updated Feb. 27, 2018, 8:29 AM), <https://www.cnbc.com/2018/02/21/definition-of-whats-an-assault-weapon-is-a-very-contentious-issue.html> (describing how the semi-automatic weapon used in the Parkland school shooting would have been included under the Assault Weapons Ban); see also Andrew Glass, *Clinton Signs Assault Weapons Ban, Sept. 13, 1994*, POLITICO (Sept. 13, 2018, 12:04 AM), <https://www.politico.com/story/2018/09/13/clinton-signs-assault-weapons-ban-sept-13-1994-813552> (summarizing the assault weapons ban in effect from 1994-2005).

67. See generally Daniels, *supra* note 66 (describing the assault weapon controversy from the gun advocates and gun control activists views); Eugene Robinson, *Assault Weapons Must Be Banned in America*, WASH. POST (June 13, 2016), [https://www.washingtonpost.com/opinions/assault-weapons-must-be-banned/2016/06/13/0d6a58f4-3195-11e6-8ff7-7b6c1998b7a0\\_story.html?utm\\_term=.36afb0e7bab8](https://www.washingtonpost.com/opinions/assault-weapons-must-be-banned/2016/06/13/0d6a58f4-3195-11e6-8ff7-7b6c1998b7a0_story.html?utm_term=.36afb0e7bab8) (outlining the support for an assault weapons ban in response to mass shootings, “not all weapons must be considered suitable for private hands”); Julie Vitkovskaya & Patrick Martin, *4 Basic Questions About the AR-15*, THE WASH. POST (Feb. 16, 2018), [https://www.washingtonpost.com/news/check-point/wp/2018/02/15/4-basic-questions-about-the-ar-15/?utm\\_term=.ecb67cc86048](https://www.washingtonpost.com/news/check-point/wp/2018/02/15/4-basic-questions-about-the-ar-15/?utm_term=.ecb67cc86048) (detailing firearm advocates’ arguments that semi-automatic weapons should not be classified as assault weapons because they are used for hunting and sport. Conversely, gun control advocates disagree stating the weapon is not suitable for hunting because semi-automatic weapons such as the AR-15 have “a high muzzle velocity, which, combined with the small .223 round, produces a violent ricochet through an animal body if it hits bone.” Gun control advocates further argue semi-automatic weapons are designed as a military weapon with the purpose to kill large number of people in a short time).

68. Daniels, *supra* note 66; Vitkovskaya & Martin, *supra* note 67 (describing the characteristics of the AR-style rifles and defining semi-automatic to mean a weapon where the shooter must pull the trigger each time they wish to fire a shot rather than a completely automatic fire, providing advantages including ease of firing, quick reloading ideal in combat situations, ability to rapid fire rounds in seconds, and a more accurate shot due to the low recoil feature).

69. See Daniels, *supra* note 66 (stating the controversy surrounding the AR-15-style rifles as the weapon of choice in many of the mass shootings occurring in the U.S.); see also Vitkovskaya & Martin *supra* note 67 (noting the use of the AR-15 at another mass shooting).

to a decrease in crime.<sup>70</sup> Public opinion has trended toward a desire for solutions that deter these mass shootings from occurring in the United States.<sup>71</sup> Solutions offered by gun control advocates often include stricter background checks for gun purchasers,<sup>72</sup> raising the purchase age requirement for all gun purchases,<sup>73</sup> ending the manufacture and sale of military assault-style semi-automatic rifles to ordinary citizens,<sup>74</sup> closing the gun show loophole,<sup>75</sup> and prohibiting sales of high capacity magazines.<sup>76</sup> In the modern era of mass shootings, gun control reform has fallen short, and none of these proposed measures have passed in Congress.<sup>77</sup>

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70. See Erwin Chemerinsky, *Actions to Decrease Gun Violence*, HARV. L. REV. BLOG (Nov. 6, 2017), <https://blog.harvardlawreview.org/actions-to-decrease-gun-violence/> (describing why stricter gun control laws will help to reduce the shooting crimes in the United States).

71. Emily Guskin & Scott Clement, *Has Parkland Changed Americans' Views on Guns?*, WASH. POST (Apr. 20, 2018), [https://www.washingtonpost.com/news/the-fix/wp/2018/04/20/has-parkland-changed-americans-views-on-guns/?noredirect=on&utm\\_term=.a101dc85c12d](https://www.washingtonpost.com/news/the-fix/wp/2018/04/20/has-parkland-changed-americans-views-on-guns/?noredirect=on&utm_term=.a101dc85c12d) (discussing the trend in public opinion found in a recent poll of Americans favoring more gun control laws); Alter, *supra* note 30 (“Even as mass-shooting deaths mount, our Second Amendment has made gun rights a third-rail issue: roughly 90% of Americans agree on ‘common-sense’ solutions like universal background checks, yet absolutists stand in the way of any meaningful action.”); see also Chemerinsky, *supra* note 72 (citing recent polls indicating the American people want more gun control).

72. See Daniella Diaz, *5 Things Congress Could Do on Guns*, CNN (Feb. 26, 2018, 8:01 AM), <https://www.cnn.com/2018/02/25/politics/gun-control-congress-proposals-marco-rubio-parkland-school-shooting/index.html> (detailing the ways to improve the background check system, including holding agencies accountable to enter criminal history, more stringent mental health reporting system, and requiring the NCIBC to be continually updated).

73. *Id.*; see also Brian Weiss, *Here are the Laws that Student Gun Control Activists from Parkland Actually Want to Pass*, BUSINESS INSIDER (Mar. 31, 2018, 3:42 PM), <https://www.businessinsider.com/these-are-the-laws-gun-control-activists-want-passed-2018-3#additional-proposals-4> (detailing the solution ban assault-style weapons from ordinary citizens).

74. See Diaz, *supra* note 72 (describing the solution to raise the age limit to 21 years of age for all gun purchases); see also Weiss, *supra* note 73 (detailing the solution to raise the age limit to 21 for all gun purchases).

75. See Marc J. Ambinder, *Focusing on ‘Gun Show Loophole’*, ABC NEWS, <https://abcnews.go.com/Politics/story?id=121200&page=1> (last visited Jan. 31, 2019) (describing the gun show loophole which allows private gun owners and collectors to swap, trade and sell guns at gun shows, without a mandated background check); see also Weiss, *supra* note 73 (describing the solution to end the gun show loophole).

76. See Diaz, *supra* note 72 (describing the solution to prohibit sales of high capacity magazines); see also Weiss, *supra* note 73 (detailing raising the gun purchase age to 21).

77. See Victor Haynes, *Gun Control in the United States*, OMICSONLINE (June 11, 2016), <https://www.omicsonline.org/open-access/gun-control-in-the-united-states-2332-0761-1000206.php?aid=74881> (quoting “no gun control legislation has passed in either house of Congress since the sunset of the ‘assault weapons ban.’”).

## IV. SOCIAL ACTIVISM IN THE WAKE OF MASS SHOOTINGS

A. *Student Activists Lead the Way in Making Change*

Prior to the Marjory Stoneman Douglas High School shooting, there were calls for more stringent gun control laws following each of the aforementioned mass shootings.<sup>78</sup> However, in instances where stricter gun control laws have gone before Congress, “Democrats [have] offer[ed] feeble pleas for new gun limits; Republicans [have] offer[ed] ‘thoughts and prayers,’” but there has been no significant gun control reform.<sup>79</sup> Yet, students from Marjory Stoneman Douglas High School have refused to simply be survivors of another school shooting.<sup>80</sup> These student activists started the “Never Again Movement” which ignited a renewed nationwide push for legislated gun control to end gun violence and mass shootings.<sup>81</sup> Following this shooting, some citizens boycotted businesses with ties to the National Rifle Association (“NRA”).<sup>82</sup> Corporate America listened to the marketplace, and several companies reacted by implementing new policies with various effects on gun control.<sup>83</sup>

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78. See Rebecca Shabad, *Why More than 100 Gun Control Proposals in Congress Since 2011 Have Failed*, CBS NEWS (June 20, 2016, 8:08 PM), <https://www.cbsnews.com/news/how-many-gun-control-proposals-have-been-offered-since-2011/> (citing the NRA as one of the major reasons for Congress’ inaction, due in large part to the significant financial contribution in support of candidates who are then left beholden to the NRA’s causes); *supra* Part II.

79. Alter, *supra* note 30 (discussing the lack of gun control legislation following the many mass shooting in the US over the years); *see id.* (citing the NRA as one of the major reasons for Congress’ inaction, due in large part to the significant financial contribution in support of candidates who are then left beholden to the NRA’s causes).

80. Emily Witt, *How the Survivors of Parkland Began the Never Again Movement*, NEW YORKER (Feb. 19, 2018), <https://www.newyorker.com/news/news-desk/how-the-survivors-of-parkland-began-the-never-again-movement> (discussing the development of the Never Again Movement asserting policy goals for stricter gun laws).

81. *See id.* (discussing the development of the “Never Again Movement” in the immediate aftermath of the Marjory Stoneman Douglas High School shooting, where students participated in national television interviews, flooded social media, demonstrated at state legislatures and in Washington, met with the President, participated in rallies including the March for Our Lives); *see also* Zameena Mejia, *3 Reasons Gen Z Activists Have Changed the Gun Control Conversation When No One Else Could*, CNBC (Mar. 14, 2018, 5:37 PM), <https://www.cnn.com/2018/03/14/how-gen-z-activists-have-changed-the-conversation-around-guns.html> (discussing how Generation Z making change to the gun control conversation by “trying to put pressure and force action” in Congress).

82. Deepa Lankshim, *How Corporate America is Changing Its Gun Policies After Parkland*, DAILY BEAST (Mar. 1, 2018, 4:35 PM), <https://www.thedailybeast.com/dicks-sporting-goods-delta-amazon-kroger-how-corporate-america-changing-gun-policies-after-parkland-florida-stoneman-douglas-assault-style-rifles-ar-15> (discussing the steps taken by corporate America following the Parkland shooting).

83. *Banks Endanger 2nd Amendment*, *supra* note 1.

B. *Social Activism by Corporate America*

In light of the recent Parkland shooting and in support of American majority opinion, as well as their own social ideals, many companies in corporate America have chosen to take a stand in the absence of action by lawmakers.<sup>84</sup> “America’s corporate community has become a quiet defender of socially liberal causes.”<sup>85</sup> Corporate social activism has taken on a wide range of activity, but has been observed most directly through policy changes by large companies.<sup>86</sup>

Several retail companies have adopted policies restricting both the arms sold in their stores and the customers to whom they are willing to sell these weapons.<sup>87</sup> Dick’s Sporting Goods, which also operates Field & Stream stores, discontinued the sale of assault-style rifles and high capacity magazines, imposed age restrictions on gun purchasers over and beyond what is already required, reiterated their ban on selling bump stocks,<sup>88</sup> and plans to destroy all unsold assault-style weapons in their stock to ensure those weapons never enter in the marketplace.<sup>89</sup> Walmart and Kroger now ban firearm sales to customers who are under the age of twenty-one, which raises the minimum purchase age from eighteen for some weapons.<sup>90</sup> REI does not sell guns; however, the company has chosen to boycott selling product brands produced by Vista Outdoor, which

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84. Lankshmim, *supra* note 82; James F. Peltz, *In a Rare Move, Corporate America Presses for Gun-Control Restrictions ‘To Take a Stand’*, L.A. TIMES (May 3, 2018, 4:05 PM), <http://www.latimes.com/business/la-fi-companies-gun-control-20201027-story.html> (stating the social activism effort by corporate America to take a stand against the gun industry is not unlike the same done to the tobacco industry years ago); *Banks Endanger 2nd Amendment*, *supra* note 1.

85. Derek Thompson, *Why Are Corporations Finally Turning Against the NRA?*, ATLANTIC (Feb. 26, 2018), <https://www.theatlantic.com/business/archive/2018/02/nra-discounts-corporations/554264/> (detailing the politicization of the nonpartisan corporate America in areas of social activism).

86. Peltz, *supra* note 84.

87. Lankshmim, *supra* note 82 (summarizing the many companies who have taken steps to change their policies surrounding guns in light of the Parkland shooting).

88. Nathan Bomey, *Dick’s Sporting Goods Bans Sales of Assault-Style Weapons After Parkland, Florida School Shooting*, USA TODAY (Feb. 28, 2018, 12:27 PM), <https://www.usatoday.com/story/money/2018/02/28/dicks-sporting-goods-bans-sales-assault-weapons-after-parkland-florida-school-shooting/380382002/> (discussing the steps taken by Dick’s Sporting Goods to discontinue sales of certain types of guns and adding age restrictions to purchasing firearms at their retail stores, which includes Field & Stream).

89. See Peltz, *supra* note 84 (describing the steps taken by corporate America to push for “tighter gun control restrictions in the absence of movement by Congress”).

90. Peltz, *supra* note 84.

also operates gun manufacturing businesses.<sup>91</sup> Vista Outdoor responded to REI's boycott by announcing that it is considering selling off its gun manufacturing brands.<sup>92</sup> Additionally, several companies across various industries have ended their discount programs with the NRA: Delta and United Airlines; Hertz, Enterprise, and Avis car rental companies; MetLife and Chubb Insurance Agencies; Best Western and Wyndham Hotels Brands; and retailer L.L. Bean, all in an effort to stand in support of gun control legislation.<sup>93</sup> This effort by corporate America to speak out in favor of stricter gun control has not been limited to retail, service, or insurance companies; banks across the United States have also stepped into a social activist role.<sup>94</sup>

### C. *Social Activism by Banks*

In March 2018, Citigroup was the first “Wall Street bank to take a stance in the nationwide gun control debate” following the Parkland shooting.<sup>95</sup> Citigroup's new policy compels existing clients—including small businesses, credit card companies, and commercial and institutional partners—to enforce background check requirements and abide by an increased age restriction of twenty-one years old when selling

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91. Danielle Wiener-Bronner, *REI Halts Orders from Vista Outdoor over its Response to Parkland Shooting*, CNN (Mar. 2, 2018, 12:58 PM), <https://money.cnn.com/2018/03/01/news/companies/rei-vista-guns/index.html> (discussing the response to Parkland shooting taken by REI, where they placed a hold on further orders from Vista Outdoor whose portfolio includes a company that manufactures assault-style weapons).

92. See Kate Gibson, *Vista Outdoor to Sell Off Gun Brands and Focus on Bullets*, CBS NEWS (May 1, 2018, 1:11 PM), <https://www.cbsnews.com/news/vista-outdoor-to-sell-gun-brands-focus-on-bullets/> (detailing Vista Outdoor's plans to sell its gun manufacturing brands following REI's boycott of the company).

93. Joshua Green, *Why Corporate America Is Fleeing the NRA*, BLOOMBERG (Feb. 26, 2018, 10:00 AM), <https://www.bloomberg.com/news/articles/2018-02-26/why-corporate-america-is-fleeing-the-nra> (discussing the large companies in corporate America who are breaking their ties with the NRA); see Lankshim, *supra* note 82 (summarizing the many companies who have taken steps to change their policies surrounding guns in light of the Parkland shooting).

94. Tiffany Hsu, *Bank of America to Stop Financing Makers of Military-Style Guns*, N.Y. TIMES (Apr. 10, 2018), <https://www.nytimes.com/2018/04/10/business/bank-of-america-guns.html> (detailing Bank of America's newly implemented policy to stop financing manufacturers of military-style guns) [hereinafter *Bank of America Stops Financing*].

95. Ed Skyler, *Announcing Our U.S. Commercial Firearms Policy*, CITIGROUP (Mar. 22, 2018, 11:30 AM), <https://blog.citigroup.com/2018/03/announcing-our-us-commercial-firearms-policy> (outlining the new Citigroup policy for firearms); see Tiffany Hsu, *Citigroup Sets Restrictions on Gun Sales by Business Partners*, N.Y. TIMES (Mar. 22, 2018), <https://www.nytimes.com/2018/03/22/business/citigroup-gun-control-policy.html> (outlining Citigroup's new policy implementation regarding gun control) [hereinafter *Citi Sets Restrictions*].

firearms.<sup>96</sup> Additionally, the policy bans those retailers from selling bump stocks and high-capacity magazines.<sup>97</sup> Further, those who do not comply with these new policies will not be able to obtain capital, and Citigroup will look to end relationships with existing clients who do not conform their respective policies to those announced by Citigroup.<sup>98</sup>

Citigroup is not the lone bank taking a stance on gun control.<sup>99</sup> Bank of America quickly followed suit and was the second major bank to make a statement in the gun control movement.<sup>100</sup> In April 2018, Bank of America also instituted a policy change, announcing that it will no longer provide financing to manufacturers producing military-style weapons for civilian use.<sup>101</sup> The policy targets the same type of weapon, the AR-15, that has been used in several mass shootings,<sup>102</sup> including the Parkland shooting in February, 2018.<sup>103</sup> Bank of America has significant financial relationships with gunmakers, arranging for over \$273 million in borrowing for gun companies since the Sandy Hook shooting.<sup>104</sup> Bank of America's relationship with gunmakers ranks fourth among banking institutions during this time period, trailing only Wells Fargo, Morgan Stanley, and TD Securities.<sup>105</sup> However, even with significant business at risk, Bank of America plans to discontinue relationships with those companies that choose to continue producing military-style weapons.<sup>106</sup>

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96. *Citi Sets Restrictions*, *supra* note 95.

97. *See* Rappeport, *supra* note 2 (addressing the policy implemented by Citigroup).

98. Rappeport, *supra* note 2; *Citi Sets Restrictions*, *supra* note 95.

99. *See* Rappeport, *supra* note 2 (addressing the policies implemented by banks in the wake of the Parkland, Florida school shooting).

100. *Bank of America Stops Financing*, *supra* note 94 (detailing Bank of America's newly implemented policy to stop financing manufacturers of military-style guns).

101. *See Bank of America Stops Financing*, *supra* note 94.

102. *Bank of America Stops Financing*, *supra* note 94.

103. Chavez & Almasy, *supra* note 26.

104. *See* Shahien Nasiripour et al., *Wells Fargo Is the Go-To Bank for Gunmakers and the NRA*, BLOOMBERG (Mar. 7, 2018, 6:00 AM) <https://www.bloomberg.com/news/articles/2018-03-07/nra-s-banker-wells-fargo-climbs-to-top-of-gunmaker-debt-market> (outlining the banking industry leaders in lending to gun companies); Robert Schmidt, *Banks Through They Had a Win With Guns. Now They've Got a Big GOP Headache*, BLOOMBERG (May 4, 2018, 4:00 AM), <https://www.bloomberg.com/news/articles/2018-05-04/citigroup-s-scolding-at-sec-exposes-gop-backlash-over-gun-policy>.

105. Nasiripour et al., *supra* note 104.

106. *See Bank of America Stops Financing*, *supra* note 94 (detailing Bank of America's newly implemented policy to stop financing manufacturers of military-style guns).

Bank of America will continue offering bank services to firearms retailers.<sup>107</sup>

A few other financial institutions have also taken steps assert a position in the gun control movement.<sup>108</sup> Referring to risk management practices and policies, JPMorgan Chase also chose to limit its ties with gun manufacturers, following suit with Citigroup and Bank of America.<sup>109</sup> JPMorgan Chase Chief Financial Officer, Marianne Lake stated, “[b]usiness relations with gunmakers have come down significantly and are pretty limited.”<sup>110</sup> Amalgamated Bank renewed its social responsibility practices—after having already limited lending to gun manufacturers and distributors previously—by enhancing its policies to promote gun safety and encouraging other banking institutions to do the same.<sup>111</sup> CEO of Amalgamated Bank Keith Mestrich stated, “[i]n the wake of Parkland, and other tragic mass shootings, we believe that the financial industry must take action. Collectively, banks and lenders have the power to promote responsible business practices from gun manufacturers and distributors, and ultimately contribute to a safer society for all.”<sup>112</sup>

While these instances highlight how financial institutions have chosen to stand against gun violence by limiting their ties to the gun industry, not all of the nation’s banks are in agreement with such policy changes.<sup>113</sup> Wells Fargo, “the gun industry’s top financier,” has spoken

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107. See McCoy & Shell, *supra* note 2 (highlighting Bank of America’s choice to only curtail financing of gun manufacturers going forward and not retailers who sell military-style weapons).

108. See McCoy & Shell, *supra* note 2 (discussing JPMorgan and Amalgamated Bank adding limitations to the business relationships with the gun industry); see also Andrew Ross Sorkin, *Big Investors Have Clout. They Can Use It with Gun Makers.*, N.Y. TIMES (Mar. 5, 2018), <https://www.nytimes.com/2018/03/05/business/dealbook/investors-gunmakers.html> (addressing BlackRock’s approach the gun industry battle).

109. See McCoy & Shell, *supra* note 2 (discussing JPMorgan adding limits to the gunmakers with which they have business relations).

110. McCoy & Shell, *supra* note 2.

111. See *Amalgamated Bank Adopts Policies to Promote Gun Safety*, AMALGAMATED BANK (April 4, 2018) <https://www.amalgamatedbank.com/news/amalgamated-bank-adopts-additional-policies-promote-gun-safety> (outlining Amalgamated Bank’s enhanced policy to encourage manufacturers and distributors to act with corporate and social responsibility by implementing procedures to ensure clients are adhering to the Everytown’s Gun Safety Codes of Conduct, pledging not to invest the bank’s own assets in the firearm industry, and working with others in the banking industry to “push for more responsible practices from gun manufacturers and distributors.”).

112. *Id.*

113. See McCoy & Shell, *supra* note 2 (discussing Wells Fargo’s choice to continue its business with gun manufacturers); Nasiripour et al., *supra* note 104 (outlining the banking industry leaders in lending to gun companies, with the top three institutions since 2012 being Wells Fargo, Morgan Stanley, and TD Ameritrade).

outwardly about the bank's beliefs that gun policy should be left to the legislature, not the banks.<sup>114</sup> Wells Fargo has had a long-standing business relationship with the NRA.<sup>115</sup> In addition, Morgan Stanley and TD Securities have not announced changes to their policies related to guns.<sup>116</sup> Many other gun advocates in the firearms industry also disagree with the recent steps taken by corporate America, especially those by banks, which call for stricter gun control.<sup>117</sup>

D. *The Gun Industry's Response*

Quickly following the implementation of policy changes made by these banks, the gun industry responded.<sup>118</sup> The industry has regarded these steps by banks in limiting their relationship with gun retailers and manufacturers as a "backhanded way of undermining the Second Amendment" and finds these steps are threatening the industry and may seek protections from Congress "to prevent financial retaliation from banks."<sup>119</sup> Through its lobbying group, the Institute for Legislative Action, the NRA has accused banks of interfering with constitutional rights.<sup>120</sup> Similarly, the National Shooting Sports Foundation has asked lawmakers to stop the banks from acting on the issue.<sup>121</sup> The legal counsel for Gun Owners of America, Michael Hammond, stated: "[i]f you can't make guns, if you can't sell guns, the Second Amendment doesn't mean much."<sup>122</sup>

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114. McCoy & Shell, *supra* note 2.

115. Nasiripour et al., *supra* note 104.

116. See Schmidt, *supra* note 104 (detailing how several banks, including Morgan Stanley, Wells Fargo and TD Securities, have not made any changes to their policies as they relate to guns and continue to finance gunmakers).

117. See e.g., *Banks Endanger 2nd Amendment*, *supra* note 1 (detailing criticism of the banks made Michael Hammond, legal counsel for Gun Owners of America and Larry Keane, Senior Vice President and Legal Counsel for National Shooting Sports Federation).

118. See *Banks Endanger 2nd Amendment*, *supra* note 1 (providing several critical and accusatory statements made by the gun industry).

119. *Banks Endanger 2nd Amendment*, *supra* note 1.

120. *Bailed-out Banks Launch Coordinated Attack on Law-abiding Gun Owners*, NRA-ILA (Apr. 13, 2018), <https://www.nra-ila.org/articles/20180413/bailed-out-banks-launch-coordinated-attack-on-law-abiding-gun-owners>.

121. *Banks Endanger 2nd Amendment*, *supra* note 1.

122. Lisa Marie Pane, *Gun Industry Sees Banks as New Threat to 2nd Amendment*, ASSOCIATED PRESS (June 24, 2018), <https://www.ap-news.com/58fe7b8d063648cd88719b2d4753b7e9/Gun-industry-sees-banks-as-new-threat-to-2nd-Amendment> (outlining the gun industry's response to banks imposing new policies against the gun industry) [hereinafter *New Threat to 2nd Amendment*].

State lawmakers are responding as well.<sup>123</sup> In August, 2018, the Louisiana Bond Commission voted to exclude Bank of America and Citigroup from bidding on underwriting the sale of \$600 million in bonds for the financing of interstate improvement and tunnel replacements.<sup>124</sup> The action was undoubtedly made in response to the banks' policies related to gun manufacturing and selling restrictions, and effectively excludes two of the largest underwriters of municipal bonds.<sup>125</sup> Thus, banks are likely to recognize that not all risks associated with policy changes are directly related to the legality of these moves.<sup>126</sup>

Critics of the movement toward gun control by banks and other corporations strongly believe public policy should be left to elected officials who are held accountable by their constituents.<sup>127</sup> Additionally, critics suggest the banks' social activism violates one's Second Amendment Constitutional right, protecting one's right to own a gun.<sup>128</sup> Gun industry leaders suggest these policy changes are threatening the gun industry and have sought the support of Congress in preventing banks from using financial retaliation.<sup>129</sup>

#### V. BANKS' SOCIAL POLICIES DO NOT VIOLATE THE SECOND AMENDMENT RIGHT TO BEAR ARMS OR FEDERAL BANKING REGULATION AND FUNCTION AS A STRATEGY OF CORPORATE SOCIAL RESPONSIBILITY

When gun advocates, including several members of Congress, have challenged the banks' recent policies, the most common arguments have suggested that either the policies violate the Second Amendment's

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123. See Amanda Albright & Jennifer Surane, *Louisiana Bans Bank of America, Citi from Bond Sale Over Gun Policies*, BLOOMBERG (Aug. 17, 2018, 10:13 AM), <https://www.bloomberg.com/news/articles/2018-08-17/bofa-citi-banned-from-louisiana-bond-sale-due-to-gun-policies> (describing the backlash felt by Bank of America and Citigroup when the Louisiana legislature banned the banks from working on the debt sale following Bank of America and Citigroup instituting the recent gun policies).

124. *Id.*

125. *Id.* (quoting Louisiana State Treasurer, John Schroder in response to the gun policies set forth by Bank of America and Citigroup, which collectively underwrote approximately 27% of all municipal bonds issued in 2017, "I personally believe the policies of these banks are an infringement on the rights of Louisiana citizens").

126. *Id.*

127. See Tim Schmidt, *A Slippery Slope to Second Amendment Discrimination*, TOWNHALL (June 25, 2018, 12:07 PM), <https://townhall.com/columnists/tim-schmidt/2018/06/25/a-slippery-slope-to-second-amendment-discrimination-n2494246> (discussing the likelihood of the banks' newly implemented policies to be challenged in court on the grounds for discrimination of targeting gun owners).

128. *Id.*

129. *New Threat to 2nd Amendment*, *supra* note 122.

right to bear arms, or the policies violate federal banking regulations.<sup>130</sup> Senator John Kennedy of Louisiana, a Republican member of the banking committee, stated “[o]ur friends at Citigroup and Bank of America apparently aren’t busy enough with their banking business; they have decided that they are going to set policy for the [S]econd [A]mendment.”<sup>131</sup> Senator Kennedy has also suggested he will personally file complaints against the banks with the Consumer Financial Protection Bureau (“CFPB”) claiming the policies violate federal law and plans to work with other members of Congress to draft legislation to stop banks from using these policies to discriminate against gun buyers.<sup>132</sup>

If a legal response is required to face either of these challenges, the banks will prevail, as the policies are not in violation of either the Second Amendment<sup>133</sup> or federal banking regulations.<sup>134</sup> Further, banks are not only legally allowed to implement such policies, but banks may also wish to implement such policies consistent with their corporate social responsibility strategies in order to increase shareholder value.<sup>135</sup>

#### A. *Banks’ Policies Are Not in Violation of the Second Amendment*

Despite criticism by Congress and the gun industry, banks are not in violation of the Second Amendment when implementing policy changes related to gun control.<sup>136</sup> According to *Heller*, the Second Amendment guarantees that individuals may possess firearms for law abiding purposes, such as self-defense, protection, hunting, and sport;

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130. See Katanga Johnson, *Senator Slams Bank Gun Policies, Threatens Consumer Complaint*, REUTERS (Apr. 12, 2018, 4:50 PM), <https://www.reuters.com/article/us-usa-senate-mulvaney/senator-slams-bank-gun-policies-threatens-consumer-complaint-idUSKBN1HJ3CB> (suggesting the policies violate federal banking regulations).

131. *Id.*

132. *Id.*; Rappoport, *supra* note 2.

133. See generally Erwin Chemerinsky, *The Three Gun Control Myths That are Killing American Kids*, SACRAMENTO BEE (Feb. 20, 2018, 1:34 PM), <https://www.sacbee.com/opinion/california-forum/article201009764.html> (detailing why gun control is not in violation of the Second Amendment).

134. See Brian Knight, *On Banks and Bullets (and Other Controversial Topics)*, FINREGRAG (Apr. 13, 2018), <https://finregrag.com/on-banks-and-bullets-and-other-controversial-topics-4b5aabc00323> (discussing whether banks should be permitted to institute the policies due to their unique relationship with the government).

135. See generally Hany Abou-El-Fotouh, *Corporate Social Responsibility in Banks*, CORP. GOVERNANCE INST. (Sept. 26, 2018), <https://corgovinstitute.com/corporate-social-responsibility-banks-2/> (outlining the necessity for banks to implement corporate social responsibility practices for best practices).

136. See generally Chemerinsky, *supra* note 133 (discussing why gun control is not in violation of the Second Amendment).

however, the right is not unlimited.<sup>137</sup> Following *Heller*, many federal courts have attempted to define those limitations.<sup>138</sup> One challenge has been that several lower courts have offered conflicting rulings when addressing whether members of the gun industry, including manufacturers and sellers, have the same Second Amendment rights as individuals.<sup>139</sup>

While *Heller* was a defining moment in the modern application of the Second Amendment, it left many constitutional questions unanswered.<sup>140</sup> Specifically, does the Second Amendment apply to or explicitly address the commercial sale of firearms?<sup>141</sup> Several cases regarding the Second Amendment's protection of gun sellers have arisen in the federal courts in the years since *Heller*.<sup>142</sup> For example, the Seventh Circuit held that corporations doing business in the firearms industry are protected under the Second Amendment, likening gun sellers to booksellers who, through the First Amendment, possess constitutional rights.<sup>143</sup>

Following *Heller*, gun advocates have made legal arguments suggesting the right to bear arms given by the Second Amendment extends to a right for gun manufacturers to produce weapons and gun retailers to sell such weapons.<sup>144</sup> These advocates favor a broad interpretation of *Heller*, providing a qualified right to the commercial sale of arms.<sup>145</sup>

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137. David Kopel, *Does the Second Amendment Protect Firearms Commerce?: Defending the Right to Sell and Trade Arms*, 127 HARV. L. REV. F. 230 (2014) (discussing whether gun sellers are protected by the Second Amendment, which has not been directly addressed in the federal courts).

138. *Id.*

139. *Id.*

140. *Id.*

141. See *United States v. Marzzarella*, 614 F.3d 85, 92 n.8. (3d Cir. 2010) (“But *Heller* did not purport to fully define all the contours of the Second Amendment . . . and accordingly, much of the scope of the right remains unsettled”).

142. See Kopel, *supra* note 137.

143. See *Ezell v. Chicago*, 651 F.3d 684 (7th Cir. 2011) (holding a supplier of firing-range facility had standing on behalf of the those citizens wishing to use the firing-range and therefore was harmed by a City of Chicago firing-range ban and was entitled to an injunction preventing enforcement of the ban); see also Kopel, *supra* note 137 (referencing the *Illinois Ass'n of Firearms Retailers v. Chicago* and *McDonald v. Chicago* cases, noting the ordinance Chicago put in place outlawing gun stores in the city here the ordinance violated the Second Amendment because it went too far in “banning legal buyers and legal dealers from engaging in lawful acquisitions and lawful sales of firearms” and further, “while gun sellers are subject to much stricter regulation than are booksellers, they are both protected by the Bill of Rights”).

144. See Kopel, *supra* note 137 (citing 1871 case *Andrews v. State*, “[t]he right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms”).

145. Kopel, *supra* note 137.

These same types of arguments may arise if gun advocates challenge the banks' recent policy decisions regarding firearms.<sup>146</sup>

The issue with this argument is that *Heller* did not explicitly guarantee a right beyond the right of an individual to possess a gun in his home for his self-protection.<sup>147</sup> *Heller* did not recognize the right of gun manufacturers to produce guns or the right of gun retailers to sell guns.<sup>148</sup> The Fourth Circuit, for example, has narrowly construed *Heller* to mean that the right guaranteed in the Second Amendment only applies to an individual's right to own a gun, not to the gun sellers or manufacturers.<sup>149</sup> Under this narrower reading of *Heller*, the bank policies are clearly not in violation of the Second Amendment, as the Second Amendment only guarantees an individual right to bear arms, and does not confer that right to gun sellers or manufacturers.<sup>150</sup>

*B. The Bank Policies Are not in Violation of Federal Banking Regulation*

Thus, if the banks' policies do not violate the Second Amendment, then the next query is whether banks are permitted to institute these policies under federal regulation.<sup>151</sup> Banks are regulated by three different federal agencies, depending on their charter type and membership status in the Federal Reserve System.<sup>152</sup> The Federal Deposit Insurance Corporation ("FDIC") is the federal regulator to state chartered nonmember banks; the Federal Reserve Board ("FRB") is the federal regulator of state chartered banks that are members of the Federal Reserve System; and the Office of the Comptroller of the Currency ("OCC") regulates national

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146. Kopel, *supra* note 137.

147. See Chemerinsky, *supra* note 133 (specifying *Heller* guaranteed the individual right to bear arms in the home).

148. See Chemerinsky, *supra* note 133 (specifying gun control laws do not violate the Second Amendment, pointing to *Heller* where the right to bear arms is not absolute).

149. See *United States v. Chafin*, 423 F.App'x 342, 344 (4th Cir. 2011) ("Although the Second Amendment protects an individual's right to bear arms, it does not necessarily give rise to a corresponding right to sell a firearm."); see also Kopel, *supra* note 137 (discussing the unpublished *Chafin* opinion which found "nothing in the Second Amendment was understood to protect the rights of an individual to sell a firearm").

150. See Kopel, *supra* note 137 (applying the theory set forth the Second Amendment does not protect the rights of an individual to sell a firearm to the banks).

151. Knight, *supra* note 134.

152. Stephen D. Simpson, *The Banking System: Commercial Banks – How Banks Are Regulated*, INVESTOPEDIA, (last visited Jan. 6, 2019), <https://www.investopedia.com/university/banking-system/banking-system6.asp> (describing the federal banking system and how it is regulated).

banks.<sup>153</sup> Additionally, the Consumer Financial Protection Bureau (“CFPB”) is the regulator for providers of consumer financial products and services.<sup>154</sup>

Due to these regulating bodies and an extensive set of federal regulations, critics are correct when they suggest banks are different than many of their corporate counterparts who have also instituted gun control policies.<sup>155</sup> These differences include banks receiving substantial government support through a number of vehicles: the government approves bank charters which limits competition in the industry; deposits are insured by the FDIC; the Federal Reserve pays interest on bank deposits; and banks have been protected by bailouts funded by the federal government.<sup>156</sup> Because the banks are so closely connected with the government, many critics, including gun industry advocates and several members of Congress, have suggested the banks have overstepped their bounds in creating policy which critics argue would be better addressed through legislation.<sup>157</sup> The Institute for Legislative Action published an article on its website stating, “[t]here is growing evidence that some of America’s financial elite want to create a world in which America’s public policy decisions emanate from corporate boardrooms in Manhattan rather than from citizens and their elected officials.”<sup>158</sup>

The public emphasis on increasing regulation and allowing legislators, and not free markets, to decide policies might seem ironically counter to the normal narrative one would expect from Republicans.<sup>159</sup> Republicans are known for favoring the limitations of government regulations in favor of allowing free market economics to determine results.<sup>160</sup>

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153. *Id.*

154. See THE CONSUMER FIN. PROTECTION BUREAU, <https://www.consumerfinance.gov/about-us/the-bureau/> (last visited Jan. 31, 2018) (defining the CFPB as the regulator of providers of consumer financial products and services).

155. See generally Knight, *supra* note 134 (discussing the how banks have instituted their own gun control policies); Peltz, *supra* note 84 (providing several examples of companies who implementing policy changes related to gun control).

156. Knight, *supra* note 134 (discussing the permissibility of banks to institute policies related to gun control policies due to their unique relationship with the government).

157. Rappeport, *supra* note 2.

158. Rappeport, *supra* note 2.

159. See Ryan Fuhrmann, *Republican and Democratic Approaches to Regulating the Economy*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/regulating-economy.asp> (updated March 19, 2018) (describing the approaches by the Republican and Democratic parties in regulating the economy, where the Republican party favors limited government regulation in the economy and the Democratic party favors more government intervention to direct the economy).

160. *Id.*

However, when asked specifically about regulation violations or potential policy changes, Republican regulators hesitate to get involved.<sup>161</sup> These federal financial regulators seem less convinced that the specific actions taken by banks violate existing regulations.<sup>162</sup> When Senator John Kennedy addressed then-CFPB Acting Director Mick Mulvaney during a Senate Banking Committee Hearing in April, 2018 about these concerns, Mulvaney responded that so long as there were no antitrust violations, the CFPB would hesitate to get involved because consumers have choices in the market and have the opportunity to choose to do business with other financial institutions.<sup>163</sup> When asked about the banks' policies, the FRB Vice Chairman Randal Quarles remarked that "the issue was outside the [FRB's] scope of federal mandate."<sup>164</sup>

Another way that lawmakers and gun owner advocacy groups are attempting to influence banks is by leveraging existing or pending financial regulation legislation to pressure banks into changing policy.<sup>165</sup> John Velleco, director of government operations at Gun Owners of America, encouraged lawmakers to withdraw support from Dodd-Frank reform unless the reform legislation included an amendment that prevented future action by banks against gun manufacturers, distributors, and purchasers.<sup>166</sup> Michael Piwowar, former Republican commissioner with the Securities and Exchange Commission, warned banks that the policy choices they make regarding gun control may put at risk Republican support for easing derivative regulations in the future.<sup>167</sup> At this point, these political threats seem to be having little effect, as the Dodd-Frank reform legislation was signed into law in May 2018, without said amendment, and other significant change to legislation related to banks and gun control currently appears unlikely.<sup>168</sup>

There are potentially two additional areas where gun advocates may suggest regulators intervene, but would have little effect: bank

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161. *Id.*

162. See BUREAU CONSUMER FIN. PROTECTION, SEMI-ANNUAL REPORT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION (April 2018), [https://files.consumerfinance.gov/f/documents/cfpb\\_semi-annual-report\\_spring-2018.pdf](https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report_spring-2018.pdf) (providing the testimony of the then Acting Director of the CFPB testifying before the Congress concerning the policies set forth by Bank of America and Citigroup); see also Rappeport, *supra* note 2.

163. BUREAU CONSUMER FIN. PROTECTION, *supra* note 162.

164. BUREAU CONSUMER FIN. PROTECTION, *supra* note 162; Rappeport, *supra* note 2.

165. BUREAU CONSUMER FIN. PROTECTION, *supra* note 162; Rappeport, *supra* note 2.

166. Rappeport, *supra* note 2.

167. Rappeport, *supra* note 2.

168. Rappeport, *supra* note 2.

examinations<sup>169</sup> and lending discrimination.<sup>170</sup> Bank examiners use the CAMELS rating system to ensure the safety and soundness of the financial institution by measuring and scoring the bank on several categories—capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk.<sup>171</sup> Gun advocates may suggest regulators intervene by putting pressure on the federal bank examiners to adjust a bank’s CAMELS rating to reflect management deficiencies by suggesting the bank policies are not examples of acceptable management practices.<sup>172</sup> However, there would be very little room to critique management for these policy decisions if all other management factors are strong and balanced by strong scores in the other areas of the CAMELS examination.<sup>173</sup>

The second potential area regulators may attempt to influence the banks’ policies would be to explore whether the policies violate the Equal Credit Opportunity Act (“ECOA”) or the Community Reinvestment Act (“CRA”).<sup>174</sup> The ECOA entitles citizens and businesses an equal opportunity to obtain credit and prohibits lending discrimination against protected classes, including race, color, religion, national origin, sex, familial

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169. See *Making Sense of the Federal Reserve: Safety and Soundness*, FED. RES. BANK OF ST. LOUIS, <https://www.stlouisfed.org/in-plain-english/safety-and-soundness> (last visited Jan. 31, 2019) (describing bank examination process to ensure safety and soundness of the institution by using CAMELS rating system – Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity).

170. See generally *What Protections Do I have Against Credit Discrimination?*, CONSUMER FIN. PROTECTION BUREAU, <https://www.consumerfinance.gov/fair-lending/> (last visited Jan. 31, 2019) (outlining the Equal Credit Opportunity Act and what constitutes credit discrimination) [hereinafter *What Protections Against Discrimination*]; *Credit & Lending Discrimination and Borrower’s Rights*, FINDLAW, <https://civilrights.findlaw.com/discrimination/credit-lending-discrimination-and-borrowers-rights.html> (last visited Jan. 31, 2019) (detailing the protections afforded under the Equal Credit Opportunity Act) [hereinafter *Credit & Lending Discrimination*].

171. CAMELS rating system—Capital Adequacy, Asset Quality, Management, Earnings, Liquidity, and Sensitivity. Capital Adequacy is assessed by considering the capital trend analysis of the company. Asset Quality is assessed by rating risk factors the company faces and comparing those factors with the company earnings to determine the stability of the company should it face risks. Management considers how well the company can operate the institution and comply with regulation. Earnings is assessed by considering how well the company is able to create capital by considering factors such as growth, stability, net worth, and existing assets. Liquidity assesses the availability of the company’s assets. Sensitivity assesses how risk can affect a company. Julia Kagen, *CAMELS Rating System*, INVESTOPEdia, <https://www.investopedia.com/terms/c/camelrating.asp> (last updated Aug. 9, 2018).

172. *Making Sense of the Federal Reserve: Safety and Soundness*, *supra* note 169.

173. *Making Sense of the Federal Reserve: Safety and Soundness*, *supra* note 169.

174. *What Protections Against Discrimination*, *supra* note 170.

or marital status, age, and source of income.<sup>175</sup> The CRA requires banks to meet the needs of the community where they are located to serve low income populations by providing credit, and are held accountable by federal bank regulators.<sup>176</sup> Gun owners, gun manufacturers, and gun distributors do not fall under one of the protected classes outlined in either of these pieces of legislation, and thus these arguments fail.<sup>177</sup>

### C. *Bank's Policies as Corporate Social Responsibility Tactics*

Since these policies are not in violation of the Second Amendment or current federal banking regulations, should banks continue to define and implement financial policies that limit access to guns? Banks may wish to continue to explore ways to effect change in our society by developing a robust Corporate Social Responsibility (“CSR”) strategy.<sup>178</sup> The development of this CSR strategy is beneficial for the banking community and ultimately could be good for a bank’s bottom line.<sup>179</sup>

In the modern business world, companies are now pressed by the public to be concerned about more than simply producing a high-quality product or service.<sup>180</sup> Rather, companies must be “good corporate citizens” that address social responsibilities that matter to those close to the company,<sup>181</sup> including their customers, employees, shareholders,

175. *What Protections Against Discrimination*, *supra* note 170; *see also Credit & Lending Discrimination*, *supra* note 170.

176. 112 U.S.C. § 2901(b) (2012); *see* Will Kenton, *Community Reinvestment Act (CRA)*, INVESTOPEDIA, (May 28, 2018), [https://www.investopedia.com/terms/c/community\\_reinvestment\\_act.asp](https://www.investopedia.com/terms/c/community_reinvestment_act.asp) (defining CRA as a federal legislation encouraging banks to meet the needs of the community, including low income communities by offering credit to members of that community as monitored by Federal regulators during a bank’s CRA examination; the banks are not examined on meeting the needs of gunmakers or sellers).

177. *See What Protections Against Discrimination*, *supra* note 170; *Credit & Lending Discrimination*, *supra* note 170; Kenton, *supra* note 176.

178. *See* Abou-El-Fotouh, *supra* note 135 (defining CSR as “how banks take into consideration the impact on society of their operation activities . . . [to] monitor and ensure their adherence to law, ethical standards and international norms to produce an overall positive impact on society”); *Environmental, Social and Governance (ESG) Criteria*, INVESTOPEDIA, (Dec. 13, 2018), <https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp> (defining ESG as “a set of standards for a company’s operations that socially conscious investors use to screen potential investments” and is similar to CSR, used by some banks).

179. *See* Abou-El-Fotouh, *supra* note 135 (outlining banks’ necessity to implement CSR practices for best practices).

180. J.J. Asongu, *Innovation as an Argument for Corporate Social Responsibility*, 1 J. OF BUS. AND PUB. POL’Y 3 (Summer 2007), (discussing the public’s expectation of companies to consider matters of CSR in running their businesses).

181. *Id.*

communities, and the environment in all aspects of their operations.<sup>182</sup> Following the Parkland school shooting, a poll found Americans' desire for stricter gun legislation had increased to 66%.<sup>183</sup> Thus far, this has been to no avail, as legislation has remained largely unchanged.<sup>184</sup> Empowered by the growing desires of Americans, corporate America and the banks decided to implement socially responsible policies to help generate change and put pressure on Congress to act.<sup>185</sup> Explaining the rationale behind Citigroup's policy, Executive Vice President Edward Skyler wrote in a blog:

We have waited for our grief to turn into action and see our nation adopt common sense measures that would help prevent firearms from getting into the wrong hands. That sadly has never come and as the weeks pass from the most recent shooting [in Parkland, Florida], it appears we remain in the same cycle of tragedy and inaction.<sup>186</sup>

Additionally, Bank of America's Vice Chairwoman, Anne Finucane, remarked the bank "want[s] to contribute in any way we can to reduce these mass shootings."<sup>187</sup> Both banks took into consideration what was happening on the ground in the United States, urged in large part by the student activists from Marjory Stoneman Douglas High School and responding to the desires of the American public for businesses to do something to help spur change in the gun control debate.<sup>188</sup>

CSR is a "business strategy that is integrated with core business objectives and core competencies of the firm, and from the outset is

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182. *Id.*

183. Jamie Ducharme, *More Americans Than Ever Support Stricter Gun Control Laws, Poll Finds*, TIME (Feb. 20, 2018), <http://time.com/5167216/americans-gun-control-support-poll-2018/> (citing the Quinnipiac University polls taken in the weeks following the Parkland school shooting).

184. Alter, *supra* note 30 (discussing the attempts at gun control legislation that follow the recent mass shooting which have historically failed in Congress).

185. Alter, *supra* note 30 (noting the public support as a result of the student movement for stronger gun control).

186. *Citi Sets Restrictions*, *supra* note 95 (outlining Citigroup's new policy implementation regarding gun control); see *Environment and Social Policies and Standards*, CITIGROUP, <https://www.citigroup.com/citi/sustainability/policies.htm> (last visited Jan. 6, 2019).

187. *Bank of America Stops Financing*, *supra* note 94 (detailing Bank of America's newly implemented policy to stop financing manufacturers of military-style guns); see *The Power to Shape the Future, Driving Smart Growth with ESG Principles*, BANK OF AMERICA, <https://www.bofaml.com/en-us/content/environmental-social-governance-ESG.html>.

188. *Bank of America Stops Financing*, *supra* note 94.

designed to create business value and positive social change, and is embedded in day-to-day business culture and operations.”<sup>189</sup> A robust CSR strategy for banks would require consideration for the impact banking decisions and policies are having on communities.<sup>190</sup> Accordingly, a strategy surrounding CSR necessitates a self-regulation in which banks must guarantee an adherence to the laws, regulations, and norms in both the United States and internationally, as well as standards of ethics in order to have a positive societal impact.<sup>191</sup> The concept of CSR extends beyond charity.<sup>192</sup> “Banks are encouraged to improve the future of the people in all communities they operate through CSR programs, which in turn will sustain their business in the future.”<sup>193</sup> CSR is a function of both risk mitigation strategy and opportunity-seeking strategy where the leaders of the organization should look for an equal balance of both in order to optimize the success of the business.<sup>194</sup>

Many banks already operate with ethics and values consistent with what would be needed to develop a robust CSR strategy, as can be seen in Citigroup’s Chief Executive, Michael L. Corbat’s remarks: “Banks serve a societal purpose—we believe our investors want us to [implement these policies] and be responsible corporate citizens.”<sup>195</sup> Just as it has been for the retailers, the gun violence issue is hard for the banks to ignore.<sup>196</sup> And as other members of corporate America have chosen to do so, “banks increasingly must consider political issues as part of their risk management decision-making process.”<sup>197</sup> Bank of America’s decision to implement its policy change was driven in part by the many employees and customers who were directly affected by recent mass

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189. Kelly McElhaney, *A Strategic Approach to Corporate Responsibility*, CLARIDEN GLOBAL (2010), [http://claridenglobal.com/programs/CGArticle\\_CSRLeadership.pdf](http://claridenglobal.com/programs/CGArticle_CSRLeadership.pdf) (defining how CSR is relevant and why it is important to the modern business world).

190. *Id.*

191. Abou-El-Fotouh, *supra* note 135 (outlining the necessity for banks to implement CSR practices for best practices).

192. Abou-El-Fotouh, *supra* note 135.

193. Abou-El-Fotouh, *supra* note 135.

194. McElhaney, *supra* note 189.

195. *Citi Sets Restrictions*, *supra* note 95 (outlining Citigroup’s new policy implementation regarding gun control).

196. Neil Haggerty, *Gun Issues is a Lose-Lose for Banks (Whatever Their Stance)*, AM. BANKER, Apr. 26, 2018, <https://www.americanbanker.com/news/gun-issue-is-a-lose-lose-for-banks-whatever-their-stance> (outlining the argument that banks are caught in a lose-lose battle no matter which side of the gun control debate they choose to promote as part of their CSR).

197. *Id.* at 2.

shootings.<sup>198</sup> Banks should be able to make such reputational decisions in the same way other members of corporate America have, without the receiving backlash from members of Congress and the gun industry.<sup>199</sup>

Organizations must also consider both the impact on reputation, and the financial implications of whatever stance they take on particular issues.<sup>200</sup> In the past, most organizations in corporate America would avoid taking overt action on controversial topics such as gun control.<sup>201</sup> Fabian Geyrhalter writes, “[o]ne of the biggest brand rules of all is ‘Do not talk politics.’ Today it is a bigger risk not to speak up.”<sup>202</sup> Today, doing nothing may adversely affect the company’s reputation and ultimately hurt the business.<sup>203</sup>

Today, societal pressure can often drive CSR policy in an organization.<sup>204</sup> Specifically, companies are listening to the public outcry related to gun control, and in the wake of the Parkland shooting, those companies are choosing to take action rather than stand idly by.<sup>205</sup> “Corporations are no longer bystanders in the culture wars. They are on the front lines.”<sup>206</sup> Ed Stack, CEO and largest shareholder of Dick’s Sporting Goods said, “we’re willing to accept [that their policies could

198. Laura J. Keller, *BofA Says 151 Employees Were Affected by Mass Shootings in U.S.*, BLOOMBERG (Apr. 25, 2018, 1:05 PM), <https://www.bloomberg.com/news/articles/2018-04-25/bofa-says-151-employees-were-affected-by-mass-shootings-in-u-s> (discussing part of the motivation behind Bank of America’s policy change to stop lending to certain gun manufacturers, where more than 150 employees were directly affected by recent mass shootings).

199. Haggerty, *supra* note 196.

200. See Pamela N. Danziger, *When Corporate Social Responsibility Veers Into Political Action: Safe or Sorry?*, FORBES (Mar. 12, 2018, 6:50 PM), <https://www.forbes.com/sites/pamdanziger/2018/03/12/when-corporate-social-responsibility-veers-into-political-action-safe-or-sorry/#114ccf0d257d> (discussing the modern approach to CSR as related to gun control); see also Asongu, *supra* note 180 (discussing the public’s expectation of companies to consider matters of CSR in running their businesses).

201. Danziger, *supra* note 200.

202. FABIAN GEYRHALTER, *BIGGER THAN THIS: HOW TO TURN ANY VENTURE INTO AN ADMIRABLE BRAND* (Brandtro 2018).

203. Danziger, *supra* note 200.

204. Tina Casey, *How Gun Control Is Raising the Bar on Corporate Social Responsibility*, TRIPLE PUNDIT (Mar. 5, 2018), <https://www.triplepundit.com/2018/03/gun-control-raising-bar-corporate-social-responsibility/> (“Two social trends have combined to make the Parkland case unique . . . the Parkland survivors themselves, who are mature, articulate, and working the levers of social media, television and other forms of modern communications with a persistence . . . the other factor is the corporate social responsibility movement.”).

205. Danziger, *supra* note 200; Casey, *supra* note 204 (“Responsiveness to social concerns is becoming an indicator of sound management, value, and profitability. It’s no accident that several of the companies responding to the Parkland massacre have made it clear that they are listening to the student activists and their communities.”).

206. Thompson, *supra* note 85 (detailing the politicization of a nonpartisan corporate America in areas of social activism).

be tested in court]. If the kids in Parkland are being brave enough to stand up and do this, we can be brave enough to stand up with them.”<sup>207</sup> The implementation of Dick’s Sporting Goods’ policy changes met both CSR strategies of mitigating risk and opportunity seeking.<sup>208</sup> Stack said the company supports Second Amendment rights, but also stated: “We don’t want to be part of a mass shooting.”<sup>209</sup>

All this being said, corporate America’s stance on gun control may not be solely driven by social responsibility, but rather it may also be propelled by companies’ bottom lines.<sup>210</sup> Financial implications, either positive or negative, are often a result of the reputation of the company.<sup>211</sup> Corporations have a responsibility to be as profitable as possible for the sake of the stakeholders, but research shows that CSR is increasingly “protecting the bottom line and boosting shareholder value.”<sup>212</sup> Corporations must show the actions they are taking on behalf of the shareholders will ultimately “enhance the value of the firm.”<sup>213</sup>

Developing a robust CSR strategy is not without risk, as evidenced by the critical feedback from members of the gun industry and gun advocates.<sup>214</sup> Banks have received both positive and negative

207. Ruth McCambridge, *The New CSR: Dick’s Sporting Goods and Walmart Enact Gun Control Measures*, NONPROFIT QUARTERLY (Mar. 1, 2018), <https://nonprofitquarterly.org/2018/03/01/new-csr-dicks-sporting-goods-walmart-enact-gun-control-measures/> (discussing the policy changes implemented by Dick’s Sporting Goods and Walmart in the wake of the shooting in Parkland, Florida as CSR).

208. *Id.*; *supra* note 88–89 (detailing Dick’s Sporting Goods policy changes included raising the age to twenty-one to purchase firearms and discontinuing the sale of semi-automatic weapons at their Field and Stream stores).

209. *Id.* (discussing Dick’s motivation effecting their policy change was to prevent the chance of a weapon purchased in their store being part of a future mass shooting).

210. Green, *supra* note 93 (discussing the large companies in corporate America who are breaking ties with the NRA).

211. See Ron Robins, *Does Corporate Social Responsibility Increase Profits?*, BUS. ETHICS (May 5, 2015) <http://business-ethics.com/2015/05/05/does-corporate-social-responsibility-increase-profits/> (discussing the financial advantages of effective corporate social responsibility); see also Ariana Galant & Simon Cadez, *Corporate Social Responsibility & Financial Performance Relationship: A Review of Measurement Approaches*, 30 ECONOMIC RESEARCH-EKONOMSKA ISTRAŽIVANJA 1 (2007) <https://www.tandfonline.com/doi/full/10.1080/1331677X.2017.1313122> (discussing CSR and the relationship to financial performance).

212. See Galant, *supra* note 211.

213. Michele Gorman, *How GCs and Cos. Can Take On Corporate Responsibility*, LAW360 (Mar. 7, 2018), <https://nahigianstrategies.com/news-articles/gcs-cos-can-take-corporate-responsibility> (discussing CSR as it relates to gun control related to the recent policy changes by corporate America following the Parkland, Florida shooting).

214. See The Times Editorial Board, *Big Banks Take a Stand Against the Gun Industry*, LA TIMES (Apr. 16, 2018, 4:10 AM), <http://www.latimes.com/opinion/editorials/la-ed-guns-banks-nra-20180412-story.html> (commending the banks for taking a stand against gun

feedback as a result of recent policy implementations.<sup>215</sup> Immediate praise for the banks came on social media and from Senate Democrats who commended both Bank of America and Citi for “tak[ing] action to address the problem of violence in our country.”<sup>216</sup> But as outlined earlier, banks have also been chastised for their decisions driven by CSR.<sup>217</sup> However, these banks feel taking no action is no longer an option if the banks are to be good corporate citizens and protect their future customer base.

## VI. CONCLUSION

The effort put forth by the survivors of the Marjory Stoneman Douglas High School shooting to effect changes in gun policy have created a wave of support throughout the country.<sup>218</sup> Born out of tragedy, the Never Again movement has drawn attention and sparked change to the gun control issues in the United States.<sup>219</sup> These actions taken by corporate America, and specifically the banking industry, are laudable. There have been arguments suggesting the banks’ policies violate the Second Amendment; however, as currently implemented, those policies do not violate the Constitution or any other laws.<sup>220</sup> While it is true banks are heavily regulated by the government, these banks’ policies do not violate federal banking regulations.<sup>221</sup> In fact, banks may be commended for implementing such policies consistent with the banks’ CSR interests and marketplace desires.<sup>222</sup>

In response to the Borderline Bar & Grill shooting in November 2018, a mother spoke about the loss of her son, saying, “[h]e didn’t come home last night. I don’t want prayers. I don’t want thoughts. I want gun

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violence by implementing policies); Haggerty, *supra* note 198 (outlining the argument that banks are caught in a lose-lose battle no matter which side of the gun control debate they choose to promote as part of their corporate social responsibility).

215. Haggerty, *supra* note 196; The Times Editorial Board, *supra* note 214.

216. Rob Blackwell, *Banks Caught in Crossfire of Gun Debate. It Won’t End Well*, AM. BANKER, May 4, 2018, <https://www.americanbanker.com/opinion/banks-caught-in-crossfire-of-gun-debate-it-wont-end-well> (describing the battle banks are fighting to engage their CSR policies with pushback from gun advocates).

217. Haggerty, *supra* note 196.

218. Witt, *supra* note 80.

219. *Id.*

220. *See supra* Part V.

221. *See supra* Part V.

222. *See supra* Part V.

control.”<sup>223</sup> Additional companies implementing similar policy changes may be needed to effect change through legislation, but these few small whispers are already turning into loud conversations. With the continued support of the American public, corporate America, and gun control advocates, that loud conversation may just turn into shouts resulting in revised gun control legislation.

ERIN A. CATLETT\*

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223. Carter Evans, *Thousand Oaks Shooting Survivor Was Friends with the Gunman*, CBS (Nov. 9, 2018, 6:35 PM), <https://www.cbsnews.com/news/thousand-oaks-survivor-was-friends-with-the-shooter/>.

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