NORTH CAROLINA BANKING INSTITUTE

Volume 28 | Issue 1 Article 5

3-1-2024

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I. INTRODUCTION

There is an old adage, often misattributed to Mark Twain, that, "[a] lie can travel halfway around the world while the truth is still putting on its shoes."[1] This appears to be a modernization of a 1710 quote from Jonathan Swift who wrote, "[f]alsehood flies, and the Truth comes limping after it; so that when Men come to be undeceiv'd [sic], it is too late; the Jest is over, and the Tale has had its Effect . . . ."[2] It is now possible to confirm the first part of Swift's observation from 300 years ago with empirical evidence that misinformation does indeed travel faster and more broadly than truth on social media.[3] This is not because social media users lack critical reasoning skills to evaluate information or because they have partisan biases. Rather, the very structure of social media platforms rewards engagement—and

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1. Niraj Chokshi, *That Wasn't Mark Twain: How a Misquotation is Born*, N.Y. TIMES (Apr. 26, 2017), https://www.nytimes.com/2017/04/26/books/famous-misquotations.html [https://perma.cc/YD58-DDXT].

2. *A Lie Can Travel Halfway Around the World While the Truth is Putting on its Shoes*, QUOTE INVESTIGATOR (July 13, 2014), https://quoteinvestigator.com/2014/07/13/truth/ [https://perma.cc/TZ96-X47D] (citing Jonathan Swift, *From Thursday November 2, to Thursday November 9, 1710*, EXAMINER, http://books.google.com /books?id=KigTAAAAQAAJ&q=%22Truth+comes%22#v=snippet& [https://perma.cc/HE89-HGQ3].

3. *See* Soroush Vosoughi et al., *The Spread of True and False News Online*, SCIENCE, Mar. 9, 2018, at 1146, https://www.science.org/doi/10.1126/science.aap9559 [https://perma.cc/23VQ-H8YS] ("[W]e found that falsehood diffused significantly farther, faster, deeper, and more broadly than the truth in all categories of information.").

misinformation and disinformation heighten engagement.[4] Studies have shown that a "'well-crafted lie' will get more engagements than typical, truthful content and that some features of social media sites and their algorithms contribute to the spread of misinformation."[5] Users are encouraged to share information indiscriminately because social media platforms reward and amplify engagement without regard to the quality or accuracy of the information being shared.[6] The greater the user engagement, the greater the profit for the social media platform.[7]

The unchecked and encouraged spread of misinformation and disinformation[8] on social media has resulted in clearly documented harm to foundational societal institutions such as politics and health.[9] As demonstrated in the failures of Silicon Valley Bank ("SVB") and Signature Bank, it also holds a particular danger for the banking system. Since the development of fractional banking in early Renaissance Italy, bank runs, often triggered by rumor or misinformation, have posed an existential threat to financial institutions.[10]

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4. Gizem Ceylan et al., *Sharing of Misinformation is Habitual, Not Just Lazy or Biased*, 120 PROCS. NAT'L ACAD. SCIS. 1, no. 4, 2023, https://www.pnas.org/doi/10.1073/pnas.2216614120 [https://perma.cc/FT9Z-TS8X].

5. Steven Lee Myers, *How Social Media Amplifies Misinformation More than Information*, N.Y. TIMES (Oct. 13, 2022), https://www.nytimes.com/2022/10/13/technology/misinformation-integrity-institute-report.html [https://perma.cc/XMT2-8NS9] (citing *Misinformation Amplification Analysis and Tracking Dashboard*, INTEGRITY INST. (Oct. 13, 2022), https://integrityinstitute.org/blog/misinformation-amplification-tracking-dashboard [https://perma.cc/YYK4-NSQR]).

6. *See* Ceylan, *supra* note 4 ("Current algorithms rely on engagement (i.e., likes, comments, shares, followers) as a quality signal and . . . prioritize the popularity of information lower the overall quality of content on a site . . . .").

7. *See id.* ("[H]abitual users are integral to social media sites' ad-based profit models, and thus these sites are unlikely to create reward structures that encourage thoughtful decisions that impede habits.").

8. *See Misinformation and Disinformation*, AM. PSYCH. ASS'N, https://www.apa.org/topics/journalism-facts/misinformation-disinformation [https://perma.cc/3ZP6-BZ7W] (last visited Dec. 15, 2023) ("Misinformation is false or inaccurate information—getting the facts wrong. Disinformation is false information which is deliberately intended to mislead—intentionally misstating the facts.").

9. *See* Muhammed Sadiq T. & Saji K. Mathew, *The Disaster of Misinformation: A Review of Research in Social Media*, 13 INT'L J. DATA SCI. & ANALYTICS 271, 271 (2022), https://link.springer.com/article/10.1007/s41060-022-00311-6 [https://perma.cc/H6YC-JKZP] (conducting a systemic literature review of misinformation centering on disasters, health, and politics).

10. *See* Gillian Tett, *What I Learnt from Three Banking Crises*, FIN. TIMES (April 6, 2023), https://www.ft.com/content/b0865633-82f2-4a49-ae0e-3bc0d1087a31 [https://perma.cc/2RK2-D8GP] ("The 'fractional banking' concept that emerged in medieval and early Renaissance Italy . . . posits that banks need to retain only a small

> In a run, fear that a bank may fail induces depositors to withdraw their money, which in turn forces liquidation of the bank's assets. The need to liquidate hastily, or to dump assets on the market when other banks are also liquidating, may generate losses that actually do cause the bank to fail. Thus the expectation of failure, by the mechanism of the run, tends to become self-confirming.[11]

Historically, bank runs can be extraordinarily powerful events. Bank runs have contributed to severe financial crises, such as the Panic of 1907,[12] and were a prominent feature of the Great Depression.[13] They even contributed to the defeat of the Spanish Armada[14] and the rise of the Nazis to power in Germany.[15]

Several attributes of bank runs make them particularly threatening to the financial system. With their emphasis on liquidity, bank runs can cause the failure of "healthy" banks as well as troubled ones.[16] Bank runs also can be contagious, indiscriminately spreading

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proportion of the deposits they collect from customers . . . . But should anything prompt depositors to grab their money en masse, fractional banking implodes.").

11. Ben S. Bernanke, *Non-Monetary Effects of the Financial Crisis in the Propagation of the Great Depression* 6 (Nat'l Bureau of Econ. Rsch., Working Paper No. 1054, 1983), https://www.nber.org/system/files/working_papers/w1054/w1054.pdf [https://perma.cc/VNZ8-8CVY].

12. *See* Jon R. Moen & Ellis W. Tallman, *The Panic of 1907*, FED. RSRV. HIST. (Dec. 4, 2015), https://www.federalreservehistory.org/essays/panic-of-1907 [https://perma.cc/592U-8V9P] (describing the causes of the Panic of 1907 and the subsequent monetary reform movement).

13. *See* FED. DEP. INS. CORP., FEDERAL DEPOSIT INSURANCE CORPORATION: THE FIRST FIFTY YEARS 3–4 (1984), https://www.fdic.gov/resources/publications/first-fifty-years/book/first-fifty-years.pdf [https://perma.cc/5PCW-FWHY] (explaining that bank failures following the 1929 stock market crash led to the implementation of a federal deposit insurance system through the creation of the FDIC).

14. Oscar Lasdon, *The Man Who Stalled the Spanish Armada*, 150 BANKERS MAG., Winter 1967, at 67–69 (1967).

15. José-Luis Peydró et al., *How Failing Banks Paved Hitler's Path to Power: Financial Crisis and Right-Wing Extremism in Germany, 1931–33*, CTR. FOR ECON. POL'Y RSCH. (Mar. 15, 2019), https://cepr.org/voxeu/columns/how-failing-banks-paved-hitlers-path-power-financial-crisis-and-right-wing-extremism [https://perma.cc/EHA7-APLD].

16. Douglas W. Diamond & Philip H. Dybvig, *Bank Runs, Deposit Insurance, and Liquidity*, 91 J. POL. ECON. 401, 402 (1983), https://www.bu.edu/econ/files/2012/01/DD83jpe.pdf [https://perma.cc/UD49-BL6A]. *But see* George G. Kaufman, *Bank Runs*, ECONLIB, https://www.econlib.org/library/Enc/BankRuns.html ("The danger of bank runs has been frequently overstated. For one thing, a bank run is unlikely to cause insolvency.")

from bank to bank until confidence is restored.[17] In addition, the seeming randomness of their occurrence makes them difficult to prevent. Over the decades, bank runs have been started by a wide range of triggering information or rumors, including news of theft by bank employees,[18] rumors of the death of bank officials,[19] derogatory statements in a bar,[20] comments from a teacher to her students,[21] "waggish" remarks by workmen,[22] and statements by politicians.[23] Misinformation or disinformation often was a key component of these triggering events.

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17. Ted Temzelides, *Are Bank Runs Contagious?*, FED. RSRV. BANK PHILA.: BUS. REV., Nov.–Dec. 1997, at 13, https://www.philadelphiafed.org/-/media/frbp/assets/economy /articles/business-review/1997/november-december/brnd97tt.pdf [https://perma.cc/SP9E-JDZC]. *But see* Charles W. Calomiris & Joseph R. Mason, *Contagion and Bank Failures During the Great Depression: The June 1932 Chicago Banking Panic*, 87 AM. ECON. REV. 863, 881 (1997), https://www.jstor.org/stable/2951329 [https://perma.cc/2JAG-KXAE] ("We conclude that failures during the [Chicago panic of June 1932] reflected the relative weakness of failing banks in the face of a common asset value shock rather than contagion.").

18. *See $1,000,000 Bank Run Caused by Arrests*, N.Y. TIMES, Jan. 9, 1927, at 1, https://timesmachine.nytimes.com/timesmachine/1927/01/09/96629137.html?pageNumber=1 [https://perma.cc/5WS8-3E2Z] ("Upward of $1,000,000 was paid out by [the bank] to approximately 1,500 depositors in a run on that institution yesterday following the arrest on Friday night of three of the bank's officials on charges of theft . . . . [It] 'look[ed] like a scene from a moving picture . . . .'").

19. *See Millions in Cash End Bay Ridge Bank Run*, N.Y. TIMES, Aug. 16, 1929 [hereinafter N.Y. TIMES, *Millions in Cash*], at 1–2, https://timesmachine.nytimes.com /timesmachine/1929/08/16/94171639.html?pageNumber=1 [https://perma.cc/VT7R-47GU] ("The [neighborhood] seethed with gossip. Some of it was that . . . [the] president of the bank, had died [and] that all of the officers had followed him in death . . . .").

20. *See id.* ("A speakeasy story prompted withdrawal of the savings of many poor depositors from a Brooklyn bank yesterday . . . .").

21. *See Causes Bank Run, Dies: School Teacher Succumbs to Gas Fumes with Man in Garage*, N.Y. TIMES, Jan. 24, 1924, at 19, https://timesmachine.nytimes.com /timesmachine/1924/01/24/104029090.pdf [https://perma.cc/2GAH-TND6] ("The teacher['s] statement to her pupils that a certain bank in the city was on a shaky foundation is believed to have caused a run on the bank . . . .").

22. *See Bank Run Caused by Waggish Remark*, N.Y. TIMES, Feb. 20, 1901, at 1, https://timesmachine.nytimes.com/timesmachine/1901/02/20/118461473.pdf [https://perma.cc/J8KH-2VEG] ("Actions of telephone repair men on the roof of the bank building last Friday started a waggish report about a run on the bank.").

23. *See* Press Release, Office of Thrift Supervision, OTS Closes IndyMac Bank and Transfers Operations to FDIC (July 11, 2008), https://www.ots.treas.gov/static/ots/press-releases/ots-pr-2008-29.pdf [https://perma.cc/5EFW-UM3B]. ("The immediate cause of the closing was a deposit run that began and continued after the public release of a June 26 letter to the OTS and the FDIC from Senator Charles Schumer of New York.").

The failure of SVB in March 2023 has been called "the first Twitter-fueled bank run."[24] Prior to its failure, SVB was the bank of choice for many venture capital-funded tech startups.[25] "Between 2019 and 2021, [SVB] tripled in size as it benefited from rapid deposit inflows during rapid venture capital (VC) and technology sector growth in a period of exceptionally low interest rates."[26] When interest rates increased in the second half of 2022, VC activity declined and clients began to withdraw deposits, most of which were uninsured, to fund business operations.[27]

During its period of growth, SVB had invested a large portion of client deposits in seemingly safe, long-dated government securities.[28] As interest rates rose, the value of these securities declined, resulting in a significant increase in unrealized losses on SVB's investment portfolio.[29] When SVB had to sell $21 billion of these securities to meet withdrawal demands, it announced on March 8, 2023, a $1.8 billion loss on the sale.[30] This announcement came the same day that Silvergate Bank reported that it was self-liquidating.[31] Uninsured SVB depositors interpreted SVB's announcement as a sign that SVB was in financial

24. Jonathan Yerushalmy, '*The First Twitter-fueled Bank Run': How Social Media Compounded SVB's Collapse*, GUARDIAN (Mar. 16, 2023), https://www.theguardian.com/business/2023/mar/16/the-first-twitter-fuelled-bank-run-how-social-media-compounded-svbs-collapse [https://perma.cc/S5UA-AN55].

25. *See* Maureen Farrell, *Inside the Collapse of Silicon Valley Bank*, N.Y. TIMES (Mar. 14, 2023), https://www.nytimes.com/2023/03/14/business/silicon-valley-bank-gregory-becker.html [https://perma.cc/9DZ5-TRGX] ("'Nothing happened inside the Valley that didn't involve Silicon Valley Bank.' . . . Silicon Valley often worked with start-ups that later became tech giants, engendering loyalty from many founders and venture capital investors.").

26. BD. OF GOVERNORS OF THE FED. RSRV. BD., REVIEW OF THE FEDERAL RESERVE'S SUPERVISION AND REGULATION OF SILICON VALLEY BANK 2 (2023) [hereinafter Review of the Federal Reserve Board], https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf [https://perma.cc/42XK-UCQD].

27. *Id.* at 20–21.

28. *Id.* at 21.

29. *Id.* at 22.

30. *Id.* at 22–23.

31. *Id.* at 24; *see also Remarks by Chairman Martin J. Gruenberg on Recent Bank Failures and the Federal Regulatory Response Before the Committee on Financial Services, United States House of Representatives,* FED. DEPOSIT INS. CORP. (Mar. 29, 2023) [hereinafter *Gruenberg Remarks*], https://www.fdic.gov/news/speeches/2023/spmar2923.html [https://perma.cc/M5AZ-YA5F] ("Following the collapse of digital asset exchange FTX . . . . Silvergate Bank experienced an outflow of deposits from digital asset customers that, combined with the FTX deposits, resulted in a 68 percent loss in deposits . . . . That rapid loss of deposits caused Silvergate Bank to sell debt securities to cover deposit withdrawals, resulting in a net earnings loss of $1 billion.").

distress and began withdrawing deposits.[32] SVB was unusually dependent on uninsured deposits for funding compared to most banks, with approximately 88 percent of its deposits uninsured.[33]

The resulting deposit run on SVB was the largest and fastest in U.S. history. Prior to SVB's failure, the largest bank run took place in 2008 at Washington Mutual bank, which totaled $16.7 billion over 10 days.[34] On March 9, 2023, SVB customers withdrew $42 billion from their accounts in a single day.[35] An additional $100 billion in withdrawals was expected the following day.[36] On March 10, SVB was closed by the California Department of Financial Protection and Innovation and the FDIC was appointed receiver.[37]

The unprecedented run at SVB differed in a number of ways from prior bank runs in both its size and speed.

> The Silicon Valley Bank run was, in many ways, the first of the digital era. Few depositors lined up at a branch. Instead, they used bank apps and phone calls to access their money in minutes. Venture capitalists and business owners described the early stages of the Silicon Valley run being led by private message boards or Slack channels, where entrepreneurs were encouraged to withdraw their funds.
>
> Silicon Valley Bank also was unique in being almost entirely exposed to one community — the tech industry, venture capital and startups. When this close-knit community of depositors talked to one another — using

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32. REVIEW OF THE FEDERAL RESERVE BOARD, *supra* note 26, at 24.
33. *Gruenberg Remarks*, *supra* note 31.
34. Felix Salmon, *The Largest Bank Run in History*, AXIOS MKTS. (Mar. 11, 2023), https://www.axios.com/2023/03/11/the-largest-bank-run-in-history [https://perma.cc/4XB6-V2XE].
35. *Id.*
36. REVIEW OF THE FEDERAL RESERVE BOARD, supra note 26, at 24.
37. Press Release, Fed. Deposit Ins. Corp., FDIC Creates a Deposit Ins. Nat'l Bank of Santa Clara to Protect Insured Depositors of Silicon Valley Bank, Santa Clara, California (March 12, 2023), https://www.fdic.gov/news/press-releases/2023/pr23016.html [https://perma.cc/N3BR-LYWJ].

> digital channels to do so quickly — the bank likely became more vulnerable to rumors and a run.[38]

As one expert noted, the result of this combination of social media communication among a narrow population coupled with the ability of depositors to instantly move money online was "a bank sprint, not a bank run, and social media played a central role in that."[39]

The level of panic reflected in the social media comments also exacerbated the run. One individual tweeted, "[i]f you are not advising your companies to get the cash out, then you are not doing your job as a board member or as a shareholder."[40] Investor Bill Ackman tweeted that "if federal regulators didn't quickly step in and guarantee all deposits, runs on other banks would start on Monday."[41] Another individual tweeted, "[y]ou should be absolutely terrified right now . . . . That is the proper reaction to a bank run and contagion."[42]

One of the first studies to examine the role of social media in the run at SVB offers some sobering findings. [43] The study found strong evidence that "social media contributed to the run on SVB, and more importantly, social media amplified the severity of the episode for other banks."[44] "The implication that social media matters for banking stability is potentially troubling because social platforms can spread inaccurate information, which could serve as a sunspot that leads to bank runs."[45] The study goes on to find that:

> Relative to offline social networks, social media has at least three features that make it more powerful as a coordination mechanism. First, social media's speed of communication is much more rapid than through

38. Ken Sweet & Stan Choe, *How the digital era helped speed up bank runs*, PBS: NEWSHOUR (Mar. 15, 2023), https://www.pbs.org/newshour/economy/bank-runs-used-to-be-slow-the-digital-era-has-sped-things-up [https://perma.cc/6LED-45JK].

39. Yerushalmy, *supra* note 24.

40. *Id.*

41. *Id.*

42. *Id.*

43. *See generally*, Anthony J. Cookson et al., *Social Media as a Bank Run Catalyst* (Université Paris-Dauphine, Research Paper No. 4422754, 2023), https://ssrn.com/abstract=4422754 [https://perma.cc/7Y7Y-9TX5] (examining the role of social media in bank runs).

44. *Id.* at 1.

45. *Id*. at 5.

> personal connections. Second, information posted to Twitter is visible publicly, which transmits information well beyond close personal connections. Third, widely read tweets can be contributed by anyone on the platform, and thus, social media can reflect information from many sources. These aspects of social media naturally interact with one another to lead to more rapid and widespread coordination of ideas. If social media continues to be a forum for depositors to share information, this would prove to be particularly powerful mechanism that can amplify bank run risk.[46]

If social media does pose a new, powerful threat to bank stability, it is important to examine strategies for addressing this rapidly growing risk.

This article examines the efficacy of past strategies for guarding banks against the risk of runs, what changes might be necessary in the current environment, and the implications of this heightened risk and the necessity of action to address it. This article proceeds in five parts. Part II examines past actions to deter bank runs by punishing those who trigger them, and how those actions might apply to social media risk.[47] Part III reviews strategies for slowing or halting bank runs once they begin and their potential efficacy in the face of a social media induced run.[48] Part IV considers the potential for internal and external actors to weaponize bank runs through social media to create chaos and instability within the financial system.[49] Part V discusses steps that can be taken to "harden" the deposit insurance system to act as a check on possible weaponization of bank runs.[50]

II. PUNISHMENT AND DETERRENCE

The Panic of 1907 has been called "the first worldwide financial crisis of the twentieth century."[51] Triggered by speculative stock

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46. *Id*.
47. *See infra* Part II.
48. *See infra* Part III.
49. *See infra* Part IV.
50. *See infra* Part V.
51. Moen & Tallman, *supra* note 12.

trading, the crisis was characterized by numerous runs on trust companies[52] and banks associated with trading activity.[53] Only the Great Depression had a greater impact on the economy and the financial system than the Panic of 1907.[54] The Panic of 1907 also would prove to be the impetus for the creation of the Federal Reserve System in 1913.[55]

In the wake of the Panic of 1907, the American Bankers Association ("ABA") launched a lobbying campaign to enact legislation at the federal and state level to punish, and by extension deter, individuals making derogatory statements about financial institutions that could cause bank runs.[56] The legislation was drafted by Thomas B. Paton, the General Counsel of the ABA, who prepared one version for Congress and one for the state legislatures.[57] All members of the ABA were provided with copies of the legislation and printed arguments in favor of the legislation and urged to write their elected representatives urging passage.[58]

At the request of the ABA, Rep. John Dalzell (R-PA) introduced H.R. 6091 in December 1907.[59] H.R. 6091 provided that:

> any person who shall make, circulate, or transmit to another or others any statement, untrue in fact, derogatory to the financial condition or affecting the solvency or financial standing of any national bank in the United States, or who shall counsel, aid, procure, or induce another to start, transmit, or circulate any such statement or rumor, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars and by

52. *Id.* "Trust companies were state-chartered intermediaries that competed with banks for deposits." *Id*.
53. *Id.*
54. *Id.*
55. *Id.*; *see also* Federal Reserve Act of 1913, Pub. L. No. 63-43, 38 Stat. 251.
56. *Committee Reports—Banking Section*, 87 COMM. & FIN. CHRON. 109, 114 (1908) (citing Thomas B. Paton, Report of Standing Law Committee), https://fraser.stlouisfed.org/title/commercial-financial-chronicle-1339/october-10-1908-497074 [https://perma.cc/KC4X-KLSW].
57. *Id.*
58. *Id.*
59. *Id.*; H.R. 6091, 60th Cong. (1907).

> imprisonment at hard labor for a term of not more than five years.[60]

Despite the strong support of the ABA, H.R. 6091 never received a floor vote in the House of Representatives during the 60th Congress.[61] Rep. Dalzell did not give up on his goal of passage and continued to refine and reintroduce the bill[62] in subsequent congresses until he was defeated following the 62nd Congress.[63] After Rep. Dalzell left Congress, other members of Congress periodically introduced similar legislation, often referred to as "bank slander" bills, into the 1950s.[64] While one of the bills was reported favorably by the Committee on Banking and Currency,[65] none of these bills ever received floor consideration.[66]

Although it was unsuccessful at the federal level, the ABA used its state associations to lobby for the enactment of similar bank slander statutes in the states.[67] The ABA convinced over 40 state legislatures to enact bank slander legislation.[68] The state legislatures added their own

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60. *Id.*

61. *See* Summit Bank v. Rogers, 206 Cal. Ct. App. 676, 683 (2012) ("While the Association's lobbying efforts proved to be unsuccessful at the federal level, numerous state legislatures, including California, adopted the proposed law.").

62. *See* H.R. 13083, 61st Cong. (1909); H.R. 14121, 62nd Cong. (1911) (introducing subsequent versions of H.R. 6091, 60th Cong. (1907).

63. *Guide to the Scrapbooks of John Dalzell, 1886–1911*, HISTORIC PITTSBURGH, https://historicpittsburgh.org/islandora/object/pitt%3AUS-QQS-MSS175/viewer [https://perma.cc/4XSF-LSQ2] (last visited Jan. 23, 2024).

64. *See* H.R. 11217, 67th Cong. (1922), H.R. 11296, 67th Cong. (1922), H.R. 9683, 71st Cong. (1930), H.R. 5274, 83rd Cong. (1953); H.R. 333, 84th Cong. (1955); H.R. 1179, 85th Cong. (1957) (reintroducing subsequent bank slander bills).

65. *See* H.R. Rep. No. 71-726 at 2 (1930), https://congressional-proquest-com.libproxy.lib.unc.edu/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/$2fapp-bin$2fgis-serialset$2f4$2fc$2fc$2f9$2f9191_hrp726_from_1_to_3.pdf /entitlementkeys=1234%7Capp-gis%7Cserialset%7C9191_h.rp.726 [https://perma.cc/M6QD-5KGX] ("This legislation is undoubtedly needed, as much injury is being done by such slanderers to national and State member banks.").

66. It appears that the only similar legislation to be enacted into law on the federal level was Section 512 of Pub. L. No. 75-424, that made it a crime to willingly and knowingly make untrue statements or rumors about the solvency or financial standing of the Federal Savings and Loan Insurance Corporation that was created by Title IV of the National Housing Act of 1938, Pub. L. No. 73-479.

67. *Committee Reports—Banking Section*, *supra* note 56, at 114.

68. Alabama, ALA. CODE § 5-5A-46; Arizona, ARIZ. REV. STAT. ANN. § 6-134; Arkansas, ARK. CODE. ANN. § 23-50-104; California, CAL. FIN. CODE § 1327; Colorado, COLO. REV. STAT. §11-102-508; Connecticut, CONN. GEN. STAT. § 36a-55; Delaware, DEL. CODE ANN. tit. 5, § 927; Florida, FLA. STAT. § 836.06; Georgia, GA. CODE ANN. § 7-1-845; Hawaii, HAW. CODE R. § 412:2-607; Idaho, IDAHO CODE § 26-1203; Illinois, 720 ILL. COMP. STAT.

embellishments to the base legislation, outlawing statements derogatory to the financial condition of a bank. For example, most of the states included the requirement that the statements be untrue or false, with one state explicitly making the truth of the statement a defense.[69] Other states added an element of intent to the statute.[70] Some states explicitly referenced the creation of a bank run or an extraordinary withdrawal of deposits.[71] One state tied the false statements to short selling, addressing an "intent to depress the value of the stocks, bonds, or securities" of the bank.[72] A few states elevated the actions in their bank slander laws to felonies.[73]

These state laws reflected a desire on the part of the states, especially in the pre-deposit-insurance-era, to punish and deter individuals from making statements that triggered bank runs. As the New York Times opined in advance of passage of the New York statute, there was a "need of some more effective means for the punishment of persons who maliciously or ignorantly circulate rumors which cause

300/1; Indiana, IND. CODE ANN. § 35-18-19-1 (repealed); Iowa, IOWA CODE § 524.1609; Kansas, KAN. STAT. ANN. § 21-4005 (repealed); Kentucky, KY. REV. STAT. ANN. § 434.310; Louisiana, LA. STAT. ANN. § 6:414.1; Maine, Me. Laws, Chapter 49, 1933 Session Law (repealed); Maryland, MD. CODE ANN., FIN. INST. § 5-805; Michigan, MICH. COMP. LAWS §750.97 (repealed); Minnesota, MINN. STAT. § 619.63 (repealed); Mississippi, MISS. CODE ANN. § 81-14-173; Missouri, H.B. 142, 1911 (repealed); Nevada, NEV. REV. STAT. ANN. § 673.810; New Hampshire, N.H. REV. STAT. ANN. § 384: 22-a (repealed); New Jersey, N.J. STAT. ANN. 17:16H-2; New Mexico, N.M. STAT. ANN. § 58-10-93; New York, NY BANKING LAW § 671; North Carolina, N.C. GEN. STAT. § 53C-8-10; North Dakota, N.D. CENT. CODE § 6-08-15; Ohio, OHIO REV. CODE § 1155.21 (repealed); Oklahoma, OKLA. ST., tit. 6, § 1413; Rhode Island, 19 R.I. GEN. LAWS § 19-9-31; South Carolina, S.C. CODE ANN. § 34-3-70; Tennessee, TENN. CODE ANN. § 45-3-1311; Texas, TEX. FIN. CODE ANN. § 59.002; Utah, UTAH CODE ANN. § 7-1-801; Virginia, VA. CODE ANN. § 6.2-940; Washington, WASH. REV. CODE § 33.36.050; West Virginia, W. VA. CODE § 31A-8-8; Wisconsin, WISC. STAT. § 40, 348.411 (repealed); Wyoming, WYO. STAT. ANN. § 13-10-102.

69. *See* Louisiana, LA. STAT. ANN. §6:414.1 ("Truth of the statement made shall be a defense to the crime set forth in this Section.").

70. *See* Arkansas, ARK. CODE. ANN. § 23-50-104 (criminalizing the circulation of any rumor with the intent to injuriously affect the financial standing or reputation of any bank); Kansas, KAN. STAT. ANN. § 21-4005 (repealed) (criminalizing the circulation of "any false rumor with intent to injure the financial standing or reputation of any bank").

71. *See* Arkansas, ARK. CODE. ANN. § 23-50-104 ("[s]eeks either by word or action to start a run upon a bank."); Colorado, COLO. REV. STAT. § 11-102-508 ("that results in an extraordinary withdrawal of funds from such bank."); Iowa, IOWA CODE § 524.1609 ("to cause or provoke, or aid in causing or provoking, a general withdrawal of deposits from such state bank.").

72. West Virginia, W. VA. CODE § 31A-8-8.

73. Georgia, GA. CODE ANN. § 7-1-845; New Mexico, N.M. STAT. ANN. § 58-10-93; Texas, TEX. FIN. CODE ANN. § 59.002.

such runs."[74] Despite the intentions behind these state laws, they generally failed in their goal to prevent bank runs.

One reason the bank slander statutes failed to prevent bank runs was that the laws were often forgotten almost as soon as they were on the books. From the passage of New York's law in 1912 until 1931, there does not appear to have been a single conviction under the state's bank slander law.[75] When a judge in North Carolina threatened to use the statute against "persons who spread rumors against banks,"[76] the local newspaper noted that, "[u]ndoubtedly, the existence of such a punitive statute is not generally known."[77] Following the implementation of deposit insurance, which made bank runs rare, the proposed use of a bank slander law in the 1960s was described as "[a] law which could not be enforced when it was needed and which has not been needed for the past quarter century."[78] Needless to say, a statute that is not widely known is unlikely to be much of a deterrent.

Another reason that state bank slander statutes had little effect was that it was often difficult or impossible to identify the individuals who made the statements that triggered a bank run, notwithstanding efforts to find the culprits. Press accounts of bank runs almost routinely included statements by bank officers to the effect that "no effort would be spared"[79] to identify the individuals who spread the rumors that

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74. *An Inexcusable Bank Run*, N.Y. TIMES, Jan. 30, 1914, at 8, https://timesmachine.nytimes.com/timesmachine/1914/01/30/101915407.html?pageNumber=8 [https://perma.cc/SCE8-4RWZ].

75. *See Business & Finance: Rumor Monger*, TIME (Sept. 7, 1931), https://content.time.com/time/subscriber/article/0,33009,742188,00.html [https://perma.cc/Q3MC-KNTE] (noting that a 1931 indictment had potential to be the first conviction since the passage of the law in 1912).

76. *Spreader of Rumors Derogatory to Bank is Liable Under Law*, GREENSBORO DAILY NEWS, Dec. 17, 1930, at 1, https://infoweb.newsbank.com/apps/news/browse-multi?t=favorite%3AGNRH%21Greensboro+News+and+Record+Historical+and+Current&p=AMNEWS&f=advanced (choose Greensboro Daily News from the list of sources; then within the "Browse Issues by Date" function use the dropdown to select the year 1930; then navigate to December 17 and click on the hyperlink) [https://perma.cc/N5XR-U5GK].

77. *Id.*

78. Jonathan Friendly, *Unused Law Cited to Close Doors*, NEWS & OBSERVER, Jan. 26, 1964, at 14, https://newsobserver.newspapers.com/paper/the-news-and-observer/3272/?tab=browse&browseUrl=%2Fthe-news-and-observer_3272%2F1964%2F01%2F26 [https://perma.cc/BB42-MYSF].

79. *See Millions on Hand to Stop Bank Run*, N.Y. TIMES, Jan. 30, 1914, at 3 [hereinafter N.Y. TIMES, *Millions on Hand*], https://timesmachine.nytimes.com/timesmachine/1914/01/30/101915368.html?pageNumber=3 [https://perma.cc/KGA5-ZN94]; *see also End New Haven Bank Run*, N.Y. TIMES, July 20, 1913, at 9, https://timesmachine.nytimes.com/timesmachine/1913/07/20/100570910.html?pageNumber

caused the run. Banks and public officials employed numerous strategies to identify "rumor mongers."[80] They offered rewards for the identification of individuals who started rumors about the bank.[81] One District Attorney issued subpoenas to depositors who withdrew their money in a bank run, requiring them to tell him "the names of persons who circulated the false reports."[82] Another bank "hired ten private detectives" and enlisted the aid of the police in tracking down the person who started the rumors about the bank.[83] Despite these efforts, it was rarely possible to identify the individuals who made the statements that started a bank run.

Even in cases where it was possible to identify the individual who stated the rumor that caused the bank run, the bank slander statutes were often employed more as a warning than as a punishment. A Utah Financial Institutions Commissioner warned the Utah League of Credit Unions that a humorous ad that had incensed banks in the state because of how they were portrayed "could be viewed as making derogatory statements about the financial condition, safety and stability of banks" in violation of the state's bank slander law.[84] Citing the state's bank slander law, the Nevada Attorney General "threatened criminal charges against [a] Las Vegas union, which had circulated handbills criticizing the management and financial performance of the Commercial Bank of Nevada."[85] On at least two occasions, politicians also have been

=9 [https://perma.cc/7NMN-8JHC] ("[The] State Bank Commissioner issued a statement in which he said he would run down the rumors which started the run, and that if those responsible could be found prosecution would follow.").

80. *To Trace Bank Rumor: Dodd Issues Subpoenas in Search for Bay Ridge Culprit*, N.Y. TIMES, Aug. 18, 1929 at 20 [hereinafter N.Y. TIMES, *To Trace Bank Rumor*], https://timesmachine.nytimes.com/timesmachine/1929/08/18/91919691.html?pageNumber=20 [https://perma.cc/W9VV-YP3A].

81. *See e.g.,* N.Y. TIMES, *Millions on Hand*, *supra* note 79 ("[I]t was said that a substantial reward might be offered for information leading to the identification of the persons responsible for the run.").

82. *See* N.Y. TIMES, *To Trace Bank Rumor*, *supra* note 80.

83. N.Y. TIMES, *Millions in Cash*, *supra* note 19.

84. Steven Overbeck, *TV Commercial Infuriates Utah Banks - State's Financial Institutions Boss Asks Credit Unions to Pull Advertisement Making Fun of Mergers; Commercial Infuriates Utah Bank*, SALT LAKE TRIB., Mar. 31, 2001, at B4, https://newspapers.lib.utah.edu/search (choose "Advanced Search" and enter "TV Commercial Infuriates Utah Banks" in the first keywords search; next enter "Salt Lake Tribune" in the second keywords search; then limit the date range to 2021-03-31 and hit submit; then click on the hyperlinked result) [https://perma.cc/3NJU-ZPJB].

85. *State Settles with Culinary over Question of Free Speech*, LAS VEGAS SUN (Feb. 9, 2000, 10:06 AM), https://lasvegassun.com/news/2000/feb/09/state-settles-with-culinary-

threatened with investigation under state bank slander statutes for comments they made about financial institutions.[86]

In the rare instances where individuals were identified and officials chose to arrest or prosecute them under state bank slander statutes, those actions were rarely successful. In 1987, a Charlotte, N.C. radio disc jockey, known for making outrageous statements as part of his show, was arrested for airing a report that a local bank had run out of money the day after the Black Monday stock market crash, the largest one-day market decline in Dow Jones history.[87] Although the bank received an on-air apology and a cash settlement, the D.J. was arrested, but not prosecuted, for his actions at the behest of state banking officials. The state Banking Commissioner stated that he felt that they had "made a point" through the arrest.[88] The public disagreed and flooded the Commissioner's office with calls, with one commenter noting that "[i]t seemed to me that the point made was that the Banking Commissioner is arrogant and high-handed."[89] The public reaction echoed comments from over 50 years earlier that few cases were

over-question-of-free-/ [https://perma.cc/K2MF-CXYQ] ("The handbills said such things as 'Commercial Bank Loses Money Again.'").

86. John Appleton, *Connecticut Plans Probe of Dimauro - Release May Have Violated State Banking Regulation*, REPUBLICAN, Sept. 1, 1990, at 1, https://infoweb.newsbank.com/apps/news/document-view?p=AMNEWS&t=country%3AUSA%21USA&sort=YMD_date%3AD&maxresults=20&f=advanced&val-base-0=Connecticut%20Plans%20Probe%20of%20Dimauro&fld-base-0=alltext&docref=news/0F2F13E51588703E [https://perma.cc/ZX5A-C7QC] ("Connecticut's banking commissioner yesterday said he will seek criminal prosecution against Massachusetts congressional candidate Theodore E. Dimauro over a campaign statement, which mistakenly said the federal government recommended liquidating Bank of New England."); *California Won't Investigate NY Senator on IndyMac*, REUTERS (Aug. 22, 2008, 4:59 PM), https://www.reuters.com/article/us-indymac-schumer-california-idUSN2219447320080822/ [https://perma.cc/2AHH-VA3A] ("[W]hile Senator Schumer's statements may have accelerated public concern about IndyMac's financial condition, we do not believe that we can prove that they caused the bank's failure.").

87. Richard Oppel, *Banking Law Needs to be Amended*, CHARLOTTE OBSERVER, Jan. 31, 1988, at 78, https://charlotteobserver.newspapers.com/image/625440271/?terms=Banking%20Law%20Needs%20to%20be%20Amended&match=1 [https://perma.cc/BZ9B-AYYC].

88. Jerry Bledsoe, *Everybody Loves a Joke – Except the N.C. Banking Commission*, GREENSBORO NEWS & RECORD, Feb. 10, 1988, at B1, https://infoweb.newsbank.com/apps/news/results?p=AMNEWS&t=country%3AUSA%21USA/decade%3A1980%211980%2B-%2B1989&sort=YMD_date%3AD&maxresults=20&f=advanced&val-base-0=Everybody%20Loves%20a%20Joke&fld-base-0=alltext&z=co_sc_postsearch_dateselector (scroll down to Greensboro News and Record and click on hyperlink) [https://perma.cc/YDQ4-KTN3].

89. *Id.*

prosecuted under bank slander statutes "because of community sentiment."[90]

One of the few bank slander cases to go to trial displayed the difficulties and risks inherent in prosecuting bank slander actions. In 1931, James H. O'Connell, a 25-year-old stock salesman at a New York City brokerage firm, was arrested at his office and charged with making false statements about the financial condition of Chatham Phenix National Bank.[91] Allegedly, O'Connell told a customer of his firm, Louis Schnell, that "the bank was shaky and urged him to sell [his] 600 shares of stock [in the bank]."[92] Schnell, who also had $45,000 on deposit at the bank, reported the statements to bank officials.[93] The bank reported the conversation to the District Attorney and took the "bold step"[94] of urging that O'Connell be prosecuted "to the very limit of the law."[95] The bank claimed that O'Connell's "lies" were part of a "whispering campaign" against the bank.[96]

At trial, O'Connell argued that he had not made any untruthful statements and that he was arrested to prevent a run on the bank.[97] He also argued that Schnell had asked him about the advisability of maintaining this stock holdings and deposits with the bank, and that he had told him that another bank had a better financial outlook.[98] Press reports also indicated that a number of concerns about the bank were already circulating publicly in the weeks before the conversation with Schnell.[99]

The trial ended with a hung jury and the indictment against O'Connell was subsequently dismissed.[100] O'Connell then promptly

90. TIME, *supra* note 75.
91. *False Bank Rumors Cause Indictment*, N.Y. TIMES, Aug. 26, 1931, at 3 [hereinafter N.Y. TIMES, *False Bank Rumors*], https://timesmachine.nytimes.com/timesmachine/1931/08/26/102258504.html?pageNumber=3 [https://perma.cc/AST4-82KN].
92. *Id.*
93. *Id.*
94. TIME, *supra* note 75.
95. N.Y. TIMES, *False Bank Rumors*, *supra* note 91.
96. *Id.*
97. *False Tale of a Bank Laid to Man on Trial,* N.Y. TIMES, Oct. 20, 1932, at 15, https://timesmachine.nytimes.com/timesmachine/1932/10/20/100867438.html?pageNumber=15 [https://perma.cc/K32A-N73N].
98. *Id.*
99. TIME, *supra* note 75.
100. *See Cleared of Rumors, Sues Bank*, N.Y. TIMES, Apr. 27, 1933, at 8, https://timesmachine.nytimes.com/timesmachine/1933/04/27/99229785.pdf [https://perma.cc/8HRE-F6C7] ("The jury disagreed when the case was tried last October.").

sued the bank and Schnell for damages.[101] He asked for $500,000 in damages,[102] equivalent to $11 million in 2023 dollars. The prosecution's failure to gain a conviction on behalf of the bank in the first use of the statute and O'Connell's suit for damages probably did not create a deterrent to the spread of rumors, but it may well have created a deterrent against banks in New York pursuing these kinds of actions.

The likely death knell for bank slander laws was sounded in a 2012 California case involving statements communicated over the Internet in the early days of social media. In *Summit Bank v. Rogers*,[103] the California Court of Appeals considered a case involving derogatory statements about a bank made by a former bank employee on the "Rants and Raves" section of Craigslist.[104] The defendant posted 21 comments over a two-month period and the bank identified at least five of them as violating the California's bank slander statute.[105] The online posts included:

> The June 7, 2009 post: "Being a stockholder of this screwed up Bank, this year there was no dividend paid. The bitch CEO that runs this Bank thinks that the Bank is her personel [sic] Bank to do with it as she pleases. Time to replace her and her worthless son."
>
> The June 21, 2009 post: "Whats [sic] up at this problem Bank. The CEO provides a [sic] executive position to her worthless, lazy fat ass son Steve Nelson. This should not be allowed. Move your account now."
>
> The July 14, 2009 post: "The FDIC and the California Department of Financial Institutions are looking at

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101. *Id.*
102. *Id.*
103. 206 Cal. App. 4th 669 (2012).
104. *Id.* at 679.
105. *Id.* "Financial Code section 1327 provides: 'Any person who willfully and knowingly makes, circulates, or transmits to another or others, any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank doing business in this state, or who knowingly counsels, aids, procures, or induces another to start, transmit, or circulate any such statement or rumor, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment for not more than one year, or both.'" *Id.* at 682.

> Summit Bank. This is the third time in less than one year. This is not a good thing, move your accounts ASAP."
>
> The July 25, 2009 post: "I had banked at Summit Banks [sic] Hayward Office. Service was poor and Summit Bank closed this office. Whats [sic] up with that. All the customer [sic] were left high and dry. This is a piss poor Bank. I would suggest that anyone that banks at Summit Bank leave before they close."
>
> The second July 25, 2009 post: "Move your accounts now before its [sic] too late."[106]

The Court carefully analyzed the application of the criminal statute to the posts and determined that the statutory provision was unconstitutional.

Rather than finding that the California bank slander law was enforceable, the Court of Appeals held:

> Instead, we find section 1327 cannot be reconciled with modern constitutional requirements. It is a criminal libel statute without a malice requirement, which is designed to prohibit speech based on its content. It fails to give persons of ordinary intelligence fair notice of what is forbidden. It sets no discernible limits on what types of speech can be criminalized, and, allowing such free range, it lends itself to arbitrary enforcement. Of greatest concern, it has the potential to inhibit persons from engaging in constitutionally protected speech about the financial soundness of our banking system by threatening those who express themselves with a less than optimistic view on this topic with criminal sanctions.[107]

In its decision, the Court of Appeals completely rejected the original reasoning behind these statutes: that allowing untrue,

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106. *Id.* at 679–80.
107. *Id.* at 692.

derogatory comments about a bank's financial condition in a time of economic uncertainty was dangerous conduct that could lead to bank runs and financial harm.

> Rather, it is precisely because of the current financial climate that we believe the public should be given broad latitude to express a wide range of viewpoints on matters relating to the operation and solvency of our financial institutions. That debate not only contributes ultimately to a proper understanding of the role and function of financial institutions in our society, but also furthers the search for solutions leading to the strengthening of the banking sector, and therefore, to our economy as a whole. Therefore, the public interest in the dissemination of this type of information is legitimate and substantial.[108]

Perhaps reflecting agreement that the "modern constitutional requirements" described in *Summit Bank* no longer support these kinds of statutory restrictions on speech, some other states have repealed their bank slander statutes in recent years.[109]

It is difficult to see any path where it will be possible to deter or punish misinformation or disinformation about banks spread by social media under federal or state law. As is clear from the operational and constitutional defects of the bank slander statutes, the government will not be able to prevent misinformation or disinformation on social media from threatening financial institutions even if there were the political will to pursue that approach. There is, however, currently no such political consensus about whether restrictions on misinformation or disinformation should be imposed on social media.

When asked about public policy options to address the issue of bank misinformation on social media following the failure of SVB, House Financial Services Committee Chairman McHenry stated, "[f]ree speech rights are free speech rights."[110] He added, "[i]n a moment of

108. *Id*. at 689.

109. Indiana, IND. CODE ANN. § 35-18-19-1 (repealed 1977); Michigan, MICH. COMP. LAWS §750.97 (repealed 2015); Minnesota, MINN. STAT. 619.63 (repealed 1963).

110. Sam Sutton, *Washington Can't Stop an Instant Bank Run*, POLITICO: MORNING MONEY (Mar. 15, 2023, 8:00 AM), https://www.politico.com/newsletters/morning-

crisis like this, there are a lot of half-baked ideas . . . The current one is about throttling social media around financial products — which I think is half-baked."[111] In addition, "Republican lawmakers and activists are mounting a sweeping legal campaign against universities, think tanks, and private companies that study the spread of disinformation on social media, accusing them of colluding with the government to suppress conservative speech online."[112] The prospects of passing legislation in such a polarized political environment are very slim, if not impossible.

It also is apparent that social media sites have no intention of addressing the spread of misinformation or disinformation. Elon Musk has described himself as a "free speech absolutist"[113] and has reinstated over 60,000 Twitter accounts that were previously banned by prior management,[114] many of them for the spread of misinformation.[115] As long as it remains profitable to serve as a platform for misinformation or disinformation and social media companies face no legal consequences

money/2023/03/15/washington-cant-stop-an-instant-bank-run-00087132 [https://perma.cc/TBQ6-8CVF].

111. *Id.*

112. Steven Lee Myers & Sheera Frenkel, *G.O.P. Targets Researchers Who Study Disinformation Ahead of 2024 Election*, N.Y. TIMES (June 19, 2023), https://www.nytimes.com/2023/06/19/technology/gop-disinformation-researchers-2024-election.html [https://perma.cc/634U-QY4G]; *see also id.* ("The [Judiciary] committee's chairman, Representative Jim Jordan of Ohio, a close ally of Mr. Trump, has accused the organizations of 'censorship of disfavored speech' involving issues that have galvanized the Republican Party: the policies around the Covid-19 pandemic and the integrity of the American political system, including the outcome of the 2020 election."); Naomi Nix, Cat Zakrzewski, & Joseph Menn, *Misinformation Research Is Buckling Under GOP Legal Attacks*, WASH. POST (updated Sept. 25, 2023, 1:26 PM), https://www.washingtonpost.com/technology/2023/09/23/online-misinformation-jim-jordan/ [https://perma.cc/8AS2-D8U8] ("Academics and government scientists say the campaign also is successfully throttling the years-long effort to study online falsehoods, which grew after Russian attempts to interfere in the 2016 election caught both social media sites and politicians unaware.").

113. Dan Milmo, *How 'Free Speech Absolutist' Elon Musk Would Transform Twitter*, GUARDIAN (Apr. 14, 2022 10:12 AM), https://www.theguardian.com/technology/2022/apr/14/how-free-speech-absolutist-elon-musk-would-transform-twitter [https://perma.cc/4R4Q-GTCE].

114. Clare Duffy, *The Mass Unbanning of Suspended Twitter Users Is Underway*, CNN BUSINESS (Dec. 8, 2022), https://www.cnn.com/2022/12/08/tech/twitter-unbanned-users-returning/index.html [https://perma.cc/WRE8-AJRP] ("The new Twitter owner had already begun to restore the accounts of some prominent, controversial users that had previously been banned or suspended from the platform, most notably former President Donald Trump . . . .").

115. Andrew Hutchinson, *New Data Suggests that Hate Speech Is on the Rise on Twitter 2.0*, SOCIAL MEDIA TODAY (Mar. 20, 2023), https://www.socialmediatoday.com/news/New-Report-Suggests-Hate-Speech-Rising-on-Twitter/645482/ [https://perma.cc/C954-G6SK].

due to Section 203 of the Communications Decency Act,[116] which limits the liability of providers for statements or misinformation shared on their platforms, there appears to be no prospect of effective self-policing by the social media companies. Banks, therefore, cannot expect to be protected from the threat of runs triggered by misinformation or disinformation. Every bank will be at risk,[117] and, in the absence of deterrence, the focus must shift to ways to slow, stop, or prevent bank runs in the age of social media once they are sparked.

III. SLOWING OR HALTING A BANK RUN

Historically, not all bank runs have caused banks to fail. Before the introduction of deposit insurance, banks employed several strategies to slow or halt runs. With varying degrees of success, these strategies were designed to regain the public confidence that had been lost and triggered the run. The approaches to establishing confidence can be grouped into two general strategies – enhanced transparency and the use of respected validators.

Walter Bagehot, who wrote *Lombard Street*,[118] "the bible of central banking,"[119] observed 150 years ago that "[e]very banker knows that if he has to *prove* that he is worthy of credit, however good may be his arguments, in fact his credit is gone."[120] Nonetheless, one common way that banks have attempted to halt runs has been to provide broad transparency about the bank's financial condition and sources of liquidity in order to reassure depositors that their money is safe and need not be withdrawn.

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116. *See* Communications Decency Act of 1996, 47 U.S.C. § 230(c)(1) ("No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.").

117. *See* Sam Sutton, *Washington Can't Stop an Instant Bank Run*, POLITICO: MORNING MONEY (Mar. 15, 2023 8:00 AM), https://www.politico.com/newsletters/morning-money/2023/03/15/washington-cant-stop-an-instant-bank-run-00087132 [https://perma.cc/TBQ6-8CVF] (discussing the implausibility of protecting banks from social media risks).

118. WALTER BAGEHOT, LOMBARD STREET: A DESCRIPTION OF THE MONEY MARKET (1873) https://tile.loc.gov/storage-services/public/gdcmassbookdig/lombardstreetde00bage/lombardstreetde00bage.pdf [https://perma.cc/C7YU-5WZN].

119. BEN S. BERNANKE, TIMOTHY F. GEITHNER, & HENRY M. PAULSON, JR., FIREFIGHTING: THE FINANCIAL CRISIS AND ITS LESSONS, p. 34 (2019).

120. BAGEHOT, *supra* note 117, at 69 (emphasis in original).

To restore confidence, banks have published their financial statements in newspapers,[121] posted letters from their boards[122] or their regulators,[123] and placed placards stating the support of their local clearinghouse "prominently in every window in the business district in the city."[124] Some banks took additional steps to reassure their customers. A Cleveland bank enduring a run "escorted a committee representing the public at large through the bank's vault" to prove their solvency.[125] Another bank eschewed any subtlety; "when the bank doors were opened . . . great stacks of bills four and five feet high were piled up before the tellers' windows,"[126] and by that afternoon, "the run seemed to be over."[127]

These instances serve to illustrate how a bank's access to liquidity is critical in halting a run. More importantly, the bank needs to effectively communicate its access to liquidity to its customers. Having access to liquidity is critical, but the run will continue until the bank can convince its customers that its access to funding will protect them against loss.

The aggressive transparency strategy was resurrected to slow deposit withdrawals at a regional bank following the failure of SVB. The managers of Western Alliance Bank "watched gape-mouthed as their bank's accounts dwindled."[128] In a modern approach to transparency, the "bleeding stopped only after the bank offered some major depositors a look inside its operations in exchange for signing

121. *Millions on Hand to Stop Bank Run*, N.Y. TIMES, Jan. 30, 1914, at 3, https://timesmachine.nytimes.com/timesmachine/1914/01/30/101915368.pdf?pdf_redirect=true&ip=0 [https://perma.cc/KGA5-ZN94].

122. *Id.*

123. *Millions in Cash End Bay Ridge Bank Run*, N.Y. TIMES, Aug. 16, 1929, at 1, https://timesmachine.nytimes.com/timesmachine/1929/08/16/94171639.pdf?pdf_redirect=true&ip=0 [https://perma.cc/6TYM-TCJ5].

124. *Milwaukee Bank Run Ended After a Panic*, N.Y. TIMES, Apr. 26, 1905, at 7 https://timesmachine.nytimes.com/timesmachine/1905/04/26/101412672.html?pageNumber=7 [https://perma.cc/LR5A-5AMP].

125. Bank Run is Checked, N.Y. TIMES, Mar. 11, 1910, at 11, https://timesmachine.nytimes.com/timesmachine/1910/03/11/105986057.html?pageNumber=11 [https://perma.cc/EW9Y-DRN4].

126. *Big Bank Run Stopped with $1,000,000 Fund*, N.Y. TIMES, Feb. 3, 1907, at 3, https://timesmachine.nytimes.com/timesmachine/1907/02/03/106738575.html?pageNumber=3 [https://perma.cc/5HEC-ANAQ].

127. *Id.*

128. Rob Copeland, *'Do You Even Want Us to Exist?' A Bank Chief Fights to Survive*, N.Y. TIMES (June 14, 2023), https://www.nytimes.com/2023/06/14/business/western-alliance-regional-banks.html [https://perma.cc/UDC4-9J7C].

nondisclosure arrangements."[129] The depositors were apparently convinced by what they saw on the bank's books, and the deposits stabilized.

In addition to transparency, banks often have used individuals who are trusted in the community to vouch for the bank and restore confidence when faced with a run. In the pre-deposit insurance era, these trusted validators often included clergy[130] and elected officials[131] who would urge depositors not to panic and withdraw their money. These individuals sometimes backed up their pleas with ostentatious displays of placing additional money in the bank to communicate their belief in its soundness. There are reports of nuns and mayors waving money over their heads in front of the gathered crowds as they entered the bank to deposit the funds.[132]

Recognizing the threat that bank runs posed to the stability of all banks, competitors of the bank suffering a run would publicly place money in the bank as a sign of their assessment of its stability[133] or refuse to take the deposits recently withdrawn from another bank.[134] Although this was often a welcome sign of support, it did have limits. In one instance, the line for a bank run extended down the block until it stretched in front of a competitor, creating confusion about which bank depositors were targeting. To ensure there was no confusion, the

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129. *Id.*

130. *See Millions in Cash End Bay Ridge Bank Run*, *supra* note 122, at 1 ("The clergyman's speech had great weight, hundreds going away convinced they had been misled."); *Cleveland Society for Savings Pays Out Close to $1,000,000*, N.Y. TIMES, Mar. 11, 1910, at 11, https://timesmachine.nytimes.com/timesmachine/1910/03/11/105986057.html?pageNumber=11 [https://perma.cc/EW9Y-DRN4] ("Catholic priests this afternoon passed through the long line of foreigners, coaxing men and women to go home and leave their money in the bank. Hundreds were persuaded to do so.").

131. *End New Haven Bank Run*, N.Y. TIMES, July 20, 1913, at 9, https://timesmachine.nytimes.com/timesmachine/1913/07/20/100570910.pdf?pdf_redirect=true&ip=0 ("Mayor Frank J. Rice made a speech to the crowd . . . . These efforts apparently had their effect, as many fell out of their places in the line, and left the bank.").

132. *Mother McKenna, 89, Stopped a Bank Run*, N.Y. TIMES, July 6, 1943, at 21, https://timesmachine.nytimes.com/timesmachine/1943/07/06/85108686.html?pageNumber=21 [https://perma.cc/N28T-H26Q] ("Carrying a large bundle of money over her head, she fought her way through the throng and, by depositing the money, stopped the run and dispersed the crowd."); *Milwaukee Bank Run Ended After a Panic, supra* note 123, at 7 ("One of the most spectacular happenings of the day was the action of Mayor Rose in walking down Wisconsin street, in full view of the crowd, with $500,000 in currency in gold in canvas bags. He was surrounded by policemen and detectives, and walked into the bank with the treasure.").

133. *Millions in Cash End Bay Ridge Bank Run*, *supra* note 122, at 1.

134. *Id.*

competitor posted a large placard in front of its doors stating "[t]his is not the bank."[135] Nonetheless, banks could usually rely on their local competitors to come to their aid and offer public support during a run.

The trusted validator strategy was on full display following the failure of SVB. The President,[136] Secretary of the Treasury,[137] and bank regulators[138] all made statements to reassure depositors in the aftermath of SVB's failure. The Federal Reserve announced a new program, the Bank Term Funding Program, to provide liquidity for banks similarly situated to SVB.[139] Also, several large banks led by JPMorgan Chase publicly deposited $30 billion in First Republic Bank to stabilize it following the SVB failure.[140] The action by JPMorgan Chase, Bank of America, Wells Fargo, and Citigroup, which harkened back to the actions of banks from decades ago, was intended to demonstrate "their overall commitment to helping banks serve their customers and

135. *Milwaukee Bank Run Ended After a Panic*, *supra* note 123, at 7.

136. Remarks on the United States Banking System and the National Economy, 2023 Daily Comp. Pres. Doc. (Mar. 12, 2023), https://www.govinfo.gov/content/pkg/DCPD-202300185/pdf/DCPD-202300185.pdf [https://perma.cc/MU5Y-2R34] ("Americans can have confidence that . . . [y]our deposits will be there when you need them. Small businesses across the country that had deposit accounts at these banks can breathe easier knowing they'll be able to pay their workers and pay their bills.").

137. Press Release, Dep't of Treasury, READOUT: Secretary of the Treasury Janet L. Yellen Convenes Financial Regulators (Mar. 10, 2023), https://home.treasury.gov/news/press-releases/jy1334 [https://perma.cc/XV4B-S9EZ] ("Secretary Yellen expressed full confidence in banking regulators to take appropriate actions in response and noted that the banking system remains resilient and regulators have effective tools to address this type of event.").

138. Press Release, Dep't of Treasury, Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC (Mar. 12, 2023), https://home.treasury.gov/news/press-releases/jy1337 [https://perma.cc/4RP9-R2LN] ("The U.S. banking system remains resilient and on a solid foundation, in large part due to reforms that were made after the financial crisis that ensured better safeguards for the banking industry.").

139. Press Release, Bd. of Governors of the Fed. Rsrv. Sys., Federal Reserve Board Announces It Will Make Available Additional Funding to Eligible Depository Institutions to Help Assure Banks Have the Ability to Meet the Needs of All Their Depositors (Mar. 12, 2023), https://www.federalreserve.gov/newsevents/pressreleases/monetary20230312a.htm [https://perma.cc/X2UJ-K4UZ].

140. Press Release, JP Morgan Chase & Co., Bank of America, Citigroup, JPMorgan Chase, Wells Fargo, Goldman Sachs, Morgan Stanley, BNY Mellon, PNC Bank, State Street, Truist and U.S. Bank to make uninsured deposits totaling $30 billion into First Republic Bank (Mar. 16, 2023) (on file with author), https://www.jpmorganchase.com/ir/news/2023/bank-to-make-uninsured-deposits-totaling-30-billion-into-first-republic-bank [https://perma.cc/2FUT-P8WF].

communities."[141] While the public statements following the failure of SVB would help reassure the public, it would not be enough to prevent the ultimate failure of First Republic Bank.[142] Bank regulators also would need to announce that all deposits in SVB and Signature Bank would be fully insured, and imply that future failures could receive the same treatment before the government was able to stabilize conditions with similarly situated regional banks and restore confidence in the financial system.[143]

While transparency and validators were sometimes able to halt or slow bank runs, banks have tried other strategies with less success. In some cases, the bank "would have employees and relatives line up in front of the tellers and make tiny deposits or withdrawals" to buy time until the bank closed for the day.[144] Of course, this strategy is of little utility today when a depositor can move money instantly from their phone or with the click of a mouse. The modern equivalent would be the sudden onset of "'technical issues' that delay or stop transactions from completing in the era of digital banking."[145]

Rule changes involving money market mutual funds ("MMMFs")[146] provided a recent real-world test of delayed payment strategies. During the 2008 Global Financial Crisis ("GFC"), the

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141. Rob Copeland et al., *Wall Street's Biggest Banks Rescue Teetering First Republic*, N.Y. TIMES (Mar. 16, 2023), https://www.nytimes.com/2023/03/16/business/first-republic-bank-sale.html [https://perma.cc/8BQN-EEBN].

142. Press Release, Fed. Deposit Ins. Corp., *JPMorgan Chase Bank, National Association, Columbus, Ohio Assumes All the Deposits of First Republic Bank, San Francisco, California* (May 1, 2023), https://www.fdic.gov/news/press-releases/2023/pr23034.html [https://perma.cc/2HDU-DRDB].

143. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-106736, PRELIMINARY REVIEW OF AGENCY ACTIONS RELATED TO MARCH 2023 BANK FAILURES 30–31 (2023), https://www.gao.gov/assets/gao-23-106736.pdf [https://perma.cc/SY53-LPU7] (discussing the FRB and FDIC decision to protect all uninsured deposits at SVB and Signature Bank).

144. Zoe Chace, *Three Ways to Stop a Bank Run*, NPR: PLANET MONEY (June 11, 2012, 4:39 AM) https://www.npr.org/sections/money/2012/06/12/154719542/three-ways-to-stop-a-bank-run [https://perma.cc/C4MQ-ARQC].

145. Gabriel Lip, *Bank Run*, CFI (last accessed Feb. 2, 2024), https://corporatefinanceinstitute.com/resources/economics/bank-run/ [https://perma.cc/Q78M-3QLA].

146. U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-105535, MONEY MARKET MUTUAL FUNDS: PANDEMIC REVEALED UNRESOLVED VULNERABILITIES (2023), https://www.gao.gov/assets/gao-23-105535.pdf [https://perma.cc/VP5T-KRWR] ("[M]MMFs are mutual funds that invest in high-quality, short-term debt securities and pay dividends that generally reflect short-term interest rates. [M]MMFs serve as intermediaries in the short-term funding markets, standing between investors with cash to lend and borrowers with short-term funding needs.").

Treasury was forced to guarantee all amounts[147] in participating MMMFs to stop a widespread run in the industry. This guarantee was funded by the extraordinary use of Treasury's Exchange Stabilization Fund.[148] Following this experience, the SEC adopted a set of reforms for MMMFs designed to slow fund withdrawals in a crisis through the application of fees and temporary suspensions of redemptions (known as "gates").[149] When these reforms were tested in the early days of the 2020 pandemic, evidence indicates that "some investors preemptively redeemed MMMF shares to avoid the possibility of incurring a liquidity fee or losing access to their funds under a redemption gate."[150] Consequently, the "SEC and other stakeholders identified the 2014 MMMF reforms and other factors as potentially *contributing* to the runs at MMMFs at the start of the pandemic,"[151] the opposite of the intended effect.

Experience shows that strategies that delay or deny depositors their money rarely calm, and often exacerbate, a run by denying depositors prompt access to their cash. As one bank official who had experienced multiple runs observed, "when this sort of thing starts, there is nothing to do but give everyone his or her money."[152] The one alternative to halting or slowing a run without giving everyone their money is to provide a government guarantee.[153] Reflecting on the experiences during the GFC, former Treasury Secretary Geithner stated that "[t]he real lesson was the power of a government guarantee; when crisis managers can credibly promise protection against catastrophic outcomes, market participants don't have to act in anticipation of those outcomes, so the feared outcomes don't happen."[154] This explains the power of deposit insurance as a deterrent for bank runs.

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147. *See id.* at 11–12 (describing the Treasury's Temporary Guarantee Program for Money Market Funds); Press Release, Dep't of Treasury, Treasury Announces Temporary Guarantee Program for Money Market Funds (Sept. 29, 2008) (announcing the program) https://home.treasury.gov/news/press-releases/hp1161 [https://perma.cc/BL76-YBKG].

148. Eric J. Spitler, *The Supreme Court's Major Questions Doctrine: Implications for Responding to Financial Crises*, 27 N.C. BANKING INST. 1, 38–39 (2023).

149. Money Market Fund Reform, 79 Fed. Reg. 47736, 47747 (Aug. 14, 2014) (to be codified at 17 C.F.R. pts. 230, 239, 270, 274 & 279).

150. GAO-01-1163T, *supra* note 146, at 16–17.

151. *Id.* at 16. (emphasis added).

152. *False Rumors Start a Bayonne Bank Run*, N.Y. TIMES, Feb. 2, 1907, at 3, https://timesmachine.nytimes.com/timesmachine/1907/02/02/106738273.html?pageNumber=3 [https://perma.cc/88RC-N24U].

153. BERNANKE ET AL., supra note 119, at 77.

154. *Id.*

Deposit insurance has proven to be one of the most effective strategies for preventing bank runs.

> Empirically, deposit insurance is highly effective at preventing runs. At a high level, the rarity of bank runs in the United States, especially runs by insured depositors, since the creation of the FDIC is clear evidence of the stabilizing benefits of deposit insurance. At the level of individual depositor behavior, analysis on data from both the United States and abroad provides consistent evidence on the effectiveness of deposit insurance in stabilizing insured deposit funding.[155]

As the FDIC consistently states, "[n]o depositor has ever lost a penny of insured deposits since the FDIC was created in 1933."[156]

However, deposit insurance did not prevent the runs at SVB or Signature Bank or the failure of First Republic Bank, banks with unusually high levels of uninsured deposits. This raises important questions as to the efficacy and effectiveness of deposit insurance in preventing bank runs when uninsured deposits make up more than 50 percent of the funding in almost half of the largest banks[157] at the very moment misinformation and disinformation is increasing on social media. The confluence of heightened risk from social media misinformation or disinformation and a deposit insurance system that is less effective in preventing runs poses an ongoing threat to banks and overall financial stability in this country.

IV. THE WEAPONIZATION OF BANK RUNS

Shortly after the failure of SVB and the accompanying instability among regional banks, some in Congress began to speak of the threat to the financial system posed by misinformation or

155. FED. DEPOSIT INS. CORP., OPTIONS FOR DEPOSIT INSURANCE REFORM, 26 (2023) [hereinafter OPTIONS FOR DEPOSIT INSURANCE REFORM].

156. *When a Bank Fails – Facts for Depositors, Creditors, and Borrowers*, FED. DEPOSIT INS. CORP. (last updated 2014), https://www.fdic.gov/consumers/banking/facts/ [https://perma.cc/95EF-S44U].

157. OPTIONS FOR DEPOSIT INSURANCE REFORM, *supra* note 155, at 9.

disinformation on social media.[158] Their concern was not limited to the impact a virtual community of venture capitalists could have on a single bank like SVB. Rather, their concern was "that US financial institutions could be vulnerable to social-media-induced bank runs and that malicious actors could use misinformation and bots to manipulate public opinion and create chaos in the financial system."[159] Their concerns about the weaponization of bank runs are not misplaced or far-fetched.

In late 1586, an early intelligence coup provided British spies with information that King Philip II of Spain planned to launch his "Invincible Armada" against an unprepared England.[160] Although defensive preparations were underway, England needed more time. Sir Francis Walsingham, Queen Elizabeth I's Secretary of State, and Thomas Sutton, a prominent merchant, realized that Philip would need to borrow to fund the expedition.[161] They learned that he had made arrangements with the Bank of San Giorgio in Genoa to lend him the funds.[162]

Sutton and his agents spread out across European trade centers and purchased drafts from traders and bankers with deposits at the bank.

> With the drafts in hand, Sutton engineered a run on the Bank of San Giorgio when the time of victualling approached . . . . Controlling such a large amount of the Bank's short-dated paper, he drained its liquid assets to the critical point—where the lack of cash scuttled any possibility of immediately provisioning the Armada.[163]

As Bishop Gilbert Burnet reported, "[h]e managed the matter with such secrecy and success that the fleet could not be set out that year."[164] The extra year would prove pivotal in the failure of the

158. Matt Laslo, *Senators Warn the Next US Bank Run Could Be Rigged*, WIRED (Mar. 20, 2023), https://www.wired.com/story/senators-warn-the-next-us-bank-run-could-be-rigged-russia-china/ [https://perma.cc/2KVS-5QFP].

159. *Id.*

160. Oscar Lasdon, *The Man Who Stalled the Spanish Armada*, BANKERS MAG., Winter 1967, at 67.

161. *Id.* at 68–69.

162. *Id.*

163. *Id.* at 69.

164. GILBERT BURNET, BISHOP BURNET'S HISTORY OF HIS OWN TIME: FROM THE RESTORATION OF KING CHARLES THE SECOND TO THE TREATY OF PEACE AT UTRECHT, IN THE

expedition. This early example of economic warfare[165] demonstrated how the plans of even powerful nations could be stymied through a bank run.

In July 1932, the Office of the Comptroller of the Currency and the Secret Service announced that they had unearthed a plot by communists in the U.S. to systematically trigger bank runs in cities in the Midwest.[166] According to government officials, the "whispering campaign" to cause runs had successfully caused bank failures in Chicago, Cleveland, and other cities in the Midwest.[167] The plotters would phone businesses and professionals and warn them, as a friend, that the bank was about to close and they should withdraw their money.[168] The professionals were chosen because they met many people during the day—"[a] doctor might, if he did not think twice, spread the rumor to twenty-five persons a day."[169]

The plotters, while taking advantage of the technology of the time, the telephone, recognized that it was "a slow proposition to get people steamed up for a run,"[170] but claimed some success in their efforts.[171] Investigators who broke up the plot described it as "a bold scheme to wreck the financial structures of major cities"[172] and concluded that the plot was "organized by Communist groups in the United States and backed by Soviets in Russia."[173] The plotters' reliance on a literal game of telephone[174] to attempt to spread the

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REIGN OF QUEEN ANNE 209 (Great Britain, William S. Orr & Co. 1850); *see also* T. B. Collinson, *A Warning Voice from the Spanish Armada*, 19 J. OF THE ROYAL UNITED SERV. INST. 285, 298 (1876) (detailing the specific costs of the run); *The London Charterhouse*, ENG. ILLUSTRATED MAG., 1885–1886, at 493 (describing the great wealth Sutton accumulated from draining the bank during his bank run).

165. *See* GLYN DAVIES, A HISTORY OF MONEY 233 (Univ. of Wales Press ed., 4th ed. 2016) ("[The Armada bank run] illustrates how sophisticated the financial aspects of economic warfare had become by the 1580s.").

166. *Government Acting On Bank Run Plot*, N.Y. TIMES, Jul. 28, 1932, at 1, https://timesmachine.nytimes.com/timesmachine/1932/07/28/issue.html [https://perma.cc/5A9Y-E2KY].

167. *Id.*

168. *Id.* at 4.

169. *Id.*

170. *Raid Bares Red Plotting of Runs to Ruin Banks,* CHI. DAILY TRIB., Jul. 28, 1932, at 6.

171. *Id.*

172. *Government Acting on Bank Run Plot*, supra note 166, at 4.

173. *Huge Red Plot to Wreck Banks by Rumors Revealed*, WASH. POST, Jul. 28, 1932, at 1.

174. In the game of telephone, "a message is given to the first person in a line of people and then they are instructed to pass the message on by whispering it in the ear of the next

rumors did not provide the reach or the speed necessary for them to be successful.

In 1966, students protesting apartheid gathered at a branch of First National City Bank in New York, asking it to cease doing business in South Africa.[175] Around 300 students filled the bank lobby and lined up out the door to simulate a run and close their accounts.[176] Although the protest gathered press attention, not surprisingly, it did not trigger a broader run on the bank. Even the organizers stated "[w]e don't have any expectation whatever of bringing a $14 billion bank down on its knees."[177] Nonetheless, they clearly understood the concept that bank runs could be weaponized under the right circumstances.

Following the 2008 GFC, as public anger grew against large U.S. banks, energy that ultimately would lead to the Occupy Wall Street movement,[178] activists took a closer look at the feasibility of bank runs as a tool of social protest. A former commodities broker writing on a website described his "Tank-a-Bank" proposal for creating a bank run to send a political message.[179] The plan, "a combination of flash-mob organization techniques and shrewd media manipulation,"[180] sought to engage millions of activists in a simultaneous run on a bank. The plan was viewed as:

> a new form of extreme action. Its reliance on millions of participants means that only mass desperation could lead to its use. But a flash-mob bank run could come in many forms. If a Facebook group that called itself BofA

person in line. The message goes from person to person until it reaches the end of the line, and that person announces the message to the group." Chad Thiele, *Lessons Learned From the Telephone Game*, CHADJTHIELE.COM (June 9, 2012), https://chadjthiele.com/2012/06/09/lessons-learned-from-the-telephone-game/ [https://perma.cc/CG93-VUEP]. Typically, the final message announced at the end of the game "is significantly different" from the original message at the beginning of the game. *Id.*

175. *Students Here Stage Bank Run To Protest 'Apartheid Support'*, N.Y. Times, Apr. 21, 1966, at 17 https://timesmachine.nytimes.com/timesmachine/1966/04/21/80003548.html?pageNumber=17 [https://perma.cc/4QMX-ZN6P].

176. *Id.*

177. *Id.*

178. Michael Levitin, *Occupy Wall Street Did More Than You Think*, THE ATLANTIC (Sep. 14, 2021), https://www.theatlantic.com/ideas/archive/2021/09/how-occupy-wall-street-reshaped-america/620064/ [https://perma.cc/BL4R-7GS6].

179. Kevin Roose, *Could Main Street Break a Bank?*, N.Y. TIMES (Oct. 14, 2010), https://archive.nytimes.com/dealbook.nytimes.com/2010/10/14/could-main-street-break-a-bank/?searchResultPosition=296 [https://perma.cc/CKN3-NCVW].

180. *Id.*

> Customers Totally Sick of Their Fees reached 2 million members, would we suddenly see cheaper checking accounts? How much anger would it take for people to join such plans or to attempt one as grand as Tank-a-Bank?[181]

The strategy of weaponizing a bank run with the intent of causing one or more bank failures was very clear. As the plan's author said, "I learned a long time ago that bullies only respond to strength. You want the banks' attention? Put one of them in the morgue. Anything else is a minor inconvenience to them."[182]

The Tank-a-Bank plan generated an immediate reaction as people understood the implications of what was being proposed. A commenter on the website compared the Tank-a-Bank proposer to "an economist for Al Qaeda."[183] The Tank-a-Bank posting was taken down in less than an hour. Nonetheless, experts who reviewed the plan found it credible with one noting specifically that "[t]o be a threat, [the plan] would have to trigger a run from commercial accounts, $250,000 and above,"[184] the exact scenario that played out in SVB and Signature Bank. Again, the relevant point is not that the plan was never implemented. Rather, the concern is it provided yet another refinement of the concept of weaponizing bank runs to achieve a desired political end.

Efforts to weaponize bank runs often foundered on an inability to mobilize action in a coordinated manner at a sufficient scale. Social media provides a platform that solves many of the shortcomings of prior efforts to weaponize bank runs. It provides access to large numbers of individuals and communities who can be targeted with information or misinformation and urged to act on it.

Misinformation and disinformation can spread unfiltered and unchecked on social media, playing on people's fears, greed, and anger to encourage them to act. The ability of social media-induced collective action to impact markets and financial institutions was evident in the effort by individual investors to band together to push up shares of

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181. *Id.*
182. *Id.*
183. *Id.*
184. *Id.*

GameStop to attack the investment strategies of hedge funds.[185] Having successfully moved the market in their favor, many amateur investors embraced this new approach to investing and targeted financial institutions based on perceived or real financial weakness. The social media attacks on Credit Suisse in early 2023 provided an example of the power of social media directed collective action.[186] Although already a troubled institution, social media attacks and speculation led by small investors drove down the stock price of the bank and heightened concerns about its viability, resulting in the Swiss government forcing an emergency acquisition by UBS.[187] "As the Credit Suisse incident shows, their actions highlight a new source of peril for troubled companies."[188]

The dangers of misinformation or disinformation on social media are likely to expand exponentially with the advent of artificial intelligence ("AI") and its ability to generate fake images and video that are difficult to distinguish from reality. "Fake video, on top of bots (fake people) and fake written content, is being used aggressively by all anti-American actors, intelligence officials say. Some experts estimate that more than 90% of content on the internet will soon be fake or manipulated."[189]

In a recent example, as negotiations reached a critical stage between Congress and the Administration during the 2023 debt limit crisis and market concerns were growing, a report of an attack on the Pentagon accompanied by a fake AI-generated image of smoke rising from the building was widely circulated "by outlets including RT, a Russian government-backed media company formerly known as Russia Today."[190] The image "was widely shared in investment circles,

185. Maureen Farrell et al., *How One of Switzerland's Oldest Banks Became a Meme Stock*, N. Y. TIMES (Oct. 17, 2022), https://www.nytimes.com/2022/10/17/business/credit-suisse-meme-stock.html [https://perma.cc/5NBL-FZZ9].

186. *Id.*

187. Hanna Ziady, *UBS Completes Credit Suisse Takeover. Here's What It Means*, CNN (June 12, 2023), https://www.cnn.com/2023/06/12/business/ubs-completes-credit-suisse-takeover/index.html [https://perma.cc/PN2W-FRYT].

188. Maureen Farrell et al., *supra* note 187.

189. Mike Allen & Jim VandeHei, *Behind the Curtain: Rattled U.S. Government Fears Wars Could Spread*, AXIOS (Oct. 20, 2023), https://www.axios.com/2023/10/20/biden-government-war-fears-israel-hamas [https://perma.cc/TKW6-YG9L]

190. Philip Marcelo, *Fake Image of Pentagon Explosion Briefly Sends Jitters Through Stock Market*, ASSOCIATED PRESS (May 23, 2023), https://apnews.com/article/pentagon-explosion-misinformation-stock-market-ai-96f534c790872fde67012ee81b5ed6a4 [https://perma.cc/358F-FJ6R].

including an account bearing Twitter's signature blue verification check mark that falsely suggested it was associated with Bloomberg News."[191] Timed at the opening of the markets, the report caused a drop in the S&P 500 as it circulated through the investment community.[192] The incident illustrated the ease with which social media disinformation can affect financial markets. It also revealed that some of the markets' own features magnified the impact of social media "because of high frequency trading, algorithmic trading, which is basically taking headlines, synthesizing them and then breaking them down into a trade on a millisecond basis."[193] As one analyst noted, "[i]t's basically like you're pulling a trigger every time a headline comes out."[194]

The timing and prominent role played by Russian media in this instance, while possibly coincidental, should provide a warning about the potential for the weaponization of bank runs through social media. The Senate Select Committee on Intelligence has issued several reports regarding Russian efforts to sow chaos, confusion, and discord through American society and democratic institutions through broad disinformation campaigns delivered through social media.[195] Specifically, the Committee found that social media provided Russia a "'cheap, efficient, and highly effective access to foreign audiences with plausible deniability of their influence.'"[196]

Two recent policy changes on X (formerly Twitter) have heightened the risks of the spread of state-sponsored disinformation. Previously, "X alerted users about an account's ties to a government on the outlet's profile page and on all of its posts."[197] "[P]osts from accounts (state-run or not) containing links to articles from state-run media included a label with an orange exclamation point reading 'Stay

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191. *Id.*
192. *Id.*
193. *Id.*
194. *Id.*
195. *See generally* COMM. ON INTELL. U.S. SENATE, RUSSIA'S USE OF SOCIAL MEDIA WITH ADDITIONAL VIEWS, S. Rep. No. 116-XX (2019) https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume2.pdf [https://perma.cc/JXJ8-26N5] (investigating Russia's interference with American matters).
196. *Id.* at 15.
197. McKenzie Sadeghi et al., *X's Unchecked Propaganda: Engagement Soared by 70% for Russian, Chinese, and Iranian Disinformation Sources Following a Change by Elon Musk*, NEWSGUARD (Sept. 26, 2023); https://www.newsguardtech.com/misinformation-monitor/september-2023/ [https://perma.cc/QCW3-J9L4].

Informed.'"[198] Since X's new policies have been enacted, "it is impossible for users to know whether an account is government-affiliated unless they have previous knowledge about the outlet's ties or do their own research."[199] In another change to its policies, X's algorithm "now regularly promotes" these state actor sites to its users.[200]

The consequences of these policy changes has been significant for the spread of state-sponsored disinformation. "In the 90 days following the removal of state-sponsored labels on X, engagement (the number of likes and shares) on posts from Russian, Chinese, and Iranian state media English-language accounts shot up [70%] compared with the previous 90-day period."[201] As important social media platforms make it easier to spread disinformation, the potential for Russia and other state actors to use social media to weaponize bank runs to create instability in the US financial system is an increasing vulnerability that needs to be addressed.

V. "HARDENING" FINANCIAL INSTITUTIONS AGAINST SOCIAL MEDIA ATTACKS

State actor efforts to create chaos and confusion through misinformation or disinformation disseminated through social media is a very difficult problem to address. The contemporary Russian model for propaganda has been characterized as "'the firehose of falsehood' because of two of its distinctive features: high numbers of channels and messages and a shameless willingness to disseminate partial truths or outright fictions."[202] In suggesting ways to counter such a propaganda attack, a RAND study stated, "our first suggestion is don't expect to counter the firehose of falsehood with the squirt gun of truth."[203] The study recommended that, "[r]ather than trying to block, refute, or undermine the propaganda, focus instead on countering its objective

198. *Id*.
199. *Id.*
200. *Id.*
201. *Id*.
202. CHRISTOPHER PAUL & MIRIAM MATTHEWS, THE RUSSIAN "FIREHOSE OF FALSEHOOD" PROPAGANDA MODEL: WHY IT MIGHT WORK AND OPTIONS TO COUNTER IT 1 (RAND CORP., 2016), https://www.rand.org/pubs/perspectives/PE198.html [https://perma.cc/9TAJ-47FF].
203. *Id.* at 9 (deemphasized).

. . . . If Russian propaganda aims to achieve certain effects, it can be countered by preventing or diminishing those effects."[204]

Following this advice, the best way to harden the banking system against efforts to weaponize bank runs through social media is to neutralize the attack by removing the concerns that it seeks to exploit, which is the fear of financial loss in the case of bank depositor runs. By taking steps to shore up the banking system and the deposit insurance scheme, policymakers can ensure that the public is confident that their money is safe and is not susceptible to rumors, true or not, about the financial condition of their bank.

Since the failure of SVB, a number of reforms have been proposed to improve the resiliency of the banking system.[205] These include updating risk-based capital requirements, applying those requirements to institutions with more than $100 billion in assets, improved stress testing, improved accounting for unrealized losses and gains, and introducing a long-term debt requirement for large banks and ensuring adequate liquidity.[206] While these reforms would undoubtedly result in a more resilient banking system, none of them would address the public's concerns about bank stability and the potential for contagion as effectively as updating the deposit insurance scheme to reflect more accurately the ways depositors interact with their banks.

To understand how the deposit insurance system needs to be reformed, it is important to understand why it was not initially effective in preventing or slowing the runs at SVB and Signature Bank. Both SVB and Signature Bank had extremely high levels of uninsured deposits, representing primarily business accounts that exceeded the deposit insurance limits.[207] When business depositors became

204. *Id.* at 10.

205. *See* Michael S. Barr, Vice Chair for Supervision, Fed. Rsrv., Speech at the Bipartisan Policy Center, Washington, D.C.: Holistic Capital Review (Jul. 10, 2023), https://www.federalreserve.gov/newsevents/speech/barr20230710a.htm [https://perma.cc/6WCG-847S] (discussing potential changes to regulation and supervision after SVB's failure).

206. *Id.*

207. *See* BD. OF GOVERNORS OF THE FED. RSRV. SYS., REVIEW OF THE FEDERAL RESERVE'S SUPERVISION AND REGULATION OF SILICON VALLEY BANK 1 (2023) https://www.federalreserve.gov/publications/review-of-the-federal-reserves-supervision-and-regulation-of-silicon-valley-bank.htm [https://perma.cc/9BF3-2M56] ("SVB was an outlier because of the extent of its highly concentrated business model, interest rate risk, and high level of reliance on uninsured deposits . . . ."); *see also* Martin J. Gruenberg, Chairman, Fed. Dep. Ins. Corp., Remarks on Recent Bank Failures and the Federal Regulatory Response before the Committee on Financial Services, United States House of

concerned about the banks' financial condition, they moved rapidly to withdraw their uninsured funds, concerned that they might not be able to make their payrolls and pay other operating expenses if the bank failed.[208] Because so many deposits were uninsured, the deposit insurance system did not provide any assurance to the depositors that their funds would be available. In fact, the original announcement of SVB's failure specified that only insured funds would be protected and an indeterminate amount of uninsured funds would be made available at some point through an advanced dividend and the future liquidation of the bank's assets.[209] It was only after the FDIC, Federal Reserve, and Treasury invoked the systemic risk exception[210] and announced that the government would insure all deposits in those institutions that confidence was restored to the system and the potential contagion to other banks was arrested.[211] Senior government officials determined that

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Representative (Mar. 29, 2023) https://www.fdic.gov/news/speeches/2023/spmar2923.html [https://perma.cc/SK3S-PV32] ("At year-end 2022, SVB reported uninsured deposits at [88%] of total deposits versus [90%] for Signature Bank.").

208. *Id.*

209. Press Release, Fed. Dep. Ins. Corp., FDIC Creates a Deposit Insurance National Bank of Santa Clara to Protect Insured Depositors of Silicon Valley Bank, Santa Clara, California (Mar. 10, 2023) https://www.fdic.gov/news/press-releases/2023/pr23016.html [https://perma.cc/35JJ-WTQ2] ("All insured depositors will have full access to their insured deposits no later than Monday morning, March 13, 2023. The FDIC will pay uninsured depositors an advance dividend within the next week. Uninsured depositors will receive a receivership certificate for the remaining amount of their uninsured funds. As the FDIC sells the assets of Silicon Valley Bank, future dividend payments may be made to uninsured depositors.").

210. The systemic risk exception ("SRE") was established by the Federal Deposit Insurance Corporation Improvement Act of 1991. FED. DEPOSIT INS. CO., CRISIS AND RESPONSE: AN FDIC HISTORY, 2008–2013, xvi-xvii (2017) https://www.fdic.gov/resources/publications/crisis-response/book/crisis-response.pdf [https://perma.cc/BZF2-CANB]. Generally, "[t]he act . . . required the FDIC to resolve failed banks in a manner that was least costly to the Deposit Insurance Fund and required the FDIC not to deviate from this least-cost requirement in order to protect uninsured depositors and other creditors." *Id.* at xvii. However, the act "included the SRE provision that permitted the suspension of this 'least cost' requirement if the FDIC Board and the Federal Reserve Board each voted to recommend the exception to the Secretary of the Treasury, who, in consultation with the President, then determined that the exception was warranted." *Id.* The SRE's invocation "required a consensus that closing the bank in question would have 'serious adverse effects on economic conditions and financial stability' and that providing assistance under the SRE would 'avoid or mitigate such adverse effects.'" *Id.*

211. U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-106736, BANK REGULATION: PRELIMINARY REVIEW OF AGENCY ACTIONS RELATED TO MARCH 2023 BANK FAILURES 30 (2023) https://www.gao.gov/assets/gao-23-106736.pdf [https://perma.cc/SCZ7-MHU3] ("The Federal Reserve and FDIC assessed that preserving unimpaired access to all uninsured deposits for SVB and Signature Bank would help mitigate adverse impacts to

the moral hazard implications of this action was outweighed by the fact that only a broad government guarantee of all deposits would be sufficient to halt the growing contagion.[212]

Deposit insurance works best to prevent bank runs when it is matched with the types of accounts most commonly used by depositors and provides protection for depositors that banks depend upon for funding. When the coverage levels and types of accounts do not match, the result is large numbers of uninsured depositors and the risks of a bank run. To avoid the impacts of this type of mismatch over time, "deposit insurance coverage has evolved to reflect both the FDIC's experience and changes in the banking industry."[213] For example, there have been periodic increases in coverage over the years to reflect inflation and the growing wealth of average depositors.[214] But there also have been more subtle changes to deposit insurance to meet the needs of depositors. In 2006, coverage was increased just for certain retirement accounts[215] to reflect the shift from defined benefit plans to individual retirement accounts.[216]

Similarly, the growing popularity of revocable trust accounts as an estate planning vehicle in recent years and the insurance status of

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financial stability and the economy. Treasury concurred with FDIC's and the Federal Reserve's analysis. In the Federal Reserve's analysis, Board staff noted that if the systemic risk exception were invoked, a resolution method could be applied that would avoid all or most of the adverse impacts discussed above. In particular, if all uninsured depositors were largely or fully protected, the adverse effects would be substantially mitigated.").

212. Mark Sobel, *Silicon Valley Bank Collapse Reverberates Through Financial System*, OMFIF (Mar. 13, 2023) https://www.omfif.org/2023/03/silicon-valley-bank-collapse-reverberates-through-financial-system/ [https://perma.cc/2XTV-GC2Q].

213. Simplification of Deposit Insurance Rules, 87 Federal Register 4455, 4456 (Jan. 28, 2022) (to be codified at 12 C.F.R. 330).

214. *See* Financial Institutions Supervisory Act of 1966, Pub. L. No. 89-695, §§ 301–02, 80 Stat. 1028, 1055–1056 (1966) (amended 1974) (increasing coverage to $15,000); *see also* Federal Deposit Insurance Increase, Pub. L. No. 93-495, 88 Stat. 1500, 1500 (1974) (amended 1980) (increasing coverage to $40,000); Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, § 308, 94 Stat. 132, 147–48 (1980) (amended 2008) (increasing coverage to $100,000); Emergency Economic Stabilization, Pub. L. No. 110-343, § 136, 122 Stat. 3765, 3799 (2008) (amended 2010) (temporarily increasing coverage to $250,000); Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law. No. 111-203, § 334, 124 Stat. 1376, 1540 (2010) (increasing coverage to $250,000).

215. Deficit Reduction Act of 2005, Pub. Law. No. 109-171, § 2103(c), 120 Stat. 4.

216. *See* Monique Morrissey, *The State of American Retirement: How 401(k)s Have Failed Most American Workers*, ECON. POL'Y INST. (Mar. 3, 2016), https://www.epi.org/publication/retirement-in-america/ [https://perma.cc/8UNF-KG4A] (charting how defined-contribution, or individual, retirement plans have a higher participation rate compared to defined-benefit plans).

these accounts played a role in the bank run at IndyMac in 2008. The run at IndyMac was unusual because it took place after the bank had failed and was under the control of the FDIC.[217] Despite the fact that it was then what former FDIC Chairman Sheila Bair called "the safest place in the world for depositors to keep their money,"[218] customers continued the run on the bank because the complicated deposit insurance rules required time-consuming individual insurance determinations for these accounts and many depositors had made mistakes in structuring their accounts that left them uninsured.[219] A few months after the failure of IndyMac, the FDIC revised its rule regarding trust accounts to make it "easy to understand and easy to apply . . . ."[220] In 2022, the FDIC simplified the rules regarding trust deposits again in response to continuing questions.[221] These slight regulatory expansions of coverage, which made deposit insurance determinations easier to make and understand, have prevented additional bank runs similar to what occurred at IndyMac.

The aspect of deposit insurance that contributed to the runs in the failures of SVB and Signature Bank was that the deposit insurance coverage level for corporate accounts is the same as for individual accounts —$250,000:[222]

> As the recent bank failures showed, losses to uninsured deposits held in business payment accounts present an important concern. Payment accounts are critical to businesses' ability to pay expenses and their employees. Because many firms' cash flow needs are high, these payment accounts by necessity are often large and

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217. SHEILA BAIR, BULL BY THE HORNS: FIGHTING TO SAVE MAIN STREET FROM WALL STREET AND WALL STREET FROM ITSELF 81 (2012).

218. *Id.*

219. *See* Deposit Insurance Regulations; Revocable Trust Accounts, 73 Fed. Reg. 56706, 56706 (Sept. 30, 2008) (to be codified at 12 C.F.R. pt. 330) ("Despite the FDIC's efforts to simplify deposit insurance rules in recent years, there is still significant public and industry confusion about the insurance coverage of revocable trust accounts . . . .").

220. *Id.* at 56707.

221. *See* Simplification of Deposit Insurance Rules, 87 Fed. Reg. 4455, 4455 (Jan. 28, 2022) (to be codified at 12 C.F.R. pt. 330) ("The amendments simplify for depositors, bankers, and other interested parties the insurance rules and limits for trust accounts.").

222. *Are My Deposit Accounts Insured by the FDIC?,* FED. DEPOSIT INS. CORP., https://www.fdic.gov/resources/deposit-insurance/financial-products-insured/ [https://perma.cc/M568-L2EF] (last updated Apr. 12, 2023).

> uninsured at the current deposit insurance limit. Thus, a disorderly bank failure can result in missed payments on trade credit and lost labor income for employees who have no direct exposure to the failed bank or ability to protect themselves from the risk of the bank. Losses on uninsured business accounts from bank runs can contribute to lost wages, business closures, and job losses.[223]

Facing the prospect that the vast majority of their deposits would be uninsured, the business customers of these institutions withdrew their deposits at a record rate.[224] It would require the bank regulators invoking the systemic risk exception and announcing that they would insure all deposits in these institutions to reassure the depositors at these banks and to prevent contagion from spreading to others.[225]

The issue of deposit insurance coverage limits for business accounts contributing to the potential for bank runs was not a new one for the FDIC and the government. The action to cover all insured accounts at SVB and Signature Bank was the fourth time in less than two decades that bank regulators or Congress took action to fully insure business transaction accounts. In 2008, following the bank runs at Washington Mutual and Wachovia, the bank regulators invoked the systemic risk exception to authorize the FDIC to create the Temporary Liquidity Guarantee Program ("TLGP").[226] One aspect of the TLGP was the Temporary Account Guarantee ("TAG") program which provided deposit insurance coverage to non-interest bearing transaction accounts ("NIBT") without limit and was "intended to encourage customers to keep their deposits in their bank and thereby avoid runs at healthy banks."[227] This program was funded by assessments on

223. OPTIONS FOR DEPOSIT INSURANCE REFORM, *supra note* 155 (2023).
224. *Id.*
225. *See id.* ("The Treasury, FDIC, and Federal Reserve agreed that systemic risk determinations for both SVB and Signature Bank were in the public interest.").
226. Press Release, Fed. Deposit Ins. Corp., FDIC Announces Plan to Free Up Bank Liquidity (Oct. 14, 2008) (on file with author).
227. CRISIS AND RESPONSE, *supra* note 213, at 51.

participating banks and was extended twice by the FDIC to December 31, 2010.[228]

With TAG set to expire at the end of 2010 and a view that the banking system remained fragile two years after the GFC, Congress voted to create its own version of TAG in the Dodd-Frank Wall Street Reform and Consumer Protection Act.[229] Section 343 of the Act provided for temporary unlimited deposit insurance for NIBT accounts through December 31, 2012.[230]

With the onset of the pandemic in 2020, Congress again authorized the FDIC to offer a guarantee on all NIBT accounts. Section 4008 of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act[231] gave the FDIC "authority to back up deposits to any limit and preemptively granted congressional approval for such a program so long as the FDIC guarantee terminated by December 31, 2020."[232] The FDIC never implemented the program, and the authority expired unused.[233] Nonetheless, Congress' action again recognized the existence of a weakness in the current deposit insurance system with regard to business accounts.

As is evident from the several alterations over the years, the deposit insurance system has been adapted throughout its existence to meet the needs of the banking public and provide financial stability.[234] The reforms addressing the run risk of business accounts, however, have all been temporary. The devastating bank runs at SVB and Signature Bank demonstrate the need for a timely reexamination of this vulnerability in the deposit insurance system.

Since the 2008 GFC, the banking system's reliance on uninsured deposits has increased dramatically, increasing at an annualized rate of 9.8 percent.[235] At year-end 2022, 40 percent of the largest banks had uninsured deposits of more than half their domestic

228. *See id.* at 52 ("Participating banks paid an assessment rate of 15, 20, or 25 basis points, depending on the institution's deposit insurance assessment category . . . ").

229. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1545 (2010).

230. Unlimited Coverage for Noninterest-Bearing Transaction Accounts, 75 Fed. Reg. 69577 (Nov. 15, 2010) (to be codified at 12 C.F.R. pt. 330).

231. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No.116-136, 134 Stat. 478 (2020).

232. OPTIONS FOR DEPOSIT INSURANCE REFORM, *supra* note 155, at 19.

233. *Id.*

234. *Id.*

235. *Id.* at 9.

deposits.[236] This increasing reliance on uninsured deposits means that the banking system also is becoming more susceptible to runs.[237] When the pervasiveness of social media and mobile banking is layered over this increased reliance on uninsured deposits, conditions exist for bank runs that will be faster and more damaging than the historical experience. If the prospect also exists for state actors, who are already deeply entrenched in social media, to weaponize bank runs to sow chaos and discord in the U.S. financial system, the possibility of accidental or deliberate destabilizing bank runs is alarming and requires immediate action.

As has been seen repeatedly, the existence of a strong deposit insurance system is the best defense against the risk of bank runs as it removes the incentives for depositors to act on the fear that their money is at risk.[238] Since the failures of SVB and Signature Bank, the FDIC has studied the current state of the deposit insurance system and recommended reforms. The FDIC found that "significantly increasing deposit insurance coverage to business payment accounts is the most promising option to improve financial stability relative to its effects on bank risk-taking, bank funding, and broader markets."[239] In other words, the FDIC argues that formalizing structures that have been used and tested on an *ad hoc* basis to provide coverage for business transaction accounts on four previous occasions is a better permanent solution than continuing to address this vulnerability in the deposit insurance system only when emergencies arise.

The FDIC's basis for this conclusion is that providing unlimited coverage to this specific type of account will accomplish financial stability objectives while maintaining depositor discipline.[240] It also recognizes that differentiating business accounts used for payments from other insured accounts that may be used for investment provides broader efficiencies to the financial system. Depositors of funds for investment purposes may be able to obtain virtually unlimited deposit insurance by splitting their accounts over multiple banks and enjoying up to $250,000 of coverage at each institution. Deposit splitting strategies, however, may not be practical for an account that is used for

236. *Id.*
237. *Id.*
238. *Id.* at 3.
239. *Id.*
240. *Id.*

paying operational expenses like payroll.[241] Given that Congress and bank regulators have already demonstrated that they will almost certainly protect business accounts in similar future crises, it makes more sense to have a system of insurance in place rather than continuing the *ad hoc* approach to crisis management. Additionally, a well-designed expansion of coverage will include a risk-based premium system that pays for the coverage in advance[242] rather than the current requirement of assessing institutions after the failure.[243] By transforming uninsured business transaction accounts into fully insured accounts, Congress would adjust the deposit insurance system to reflect the realities of the current financial system while simultaneously preserving existing economic efficiencies.

Unfortunately, within months of the SVB and Signature Bank failures, action in Congress already stalled.[244] With "resistance from the right and the left – and little pressure to act from the industry,"[245] the legislative prospects for necessary reforms seem slim. This legislative stalemate threatens to leave this dangerous vulnerability to financial stability in place for the foreseeable future.

If Congress is unwilling or unable to pass the necessary legislation to reform the deposit insurance system more broadly, adopting a more limited change to the systemic risk designation protocol would make the current *ad hoc* approach work better in a crisis. In 2008, the FDIC used the systemic risk exception to create the TAG, a broad-based deposit insurance guarantee for NIBT accounts.[246]

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241. *Id.*

242. The temporary TAG program implemented by the FDIC in 2008 assessed risk-based premiums for the coverage of NIBT accounts. The FDIC collected $1.2 billion in fees under this program. CRISIS AND RESPONSE, *supra* note 213, at 58.

243. Press Release, Fed. Deposit Ins. Corp., FDIC Board of Directors Issues a Proposed Rule on Special Assessment Pursuant to Systemic Risk Determination (May 11, 2023) https://www.fdic.gov/news/press-releases/2023/pr23037.html [https://perma.cc/L9R9-ENXC].

244. Eleanor Mueller, *Congress Cools on Post-SVB Banking Overhaul*, POLITICO (Apr. 26, 2023, 10:43 AM), https://www.politico.com/news/2023/04/26/congress-increase-deposit-insurance-silicon-bank-00093561 [https://perma.cc/7VRR-TTG5].

245. *See id.* ("More than 20 conservative groups including Americans for Tax Reform, the Koch brothers-founded Americans for Prosperity and Heritage Action are warning Congress that a bigger backstop for bank customers would fuel risk-taking and lead to future bailouts. Left-leaning groups like the Center for American Progress and Americans for Financial Reform want lawmakers to prioritize tougher regulations that would address other problems they see within the industry.").

246. CRISIS AND RESPONSE, *supra* note 213, at xvi–xvii.

After questions were raised about the breadth and use of the systemic risk exception for this purpose,[247] Congress prohibited the FDIC from creating a similar broad-based program in the future without express congressional approval.[248] Going forward, the systemic risk exception may only be used in conjunction with a specific bank failure and may only guarantee uninsured deposits in that failure.

The use of the systemic risk exception with these new Dodd-Frank limitations posed real communications challenges for bank regulators seeking to prevent contagion at other banks following the failures of SVB and Signature Bank. Uninsured depositors at other similarly situated banks wanted assurances that their funds were safe as well. Although the government officials appeared to want to provide that assurance in clear and definitive language to limit contagion, they could not because the statute only permitted the use of the systemic risk exception in the case of actual individual failures, not hypothetical future ones,[249] and an industry-wide guarantee could only be provided with congressional concurrence. The press was highly critical of the government's communications, noting that:

> officials have been trying to have their cake and eat it, too: making vague statements about deposits being "safe" that might give the impression every deposit is guaranteed, without explicitly saying so. The result is a mealy-mouthed mess, with markets swinging wildly on relatively incremental wording changes in public statements from senior officials.[250]

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247. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-100, REGULATORS' USE OF SYSTEMIC RISK EXCEPTION RAISES MORAL HAZARD CONCERNS AND OPPORTUNITIES EXIST TO CLARIFY THE PROVISION (2010) ("Regulators' use of the systemic risk exception may weaken market participants' incentives to properly manage risk if they come to expect similar emergency actions in the future.").

248. 12 U.S.C. §§ 5612, 5613.

249. Joseph Cioffi et. al., *No Guarantee Systemic Risk Exception Will Save the Next Bank*, REUTERS (Apr. 6, 2023), https://www.reuters.com/legal/transactional/no-guarantee-systemic-risk-exception-will-save-next-bank-2023-04-06/ [https://perma.cc/NEN9-DUVM].

250. Catherine Rampell, *Are All Bank Deposits Insured? The Feds Must Get Their Story Straight.*, WASH. POST (Mar. 24, 2023), https://www.washingtonpost.com/opinions/2023/03/24/banks-deposits-yellen-insurance-svb/ [https://perma.cc/H36S-W9RP].

Recognizing that effective communication was essential in a crisis, the press noted that, "[t]his is a time for clarity, not vagueness."[251]

A failure to provide clear communications and assurances beyond a specific failure can prove critical to preventing a bank run from spreading to other institutions. However, current law only permits this type of communication after Congress has authorized a broad-based program.[252] Given the speed with which the SVB and Signature Bank failures occurred over a weekend where Congress was not in session, Congress should rescind the changes it made in the Dodd-Frank Act and again permit regulators to take broad-based industry action to protect depositors.[253] This statutory change would allow bank regulators to quickly address systemic issues that might arise in a bank's failure and, more importantly, allow it to take steps to act to prevent possible contagion and provide clear assurances to a nervous public.

VI. CONCLUSION

The threat of runs on banks is "inherent in banking, where long-term assets are funded by short-term deposit liabilities"[254] that are payable on demand. While deposit insurance protection has provided stability for the past 90 years by removing the incentive for depositors to run, changes in banking over the past two decades that have increased the presence and reliance on uninsured deposits have weakened the efficacy of that protection. Additionally, the development of social media and online banking technology means that runs are now faster and less able to be contained than in the past. Not only are the runs too rapid to halt, but prior tools such as transparency and trusted validators

251. *Id.*
252. 12 U.S.C. § 5612.5.
253. Contrast the action Congress took in passing Section 1105 of the Dodd-Frank Act to limit the FDIC's authority to individual receiverships with the amendments it made to the Federal Reserve's Section 13 lending powers in Section 1101 of the Act mandate that these powers could only be used "for the purpose of providing liquidity to the financial system and not to aid a failing financial company." Eric J. Spitler, *The Supreme Court's Major Questions Doctrine: Implications for Responding to Financial Crises*, 27 N.C. BANKING INST. 1, 47 (2023), https://scholarship.law.unc.edu/ncbi/vol27/iss1/6 [https://perma.cc/KSV7-ZZZK] (explaining how congress limited agencies powers by requiring extension of emergency credit be through broad based lending facilities, rather than targeted extensions to individual institutions).
254. OPTIONS FOR DEPOSIT INSURANCE REFORM, *supra* note 155, at 7.

are ineffective in a medium where facts are overwhelmed by misinformation and disinformation, and there are few trusted sources of information or leadership.

The failures of SVB and Signature Bank provided a stark lesson in the fragility of confidence in the financial system today. Undoubtedly, state actors are aware of these weaknesses and have the capacity to use social media channels to weaponize bank runs and sow chaos in the financial system. Updating the deposit insurance system to address vulnerabilities such as uninsured business accounts is not only a financial imperative, but a national security one. Only a strong deposit insurance system that provides depositors with confidence that their money is safe can act as a bulwark against misinformation or disinformation and fear that can be spread rapidly through social media at speeds that were unimaginable just a few years ago.

Congress must act to give bank regulators the tools to protect the financial system, even if it provides them with greater discretion than it would prefer. Bank runs are harmful to communities and can be very expensive. Providing the means to prevent them is far preferable to a situation where the ability to respond to a crisis is limited and regulators are only able to clean up the damage that results.