

2020

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David S. Meyer & Kaylin Bourdon, *Social Movements and Standing in the American Gun Debate*, 69 Emory L. J. 919 (2020).

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SOCIAL MOVEMENTS AND STANDING IN THE AMERICAN GUN DEBATE[†]

*David S. Meyer**

*Kaylin Bourdon***

ABSTRACT

Who gets to be heard is a fundamental question in any democracy, and access to the arenas of political debate is every bit as contested as the disputes about policy within. The legal system offers rules of “standing” to determine who can make claims in a courtroom. We think the concept of standing is useful in making sense of access to a range of other political arenas as well. Notably, having an identifiable interest in the outcome of a particular set of decisions, a stake in the outcome, doesn’t necessarily grant a claimant access to an audience. Social movements work to convert stake into standing, and to win access to social and political arenas for distinct constituencies and claimants. Their arguments for access often parallel the legal criteria for standing. We provide an overview of the legal rules of standing, which afford judges considerable discretion in deciding who gets a hearing. We show that the rules for standing in the public sphere faintly echo those about access to a courtroom, although they are even less transparent and less reliable. Individuals and actors make claims about stake, expertise, and status to gain access to audiences in public debates, but standing is virtually always contested, contingent, and bounded. Using recent developments in the American gun debate, we detail political struggles for standing, considering the claims that various actors make in order to gain an audience. We find that significant audiences grant standing based on the political stance, rather than other identifiable criteria, contributing to a divisive and partisan debate, and critical challenges for making wise policies.

[†] One of us presented an initial version of this piece at the Randolph W. Throver Symposium, “Exploring Gun Violence in Modern America: Law, Policy, and Social Movements,” at Emory University Law School, February 7, 2019. We appreciate helpful comments on a subsequent version from Katelyn Malae, Alex Maresca, Ricardo Fabrino Mendonça, Chit Wai John Mok, Cam Nguyen Owen, Paula Guimares Simoes, and Anjali Verma. We are also grateful for exceptional research assistance from Mariana Lopez. We are also indebted to the Jack W. Peltason Center for the Study of Democracy for support on this project.

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INTRODUCTION

Justice Brett Kavanaugh's appointment to the Supreme Court produced extraordinarily contested hearings. Early on, when protesters were focused on his jurisprudence, rather than his personal life, activists crowded into the hearing room to hold signs and react to potentially controversial questions and answers. At one moment, on the edge of a break, a bald man with glasses wearing a suit approached then-Judge Kavanaugh, right hand outstretched. The man's hand remained extended as Kavanaugh turned away and buttoned his coat before disappearing into a crowd of allies.

A photo of the snubbed greeter appeared in newspapers across the United States and all across the Internet, adding yet another twist of controversy to the hearings. The man reaching out to shake Judge Kavanaugh's hand was Fred Guttenberg, whose teenage daughter, Jaime, had been one of seventeen students and staff shot to death by a young man armed with a semiautomatic weapon at Marjorie Stoneman Douglas High School in Parkland, Florida, just over a year earlier.¹ Guttenberg had spent much of the time since his daughter's death sharing his grief—and even more his pleas for meaningful gun safety regulations—in public meetings and in mass media of all kinds.

Although Kavanaugh didn't provide detailed explanations of his views on guns and the Second Amendment in the confirmation hearings,² the picture of him turning away from a still-grieving father seemed to suggest his views on gun violence—as well as a crude reading of the potential Justice's humanity. Guttenberg and his allies worked to exploit that image. Using Twitter, Guttenberg posted a description of the event along with his interpretation, “Just walked up to Judge Kavanaugh as morning session ended. Put out my hand to introduce myself as Jaime Guttenberg's dad. He pulled his hand back, turned his

¹ On the shooting, see Eric Levenson & Joe Sterling, *These Are the Victims of the Florida School Shooting*, CNN (Feb. 21, 2018), <https://www.cnn.com/2018/02/15/us/florida-shooting-victims-school/index.html>. On the handshake, see Christianna Silva, *This Is What Happened When the Father of a Parkland Victim Tried to Shake Brett Kavanaugh's Hand*, VICE (Sept. 4, 2018, 3:52 PM), https://www.vice.com/en_us/article/ne5a8g/this-is-what-happened-when-the-father-of-a-parkland-victim-tried-shake-brett-kavanaughs-hand.

² Judge Kavanaugh's dissenting opinion in *Heller v. District of Columbia*, 670 F.3d 1244, 1272 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) suggested that he embraced an expansive view of the Second Amendment, which afforded strong protections for individuals to have access to guns for self-defense. In the case, often called *Heller II*, the majority ruled against a suit filed by gun rights advocates, who sought to overturn restrictions on handgun ownership in the District of Columbia. *Id.* at 1264. Because of Kavanaugh's views in this case, and in the context of President Trump's active campaign for gun rights, the appointment seemed to promise a Court majority more skeptical of local governments regulating access to guns.

back to me, and walked away. I guess he did not want to deal with the reality of gun violence.”³

Kavanaugh sought to counter at least that last criticism as he described in written comments to the Senate Judiciary Committee how and why he turned away from Guttenberg:

As I was leaving the hearing room for a recess last Tuesday, a man behind me yelled my name, approached me from behind, and touched my arm. It had been a chaotic morning with a large number of protestors in the hearing room. As the break began, the room remained noisy and crowded. When I turned and did not recognize the man, I assumed he was a protestor. In a split second, my security detail intervened and ushered me out of the hearing room.

In that split second, I unfortunately did not realize that the man was the father of a shooting victim from Parkland, Florida. Mr. Guttenberg has suffered an incalculable loss. If I had known who he was, I would have shaken his hand, talked to him, and expressed my sympathy. And I would have listened to him.⁴

Without offering a legal analysis or a sense of his jurisprudence, Kavanaugh wanted to convey his human concern.⁵ The suffering Fred Guttenberg endured gave him the right to be recognized, to be greeted, and to be heard. Kavanaugh did not suggest that he could attend to Guttenberg’s pain or would accede to his policy views, but that the grieving father was entitled to, at least, a respectful audience with the would-be Justice.⁶

The theatrical encounter on the floor of the Senate hearing and the post-hoc explanations underscore a critical issue for contemporary democracies: who gets to be heard. The right to speak and present opinions on matters of contest does not necessarily afford advocates with meaningful access to an audience. We are concerned not only with who gets to speak, by carting a soapbox to the public

³ Silva, *supra* note 1.

⁴ Li Zhou, *Kavanaugh: I Ignored a Parkland Victim’s Father Because I Thought He Was Just Another Protester*, VOX (Sept. 13, 2018, 9:30 AM), <https://www.vox.com/policy-and-politics/2018/9/13/17853968/supreme-court-nominee-brett-kavanaugh>.

⁵ See Amber Jamieson, *The Father of a Parkland Shooting Victim Tried to Shake Hands with Brett Kavanaugh*, BUZZFEED NEWS (Sept. 4, 2018), <https://www.buzzfeednews.com/article/amberjamieson/brett-kavanaugh-fred-guttenberg-handshake>.

⁶ The sequence of events reported elsewhere does not quite match Kavanaugh’s description. See Jamieson, *supra* note 5. At the outset of the hearing Senator Dianne Feinstein (Democrat, California), who had invited Guttenberg to the hearing, introduced the visitor and underscored his understandable concern with gun safety. *Id.* Security forces did not come between Kavanaugh and Guttenberg, who remained in the room when the judge turned away. *Id.*

square or tweeting out clever comments on the issues of the day, but also whose views and comments get attention. Although civil liberties afford large numbers of people the right to speak, and the range of Internet outlets afford those who want to speak many platforms to do so, neither the right nor available means afford all advocates meaningful access to an audience.

The legal concept of “standing” offers an analog for understanding the process of making claims to an attentive audience, although standing in the public sphere operates by rules that are less evident and far more elastic than those in the courtroom.⁷ Some of the participants in the Guttenberg/Kavanaugh scene were in the Senate hearing room because their presence was authorized by well-established confirmation procedures. An elected president nominated then-Judge Kavanaugh, who was then questioned by senators elected through well-regulated and well-monitored procedures. The principals had standing through their institutional positions. But Fred Guttenberg was in the room as a spectator who attempted to enter the action. His presence was occasioned by the personal loss he had suffered and amplified by his participation in a large and growing movement for gun safety regulation.

Here, we mean to consider the relationship of social movements to the democratic dialogue surrounding standing in the public sphere. Social movements, we contend, work by influencing the range of actors granted standing in political debate, sometimes generally, and sometimes on a distinct set of issues. Social movements sometimes can work to extend meaningful standing to a broader range of actors and interests, ultimately promoting a more robust—and often sloppier and more complicated—politics. Sometimes, movements are explicitly concerned with extending formal recognition to interests underrepresented in mainstream politics. Abolitionists worked both to promote changes in policies made by white men and to enable a new set of actors, black men, to participate in institutional politics.⁸ Suffragists argued over decades that women had distinct interests and the developed capacity to represent them and make political judgments, ultimately winning the vote, and later on, participation in other venues of American life.⁹ The extension of the franchise and following struggles about desegregating political and educational institutions are ultimately contests about standing.

⁷ See generally DEBORAH STONE, *POLICY PARADOX AND POLITICAL REASON* (3d ed. 2012).

⁸ Adam Rothman, *The Truth About Abolition*, ATLANTIC, <https://www.theatlantic.com/magazine/archive/2016/04/the-truth-about-abolition/471483/> (last visited Mar. 28, 2020) (book review).

⁹ Jennifer Schuessler, *The Complex History of the Women’s Suffrage Movement*, N.Y. TIMES (Aug. 15, 2019), <https://www.nytimes.com/2019/08/15/arts/design/womens-suffrage-movement.html>.

But battles over standing are not always so tightly focused on formal access to political institutions. Standing means the chance to tell a story to someone who will hear and may respond. In debates about virtually any political issue—climate change, for example, or public spending on education—the work of social movements is to change the composition of the cast of relevant actors to advance their cause.¹⁰

The contemporary case of gun politics provides an excellent opportunity to develop the concept of standing. Advocates of legislated gun safety measures that would restrict access to particular weapons for particular people offer claims that relevant actors in the debate include victims and potential victims of gun violence. Their opponents contest the inclusion of political perspectives of virtually anyone who might argue for such restrictions. In the pages that follow, we will consider the nature of the relevant actors proposed by each side and the arguments proposed to bolster or disqualify their participation. First, however, we will consider the issues of standing, social movements, and discussions of democracy.

I. STANDING: WHO GETS A HEARING?

The concept of standing refers to the right of a claimant to file a case and be heard in a courtroom. Once granted access to the judicial process, all parties are bound by a set of rules and entitled to an ostensibly fair hearing in accordance with those rules. The judge or jury is positioned to make binding decisions about competing claims, which the parties must ultimately, however grudgingly, accept. The prospect of a favorable decision is, of course, the most attractive possibility for entering the court for people with a grievance, and social movement activists are lured by the iconic role that notable cases like *Brown v. Board of Education* or *Roe v. Wade* have in the popular understanding of the civil rights and reproductive rights movements. But, even absent a comprehensive court win, there are other advantages for social movements.¹¹

¹⁰ Although broad public debates take place sometimes, most policy areas are managed by a more restricted set of political actors, described as participants in a “policy domain.” Policies are defined more by stability than gradual change. On occasion, substantial changes take place. See generally FRANK R. BAUMGARTNER & BRYAN D. JONES, *AGENDAS AND INSTABILITY IN AMERICAN POLITICS* (2d ed. 2009).

¹¹ The power of the courts to propel social change has been a matter of great dispute among scholars. See, e.g., GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (2d ed. 2008); Michael W. McCann, *The Supreme Court and Social Change: Reform Litigation on Trial*, 17 *LAW & SOC. INQUIRY* 715, 742–43 (1992); David S. Meyer & Steven A. Boutcher, *Signals and Spillover: Brown v. Board of Education and Other Social Movements*, 5 *PERSP. ON POL.* 81, 83 (2007). Analysts differ in their assessment of the importance of particular cases brought by activists on public policy, there is a recognition that the corollary benefits of litigation can help activists raise money and visibility for the issues they care about, and spur activism

Access to the law offers not only the promise of a fair hearing for the dispute in question, but also the tools of compulsory process, including the prospect for presenting a set of claims in a visible setting, mustering evidence, including testimony, to support that claim, and the capacity to compel opponents to furnish potentially helpful information through discovery and cross-examination. A court case provides a focal point for a social movement seeking to advance a vision of social change.

Partly for these reasons, access to courts is limited by rules of *standing*.¹² The legal system is tasked with adjudicating disputes, but all disputants do not enjoy equal access to a judicial hearing.¹³ With reference to the concept of standing, judges restrict access to legal proceedings ostensibly based on formal legal criteria for the right to be heard.¹⁴ Inconsistencies in application and the growth in public interest litigation have encouraged the development of an extensive literature on the concept and execution of the doctrine of standing.¹⁵ Central to contemporary scholarship is William Fletcher's review, and his observation that "[t]he stated purposes and black-letter doctrine of standing are numbingly familiar," is itself, numbingly familiar, quoted frequently in subsequent articles.¹⁶

The three core criteria for standing are (1) that potential plaintiffs have suffered "injury in fact," that is, a palpable harm; (2) that the subject of complaint has caused the injury; and (3) that the legal system has the capacity to provide meaningful redress.¹⁷ The putative plaintiffs must show that they have

beyond the courtroom.

¹² *Standing*, CORNELL L. SCH. LEGAL INFO. INST. <https://www.law.cornell.edu/wex/standing> (last visited Mar. 28, 2020).

¹³ David H. Gans, *How Scalia Made It Difficult to Bring Cases to Court*, ATLANTIC (Aug. 1, 2016), <https://www.theatlantic.com/politics/archive/2016/08/scalia-access-to-courts/49359>.

¹⁴ *Standing*, *supra* note 12.

¹⁵ William A. Fletcher, *The Structure of Standing*, 98 YALE L.J. 221, 222 (1988); *see, e.g.*, Heather Elliott, *Standing Lessons: What We Can Learn When Conservative Plaintiffs Lose Under Article III Standing Doctrine*, 87 IND. L.J. 551 (2012) [hereinafter Elliott, *Standing Lessons*]; Heather Elliott, *The Functions of Standing*, 61 STAN. L. REV. 459 (2008) [hereinafter Elliott, *The Functions of Standing*]; Richard H. Fallon Jr., *The Fragmentation of Standing*, 93 TEX. L. REV. 1061 (2015); Andrew Hessick, *Standing, Injury in Fact, and Private Rights*, 93 CORNELL L. REV. 275 (2008); Evan Tsen Lee & Josephine Mason Ellis, *The Standing Doctrine's Dirty Little Secret*, 107 NW. U. L. REV. 169 (2012); Richard J. Pierce, Jr., *Is Standing Law or Politics?*, 77 N.C. L. REV. 1741 (1999); Fred O. Smith, Jr., *Undemocratic Restraint*, 70 VAND. L. REV. 845 (2017); Cass R. Sunstein, *Standing and the Privatization of Public Law*, 88 COLUM. L. REV. 1432 (1988); Drew McLelland & Sam Walsh, *Litigating Challenges to Federal Spending Decisions: The Role of Standing and Political Question Doctrine* (Harvard Law Sch. Fed. Budget Policy Seminar, Briefing Paper No. 33, 2006), http://www.law.harvard.edu/faculty/hjackson/LitigatingChallenges_33.pdf.

¹⁶ Elliott, *The Functions of Standing*, *supra* note 15, at 465; Fallon, *supra* note 15, at 1067, 1070; Pierce, *supra* note 15, at 1750; Smith, *supra* note 15, at 855; Sunstein, *supra* note 15, at 1434.

¹⁷ Fletcher, *supra* note 15, at 222.

suffered damages, that the defendant was responsible, and that the issue is justiciable. The idea is that standing is predicated on the plaintiff having a stake in the outcome, and the desired outcome is one that a court could deliver.¹⁸ The basic principle underscoring these criteria is that courts, in a democracy, should be adjudicating cases, not causes, which are more properly managed politically. In execution, however, United States courts have been inconsistent in defining and applying these criteria,¹⁹ even as definitions and applications are consequential to the administration of justice and the broader functioning of democratic institutions.²⁰

The most important function of standing doctrine is that it offers a host of rationales to deny access to the courts, one distinct venue, restricting the claimants and claims the judicial system faces.²¹ Denial of standing is defended as a means of protecting the separation of powers in the federal government²² and maintaining the primacy of democratic institutions, answerable to the public, in making decisions on policy.²³ To the extent that majorities can sometimes win through institutional politics, the bar for being heard should be higher for their access to the courts than for minorities, political or otherwise, who are unlikely to be protected without judicial intervention.

Still, the inconsistent focus on specified rather than generalized harms pushes judges away from taking cases that would seem to require structural remedies that extend beyond the normal purview of a judge. At the same time, the judicial system is also at least sometimes responsible for protecting the larger functioning of the system. A considered reluctance to take on cases that reflect causes can result in a larger pattern of political inequality and structural exclusion of certain groups. The necessity of considering the context as well as the case presents recurrent challenges to the legal system in an imperfect democratic system in which rights are protected inconsistently. Even as cases are decided independently, some scholars have observed patterns in which a reluctance to consider cases in which a private right or personal harm is not at stake.²⁴

¹⁸ *Id.*

¹⁹ Lee A. Albert, *Justiciability and Theories of Judicial Review: A Remote Relationship*, 50 S. CAL. L. REV. 1139, 1139–44 (1977).

²⁰ William Baude, *The Legal Power of 'Standing'*, N.Y. TIMES (May 14, 2015), <https://www.nytimes.com/2015/05/14/opinion/the-legal-power-of-standing.html>.

²¹ Elliott, *The Functions of Standing*, *supra* note 15, at 468–69.

²² Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881, 881–82 (1983).

²³ Elliott, *The Functions of Standing*, *supra* note 15, at 516.

²⁴ See Sunstein, *supra* note 15, at 1438 (observing that a period in which greater questions received

The announced standards for standing provide sufficient wiggle room for judges to exercise discretion, and make it difficult for social movements pressing for change to have access to the court, while simultaneously affording opponents of substantive change ready access to appear in courts to protect individual property rights.²⁵ Of particular interest are the obstacles created by the nature of harms that warrant judicial attention, and the justiciability of those claims. On the former issue, a doctrine that protects the other institutions of governance would encourage judges to be reluctant to take cases involving generalized claims of harm rather than those that are separable and identified as associated with a distinct person or group of individuals.

Structural distortions in the electoral or taxation systems, for example, adversely affect all those who might vote or pay taxes, but that generalized harm makes courts particularly wary about taking them on.²⁶ Organized groups of minorities can make their claims to larger audiences and attempt to build majorities. And, presumably, majorities would have access to other means of redressing claims beyond appeal to an explicitly anti-democratic institution. Judges can duck ostensibly political cases, shifting responsibility for redress back to the claimants and the larger political system. But, critically, the political system to which the courts direct frustrated claimants is designed to stall and frustrate majorities pressing for change.²⁷ Historically, courts are reluctant to take cases in which they cannot imagine making and enforcing policies that provide redress, particularly against the opposition of forceful advocates in other branches of government.²⁸ Thus, claimants about the conduct of foreign policy and war, the protection of the environment, or violations of the Emoluments Clause of the Constitution face overwhelming obstacles in making their claims in courts or elsewhere.

Judges grant standing inconsistently, often providing access to legal remedies to those who might win in political battles elsewhere (and therefore would not need the courts), while denying standing to those without meaningful access to alternative remedies.²⁹ Sometimes, taxpayers can successfully claim

judicial consideration began to be eclipsed in the late 1970s by a focus on what he terms private law and the identification of particularized rather than systemic grievances and inequalities).

²⁵ *Id.* at 1437–38.

²⁶ McClelland & Walsh, *supra* note 15, at 4–11, 16–19, 32–33.

²⁷ See DAVID S. MEYER, *THE POLITICS OF PROTEST: SOCIAL MOVEMENTS IN AMERICA* 8–27 (2d ed. 2015).

²⁸ See, e.g., Russell W. Galloway, *Basic Justiciability Analysis*, 30 SANTA CLARA L. REV. 911 (1990); Julia Simon-Kerr & Robynn K. Sturm, *Justiciability and the Role of Courts in Adequacy, Litigation: Preserving the Constitutional Right to Education*, 6 STAN. J. C.R. & C.L. 83 (2010); Nat Stern, *Don't Answer That: Revisiting the Political Question Doctrine in State Courts*, 21 U. PA. J. CONST. L. 153 (2018).

²⁹ Hessick, *supra* note 15, at 289–306.

that paying for government activities they find offensive will win them a hearing in court,³⁰ and sometimes not.³¹ On occasion, voters systematically excluded from equal access to political influence can claim standing,³² while sometimes voters claiming electoral disadvantage have been denied access to the courts.³³ The apparent inconsistency of these decisions by intelligible legal standards can, alas, be explained with reference to political commitments or ideology.³⁴ Denying political opponents access to the courts undermines public faith in the judicial system while potentially leaving corruption or structural defects in the political system untouched. In effect, in seeking to protect the primacy of political institutions, the denial of standing can undermine the democratic functioning of those institutions. At the same time, a judicial warrant on broad matters of policy can also engender opposition and undermine respect for the autonomy of such a transparently anti-democratic institution.

Making effective claims for standing can push advocates to make two seemingly conflicting presentations of themselves and the facts. On the one hand, demonstrating injury requires a showing that one suffered a specific and divisible wrong, apart from others, and an injury that can be rectified, or at least redressed with compensation. On the other hand, in making claims about democratic institutions, one's injuries must be presented as exemplifying those done to a much larger class of people, and the wrongs to be corrected must be of systemic importance.

These issues are by no means relegated to the past. As we write, teenage environmental activists have pursued a case to force federal government action to combat climate change, a global problem to which all wealthy countries, save the United States, have expressed strong commitments.³⁵ The young plaintiffs argue that they will suffer greater harm than those who are now making political decisions, partly because of their youth: If all goes *well*, the plaintiffs will

³⁰ *E.g.*, *Flast v. Cohen*, 392 U.S. 83 (1968).

³¹ *Hein v. Freedom from Religion Found.*, 551 U.S. 587 (2007); *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992); *Allen v. Wright*, 468 U.S. 737 (1984); *United States v. Richardson*, 418 U.S. 166 (1974).

³² *FEC v. Akins*, 524 U.S. 11 (1998); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Baker v. Carr*, 369 U.S. 186 (1962).

³³ *See, e.g.*, *Public Citizen, Inc. v. Simon*, 539 F.2d 211 (D.C. Cir. 1976). The case is discussed in a longer argument about the need for the courts to intervene to prevent incumbents from gaining undue advantage in reelection campaigns. *See also* Erwin Chemerinsky, *Protecting the Democratic Process: Voter Standing to Challenge Abuses of Incumbency*, 49 OHIO ST. L.J. 773, 781 (1988).

³⁴ *Pierce*, *supra* note 15, at 1743.

³⁵ *Lee van der Voo*, *Teen Activists Face US Government in Crucial Hearing Over Climate Trial*, GUARDIAN (June 4, 2019, 6:12 PM), <https://www.theguardian.com/environment/2019/jun/04/teen-activists-face-us-government-in-crucial-hearing-over-climate-trial>; *Juliana v. U.S.*, OUR CHILD. TR., <https://www.ourchildrenstrust.org/juliana-v-us> (last visited Jan. 20, 2020).

survive to see harsh environmental outcomes that current political leaders forcefully cannot imagine. The plaintiffs claim scientific and global political mandates. At the same time, the harms they claim they will suffer will be equally felt by billions of others. In the United States, the plaintiffs claim political institutions have failed to respond not only to their interests but also those of everyone else on the planet.³⁶ A meaningful remedy will require a substantial commitment to action by a range of government institutions with whatever actions a court specifies.

Rejection of standing for a claimant involved in what is judged to be a political dispute is based on the notion of protecting American institutions and democratic procedures more generally. Whereas a court can make binding decisions that are unpopular with substantial numbers of people, political democracy is predicated on the notion that majorities will usually rule . . . mostly. When a judge denies standing and the presentation of claims in court, the assumption is that the claimant has other potential routes for making those same claims, routes in which the rules of standing are less restrictive, and the audience for those claims is substantially larger and less encumbered.

The grant of standing puts a claimant into the courtroom, but she may not be the one telling her story or forwarding her case. In addition to a professional advocate, a case can afford claimants the chance to have witnesses attest to their

³⁶ The case of *Juliana v. United States*, 217 F. Supp. 3d 1224, 1243 (D. Or. 2016), *rev'd and remanded*, 947 F.3d 1159 (9th Cir. 2020) is a signal example of both the complexities and inconsistencies in the application of standing. The plaintiffs, all minors at the time of the initial filing, argued that the federal government's failure to act effectively on the issue of climate change presented a proximate threat to their futures. *Id.* at 1233. The government moved to dismiss the case on a matter of standing, and by some measures, this made a great deal of sense. *Id.* The children were unlikely to suffer specific harms that all other Americans, and indeed, humans, were protected from. Further, the District Court was poorly positioned to provide a remedy from any harms on the horizon for the claimants, such as ordering the United States to withhold approval for any drilling for fossil fuel, which the plaintiffs had requested. The government appealed the District Court's refusal to dismiss the case, and a Ninth Circuit panel reversed the ruling, ordering the District Judge to dismiss the case. *Juliana v. United States*, 947 F.3d 1159, 1175 (9th Cir. 2020). Judge Andrew Hurwitz, writing for himself and Judge Mary Murguia, held that the District Court correctly found that at least some "plaintiffs claimed concrete and particularized injuries" and that "there was at least a genuine factual dispute as to whether a host of federal policies were a 'substantial factor' in causing the plaintiffs' injuries," but that the Court lacked the capacity to redress those wrongs. *Id.* at 1168–73. The Court endorsed the claims of the plaintiffs, but as Judge Hurwitz wrote, "Reluctantly, we conclude that such relief is beyond our constitutional power. Rather, the plaintiffs' impressive case for redress must be presented to the political branches of government." *Id.* at 1165. Judge Josephine Staton dissented, finding that "plaintiffs have a constitutional right to be free from *irreversible and catastrophic climate change*." *Id.* at 1182 (Staton, J., dissenting). Judge Staton's dissent was based on the premise that partial redress possible from a judicial decision, even a slight delay in the time to irreversible climate change, justified a grant of standing. *Id.* at 1191 (Staton, J., dissenting); *see also* Complaint for Declaratory and Injunctive Relief, *Juliana v. United States*, 217 F. Supp. 3d 1224 (No. 6:15-cv-01517-TC) (D. Or. Aug. 12, 2015), *rev'd and remanded*, 947 F.3d 1159 (9th Cir. 2020); *Juliana*, *supra* note 35.

case, including both witnesses of fact and experts. Without standing for a claimant, neither advocates nor witnesses are heard. In the courtroom, a judge applies standards for the relevance and reliability of testimony. A fact witness must demonstrate access to special information of interest to the court, often through actually witnessing conduct of defendants. Attorneys can also demonstrate the utility of testimony from expert witnesses who have not actually witnessed the conduct at issue, but who can provide contextual information useful for making an informed judgment in a case.³⁷ The grant of standing to participate in court proceedings is of critical importance for movements engaged in a litigation strategy. Importantly, expert testimony is not solicited by the judge, but by advocates, who work to find certifiable witnesses who will buttress their case. Rather than a disinterested authority, expertise is deployed by adversaries in dispute. Standing is the entry that allows a party to engage with the system. Once offered some kind of access, advocates push to gain recognition for facts and a preferred interpretation of their meaning.

II. STAKE VERSUS STANDING

The courtroom provides a set of ideas for engaging conflict that translate imperfectly to other means for pursuing political goals outside of the courts, and the differences are worth noting. Standing in the legal system is dichotomous: One is in or out. A judge makes decisions about what additional information is relevant and thus admissible, and how to weigh particular claims and claimants against a formal articulated standard of law. But the rules of standing vary across arenas. In established political institutions, like legislatures, standing is granted to those who have gained membership, often through an election. Those with standing can open the arena a little more broadly to grant a hearing to actors they choose on distinct issues or for particular purposes. As example, members of Congress can call witnesses to testify in hearings and can speak for others in legislative debate.³⁸

In the broader political arena, the process is far less routinized, obviously unregulated, and far more uncertain. Standing is not dichotomous, but graded

³⁷ The *Daubert* standard gives judges the responsibility for determining the reliability of an expert's testimony. *Daubert v. Merrell Dow Pharms. Inc.*, 509 U.S. 579 (1993). Of course, while there is a scientific consensus on some issues, this is not the case on all matters likely to be disputed in court. And on an issue like climate change, on which a strong scientific consensus has failed to convince elected officials, we see a clash between expert opinion and the functioning of a democracy. Susan Haack, *The Expert Witness: Lessons from the U.S. Experience*, 28 HUMANAMENTE J. PHIL. STUD. 39, 51 (2015); Steven Messer, "We Doubt That Is So": *Expert Witness Certification after Wal-Mart and Comcast*, 17 U. PA. J. BUS. L. 293, 298–99 (2014).

³⁸ VALERIE HEITSHUSEN, CONG. RESEARCH SERV., CRS 98-337, SENATE COMMITTEE HEARINGS: ARRANGING WITNESSES 1–2 (2017).

and relational. One who gains a hearing is attended to with more or less seriousness by different listeners, and the degree of attentiveness can vary over time.

We are not the first to try to translate this concept into the public sphere. An international team of scholars comparing public discourse on abortion in the United States and Germany deployed “standing” to describe recognition in mass media.³⁹ Actors granted standing could speak for themselves in the media—at least sometimes. They found that elected officials and representatives of organized religion gained substantial recognition in the media in both countries, although representatives of the political parties in Germany enjoyed far more access to the media than their counterparts in the United States.⁴⁰ In the United States, representatives of established social movement organizations, particularly large and well-funded groups, enjoyed substantial access to mainstream media.⁴¹ In both countries, recognized experts on policy provided relatively little of the public discourse on the abortion issue. Their design effectively designated editors and publishers as gatekeepers, who could grant access and audience to select actors.⁴² Getting into mainstream media is, in this model, equivalent to gaining a place in the public debate.

But the contemporary public sphere, unlike this model, and distinct from the legal system, offers multiple audiences that can grant a hearing to claims makers. To begin with, actors need to convince others concerned with the issue at hand or already active that they have a place in the campaign. Karen Beckwith’s pioneering work examining the role of women in a coal miners’ strike offered a purposeful notion of standing as a kind of claims-making. As she put it, standing in, and on behalf of, a political movement is “an explicitly articulated rationale and presence of actors’ position and presence in a movement that asserts a status of legitimacy in making claims and demands as primary actors”⁴³ Beyond allies, activists work to be acknowledged by multiple audiences, including more and less active bystanders, gatekeepers of many institutions, and authorities.

In writing about military families in anti-war and peace movements, Lisa Leitz develops a similar concept, using different language. Leitz describes how activist parents and spouses of servicepeople emphasize their “skin in the game,”

³⁹ See MYRA MARX FERREE ET AL., *SHAPING ABORTION DISCOURSE: DEMOCRACY AND THE PUBLIC SPHERE IN GERMANY AND THE UNITED STATES* 86–87 (2002).

⁴⁰ *Id.* at 83–85.

⁴¹ *Id.*

⁴² See generally *id.* at 86–103.

⁴³ See Karen Beckwith, *Lancashire Women Against Pit Closures: Women’s Standing in a Men’s Movement*, 21 *SIGNS* 1034, 1040 (1996).

that is, the sacrifices and risks that attend to the families of people serving in the military.⁴⁴ The claims of groups like Military Families Speak Out were predicated on the assertion that military families, by contributing—and risking—their loved ones to the military, were completely engaged in the execution of U.S. foreign and military policy, suffering costs, and very much vulnerable to harm.⁴⁵ This commitment, they argued, should entitle them to voice and audience in the public debates about decisions to send the military abroad or into combat.⁴⁶

Unlike legal standing, in the political sphere standing is more likely to be segmented by venues and audiences. Additionally, in an increasingly fragmented political arena, claims of standing need to be reargued constantly and are subject to renegotiation. Audiences can lose interest or patience with a person or a set of claims, and an individual's arguments or conduct can offend a core audience to the extent that people no longer lend their attention.⁴⁷ In the public sphere, expertise and experience are also valuable assets, but are often components of the claim for standing. They may be more closely related to whoever is granted standing to be heard.

The legal system also draws a distinction between those who are affected by a policy or political decision, that is, those who have a stake, and those who are entitled to contest that decision in courts. As hazily and erratically as that distinction is often drawn in courts, it is far more complicated in the political sphere.

The basic premise of democracy is that people should get to weigh in on decisions in which they have a stake in the outcome, that is, on matters that affect their lives. In addition to any moral justification, this premise is predicated on at least two practical grounds: First, individuals affected by a policy may have an informed perspective that makes for better decisions; and second, that participation in a process for decision-making that they find legitimate, even frequent losers in the policy debate are more likely to try to work within the

⁴⁴ LISA LEITZ, *FIGHTING FOR PEACE: VETERANS AND MILITARY FAMILIES IN THE ANTI-IRAQ WAR MOVEMENT* 48 (2014).

⁴⁵ *Id.* at 5–7.

⁴⁶ *Id.* at 48–49.

⁴⁷ The case of Milo Yiannopoulos, who was briefly a well-known and very well-compensated conservative provocateur, is instructive. When a video featuring the speaker defending sex with minors circulated, Yiannopoulos lost credibility with his core supporters, and thus his platforms and his audience. See Charlie May, *The Fall of Milo: Breitbart's Former Star Is Now Hawking Supplements on Infowars*, SALON (Feb. 21, 2018, 6:09 PM), <https://www.salon.com/2018/02/21/the-fall-of-milo-breitbart-s-former-star-is-now-hawking-supplements-on-infowars/>.

political system than to try to overthrow it.⁴⁸ These two elements reflect what we can describe as *stake*, or interest, in both an issue and in a system. People with a stake in a set of issues are likely to care more and may have access to more useful information. People with a stake in a system work to uphold it, are more willing to pay taxes and take up arms, and less likely to rise up in rebellion.⁴⁹ Losers in a political debate, including officials turned out of office, commit to accede to the rules in order to preserve the system with the intent of competing for power in the future.⁵⁰

Of course, there has always been a gap between a larger number of people with a stake in a set of issues and those who actually get to participate in the political process and gain consideration of their opinions. Early forms of democracy designated a group of people as citizens, restricting access to the political arena on the basis of wealth, race, gender, and age.⁵¹ People are excluded from participation in politics for a few distinct, but often coincident, reasons. First, they may not be granted standing even if they are affected by decisions because their stake in the outcome is not seen as a legitimate concern by those in the political arena. As an obvious example, the life chances of refugees from North Africa or South America are clearly and dramatically affected by whomever happens to be in power of the United States. Lacking citizenship or even legal residency, however, they lack the political standing to participate in the policymaking process, even though their stake in the outcome is clear. They are dependent upon successfully mobilizing others with standing on their behalf. Additionally, people are excluded because policymakers doubt their sense and sobriety, and thus their capacity to contribute to informed democratic debate. Children and those judged morally or intellectually defective do not get to participate. Finally, people are excluded from deliberation and political standing because policymakers believe that they can consider and attend to their legitimate interests.⁵²

We know that the universe of those included in democratic debate varies dramatically across different settings and over time. Participation in ancient Athenian democracy was limited to male citizens, that is, men born to two

⁴⁸ JAMES MILL, *AN ESSAY ON GOVERNMENT* 19–20 (Cambridge Univ. Press, 1937) (1823) provides a classic and simple statement of the theory.

⁴⁹ *Id.*

⁵⁰ See STEVEN LEVITSKY & DANIEL ZIBLATT, *HOW DEMOCRACIES DIE* 125–26 (2018). Democracies die when fear of losing power supersedes commitment to a set of rules and the political system. *Id.*

⁵¹ Ed Crews, *Voting in Early America*, HISTORY, <https://www.history.org/foundation/journal/spring07/elections.cfm> (last visited Mar. 8, 2020).

⁵² These basic premises in classical democratic theory are outlined clearly by James Mill. James Mill, *Government*, in SUPPLEMENT TO THE ENCYCLOPEDIA BRITANNICA 3, 20–27 (J. Innes ed., 1825).

Athenian citizens who had completed military service, comprising roughly a fifth of the population.⁵³ The right to participate, however, did not guarantee much in the way of influence. It's hard to imagine that even in ancient Athens that some speakers did not elicit hoots, jeers, or at least eye rolls, while others may have been more effective in moving the crowd. There is surely no reason to believe that the restricted presence in the political arena led to a more informed and thoughtful debate if we are to believe depictions from the Platonic dialogues or later dramatic renderings of discussion in the public sphere.⁵⁴

Contemporary democracies afford considerably more room for participation in any case. In the United States, we saw the relatively quick relaxation of property requirements for voting, followed, slowly, by the inclusion of Black men, women, and then eighteen-year-old individuals. For our purposes, it is important to note that claims to inclusion were made in other venues by African Americans, women, and teenagers through vigorous social movements, ultimately winning some elements of political inclusion.⁵⁵

Free speech protections were afforded to people who did not have access to the ballot, allowing ultimately effective campaigns to gain suffrage. The image of the public square is an updated version of the ancient Greek agora.⁵⁶ In older versions of American democracy, anyone was entitled to carry a soapbox and attempt to draw an audience, but most were surely unsuccessful in attracting and directing the crowd. In contemporary political arenas, formal access to the debate is extraordinarily available by historical standards.⁵⁷ One does not need

⁵³ JOHN THORLEY, *ATHENIAN DEMOCRACY* 74 (1996).

⁵⁴ Plato was relentlessly critical of the workings of democracy; *Gorgias* is clearly written to elicit skepticism about public debate and popular democracy. See PLATO, *GORGIAS* (CreateSpace ed., Benjamin Jowett trans., 2016) (380 B.C.E.). Shakespeare's version of Marc Antony's post-assassination speech in *Julius Caesar* is also bound to feed cynicism about persuasion in the public arena. See generally WILLIAM SHAKESPEARE, *JULIUS CAESAR*.

⁵⁵ There is a large literature on abolition and then the civil rights movement. See generally DAVID J. GARROW, *PROTEST AT SELMA: MARTIN LUTHER KING, JR., AND THE VOTING RIGHTS ACT OF 1965* (2015); JUAN WILLIAMS, *EYES ON THE PRIZE: AMERICA'S CIVIL RIGHTS YEARS, 1954-1965* (2002). There is also extensive literature on women's suffrage. See LEE ANN BANASZAK, *WHY MOVEMENTS SUCCEED OR FAIL: OPPORTUNITY, CULTURE, AND THE STRUGGLE FOR WOMAN SUFFRAGE* (1996); ELLEN CAROL DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA, 1848-1869* (1978); CORRINE M. MCCONNAUGHY, *THE WOMAN SUFFRAGE MOVEMENT IN AMERICA* (2013). Literature on the student movement and youth voting is also prominent. See generally WENDELL W. CULTICE, *YOUTH'S BATTLE FOR THE BALLOT: A HISTORY OF VOTING AGE IN AMERICA* (1992); JAMES MILLER, *DEMOCRACY IS IN THE STREETS: FROM PORT HURON TO THE SIEGE OF CHICAGO* (1994).

⁵⁶ Christopher P. Dickenson, *On the Agora: The Evolution of a Public Space in Hellenistic Roman Greece (c. 323 BC-267 AD)*, in *MNEMOSYNE SUPPLEMENTS: HISTORY AND ARCHAEOLOGY OF CLASSICAL ANTIQUITY* 398 (Hans van Wees et al. eds., 2017).

⁵⁷ Ready access to the public square, particularly the modern version of the public square, doesn't provide routine access to an audience, attentive or not. Although Twitter, for example, has many millions of users, most

to be informed, adult, or even well-intentioned to commence posting on social media; of course, most posters get little attention.⁵⁸ Simply, the formal right to speak may bear a decreasing relationship to the capacity to draw and move an audience. What's more, the wide dispersal of social media outlets, in which advocates can gain access without formal granting of standing by an established media gatekeeper, makes assessing the rules and processes for winning an audience more complicated, less consistent, and more difficult to discern.

III. CLAIMING STANDING

Although there seem to be innumerable outlets for expression in the contemporary political arena, attention is limited.⁵⁹ Structurally, there is a finite amount of space in the venues that matter for changing policy, including a president's speech, broadcasts on the network news, or a legislative agenda. Even with unlimited space, the capacity of individuals to absorb, understand, fund, and engage an issue is also limited.⁶⁰ A political advocate is always competing, first, for attention, and next, for acceptance. Advocates try to make claims, generally by telling a story about their concerns, their proposed remedies, and themselves.⁶¹ They amplify their claim with many allies or dramatic tactics. A claim for attention is, in essence, an appeal for standing, but one in which the rules and routines are harder to understand and navigate than in the legal system.

Aristotle helps. No more enamored with democracy than Plato, he was somewhat more pragmatic and programmatic in his writing.⁶² His *Rhetoric*

of them have very few followers attending to their posts. One study found that the average number of followers for each Twitter user was 203, buoyed up by celebrity accounts with thousands or even millions of followers. See SHIRIN NILIZADEH ET AL., TWITTER'S GLASS CEILING: THE EFFECT OF PERCEIVED GENDER ON ONLINE VISIBILITY 289 (2016). The median number was much smaller, and roughly half of users had follower numbers in the single digits. *Id.*

⁵⁸ NILIZADEH ET AL., *supra* note 57, at 289–98.

⁵⁹ See generally Stephen Hilgartner & Charles L. Bosk, *The Rise and Fall of Social Problems: A Public Arenas Model*, 94 AM. J. SOC. 53, 53–78 (1988).

⁶⁰ *Id.*

⁶¹ The literature on persuasion in social movements is immense. See generally ALBERT O. HIRSCHMAN, *THE RHETORIC OF REACTION: PERVERSITY, FUTILITY, JEOPARDY* (1991) (discussing competing rhetoric in the public arena); FRANCESCA POLLETTA, *IT WAS LIKE A FEVER: STORYTELLING IN PROTEST AND POLITICS* (2006); STONE, *supra* note 7 (discussing the constraints presented by the political context); SIDNEY TARROW, *THE LANGUAGE OF CONTENTION: REVOLUTIONS IN WORDS, 1688–2012* (2013); William A. Gamson & David S. Meyer, *Framing Political Opportunity*, in *COMPARATIVE PERSPECTIVES ON SOCIAL MOVEMENTS: POLITICAL OPPORTUNITIES, MOBILIZING STRUCTURES, AND CULTURAL FRAMINGS* 275–90 (Doug McAdam et al. eds., 1996) (emphasizing the importance of political context on the viability of particular claims or issues); Francesca Polletta et al., *The Sociology of Storytelling*, 37 ANN. REV. SOC. 109 (2011).

⁶² See generally ARISTOTLE, *RHETORIC* (W. Rhys Roberts & Ingram Brewster trans., Random House

offers a guide to exerting influence in democratic debate, much of what is translatable to the contemporary arena. Recognizing that speakers enjoyed vastly different responses, he argued that persuasion was a function of a speaker's demonstrating *logos*, *ethos*, and *pathos*, that is, knowledge of the law, good judgment, and ability to elicit emotion.⁶³ In telling a story about a problem and potential solution, the speaker is also telling a story about herself and her claim to attention. We think this recognition provides a useful starting point for understanding the nature of influence in a larger, far more unruly, arena.⁶⁴

Aristotle saw persuasion as a multi-dimensional process, and argued that effective advocacy meant unifying distinct efforts to establish *ethos*, *pathos*, and *logos* to bolster the strength of claims.⁶⁵ *Logos*, the logical presentation of argument, means understanding an issue and its place in a larger world of politics and policy, and represents a claim to smart policy. But we know that expert analysis does not always prevail in the public square. *Pathos* is finding a way to reach the emotions of an audience and is a matter of technique.⁶⁶ Skill in eliciting sympathy is common among successful politicians and salespeople of all sorts. It is easily divorceable from wisdom and intent. But demonstration of *ethos* is about the claims to standing and the place of the speaker in the public debate and in the esteem of those who listen. It is about *who* a speaker is, or at least who they are *perceived* to be by an audience.⁶⁷ To demonstrate *ethos* is to establish one's credibility, or perceptions of trust and believability. The speaker who earns the trust of an audience wins trust and acceptance on matters of policy. It is *ethos* that best defines standing in the public sphere.

Aristotle identified three components that contribute to the credibility of a speaker: authenticity, character, and expertise.⁶⁸ Aristotle describes three distinct appeals speakers make to demonstrate *ethos*: *phronesis* (good sense), *arete* (good morals or virtue), and *eunoia* (goodwill).⁶⁹ In contemporary political debates, we can think about these components as good judgment/expertise,

1954) (350 B.C.).

⁶³ See *id.* at 25 ("The man who is to be in command of them must, it is clear, be able (1) to reason logically, (2) to understand human character and goodness in their various forms, and (3) to understand the emotions—that is, to name them and describe them, to know their causes and the way in which they are excited.").

⁶⁴ Deborah Stone argues that Aristotle is a particularly useful guide for making sense of the politics of persuasion in the modern *polis*. See STONE, *supra* note 7, at 206.

⁶⁵ See ARISTOTLE, *supra* note 62, at 25.

⁶⁶ *Id.*

⁶⁷ See *id.*

⁶⁸ ARISTOTLE, NICOMACHEAN ETHICS bk. II, at 20–21 (Terence Irwin trans., Hackett Publishing Co. 2019) (c. 384 B.C.E.).

⁶⁹ *Id.*

commitment, and goodwill. Speakers and movement leaders who are able to demonstrate all three aspects to an audience, are most likely to be effective in gaining attention and persuading that audience.⁷⁰ To demonstrate that one is a person of character is to find a way to show that the speaker lives by the general set of moral standards that a given society expects of its members. Of course, context matters, but conventional virtues of honesty, fairness, and respect for others are common. Perceptions of expertise, which refers to a skill or knowledge in a specific area, vary according to issue area and audience as well, but experience in working on an issue and seeking justice and wisdom helps. A speaker will work to show certification through experiences and education, and the testimony of other individuals and institutions. Issue expertise is explicitly segmented, and not routinely translatable across contexts.⁷¹ One who has mastered the minutiae of a city's building codes or the intricacies of trademark law is not necessarily seen as an expert on other matters of policy.

The final issue of demonstrating good character and intent is likely the most complicated. Often, in the public sphere, this is defined as *authenticity*, which is the perception that a person is sincerely committed to the positions articulated, and not offering judgments based on personal interest or some other corrupt intent.⁷² Aristotle conceptualized authenticity in terms of an actor's *intentions* or the *will* behind their actions, which was the will to fill a defined social role.⁷³ Much later, Enlightenment thinkers redefined the notion as *individuality* or *self-autonomy* in terms of the *right to be oneself*, which represents a distinctly *modern* twist that has endured into the contemporary era.⁷⁴ Assumed by this

⁷⁰ In settling internecine disputes within a movement, Robert D. Benford notes the importance of a speaker's credibility: "The persuasive power of speakers rests not only on what they say and how well they say it, but also on who they are. In other words, the status and prestige of the communicators have a direct bearing on the perceived plausibility of claims." Robert D. Benford, *Frame Disputes Within the Nuclear Disarmament Movement*, 71 SOC. FORCES 667, 693 (1993).

⁷¹ See generally GARY ALAN FINE, *DIFFICULT REPUTATIONS: COLLECTIVE MEMORIES OF THE EVIL, INEPT, AND CONTROVERSIAL* (2001).

⁷² It's interesting, but perhaps unsurprising, that the issue of authenticity crosses an extremely broad range of social spheres. E.g., Mya Pronschinske, Mark D. Groza & Matthew Walker, *Attracting Facebook Fans': The Importance of Authenticity and Engagement as a Social Networking Strategy for Professional Sport Teams*, 21 SPORT MARKETING Q. 221, 221–31 (2012); Glenn Carrol & Dennis Ray Wheaton, *The Organizational Construction of Authenticity: An Examination of Contemporary Food and Dining in the U.S.*, 255–60 (Stanford Univ. Graduate Sch. of Bus., Research Paper No. 1995, 2009); James Walker, *Authenticity and Experience: The Problem of Identity Politics in Literature*, QUILLETE (May 4, 2016), <https://quillette.com/2016/05/04/authenticity-and-experience-the-problem-of-identity-politics-in-literature/>.

⁷³ See generally ARISTOTLE, *supra* note 62.

⁷⁴ See generally MARSHALL BERMAN, *THE POLITICS OF AUTHENTICITY: RADICAL INDIVIDUALISM AND THE EMERGENCE OF MODERN SOCIETY* (1971).

conceptualization is that there is a “true” internal self to which each individual is innately inclined, and which one’s external actions should match.⁷⁵

In seeking to demonstrate authenticity, contemporary speakers identify themselves, provide a capsule biography, and announce a set of motivations and skills.⁷⁶ They are constrained, to some extent, by the known facts of their individual histories. Thus, an activist announces her sincerity and commitment in order to demonstrate sincerity and commitment.⁷⁷ They then draw on the distinct individual backgrounds to buttress those assertions.⁷⁸ Opponents will mine those personal facts in order to challenge those claims. An opponent will find contradictions to undermine the credibility of a speaker or suggest motivations for a position that is at odds with those articulated.⁷⁹ A personal history of political commitments is always double-edged in that positions on a particular issue can be portrayed as part and parcel of a commitment, possibly a compensated commitment, to a larger set of political goals. The gun control advocate who has a past in Democratic politics can be discredited as an ideologue; the gun rights activist with a history of paid endorsements can be seen as a shill.⁸⁰ In the gun debate, for example, gun-control advocates will point to a history in politics or salesmanship to undermine a speaker’s claim of authenticity. These battles of authenticity are recurrent and rarely resolved.

⁷⁵ Carrol & Wheaton, *supra* note 72, at 257. The authors use contemporary tastes in food as a vehicle for examining the appeals of authenticity and contend that choices in commerce and consumption can reflect a presumption of deliberate moral choices for all concerned. *Id.*

⁷⁶ See e.g., Zakiya Luna, *Who Speaks for Whom? (Mis)Representation and Authenticity in Social Movements*, 22 MOBILIZATION 435, 435–50 (2017); Sharon Erickson Nepstad & Clifford Bob, *When do Leaders Matter? Hypotheses on Leadership Dynamics in Social Movements*, 11 MOBILIZATION 1, 3–15 (2006). Nepstad and Bob argue that in making claims to legitimacy, social movement leaders are constrained by the different forms of capital available to them, including symbolic capital, which can be rooted in a person’s biographical experiences and specific personality traits.

⁷⁷ See Robert D. Benford & Scott A. Hunt, *Dramaturgy and Social Movements: The Social Construction and Communication of Power*, 62 SOCIOLOGICAL INQUIRY 1, 36–55 (1992).

⁷⁸ *Id.*

⁷⁹ Luna, *supra* note 76; Edward T. Walker, *Between Grassroots and ‘Astroturf’: Understanding Mobilization from the Top-Down*, in THE SAGE HANDBOOK OF RESISTANCE 273 (David Courpasson & Steven Vallas eds., 2016) (arguing that “the moral authenticity of public participation is always contested, contingent, and socially constructed”).

⁸⁰ These examples are from the contemporary debate. Shannon Watts, founder of Moms Demand Action, has in the past worked as a communications staffer for Democratic politicians. Amy Chozick, *Shannon Watts’s Work Diary: The Demanding Job of Running ‘Moms Demand Action’*, N.Y. TIMES (June 6, 2009), <https://www.nytimes.com/2019/06/06/business/shannon-watts-moms-demand-action-gun-control-work-diary.html>. Dana Loesch, until recently a paid spokesperson for the National Rifle Association, at one time earned a living endorsing nutritional aids. Kate Bratskeir, *NRA Spokesperson Dana Loesch Is Also the Face of SuperBeets, a Beet Juice Supplement*, MIC (Mar. 6, 2018), <https://www.mic.com/articles/188316/nra-spokesperson-dana-loesch-is-also-the-face-of-superbeets-a-beet-juice-supplement>.

Importantly, the attentiveness of an audience is segmented by issues, arenas, and separated in time. Audiences will be more interested in hearing from a speaker on a set of issues when those issues are salient and gaining attention in other ways. Mass shootings make gun politics more salient, and vigorous gun politics lead to more attention to mass shootings. Here, we must turn our attention to the role of social movements in promoting public dialogue and gaining attention for neglected issues and speakers.

IV. SOCIAL MOVEMENTS MAKE CLAIMS AND EXTEND STANDING

Discussion about persuasion in the *polis* envisions a single speaker, with an agenda, seeking to generate attention and support. In contemporary politics, however, few solitary actors are likely to gain either attention or influence—at least not just through talking. Instead, claimants are supported by organized groups and social movements that sometimes provide a foundation for standing upon. Leaders try to spur people to join them in their crusades, and to amplify their claims to larger audiences. Moreover, leaders work to educate bystanders on their view of the issue at hand and encourage them to feel confident in articulating their own beliefs. In effect, leaders work to share their standing with their supporters and to bring their supporters into the public debate. Importantly, those leaders are dependent upon their followers and allies to have continued space in a larger public dialogue.

Here, some discussion of social movements helps us understand how political mobilization works to reduce the gap between those with stake and those with standing to speak. Social movements represent phenomena that get a great deal of attention across a range of disciplines, but analysts often envision very different sorts of political formations when they use the term. The innovation of the social movement form provided people with grievances a means to engage in sustained efforts to make claims to authorities with the capacity to respond to both the claims and the people making them. Charles Tilly charts the origins of the social movement to the development of the nation-state, which afforded people the means to develop “indirect” efforts to redress wrongs.⁸¹ Whereas people with grievances previously tried to rectify them directly (e.g., hungry people seized bread; disgruntled peasants killed tax collectors), the modern state offers both a potential arena for making claims and a potential ally with the capacity to intervene in disputes. As such, the state becomes a target against which movements can push to enter and an actor which

⁸¹ CHARLES TILLY, FROM MOBILIZATION TO REVOLUTION 106 (1978).

can be mobilized. Successful movements can use the state as a focus and a “fulcrum” which ultimately amplifies their influence.⁸²

Movements can best be seen as broad coalitions including both formal organizations and individuals with a range of concerns and degrees of commitments. The strategies that protest movements employ bear a close relationship to the nature of available means for claims-making within the polity—what scholars refer to as the “structure of political opportunities.”⁸³ It is reasonable to assume that most people who think they have a reasonable chance of getting what they want without taking on the costs and invoking the risks of disruptive protest are unlikely to protest; those who see no prospect of influence are also unlikely to protest.⁸⁴ Social movements are most likely to emerge in settings where protest seems both necessary and potentially effective. Of course, the opportunities vary over time and across constituencies.⁸⁵

In settings where extensive access and representation are broadly available, protest is likely to be less dangerous and less disruptive. Most frequently in liberal democratic polities movements deploy a range of political tactics, including means of claims-making that are well-established and routine (e.g., voting, campaign contributions, litigation, letter-writing) and others that are more frequently seen as protest (e.g., mass demonstrations, pickets, boycotts, disciplined and nonviolent civil disobedience).⁸⁶ Less frequently, social movements deploy violence against property, and still less frequently, attacks on private citizens or agents of the government.⁸⁷ Although early scholarship presented movements as a force for excluded constituencies, contemporary political movements include both outsiders and those who already enjoy some

⁸² SIDNEY G. TARROW, *POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS* (3d ed. 2011).

⁸³ The term originates with Peter K. Eisinger. See Peter K. Eisinger, *The Conditions of Protest Behavior in American Cities*, 67 AM. POLITICAL SCI. REV. 11, 11 (1972) (comparing the openness of cities that suffered riots with those that did not); see also TILLY, *supra* note 81, at 148, 151 (applying Eisinger’s idea to national contexts). See generally David S. Meyer, *Protest and Political Opportunities*, 30 ANN. REV. SOC. 125 (2004).

⁸⁴ Most, but not all, people are sensitive to cues in the political environment. Saints and psychopaths are willing to take to the streets on their own regardless of the prospects for success. Meyer, *supra* note 27. On the social psychology of participation, see generally CATHERINE CORRIGALL-BROWN, *PATTERNS OF PROTEST: TRAJECTORIES OF PARTICIPATION IN SOCIAL MOVEMENTS* (2011); DAVID A. SNOW & SARAH A. SOULE, *A PRIMER ON SOCIAL MOVEMENTS* (2010); Robert D. Benford, “*You Could Be the Hundredth Monkey*”: *Collective Action Frames and Vocabularies of Motive Within the Nuclear Disarmament Movement*, 34 SOC. Q. 195, 196–201 (1993).

⁸⁵ See TILLY, *supra* note 80, at 52–63; David S. Meyer, “*Opportunities and Identities: Bridge-building in the Study of Social Movements*”, in *SOCIAL MOVEMENT: IDENTITY, CULTURE, AND THE STATE* 3–21 (David S. Meyer, Nancy Whittier & Belinda Robnett eds., 2002).

⁸⁶ See Eisinger, *supra* note 83, at 23.

⁸⁷ *Id.*

access to meaningful political participation. The power of a social movement is defined by the strength of the relationship between the margins and the mainstream.⁸⁸ It is most helpful to think of movements as defined by the mobilization of new or underrepresented constituencies, the engagement of individuals in groups on issues, and the use of tactics that are, for them, unusual over an extended period of time. An institutional footing is extremely important in sustaining engagement.

Although the histories of social movements and their relationship to mainstream politics are virtually always long and complicated, dramatic events tend to dominate common stories about their efforts. Narrative constraints lead people to tell grossly simplified stories of social movement trajectories that truncate history. As an example, one common story of the Civil Rights Movement begins with Rosa Parks refusing to move to the back of a segregated bus in Montgomery, Alabama, in December 1955, and ends with President Lyndon Johnson signing the Voting Rights Act in the summer of 1965.⁸⁹ Tracing a contentious decade makes for a compelling story but omits important details that open up our ideas about standing.

First, we can learn that organizers construct standing, picking images, or public plaintiffs that present a preferred interpretation of the movement. Resistance to segregation on buses did not begin with Rosa Parks; indeed, earlier that year, a black teenage girl was arrested for the same offense in Montgomery.⁹⁰ The local NAACP elected not to build a court case or a boycott around Claudette Colvin, who was fifteen at the time of her arrest, unmarried, pregnant, and darker-skinned.⁹¹ Organizers made a strategic choice that the older, married, employed, and lighter-skinned Rosa Parks would be a better representative for the movement, in effect, a more attractive plaintiff in a variety of public spaces.⁹²

Picking exemplars is recurrent public relations work that social movements and others do—in a variety of venues—as we can see by tracing resistance on buses back a little further. Ten years earlier, Lieutenant Jackie Robinson was court-martialed for refusing to move to the back of a segregated bus at Fort Hood in Texas.⁹³ Robinson was acquitted and became much more famous a few years

⁸⁸ *Id.*

⁸⁹ Williams, *supra* note 55, at 283–87.

⁹⁰ Margot Adler, *Before Rosa Parks, There Was Claudette Colvin*, NPR (Mar. 15, 2009), <https://www.npr.org/2009/03/15/101719889/before-rosa-parks-there-was-claudette-colvin>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Laura Smith, *Jackie Robinson Was Once Humiliated and Court-Martialed for Sitting Next to a Black*

later when he signed a contract to play for the Brooklyn Dodgers and became the first African American to play in Major League Baseball.⁹⁴ In the frequently repeated tale of the Dodgers' decision to pick Robinson as the first, we see the careful attention to the construction of a model plaintiff. In addition to excellence in baseball, Robinson was married, a college graduate, and a veteran.⁹⁵

Second, a slightly deeper history demonstrates what we might describe as the segmentation of standing. Rosa Parks had been active in pushing for civil rights for a dozen years before the incident in Montgomery.⁹⁶ She had recently attended a two-week workshop, "Racial Desegregation: Implementing the Supreme Court Decision," on nonviolent action and social change at the Highlander Folk School in Tennessee, where the citizenship education curriculum included civil disobedience and the *Brown v. Board of Education* decision.⁹⁷ She was also local chapter secretary of the Montgomery chapter of the National Association for the Advancement of Colored People and had sufficient standing within the organization to be bailed out by its president, E.D. Nixon.⁹⁸ She enjoyed a status within the organization and, more generally, in Montgomery's black community that did not extend to the larger world around—as evidenced by the way a bus driver treated her.⁹⁹ Nixon and Jo Ann Robinson, a teacher and president of the local Women's Political Council, made the decision to push Parks' standing to wider venues by staging the bus boycott.¹⁰⁰

Woman People Thought Was White, TIMELINE (Mar. 21, 2018), <https://timeline.com/jackie-robinson-wouldnt-go-to-the-back-of-the-bus-bd637b346c3f>.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ See generally JEANNE THEOHARIS, *THE REBELLIOUS LIFE OF MRS. ROSA PARKS* (2013). In December 2019, the Library of Congress opened an extended exhibit, *Rosa Parks: In Her Own Words*, which documents her long engagement in the civil rights movement. *Rosa Parks: In Her Own Words*, LIBR. CONGRESS, <https://www.loc.gov/exhibitions/rosa-parks-in-her-own-words/about-this-exhibition/> (last visited Mar. 29, 2020).

⁹⁷ Joyce Denise Duncan, *Historical Study of the Highlander Method: Honing Leadership for Social Justice 88–90* (May 2005) (electronic Doctor of Education dissertation, East Tennessee State University), <https://dc.etsu.edu/etd/996>.

⁹⁸ ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENTS: BLACK COMMUNITIES ORGANIZING FOR CHANGE* 52 (1984).

⁹⁹ Parks refused to surrender her seat on a crowded bus operated by a driver who had previously mistreated her. The story is described in the obituary of the driver. Jon Thurber, *James Blake, 89; Driver Had Rosa Parks Arrested*, L.A. TIMES (Mar. 26, 2002), <https://www.latimes.com/archives/la-xpm-2002-mar-26-me-blake26-story.html>

¹⁰⁰ MORRIS, *supra* note 98, at 52.

Third, standing to speak on behalf of a movement is contested and contingent. One can gain status within activist communities in a variety of ways, including sustained effort and commitment, knowledge of an issue, or even charm. But that standing does not necessarily translate across other venues. This makes sense. We do not go to an accomplished singer for advice on construction, nor do well-regarded professors of law routinely find ready audiences for their wisdom on dental care. But activist communities can buoy the public visibility of their leaders—or others.

When a movement is active, and the issues it presses are visible, politicians, journalists, academics, and others look for commentary on what activists want and what they are prepared to do to get it. Although organizations can select leaders or spokespeople, it is far more difficult for the messier political form of social movements to do the same. Organizations compete for attention and resources, even when they pursue common goals. And authorities of all kinds who seek a voice from a movement have their own interests. The construction of standing to speak for a movement is thus relational and contested.

For a clear example, let us return to the case of Rosa Parks. She is justifiably well-known for her act of courage, but she did not become a visible spokesperson for the movement. When the newly formed Montgomery Improvement Association organized a massive boycott of buses in the city—in conjunction with a lawsuit¹⁰¹ challenging segregation in public transit—Nixon and other longtime activists actively recruited a relative outsider, Martin Luther King, Jr., to serve as the public face of the movement. King, in his first parish, was only twenty-six and was not encumbered by previous alliances or history in the community. His standing as a minister gave him some credibility to speak on behalf of the larger Black community.

It was not long, however, before King's standing as the spokesperson for the movement was itself contested. Other civil rights organizations had their own leaders representing somewhat different perspectives: more radical in their claims or more moderate; more willing to take dramatic action or less willing to countenance civil disobedience; more or less interested in linking other issues, most notably the war in Vietnam, to the cause of civil rights.¹⁰²

We can tell extended and edited versions of every social movement's history in American politics. Although the peak periods of activism make for the most

¹⁰¹ See, e.g., *Browder v. Gayle*, 142 F. Supp. 707 (S.D. Ala. 1956).

¹⁰² MORRIS, *supra* note 98, at 122; Benjamin T. Harrison, *Impact of the Vietnam War on the Civil Rights Movement in the Midsixties*, 3 *STUD. CONFLICT & TERRORISM* 261, 261–78 (1996).

dramatic narratives, those events and individuals stand upon the foundations built by others in much less visible efforts. During peak periods of activism, movements comprise a larger number of people undertaking diverse activities in rough alignment, if not in agreement. Activists make those periods, to be sure, by devising effective strategies and campaigns for mobilization, but their success in doing so is largely defined by what their opponents are doing—social movements crest and decline in response to what scholars define as the structure of political opportunities.¹⁰³ Although there are stalwarts who are committed to taking to the streets to represent their political views clearly and sharply at all times, they are less important than the less frequent activist who engages when issues seem particularly threatening or promising. Most people are unlikely to protest most of the time and do so when they believe their efforts are likely to be consequential. They take cues from figures in institutional politics, who promise (or threaten) to execute substantial change. They also take cues from those around them and are more likely to engage in disruptive politics when they see others doing so. In this way, social protest spurs more protests. During peak periods of mobilization, news media and audiences are more likely to attend to the efforts of advocates, who have a somewhat easier task of winning attention. Decisive political action from government, either in support or clear opposition to activists' goals, undermines the basis for mobilization. It also strains the links between the margins and the mainstream of a campaign, as those who are willing to make peace with pragmatic institutional politics find it harder to unite with those who are unwilling to do so. It is important to note, however, that the proliferation of increasingly diverse claims and claimants in contemporary democracies makes it harder for governments to make policy decisively. The difficulty of making policy contributes to making social movements a ubiquitous feature in contemporary political life.¹⁰⁴

Political activism, including large demonstrations, civil disobedience, town meetings, boycotts, and petitions, spurs attention to the claims of advocates in an environment where speakers compete for attention. Standing is then conditional upon an audience ready to hear about particular sets of issues. Events can be critical to the development of social movements and the standing of their claims in the public sphere. Sometimes, activists can create such critical events,

¹⁰³ Eisinger, *supra* note 83, at 23 (coining the term in comparing the relative openness and responsiveness in cities, predicting which cities were likely to encounter riots); see TILLY, *supra* note 81, at 143–44 (adopting the term and offering a more comprehensive theory for explaining variations in mobilization at a national level); MCADAM, *supra* note 83 (employing the concept to explain the long history of the civil rights movement). See generally Meyer, *supra* note 83.

¹⁰⁴ THE SOCIAL MOVEMENT SOCIETY: CONTENTIOUS POLITICS FOR A NEW CENTURY 4 (David S. Meyer & Sidney Tarrow eds., 1998).

such as Rosa Parks' refusal to move to the back of a bus, followed by a boycott and a lawsuit, or the Women's March on the day after Donald Trump's inauguration.¹⁰⁵ Sometimes, activists exploit events that they did not create. The antinuclear movement grew in the wake of visible reactor accidents, for example, which were more visible because of the movement's engagement.¹⁰⁶

Additionally, expertise—and thus credibility—is also generally segmented by issue area. While it is possible for a specific actor to have established expertise on a range of issues, it is not automatically transferrable. Instead, people make arguments in favor of their expertise on a certain issue, which they reinforce with demonstrable experience. These claims compete against each other for the public's support, and their success is thus partly dependent on the pool of competition. Thus, actors want to make the most convincing argument possible by framing their expertise on an issue and providing the maximum amount of tangible evidence available.

Social movements work to extend standing to people normally excluded from the political debate. Sometimes, this is by gaining acceptance in the formal institutions of government and participation, such as winning access to the vote. But social movements, espousing democratic values, also expend considerable effort to educate supporters on their positions, and to get those supporters to testify on their opinions. Social movements, articulating an ethos of democracy, work to legitimate and amplify the concerns and even the words of their supporters.

We can see this dynamic most clearly in the episodic movements on war and peace and on nuclear power and nuclear weapons.¹⁰⁷ Although the most visible activists in these cases are often the well-educated middle class—not people systematically excluded from participation in politics—the claim for enhanced democratic debate is recurrent, often expressed as being against expert opinion, or at least the experts in government. On nuclear weapons, as a key example, most people are neither well informed nor politically engaged most of the time.¹⁰⁸ In times of enhanced public concern, however, social movements make

¹⁰⁵ DANA R. FISHER, *AMERICAN RESISTANCE: FROM THE WOMEN'S MARCH TO THE BLUE WAVE* 14, 33–36 (2019); *THE RESISTANCE: THE DAWN OF THE ANTI-TRUMP OPPOSITION MOVEMENT* 75 (David S. Meyer & Sidney Tarrow eds., 2018).

¹⁰⁶ William A. Gamson, *Political Discourse and Collective Action*, in *INT'L SOCIAL MOVEMENT RES.* 1, 219–233 (1988); Suzanne Staggenborg, *Critical Events and the Mobilization of the Pro-Choice Movement*, 6 *RES. POL. SOC.* 319–45 (1993).

¹⁰⁷ Sam Marullo & David S. Meyer, *Anti-War and Peace Movements*, in *THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS* 641–65 (David A. Snow, Sarah A. Soule, & Hanspeter Kriesi eds., 2004).

¹⁰⁸ DAVID S. MEYER, *A WINTER OF DISCONTENT: THE NUCLEAR FREEZE AND AMERICAN POLITICS* 87

the claim that regular citizens can develop an informed opinion that should be given attention by both other people and by elected officials.

Arguments against those antinuclear movements make familiar arguments of standing: People who oppose the government's policy are either ill-intentioned ("carrying water" for enemies) or well-intentioned but ill-informed.¹⁰⁹ More generally, political figures, including governments and citizens, are eager to encourage enhanced democratic participation from their supporters. In an op-ed during the height of the nuclear freeze movement, columnist Russell Baker crystalized the issue well:¹¹⁰

My position on the nuclear freeze is that the Government ought to stop telling me I'm too dumb to have an opinion on it. Of course it's a complicated business, but it's nowhere near as hard to understand as economics, and during the elections this fall President Reagan urged everybody in the country to have an opinion about his economic policy. . . . This sensible view of experts has never extended to nuclear policy. There, a small group of "strategic thinkers" has been elevated above mere experthood to a kind of secular priesthood. To suggest that they may be just as wrong about their business as economists usually are about theirs is treated, if not as an act of heresy, at least as an impudence silly in the extreme.

. . . .

Over 30 years their theories, aimed at protecting the country from destruction, have produced arsenals here and abroad sufficient to destroy civilization several times more than necessary to preserve it. Maybe this makes sense, but I doubt it. In any case, if you ask, "Are you guys sure you know what you're doing?" is it a satisfactory answer to be told, "Shut up, dummy, and worry about something like economics"?

. . . .

Sure, we're dumb about economics and dumb about nuclear strategy too, but genuine unforgivable dumbness consists in letting ourselves be persuaded that the experts don't need us shouting at them to keep them in touch with human reality.

Active citizens in social movements promote democratic engagement when the balance of power within government works against them and their policy

(1990).

¹⁰⁹ See DAVID S. MEYER, A WINTER OF DISCONTENT: THE NUCLEAR FREEZE AND AMERICAN POLITICS 87 (1990); ANDREW ROJECKI, SILENCING THE OPPOSITION: ANTINUCLEAR MOVEMENTS AND THE MEDIA IN THE COLD WAR 9 (1999).

¹¹⁰ Russell Baker, *Sunday Observer: Nuclear Freeze Frame*, N.Y. TIMES MAG. Dec. 12, 1982, at 32.

preferences. In doing so, they extend standing claims to a broader group of people, mobilizing and legitimating public opinion.

V. SOCIAL MOVEMENTS AND POLITICAL INFLUENCE

The work of social movements is to draw attention to a set of problems and promote support for a set of preferred remedies and, importantly, support for themselves as substantial political actors. In order to do so effectively, social movements must be *authentic*, *abiding*, and *opportunistic*.

In the contemporary era, authenticity is a matter of convincing audiences that a movement really represents a distinct set of views and often a constituency that is otherwise disadvantaged through conventional politics alone. One is likely to get more attention for claims when there is already a public paying attention to relevant issues and events. Organizers make claims that their adherents are regular Americans, who are not corrupted by partisan commitments, crass personal financial gain, or foreign entanglements of any kind. Instead, they portray their supporters as representatives of legitimate grassroots sentiments which are genuinely felt by those presenting them.¹¹¹ These claims are, naturally, contested by their opponents, who will seek to undermine such claims, arguing that demonstrators are paid, partisan, or otherwise corrupt.

Movements must abide because making substantive political change requires sustained commitments and engagement. The institutional design of the American government requires successive electoral victories to line up several political institutions in order to promote policy change. A one-time explosion of attention evaporates in the political system. Activists need to remain engaged in order to make any kind of progress. Although there have been many eruptions of spontaneous activism in response to political shocks of various kinds, movements need to sustain themselves and their engagement in order to cultivate ideas and political influence.¹¹² If we think about the civil rights movement, for example, we remember that the long-term efforts of the NAACP helped educate Rosa Parks and organize her support and the subsequent boycott.¹¹³ Its sustained effort of litigation spanning decades ultimately helped produce and publicize the

¹¹¹ DEANA A. ROHLINGER, *ABORTION POLITICS, MASS MEDIA, AND SOCIAL MOVEMENTS IN AMERICA* 93 (2015) (discussing the National Organization for Women's presentation of its membership).

¹¹² See Suzanne Staggenborg, *The Consequences of Professionalization and Formalization in the Pro-Choice Movement*, 53 AM. SOC. REV. 585, 597–603 (1988).

¹¹³ See, e.g., THEOHARIS, *supra* note 96.

Brown decision¹¹⁴ and, not much later, its youth wing seeded the development of the new Student Nonviolent Coordinating Committee (SNCC).¹¹⁵ Movements need to sustain themselves in the political arena in order to continue to define their demands and then to claim credit for their accomplishments.¹¹⁶

Finally, effective social movements are opportunistic; they take advantage of contemporary events to frame their definitions of problems and their preferred solutions.¹¹⁷ Activists release statements and respond when questions about their concerns come into the news: Court decisions about reproductive rights are immediately framed as threats or accomplishments by anti-abortion and abortion rights groups; climate change activists weigh in on odd weather events; contemporary civil rights activists draw attention to instances of police violence that make it into the news. When social movements are successfully engaged over an extended period of time, politicians and journalists are immediately more sensitive to their issues, as expressed in contemporary events.¹¹⁸

Advocates frame their standing in the debate by emphasizing stake, that is, the likelihood that they would be affected by the policies that concern them. Experts frame their standing in the debate by emphasizing the scope of their expertise, and by framing the policy issues as nested within that expertise. Sometimes that means opponents in a political debate speak past each other. The climate change activist who marches against coal mining, for example, emphasizes the environment, whereas the miner emphasizes work or tradition.

For gun safety and gun control activists, dramatic shootings provide critical opportunities for underscoring their claims and their commitments. We know that the ready availability of guns is rarely a salient issue for most Americans, who are more likely to prioritize issues of the health of the economy or the costs and dangers of military forces abroad. Those few who prioritize gun issues have overwhelmingly been supporters of an unrestricted vision of gun rights.¹¹⁹ A

¹¹⁴ RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* 14 (1975) (providing a comprehensive history of the decades of litigation leading up to *Brown*, along with a window into the strategic thinking of the civil rights litigants); *see also* ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE* 26–27 (1984).

¹¹⁵ MORRIS, *supra* note 114, at 215.

¹¹⁶ *See generally* David S. Meyer, *Claiming Credit: Stories of Movement Influence as Outcomes*, 11 *MOBILIZATION* 201 (2006).

¹¹⁷ Social movements engage policy entrepreneurs, who attach their solutions to recognized problems. *See, e.g.*, JOHN W. KINGDON, *AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES* 165–66 (1984).

¹¹⁸ *See* STONE, *supra* note 7, at 189–207.

¹¹⁹ Robert Gebelhoff, *Gun Reform Doesn't Happen Because Americans Don't Want It Enough*, *WASH. POST.* (Mar. 4, 2019 3:03 PM), <https://www.washingtonpost.com/opinions/2019/03/04/gun-reform-doesnt->

political assassination attempt, the shooting of a celebrity, or a dramatic mass shooting offer gun control activists the chance to exploit a moment of attention. New gun-control advocacy groups, including the Brady Campaign and Moms Demand Action, developed in the wake of mass shootings, have historically found it difficult to sustain the needed support over the years to win policy gains.¹²⁰ It is for good political reason that opponents of gun control are generally silent in the wake of a mass shooting, criticizing their adversaries for politicizing a tragedy.¹²¹ “Thoughts and prayers” is a means of taking up space and marking time until the moment of political concern and salience passes.¹²² The financial and partisan advantages that gun rights activists have generally enjoyed have meant that they can encourage debates to take place when their opponents are less visible.¹²³ In contrast, gun safety advocates must seize the moment of attention, underscoring the peculiarities of policies in the United States, and mobilizing support. It is in those moments of attention that their claims to standing can be most clearly seen.

The presence of ongoing social movements in the political debate affects which issues are discussed, what remedies are seen as viable, and which actors are worthy of attention. Grassroots mobilization can thus be part of a longer process that promotes policy change.¹²⁴ The simplest model, in which ongoing mobilization leads to the eventual adoption of some portion of activists’ demands, surely explains part of the political process. But social movements can also have unintended and even perverse effects. First, the threat of social disruption can lead authorities to repress movement actors or adopt unwelcome

happen-because-americans-dont-want-it-enough/; George Skelton, *Gun Control Has Been Doomed by Single-Issue Voters. Will that Ever Change?* L.A. TIMES, (Aug. 8, 2019, 11:54 AM), <https://www.latimes.com/california/story/2019-08-08/single-issue-voters-have-doomed-gun-control-in-congress-that-could-be-changing>. See generally KRISTIN GOSS, *DISARMED: THE MISSING MOVEMENT FOR GUN CONTROL IN AMERICA* (2006); Eulalie Laschever & David S. Meyer, *Growth and Decline of Opposing Movements: Gun Control and Gun Rights, 1945–2015* (unpublished, U.C. Irvine 2019), forthcoming, *MOBILIZATION*, (on file with author).

¹²⁰ Kristin A. Goss, *Whatever Happened to the ‘Missing Movement’? Gun Control Politics Over Two Decades of Change in GUN STUDIES: INTERDISCIPLINARY APPROACHES TO POLITICS, POLICY, AND PRACTICE* 136–50 (Jennifer Carlson, Kristin A. Goss, & Harel Shapira eds., 2018).

¹²¹ German Lopez, *Lawmakers Can’t Do Anything About Mass Shootings Without Politicizing Them*, VOX (Oct. 3, 2017 9:50 AM), <https://www.vox.com/policy-and-politics/2017/10/3/16405052/mass-shooting-politicize-gun-violence>.

¹²² Jennifer Wright, *Why Politicians Offer Prayers After a Mass Shooting*, HARPER’S BAZAAR (Aug. 5, 2019), <https://www.harpersbazaar.com/culture/politics/a28611490/why-politicians-offer-prayers-after-mass-shooting-gun-violence/>.

¹²³ See Eulalie Laschever, *Opposing Movement Strategy, Critical Events, and Policy Change: How the Gun Control and Gun Rights Movements Capitalize on Mass Shootings 47–55* (2017) (unpublished Ph. D. dissertation, U.C. Irvine), <https://escholarship.org/uc/item/3xn713ft>.

¹²⁴ See generally ROUTING THE OPPOSITION: SOCIAL MOVEMENTS, PUBLIC POLICY, AND DEMOCRACY (David S. Meyer et al. eds., 2005).

policies.¹²⁵ Second, when movements seem to be making progress, they encourage others who see themselves as similarly situated to emulate ostensibly effective strategies and tactics and take to the streets as well.¹²⁶ Third, this demonstration effect can mobilize opponents as well. Indeed, potentially successful campaigns, both by example and by posing direct threats to established interests, are likely to lead the opposition to adopt movement forms and tactics.¹²⁷ As a result, we will see that each claim for standing, based on interest, harm, or expertise, is met with countervailing claims and claimants from an opposing movement. We cannot discuss stake and standing in the movement for gun safety without simultaneously considering the oppositional claims made by a longer-standing and better-resourced movement for gun rights.¹²⁸

Given the nature of the political debate on guns in the United States, in which large majorities support some strictures on access to weapons,¹²⁹ the gun safety movement has had an interest in working aggressively to expand the number of voices on policy, that is, to extend standing to neglected actors. This is a familiar social movement story, valorizing, publicizing, and helping to shape the opinions of people who are less visible within the political mainstream. There is a set of actors who enjoy routine access to a platform on gun regulation issues, including elected officials, who can readily access standing on all matters of policy. Well-established organized groups also figure regularly in the public sphere, by vaunt of their memberships. Here, the greater size and resources of the NRA¹³⁰ affords it the latitude to try new ways of reaching a broader public, including the recently decommissioned NRATV.¹³¹ The gun rights movement has been able to abide over a long period of time and to opportunistically intervene in moments where it can be most effective. It rests its standing claims of authenticity to its representation of millions of members, many passionate, to

¹²⁵ FRANCIS FOX PIVEN AND RICHARD A. CLOWARD, *POOR PEOPLES MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* (1977), at 27–32.

¹²⁶ See generally DOUG MCADAM ET AL., *DYNAMICS OF CONTENTION* (2001).

¹²⁷ David S. Meyer & Suzanne Staggenborg, *Movements, Countermovements, and the Structure of Political Opportunity*, 101 AM. J. SOC. 1628, 1632 (1996).

¹²⁸ GOSS, *supra* note 120, at 10; Matthew J. Lacombe, *The Political Weaponization of Gun Owners: The National Rifle Association's Cultivation, Dissemination, and Use of a Group Social Identity*, 81 J. OF POLITICS (2019)4: 1342-1356.

¹²⁹ Katherine Schaeffer, *Share of Americans Who Favor Stricter Gun Laws Has Increased Since 2017*, PEW (Oct. 16, 2019), <https://www.pewresearch.org/fact-tank/2019/10/16/share-of-americans-who-favor-stricter-gun-laws-has-increased-since-2017/>.

¹³⁰ Goss, *supra* note 120, at 10; Matthew J. Lacombe, *Weaponization of Gun Ownership: The National Rifle Association's Cultivation, Dissemination, and Use of a Group Social Identity*, 81 J. POL. 1342, 1343 & n.1 (2019); Laschever, *supra* note 123, at 456–71.

¹³¹ Danny Hakim, *N.R.A. Shuts Down Production of NRATV, and Its No. 2 Official Resigns*, N.Y. TIMES (June 25, 2019), <https://www.nytimes.com/2019/06/25/us/nra-nratv-ackerman-mcqueen.html>.

its interpretation of the Constitution, and to its professional relationships with politicians in Congress and state legislatures. Lacking comparable resources and history, gun safety groups gain platforms more erratically.

Established organizations provide the infrastructure for social movement claimants, but individual stories dominate in the political arena. Both groups and individuals make clear claims for attention or standing, and the nature of those claims include parallels to the claims in a courtroom, and then extend beyond them. In the public sphere groups make claims to standing based on personal experience, and also based on expertise.¹³² Well-established groups can provide a foundation for making such claims. Effective organizing entails extending episodic moments of attention, defining crises as a function of policy failure, and promoting alternative policies. This entails bringing new actors into mainstream political discourse, by promoting and legitimating their standing. We see social movements do this in ways that are somewhat parallel to those that exist in the courtroom. By raising the visibility of political issues, social movements identify a broader range of actors who have a stake in a particular set of policies. Activists seek to give those actors voice and visibility, in effect claiming public standing. They also recognize and mobilize experts who can offer perspectives that help promote their claims.

VI. EXPERIENCE AND THE POWER OF WITNESS

Demonstrating harm by virtue of experience is a core component of contemporary gun control advocacy. Eyewitness testimony is rhetorically powerful. The first-hand story invites an audience in, and standing is granted as a result of experience. Particularly powerful is a survivor's testimony, which is well-established in history and literature that extends far beyond gun politics. The story of Job is moved by the recurrent reports of the one servant who witnesses the wrath of the Lord and returns to his master to convey the tale.¹³³ The narrators of *Moby-Dick*¹³⁴ and *The Rime of the Ancient Mariner*¹³⁵ similarly (and derivatively) survive in order to convey mad tales of obsession and the power of nature. And it's not just in fiction. Like other survivors of the Holocaust, Eli Wiesel found the obligation to tell his story gave purpose to the

¹³² See generally KELLY MOORE, *DISRUPTING SCIENCE* (2008) (providing an excellent treatment of how experts—in this case, scientists—cultivate a place in the public arena by building purposeful organizations).

¹³³ “[A]nd I only am escaped alone to tell thee.” *Job* 1:15 (King James).

¹³⁴ See HERMAN MELVILLE, *MOBY-DICK: OR, THE WHALE* 221–23 (Lerner Publishing Group 1988) (1851).

¹³⁵ See SAMUEL TAYLOR COLERIDGE, *RIME OF THE ANCIENT MARINER* 4–12 (Infomotions, Inc. 2000) (1798).

rest of his life.¹³⁶ Vietnam Veterans, organized and individual, claimed a distinct status and special insight based on their experience in the controversial war. It was future Secretary of State John Kerry's experience, for example, and not his stance on the war, that won him an invitation to testify before Congress on the war as a young man.¹³⁷ The experience gives opportunity and obligation to testify—as a warning to others. Kerry's testimony on behalf of Vietnam Veterans Against the War was explicit in acknowledging war crimes committed by his colleagues, and the horror and futility of the war, leading to an admonition to the nation: "We are asking Americans to think about that because how do you ask a man to be the last man to die in Vietnam? How do you ask a man to be the last man to die for a mistake?"¹³⁸

Survivors of mass shootings can provide powerful witnesses to the threat and dangers of gun violence, but rarely have they been able to sustain visible advocacy. The shooting at Marjory Stoneman Douglas High School, which took Jaime Guttenberg's life,¹³⁹ seems to be turning out differently. On February 14, 2018, a deeply troubled former student appeared at the public high school shortly before dismissal. He was armed with a semi-automatic weapon and carrying multiple magazines. He opened fire, killing fourteen students and three staff members and wounding another seventeen. The shooting lasted about six minutes, the gunman left and was apprehended an hour later. This was the worst school shooting in history—to that date.¹⁴⁰

¹³⁶ ELIE WIESEL, NIGHT, at viii (Marion Wiesel trans., 2006).

¹³⁷ Marvin Kalb, *When Kerry Stormed D.C.*, NAT'L INTEREST 25–36 (Mar. 1, 2013), <https://nationalinterest.org/article/when-kerry-stormed-dc-8142>.

¹³⁸ *Vietnam Veterans Against the War Statement by John Kerry to the Senate Committee of Foreign Relations*, SIXTIES PROJECT, http://www2.iath.virginia.edu/sixties/HTML_docs/Resources/Primary/Manifestos/VVAW_Kerry_Senate.html (last visited Mar. 29, 2020). For more background on Vietnam War veterans, see generally RICHARD R. MOSER, *THE NEW WINTER SOLDIERS: GI AND VETERAN DISSENT DURING THE VIETNAM ERA* (1996).

¹³⁹ Emily Shapiro et al., *Parkland Shooting 1 Year Later: Remembering the 17 Victims of the School Massacre*, ABC NEWS (Feb. 14, 2019, 1:02 AM), <https://abcnews.go.com/US/teacher-coach14-year-freshman-florida-high-school-massacre/story?id=53092879>.

¹⁴⁰ Michelle Mark, Kieran Corcoran & David Choi, *This Timeline Shows Exactly How the Parkland Shooting Unfolded*, BUS. INSIDER (Feb. 14, 2019, 10:19 AM), <https://www.businessinsider.com/timeline-shows-how-the-parkland-florida-school-shooting-unfolded-2018-2>.

Three days after the assault, Emma Gonzalez, a senior with interests in drama¹⁴¹ and Advanced Placement Government,¹⁴² addressed a rally for gun control in Fort Lauderdale. Her speech following the shooting won national attention. Gonzalez announced:

Every single person up here today, all these people should be home grieving. But instead we are up here standing together because if all our government and President can do is send thoughts and prayers, then it's time for victims to be the change that we need to see.

....

We are going to be the kids you read about in textbooks. Not because we're going to be another statistic about mass shooting in America, but because . . . we are going to be the last mass shooting. . . . [W]e are going to change the law. That's going to be Marjory Stoneman Douglas in that textbook and it's going to be due to the tireless effort of the school board, the faculty members, the family members and most of all the students.

....

To every politician who is taking donations from the NRA, shame on you.

....

The people in the government who were voted into power are lying to us. And us kids seem to be the only ones who notice and our parents to call BS. Companies trying to make caricatures of the teenagers these days, saying that all we are self-involved and trend-obsessed and they hush us into submission when our message doesn't reach the ears of the nation, we are prepared to call BS. Politicians who sit in their gilded House and Senate seats funded by the NRA telling us nothing could have been done to prevent this, we call BS. They say tougher guns laws do not decrease gun violence. We call BS. They say a good guy with a gun stops a bad guy with a gun. We call BS. They say guns are just tools like knives and are as dangerous as cars. We call BS. They say no laws could have prevented the hundreds of senseless tragedies that have occurred. We call BS. That us kids don't know what we're talking about, that we're too young to understand how the government works. We call BS.¹⁴³

¹⁴¹ Michael Schulman, *The Spring Awakening of the Stoneman Douglas Theatre Kids*, NEW YORKER (Feb. 23, 2018), <https://www.newyorker.com/culture/cultural-comment/the-spring-awakening-of-the-stoneman-douglas-theatre-kids>; Emily Witt, *How the Survivors of Parkland Began the Never Again Movement*, NEW YORKER (Feb. 19, 2018), <https://www.newyorker.com/news/news-desk/how-the-survivors-of-parkland-began-the-never-again-movement>.

¹⁴² Charlotte Alter, *The School Shooting Generation Has Had Enough*, TIME (Mar. 22, 2018), <https://time.com/longform/never-again-movement/>.

¹⁴³ Elizabeth Entenman, *Here's the Full Transcript of Emma Gonzalez's Passionate Anti-Gun Speech*, HELLO GIGGLES (Feb. 17, 2018, 6:04 PM), <https://hellogiggles.com/news/emma-gonzalez-full-speech/>; Gemma

Gonzalez charged elected officials with ignoring the best interests of those they were supposed to protect, acceding to the wishes of a well-funded group that represented an industry and a minority interest instead.¹⁴⁴ She said that the politicians could no longer lie to her or her classmates.¹⁴⁵ She and her classmates had done their research, and they had survived the consequences of politicians' neglect of basic facts and human concern.¹⁴⁶ She proclaimed that the kids would stand up to protect themselves and would force the government to respond to their best interests.¹⁴⁷

With close-cropped hair, theatrical performing skills, and earned passion, Gonzalez delivered a powerful speech, and videos of it went viral.¹⁴⁸ She quickly became a public figure in an emerging movement, amassing more than one million followers on Twitter.¹⁴⁹ But she was not alone: Other articulate and informed survivors from her high school filled in to advance their ideas on gun control in state capitals, the offices of members of Congress, the airwaves, town meetings, all kinds of social media, and even an orchestrated public meeting in the White House.¹⁵⁰ Although they were savvy and sophisticated, their primary claims to public attention and political influence were their experience and their authenticity.

That first demonstration in Fort Lauderdale was organized very quickly, gave a platform to Emma Gonzalez, and reflected social movement work. Student organizers, supported by the adults around them, worked to seize the moment of national attention to press social and political action on gun violence and school safety. They were determined to take advantage of what is the normally fleeting public interest in the victims of a tragedy. They were extremely effective in executing a number of strategies to extend their moment of visibility and advocacy.¹⁵¹

Mullin, 'It's Bulls***' Florida Shooting Survivor Emma Gonzalez Shames Donald Trump and Demands Stricter Gun Laws in Emotional Anti-Gun Rally Speech, SUN (Feb. 18, 2018, 12:16 PM), <https://www.thesun.co.uk/news/5603849/florida-shooting-emma-gonzalez-strict-gun-laws-rally/>.

¹⁴⁴ Entenman, *supra* note 143.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ To see the full video, see *Florida Student to NRA and Trump: 'We Call BS,'* YOUTUBE (Feb. 17, 2018), <https://www.youtube.com/watch?v=ZxD3o-9H11Y>.

¹⁴⁹ David Williams, *Parkland Shooting Survivor Emma González Has More Twitter Followers Than the NRA*, CNN (Feb. 27, 2018, 8:38 PM), <https://www.cnn.com/2018/02/27/us/gonzalez-nra-twitter/index.html>.

¹⁵⁰ Emily Witt, *From Parkland to Sunrise: A Year of Extraordinary Youth Activism*, NEW YORKER (Feb. 13, 2019), <https://www.newyorker.com/news/news-desk/from-parkland-to-sunrise-a-year-of-extraordinary-youth-activism>.

¹⁵¹ Alter, *supra* note 142.

The Parkland kids jumped into a debate about guns that has been, oddly, both heated and ossified. Well-established and well-funded interest groups operate in Congress, state legislatures, and in public, presenting their views of sensible responses to the problems associated with guns in America.¹⁵² The largest gun rights group is supported not only by hunters and target shooters but also by ideologues and industry.¹⁵³ Its chief opponents in the political arena include concerned citizens, but they are also bankrolled by extremely wealthy individuals, most notably Michael Bloomberg, a billionaire who previously served as mayor of New York City.¹⁵⁴ On each side of the debate, partisans claim they represent an authentic grassroots American voice, the wisdom of the people; at the same time, they are dependent upon the support of committed elites, following their interests or ideologies.

Grieving survivors have attempted to use that experience and status to weigh in on the gun debate before but without remotely comparable success.¹⁵⁵ There are at least three reasons for the relative success of the Parkland kids. First, experience does not necessitate a certain position on remedies. Whereas some survivors favor stricter controls on access to guns, others endorse alternative remedies, including “hardened” schools with armed security or armed

¹⁵² Robert Richards, *The Role of Interest Groups and Group Interests on Gun Legislation in the U.S. House*, 98 SOC. SCI. Q. 471, 471–72 (2017).

¹⁵³ Patrick J. Charles, *How the Gun Lobby Came To Be So Powerful*, NEWSWEEK (Feb. 16, 2018, 10:57 AM), <https://www.newsweek.com/how-gun-lobby-came-be-so-powerful-809304>.

¹⁵⁴ Reid J. Epstein, Maggie Astor & Danny Hakim, *How Gun Control Groups Are Catching Up to the N.R.A.*, N.Y. TIMES (Aug. 4, 2019), <https://www.nytimes.com/2019/08/04/us/politics/gun-control-laws-mass-shootings.html>.

¹⁵⁵ Caleb Keeter, a guitarist who had performed in Las Vegas at a music festival disrupted by a mass shooter in 2017, announced on Twitter that he had changed his mind on gun control, realizing that the weapons members of his band were packing were useless in defending against a mass shooter armed with semiautomatic weapons. Sara Boboltz, *Guitarist Caleb Keeter Says Seeing Vegas Shooting Changed His Mind on Gun Control*, HUFFPOST (Oct. 3, 2017, 3:26 PM), https://www.huffpost.com/entry/las-vegas-festival-performer-says-shooting-changed-his-mind-on-gun-control_n_59d273d1e4b06791bb12313d. “I cannot express how wrong I was,” he wrote, “We need gun control RIGHT. NOW.” *Id.* Richard Martinez, a criminal defense attorney whose son was killed in a mass shooting near the campus of the University of California, Santa Barbara, announced that he was devoting the rest of his life to combating gun violence, and occasionally gains an audience. *Father of Shooting Victim Pleads for Florida Gun Control*, TALLAHASSEE DEMOCRAT (July 3, 2014, 6:58 AM), <https://www.tallahassee.com/story/news/politics/2014/07/02/richard-martinez-father-shooting-victim-pleads-gun-control-florida/12123897/>; Kimberly Kindy, *Father of Victim in Santa Barbara Shootings to Politicians: I Don’t Care About Your Sympathy*, WASH. POST (May 27, 2014), https://www.washingtonpost.com/politics/father-of-victim-in-santa-barbara-shootings-to-politicians-i-dont-care-about-your-sympathy/2014/05/27/8a030d10-e5ad-11e3-a86b-362fd5443d19_story.html. But Martinez’s substantial Twitter following numbers just over 20,000 as of Feb. 12, 2020, a fraction of the number following Emma Gonzalez. *Compare Richard Martinez (@riromtz)*, TWITTER, https://twitter.com/riromtz?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor, with *Emma Gonzalez (@Emma4Change)*, TWITTER, https://twitter.com/Emma4Change?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor.

teachers.¹⁵⁶ Second, the well-established and polarized debate about gun policy makes it all too easy for audiences to code and sort new speakers. Adults who speak for their lost children can be portrayed as strategic political actors exploiting their personal tragedies. Thus, even the grieving parents of twenty six- to seven-year-olds killed at Sandy Hook Elementary School in 2012 were unable to command attention for very long. The tragic shooting briefly drew national attention, spurring the formation of new political organizations devoted to gun control measures.¹⁵⁷ But as these efforts started to grow, their partisans were attacked by political opponents seeking to discredit their gun control efforts. Some disputed whether or not a shooting had actually taken place,¹⁵⁸ while slightly less outrageous critics suggested that regardless of the tragedy, the parents merited no particular standing in the public debate, and had already enjoyed enough attention.¹⁵⁹ As then-Congressman Joe Walsh tweeted, “‘I’m sick & tired of the Sandy Hook parents. They’re partisan & political. They can be attacked just like anyone else.’ In another tweet, he said ‘Sandy Hook Parents: Your 15 minutes is up.’”¹⁶⁰

The articulate teens who organized after the Parkland shooting were mature enough to speak effectively for themselves, but not so sophisticated and experienced to be immediately sorted and dismissed in the larger debate. Savvy enough to understand that their standing was dependent upon their experience and could disappear quickly, they were candid about what they had experienced—hiding in a barricaded classroom, waiting to pick up a brother after school, mourning a friend who had been killed.¹⁶¹ At the same time, they cleverly avoided arcane details in the gun debate about constitutional constraints

¹⁵⁶ Jane Coaston, *You’ve Heard of David Hogg. But the Right Has Claimed Another Parkland Student as Its Own*, Vox (Apr. 18, 2018, 10:00 AM), <https://www.vox.com/2018/4/18/17207458/parkland-kyle-kashuv-ben-shapiro-david-hogg-guns-parkland-fox>.

¹⁵⁷ Danny Hayes, *How Media Lose Interest in Gun Control*, CNN, <https://www.cnn.com/2013/01/11/opinion/hayes-gun-control-attention-span/index.html> (last updated Jan. 11, 2013, 10:01 AM).

¹⁵⁸ Barbara Demick, *In an Age of ‘Alternative Facts,’ a Massacre of Schoolchildren Is Called a Hoax*, L.A. TIMES (Feb. 3, 2017, 12:00 PM), <https://www.latimes.com/nation/la-na-sandy-hook-conspiracy-20170203-story.html>; Reeves Wiedeman, *The Sandy Hook Hoax*, N.Y. MAG. (Sept. 5, 2016), <http://nymag.com/intelligencer/2016/09/the-sandy-hook-hoax.html>.

¹⁵⁹ E.g., Jeffrey Scott Shapiro, *Sandy Hook Mustn’t Claim the Second Amendment. Grieving Families Deserve Sympathy, But Not Deference*, WASH. TIMES (Apr. 18, 2013), <https://www.washingtontimes.com/news/2013/apr/18/sandy-hook-mustnt-claim-the-second-amendment/>.

¹⁶⁰ Matt Keeley, *Joe Walsh Says He’s ‘Said Racist Things on Twitter,’ But ‘Wouldn’t Call Myself a Racist’*, NEWSWEEK (Aug. 26, 2019, 8:21 PM), <https://www.newsweek.com/joe-walsh-says-hes-said-racist-things-twitter-wouldnt-call-myself-racist-1456232>.

¹⁶¹ Michelle Cottle, *How Parkland Students Changed the Gun Debate*, ATLANTIC (Feb. 28, 2018), <https://www.theatlantic.com/politics/archive/2018/02/parkland-students-power/554399/>.

or particular policies, focusing instead on the outsize political role played by the NRA.¹⁶²

Third, and probably most importantly, the Parkland survivors were deliberate in organizing their efforts, working collectively to develop and execute strategies, and to build organizations that would survive the burst of attention the shooting generated. Here, the nature of the Parkland setting mattered: It is a mostly liberal, well-resourced, and politically sophisticated community with a well-funded public school. The kids who organized were articulate and supported by their parents and their community. The origin story of the campaign involves one survivor, Cameron Kasky, deciding that they must act to stop other young people from living through what they'd just experienced.¹⁶³ He invited friends to his house, where they sat in his living room talking, texting, and tweeting.¹⁶⁴ Parents ordered food and encouraged them.¹⁶⁵ The initial core group included a large number of theater kids, who were more comfortable on camera,¹⁶⁶ and a select few adept organizers.¹⁶⁷ They developed a slogan, #NeverAgain, started a slew of targeted social media accounts and put together a set of goals and strategies.¹⁶⁸ Filling mainstream media and astutely using their own social media, a core group of students strategically deployed themselves as children who should be protected, whose government was failing

¹⁶² Alter, *supra* note 142.

¹⁶³ Emily Witt's coverage of the early days of the Parkland campaign in *The New Yorker* is particularly valuable. See generally Emily Witt, *Calling B.S. in Parkland, Florida*, NEW YORKER (Feb. 17, 2018), <https://www.newyorker.com/news/news-desk/three-days-in-parkland-florida>; Emily Witt, *How the Survivors of Parkland Began the Never Again Movement*, NEW YORKER (Feb. 19, 2018), <https://www.newyorker.com/news/news-desk/how-the-survivors-of-parkland-began-the-never-again-movement> [hereinafter Witt, *How the Survivors*]; Emily Witt, *Urgency and Frustration: The Never Again Movement Gathers Momentum*, NEW YORKER (Feb. 23, 2018), <https://www.newyorker.com/news/news-desk/urgency-and-frustration-the-never-again-movement-gathers-momentum>; Emily Witt, "We're Not Your Pawns": *Parkland's Never Again Movement Meets the Lawmakers*, NEW YORKER (Mar. 8, 2018), <https://www.newyorker.com/news/news-desk/were-not-your-pawns-parklands-never-again-movement-meets-the-lawmakers?verso=true>; Emily Witt, *The March For Our Lives Presents a Radical New Model for Youth Protest*, NEW YORKER (Mar. 25, 2018), <https://www.newyorker.com/news/dispatch/the-march-for-our-lives-presents-a-radical-new-model-for-youth-protest>; Emily Witt, *Launching a National Gun-Control Coalition, the Parkland Teens Meet Chicago's Young Activists*, NEW YORKER (June 26, 2018), <https://www.newyorker.com/news/dispatch/launching-a-national-gun-control-coalition-the-parkland-teens-meet-chicagos-young-activists?verso=true>.

¹⁶⁴ Alter, *supra* note 142.

¹⁶⁵ *Id.*

¹⁶⁶ Stephen Sacs, *Surprised that 'Never Again' Leaders Are Theatre Kids? I'm Not*, AM. THEATRE (Feb. 23, 2018), <https://www.americantheatre.org/2018/02/23/surprised-that-never-again-leaders-are-theatre-kids-im-not/>.

¹⁶⁷ Jaclyn Corin, *I Thought I Knew How My Life Would Play Out. Then Parkland Happened*, TEENVOGUE (Sept. 27, 2019), <https://www.teenvogue.com/story/jaclyn-corin-parkland-march-for-our-lives>.

¹⁶⁸ Witt, *How the Survivors*, *supra* note 163.

them.¹⁶⁹ Although they cooperated with well-established gun control groups, like Everytown for Gun Safety, Moms Demand Action, and the Giffords Law Center to Prevent Gun Violence, they maintained autonomy and control of their own image.¹⁷⁰

They staged demonstrations, chartered busses to lobby legislators in Tallahassee, and appeared in absolutely every available media outlet with surprising message discipline, and astonishing sophistication.¹⁷¹ “We’re children,” seventeen-year-old David Hogg explained in a television interview, “You guys are the adults.”¹⁷² Clearly self-conscious about the images and standing claims they projected, the Parkland kids were able to represent both innocence and urgency as they demanded action to protect other young people and, as they repeated, to ensure that other young people should not experience what they had just survived. But they also consistently displayed verbal and political acuity, as well as wit.¹⁷³ They were able to bring a sophistication and staying power to their media moments that was unexpected from victimized innocents.

In addition to a very clever rhetorical strategy, the Stoneman Douglas student activists also developed a set of transportable tactics designed for other young people in high schools across the United States. The Parkland kids’ strategy was expressly designed to sustain their efforts over an extended period of time.¹⁷⁴ They formed their own organization, March for Our Lives, which emphasized the innocence of children.¹⁷⁵ It also made a standing claim based on the prospect of harm: They were at risk, they claimed explicitly, as a result of unwise policies, and they were not alone.¹⁷⁶ The risks they faced were shared by

¹⁶⁹ *Id.*

¹⁷⁰ David S. Meyer, *One Year After the Parkland Shooting, Is the #NeverAgain Movement on Track to Succeed?*, WASH. POST (Feb. 14, 2019, 4:45 AM), <https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/14/one-year-after-the-parkland-shooting-is-the-neveragain-movement-on-track-to-succeed/>.

¹⁷¹ *Id.*

¹⁷² Julie Turkewitz & Niraj Chokshi, *Florida Shooting Survivor Wants Action: ‘We’re Children. You Guys Are the Adults’*, N.Y. TIMES (Feb. 15, 2018), <https://www.nytimes.com/2018/02/15/us/david-hogg-florida-shooting.html>.

¹⁷³ Cottle, *supra* note 161.

¹⁷⁴ Hannah Kapoor, Dara Rosen & Brianna Fisher, *Take Action: Parkland Students on Five Ways to Fight Gun Violence in 2019*, GUARDIAN (Jan. 1, 2019, 1:10 PM), <https://www.theguardian.com/us-news/2019/jan/01/parkland-students-five-ways-fight-gun-violence-2019>.

¹⁷⁵ For a compelling account of the organizing effort, see DAVE CULLEN, *PARKLAND: BIRTH OF A MOVEMENT* (2019). The organizers themselves produced a volume of their own stories. *See generally* FOUNDERS OF MARCH FOR OUR LIVES, *GLIMMER OF HOPE: HOW TRAGEDY SPARKED A MOVEMENT* (2018).

¹⁷⁶ Sabrina Siddiqui, *Parkland Students to Congress: Tighten Gun Laws or Risk ‘Killing America’s Future’*, GUARDIAN (Mar. 22, 2018, 1:57 PM), <https://www.theguardian.com/us-news/2018/mar/22/parkland-students-congress-gun-control>.

students across the United States. In effect, they built on a growing gun safety movement but proffered a fresh image for it. At their national rally, in March 2018, they took care that all of the featured speakers were teenagers; the only older people who got near the podium were musical performers.¹⁷⁷ They used the speakers' slots to frame the identity of their own movement. The first active Parkland kids were drawn mostly from a group of friends and were overwhelmingly white and middle-class.¹⁷⁸ The organizers were conscious enough to realize the narrowness of their platform and were strategic about extending it, and about diversifying their own appearance.¹⁷⁹ They extended the platform they had earned, giving prime speaking spots to Black and Latino youth who were scared not only of mass shooters but also scarred by gun violence from crime and the police.¹⁸⁰ Edna Chavez, from Los Angeles, whose then-high school-aged brother was killed outside their home more than a decade earlier, and whose father was an undocumented immigrant, spoke powerfully about what she described as "day-to-day gun violence."¹⁸¹ Zion Kelly, from Washington, D.C., spoke about the death of his identical twin brother, who was walking home from a college prep course months earlier when he was killed, and emphasized that gun violence was an ongoing threat in his life.¹⁸² They were able to inspire groups of teens across the nation to stage their own events, including school walkouts, and to prevent the debate from getting lost in the details of the policy.¹⁸³

Their strategy produced difficult challenges for their political opponents, who sought to discredit them.¹⁸⁴ Their standing and claim to an audience were

¹⁷⁷ This was a notable switch from a more conventional large demonstration, where the musical performers are typically the youngest people on the podium. See, e.g., March for Our Lives, *Speakers Announced for the 'March for Our Lives' Rally in Washington, D.C. on Saturday, March 24th*, PR NEWSWIRE (Mar. 24, 2018, 4:00 PM), <https://www.prnewswire.com/news-releases/speakers-announced-for-the-march-for-our-lives-rally-in-washington-dc-on-saturday-march-24th-300619020.html>.

¹⁷⁸ Saba Hamedy, *The Parkland Kids Keep Checking Their Privilege*, CNN (Mar. 25, 2018, 10:39 AM), <https://www.cnn.com/2018/03/24/politics/march-for-our-lives-students-checking-privilege-trnd/index.html>.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Luzelena Escamilla, *Our Daily Reality of Gun Violence and Trauma: Q&A with Teen Activist Edna Chavez*, MALALA ASSEMBLY (Oct. 17, 2018), <https://assembly.malala.org/stories/edna-chavez-gun-violence-and-trauma>; German Lopez, *March for Our Lives' Edna Chavez Speaks for the Kind of Gun Violence that Doesn't Make Front Pages*, VOX (Mar. 24, 2019, 2:33 PM), <https://www.vox.com/policy-and-politics/2018/3/24/17159698/march-for-our-lives-edna-chavez-gun-violence>.

¹⁸² Julie Depenbrock, *Zion Kelly's Twin Died from Gun Violence. Now, the D.C. Teen Is on a Mission*, WAMU (June 13, 2018), <https://wamu.org/story/18/06/13/ones-getting-shot-zion-kelly-impact-gun-violence-d-c-s-youth/>.

¹⁸³ Katie Peters, *Seven Ways America Has Changed Since the March for Our Lives*, GIFFORDS: BLOG (Mar. 20, 2019), <https://giffords.org/blog/2019/03/7-ways-america-changed-since-the-march-for-our-lives/>.

¹⁸⁴ Abby Ohlheiser, *How the Parkland Teens Became Villains on the Right-Wing Internet*, WASH. POST

based on their experience surviving a shooting. Because they were emphasizing their experience rather than their expertise, they were able mostly to avoid being discredited for naiveté. Yet they made expressly political claims—focusing specifically on the outsize political power of the NRA—rather than demanding unspecified remedies. When opponents disputed their expertise, they countered with their experience.¹⁸⁵ When opponents focused on their politics, they recalled the details of suffering through a mass shooting in a public school.¹⁸⁶

It was difficult for gun rights enthusiasts to dislodge the Parkland kids' public standing, although opponents challenged their goodwill, good judgment, and good character.¹⁸⁷ The young activists consistently responded by leading with their experience. Because the injuries they claimed and the horror they witnessed provided the initial basis for their presence in the public arena, it was the first thing challenged. Some conspiracy theorists disputed the details of the shooting and the presence of some of the activists at the school that day, suggesting instead that they were “crisis actors.”¹⁸⁸

The effort was reminiscent of conspiracy theorists who claimed that the Sandy Hook parents were political plants and that the elementary school shooting had not really taken place.¹⁸⁹ These conspiracy theories are ill-informed, tendentious, and hateful claims made to discredit their public

(Mar. 27, 2018, 7:55 AM), <https://www.washingtonpost.com/news/the-intersect/wp/2018/03/26/how-the-parkland-teens-became-villains-on-the-right-wing-internet/>.

¹⁸⁵ Jen Kirby, *Parkland Teens Are Calling Out Critics on Social Media*, VOX (Feb. 26, 2018, 8:15 PM), <https://www.vox.com/2018/2/26/17054408/parkland-shooting-activist-teens-gun-control>.

¹⁸⁶ *Id.*

¹⁸⁷ See, e.g., Alter, *supra* note 142 (“As teenagers who survived a school shooting, they’re politically hard to hit: if the NRA or the GOP fight back, they are attacking young victims of a tragedy.”); see also Jennifer Mascia, *Bullet Points: Reflections from the Front Lines of the Gun-Violence Epidemic*, COLUM. MAG., <https://magazine.columbia.edu/article/bullet-points-reflections-front-lines-gun-violence-epidemic> (last visited Feb. 21, 2020). As a reporter for TRACE who had covered the gun issue for years, Mascia describes the Parkland kids bringing something different to the debate by virtue of an unusual combination of age, experience, and strategy. *Id.* “Before February 2018, the idea that teenage survivors of a school shooting would be able to corral hundreds of thousands of their peers into the street to advocate for gun reform—a political third rail if there ever was one—and manage to dominate a news agenda led by a head-spinning number of domestic and international scandals would have seemed outlandish. But the Parkland teens weren’t easy to dismiss.” *Id.*

¹⁸⁸ See Kirby, *supra* note 185; Matthew Yglesias, *The Parkland Conspiracy Theories, Explained*, VOX (Feb. 22, 2018, 8:00 AM), <https://www.vox.com/policy-and-politics/2018/2/22/17036018/parkland-conspiracy-theories>.

¹⁸⁹ See generally Vanessa Romo, *Sandy Hook Victim’s Father Wins Defamation Suit; Alex Jones Sanctioned*, NPR (June 18, 2019, 10:04 PM), <https://www.npr.org/2019/06/18/733880866/sandy-hook-victims-father-wins-defamation-suit-alex-jones-sanctioned> (describing a lawsuit condemning conspiracy theorists who published a book arguing that the Sandy Hook shooting never happened).

standing.¹⁹⁰ Disqualifying the event or the actor is a way to keep them—and their claims—out of the public debate.

Forced to accept the reality of the shooting and its attendant harm, questioning the independence and the wisdom of the Parkland kids was all that remained. The young organizers' efforts generated a great deal of attention, and gun rights supporters could not realistically ignore the opportunities to counter their claims in high-visibility venues.¹⁹¹ Shortly after the shooting, CNN broadcasted a town hall meeting to discuss the shooting and gun violence more generally.¹⁹² Although the Parkland kids were not the prime speakers, a few got a chance to ask questions.¹⁹³ Dana Loesch, then a spokesperson for the NRA, tried to thread the needle of sympathizing with their pain, praising their civic engagement and standing, while simultaneously discrediting their political agenda.¹⁹⁴ The transcript of the meeting reflects her strategy of honoring the young activists for their commitments while explaining that she had better ideas about how to keep them safe, and that her own standing in the debate was based on representing a much larger group of people:

DANA LOESCH: Well first off Emma [Gonzalez], I want to applaud you for standing up and speaking out. And for anyone who has ever criticized you or any of these students up here, including people who have been on my side of this issue, I don't think that anyone should deny you your voice or deny you your position because you are young.

GONZALEZ: I want to thank you for that.

LOESCH: I was a very politically active teenager and I'm on this stage as a result of that. Think of how far you all could go, as a result of voicing your beliefs.¹⁹⁵

Later on, in the town hall, Loesch began answering a teacher's question by sympathizing with the students:

LOESCH: And—and I want to say, as well, I can't—I—as a parent, I see my kids in these students. I see my kids in the students that are here today. What you went through is horrid. I'm not going to pretend to

¹⁹⁰ *Id.*

¹⁹¹ See Deirdre Walsh, *House Speaker Paul Ryan Meets with Parkland Shooting Survivors*, CNN (Feb. 27, 2018, 4:54 PM), <https://www.cnn.com/2018/02/27/politics/ryan-meets-with-parkland-students/index.html> (describing meetings between the Parkland kids and several Congressmen).

¹⁹² *Transcript: Stoneman Students' Questions to Lawmakers and the NRA at the CNN Town Hall*, CNN (Feb. 22, 2018, 10:02 AM), <https://www.cnn.com/2018/02/22/politics/cnn-town-hall-full-video-transcript/index.html>.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

understand what you went through. I—there are no words for it. It’s monstrous. And no—nobody should have to endure that.¹⁹⁶

When being questioned, Loesch made it clear that she was answering questions for the NRA, not herself:

LOESCH: What the NRA’s position has been. The NRA came . . .

UNIDENTIFIED FEMALE: What’s yours?

LOESCH: I’m talking for them. These are the 5 million members that I’m here representing.¹⁹⁷

Loesch went on to explain that she had learned the importance of protecting herself when she was younger, and now recognized that she had to protect her own children as well.¹⁹⁸ Accepting the presence of the young activists in the political arena, she countered that the large number of people in the NRA gave her standing to dispute their political prescriptions.¹⁹⁹ In effect, she also portrayed opponents of gun control as actors with standing whose safety and possession of weapons was in more or less immediate jeopardy.²⁰⁰ She patronized the young activists, suggesting that when they were a little older, they would be more likely to understand wiser policies.²⁰¹

Later, as the young people addressed other issues, including gay and lesbian rights, they were subjected to more, often tendentious and dishonest

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Facing the young activists and a largely hostile audience, Loesch was relatively constrained in her criticisms. She responded to a question proposed by Emma Gonzalez, stating, “Well first off Emma, I want to applaud you for standing up and speaking out. And for anyone who has ever criticized you or any of these students up here, including people who have been on my side of this issue, I don’t think that anyone should deny you your voice or deny you your position because you are young.” *Transcript: Stoneman Students’ Questions to Lawmakers and the NRA at the CNN Town Hall*, CNN (Feb. 22, 2018, 10:02 AM), <https://www.cnn.com/2018/02/22/politics/cnn-town-hall-full-video-transcript/index.html>. She then preceded to tell them they were misinformed. It was easy to read Loesch’s approach as condescending to the young activists. *Id.*; see, e.g., Katherine Krueger, *Parkland Shooting Survivors Handed the NRA’s Dana Loesch Her Ass on CNN*, SPLINTER NEWS (Feb. 22, 2018, 8:35 AM), <https://splinternews.com/parkland-shooting-survivors-handed-the-nras-dana-loesch-1823223073>. In print—and particularly online—other gun rights supporters were less subtle. See Jason Wilson, *How Rightwing Media Is Already Attacking Florida Teens Speaking Out*, GUARDIAN (Feb. 20, 2018, 3:58 PM), <https://www.theguardian.com/us-news/2018/feb/20/how-rightwing-media-is-already-attacking-florida-teens-speaking-out> (giving an inventory of the attacks on the Parkland kids). In the *National Review*, Ben Shapiro wrote that the young activists were not wise nor authentic: “Children and teenagers are not fully rational actors. They’re not capable of exercising supreme responsibilities. And we shouldn’t be treating innocence as a political asset used to push the agenda of more sophisticated players.” Ben Shapiro, *Students’ Anti-Gun Views*, NAT’L REV. (Feb. 20, 2018, 6:30 AM), <https://www.nationalreview.com/2018/02/students-anti-gun-views/>.

criticisms.²⁰² A forged video of Emma Gonzalez ripping up the Constitution circulated online, along with personal attacks that emphasized that she was openly bisexual, and had headed her high school's Gay/Straight Alliance before the shooting.²⁰³

The Parkland kids offered a master class in framing their own standing. Their effort started with telling their individual stories and sharing their loss of friends and their fear.²⁰⁴ It also involved demonstrating their injuries. At the first national March for Our Lives demonstration on March 24, 2018, Sam Fuentes brought her injuries to the podium.²⁰⁵ Nervous, but smiling, Fuentes had been shot in school weeks earlier, and still carried pieces of shrapnel behind her cheek and eye.²⁰⁶ Limping to the microphone,²⁰⁷ she announced: “the truth is, I am not here for me. I am here for you. So you don’t ever have to fear getting shot in your own classroom.”²⁰⁸ She then read a poem describing the day before throwing up on stage.²⁰⁹ Fuentes recovered, demanded policy change, and then led the crowd of hundreds of thousands in a chorus of “Happy Birthday” for a friend who did not survive the shooting.²¹⁰

The Parkland kids were also successful at staying unified and not squabbling about style, preferred policies, or primacy. As a result, the core group of

²⁰² Ohlheiser, *supra* note 184.

²⁰³ Molly Olmstead, *The Public Attacks on the Parkland Teens Are Getting Nastier*, SLATE (Mar. 29, 2018, 3:31 PM), <https://slate.com/news-and-politics/2018/03/the-insults-pro-gun-people-use-against-parkland-students-david-hogg-and-emma-gonzalez.html>; Rebecca Savransky, *Parkland Survivor Emma González: Gay Activism, Anti-Gun Violence Movement ‘Definitely Linked For Me’*, HILL (Mar. 25, 2018, 7:55 AM), <https://thehill.com/blogs/blog-briefing-room/news/380151-emma-gonzalez-gay-activism-and-efforts-to-lead-anti-gun>.

²⁰⁴ See Eric Levenson et al., *Parkland Students: This Is Why We’re Going to Florida’s Capital*, CNN (Feb. 20, 2018, 11:33 PM), <https://www.cnn.com/2018/02/20/us/fl-shooting-students-lawmakers-bus/index.html> (chronicling why student’s are going to Tallahassee to speak to lawmakers).

²⁰⁵ James Hale, *Who Is Sam Fuentes? The Parkland Survivor Got Sick on Stage at the March for Our Lives & Took It in Stride*, BUSTLE (Mar. 24, 2018), <https://www.bustle.com/p/who-is-sam-fuentes-the-parkland-survivor-got-sick-on-stage-at-the-march-for-our-lives-took-it-in-stride-8596554>; Jen Kirby, *The March for Our Lives, Explained*, VOX (Mar. 24, 2018, 9:36 PM), <https://www.vox.com/2018/3/19/17139654/march-for-our-lives-dc-march-24-protest>; *Parkland Survivor Sam Fuentes Vomits During Gun Protest Speech*, YOUTUBE (Mar. 24, 2018), <https://www.youtube.com/watch?v=dw6hbACrP38>.

²⁰⁶ Hale, *supra* note 205; *Parkland Survivor Sam Fuentes*, *supra* note 205.

²⁰⁷ Sam Fuentes was shot in both legs and in the face in the Parkland shooting; she now walks with a cane. She is seen limping to the podium at the March for Our Lives rally in *Parkland, FL Shooting Survivor Sam Fuentes Performs Spoken Word Piece at March For Our Lives Rally*, YOUTUBE (Mar. 24, 2018), <https://www.youtube.com/watch?v=nKBoz-Vbmr0>.

²⁰⁸ *Parkland Survivor Sam Fuentes*, *supra* note 205.

²⁰⁹ *Id.*

²¹⁰ Courtney Larocca, *Parkland Survivor Sam Fuentes, 18, Threw Up During Passionate Speech & Heroically Kept Going*, HOLLYWOOD LIFE (Mar. 24, 2018, 2:41 PM), <https://hollywoodlife.com/2018/03/24/sam-fuentes-threw-up-march-for-our-lives-speech-school-video/>; *Parkland Survivor Sam Fuentes*, *supra* note 205.

organizers were able to represent the survivors of the shooting publicly. This was no small achievement, as there was hardly a consensus among the students about appropriate ways forward.²¹¹ Indeed, one outspoken conservative student, Kyle Kashuv, found a public identity in conservative media disputing the prescriptions of the dominant group, but his own reach didn't extend beyond conservative media.²¹²

Standing and audience come with a tale of witness. Even members of Congress, who can exercise standing in the public debate by vaunt of their positions, deploy stories of personal tragedy to enhance their visibility and credibility to audiences outside—and maybe even inside—the floor of Congress. As the gun debate continued, officials offered stories of personal experience as victims—or representatives of victims—of gun violence to buttress their claims²¹³ to the audience.²¹⁴ Democratic Representatives Lucy McBath (Georgia) and Debbie Mucarsel-Powell (Florida) recounted the loss of close relatives to gun violence. Others recounted the experience of mass shootings in their congressional districts.²¹⁵

The organized group of theater kids and friends at Stoneman-Douglas started with the raw material of their own experience, which was indeed horrific, and emphasized their youth.²¹⁶ They put those who attacked their standing or their wisdom in an awkward situation, where critics seemed to be inappropriately and

²¹¹ See Benjamin Herold, *His Sister Was Killed Inside Parkland's Stoneman Douglas High. He's Still a Student There*, ED. WEEK (Feb. 12, 2019), <https://www.edweek.org/ew/articles/2019/02/12/his-sister-was-killed-inside-parklands-stoneman.html> (describing a student who disagreed with the policies that many of his classmates were promoting nationally); Caleb Parke, *Parkland Survivor Kyle Kashuv on Meeting Trump, His App to Prevent Another School Shooting*, FOX NEWS (Mar. 9, 2018), <https://www.foxnews.com/us/parkland-survivor-kyle-kashuv-on-meeting-trump-his-app-to-prevent-another-school-shooting> (describing a student who was disappointed in a fellow classmate's conduct at another media appearance).

²¹² Parke, *supra* note 212. Kashuv himself became deeply immersed in conservative politics, which, in conjunction with racist and misogynist rhetoric, resulted in his larger political marginalization—and the rescission of an offer of admission from Harvard University. See also Andrew Marantz, *Junior Offender*, NEW YORKER, June 3, 2019, at 16 (describing how a conservative organization, Turning Point USA, called Kashuv's inflammatory remarks “unacceptable” and “un-American”); Patricia Mazzei, *Harvard Drops Parkland Voice over His Slurs*, N.Y. TIMES, June 18, 2019, at A1.

²¹³ Addy Baird & Josh Israel, *Here Is How the Gun Violence Debate Has Changed in the Year Since Parkland*, THINKPROGRESS (Feb. 14, 2019, 12:35 PM), <https://thinkprogress.org/parkland-anniversary-gun-violence-debate-4b28daef6173/>.

²¹⁴ *Id.*

²¹⁵ Cristina Marcos, *Gun Epidemic Is Personal for Lawmakers Touched by Violence*, HILL (Sept. 14, 2019, 5:10 PM), <https://thehill.com/homenews/house/461296-gun-epidemic-is-personal-for-lawmakers-touched-by-violence>.

²¹⁶ Stephen Sachs, *Are You Surprised That the Young Leaders of the Never Again Movement Are Theatre Kids? I'm Not*, INTIMATE EXCELLENT (Feb. 23, 2018), <https://intimateexcellent.com/2018/02/23/are-you-surprised-that-the-young-leaders-of-the-never-again-movement-are-theatre-kids-im-not/>.

cruelly bullying children.²¹⁷ They became celebrities who understood the potential of their perhaps momentary fame. They worked to share their spotlight and direct their attention to mobilizing other young people.²¹⁸ In the summer and spring, they organized a national tour, Vote for Our Lives, expressly dedicated to getting young people to the polls in November.²¹⁹ Making more than seventy appearances across the country, members spoke, distributed t-shirts and stickers, and then patiently posed for selfies with eager audiences.²²⁰

Their particular experience of terror and loss was distinct, however, and school shootings are, fortunately, still very rare.²²¹ A sustained movement could not depend upon survivors alone. The young activists worked to share their status and their standing with other young people who were at risk.²²² Other young activists talked about the trauma of practicing active shooter drills in

²¹⁷ See David Barnett, *Alt-Right Internet Trolls Attack Parkland Survivors*, INDEPENDENT (Mar. 30, 2018, 5:00 PM), https://www.independent.co.uk/news/long_reads/altright-internet-trolls-attack-parkland-survivors-a8276276.html (condemning those who ridicule the Parkland survivors). Fox News host Laura Ingraham dismissively reported the results of Parkland activist David Hogg's initial college applications, ridiculing what she described as Hogg's inadequate grades and test scores. See Daniel Victor, *Sponsors Flee Host at Fox After Student Is Mocked*, N.Y. TIMES, Mar. 30, 2018, at B2. Hogg called foul, and asked advertisers to desert the host—and many did. *Id.* Ultimately, Hogg and Jacklyn Corin, another Parkland activist, attended Harvard University. Emma Ockerman, *Parkland Survivor Kyle Kashuv Was Going to Harvard. Then His Old Messages with Racial Slurs Surfaced.*, VICE (June 17, 2019, 1:38 PM), https://www.vice.com/en_us/article/597q85/parkland-survivor-kyle-kashuv-was-going-to-harvard-then-his-old-messages-with-racial-slurs-surfaced.

²¹⁸ See Hamedy, *supra* note 178 (describing how the Parkland kids invited other children affected by gun violence to join them onstage at an event).

²¹⁹ Brakkton Booker, *Parkland Survivors Launch Tour to Register Young Voters and Get Them Out in November*, NPR (June 16, 2018, 8:10 AM), <https://www.npr.org/2018/06/16/620486174/parkland-survivors-launch-tour-to-register-young-voters-and-get-them-out-in-nove>; *Tour Dates*, MARCH FOR OUR LIVES, <https://marchforourlives.com/tour/> (last visited Jan. 11, 2020).

²²⁰ See *Tour Dates*, *supra* note 219 (listing over seventy tour dates throughout the United States). One of the authors attended a town hall rally in Irvine, on July 20, 2019, and sometimes sports a t-shirt received there. The shirt displays a QR code that links to a voter registration site. The rally received some local coverage. See Tribune Content Agency, *In Southern California Visit, Parkland Survivors Push for Gun Control, Voter Registration*, VC STAR, <https://www.vcstar.com/story/news/2018/07/21/visit-parkland-students-push-gun-control-voter-registration/815339002/> (last updated July 22, 2018, 12:19 AM).

²²¹ Martin Kaste, *Despite Heightened Fear of School Shootings, It's Not a Growing Epidemic*, NPR (Mar. 15, 2018, 7:39 AM), <https://www.npr.org/2018/03/15/593831564/the-disconnect-between-perceived-danger-in-u-s-schools-and-reality> (noting that there is an average of about one multi-victim school shooting per year and the number of deaths from multi-victim shootings have actually gone down from the 1990s).

²²² Hamedy, *supra* note 178.

school²²³ or having to carry transparent²²⁴ or bulletproof backpacks. In essence, the organized Parkland survivors made a specific claim of harm that was sufficiently compelling and generalizable as fear to win a broad audience and mobilize other young activists. Their appeal was based first on their ability to rouse the emotions—*pathos* in Aristotle’s terms²²⁵—of their audiences, but this appeal—and their experiences—are only a step toward expertise and wise policies. The survivors and victims can testify to their pain and loss, but they are not necessarily well-positioned to make policy.

VII. STANDING FOR INSTITUTIONAL ACCESS

Advocates often try to use the standing they have achieved in one setting and extend it to others. Celebrities, activists, and businesspeople can use their visibility and resources to run for office and gain formal institutional standing.²²⁶ Ostensibly, institutional standing is less contingent and can provide better access to the levers of policymaking.²²⁷ Thus far, this seems to be Lucy McBath’s story. McBath became a gun safety activist after her seventeen-year-old son Jordan Davis was shot and killed while sitting in a car in a gas station parking lot in Jacksonville, Florida.²²⁸ The shooter had become enraged after Jordan and his

²²³ Scott Travis, *Fewer Active Shooter Drills Urged*, S. FL. SUNSENTINEL, Oct. 16, 2019, at 1a. Dramatic school shootings are horrifying, but still very rare, and children are still safer in schools than almost anywhere else. Martin Kaste, *Despite Heightened Fear of School Shootings, It’s Not a Growing Epidemic*, NPR (Mar. 15, 2018, 7:39 AM), <https://www.npr.org/2018/03/15/593831564/the-disconnect-between-perceived-danger-in-u-s-schools-and-reality>. The drills themselves are damaging and can create their own traumas. See Leila Nadya Sadat & Madaline M. George, *Gun Violence and Human Rights*, 60 WASH. U. J.L. & POL’Y 1, 16 (2019) (describing one particular drill in which police dress up as active shooters by wearing masks and shoot blanks to simulate gunshots); Elizabeth Williamson, *Fear and Anxiety from Repeatedly Preparing for a Nightmare*, N.Y. TIMES, Sept. 5, 2019, at A20 (“Psychologists and many educators say frequent, realistic drills contribute to anxiety and depression in children . . .”); see also Erika Christakis, *Active-Shooter Drills Are Tragically Misguided*, ATLANTIC (Mar. 13, 2019, 11:12 AM), <https://www.theatlantic.com/magazine/archive/2019/03/active-shooter-drills-erika-christakis/580426/>.

²²⁴ Sam Reed, *How Did Transparent Bags Become the Solution to Gun Violence?*, HOLLYWOOD REP. (Mar. 22, 2018, 2:34 PM), <https://www.hollywoodreporter.com/news/how-did-transparent-bags-become-solution-gun-violence-1096620>; Robby Soave, *Mandatory Transparent Backpacks Violate Students’ Privacy Rights*, REASON (Apr. 2, 2018, 3:20 PM), <https://reason.com/2018/04/02/stoneman-douglas-transparent-backpacks/printer/>.

²²⁵ Michael Frost, *Ethos, Pathos & Legal Audience*, 99 DICK. L. REV. 85, 86 (1994).

²²⁶ See David S. Meyer & Joshua Gamson, *The Challenge of Cultural Elites: Celebrities and Social Movements*, 65 SOC. INQUIRY 181, 185–90 (1995).

²²⁷ Cynthia Nixon, known for acting more than politics, explains her unsuccessful effort at running for the Democratic nomination for governor in New York, as an effort to raise issues she saw as important and, if she won, to get things done. Rebecca Nelson, *Cynthia Nixon Knew Her Chances of Becoming New York Governor Were Slim. One Year Later, She Has No Regrets About Running*, TIME (Mar. 19, 2019), <https://time.com/5553528/cynthia-nixon-governor-new-york-campaign/>.

²²⁸ Rebecca Johnson, *We Will Never Stop*, VOGUE, Dec. 2019, at 78.

three friends, all unarmed Black male teenagers, refused to lower the volume of their “loud rap music.”²²⁹

McBath quit her job as a flight attendant and devoted herself to full-time advocacy.²³⁰ She began as a speaker and faith and outreach leader for Everytown for Gun Safety and Moms Demand Action, two of the nation’s largest gun-control organizations.²³¹ She appeared at all sorts of movement events and frequently on television.²³² In 2016, McBath was one of nine “Mothers of the Movement,” Hillary Clinton invited onto the stage of the Democratic National Convention in Philadelphia.²³³ All of the women had lost children to gun violence or at the hands of law enforcement.²³⁴ The speaking slot for the Mothers was candidate Clinton’s gesture to the Black Lives Matter movement against police violence.²³⁵ McBath’s standing in front of the convention was a result of her standing in the movement, which came out of her standing as a surviving victim of gun violence.

Following Donald Trump’s victory in the presidential race, McBath decided to run for office.²³⁶ After the Parkland shooting raised the public profile of the gun safety issue, she targeted a suburban Atlanta congressional district that had

²²⁹ Jasper Scherer, *Fla. ‘Loud Music’ Murder: Firing into Car Full of Teens Playing Rap Music Not ‘Self-Defense,’ Court Rules*, WASH. POST: MORNING MIX (Nov. 18, 2016, 3:59 AM), <https://www.washingtonpost.com/news/morning-mix/wp/2016/11/18/fla-loud-music-murder-firing-into-car-full-of-teens-playing-rap-music-not-self-defense-court-rules/>.

²³⁰ *About*, U.S. REPRESENTATIVE LUCY MCBATH: GA.’S 6TH CONG. DISTRICT, <https://mcbath.house.gov/about> (last visited Jan. 12, 2020); Lucy McBath, “A New Path Forward Has Opened”: *How My Son’s Murder Inspired Me to Run for Congress*, VANITY FAIR (Apr. 9, 2018), <https://www.vanityfair.com/news/2018/04/how-my-sons-murder-inspired-me-to-run-for-congress-lucy-mcbath>.

²³¹ *About*, *supra* note 230.

²³² *Lucy McBath, National Gun Safety Advocate, to Qualify for Congress*, LUCY MCBATH FOR CONGRESS (Mar. 8, 2018), <https://lucyforcongress.com/press/campaign-announcement/>.

²³³ Perry Bacon Jr., ‘*Mothers of the Movement*’ Back Clinton in Convention Speeches, NBC NEWS (July 26, 2016, 9:21 PM), <https://www.nbcnews.com/storyline/2016-conventions/mothers-movement-back-clinton-convention-speeches-n616991>; Michael Sebastian, *Who Are The ‘Mothers of The Movement’ Speaking at The Democratic National Convention?*, ELLE (July 26, 2016), <https://www.elle.com/culture/career-politics/news/a38111/who-are-mothers-of-the-movement-dnc/>.

²³⁴ *Supra* note 233.

²³⁵ Bacon, *supra* note 233. This gesture, which expressed a public focus on gun violence rather than police brutality, was itself controversial, and not all of the Mothers invited would participate because they saw the focus move away from police crimes. See Jaweed Kaleem, ‘*Black Lives Matter!*’ Chants Erupt as *Mothers of the Movement Take the Stage at the DNC*, L.A. TIMES (July 26, 2016, 4:40 PM), <https://www.latimes.com/politics/la-na-dnc-mothers-of-the-movement-20160726-snap-story.html>.

²³⁶ Sam Fullwood III, *There Are Black Women Not Named Oprah Running for Office Across the Country*, THINKPROGRESS (Jan. 10, 2018, 2:57 PM), <https://thinkprogress.org/black-women-candidates-who-arent-oprah-d59fdc94c85d/>.

been in Republican hands for decades.²³⁷ Mobilizing local volunteers²³⁸ and national gun control money and attention,²³⁹ McBath narrowly won a Democratic primary, and even more narrowly won the 2018 election, by 1% of the vote, unseating the incumbent Republican.²⁴⁰

McBath arrived in Congress with an agenda, clearly emphasizing that gun violence prevention would be a top priority.²⁴¹ At the same time, she refused to present herself as a single-issue candidate: her website lists many other issues, including veterans, jobs and the economy, immigration, and LGBTQ rights.²⁴² McBath's decision to present herself as a candidate with a comprehensive agenda was, of course, the only pragmatic choice. In order to hold that office, McBath would have to demonstrate service to a constituency with a range of concerns; in order to be effective as a legislator, she would have to work with more than 200 other Democrats in her caucus with concerns about the environment, health care, taxation, and many other issues. In her first term, Representative McBath served as the Vice Chair of the Gun Violence Task Prevention and co-sponsored a bill to require universal background checks for all firearm purchases nationwide, which passed in the House of Representatives.²⁴³ She has co-sponsored a number of other bills related to gun

²³⁷ Michelle Goldberg, *The Resistance Strikes Back*, N.Y. TIMES, Nov. 11, 2018, at SR1; *Lucy McBath*, *supra* note 233.

²³⁸ Daniel Marans & Sarah Ruiz-Grossman, *How Lucy McBath Won the Same Georgia District that Jon Ossoff Lost*, HUFFPOST (Nov. 11, 2018, 5:48 PM), https://www.huffpost.com/entry/lucy-mcbath-jon-ossoff-georgia-house-race-karen-handel_n_5be5ef60e4b0dbe871aad196?ncid=txtlnkusaolp00000603.

²³⁹ Tamar Hallerman, *Handel Condes Race to McBath*, ATLANTA J.-CONST., Nov. 9, 2018, at 1A.

²⁴⁰ *Georgia's 6th Congressional District Election (May 22, 2018 Democratic Primary)*, BALLOTPEDIA, [https://ballotpedia.org/Georgia%27s_6th_Congressional_District_election_\(May_22,_2018_Democratic_primary\)](https://ballotpedia.org/Georgia%27s_6th_Congressional_District_election_(May_22,_2018_Democratic_primary)) (last visited Jan. 14, 2020); *Lucy McBath*, BALLOTPEDIA, https://ballotpedia.org/Lucy_McBath (last visited Jan. 14, 2020); P.R. Lockhart, *6 Years Ago Her Son Was Murdered. Now Lucy McBath Is Heading to Congress*, VOX (Nov. 8, 2018, 8:15 AM), <https://www.vox.com/policy-and-politics/2018/11/8/18072360/lucy-mcbath-georgia-midterm-election-results-karen-handel>.

²⁴¹ Ryan Reed, *Georgia Dem Lucy McBath Salutes Late Son, Gun Violence Victims in Post-Election Tweet*, ROLLING STONE (Nov. 19, 2018, 2:25 PM), <https://www.rollingstone.com/culture/culture-news/georgia-dem-lucy-mcbath-salutes-late-son-gun-violence-victims-in-post-election-tweet-758239/>.

²⁴² The full list of issues includes healthcare, gun safety, jobs and the economy, education, immigration and DACA, women's rights, LGBTQ rights, money in politics, the environment, and infrastructure. *See, e.g., Issues*, LUCY MCBATH FOR CONGRESS, <https://lucyforcongress.com/issues/> (last visited Oct. 22, 2019).

²⁴³ McBath co-sponsored H.R. 8, the Bipartisan Background Checks Act of 2019, which passed in the House of Representatives by a vote of 240-190 on February 27, 2019. Bipartisan Background Checks Act of 2019, H.R. 8, 116th Cong. (2019); *see Issues: Gun Violence Prevention*, U.S. REPRESENTATIVE LUCY MCBATH: GA.'S SIXTH CONG. DISTRICT, <https://mcbath.house.gov/gun-safety> (last visited Oct. 13, 2019); Press Release, U.S. Representative Lucy McBath: Georgia's Sixth Congressional District, House of Representatives Passes H.R. 8, the Bipartisan Background Checks Act of 2019 (Feb. 27, 2019), <https://mcbath.house.gov/press-releases?ID=350F3255-536C-4391-ACEB-C09FEAD2BB9D>.

violence prevention,²⁴⁴ including H.R. 231,²⁴⁵ which would prohibit federal funding for firearms training of school teachers, and Jaime's Law, H.R.1705,²⁴⁶ which would require background checks for the sale of ammunition.²⁴⁷ The Bill was named for Jaime Guttenberg, one of the students killed in the Parkland shooting; Jaime's father was the man who tried to greet then-Judge Kavanaugh at his confirmation hearings.²⁴⁸ Most of these bills have yet to reach the floor of the House; those that have been passed have not been considered by the Republican-controlled Senate.²⁴⁹ Although Representative McBath has worked hard to follow through on her commitments, her efforts have been stalled by the constraints of representative democracy in a large and diverse country, and the institutional structures built into American government politics in particular.

At first glance, Lucy McBath's extension of her standing as a victim, to standing as an activist, to winning election as a committed legislator exemplifies the workings of representative democracy. And the story of activists running for elected office is hardly unusual in American politics.²⁵⁰ A century ago, suffragist and anti-war activist Jeannette Rankin turned her focus to a successful Congressional campaign in 1916 and again in 1940, coming to represent Montana as a Republican opposed to war.²⁵¹ She lost reelection campaigns twice

²⁴⁴ As of December 2019, McBath has co-sponsored 182 bills during her tenure in Congress. Thus far, McBath has sponsored the following bills and resolutions related to gun violence prevention: Keeping Guns Out of Classrooms H.R. Res. 231, 116th Cong. (2019) ; Supporting the Goals and Ideals of National Gun Violence Awareness Weekend and National Gun Violence Awareness Month, H.R. Res. 391, 116th Cong. (2019); Gun Violence Prevention Research Act of 2019, H.R.674, 116th Cong. (2019); Raise the Age Act, H.R. 717, 116th Cong. (2019); MICRO Act, H.R. 719 116th Cong. (2019); Undetectable Firearms Modernization Act, H.R. 869, 116th Cong. (2019); No Guns for Abusers Act, H.R. 1287, 116th Cong. (2019); Assault Weapons Ban of 2019, H.R. 1296, 116th Cong. (2019); Resources for Victims of Gun Violence Act of 2019, H.R. 2585, 116th Cong. (2019); Jaime's Law, H.R. 1705, 116th Cong. (2019); Disarm Hate Act, H.R. 2708, 116th Cong. (2019); Prevent Gun Trafficking Act, H.R. 4116, 116th Cong. (2019) ; School Shooting Safety and Preparedness Act, H.R. 4301, 116th Cong. (2019); *see also Representative Lucy McBath*, CONGRESS.GOV, <https://www.congress.gov/member/lucy-mcbath/M001208?q=%7B%22sponsorship%22%3A%22cosponsored%22%7D&page=100&page=2> (last visited Oct. 22, 2019).

²⁴⁵ H.R. Res. 231, 116th Cong. (2019).

²⁴⁶ H.R. 1705, 116th Cong. (2019).

²⁴⁷ Press Release, Debbie Wasserman Schultz, U.S. Representative (FL-23), U.S. House of Representatives, Wasserman Schultz & Blumenthal Introduce Jaime's Law (Mar. 13, 2019), <https://wassermanschultz.house.gov/news/documentsingle.aspx?DocumentID=1309>.

²⁴⁸ Kalhan Rosenblatt, *Parkland Victim's Father and Kavanaugh: The Handshake that Wasn't*, NBC NEWS (Sept. 4, 2018, 3:47 PM), <https://www.nbcnews.com/politics/supreme-court/parkland-victim-s-father-kavanaugh-handshake-wasn-t-n906331>.

²⁴⁹ *See supra* notes 244–46.

²⁵⁰ *See, e.g., Ben Monterroso, Activists Can Be Principled Politicians*, N.Y. TIMES (Feb. 6, 2016), <https://www.nytimes.com/roomfordebate/2016/02/08/can-activists-be-politicians/activists-can-be-principled-politicians>.

²⁵¹ *See Jeannette Rankin*, NAT'L WOMEN'S HALL FAME, <https://www.womenofthehall.org/inductee/jeannette-rankin/> (last visited Jan. 16, 2020).

after voting against the United States' entry into both World Wars and continued as a women's rights and anti-war activist until her death in 1973.²⁵² Michele Bachmann first ran for office in 2000, after decades of Christian conservative activism that began as a street counselor in the anti-abortion movement; she eventually served four terms in the House of Representatives and launched an unsuccessful campaign for the Republican Party's presidential nomination in 2012.²⁵³ John Lewis first reached national attention when, as the national chairman of the Student Non-Violent Coordinating Committee, he was the youngest leader to speak at the March on Washington.²⁵⁴ Lewis had already been beaten and arrested numerous times at nonviolent actions, and continued his efforts as an organizer, inside and outside of government,²⁵⁵ until successfully running for Congress as a Democrat in 1986, representing an Atlanta district next to that of Lucy McBeth, where he served until his death in July 2020.²⁵⁶ All these activists brought attention to themselves and their movements but had difficulty translating their commitments into legislation.

Institutional standing as an elected official brings a host of benefits for an activist and a movement, but it also brings constraints. Speaking passionately about issues and introducing legislation is a small part of what it takes to promote political change or to pass legislation. Effectiveness in Congress requires not only legislative savvy, but also persistence, and accommodation with rules of decorum and the demands of party leadership, as well as constant attention to the dynamics of electoral politics.

Indeed, we wonder if we've seen Lucy McBeth's story before. Carolyn McCarthy entered politics after her husband and son were shot by a crazed gunman on a Long Island Railroad commuter train in December 1993.²⁵⁷ McCarthy, then a nurse, turned her attention to politics, starting as a gun control activist and lobbyist, but launched an electoral campaign in 1996 when the Congressman in her district voted to repeal a ban on assault weapons.²⁵⁸ She

²⁵² *Id.*

²⁵³ See Ryan Lizza, *Leap of Faith: The Making of a Republican Front-Runner*, NEW YORKER (Aug. 8, 2011), <https://www.newyorker.com/magazine/2011/08/15/leap-of-faith-ryan-lizza>.

²⁵⁴ Allison Keyes, *50 Years After March on Washington, John Lewis Still Fights*, NPR (Aug. 27, 2013, 11:54 PM), <https://www.npr.org/2013/08/28/216259218/50-years-after-march-on-washington-john-lewis-still-fighting>.

²⁵⁵ *Id.*

²⁵⁶ See JOHN LEWIS & MICHAEL D'ORSO, *WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT* 121–22, 130, 437, 453 (1998).

²⁵⁷ See Associated Press, *20 Years Later: Long Island Rail Road Shooting Remembered as Day Killer Colin Ferguson Went off the Rails*, N.Y. DAILY NEWS (Dec. 6, 2013), nydailynews.com/new-york/lirr-bloodbath-remembered-20-years-article-1.1539603.

²⁵⁸ See *McCarthy, Carolyn*, HIST. ART & ARCHIVES: U.S. HOUSE REPRESENTATIVES, <https://history.house>.

won and served in the House of Representatives from 1997 to her retirement in 2015.²⁵⁹

Once in office, McCarthy immediately began pushing for measures to reduce gun violence. In 1997, she proposed an unsuccessful amendment that would have required childproof safety measures for guns.²⁶⁰ It was not until ten years later that McCarthy would make any progress on the issue, with the passing of the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, which granted federal funding for the maintenance of up to date mental health records in the national background check system.²⁶¹ During her eighteen years in office, McCarthy introduced a number of bills aimed to prevent gun violence that were never signed into law.²⁶² Perhaps the most popular of these was her unsuccessful proposal to ban assault weapons in 2013.²⁶³

gov/People/Detail/17705 (last visited Oct. 13, 2019).

²⁵⁹ *Id.*

²⁶⁰ See Kathy Koch, *School Violence: Are American Schools Safe?*, 8 CQ RESEARCHER 883, 887 (1998).

²⁶¹ See “NICS Improvement Amendments Act” Not Gun Control!, NRA-ILA (June 23, 2007), <https://www.nra.org/articles/20070623/nics-improvement-amendments-act-not-g>.

²⁶² Stop Online Ammunition Sales Act of 2013, H.R. 142, 113th Cong. (2013); Fix Gun Checks Act of 2013, H.R. 137, 113th Cong. (2013); Gun Show Loophole Closing Act of 2013, H.R. 141, 113th Cong. (2013); Large Capacity Ammunition Feeding Device Act, H.R. 138, 113th Cong. (2013); Stop Online Ammunition Sales Act of 2012, H.R. 6241, 112th Cong. (2012); Fix Gun Checks Act of 2011, H.R. 1781, 112th Cong. (2011); Gun Show Loophole Closing Act of 2011, H.R. 591, 112th Cong. (2011); Large Capacity Ammunition Feeding Device Act, H.R. 308, 112th Cong. (2011); Firearm Owners Responsibility Act, H.R. 5736, 111th Cong. (2010); Gun Trafficking Prevention Act of 2009, H.R. 4298, 111th Cong. (2009); No Fly, No Buy Act of 2009, H.R. 2401, 111th Cong. (2009); H.R. 6676, 110th Cong. (2008); Virginia Tech Victims Campus Emergency Response Policy and Notification Act, H.R. 5735, 110th Cong. (2008); Anti-Gun Trafficking Penalties Enhancement Act of 2007, H.R. 1895, 110th Cong. (2007); Anti-Large Capacity Ammunition Feeding Device Act of 2007, H.R. 1859, 110th Cong. (2007); No Fly, No Buy Act of 2007, H.R. 1167, 110th Cong. (2007); Foreign Felon Gun Prohibition Act of 2007, H.R. 1168, 110th Cong. (2007); Assault Weapons Ban and Law Enforcement Protection Act of 2007, H.R. 1022, 110th Cong. (2007); NICS Improvement Act of 2007, H.R. 297, 110th Cong. (2007); Anti-Large Capacity Ammunition Feeding Device Act of 2005, H.R. 3348, 109th Cong. (2005); Foreign Felon Gun Prohibition Act, H.R. 1931, 109th Cong. (2005); NICS Improvement Act of 2005, H.R. 1415, 109th Cong. (2005); Assault Weapons Ban and Law Enforcement Protection Act of 2005, H.R. 1312, 109th Cong. (2005); H.R. 1195, 109th Cong. (2005); NICS Improvement Act of 2003, H.R. 3237, 108th Cong. (2003); H.R. Con. Res. 204, 108th Cong. (2003); Assault Weapons Ban and Law Enforcement Protection Act of 2003, H.R. 2038, 108th Cong. (2003); Gun Sale Anti-Fraud and Privacy Protection Act, H.R. 2778, 107th Cong. (2001); H.R. Con. Res. 129, 107th Cong. (2001); Supporting the Million Mom March, H.R. Res. 498, 106th Cong. (2000); Act for the Effective National Firearms Objectives for Responsible Common-sense Enforcement of 2000, H.R. 4066, 106th Cong. (2000); Children’s Gun Violence Prevention Act of 1999, H.R. 1342, 106th Cong. (1999); Children’s Gun Violence Prevention Act of 1998, H.R. 4073, 105th Cong. (1998).

²⁶³ McCarthy sponsored Assault Weapons Ban of 2013, H.R. 437, 113th Cong. (2013); see Colin Campbell, *Carolyn McCarthy Makes Impassioned Plea for New Assault Weapons Ban*, OBSERVER (Jan. 24, 2013, 12:02 PM), observer.com/2013/01/carolyn-mccarthy-makes-impassioned-plea-for-gun-control-it-has-to-stop/.

Despite McCarthy's long tenure in Congress and the popular attention surrounding her story,²⁶⁴ she acknowledged that her progress on the prevention of gun violence was extremely limited.²⁶⁵ McCarthy saw her job in government as a mission, and her plea that Congress would pass gun control measures and "let [her] go home" gained mainstream media attention.²⁶⁶ Ultimately, she was unable to achieve success on the issue on which she ran: a ban on assault weapons.²⁶⁷ Instead, she spent most of her career working on other issues, including education and finance.²⁶⁸ In a 2014 interview upon the announcement of her retirement, McCarthy admitted frustration with the slow pace of congressional and bureaucratic politics.²⁶⁹ Her story underscores the difficulties inherent in the institutional path on which Lucy McBath has embarked. While the standing derived from her loss and her activism does not disappear, turning it into meaningful action is dependent upon becoming something other than a witness or victim. Of course, it is not only victims who get to testify.

VIII. CELEBRITIES STANDING FOR A CAUSE

Experience is not a necessary qualification for entering the public debate. Celebrities enjoy immediate and routine access to public attention as a result of their public renown. Sometimes, that public renown and access to media come from some kind of identifiable achievement, often in the arts or sports.²⁷⁰ Sometimes, fame seems to exist independently of any discernible achievement, and, in Daniel Boorstin's elegant formulation, celebrity identifies people who are famous for being famous.²⁷¹ Their notoriety enables them to draw attention to their views on matters of public concern—or virtually anything else.²⁷²

²⁶⁴ *The Long Island Incident*, produced by Barbara Streisand, tells the story of Carolyn McCarthy. See Will Joyner, *Television Review; After Massacre, Fact Meets Memory*, N.Y. TIMES (May 2, 1998), <https://www.nytimes.com/1998/05/02/arts/television-review-after-massacre-fact-meets-memory.html>.

²⁶⁵ Rick Hampson, 'Gun Lady' Carolyn McCarthy Finally Going Home, USA TODAY (Jan. 2, 2015, 1:38 PM), <https://www.usatoday.com/story/news/nation/2015/01/02/carolyn-mccarthy-retiring/20599293/>.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ McCarthy, Carolyn, *supra* note 259.

²⁶⁹ Ed O'Keefe, Carolyn McCarthy, *Public Face of the Gun Control Movement, Is Leaving Congress*, WASH. POST (Dec. 5, 2014), https://www.washingtonpost.com/politics/carolyn-mccarthy-public-face-of-the-gun-control-movement-is-leaving-congress/2014/12/05/b15eb01c-74cd-11e4-bd1b-03009bd3e984_story.html.

²⁷⁰ Meyer & Gamson, *supra* note 226, at 184.

²⁷¹ See generally DANIEL J. BOORSTIN, *THE IMAGE: A GUIDE TO PSEUDO-EVENTS IN AMERICA* (1978). More recently, one view suggests celebrity can be defined as "a person who has a high public profile, usually promoted by appearances in the mass media and they are consequently readily recognized by others . . . characterized by exceptional or extraordinary qualities in terms of their abilities, attractiveness, personalities, and lifestyles." BARRIE GUNTER, *CELEBRITY CAPITAL: ASSESSING THE VALUE OF FAME 2* (2014).

²⁷² Meyer & Gamson, *supra* note 226, at 184–85.

Sometimes, this is good for the causes they endorse, but celebrities can also enhance their own visibility by hooking into a current political cause.²⁷³

Celebrities can provide an important asset to a political cause or a social movement, but they do not represent an unalloyed benefit.²⁷⁴ By sharing their own spotlight with a given issue, celebrity engagement can increase the visibility of the issue and its salience on a broader public agenda.²⁷⁵ Celebrities can also increase coverage of a movement, attendance at its events, and even their prospects for fundraising.²⁷⁶ At the same time, however, celebrities may project a less than considered vision of the politics of the issue, and end up soaking up the spotlight that would otherwise be claimed by policy details or more engaged and informed activists.²⁷⁷ We see that members of the public are able to evaluate how seriously to take a particular celebrity's endorsement of an issue, considering their own opinions as well as the credibility of the particular famous people currently engaged.²⁷⁸

Social media has made celebrity activism more accessible than ever. Celebrities of all sorts commonly express political views on popular forums such as Twitter or Instagram, particularly in moments of increased salience due to a critical event.²⁷⁹ In the wake of mass shootings, many celebrities become activists—at least on social media. Some of their messages remain politically neutral, expressing sorrow without attributing any cause or prescribing any solutions.²⁸⁰ Others are more pointed and advocate dramatic changes in policy, including a call for bans on assault rifles and universal background checks in order to prevent such an event from happening again.²⁸¹ Sometimes these claims include endorsements of specific social movement organizations, but they can also be general appeals for change.²⁸²

In addition to social media, the activism of celebrities can take a number of forms, including financial donations, involvement, or performance at a protest or other awareness-increasing activity.²⁸³ Several celebrities, including George

²⁷³ *Id.* at 185.

²⁷⁴ *Id.*

²⁷⁵ Anthony J. Nownes, *Can Celebrities Set the Agenda?*, POL. RES. Q. (Aug. 24, 2019).

²⁷⁶ Meyer & Gamson, *supra* note 226, at 185–86.

²⁷⁷ *Id.* at 187.

²⁷⁸ *Id.*

²⁷⁹ Kayleigh Roberts, *23 Celebs Who Have Spoken Out Publicly About Gun Control*, ELLE (Aug. 5, 2019), <https://www.elle.com/culture/celebrities/g19070006/celebs-speak-out-gun-control/>.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ Mike Fleming Jr., *Eli Broad Joins Oprah Winfrey, Clooneys, Katzenbergs, Spielberg and Capshaw in*

Clooney, Oprah Winfrey, and Steven Spielberg, donated large sums of money, more than \$500,000 each, to fund the March for Our Lives demonstration.²⁸⁴ The event also featured celebrity performers, including Ariana Grande, Lin-Manuel Miranda, Ben Platt, Miley Cyrus, Jennifer Hudson, Andra Day, Common, Selena Gomez, Lady Gaga, and Demi Lovato.²⁸⁵ Many other celebrities publicized their attendance as ordinary protesters, some even bringing their children and families.²⁸⁶ In the months that followed, groups of actors and musicians created public service announcements and organized *as celebrities* to form a new group, the No-RA (No Rifle Association), to fight the NRA and support gun safety regulations.²⁸⁷ Then-NRA spokesperson Dana Loesch criticized “Hollywood phon[ies]” and “role model athletes who use their free speech to alter and undermine what our flag represents,” warning that their time would come.²⁸⁸

Although the NRA was critical of Hollywood elites who were on the other side of the cultural war, the organization actively promotes its own celebrity supporters.²⁸⁹ As the organization’s orientation became more expressly political in the 1970s, leaders realized the benefits of celebrity spokespeople, recruiting actors, and one-time civil rights activist, Charlton Heston, to serve as its president for five years, from 1998 to 2003.²⁹⁰ Heston’s visibility and standing came from his notoriety, first as a movie star known for heroic roles, and then as a committed celebrity activist. In 1956 Heston had played Moses in the epic,

Donations to End Gun Violence: Who’s Next?, DEADLINE (Feb. 23, 2018, 1:40 PM), <https://deadline.com/2018/02/george-clooney-amal-clooney-donate-500000-march-for-our-lives-school-shootings-1202296098/>.

²⁸⁴ Some of the funders have less of a public celebrity but are film and music producers or executives and owners of private businesses. *See, e.g.*, Emily Farra, *Gucci Is Donating \$500,000 to the March for Our Lives Gun Control Rally*, VOGUE (Feb. 23, 2018), <https://www.vogue.com/article/gucci-donation-march-for-our-lives-gun-control-rally>; *see also* Fleming, *supra* note 283.

²⁸⁵ *March for Our Lives Makes History Across America*, LOOK TO STARS (Mar. 26, 2018), <https://www.looktothestars.org/news/17738-march-for-our-lives-makes-history-across-america>.

²⁸⁶ Lisa Ryan, *All the Celebrities at the March for Our Lives*, CUT (Mar. 24, 2018), <https://www.thecut.com/2018/03/march-for-our-lives-2018-celebrities-performers.html>. Cher, Paul McCartney, Kim Kardashian and Kanye West, Amy Poehler, Will Smith, Amy Schumer, Justin Timberlake, Dennis Rodman, Padma Lakshmi, Jimmy Kimmel, and Julianne Moore all publicized the event and their support of it. *Id.*

²⁸⁷ Melissa Chan, *‘The Time Is Now.’ This New Coalition of Celebrities and Activists Just Pledged to Take on the NRA*, TIME (Apr. 20, 2018, 1:38 PM), <https://time.com/5248072/nora-coalition-celebrities-nra/>.

²⁸⁸ NRATV (@NRATV), TWITTER (Mar. 4, 2018, 3:55 PM), <https://twitter.com/nratv/status/970402289742618624?lang=en>; NRA, *Dana Loesch Has a New Show Coming to NRATV*, YOUTUBE (Feb. 14, 2018), <https://www.youtube.com/watch?v=6dcFEAZQql8>.

²⁸⁹ Emily Rupertus, *10 Celebrities We Love Who Love The NRA*, NRA BLOG (July 14, 2015), <https://www.nrablog.com/articles/2015/7/10-celebrities-we-love-who-love-the-nra/>.

²⁹⁰ Bill Higgins, *Hollywood Flashback: Charlton Heston’s “Cold Dead Hands” Speech Fired Up the NRA in 2000*, HOLLYWOOD REP. (May 16, 2019, 11:00 AM), <https://www.hollywoodreporter.com/news/charlton-hestons-cold-dead-hands-speech-fired-up-nra-2000-1209349>.

The Ten Commandments; in 1963, he was a visible celebrity presence at the March for Jobs and Freedom in Washington, D.C.²⁹¹ In the 1950s and 1960s, Heston supported Democratic candidates for office, and even the 1968 Gun Control Act, but his politics became more conservative over the course of the next decade.²⁹² He proclaimed his support for gun rights as consonant with the Constitution and with the preservation of American culture.²⁹³

The NRA also featured several celebrities on its national Board of Directors, including rock musician Ted Nugent, basketball star Karl Malone, country singer Miranda Lambert, and actor Tom Selleck.²⁹⁴ The organization publicizes celebrity members, running advertisements and videos describing their commitments.²⁹⁵ Prominent supporters include actors Brad Pitt, Chuck Norris, R. Lee Ermey, Whoopi Goldberg, James Earl Jones, and Jeremy Renner.²⁹⁶ They make distinct claims to standing: Musician Charlie Daniels, for example, describes growing up with guns.²⁹⁷ Conservative columnist S.E. Cupp explains, “as a woman, and now a mom, it’s incredibly important to feel like I can take care of myself.”²⁹⁸

Celebrities can certainly drive attention to a cause, but the credibility of their claims depends upon a match between a profile or persona and the cause at hand.²⁹⁹ In addition to renown, celebrities engaging in politics make claims about why their opinions should be considered—in short, why they should be granted an audience’s attention.³⁰⁰ Few of the celebrities who advocate for gun control claim expertise on guns or public policy, offering instead a generalized concern about concern about public safety.

In general, celebrity visibility creates greater risks to personal safety.³⁰¹ Celebrities can respond by installing sophisticated security systems in their

²⁹¹ *Id.*

²⁹² Ben Garrett, ‘*From My Cold, Dead Hands*’: A Profile of Charlton Heston, THOUGHTCO, <https://www.thoughtco.com/charlton-heston-gun-rights-profile-721331?print> (last updated Mar. 11, 2019).

²⁹³ *Id.*

²⁹⁴ Jeremy Fuster, *11 Hollywood Stars in the NRA: From Chuck Norris to James Earl Jones (Photos)*, WRAP (Feb. 25, 2018, 2:15 PM), <https://www.thewrap.com/11-stars-hollywood-nra-chuck-norris-james-earl-jones-rifle-gun/>.

²⁹⁵ *Id.*

²⁹⁶ Emily Rupertus, *10 Celebrities We Love Who Love the NRA*, NRA BLOG (July 14, 2015), <https://www.nrablog.com/articles/2015/7/10-celebrities-we-love-who-love-the-nra/>; Fuster, *supra* note 294.

²⁹⁷ Rupertus, *supra* note 296.

²⁹⁸ Erik Wemple, *S.E. Cupp Is a CNN Commentator and #NRAMom*, WASH. POST (May 5, 2015), <https://www.washingtonpost.com/blogs/erik-wemple/wp/2015/05/05/s-e-cupp-is-a-cnn-commentator-and-nramom/>.

²⁹⁹ GUNTER, *supra* note 271, at 2–4.

³⁰⁰ Meyer & Gamson, *supra* note 226, at 187.

³⁰¹ Kenzie Bryant, *The Staggering Price Tag on Safety in the Modern Celebrity World*, VANITY FAIR (Nov.

homes, hiring armed guards, and maintaining their own weapons.³⁰² Celebrity gun rights activists acknowledge the additional threats they may face but maintain that it is their fundamental constitutional right to own guns. Celebrity activists such as Brad Pitt,³⁰³ Vince Vaughn,³⁰⁴ and Ted Nugent³⁰⁵ have argued that guns are a fundamental right that allows all citizens to protect themselves and their families. Actor Chuck Norris claims special knowledge of violence and the use of weapons based on his military service and martial arts expertise.³⁰⁶ Samuel L. Jackson³⁰⁷ and Ice-T³⁰⁸ claim standing as Black men who are cognizant of America's long history of racial violence and claim that they must fight against Black disarmament.³⁰⁹

Celebrities often cite their experience in justifying their stance on guns; there is no necessary connection between an enhanced threat and the public stance the celebrity takes. Paul McCartney became drawn to the issue of gun control by the loss of fellow celebrity and former bandmate John Lennon to gun violence.³¹⁰ Similarly, Ariana Grande pledged her support for gun control after her Manchester, U.K. concert was targeted with explosives in 2017.³¹¹ Kim Kardashian West spoke out about gun control after being the victim of an armed

4, 2016), <https://www.vanityfair.com/style/2016/11/bodyguard-security-cost-kim-kardashian-brad-pitt>.

³⁰² Greg Fisher, *High-Risk, High-Expense Security for Celebrities Plagued by Stalkers*, CBS NEWS (Sept. 8, 2017, 4:31 PM), <https://www.cbsnews.com/news/high-risk-high-expense-security-for-celebrities-like-gwyneth-paltrow-sandra-bullock-plagued-by-stalkers/>.

³⁰³ Cheryl K. Chumley, *Brad Pitt: I've Been a Gun Owner Since My Kindergarten Days*, WASH. TIMES (Oct. 14, 2014), <https://www.washingtontimes.com/news/2014/oct/14/brad-pitt-ive-been-a-gun-owner-since-my-kindergart/>.

³⁰⁴ Katia Hetter, *Actor Vince Vaughn Outlines Support for Gun Rights*, CNN (June 1, 2015), <https://www.cnn.com/2015/06/01/entertainment/vince-vaughn-gun-rights-feat/index.html>.

³⁰⁵ CNN, *Ted Nugent Explains His Love of Guns*, YOUTUBE (Feb. 4, 2013), https://www.youtube.com/watch?v=zL2Ry_7GkGM.

³⁰⁶ Guy J. Sagi, *Chuck Norris Named Glock Spokesman*, SHOOTING ILL. (Apr. 11, 2019), <https://www.shootingillustrated.com/articles/2019/4/11/chuck-norris-named-glock-spokesman/>.

³⁰⁷ Matthew Weaver, *Samuel L. Jackson Says He Carries a Firearm and Is Against Gun Control*, GUARDIAN (Jan. 8, 2016), <https://www.theguardian.com/film/2016/jan/08/samuel-l-jackson-carries-gun-against-gun-control>.

³⁰⁸ Patrick Gavin, *Ice-T: Guns are 'Last Form of Defense'*, POLITICO (July 23, 2012), <https://www.politico.com/story/2012/07/ice-t-guns-are-last-form-of-defense-078875>.

³⁰⁹ See Adam Winkler, *Adam Winkler, "Gun Fight" Author, On Gun Control's Racism*, DAILY BEAST (July 13, 2017, 10:01 PM), <https://www.thedailybeast.com/adam-winkler-gun-fight-author-on-gun-controls-racism> (describing the history of Black disarmament in the United States).

³¹⁰ Alex Horton, *Why Paul McCartney Marched: 'One of My Best Friends Was Killed in Gun Violence'*, WASH. POST (Mar. 24, 2018), <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2018/03/24/why-paul-mccartney-marched-one-of-my-best-friends-was-killed-in-gun-violence/>.

³¹¹ Awr Hawkins, *Ariana Grande Defends Gun Control Activism: I'm Not 'Going to Shut Up and Sing My Songs'*, BREITBART (July 12, 2018), <https://www.breitbart.com/entertainment/2018/07/12/ariana-grande-defends-gun-control-activism-im-not-going-to-shut-up-and-sing-my-songs/>.

robbery in Paris in 2016.³¹² Others draw on their experiences with gun violence in their “private lives” or as non-celebrities.³¹³ Jennifer Hudson, who performed at the March for Our Lives demonstration in Washington, D.C., has stated that her involvement in the issue stems from the loss of her mother, brother, and nephew to domestic gun violence.³¹⁴ More commonly, celebrities express a generalized concern about public safety and care for the well-being of children, including Lin-Manuel Miranda and Ben Platt,³¹⁵ Julianne Moore,³¹⁶ and George and Amal Clooney.³¹⁷ Young singers Demi Lovato and Ariana Grande have announced that their increased visibility and wealth create not only substantial political potential, but also a responsibility to do more.³¹⁸

There are risks, of course, for celebrities who get involved with politics. Taking a strong stance on any issue can alienate potential employers and audiences. Ed Asner claimed his service as president of the Screen Actors Guild and strong stance against U.S. intervention in Central America contributed to the cancellation of his television show, *Lou Grant*, in the early 1980s.³¹⁹ Tim Allen claimed that the conservative politics of the character he played on *Last Man Standing*, which mirrored his own, led to the cancellation of his sitcom.³²⁰ The country band, Dixie Chicks, lost a large share of their audience when lead singer Natalie Maines criticized President George W. Bush and the invasion of

³¹² Lena Finkel, *What We’re Reading: Kim Kardashian’s Essay on Gun Control*, FEMESTELLA (Oct. 2, 2017), <http://www.femestella.com/kim-kardashian-gun-safety-essay/>.

³¹³ See Rosemary Rossi, *Jennifer Hudson: Gun Violence ‘Can Happen to Anybody’*, WRAP (Mar. 24, 2018), <https://www.thewrap.com/jennifer-hudson-gun-violence-can-happen-to-anybody-march-for-our-lives-video/>.

³¹⁴ *Id.*

³¹⁵ Daniel Kreps, *See Lin-Manuel Miranda, Ben Platt Perform at March of Our Lives Rally*, ROLLING STONE (Mar. 24, 2018), <https://www.rollingstone.com/music/music-news/see-lin-manuel-miranda-ben-platt-perform-at-march-for-our-lives-rally-201906/>.

³¹⁶ Krystie Lee Yandoli, *Julianne Moore Made a Powerful Plea to Mitch McConnell About Gun Control*, BUZZFEED NEWS (Aug. 7, 2019, 5:52 PM), <https://www.buzzfeednews.com/article/krystieyandoli/julianne-moore-gun-control-shootings-mitch-mcconnell>.

³¹⁷ Judy Kurtz, *George and Amal Clooney Join Gun Control March Following FL School Shooting*, HILL (Feb. 20, 2018, 11:52 AM), <https://thehill.com/blogs/in-the-know/in-the-know/374640-george-and-amal-clooney-join-pro-gun-control-march-following>.

³¹⁸ Charles Holmes, *Demi Lovato Shares Why Celebrities Shouldn’t be Dismissive of Issues Like Gun Control*, MTV (Mar. 9, 2018), <http://www.mtv.com/news/3068559/demi-lovato-gun-control/>; Hawkins, *supra* note 311.

³¹⁹ Eleanor Blau, *Asner Calls ‘Lou Grant’ Censored*, N.Y. TIMES, May 18, 1982, at C9.

³²⁰ Emily Yahr, *Tim Allen Thinks Conservative Politics Might Be Why ‘Last Man Standing’ Got Canceled*, WASH. POST (Sept. 27, 2017, 5:10 PM), <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2017/09/27/tim-allen-thinks-conservative-politics-might-be-why-last-man-standing-got-canceled/>. Allen’s show was ultimately picked up by the Fox network. Danielle Turchiano, *‘Last Man Standing’ Renewed at Fox*, VARIETY (Apr. 18, 2019, 11:00 AM), <https://variety.com/2019/tv/news/last-man-standing-renewal-fox-1203188103/>.

Iraq from the stage at a concert in London in 2003.³²¹ The band responded over time by reconfiguring its sound and its target audience.³²² There is enough in any of these cases to warn more careful celebrities from engaging in politics altogether, or at least from taking political stances unpopular with a core audience. These career risks are specific to a celebrity and their particular audience and industry.³²³ Pop singers who target a youthful market are unlikely to suffer the same grievous consequences as the Dixie Chicks, who depended upon a country audience.³²⁴

Like anyone else, celebrities can change their minds and their positions, but this also entails risk; audiences can question whether they were motivated by cause or by career. After the Parkland shooting in February 2018,³²⁵ some celebrities visibly scaled back their commitments to the NRA. In September 2018, Tom Selleck resigned from the Board of the NRA, citing work commitments and announcing that he was maintaining his membership; he had served on the Board for nearly fifteen years, and provided extensive fundraising assistance.³²⁶ S.E. Cupp resigned her membership in the NRA after a mass shooting in El Paso, Texas, in August 2019, and announced her support for universal background checks and limits on certain kinds of weapons and magazines.³²⁷ It remains to be seen whether these decisions will create career consequences for the celebrities.

The gun debate features visible celebrities on both sides of the issue, but the gun safety side has made continual gains in the number and visibility of celebrities on its side.³²⁸ Although some of these celebrities make standing

³²¹ See Gabriel Rossman, *Elites, Masses, and Media Blacklists: The Dixie Chicks Controversy*, 83 SOC. FORCES 61, 61–62 (2004) (describing the concert and its aftermath).

³²² See Alan Light, *The Dixie Chicks, Long Past Making Nice*, N.Y. TIMES (June 10, 2016), <https://www.nytimes.com/2016/06/12/arts/music/dixie-chicks-return-tour.html> (stating that the band regained success but stepped away from the country music scene).

³²³ Cf. Howard I. Berkman, *The Right of Publicity—Protection for Public Figures and Celebrities*, 42 BROOK. L. REV. 527, 527 (1976) (describing the new creation of the right to publicity, a right created because of the unique positioning of celebrities and the value of their image).

³²⁴ Cf. Claire Katz, “*The Eternal Irony of the Community*”: *Prophecy, Patriotism, and the Dixie Chicks*, 26 SHOFAR 139, 157 (2008) (describing that unlike other genres, “[c]ountry music claims to uphold the value of patriotism”).

³²⁵ Amy Held, ‘*We Live with It Every Day*’: *Parkland Community Marks 1 Year Since Massacre*, NPR (Feb. 14, 2019, 12:31 PM), <https://www.npr.org/2019/02/14/694688365/we-live-with-it-every-day-parkland-community-marks-one-year-since-massacre>.

³²⁶ Mike Spies, *Tom Selleck Quits NRA Board*, TRACE (Sept. 18, 2018), <https://www.thetrace.org/2018/09/tom-selleck-quits-nra-board/>.

³²⁷ Morgan Gstalter, *S.E. Cupp Quits NRA, Says We Must ‘Do Something’ About Guns*, HILL (Aug. 12, 2019), <https://thehill.com/homenews/media/457092-se-cupp-quits-nra-says-we-must-do-something-about-guns>.

³²⁸ See *supra* note 321 and accompanying text.

claims based on personal histories or competencies,³²⁹ they gain attention almost exclusively from their visibility as celebrities and the resources they can command.³³⁰ Celebrities win attention and support based on their stance, rather than their expertise or experience.³³¹ The gun debate features celebrities on each side of the political divide, with credibility within each movement defined by stance rather than status or some inherent expertise.

A. *Movement-Made Celebrities*

The common vision of celebrity engagement in politics involves the participation of someone who has achieved renown in a different area. In contemporary politics, however, movements can create their own celebrities, promoting spokespeople as well as issues. The Parkland kids, for example, became a sort of movement celebrities.³³² Their presence turned out larger numbers of people at rallies where participants would line up to take photos with the famous activists.³³³ Their efforts and motivations have been chronicled in lavishly illustrated and photographed issues of *Time*,³³⁴ *People*,³³⁵ and *Vanity Fair*.³³⁶

There are adult movement celebrities as well. Shannon Watts, who founded Moms Demand Action in response to the Sandy Hook shooting, has her own conversion to activism story, appears frequently on television, and has published a book about her efforts.³³⁷ Prior to her activism, Watts was a self-proclaimed stay-at-home mom and a former public relations executive for several Fortune

³²⁹ See *supra* note 321 and accompanying text.

³³⁰ See, e.g., Melissa Chan, 'The Time Is Now.' *This New Coalition of Celebrities and Activists Just Pledged to Take on the NRA*, TIME (Apr. 20, 2018, 1:38 PM), <https://time.com/5248072/nora-coalition-celebrities-nra/>.

³³¹ Arthur Delaney, *Mark Ruffalo Is a Good Actor. Is He a Good Activist?*, HUFFPOST (Dec. 9, 2019, 3:04 PM), https://www.huffpost.com/entry/mark-ruffalo-water-defense_n_5dee5883e4b05d1e8a553e6b.

³³² See *infra* notes 335–336 and accompanying text.

³³³ See, e.g., Emanuella Grinberg & Nadeem Muaddi, *How the Parkland Students Pulled off a Massive National Protest in Only 5 Weeks*, CNN (Mar. 26, 2018, 9:17 AM), <https://www.cnn.com/2018/03/26/us/march-for-our-lives/index.html>.

³³⁴ Barack Obama, *Cameron Kasky, Jaclyn Corin, David Hogg, Emma González and Alex Wind*, TIME, <https://time.com/collection/most-influential-people-2018/5217568/parkland-students/> (last visited Jan. 14, 2020) (listing the Parkland students as some of the Most Influential People of 2018).

³³⁵ Laura Barcella, Greg Hanlon & Elaine Aradillas, *Life After Parkland: How 6 Survivors Are Healing in the Aftermath of Horror*, PEOPLE (Apr. 9, 2019, 11:59 AM), <https://people.com/crime/parkland-survivors-trauma-mass-shooting/>

³³⁶ Dave Cullen, "The News Forgets. Very Quickly": *Inside the Marjory StonemanDouglas Students' Incredible Race to Make History*, VANITY FAIR (Mar. 7, 2018), <https://www.vanityfair.com/news/2018/03/inside-the-marjory-stoneman-douglas-students-race-to-make-history>.

³³⁷ See generally SHANNON WATTS, *FIGHT LIKE A MOTHER: HOW A GRASSROOTS MOVEMENT TOOK ON THE GUN LOBBY AND WHY WOMEN WILL CHANGE THE WORLD* (2019).

500 companies.³³⁸ She frequently recounts her personal conversion narrative, starting as a stay-at-home housewife stirred into political action by the Sandy Hook shooting.³³⁹ Even as Moms Demand became a sizable presence on the political scene and Watts herself fully engaged in political action, she emphasized that she was a volunteer, again trying to underscore her authenticity.³⁴⁰ Critics were quick to point out, however, that Watts had a history of working in politics, serving first as part of the public relations staff of Mel Carnahan, the former Democratic Governor of Missouri, and then starting her own public relations firm.³⁴¹ The charge of professionalism was intended to type Watts as inauthentic and partisan; even if unpaid at the moment, Watts came to the movement with a serious set of political skills and commitments.³⁴²

The NRA has developed a more elaborate set of platforms with the express intent of developing its own movement-based celebrities. Until recently, the NRATV network featured well-paid personalities such as Dana Loesch³⁴³ and Colion Noir,³⁴⁴ giving each a platform and an audience sympathetic to gun rights. Loesch has also built a personal brand, authoring several books on gun politics and hosting her own radio show, which has propelled her popularity.³⁴⁵ Like Watts on the gun control side, Loesch roots her standing in the debate in a self-imposed sacrifice for the cause and draws on her status as a concerned mother.³⁴⁶ She also draws on her childhood experience with guns, claiming extensive knowledge and expertise on how to own and operate firearms.³⁴⁷ Noir,

³³⁸ Lydia Dishman, *How One Mom Leads Millions to Take on the NRA*, FAST COMPANY (Mar. 8, 2018), <https://www.fastcompany.com/90450665/the-one-thing-resilient-leaders-do-differently>.

³³⁹ *Meet Shannon Watts, Founder of Moms Demand Action*, MOMS DEMAND ACTION, <https://momsdemandaction.org/shannon-watts/> (last visited Mar. 30, 2020).

³⁴⁰ Shannon Watts (@shannonrwatts), TWITTER (May 9, 2019, 9:18 AM), <https://twitter.com/shannonrwatts/status/1126476564323917830?lang=en> (“I’m a fulltime volunteer. I make zero dollars. Unlike Wayne LaPierre and Chris Cox, I’m not a registered lobbyist. Mike Bloomberg is one of 350,000+ donors. And that’s what you don’t get, @NRA—I am just a mom. And that’s why I’ll never stop exposing your deadly agenda.”).

³⁴¹ Erik Wemple, *NPR Issues Large Correction About Stay-at-Home Mom/Gun-Control Activist*, WASH. POST (June 23, 2016, 12:42 PM), <https://www.washingtonpost.com/blogs/erik-wemple/wp/2016/06/23/npr-issues-large-correction-about-stay-at-home-momgun-control-activist/>; *Out of Style: Levi’s Fawns Over Shannon Watts in Pantmaker’s Latest Gun Control Effort*, NRA-ILA (May 17, 2019), <https://www.nraila.org/articles/20190517/out-of-style-levi-s-fawns-over-shannon-watts-in-pantmaker-s-latest-gun-control-effort>.

³⁴² *Out of Style*, *supra* note 341.

³⁴³ Laura M. Holson, *The National Rifle Association’s Telegenic Warrior*, N.Y. TIMES (Jan. 20, 2018), <https://www.nytimes.com/2018/01/20/style/dana-loesch-national-rifle-association.html>.

³⁴⁴ *About Colion Noir*, COLION NOIR, <https://www.mrcolionnoir.com/about/> (last visited Jan. 15, 2020).

³⁴⁵ *About*, DANA LOESCH, <https://danaloesch.com/about/> (last visited Jan. 15, 2020).

³⁴⁶ *See, e.g.*, Megan Garber, *Dana Loesch and the NRA’s Maternity Theater*, ATLANTIC (Feb. 23, 2018), <https://www.theatlantic.com/entertainment/archive/2018/02/nra-dana-loesch/554024/> (describing her appeal to her own role as a mother in a debate with Parkland student activists).

³⁴⁷ *See, e.g.*, Erica Ritz, *The Terrifying Thing that Happened to Dana Loesch as a Child That Made Her*

on the other hand, draws on race and a history of Black gun ownership to argue that he should not have to be ashamed for loving guns.³⁴⁸ He also uses his professional status as a lawyer to buttress his claims of expertise on constitutional aspects of the debate.³⁴⁹ Their critics emphasize that they are professional gun rights advocates.³⁵⁰ Loesch, in particular, had cultivated a career based on an image of a “punk-rock conservative,” starting with a blog and then her own radio show.³⁵¹ Support for gun rights had been a core part of her political identity long before she started working for the NRA, but she had also filmed commercials for numerous products, including nutritional aids of dubious value, and pitched herself as a centerpiece for a new television sitcom.³⁵² Critics routinely describe her as a shill, mouthing a message for professional gain.³⁵³ These are obvious attacks on standing.

Such movement celebrities will often extend their reach to other issues of their concern. Many of the Parkland kids, for example, have spoken on LGBTQ rights and climate change, issues on which their special experience is not evident.³⁵⁴ Like other celebrities, the basis of their credibility ranges. In contrast

Become a Second Amendment Advocate, BLAZE (Oct. 21, 2014) <https://www.theblaze.com/news/2014/10/21/the-terrifying-thing-that-happened-to-dana-loesch-as-a-child-that-made-her-become-a-second-amendment-advocate> (describing a childhood incidence of violence that led to her appreciation for the protective properties of firearms).

³⁴⁸ See Molly Hennessy-Fiske, *NRATV's Colion Noir on Black Gun Ownership, the Parkland Students and Why He Finds the AR-15 'Beautiful'*, L.A. TIMES (May 3, 2018), <https://www.latimes.com/nation/la-na-nra-colion-noir-20180503-story.html> (“As a black NRA member, Noir takes issue with those who view him as a token, citing a history of black gun ownership dating back to the formation of the Buffalo Soldiers from a U.S. Army regiment in 1866.”).

³⁴⁹ *Colion Noir*, *supra* note 344 (describing how his love of guns and interest in the Second Amendment developed during law school and while studying for the bar examination).

³⁵⁰ See Mike Spies, *Secrecy, Self-Dealing, and Greed at the N.R.A.*, NEW YORKER (Apr. 17, 2019), <https://www.newyorker.com/news/news-desk/secrecy-self-dealing-and-greed-at-the-nra> (“Loesch and Noir have become the primary public faces of the N.R.A.; at events, enormous banners feature their images alongside those of LaPierre and Chris Cox, the organization’s top lobbyist.”).

³⁵¹ See *Dana Loesch: The Dana Show*, KLZ 560 AM, <https://www.klzradio.com/show/dana-loesch-the-dana-show/> (last visited Mar. 30, 2020) (“Dana’s original brand of young, punk-rock, conservative irreverence has found a fast-growing audience in multiple mediums.”).

³⁵² Maddy Foley, *Who Is Dana Loesch? The NRA Spokesperson Has Been Outspokenly Against Stricter Gun Control in the US*, BUSTLE (Oct. 2, 2017), <https://www.bustle.com/p/who-is-dana-loesch-the-nra-spokesperson-has-been-outspokenly-against-stricter-gun-control-in-the-us-2744177> (describing Loesch’s career before becoming an NRA spokeswoman); see Bratskeir, *supra* note 80 (discussing Loesch’s appearances in advertisement for nutritional product); Greg Evans, *NRA's Dana Loesch, Sitcom Star? 'NCIS' Producer Says He Got the Pitch*, DEADLINE (Feb. 23, 2018, 10:47 AM), <https://deadline.com/2018/02/dana-loesch-paul-guyot-nra-sitcom-pitch-1202301181/> (describing how Loesch pitched herself for a sitcom).

³⁵³ Oliver Willis, *NRA Shill Dana Loesch Steals Rallying Cry of Teenage Shooting Survivors*, AM. INDEP. (Feb. 22, 2018, 11:03 AM), <https://americanindependent.com/nra-shill-dana-loesch-steals-rallying-cry-shooting-survivors/>.

³⁵⁴ See, e.g., Tom Clift, *One of the Parkland Survivors Has Shouted Out This Friday's School Strike for*

with other celebrities, their credibility is tied to a specific issue and may not be transferrable to other issues. Moreover, reaching out to address other issues carries risks of compromising the power and authenticity of one's standing in the movement.

Celebrity participation in the ongoing gun debate is unlikely to provide much in the way of enlightenment or to change many minds. Although celebrities are able to claim public space to make claims both for and against regulation, their spotlight doesn't come with special credibility in the gun debate. In a starkly polarized political landscape, there are spotlights respected exclusively on only one side of the battle, and increasingly, that side is tightly lashed to a set of either liberal or conservative positions.

IX. SPECIALIZED EXPERTISE AND PUBLIC TESTIMONY

A. *Gun Violence, Public Policy and Public Safety*

An essential challenge in a democracy is that popular wisdom isn't always wise. Just as individuals consult experts for advice about maintaining their health, their gardens, or their automobiles, democratic states should be able to access expert analysis in making public policy. The structure of contemporary politics, in which elected officials govern a well-developed and disciplined bureaucracy that provides nonpartisan expertise and implements policies, depends upon the willingness of political figures to manage reasonably objective assessments of social problems and potential solutions.³⁵⁵ Although implementing this ideal always presents challenges, creating and implementing wise policy is particularly disabled in contemporary American politics.

Objective empirical research should play an important role in informing and sometimes resolving contested debates. On matters of public health and safety, the CDC are explicitly committed to this mission.³⁵⁶ As the agency declares, the CDC "increases the health security of our nation. As the nation's health protection agency, CDC saves lives and protects people from health threats. To accomplish our mission, CDC conducts critical science and provides health

Climate Action, JUNKEE (Mar. 13, 2019), <https://junkee.com/school-strike-climate-parkland/197519>; Jeff Taylor, *Watch This Parkland Survivor's Powerful Speech that Ties LGBT Students to Gun Control*, LGBTQ NATION (Mar. 12, 2018), <https://www.lgbtqnation.com/2018/03/watch-parkland-survivors-powerful-speech-ties-lgbt-students-gun-control/>.

³⁵⁵ The classic articulation of bureaucracy and expertise in democracy is found in MAX WEBER, *THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION* 329–41 (A. M. Henderson & Talcott Parsons trans., Oxford Univ. Press 1947).

³⁵⁶ See *infra* note 358 and accompanying text.

information that protects our nation against expensive and dangerous health threats and responds when these arise.”³⁵⁷ Until 1996, gun violence was among the public health threats addressed by the CDC.³⁵⁸

Gun violence research funded or conducted by the CDC provided powerful ammunition for advocates of gun regulation. In particular, a study by Arthur Kellermann and colleagues, published in *The New England Journal of Medicine* in 1993, concluded that individuals with guns in their homes were 2.7 times more likely to be victims of gun violence than people without guns in the home.³⁵⁹ The finding, that keeping a gun at home was a risk factor rather than a remedy for gun violence, was a blow to advocates of gun rights, who had long promoted guns as a resource for self-defense and protection in the home.³⁶⁰

The NRA responded by launching a campaign to abolish the CDC altogether, focusing on its director Mark Rosenberg, who was charged with exploiting government funds for a personal political agenda.³⁶¹ Government researchers, the NRA contended, had no business in what it described as advocacy work.³⁶² The CDC responded that gun violence is a public health issue, an area situated well within the jurisdiction of its mandate.³⁶³ The NRA’s claim was that Second Amendment rights precluded funding research that might undermine support for ready access to firearms.³⁶⁴

³⁵⁷ *Mission, Role and Pledge*, CDC, <https://www.cdc.gov/about/organization/mission.htm> (last visited Jan. 15, 2020).

³⁵⁸ Christine Jamieson, *Gun Violence Research: History of the Federal Funding Freeze*, AM. PSYCHOL. ASS’N (Feb. 2013), <https://www.apa.org/science/about/psa/2013/02/gun-violence>.

³⁵⁹ Arthur L. Kellermann et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 NEW ENG. J. MED. 1084, 1084 (1993) (“We found that keeping a gun in the home was strongly and independently associated with an increased risk of homicide (adjusted odds ratio, 2.7; 95 percent confidence interval, 1.6 to 4.4). Virtually all of this risk involved homicide by a family member or intimate acquaintance.”).

³⁶⁰ See Michael Hiltzik, *The NRA Has Blocked Gun Violence Research for 20 Years. Let’s End Its Stranglehold on Science.*, L.A. TIMES (June 14, 2016, 9:55 AM), <https://www.latimes.com/business/hiltzik/la-fi-hiltzik-gun-research-funding-20160614-snap-story.html> (“[P]rotection from crime’ was the most commonly cited rationale for having guns in the home.”).

³⁶¹ Sarah Zhang, *Why Can’t the U.S. Treat Gun Violence as a Public-Health Problem?*, ATLANTIC (Feb. 15, 2018), <https://www.theatlantic.com/health/archive/2018/02/gun-violence-public-health/553430/> (“It deemed the research politically motivated. Gun-rights advocates zeroed in on statements like that of Mark Rosenberg, then the director of the CDC’s National Center for Injury Prevention and Control.”).

³⁶² Samantha Raphelson, *How the NRA Worked to Stifle Gun Violence Research*, NPR (Apr. 5, 2018, 3:01 PM), <https://www.npr.org/2018/04/05/599773911/how-the-nra-worked-to-stifle-gun-violence-research> (describing how one of the main opponents to CDC research said that the CDC could not collect “data so that [the CDC] can advocate gun control”).

³⁶³ Zhang, *supra* note 361.

³⁶⁴ Cf. M. Christine Cagel & J. Michael Martinez, *Have Gun, Will Travel: The Dispute Between the CDC and the NRA on Firearm Violence as a Public Health Problem*, 32 POL. & POL’Y 278, 290 (2004) (“[E]mphasis on the Second Amendment has allowed the group to shift the terms of the debate.”).

After the Republican Party gained control of the House of Representatives in 1994, NRA allies followed through on the organization's complaints. Representative Jay Dickey, who described himself as a "point man for the NRA,"³⁶⁵ attached an amendment to a 1996 spending bill, which explicitly prohibited the CDC from promoting gun control.³⁶⁶ In addition to the so-called Dickey Amendment, the bill cut \$2.6 million dollars from the CDC's budget, the precise amount that had been spent on gun violence research in the previous year.³⁶⁷

Although the Dickey Amendment did not directly ban research on gun safety, the leadership of the CDC got the message to stay away from the topic.³⁶⁸ Ensuing events confirmed that judgment. In 2009, researchers funded by the National Institute on Alcohol Abuse and Alcoholism published a study that investigated the link between gun possession and gun assault.³⁶⁹ They found that possessing a gun was associated with approximately a fivefold increase in the probability that an individual would experience gun assault.³⁷⁰ In response, Congress extended the language of the Dickey amendment from the CDC to all Department of Health and Human Service Agencies,³⁷¹ crystallizing the message's application to all federal employees.

The Dickey Amendment continues to constrain ostensibly non-partisan research on gun violence, even as its sponsor expresses regret about his own role in restricting the flow of information to protect access to guns.³⁷² Again, a mass shooting was a catalyst for reflection, if not reform. In 2012, a former PhD student in neuroscience entered a midnight screening of *The Dark Knight Rises* at a movie theater in Aurora, Colorado, armed with tactical gear.³⁷³ After setting

³⁶⁵ Jay Dickey, *Arkansas Congressman Who Blocked Gun Research, Dies at 77*, NPR (Apr. 25, 2017, 4:32 PM), <https://www.npr.org/2017/04/25/525604434/jay-dickey-arkansas-congressman-who-blocked-gun-research-dies-at-77>.

³⁶⁶ Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009.

³⁶⁷ Jamieson, *supra* note 358.

³⁶⁸ See Arthur L. Kellermann & Frederick P. Rivara, *Silencing the Science on Gun Research*, 309 JAMA 549, 549 (2013) ("To ensure that the CDC and its grantees got the message, the following language was added to the final appropriation: 'none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.'").

³⁶⁹ Charles C. Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 AM. J. PUB. HEALTH 2034 (2009).

³⁷⁰ *Id.* at 2034.

³⁷¹ Omnibus Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 125 Stat. 1085.

³⁷² Jay Dickey, *supra* note 365.

³⁷³ *Aurora Shooting Leaves 12 Dead, 70 Wounded*, HISTORY (July 20, 2012), <https://www.history.com/this-day-in-history/12-people-killed-70-wounded-in-colorado-movie-theater-shooting>.

off tear gas grenades,³⁷⁴ he fired multiple (legally purchased) guns³⁷⁵ into the crowd of 400 moviegoers, ultimately killing twelve and injuring seventy more.³⁷⁶ Retired Representative Dickey came forward to express regret about his role in preventing research on gun violence for the last fifteen years.³⁷⁷ He forged an alliance with Mark Rosenberg, a former director at the CDC that he once targeted, and the pair coauthored an opinion piece in the *Washington Post* calling for comprehensive research on gun violence.³⁷⁸ Dickey expressed in interviews that he never intended to effectively ban gun violence research, only partisan advocacy.³⁷⁹ Dickey confessed that he wished he had taken a more active role in ensuring that proper research did take place.³⁸⁰

Although useful research is conducted without federal funding,³⁸¹ the absence of federal support means that scholars must find alternative sources of support and prospects for outlets for their work, but nonprofits and individuals can't do the job that government-sponsored researchers can do.³⁸² Independent

³⁷⁴ *Colorado Shooting Tear Gas Hospitalizations: What Are the Health Effects of Chemical Exposure?*, HUFFPOST (July 15, 2013, 1:38 PM), https://www.huffpost.com/entry/colorado-shooting-tear-gas-hospitalizations-health_n_1689963.

³⁷⁵ According to CNN, the shooter bought guns legally from Bass Pro Shops and Gander Mountain, as well as purchasing over 6,000 rounds of ammunition online. *Colorado Theater Shooting Fast Facts*, CNN (July 14, 2019, 2:01 PM), <https://www.cnn.com/2013/07/19/us/colorado-theater-shooting-fast-facts/index.html>.

³⁷⁶ Julia Jacobo, *A Look Back at the Aurora, Colorado, Movie Theater Shooting 5 Years Later*, ABC NEWS (July 20, 2017, 7:13 AM), <https://abcnews.go.com/US/back-aurora-colorado-movie-theater-shooting-years/story?id=48730066>.

³⁷⁷ Sam Roberts, *Jay Dickey, Arkansas Lawmaker Who Blocked Gun Research, Dies at 77*, N.Y. TIMES (Apr. 24, 2017), <https://www.nytimes.com/2017/04/24/us/jay-dickey-dead-arkansas-congressman.html> (“But in 2012, long after he left Congress and right after a gunman killed 12 people and injured scores more in an Aurora, Colo., movie theater, Mr. Dickey . . . declared that research could have been conducted without encroaching on the rights of legitimate gun owners.”).

³⁷⁸ Jay Dickey & Mark Rosenberg, Opinion, *We Won't Know the Cause of Gun Violence Until We Look for It*, WASH. POST (July 27, 2012), https://www.washingtonpost.com/opinions/we-wont-know-the-cause-of-gun-violence-until-we-look-for-it/2012/07/27/gJQAPfenEX_story.html.

³⁷⁹ Sam Stein, *The Congressman Who Restricted Gun Violence Research Has Regrets*, HUFFPOST (Oct. 6, 2015, 8:03 AM), https://www.huffpost.com/entry/jay-dickey-gun-violence-research-amendment_n_561333d7e4b022a4ce5f45bf; *Ex-Rep. Dickey Regrets Restrictive Law on Gun Violence Research*, NPR (Oct. 9, 2015), <https://www.npr.org/2015/10/09/447098666/ex-rep-dickey-regrets-restrictive-law-on-gun-violence-research>.

³⁸⁰ See *Ex-Rep. Dickey*, *supra* note 379.

³⁸¹ For example, the University of California Firearm Violence Research Center (UCFC) is the result of a statewide initiative to address gun violence as a public health issue. See *About the University of California Firearm Violence Research Center (UCFC)*, UC DAVIS HEALTH, <https://health.ucdavis.edu/vprp/UCFC/index.html> (last visited Jan. 24, 2020). The UCFC works in conjunction with the Violence Prevention Research Program at the University of California, Davis. *Id.* It is expressly intended to fill the gap caused by the absence of federal funding. Carole Gan, *Nation's First State-Funded Firearm Violence Research Center To Be Established at UC Davis*, UC DAVIS (Aug. 29, 2016), <https://www.ucdavis.edu/news/nation%E2%80%99s-first-state-funded-firearm-violence-research-center-be-established-uc-davis/>.

³⁸² Maggie Koerth, *Why Nonprofits Can't Research Gun Violence as Well as the Feds*, FIVETHIRTYEIGHT (Nov. 14, 2019, 11:31 AM), <https://fivethirtyeight.com/features/why-nonprofits-cant-research-gun-violence-as>

researchers have a more difficult time acquiring data, for example, and research funding is generally less stable than that once provided by the CDC. Gun control activists, including Gabrielle Giffords and Barack Obama, have pushed for the CDC to return to supporting research on gun violence.³⁸³

The dearth of pointedly nonpolitical research hasn't eliminated experts on gun violence from the political debate, but it has constrained their visibility and effectively allowed partisan experts to play an outsized role in the public sphere. Academic research is judged by the rigor of the process of inquiry, and the clarity and honesty of the presentation of results. But advocates look for different elements³⁸⁴ in the research they want to promote: Results provide the first filter in granting standing. Both gun rights and gun control advocates have found expert research to cite and promote, but that work doesn't always pass scholarly critical muster.

In 2000, Michael Bellesiles, then a historian at Emory University,³⁸⁵ published *Arming America: The Origins of a National Gun Culture*, which argued that American gun culture was a largely modern invention.³⁸⁶ Reporting on probate records from the late 1700s, Bellesiles claimed that very few households owned operable firearms in America's past.³⁸⁷ Based on this analysis, he argued that it was extremely unlikely that the Founding Fathers wrote the Second Amendment to ensure an individual right to gun ownership.³⁸⁸

At least partly because of the implications of its findings, *Arming America* initially received a warm welcome from both gun control advocates and

well-as-the-feds/.

³⁸³ Press Release, Giffords, Gabrielle Giffords on Historic Victory for Gun Safety, House of Representatives includes \$50 Million to Fund Gun Violence Research (June 19, 2019), <https://giffords.org/press-release/2019/06/gun-violence-research-funding-house-passage/>; *Funding Federal Gun Violence Research*, GIFFORDS, https://giffords.org/wp-content/uploads/2018/12/Giffords_CDC-research-fact-sheet-2018-1.pdf (last visited Jan. 27, 2020); see Eliot Marshall, *Obama Lifts Ban on Funding Gun Violence Research*, SCIENCE (Jan. 16, 2013, 5:55 PM), <https://www.sciencemag.org/news/2013/01/obama-lifts-ban-funding-gun-violence-research> (stating that President Obama removed the restriction on CDC funding of research on gun violence).

³⁸⁴ For example, consider the reaction to the CDC's research decades ago. See *supra* note 359 and accompanying text.

³⁸⁵ Bill Black, *The Historical Profession's Greatest Modern Scandal, Two Decades Later*, WEEK (Sept. 18, 2019), <https://theweek.com/articles/865208/historical-professions-greatest-modern-scandal-two-decades-later>.

³⁸⁶ MICHAEL BELLESILES, *ARMING AMERICA: THE ORIGINS OF A NATIONAL GUN CULTURE* 13 (2000).

³⁸⁷ *Id.* (claiming to have found that only about 15% of probate records—which were essentially property inventories of the deceased—included guns, and less than half of those were actually operable in their current state).

³⁸⁸ See Stephen B. Halbrook, *Deconstructing the Second Amendment*, INDEP. INST. (Nov. 3, 2000), <https://www.independent.org/news/article.asp?id=342>.

professional historians.³⁸⁹ Bellesiles even won the prestigious Bancroft Prize.³⁹⁰ But other scholars could not replicate the findings. James Lindgren and Justin Lee Heather, law professors at Northwestern University, were among those who tried.³⁹¹ Reviewing the documentary evidence cited by Bellesiles, they concluded that at least 60% of the inventories had been falsified,³⁹² raising suspicions that Bellesiles falsified data to support his political preferences. Bellesiles was unable to produce records of his data, which he claimed had been destroyed by a flood in his office at Emory University.³⁹³ Emory conducted a formal investigation for misconduct,³⁹⁴ the Bancroft Prize was rescinded—for the first time ever,³⁹⁵ and Bellesiles resigned his academic position and retreated from the public debate about gun policy.³⁹⁶

Gun rights advocates supported tainted experts as well. In *More Guns, Less Crime*, economist John Lott, Jr. argued that cities with a more lenient policy on the concealed carry of firearms reported lower rates of violent crime.³⁹⁷ Lott surmised that the potential presence of guns deters criminals.³⁹⁸ Lott initially claimed that his data was drawn from professionally-administered surveys conducted by the *Los Angeles Times*, Gallup, and Peter Hart Associates.³⁹⁹ When questioned by James Lindgren—once again fact-checking—Lott changed his

³⁸⁹ See, e.g., ADAM WINKLER, *GUNFIGHT* 26 (2011); Black, *supra* note 386.

³⁹⁰ WINKLER, *supra* note 389, at 26.

³⁹¹ *Id.* at 27–28.

³⁹² See *id.* at 28 (saying that data was falsified in alignment with Bellesiles’s thesis). For the full statement, see generally James Lindgren & Justin L. Heather, *Counting Guns in Early America*, 43 WM. & MARY L. REV. 1777 (2002).

³⁹³ *Id.* at 30. Bellesiles claimed to have recorded his data from 11,170 probate records by hand on “ordinary yellow pads with pencil.” *Id.* Winkler describes this practice as “highly unusual” for top scholars at the time, as the standard was to keep meticulous records and store them digitally. See *id.* (stating that Bellesiles was pressured to turn over computer files and spreadsheets before he revealed his method of data storage and explained that a flood destroyed the data).

³⁹⁴ STANLEY N. KATZ ET AL., REPORT OF THE INVESTIGATIVE COMMITTEE IN THE MATTER OF PROFESSOR MICHAEL BELLESILES 2 (2002).

³⁹⁵ Robert F. Worth, *Prize for Book Is Taken Back from Historian*, N.Y. TIMES (Dec. 14, 2002), <https://www.nytimes.com/2002/12/14/business/prize-for-book-is-taken-back-from-historian.html>. The Emory investigation accused Bellesiles of producing “unprofessional and misleading work.” KATZ ET AL., *supra* note 394, at 18. This marked the first occasion in which the Bancroft Prize was rescinded since its institution in 1948. Robert F. Worth, *Prize for Book Is Taken Back from Historian*, N.Y. TIMES (Dec. 14, 2002), <https://www.nytimes.com/2002/12/14/business/prize-for-book-is-taken-back-from-historian.html>.

³⁹⁶ See WINKLER, *supra* note 390, at 31; Black, *supra* note 390.

³⁹⁷ JOHN R. LOTT, JR., *MORE GUNS, LESS CRIME: UNDERSTANDING CRIME AND GUN-CONTROL LAWS* 19 (1st ed. 1998).

³⁹⁸ See *id.* Lott claimed that would-be criminals behaved rationally and sought to avoid the prospect of return fire. *Id.*

³⁹⁹ WINKLER, *supra* note 389, at 76.

story, saying he conducted a telephone survey of 2,500 people.⁴⁰⁰ He said his data, along with the names of research assistants, phone records, and survey questions, had disappeared in a computer crash and thus could not be shared.⁴⁰¹

The National Research Council formally investigated Lott's research in 2004.⁴⁰² The majority of the members on the investigative committee agreed that the data presented did not support his conclusion.⁴⁰³ The NRC noted that the vast majority of peer-reviewed research had reached the opposite conclusion.⁴⁰⁴ The controversy turned to ridicule as it was discovered that Lott had been posing as a graduate student and personal fan online to review and defend his own work.⁴⁰⁵ In the wake of the scandal, Lott left academia and founded the Crime Prevention Research Center,⁴⁰⁶ which he dedicated to the study of gun regulation law and crime.⁴⁰⁷ Despite these colorful and controversial episodes, Lott continues to be cited as an expert in the gun debate—and not just by the NRA.⁴⁰⁸ Lott has published op-eds in Fox News,⁴⁰⁹ the *Los Angeles Times*,⁴¹⁰ *The Wall Street*

⁴⁰⁰ *Id.* at 77.

⁴⁰¹ *Id.*

⁴⁰² Abhay Aneja et al., *The Impact of Right to Carry Laws and the NRC Report: The Latest Lessons for the Empirical Evaluation of Law and Policy 2* (Stanford Law & Econ., Working Paper No. 461, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443681.

⁴⁰³ *Id.* (arguing that evidence shows the dissenting member, who believed the data did support the thesis, was wrong).

⁴⁰⁴ Evan DeFilippis & Devin Hughes, *The Bogus Claims of the NRA's Favorite Social Scientist, Debunked*, VOX (Aug. 30, 2016, 9:40 AM), <https://www.vox.com/2016/8/30/12700222/nra-social-scientist-claims-debunked>.

⁴⁰⁵ Richard Morin, *Scholar Invents Fan to Answer His Critics*, WASH. POST (Feb. 1, 2003), <https://www.washingtonpost.com/archive/lifestyle/2003/02/01/scholar-invents-fan-to-answer-his-critics/f3ae3f46-68d6-4eee-a65e-1775d45e2133/>.

⁴⁰⁶ *About/Board of Academic Advisors*, CRIME PREVENTION RESOURCE CTR., <https://crimeresearch.org/about-us/> (last visited Jan. 24, 2020). The Crime Prevention Resource Center is a non-profit that claims to not accept money from the NRA, gun manufacturers, or anyone else in the gun debate. *Id.* However, within the first few minutes of visiting their website an ad pops up asking for donations. *Id.*

⁴⁰⁷ Ari Rabin-Havt, *Who Is Behind the Lie that More Guns Makes Us Safe?*, NATION (Apr. 20, 2016), <https://www.thenation.com/article/archive/who-is-behind-the-lie-that-more-guns-makes-us-safe/>.

⁴⁰⁸ Evan DeFilippis & Devin Hughes, *The Bogus Claims of the NRA's Favorite Social Scientist, Debunked*, VOX (Aug. 30, 2016, 9:40 AM), <https://www.vox.com/2016/8/30/12700222/nra-social-scientist-claims-debunked>.

⁴⁰⁹ John R. Lott, Jr., *It's About Time for Texas' Guns on Campus Law*, FOX NEWS (Aug. 1, 2016), <https://www.foxnews.com/opinion/its-about-time-for-texas-guns-on-campus-law>.

⁴¹⁰ John R. Lott, Jr., *Opinion, We Adjust for Population with Murder Rates. Why Not for Mass Shootings?*, L.A. TIMES (July 31, 2016, 5:00 AM), <https://www.latimes.com/opinion/op-ed/la-oe-lott-mass-shootings-adjust-for-population-20160731-snap-story.html>; John R. Lott, Jr., *Letter to the Editor, Yes, Gun-Free Zones Are Targets and Research Proves It*, L.A. TIMES (July 13, 2016, 9:45 AM), <https://www.latimes.com/opinion/readersreact/la-ol-le-gun-free-zones-mass-shootings-20160713-snap-story.html>.

Journal,⁴¹¹ and *The Washington Post*.⁴¹² We surmise that his standing in the debate is based on his political position, rather than the rigor and reliability of his scholarship.

Bellesiles and Lott gained visibility for their work largely because it aligned with the preferred policy positions of advocates. Just as their supporters were eager to promote research that supported their claims, their opponents developed an obvious interest in discrediting it. In both cases, the partisan presentation of research discredited not only Bellesiles and Lott but the very notion of nonpartisan research and expertise more generally. The gaps in reliable scholarly research leave a policy debate that could easily benefit from expert intervention.

Other professionals also make claims to expertise, a distinct perspective, and a special claim to standing. Such expert claims are distinct from those of real and potential victims, gun owners, or concerned citizens. The experts claim standing on gun policy that is informed by professional practice, but these claims are received in a highly polarized environment.

B. Physicians and Lane Maintenance

Doctors enjoy special status in the United States. We know that gaining a medical license requires significant academic skills and commitment, and a substantial investment of time and money. The basic goals of the medical professional—treating disease, promoting health, and trying to help people in need—represent almost consensual values. Although public esteem for physicians has fallen in recent years⁴¹³—along with respect for basically all institutions—doctors remain broadly respected. Seeking to translate that status into influence, physicians have individually and collectively engaged in the gun debate.⁴¹⁴ Their professional status suggests advantages in claiming good will and good judgment. They try to make claims about standing by asserting good information, by reframing the problem of gun violence into a question of public health, and by demonstrating their special commitment to protecting the public.

⁴¹¹ John R. Lott, Jr., *Mexico's Soaring Murder Rate Proves Gun Control Is Deadly*, WALL ST. J. (Oct. 21, 2019, 6:25 PM), <https://www.wsj.com/articles/mexicos-soaring-murder-rate-proves-gun-control-is-deadly-11571696723>.

⁴¹² Richard H. Black & John R. Lott, Jr., *What the Media Miss When Talking About Guns*, WASH. POST (July 5, 2019, 5:45 PM), <https://www.washingtonpost.com/opinions/2019/07/05/what-media-miss-when-talking-about-guns/>.

⁴¹³ Dhruv Khullar, *Do You Trust the Medical Profession?*, N.Y. TIMES (Jan. 23, 2018), <https://www.nytimes.com/2018/01/23/upshot/do-you-trust-the-medical-profession.html>.

⁴¹⁴ Bruce Y. Lee, *How Doctors Responded After NRA Told Them to 'Stay in Their Lane'*, FORBES (Nov. 11, 2018, 1:14 PM), <https://www.forbes.com/sites/brucelee/2018/11/11/how-doctors-responded-after-the-nra-said-stay-in-their-lane/#7b69f54b581c>.

In the wake of the December 2012 mass shooting at an elementary school in Newtown, Connecticut—where most of the victims were young children⁴¹⁵—associations of medical professionals began to weigh in more aggressively in the gun debate, declaiming their special knowledge and associated responsibility. By February 2013, scant weeks after the shooting, the American Academy of Orthopaedic Surgeons (AAOS) published an alert for action on gun violence, specifically referencing school shootings.⁴¹⁶ The position on gun violence was not new, but the particular horrors of this shooting gave the doctors both impetus and access to an audience. Nearly twenty years earlier, in July 1996, the organization had issued a position statement which explicitly defined firearms violence as a public health problem that must be addressed.⁴¹⁷ The AAOS promoted a multi-pronged strategy, termed a “comprehensive public health approach,” which included special training for physicians, research on the nature and frequency of firearms injuries, legislation that offered some restrictions on access to guns, and licensing and fees for gun ownership.⁴¹⁸

Many organizations of other medical specialists followed suit, taking the occasion of the shooting to reaffirm and amplify professional commitments to address gun violence. In April 2013, *The Journal of Child and Adolescent Psychiatry* published *Ending the Silence on Gun Violence*, an editorial that deployed the professional expertise and status of the professional association to dispute the notion that gun violence was best considered a problem of mental health.⁴¹⁹ “It is imperative,” the authors assert, “that we harness our clinical and research capabilities to learn from this dark episode and inform actions that will decrease the toll of violent death among our citizenry.”⁴²⁰ The editorial encourages psychiatrists to counsel patients about the dangers of guns, an action that might be considered as part of professional practice, but they go further. Noting that access to firearms in the United States is comparatively and unduly easy, they call for stricter laws regulating gun ownership.⁴²¹

⁴¹⁵ James Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. TIMES (Dec. 14, 2012), <https://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html>.

⁴¹⁶ Maureen Leahy, *Taking Aim at Youth Gun Violence*, AAOS NOW (Feb. 2013), <https://www5.aaos.org/aaosnow/issue/?issue=AAOSNow/2013/Feb>.

⁴¹⁷ *Position Statement: Firearms Violence*, AAOS (July 1996), <http://www2.aaos.org/bulletin/jul96/position.htm>.

⁴¹⁸ *Id.*

⁴¹⁹ David A. Brent et al., *Ending the Silence on Gun Violence*, 52 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 333, 336 (2013).

⁴²⁰ *Id.* at 336–37.

⁴²¹ *Id.*

In December 2013, on the anniversary of the Sandy Hook shooting, Dr. Thomas McInerny, President of the American Academy of Pediatricians, issued a statement embodying the group's obligations to the public debate.⁴²² The statement noted that the pediatricians have a special responsibility to protect children and that means keeping young children from excessive coverage of gun violence but also working to reduce the incidence of violence.⁴²³ Focusing on the number of children killed by guns each day, Dr. McInerny announced "a respectful call to pediatricians, parents, policymakers and all who care for children to keep working to protect them from gun violence."⁴²⁴ For the pediatricians, this entailed counseling families with children on the dangers inherent in gun ownership, but also supporting research and stronger laws governing access to weapons and standards for safe storage.⁴²⁵

These positions were not new, but the occasion of the occurrence of a dramatic shooting offered an audience and urgency for stronger statements deploying professional responsibility in calling for policy reform. The school shooting at Sandy Hook was hardly the last occasion. Two days after the June 12, 2016 Pulse Nightclub shooting in Orlando, Florida,⁴²⁶ the American Medical Association "almost unanimously" approved a resolution defining gun violence as a public health problem, and demanding extensive epidemiological research on its occasion.⁴²⁷ Two years later, with recent shootings more salient, the AMA strengthened its position and offered more specific pronouncements.⁴²⁸ Immediate Past President David O. Barbe announced:

People are dying of gun violence in our homes, churches, schools, on street corners and at public gatherings, and it's important that lawmakers, policy leaders and advocates on all sides seek common ground to address this public health crisis In emergency rooms across the country, the carnage of gun violence has become a too

⁴²² Thomas K. McInerny, *Protecting Children from Gun Violence: A Message from the AAP President*, AM. ACAD. PEDIATRICS (Dec. 10, 2013), <https://www.aap.org/en-us/advocacy-and-policy/Pages/A-Message-from-AAP-President-Thomas-K-McInerny-MD-FAAP-on-the-Anniversary-of-the-Tragedy-in-Newtown-CT.aspx>.

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ Julia Jacobo, *3 Years After Pulse Nightclub Shooting, Florida Lawmakers Look to Make Site a National Memorial*, ABC NEWS (June 12, 2019, 1:43 PM), <https://abcnews.go.com/US/years-pulse-nightclub-shooting-florida-lawmakers-make-site/story?id=63656989>.

⁴²⁷ Steven Novella, *AMA Decides Gun Violence Is a Public Health Issue*, SCI-BASED MED. (June 15, 2016), <https://sciencebasedmedicine.org/ama-decides-gun-violence-is-a-public-health-issue/>.

⁴²⁸ Press Release, American Medical Association, *AMA Recommends New, Common-Sense Policies to Prevent Gun Violence* (June 12, 2018), <https://www.ama-assn.org/press-center/press-releases/ama-recommends-new-common-sense-policies-prevent-gun-violence>.

routine experience. Every day, physicians are treating suicide victims, victims of domestic partner violence, and men and women simply in the wrong place at the wrong time. It doesn't have to be this way, and we urge lawmakers to act.⁴²⁹

The AMA offered specific demands for action and a long list of other large and small restrictions to the ownership and use of guns.⁴³⁰ Notable demands included maintaining schools as gun-free zones, issuing universal background checks, stopping universal concealed carry legislation, banning sales of assault weapons and high capacity ammunition magazines, and raising the legal age for purchasing guns or ammunition.⁴³¹ The webpage announcement included links to specific pieces of legislation on which the organization had taken positions.⁴³²

The calls for gun regulation and the claims of special responsibility in the debate we discuss here are hardly unusual. Contemporary medical journals feature many research articles and statements that come to the same positions.⁴³³ Organized physician groups offered strong statements, often buttressed by research, and calls for action, including policy reform as well as for more research. The American College of Physicians (ACP) has been particularly prolific, publishing dozens of articles over the past two decades that support stronger political action on regulating access to firearms and making those articles easily accessible to broader audiences by removing paywalls to all relevant pieces.⁴³⁴ In November 2018, the ACP published a position paper, amplifying members' view of gun violence as a critical and unaddressed public health crisis, pointing to a familiar set of remedies that it describes as evidence-based.⁴³⁵

The gun debate took a new turn, however, when gun rights activists responded to the physician advocates by contesting their standing to participate

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ See, e.g., Steven E. Weinberger et al., *Firearm-Related Injury and Death in the United States: A Call to Action From 8 Health Professional Organizations and the American Bar Association*, 162 ANNALS INTERNAL MED. 513, 513 (2015). This piece features the additional twist of a reported consultation with the American Bar Association, which assures that none of the proposed policies conflict with Second Amendment protections. *Id.* at 513. For another example, see AACAP Statement Responding to Gun Violence, AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY (Feb. 22, 2018), https://www.aacap.org/AACAP/Press/Press_Releases/2018/AACAP_Statement_Responding_to_Gun_Violence.aspx.

⁴³⁴ See *Firearm Related Content*, ANNALS INTERNAL MED., <https://annals.org/aim/pages/firearm-related-content> (last visited Jan. 16, 2020).

⁴³⁵ Renee Butkus et al., *Reducing Firearm Injuries and Deaths in the United States: A Position Paper from the American College of Physicians*, 169 ANNALS INTERNAL MED. 704, 704–06 (2018).

in the debate. This contest over standing spilled into part of what is now the public sphere, Twitter.⁴³⁶ Before the official publication of the ACP's position paper, the NRA's Institute for Legislative Action issued a sharp rebuttal on its website, describing the recommended policies as "every anti-gunner's public policy wish list."⁴³⁷ The NRA criticized the quality of evidence the ACP cited to support its recommendations, suggesting the studies cited were too small or inconclusive, yet concluded not with a call for more research, but instead with untempered deference to an expansive view of the Second Amendment.⁴³⁸

In November 2018, the NRA broadened the battle by taking to social media. On November 7, the organization tweeted: "Someone should tell self-important anti-gun doctors to stay in their lane. Half of the articles in *Annals of Internal Medicine* are pushing for gun control. Most upsetting, however, the medical community seems to have consulted NO ONE but themselves."⁴³⁹

The NRA's broadside was a clear attack on the physicians' standing and a standing claim for the organization and its members. The medical journal articles were extensively sourced and referenced, so the authors had consulted many people in a scholarly fashion.⁴⁴⁰ They had not, however, made peace with the NRA. The almost explicit claim here is that by virtue of its long history of advocacy, the NRA believed it merited special attention or a privileged place in the longstanding gun debate. A call for one's political opponents to "stay in their lane"⁴⁴¹ was an effort to deny the physicians a place in the political debate.

Hundreds of individual doctors responded on Twitter and other social media platforms that their experiences in practice gave them a special understanding of the dangers of guns.⁴⁴² On social media, particularly within Twitter's strict limits on the number of characters in a message, personal assertions and experiences replaced empirical evidence.⁴⁴³ Emergency room doctors, in particular, were dramatic in describing—in very brief bursts—how ready access to guns affected their professional lives.⁴⁴⁴

⁴³⁶ See *infra* notes 440–456 and accompany text.

⁴³⁷ *Surprise: Physician Group Rehashes Same Tired Gun Control Policies*, NRA-ILA (Nov. 2, 2018), <https://www.nra.org/articles/20181102/surprise-physician-group-rehashes-same-tired-gun-control-policies>.

⁴³⁸ *Id.*

⁴³⁹ NRA (@NRA), TWITTER (Nov. 7, 2018, 2:43 PM), <https://twitter.com/nra/status/1060256567914909702?lang=en>.

⁴⁴⁰ Butkus et al., *supra* note 435, at 704.

⁴⁴¹ NRA (@NRA), TWITTER (Nov. 7, 2018, 2:43 PM), <https://twitter.com/nra/status/1060256567914909702?lang=en>.

⁴⁴² See Lee, *supra* note 414.

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

The doctors posted photographs to underscore their ridicule, testimony, and urgency.⁴⁴⁵ Respecting the privacy of their patients, the doctors didn't post pictures of their patients. Instead, they posted photographs with images that dramatized their experiences and concerns, including: ambulances parked outside emergency rooms;⁴⁴⁶ the chair one doctor sat in to inform parents of the loss of their child; and the bloody scrubs a doctor had worn while treating the victim of a gunshot wound.⁴⁴⁷ Specific claims about policy were far less evident than graphic documentation of the trauma, physical and otherwise, that gun violence can produce:

"The #NRA chided doctors to 'stay in their lane' about #GunViolence. Gun violence literally *is* our 'lane.' I've had the spilled blood of gunshot victims on my scrubs and shoes. When did the NRA save someone who is shot and dying!? #ThousandOaks." – Dr. Dena Grayson⁴⁴⁸

"Ma'am, before you challenge our expertise, I invite you to see it first hand. You are welcome to join me on call. DM me to arrange. You will understand that real shock value is what we see daily, not ridiculous analogies like this." – Matthew D. Neal, MD⁴⁴⁹

"Who do you think removes bullets from spines and repairs (or tries to) livers blasted by an AR-15? The tooth fairy? This literally is medicine's lane." – Dr. Jennifer Gunter⁴⁵⁰

"@NRA says docs should 'stay in [our] lane.' My lane is a pregnant woman shot in a moment of rage by her partner. She survived because the baby stopped the bullet. Have you ever had to deliver a shattered baby? #ThisisMyLane. What's yours? #Docs4GunSense." – Stephanie Bonne, November 9, 2018⁴⁵¹

"#ThisisMyLane . . . @NRA Come to the trauma bay; see first-hand what an emergency thoracotomy looks like trying to save a gunshot victim without vital signs. Come with us as we tell a mother her child

⁴⁴⁵ *Id.*

⁴⁴⁶ jhm11 (@jhenrn11), TWITTER (Nov. 19, 2018, 10:49 PM), <https://twitter.com/jhenrn11/status/1064727490093072384>.

⁴⁴⁷ *Id.*

⁴⁴⁸ Dr. Dena Grayson (@DrDenaGrayson), TWITTER (Nov. 10, 2018, 7:31 PM), <https://twitter.com/DrDenaGrayson/status/1061416028310249472>.

⁴⁴⁹ Matthew D. Neal, MD (@macky_neal), TWITTER (Nov. 10, 2018, 7:38 PM), https://twitter.com/macky_neal/status/1061417848558497792.

⁴⁵⁰ Jennifer Gunter (@DrJenGunter), TWITTER (Nov. 7, 2018, 10:27 PM), <https://twitter.com/DrJenGunter/status/1060373165937844224>.

⁴⁵¹ Stephanie Bonne (@scrubbedin), TWITTER (Nov. 9, 2018, 4:42 PM), <https://twitter.com/scrubbedin/status/1061011179198472193>.

has died from gun violence. Yup, this is definitely OUR lane.” – Sara Shanahan⁴⁵²

The doctors’ personal claim to standing based on experience generated a great deal of attention briefly, but seemed to add more heat than light to the contested political debate. Gun rights advocates were unconvinced by the doctors’ experiences and were coolly dismissive of their stories. Conservative provocateur Ann Coulter responded on Twitter: “Emergency room doctors pull cue balls, vines & gummy bears out of human orifices every week. That doesn’t make them experts on pool, horticulture or chewy candy.”⁴⁵³ Doctors continued firing in the Twitter war, contesting Coulter’s standing in the debate:

“A serious question for you @AnnCoulter? I’m a trauma surgeon & a police officer. I’ve been bled on by my patients in the OR at @ParklandTrauma AND by my friends injured in gunfights w/@DallasPD SWAT. You sit in front of a camera & talk. What EXACTLY are you an expert on ma’am?” – Alexander Eastman⁴⁵⁴

Another doctor responded: “We do examine assholes all day so it does make us an expert on them. You qualify.”⁴⁵⁵

Although the public debate about standing in the gun debate was particularly colorful, extensive, and scatological, it was not novel. Indeed, both the NRA and its critics returned to well-rehearsed arguments that appeared in earlier bursts of attention in the wake of mass shootings. The NRA dismissed a 2015 article published in the *Annals of Internal Medicine*⁴⁵⁶ by questioning the wisdom and integrity of the authors, declaring the authors should stay out of the issue:

[The authors] strained their credibility and made fools of themselves with a call to action in favor of gun control . . . these doctors and

⁴⁵² Sara Shanahan (@SaraShanahan_MD), TWITTER (Nov. 9, 2018, 7:49 PM), https://twitter.com/SaraShanahan_MD/status/1061058205944401920; see also Anna Sheffer, *Doctors Are Tweeting About Gun Control Again After the Chicago Hospital Shooting, and Everyone Should Read This*, HELLO GIGGLES (Nov. 20, 2018, 6:16 AM), <https://helligiggles.com/news/er-doctor-viral-tweet-ann-coulter-gun-control/>.

⁴⁵³ Ann Coulter (@AnnCoulter), TWITTER (Nov. 10, 2018, 4:23 PM), <https://twitter.com/AnnCoulter/status/1061368733229309952>.

⁴⁵⁴ Alexander Eastman (@PMHTrauma_ALE), TWITTER (Nov. 10, 2018, 6:52 PM), https://twitter.com/PMHTrauma_ALE/status/1061406231624060928; see also Jennifer Emily & Robert Wilonsky, *Ann Coulter Says Doctors Should Butt Out of Gun Debate. A Dallas SWAT Surgeon Has Some Feelings About That*, DALL. NEWS (Nov. 12, 2018, 1:15 PM), <https://www.dallasnews.com/news/2018/11/12/ann-coulter-says-doctors-should-butt-out-of-gun-debate-a-dallas-swat-surgeon-has-some-feelings-about-that/> (discussing Dr. Eastman’s response).

⁴⁵⁵ *This Doctor Had the Perfect Response to the Conservative Who Trolled Them over Gun Control*, POKE, <https://www.thepoke.co.uk/2018/11/13/doctor-perfect-response-conservative/> (last visited Mar. 30, 2020) (quoting a tweet from Cathleen London MD, which is no longer accessible).

⁴⁵⁶ Weinberger et al., *supra* note 433.

lawyers might want to educate themselves. Better yet, they should stick to medicine and law, rather than dabble in matters in which they have little understanding and zero practical experience. For union removal or estate planning, doctors and lawyers have a lot to offer. When serving as the gullible mouthpieces for a political agenda, they do themselves and the good standing of their professions a disservice.⁴⁵⁷

Not only does the entry of doctors into the political debate deserve discussion and policymaking on guns, but it also compromises the medical field, the NRA proclaimed. In an August 2016 iteration of the debate article, the NRA took issue with Monyae De, a doctor who argued that licenses should be required for gun owners.⁴⁵⁸ The NRA attacked the organized medicine, claiming that:

[M]edical mistakes are the third leading cause of death in the U.S. . . . [They cause] almost ten times the number of annual deaths attributable to firearms. . . . Instead of creating new requirements to limit the constitutional rights of “ordinary” law-abiding citizens, we might suggest that De could serve society better by focusing her energies to the obvious problems within the medical profession itself.⁴⁵⁹

But gun rights activists have not opposed the public standing of all physicians. Instead, doctors who advocate an expansive view of gun rights have formed their own organizations⁴⁶⁰ and received respectful attention from the NRA, which promotes their standing when they appear in other outlets.⁴⁶¹ For example, Marc Siegel, a physician, and professor at the NYU Langone Medical Center, explicitly rejected professional standing to make claims about policy.⁴⁶² Siegel wrote:

We physicians (and physician groups) are entitled to our opinions, while gun owners continue to have the right to bear arms. Guiding legislators on gun control is not a physician’s proper lane. . . . We doctors, meanwhile, must treat the sick and wounded and can speak

⁴⁵⁷ *Grandstanding Doctors and Lawyers Call for Gun Control*, NRA-ILA (Feb. 27, 2015), <https://www.nra.org/articles/20150227/grandstanding-doctors-and-lawyers-call-for-gun-control>.

⁴⁵⁸ *See Doctor Prescribes Requiring a “Medical License” for Gun Ownership*, NRA-ILA (Aug. 19, 2016), <https://www.nra.org/articles/20160819/doctor-prescribes-requiring-a-medical-license-for-gun-ownership> (recounting that Dr. De argued that obtaining assault rifles should be as difficult as obtaining a medical license).

⁴⁵⁹ *Id.*

⁴⁶⁰ *See, e.g., About*, DRS. FOR RESPONSIBLE GUN OWNERSHIP, <https://drgo.us/about/> (last visited Jan. 24, 2020).

⁴⁶¹ *See, e.g., Physicians Group Launches Effort to Help Patients Find Pro-Gun Healthcare Providers*, NRA-ILA (Sept. 8, 2017), <https://www.nra.org/articles/20170908/physicians-group-launches-effort-to-help-patients-find-pro-gun-healthcare-providers> (supporting a project by a pro-gun physician group).

⁴⁶² Marc Siegel, *Gun Control and a Doctor’s ‘Lane’*, NAT’L REV. (Nov. 29, 2018, 6:30 AM), <https://www.nationalreview.com/2018/11/gun-control-debate-physicians-groups-policy-guidance/>.

our minds freely, but we should recognize that we are in no position to provide official regulatory guidance⁴⁶³

There is some irony here. By promoting the views of physicians who both proclaim an expansive right to personal gun ownership and deny that they have special standing in the gun debate, gun rights advocates are giving those physicians standing and access to an audience. Qualification for this standing comes not from these physicians' professional expertise, but from their stance on guns. In effect, the stance on guns works as the first filter for entry into the public debate as an expert. Ultimately, the absence of disinterested expertise in the debate contributes little to informed policy on guns and a great deal to undermining faith in expertise more generally.

C. *Gun Safety and Peace Keeping*

In a similar way, both sides of the gun debate have worked to mobilize law enforcement officials to support their claims on matters of policy. Sheriffs and public safety commissioners should be particularly well-positioned to weigh in on the public debate. Charged with public safety and often confronting “bad guys” with guns, it is reasonable to think that they would be professionally concerned with public safety and the role that public access to firearms has in either promoting or undermining it. As implementers of public policy, or “street-level bureaucrats,”⁴⁶⁴ law enforcement officials are constrained and enabled by the law. In addition to their mission, they come to the debate in a uniform of authority and credibility.

Within law enforcement, there is no consensus on the utility of particular gun safety regulations nor the appropriate rules for access to firearms.⁴⁶⁵ This means that advocates on either side of the political debate can cite and deploy professional expertise in support of their position. Most frequently, this takes place in the context of debates over city ordinances or state laws that alter the ease of people's access to guns.⁴⁶⁶ In recent years, the reform of gun control laws has been continuous, particularly at the state level.⁴⁶⁷ High-visibility mass

⁴⁶³ *Id.*

⁴⁶⁴ MICHAEL LIPSKY, *STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES* 13–14 (1st ed. 1980).

⁴⁶⁵ *See, e.g.*, Jim Donahue, *Cop No More*, COPBLUE (Mar. 5, 2018), <https://copblue.com/cop-no-more/>. The entry features an officer writing to disagree with a police chief's position and briefly pointing to a history of police positions on gun issues. *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ EULALIE IDA JEAN LASCHEVER, *OPPOSING MOVEMENT STRATEGY, CRITICAL EVENTS, AND POLICY CHANGE: HOW THE GUN CONTROL AND GUN RIGHTS MOVEMENTS CAPITALIZE ON MASS SHOOTINGS* 14 (2017).

shootings provoke legislative action, although not in a consistent direction. In the wake of the Sandy Hook shooting, almost every State passed new legislation—about half made it more difficult to obtain guns legally, and half made it easier.⁴⁶⁸

Prospective and passed policy reforms provide law enforcement officials occasion to opine on the wisdom of proposals, and sometimes to do more than that.⁴⁶⁹ In addition to offering opinions on public safety, the responsibilities of law enforcement, and the Constitution, law enforcement officials have signed petitions,⁴⁷⁰ filed lawsuits,⁴⁷¹ and promised to resist new regulations by not enforcing laws they deem to be unwise or unconstitutional.⁴⁷² Police chiefs and sheriffs frequently do so, and their comments and standing are promoted by their supporters and pilloried by their opponents.⁴⁷³

In the wake of the shooting at the Marjory Stoneman Douglas High School, law enforcement officials from Florida cities responded by supporting a ban on semiautomatic weapons like the AR-15 and stronger “red flag” laws to make it easier to take weapons from people judged to be dangerous to themselves or others.⁴⁷⁴ “Congress messed up when they didn’t renew the assault weapons ban [in 2004]. I think that was problematic,” said Miami Shores police chief, Kevin Lystad, President of the Florida Police Chiefs Association (FPCA).⁴⁷⁵ Lystad said that the Association would support restrictions on access to guns, as well as stronger background checks.⁴⁷⁶ Florida officials offered public testimony based on what they described as their frustrations with the limitations of current Florida

⁴⁶⁸ *Id.*

⁴⁶⁹ Donahue, *supra* note 465.

⁴⁷⁰ See, e.g., Dan Weisberg, *Police Officers Right to Carry Firearms*, CHANGE, <https://www.change.org/p/charles-schumer-police-officers-right-to-carry-firearms> (last visited Mar. 30, 2020) (petitioning to expand rights for off-duty officers to carry firearms).

⁴⁷¹ E.g., Eli Stokols, *Majority of Colorado Sheriffs Join Lawsuit Against Gun Control Laws*, KDVR: FOX 31 NEWS (May 16, 2013, 4:10 PM), <https://kdvr.com/news/politics/majority-of-colorado-sheriffs-bringing-lawsuit-against-gun-control-laws/>.

⁴⁷² Martin Kaste, *When Sheriffs Won't Enforce the Law*, NPR (Feb. 21, 2019, 4:16 PM), <https://www.npr.org/2019/02/21/696400737/when-sheriffs-wont-enforce-the-law;SeveralColoradoSheriffsSayTheyWon'tEnforceRedFlagGunLaw>, CBS NEWS: 60 MINUTES OVERTIME (Nov. 15, 2019), <https://www.cbsnews.com/news/several-colorado-sheriffs-say-they-wont-enforce-red-flag-gun-law-60-minutes-2019-11-15/>.

⁴⁷³ Donahue, *supra* note 465; see also Seattle Times Editorial Board, *Agree or Disagree, Sheriffs Must Enforce New State Gun Law*, SEATTLE TIMES (Feb. 17, 2009), <https://www.seattletimes.com/opinion/editorials/agree-or-disagree-sheriffs-must-enforce-new-state-gun-law/>.

⁴⁷⁴ Charles Rabin & Jay Weaver, *In Wake of Parkland Massacre, Police Chiefs—Again—Call for Assault-Weapons Ban*, MIAMI HERALD (Jan. 19, 2018, 8:11 PM), <https://www.miamiherald.com/news/local/article2011002389.html>.

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.*

laws.⁴⁷⁷ Reporting that they are familiar with troubled individuals maintaining extensive caches of weapons, law enforcement officials complained that there was little they could do until after a crime had been committed.⁴⁷⁸ Under current law, said Scott Israel, Broward County Sheriff, “we’re handcuffed and our hands are tied.”⁴⁷⁹

Other law enforcement officials questioned not only the wisdom of the FPCA but also the extent to which they represented the judgment of the rank and file of police. On CopBlue, an independent blog “created by street cops for street cops,”⁴⁸⁰ Jim Donahue, formerly a police officer in Michigan, called out chiefs and sheriffs who had endorsed various gun control measures, particularly the group from Florida:

Current newspaper articles report that the Chiefs of Police all over South Florida are strongly advocating for more strict gun control laws. Article go [sic] on to suggest that the majority of the Florida Chiefs of Police are of the same opinion. . . . As an individual street cop, I read this stuff and wonder, “Who agrees with what the Chief is saying on this? Certainly not me.”. . . . Chances are you would never hear an experienced street cop advocating for more government control of guns. Yet, the politicians hear some chief with oral diarrhea advocating for more gun control and they judge that all 800,000 cops across the country want more government intervention in their lives . . . No matter how famous, chiefs who spout-off like this are talking like eggheads. The issue of active shooters in schools has been an important topic in law enforcement circles ever since Columbine. Here are some of the areas where either the chief and the rank & file are often going in opposite directions. Law enforcement wants more gun control laws. No, we don’t. Most often, the proposed laws won’t fix the problem. . . . A chief should know that the Supreme Court has ruled the right to “keep and bear arms” is a fundamental right under the Constitution. It can only be restricted by a court of law where the individual had the benefit of due process. Therefore, taking away someone’s Second Amendment rights takes a lot more than simply putting them, “on a list.”. . . Citizens have primary responsibility for their own defense – and sometimes, their only defense. . . . The point of all of these examples is this: a real cop would never say them out

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

⁴⁸⁰ See *CopBlue Background & Mission*, COPBLUE, <https://copblue.com/about/copblue-background/> (last visited Mar. 30, 2020).

loud—especially not to a member of the media. Cops know of the shortcomings of each example.⁴⁸¹

Donahue’s critical claim is that the chiefs who support gun control measures are not “real cops,” but leaders who have, for some reason, lost touch with the rank and file officers protecting the public who know, paradoxically, that they cannot always reliably protect the public.⁴⁸²

Importantly, this divide is not strictly between street cops and their bosses. Just years before, Brevard County Sheriff, Wayne Ivey, had issued a call for citizens to arm themselves to fight terrorism, noting that law enforcement needed help.⁴⁸³ When the Ohio legislature considered a bill that would allow unlicensed concealed carry of firearms, law enforcement officers and officials came to the state legislature to register their opposition.⁴⁸⁴ “An untrained person, even with the minimum training currently required for CCW holders, really has no idea what they have truly just embarked into,” said Michael Haynes, a Toledo Police officer who spoke on behalf of the Toledo Police Patrolman’s Association.⁴⁸⁵ Here, the officer claimed standing by virtue of his professional expertise.⁴⁸⁶ He was not alone. The Chief of Police of Oregon, Ohio, Mike Navarre, noted his opposition to concealed carry altogether and blamed gun rights fundamentalists for the unwelcome legislation.⁴⁸⁷ Navarre claimed: “Basically what they’re saying is you can buy a gun from Wal-Mart, stick it in the back of your pants, and go about your business without anyone showing you how to use it. . . . It makes no sense whatsoever. It makes a very dangerous job of being a police officer even more so.”⁴⁸⁸

A law enforcement leader who comes out for gun control measures quickly becomes a target for his political opponents, who will question his standing. Shortly after a school shooting in Santa Fe, Texas, in which ten people were

⁴⁸¹ Donahue, *supra* note 465.

⁴⁸² *Id.*

⁴⁸³ J.D. Gallop, *Brevard Sheriff’s Gun Call Goes Viral*, FLA. TODAY (Dec. 11, 2015, 3:48 PM), <https://www.floridatoday.com/story/news/2015/12/07/sheriff-calls-citizens-ready/76922098/>.

⁴⁸⁴ Jim Provance, *Officers Speak Out Against License-Free Concealed Carry*, TOL. BLADE (May 22, 2019, 3:13 PM), <https://www.toledoblade.com/local/politics/2019/05/22/officers-oppose-licence-free-concealed-carry-ohio-house-bill-178/stories/20190522134>.

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.* The officer suggested that he was speaking on behalf of the Toledo Police Patrolman’s Association. *Id.*

⁴⁸⁷ Jay Skebba & Lauren Lindstrom, *Bill Would Let All Law-Abiding Ohioans Above 21 Carry Hidden Guns*, TOL. BLADE (Mar. 29, 2019, 11:27 AM), <https://www.toledoblade.com/local/politics/2019/03/29/ohio-bill-would-end-concealed-carry-gun-permit-requirement/stories/20190329126>.

⁴⁸⁸ *Id.*

killed and thirteen more wounded, Houston Police Chief Art Acevedo took to social media to criticize legislators for failing “to enact common sense statutes & policies & continu[ing] to fail our families & especially our children.”⁴⁸⁹ That Twitter post was followed by a much longer post on Facebook:

Today I spent the day dealing with another mass shooting of children and a responding police officer who is clinging to life. I'm not ashamed to admit I've shed tears of sadness, pain and anger I know some have strong feelings about gun rights but I want you to know I've hit rock bottom and I am not interested in your views as it pertains to this issue. Please do not post anything about guns aren't the problem and there's little we can do. . . . I have never accepted the status-quo in anything I do and I've never accepted defeat. And I won't do it now. I will continue to speak up and will stand up for what my heart and my God commands me to do, and I assure you he hasn't instructed me to believe that gun-rights are bestowed by him. . . . This isn't a time for prayers, and study and Inaction [sic], it's a time for prayers, action and the asking of God's forgiveness for our inaction (especially the elected officials that ran to the cameras today, acted in a solemn manner, called for prayers, and will once again do absolutely nothing).⁴⁹⁰

Dana Loesch, then working as a spokesperson for the NRA, attacked Acevedo, arguing that his stance was not credible because he had refused to order his officers to check the immigration status of everyone they encountered.⁴⁹¹ He argued that it would compromise law enforcement efforts by making people reluctant to report crimes to the police.⁴⁹² Loesch said Chief Acevedo was a hypocrite and untrustworthy because he “‘doesn't believe you have to enter [the country] legally,’ she said, ‘but thinks he has the right to go into every home in Texas and inspect how everybody's storing their firearms? I don't think so.’”⁴⁹³ Acevedo tweeted back: “Unlike the @NRATV I believe guns belong in the hands of law-abiding Americans of sound mind and will do everything I can to keep it that way and to keep firearms out of the hands of criminals and the mentally unstable. Goodnight.”⁴⁹⁴ Acevedo eventually stopped

⁴⁸⁹ St. John Bamed-Smith, *Chief Art Acevedo Battles NRA in Heated Exchanges After Santa Fe Massacre*, HOUS. CHRON. (May 23, 2018, 5:47 PM), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Chief-Art-Acevedo-battles-NRA-in-heated-exchanges-12935732.php>.

⁴⁹⁰ *Id.*

⁴⁹¹ Meagan Flynn, *Houston Police Chief 'Hit Rock Bottom' After Santa Fe Shooting. Then Came a Nasty Feud with the NRA.*, WASH. POST (May 24, 2018, 6:27 AM), <https://www.washingtonpost.com/news/morning-mix/wp/2018/05/24/houston-police-chief-hit-rock-bottom-after-santa-fe-shooting-then-came-a-nasty-feud-with-the-nra/>.

⁴⁹² *Id.*

⁴⁹³ *Id.*

⁴⁹⁴ *Id.*

responding to Loesch and the NRA, who would not have retreated from the media battle.⁴⁹⁵ At the same time, he appeared throughout mainstream media, explaining his views, and attacks on him continued. Kevin Williamson, a conservative opinion writer, argued Acevedo had no standing to weigh in on gun control altogether:

I've met Chief Acevedo, and he seems to me a good guy with a tough job, but he's out of bounds here. Like a great many police chiefs and other civil servants in this ailing republic, he could stand being reminded of who works for whom. Police chiefs are not lawmakers. It is not Chief Acevedo's job to decide what kind of gun laws Texas—or the United States—has or does not have. Like any citizen, Chief Acevedo is entitled to his opinion, but he doesn't have any special competence or standing to speak on the issue of gun control. What he has is only a point of view. . . . Chief Acevedo should stick to policing crime in Houston rather than the political views of the people for whom—in case he has forgotten—he works. Unless he wants to be chief of police at *Face the Nation*, the position of sheriff of Fox News already having been taken. Chief Acevedo needs to give some thought to the question of whether he wants to be a cop or a politician. If he wants to be a cop, he should go stick to running the Houston police department.⁴⁹⁶

Using the language of standing, Williamson argues that Chief Acevedo has no purchase on public advice on matters of policy; rather, his job is to implement policies made by elected officials—except on gun issues, where the Constitution takes the question of regulation off the table completely.⁴⁹⁷ So, gun rights proponents challenged the standing of law enforcement officials who advocated for stricter gun control laws, questioning their integrity, their judgment, and their authenticity.

Advocates of gun control use much the same arguments to respond to law enforcement officials who oppose regulation of firearms. When the Los Angeles City Council considered a regulation that would require anyone within the city to lock their weapons when not in use, the police union opposed the measure.⁴⁹⁸ The union's claim was that current and retired officers should have ready access

⁴⁹⁵ *Id.*

⁴⁹⁶ Kevin D. Williamson, *Remember Who Works for Whom, Chief Acevedo*, WASH. EXAMINER (May 21, 2018, 2:15 PM), <https://www.washingtonexaminer.com/weekly-standard/houston-police-chief-art-acevedo-is-not-interested-in-your-views-on-gun-control>.

⁴⁹⁷ *Id.*

⁴⁹⁸ Emily Alpert Reyes, *L.A. Councilman Wants to Expedite Gun-Lock Law*, L.A. TIMES, July 1, 2015, at B5.

to their weapons so they could protect public safety.⁴⁹⁹ City councilors and members of mobilized interest groups argued that the laws must apply to anyone, and that police enjoyed no special perspective or privilege.⁵⁰⁰

Local law officials in Colorado issued a promise that they would not enforce a strong red flag measure that the legislature was considering.⁵⁰¹ The extreme protection measure would allow family members, roommates, and law enforcement officials to petition a judge to confiscate weapons of people they believed to be dangerous to themselves or others based on a preponderance of the evidence.⁵⁰² Thirty-two counties in Colorado declared themselves to be Second Amendment sanctuary zones, and law enforcement officers pledged not to enforce the law and to defy court orders to take weapons from citizens who had not broken laws—even if that meant their own arrest.⁵⁰³ Substantial numbers of law enforcement leaders have made similar pledges to resist a variety of gun control measures in Maryland,⁵⁰⁴ New Mexico,⁵⁰⁵ and Washington state⁵⁰⁶—among other places. Gun control advocates argue that the NRA has been actively recruiting law enforcement officials and encouraging them to take this stand.⁵⁰⁷ According to the Brady Campaign, a gun control group, “public comments in opposition to these bills showed a shocking disregard for basic tenets of American governance such as the separation of powers, strongly deviated from the traditional role of law enforcement embedded in American society, and instead reading like a list of National Rifle Association (NRA) talking points.”⁵⁰⁸

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

⁵⁰¹ Scott McLean & Sara Weisfeldt, *This Colorado Sheriff Is Willing to Go to Jail Rather Than Enforce a Proposed Gun Law*, CNN (Mar. 31, 2019, 2:11 AM), <https://www.cnn.com/2019/03/31/us/colorado-red-flag-gun-law/index.html?no-st=1562819829>. HB19-1177 took effect in January 2020. Bente Birkeland, *Colorado Gun Rights Group Files Lawsuit Over ‘Red Flag’ Law*, COLO. PUB. RADIO (May 2, 2019), <https://www.cpr.org/2019/05/02/colorado-gun-rights-group-files-lawsuit-over-red-flag-law/>.

⁵⁰² *Supra* note 501 and accompanying text.

⁵⁰³ *Supra* note 501 and accompanying text.

⁵⁰⁴ Chase Cook, *Wicomico County Sheriff: ‘We Will Not Comply’ with Long Gun License Bill as Written*, CAP. GAZETTE (Feb. 25, 2019), <https://www.capitalgazette.com/politics/ac-cn-wicomico-not-comply-20190226-story.html>.

⁵⁰⁵ Robert Davis, *New Mexico: 29 of 33 County Sheriffs Refuse to Enforce Anti-2A Laws, 24 Counties Become Sanctuaries*, GUNPOWDER MAG. (Mar. 4, 2019), <https://www.gunpowdermagazine.com/new-mexico-29-of-33-county-sheriffs-refuse-to-enforce-anti-2a-laws-24-counties-become-sanctuaries/>.

⁵⁰⁶ Erik Lacitis, *‘I’m Just Standing Up for People’s Rights’: Police Chief in Tiny Republic Says He Won’t Enforce New Gun Law*, SEATTLE TIMES (Nov. 19, 2018, 2:22 PM), <https://www.seattletimes.com/seattle-news/politics/police-chief-in-tiny-republic-wants-it-a-sanctuary-city-from-new-gun-law/>.

⁵⁰⁷ Eric Lutz, *The Right’s Latest Tactic on Gun Laws? Just Don’t Enforce Them*, ROLLING STONE (May 28, 2019, 11:50 AM), <https://www.rollingstone.com/politics/politics-features/second-amendment-sanctuaries-nra-839552/>.

⁵⁰⁸ On the NRA’s fingerprints, see BRADY CAMPAIGN, ROGUE SHERIFFS IN NEW MEXICO: WHO DO THEY SERVE? 3 (2019).

The rogue—or resistant—law enforcement officials keep coming back to the claim that whatever law they are resisting is unconstitutional, and therefore their resistance is appropriate, even necessary.⁵⁰⁹ Gun control advocates' response to this interpretation is very much like Williamson's reaction to Sheriff Acevedo; as an example, Jonathan Lowy of Brady explained, "[i]t should not be up to individual sheriffs or police officers deciding which laws they personally like This attitude shows a disrespect for the way our system of government is supposed to operate."⁵¹⁰

Here again, advocates and concerned citizens grant the law enforcement officials' standing and audience in the public debate based on their stance, while disputing the standing of their opponents for the same reason. It is a limited conception of expertise.

D. Educators and Safe Schools

When the Sandy Hook school shooting shocked the nation and raised the profile of America's gun policies, spurring support for some gun control measures, the NRA had to respond. Consistently opposed to any measures that might make it more difficult for people to obtain a wide variety of weapons, the NRA proposed alternative means of protecting schools.⁵¹¹ "The only thing that stops a bad guy with a gun is a good guy with a gun," its chief executive Wayne LaPierre explained.⁵¹² Since gun control measures would not work, he explained, the organization developed alternatives.⁵¹³ The organization announced a "School Shield" program, which offered advice and relatively small grants to schools that would invest in hardening the targets that schools normally presented to gunmen.⁵¹⁴ The program involved safety training, installing bulletproof glass and metal detectors, improving locks, and supporting

⁵⁰⁹ Davis, *supra* note 505.

⁵¹⁰ Daniel Trotta, *Defiant U.S. Sheriffs Push Gun Sanctuaries, Imitating Liberals on Immigration*, REUTERS (Mar. 4, 2019, 6:10 AM), <https://www.reuters.com/article/us-usa-guns-sanctuary/defiant-us-sheriffs-push-gun-sanctuaries-imitating-liberals-on-immigration-idUSKCN1QL0ZC>.

⁵¹¹ See Sarah Muller, *NRA's 'Shield Program' Calls for More Guns in Schools*, MSNBC (Apr. 2, 2013, 1:54 PM), <http://www.msnbc.com/the-last-word/nras-shield-program-calls-more-guns-schools> ("NRA-backed 'National Shield Program' outlined eight recommendations to increase school safety, including arming designated staffers with weapons and offering a security training program.").

⁵¹² *Id.*

⁵¹³ *Id.*

⁵¹⁴ *About NRA School Shield*, NRA SCH. SHIELD, <https://www.nraschoolshield.org/about> (last visited Jan. 21, 2020); see Stephanie Mencimer, *After Sandy Hook, the NRA Made Big Promises About a New School Safety Program. It Hasn't Done Much.*, MOTHER JONES (Feb. 26, 2018), <https://www.motherjones.com/politics/2018/02/after-sandy-hook-the-nra-made-big-promises-about-a-new-school-safety-program-it-hasnt-done-much/> (critiquing the amount of money granted).

trained teachers carrying concealed weapons.⁵¹⁵ At the CNN town hall following the Parkland shooting nearly six years later, a parent in the audience challenged Dana Loesch on the outcomes of that effort.⁵¹⁶ Loesch responded that very few schools participated in the program; the NRA could offer resources, but individual schools had to take the initiative.⁵¹⁷

After the Parkland shooting, the NRA returned to its School Shield program, encouraging politicians to take up the cause.⁵¹⁸ President Donald Trump responded quickly, suggesting that well-trained teachers could get a small bonus for carrying weapons to their jobs, thus hardening the targets and deterring shooters.⁵¹⁹ “You give them a little bit of a bonus, so practically for free, you have now made the school into a hardened target,” he explained.⁵²⁰ Trump’s Secretary of Education, Betsy DeVos, followed by suggesting that federal funds appropriated in the Every Student Succeeds Act could be offered as grants to help pay for training and arming teachers.⁵²¹ At least six states, including Florida, actively considered legislation allowing teachers to carry concealed arms in their classes.⁵²²

Arming teachers proved immediately to be very unpopular with the general public (42% supported arming teachers in one poll) and far less popular with teachers (only 18% expressed a willingness to carry weapons).⁵²³ Teacher organizations, including the American Federation of Teachers (AFT) and the National Education Association (NEA), immediately announced opposition,⁵²⁴

⁵¹⁵ Jennifer Harper, *NRA ‘School Shield’ Program Awards \$600K in Grants for School Security Projects*, WASH. TIMES (Sept. 10, 2018), <https://www.washingtontimes.com/news/2018/sep/10/nra-school-shield-program-awards-600000-in-grants-/>; Mencimer, *supra* note 514.

⁵¹⁶ Mencimer, *supra* note 514.

⁵¹⁷ *Id.* The actual amounts awarded could pay for little of the target hardening the NRA advised, and some of the larger grants were awarded to districts governed by ambitious allies. *See id.*

⁵¹⁸ *See* Halimah Abdullah & Cheyenne Haslett, *NRA Chief Cites ‘Failures’ in School Security, Mental Health System After Parkland Shooting*, ABC NEWS (Feb. 22, 2018, 11:34 AM), <https://abcnews.go.com/Politics/nra-president-wayne-lapierre-addresses-conservative-conference-wake/story?id=53274513> (stating at a speech, LaPierre “offered the NRA’s School Shield programs assistance ‘absolutely free to any school in America’”).

⁵¹⁹ Julie Hirschfeld Davis, *Trump Suggests Armed Teachers Get ‘Bit of Bonus’*, N.Y. TIMES, Feb. 23, 2018, at A1.

⁵²⁰ *Id.*

⁵²¹ Erica L. Green, *DeVos Is Said to Consider Funding Guns for Schools*, N.Y. TIMES, Aug. 22, 2018, at A11.

⁵²² Amanda Litvinov, *Lawmakers in These 6 States Are Pushing to Arm Teachers*, EDUC. VOTES (Apr. 25, 2019), <https://educationvotes.nea.org/2019/04/25/lawmakers-in-these-6-states-are-pushing-to-arm-teachers/>.

⁵²³ Megan Brenan, *Most U.S. Teachers Oppose Carrying Guns in Schools*, GALLUP (Mar. 16, 2018), https://news.gallup.com/poll/229808/teachers-oppose-carrying-guns-schools.aspx?g_source=link_news_v9&g_campaign=item_231224&g_medium=copy.

⁵²⁴ John Bacon, *Trump Plan at Odds with Teacher #ArmMeWith Movement*, USA TODAY (Feb. 22, 2018,

and news media were filled with testimony by teachers, including many who owned permitted guns,⁵²⁵ about the dangers of the proposal.⁵²⁶ AFT President Randi Weingarten announced:

[I am] sickened by those . . . who want an arms race and to turn schools into militarized fortresses by arming teachers. . . . Anyone who wants guns in schools has no understanding of what goes on inside them—or worse, doesn't care I spoke to 60,000 educators last night in a telephone town hall. The response was universal, even from educators who are gun owners: Teachers don't want to be armed, we want to teach.⁵²⁷

Teachers across the country sought to use the movement to make other claims about how to improve schools—deploying the hashtag #ArmMeWith, teachers posted on Facebook, Instagram, and Twitter lists of the things they needed to do their jobs more effectively, including books, erasers, smaller classes, and counselors.⁵²⁸

In addition to not getting things they thought would help them do their jobs, teachers were understandably unenthusiastic about the presence of guns on their campuses.⁵²⁹ The Giffords Center maintains a list of incidents in schools where guns were mishandled, sometimes very dangerously.⁵³⁰ The record includes dozens of incidents of guns left unattended or used to threaten students or other teachers and at least fifteen incidents of accidental discharge of firearms.⁵³¹

Meanwhile, gun rights volunteers offered free classes to interested teachers which were, according to supporters of gun rights, wildly popular and successful.⁵³² The NRA posted a report on John Benner, who runs the Tactical

9:30 AM), <https://www.usatoday.com/story/news/nation/2018/02/22/trump-plan-odds-teacher-armmewith-movement/362294002/>.

⁵²⁵ *Id.*

⁵²⁶ David Brennan, *No Guns for Teachers, American Educators Say, Demand Mental Health Resources Instead*, NEWSWEEK (Mar. 23, 2019, 10:06 AM), <https://www.newsweek.com/teachers-guns-schools-mass-shooting-gun-crime-mental-health-1373035>.

⁵²⁷ Bacon, *supra* note 524.

⁵²⁸ Amanda Morris, *In #ArmMeWith Movement, Teachers Ask to be Armed - but not with Guns*, CNN (Feb. 22, 2018, 11:21 PM), <https://www.cnn.com/2018/02/22/politics/armmewith-twitter-teachers-guns/index.html>; *#ArmMeWith Smaller Classes, Books and Paper Towels but Not Guns, Teachers Post Online*, ABC NEWS (Feb. 24, 2018), <https://abcnews.go.com/Politics/teachers-armmewith-hashtag-school-funding-counselors-guns/story?id=53329559>; *ArmMeWith Movement*, FACEBOOK, <https://www.facebook.com/armmewith/> (last visited Feb. 20, 2019).

⁵²⁹ Morris, *supra* note 528.

⁵³⁰ Kelly Drane, *Every Incident of Mishandled Guns in Schools*, GIFFORDS (Dec. 11, 2019), <https://giffords.org/blog/2019/12/every-incident-of-mishandled-guns-in-schools-blog/>.

⁵³¹ *Id.*

⁵³² Brad Fitzpatrick, *Arming Educators*, AM.'S 1ST FREEDOM (Oct. 23, 2018), <https://www>.

Defense Institute (TDI) in West Union, Ohio, and designed a Faculty/Administrator Safety Training and Emergency Response (FASTER) Program that includes the use of weapons.⁵³³ The story reports that he has trained about 1,600 teachers and school personnel in the program.⁵³⁴ Chris Burrows, a school superintendent in Georgetown, Ohio, explained:

Ultimately, it is my responsibility to deploy as many strategies as humanly possible to ensure moms and dads that their children are protected. When you look at the research behind active-shooter scenarios the data is clear: seconds save lives. After learning this, I knew it was imperative for me to train all willing staff members to do two things: respond to and confront an active killer with a weapon and respond to any student or staff member that may need medical treatment immediately. . . . This was never about a political stance simply a researched based strategy that could get our district one step closer to our assurances, keeping the boys, girls, and adults of Georgetown safe by having the ability to respond to the unthinkable situation immediately.⁵³⁵

It is not clear that the organized response by teachers had much influence on the policymakers considering proposals to arm them. At least eight states allow permitted employees other than security officers to carry concealed weapons, and a larger number allow schools or districts to give permission to individuals to carry guns.⁵³⁶ In October 2019, Florida joined this list when a bill creating the Guardian Program, part of the Marjory Stoneman Douglas High School Safety Act—a response to the Parkland shooting—came into effect.⁵³⁷ The program provides a \$500 stipend to teachers who complete an extensive training program and agree to carry their weapons to school.⁵³⁸ The young people who survived the Parkland shooting and organized March for Our Lives vigorously—and unsuccessfully—opposed the bill.⁵³⁹ Emma Gonzalez tweeted, “LISTEN TO

americas1stfreedom.org/articles/2018/10/23/arming-educators/.

⁵³³ *Id.*

⁵³⁴ *Id.*

⁵³⁵ *Id.*

⁵³⁶ Kayla Dwyer, *Guns in School? Here’s a List of States that Allow Armed Teachers*, MORNING CALL (Feb. 14, 2019, 9:20 AM), <https://www.mcall.com/news/education/mc-nws-guns-in-schools-list-20181108-story.html>. (“These 8 states have policies that specifically allow school employees—other than security personnel, which are allowed to carry guns in 28 states—to carry guns on school property, though they may need the district’s permission: Idaho, Kansas, Louisiana, Missouri, South Dakota, Tennessee, Texas, Wyoming.”).

⁵³⁷ Laura M. Holson, *Florida Teachers Can Now Carry Guns at School*, N.Y. TIMES (Oct. 1, 2019), <https://www.nytimes.com/2019/10/01/us/florida-teachers-guns.html>.

⁵³⁸ *Id.*; *Guardian Program*, FLA. DEP’T EDUC., <http://www.fldoe.org/safe-schools/guardian-program.stml> (last visited Mar. 30, 2020).

⁵³⁹ Maggie Jones, *The March for Our Lives Activists Showed Us How to Find Meaning in Tragedy*, SMITHSONIAN MAG. (Dec. 2018), <https://www.smithsonianmag.com/innovation/march-for-our-lives-student->

THE PEOPLE WHO ARE AFFECTED BY THIS, THOSE IN THE LEGISLATURE DON'T KNOW WHAT THEY ARE DOING TO US.”⁵⁴⁰

The national standing that the Parkland students cultivated proved to be of little value in convincing their state legislature or their governor of the legitimacy or wisdom of their concerns, even when buttressed by the teachers' overwhelming opposition to the new policy. Standing is contingent and segmented. The people who made the policies were not those who were particularly interested in listening to these organized students or teachers.

X. STAKE, STANDING, SOCIAL MOVEMENTS AND DEMOCRACY

We know there is a gap between stake and standing, and that democratic reforms promote narrowing that gap. Long ago, President Lincoln identified enslaved people in the southern part of the United States as comprising a “peculiar and powerful interest” that was the cause of the Civil War, but those people lacked the standing to participate in making decisions about their lives and their nation.⁵⁴¹ War, then constitutional amendments, lawsuits, and more than a century of engaged activism, reduced the gap, slowly, erratically, and at great cost to some people.

Democracy is an inherently messy form of making political decisions, even when those involved share interests and attitudes. Diversifying the democratic community cannot help but make politics more contested and far more difficult to manage. The legal concept of standing works to limit the scope and volume of considerations and claimants that courts manage. In the broader political arena, however, the rules for standing themselves are contingent and contested. Indeed, a good portion of the democratic process is built around extending standing to new actors and interests.

Social movements work to bring additional actors standing in public debate, deploying a range of tactics to bring attention to issues and constituencies activists view as excluded or neglected. Organizers make standing claims by pushing people to recognize their stake in political decisions and demand access. They call for attention and consideration, promising not to go away until they are included. Organized campaigns work to bring attention to identified experts

activists-showed-meaning-tragedy-180970717/; Brittany Shammass, *Broward and Miami-Dade Teachers Won't Carry Guns Even if DeSantis Signs Controversial Bill*, MIAMI NEW TIMES (May 3, 2019, 8:09 AM), <https://www.miaminewtimes.com/news/broward-and-miami-dade-teachers-wont-carry-guns-even-if-governor-desantis-signs-controversial-bill-11163067>.

⁵⁴⁰ Shammass, *supra* note 539.

⁵⁴¹ President Abraham Lincoln, Second Inaugural Address (Apr. 10, 1865).

as well, seeking to incorporate perspectives they view as helpful into the public debate. At one level, a broader consideration of those affected by policies, informed by a more comprehensive understanding of those policies, should make for better policies. But in the political arena, standing is relational, contingent, and filtered first by the stances actors take. We would like to believe that credibility is demonstrated by trust in someone to give us news that we do not want to hear. Certainly, the world works that way sometimes. Most trust a dentist to report when a filling needs to be replaced or a good mechanic to explain that an oil pump needs to be rebuilt. Our trust is tested, then demonstrated, by our willingness to accept and consider unpleasant or inconvenient facts.

But in the political realm, increasingly, people pick those they trust based on stance rather than status or expertise, granting standing to those who affirm and strengthen our beliefs. It may be that the polarization of contemporary politics conditions us to resist information that challenges our existing beliefs and commitments.⁵⁴² In a public lecture at the end of the first World War, Max Weber charged scholars with the task of educating students to the complexity of social problems, and to accept and respond to unwelcome news.⁵⁴³ He explained: “The primary task of a useful teacher is to teach his students to recognize ‘inconvenient’ facts—I mean facts that are inconvenient for their party opinions.”⁵⁴⁴ Weber understood that a vital democracy was predicated on honest and informed discourse that addressed accurate explanations of social reality.

But this is not the world we live in. The NRA criticizes the presence of doctors in the gun debate when those doctors deplore gun violence but publicizes doctors who are committed to a strong version of gun rights. Gun control advocates underscore the value of young people who see the need for sensible regulations on gun sales but are much less interested in young people who do not see the wisdom of such regulations. Credibility that is contingent upon someone endorsing our own policy preferences is not really credibility. In the last half-century of political debate about guns, a well-resourced movement representing the firearms industry and some gun owners has established a seemingly permanent place in the political debate. Its opponents, advocates of gun control, have worked to bring new actors into the debate: victims and survivors, researchers, physicians, law enforcement officials, teachers, and

⁵⁴² See generally EZRA KLEIN, *WHY WE’RE POLARIZED* (2020).

⁵⁴³ Max Weber, *Science as Vocation*, Address at Munich University (c. 1918), in 87 *DAEDALUS* 111 (1958).

⁵⁴⁴ *Id.* at 125.

many others. Their success in doing so has depended upon successfully exploiting the moments of attention that follow visible tragedies like assassinations or mass shootings. In response to every new set of actors brought into the political debate, gun rights activists have responded by promoting their own allies with similar qualifications. The public debate gets broader, sloppier, and more polarized.

Standing is relational, that is, implicitly negotiated between a speaker and an audience, and increasingly, audiences are segmented. The analysis and the speaker don't necessarily reach beyond a distinct and limited community. In an era of expanding social media, this general situation produces a kind of democratic dialogue, but it is one that can easily be compromised when we deny standing to comparably situated actors who disagree with us. The danger here is the drive for "motivated reasoning," that is, rigorous analytical work that is directed to support a particular finding.⁵⁴⁵ Much as an attorney will aggressively, but honestly, look for evidence and arguments that support the position of her client, those with strong commitments are likely to work hard to find the desired outcome, rather than an undisclosed answer. As new actors enter political debates on the basis of firm commitments to positions rather than problems, the result is a more vigorous debate, but not necessarily a more informed one. In addition to considering how we grant standing in the public sphere, and whose judgments we attend to, it may be time to consider the rules of evidence as well.

⁵⁴⁵ It's not that rationality is abandoned so much as that rational processes are deployed in the service of a largely pre-determined outcome. Although individuals want accurate information and also to draw rational conclusions, they also generally want information and analyses that support the opinions and predispositions they already have. There are neurological, social-psychological, and political incentives for doing so. *See, e.g.*, MILTON LODGE & CHARLES S. TABER, *THE RATIONALIZING VOTER* 150 (2013); JOHN R. ZALLER, *THE NATURE OF MASS OPINION* (1992); Ziva Kunda, *The Case for Motivated Reasoning*, 108 *PSYCHOL. BULL.* 480 (1990); Chris Mooney, *The Science of Why We Deny Science: Motivated Reasoning*, MOTHER JONES, <https://www.motherjones.com/politics/2011/04/denial-science-chris-mooney/> (last visited Feb. 22, 2020).