

“The Obama Presidency and Gun Policy”

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“I have always believed that the Second Amendment protects the right of individuals to bear arms. . . .The Supreme Court has now endorsed that view. . . .As President, I will uphold the constitutional rights of law-abiding gun-owners, hunters, and sportsmen.”¹

Barack Obama, after *D.C. v. Heller* Supreme Court ruling, 2008

“A majority of Americans support banning the sale of military-style assault weapons. A majority of Americans support banning the sale of high-capacity ammunition clips. A majority of Americans support laws requiring background checks before all gun purchases, so that criminals can’t take advantage of legal loopholes to buy a gun from somebody who won’t take the responsibility of doing a background check at all. . . . So I will use all the powers of this office to help advance efforts aimed at preventing more tragedies like this.”²

President Obama, after Sandy Hook shooting, 2012

Public policy is a useful lens for understanding and analyzing a presidential administration. Yet policy is more than simply the product or output of an administration. Policy enactments and failures can measure the relative success of an administration. They are also a yardstick or barometer of the administration’s ideological direction and priorities. And policy is not only a dependent variable, the product of political and prior policy forces. As I argued forty years ago, policy types can, in and of themselves, shape the nature of presidential policy controversy, success, and failure.³ In this paper I propose to examine the Obama presidency

through the lens of gun policy. In other writing, I have argued that gun policy is an exemplar of social regulatory policy, the category of policy that, by the nature of its tumultuous politics, is the most daunting for presidents to enact or implement. The full explication of that argument is beyond the scope of this paper. Suffice it to say that, for the Obama presidency, gun policy proved as intractable as it had for past administrations. Still, it reveals much about the arc of the Obama presidency, and also of the Democratic party's evolution on the gun issue, as it moved from championing the issue, then abandoning it, then returning to it.

The Obama administration's seemingly schizophrenic handling of gun policy in its eight years neatly bisects his administration according to his two terms. In his 2008 election campaign and first term, candidate and then President Obama carefully avoided the subject. In his second term, however, he doggedly but unsuccessfully pursued major gun policy change in Congress. These two very different trajectories reflect not only the issue's intractability but the nation's underlying schizophrenia on the gun issue: enduring and consistent public support for stronger gun laws, on the one hand, versus a record of only occasional success in enacting such policies that is often animated by cataclysmic instances of gun violence. This "gun dilemma"⁴ is no less apparent in Barack Obama's record. The explanation begins with the 2000 presidential election.

Democrats Burned by Guns?

The gun issue played a central role in the 2000 elections and was a major point of disagreement between Democratic nominee Al Gore and Republican nominee George W. Bush.⁵ As is true of the history of gun policy,⁶ its prominence in that election owed much to a shocking gun massacre: the mass shooting by two disgruntled high school students at Columbine High School in Littleton, Colorado in April 1999, where twelve students and a teacher were killed and

twenty-three injured. That event in turn prodded Congress to take up new gun measures that summer which passed narrowly in the Senate, but ultimately foundered in the House of Representatives. Still, national momentum seemed to be on the side of the gun safety movement, culminating in a national rally held in the nation's capital on Mother's Day 2000. Dubbed the Million Mom March, it was the largest demonstration held there since the civil rights movement of the 1960s. That event seemed to presage a new wave of political momentum to buttress stronger gun laws, but the wave failed to sustain itself, and the momentum dissipated.

Gore's embrace of stronger gun measures, followed by his narrow loss in November, prompted gun rights forces to claim that Gore's position helped deliver the electoral votes of three states (Arkansas, Tennessee, and West Virginia) for Bush. Many Democrats agreed that the issue had cost Gore the election, or at least contributed to his defeat, despite persuasive subsequent evidence to the contrary.⁷ In any case, in the aftermath of the election, the Democrats, with some exceptions, all but abandoned gun control advocacy at the national level, considering it a politically costly distraction that diverted attention from more pressing, and arguably more winnable, issues.⁸ As part of a conscious strategy to broaden the party's base and recapture control of Congress, Democrats courted the gun community, ran "blue dog" Democrats who supported gun rights, and even embraced gun rights rhetoric. This strategy had two effects: it helped the Democrats regain control of Congress in the 2006 midterm elections, and it also yielded the national gun debate mostly to the pro-gun rights side, which ran the table during the gun-friendly Bush presidency, including the enactment of the National Rifle Association's top legislative priority, special liability protection for the gun industry, the Protection of Lawful Commerce in Arms Act (PLCAA) in 2005. Three years later, the Supreme Court ruled, for the

first time in history, that the Second Amendment's "right to bear arms" protected a personal right to own handguns for protection in the home in the case of *D.C. v. Heller* (2008).

As an Illinois state senator and then as U.S. senator, Barack Obama had expressed frank support for stronger gun laws. But in the manner of the post-2000 Democratic party, Obama not only downplayed his support for stronger gun laws but lined up gun enthusiasts to voice their support for him during the campaign. He proclaimed his support for protecting Second Amendment rights, a move prompted at least in part by the Supreme Court's *Heller* decision, handed down during the campaign in June. At the same time, however, his party's platform endorsed stronger gun measures.⁹

Even with *Heller*, the gun issue was little in evidence in the 2008 presidential race, pushed aside by three factors: emphasis on a fistful of more salient issues, including the worst economic downturn since the Depression of the 1930s, the Iraq war, rising gasoline prices, the environment, jobs, health care, and taxes; continued Democratic avoidance of the gun issue; and Republican presidential nominee Senator John McCain's (AZ) mixed record on the gun issue, tainted by the National Rifle Association's vehement attacks on him earlier in the decade for his support of campaign finance reform. (The NRA ultimately endorsed McCain for president.)

Still, the issue served as an important litmus test by which Republican candidates around the country established conservative bona fides. Among the Democrats, most continued to maintain support for limited gun control measures, but they also adopted gun rights rhetoric, framed by the *Heller* ruling, to reassure gun owners that they would not seek to restrict traditional lawful gun activities, including hunting and sporting.

The Gun-Free 2008 Campaign

The Republican party's nomination of Senator John McCain for president proved to be especially problematic for the NRA because, aside from Bill and Hillary Clinton, McCain had been one of the organization's chief demonic figures, repeatedly pilloried in NRA publications for his support of closing the "gun show loophole" (the practice allowed in many states where some gun show, internet, or other private sales do not require background checks of purchasers), and for his sponsorship of the McCain-Feingold campaign finance reform bill, which the NRA had vehemently opposed. McCain also admitted that he did not own a gun. When Barack Obama was criticized by McCain for his past support of an array of gun control measures, Obama countered that he supported the Second Amendment (the gun rights' rhetorical touchstone phrase), adding that "I come from a state—we've got a lot of hunters in downstate Illinois. And I have no intention of taking away folks' guns."¹⁰ Although Hillary Clinton was the NRA's chief demonic figure in the early 2000s, she extolled her gun credentials in the 2008 primaries by saying that she had been taught to hunt by her father, had been duck hunting, and on the campaign trail repeated the gun rights mantra, "I believe in the Second Amendment," while also expressing support for sensible gun laws, as did Obama.¹¹ During the Indiana primary, her campaign tried to turn the gun issue to its advantage by sending out a mailing in effect attacking Obama as anti-gun, noting that he had supported a handgun ban and citing his campaign comment that people living in rural areas were "bitter" and they therefore "cling to guns."¹²

Senator McCain extolled gun rights in his campaign, despite the NRA's past hostility to him, and criticized Obama for his past support of gun laws. For his part, Obama staked out this position in the aftermath of the *Heller* decision: "I have always believed that the Second Amendment protects the right of individuals to bear arms. . . . The Supreme Court has now

endorsed that view. . . .As President, I will uphold the constitutional rights of law-abiding gun-owners, hunters, and sportsmen.”¹³

Obama countered the Clinton and McCain attacks by continuing to trumpet his support for gun rights and running ads featuring endorsements from hunters and from the American Hunters and Shooters Association.¹⁴ These efforts became an integral component of his campaign in traditionally “red” states like Montana, North Dakota, Georgia, and South Carolina. Obama’s victories in the fall campaign in states including Colorado, Indiana, New Hampshire, and New Mexico reflect at least some success at blunting attacks by gun groups. As if to prove the point that party platforms reflect the parties’ activist bases more than those of the presidential candidates, the 2008 Democratic platform referenced protecting citizens’ right to bear arms, but it also supported closing the gun show loophole, improving background checks, and reinstating the assault-weapons ban. While Obama’s election was viewed as bad news for the NRA, it was not bad news at all for most gun owners.

The Obama First Term

Consistent with his campaign, Obama took no steps to support stronger gun laws in his first term, and in fact was largely silent on the issue, including squelching an initial effort by some in the Obama administration to try and revive the federal assault weapons ban that had lapsed in 2004.¹⁵ One might suppose that this did not reflect his true policy preferences, given his pre-presidency record supporting stronger gun laws and general policy liberalism, but if results matter most in politics, then Obama was as good as his word in his first term, in that he proposed no new gun legislation to Congress, and even signed into law two minor provisions that loosened gun laws, allowing gun carrying in national parks, and allowing unloaded and locked guns to be

carried on Amtrak trains in checked baggage.¹⁶ In fact, the Brady Campaign, a pro-gun safety organization, gave him a failing grade of “F” on the issue after his first year in office.¹⁷

The fact that the Obama administration made a clear decision to push aside gun policy change in favor of other priorities in Congress is evident in the administration’s fat record of accomplishment in the 111th Congress of 2009-2010, when the Democrats maintained a 19 to 20-vote margin in the Senate, and a roughly 78 seat margin in the House of Representatives over the Republicans. Among the landmark legislation enacted in the 111th Congress, coming as it did as the nation’s economy teetered on the brink of collapse, were an economic stimulus package including rescues for two U.S. auto makers, the Troubled Asset Relief Program (TARP) financial bailout fund, the Affordable Care Act (“Obama Care”), the Dodd-Frank Wall Street Reform and Consumer Protection Act, the bank bailout, a tax cut, and student loan program reform.¹⁸ Despite criticisms of Obama’s decision to prioritize health care reform and what some saw as his limited political skills,¹⁹ his record of accomplishment in Congress is undeniably considerable. Thus, he could have pressed for gun law reform as well, though whether that would have been wise or successful in political or policy terms is a different question.

Second Term Reverse

As has happened in America’s past, two cataclysmic instances of gun violence changed Obama’s course on the gun issue.

The first occurred on July 20, 2012, when a deeply disturbed 24-year-old man entered the Century 16 movie theater in Aurora, Colorado during its midnight showing of the just-opened Batman movie, “The Dark Knight Rises.” Walking to the front of the multiplex room as the movie played and clad in body armor, the man started to fire randomly yet methodically into the

crowded darkened theater. Many of the patrons assumed at first that it was somehow part of the movie's opening showing. Possessing four guns purchased legally at local gun shops (two .40-caliber Glock handguns, a Remington 12-gauge shotgun, and an AR-15-type assault rifle with an attachable 100 round drum magazine, all purchased legally at local gun shops, and over 6000 rounds of ammunition, purchased legally over the internet), he killed twelve and injure 58. After an apparent jam of his semi-automatic rifle, he left the theater and was arrested outside in the parking lot by police, who had already arrived at the scene. He had also booby-trapped his apartment, which took police two days to defuse.²⁰

Even for a nation increasingly inured to mass violence, the Colorado movie shooting incident by itself shocked the nation's sensibilities. Aside from the utterly random and senseless nature of the incident, it raised an array of public policy questions pertaining to the hot-button issue of gun control, as did other shooting incidents that summer. For example, shooter James Holmes was able to purchase his guns without anything more than the most cursory background check. He had no prior criminal record, and while he had undergone some counseling, he had not been judged mentally incompetent, despite escalating concern about his markedly deteriorating mental health from those who knew him. In a few states, gun purchase background checks are much more thorough, including in-person interviews of the applicant by police, and contacts with friends and relatives. Such a check would have rapidly exposed Holmes's troubled behavior and frustrated the sales, as would have been the case of the two perpetrators in two other mass shootings that occurred around the same time. All three of these individuals had well-known emotional problems.²¹ In addition, assault weapons and large-capacity magazines were barred to civilian purchase by federal law until 2004, when the federal assault weapons ban lapsed. The large quantity ammunition purchase made by Holmes over the internet occurred without

regulation or even documentation (attempts to regulate internet ammunition sales have repeatedly failed).

Coming as it did in the midst of the presidential campaign, both Obama and Republican nominee Mitt Romney issued statements of sympathy for the victims. Obama's spokesman said that the main focus of the president was to "protect Second Amendment rights."²² Romney said, "Changing the heart of the American people may well be what's essential."²³ In a speech on July 25, Obama dipped a toe in the gun policy debate waters, saying "I believe that a lot of gun owners agree that AK 47s belong in the hands of soldiers, not in the hands of criminals. . .and not on the streets of our cities." Yet his summative point in the speech signalled his walk away from guns: "I'm going to continue to work with both parties. . .to arrive at a consensus around violence reduction."²⁴ This cautiously crafted response was not repeated in the balance of the campaign. Both presidential candidates rapidly returned to other campaign issues even though both had voiced support for stronger gun policy measures in the past. The 2012 Democratic party platform, issued in September, acknowledged the individual right to bear arms, "subject to reasonable regulation," decried gun violence, and supported improved gun background checks, reenactment of the assault-weapons ban, and closing of the gun show loophole.²⁵ That party boilerplate notwithstanding, *New York Times* columnist Gail Collins appropriately dubbed the gun issue "the least popular subject" of the 2012 campaign.²⁶

The second and even more catalyzing event shocked the nation in a way not seen since the 1999 Columbine high school shooting. On the morning of December 14, 2012, a twenty-year-old man shot and killed his mother as she lay in bed asleep, using a gun she owned. The man had lived with his mother in her Newtown, Connecticut, home but had not spoken with her directly in two years, insisting that they communicate by email only. Adam Lanza had exhibited

significant mental health problems for many years and, among other things, had been obsessed with stories of past mass shootings. All of the guns Lanza had in his possession on that day belonged legally to his mother, who had been an avid shooter. She had tried to interest her son in shooting as a way to bond with him. After killing his mother, he drove to nearby Sandy Hook Elementary School, taking four of his mother's guns with him. He entered the school, shooting out its glass front entrance and proceeded into the building, where he shot and killed twenty elementary school children, as well as six adult teachers and staff, using a Bushmaster XM15-E2S .223-caliber semiautomatic assault rifle along with several thirty-round magazines. He fired 154 shots in less than five minutes. All of those killed were shot with the assault rifle and each was shot at least three times. About a minute after the first police arrived, the man shot and killed himself with a 10mm Glock handgun. No motive for the attack was ever established.²⁷

That day, Obama spoke to the country in a mixture of anguish and outrage. Yet this political moment was different. After a convincing re-election campaign the previous month, bringing with it a renewed electoral mandate, and his January inauguration and the State of the Union both in sight, Obama decided to move on the issue. Within days of the shooting, Obama appointed Vice President Joe Biden to head a task force to study the gun issue and make recommendations for change. Within a month, the group presented its report, calling for universal background checks for gun purchases, restrictions on assault weapons and high-capacity ammunition magazines, mental health and school safety initiatives, increased funding for police protection in schools, and stronger measures to stop straw gun purchases and gun trafficking. In mid-January, Obama also issued nineteen (or twenty-three, depending on how they are counted) executive issuances and memoranda to tighten up the background check system, enhance and fund research on gun violence, improve federal gun trafficking databases,

examine gun safety measures, and other steps involving federal agencies. Far from illustrating the potency of unilateral presidential actions, however, an examination of these unilateral measures by Obama suggests the profound limitations of such actions, as they mostly consisted of directives to federal agencies to issue reports, to inform relevant actors of existing gun-related laws and regulations, to direct agencies to review existing actions, and even to “Nominate an ATF director.”²⁸ In early 2016, Obama enacted additional executive actions aimed at further efforts to tighten the background check process and at the gun show loophole.²⁹

In Congress, the proposals were first taken up in the Democratic-controlled Senate, with bill supporters hoping that any bill passage would pressure the Republican-controlled House to at least take up the measures. In March 2013, the Senate Judiciary Committee approved provisions to criminalize straw gun purchases, enact a uniform background check measure, and reestablish an assault-weapons ban. At about this time, a junior member of the Senate, Joe Manchin (D-WV) took up the cause of championing some version of a gun bill, partly at the behest of more liberal Senate leaders who felt that a more conservative sponsor would give the bill greater legitimacy with moderates. Manchin was considered one of the most-conservative Democrats in the Senate, was a gun owner, and had been endorsed by the NRA throughout his thirty-year political career. Yet, he seemingly broke with the NRA in this effort. He persuaded Pennsylvania Republican Pat Toomey, who had been elected with the help of over \$1 million from the NRA, to cosponsor the measure.

The Manchin–Toomey bill that emerged in April called for universal background checks for gun purchases, including gun show and internet sales, excepting transfers to relatives and friends, and it facilitated the gathering of mental health and other relevant data from the states to be submitted to the national background check (NICS) database. Yet, it also reduced the

background check waiting period from seventy-two hours to forty-eight hours (if no report came back within that time, the gun sales would go through); made interstate transport of weapons easier; allowed interstate sale of handguns from licensed dealers; made the use of gun records for creating a registry a felony; and established a national commission on mass violence. Throughout this period, bill advocates, including Judiciary Committee Chair Pat Leahy (D-VT) and Manchin, worked closely with representatives of the NRA; indeed, the provisions added to expand gun access came at the behest of the NRA. While the gun group did not trumpet its involvement, the Manchin–Toomey bill was constructed with, and won the quiet approval of, the NRA.³⁰

Almost immediately, however, word of the compromise bill and the NRA’s role leaked out on gun-rights websites, and gun groups hostile to the NRA, such as the Gun Owners of America and the National Association for Gun Rights, began to pummel the NRA for selling out the cause. Within days, NRA leaders ceased communicating with Manchin; shortly thereafter, they announced their opposition to the bill, vowing to do everything they could to defeat it. On April 17, the full Senate voted on seven gun-related measures; each needed to garner 60 votes—not a simple majority of 51—to invoke cloture to then end debate. The Manchin–Toomey bill thus garnered majority support, but still failed, by a vote of 54 in favor to 46 against. A separate measure to ban assault weapons, championed by Senator Dianne Feinstein (D-CA), failed 40–60; the magazine limits bill failed 46–54; the straw-purchase gun trafficking bill failed 58–42. The NRA extolled the bills’ defeat as a great victory for gun rights, but never mentioned to its membership that it had helped craft the bill that it later helped defeat. Bill supporters decried the NRA’s attack, noting that public opinion polls consistently showed that 90 percent of Americans supported universal background checks, with decisive majorities also favoring the other proposals.³¹

As noted, Senate passage was no guarantee that the bill would have made its way to the president's desk. In fact, as the Senate was working on these measures, House Republican leaders advanced four measures to roll back gun regulations, including provisions to bar the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) from requiring gun dealers to conduct annual inventories of their stock to make sure that guns had not been lost, stolen, or improperly sold; to broaden the definition of guns that could be imported into the United States; to prevent the ATF from canceling a gun dealer's license for lack of business; and to add a disclaimer to government gun data saying that it could not be used to draw conclusions about gun crimes. None of these bills came to floor votes.³²

Four political reactions emerged from this tumultuous political moment. First, gun rights groups extolled their victory. Second, gun control groups vowed to redouble their efforts. Third, legislative activity at the state level exploded throughout the United States: in 2013 alone, twenty states enacted tougher gun laws, while twenty-seven states loosened gun regulations; some states enacted both types of measures.³³ And fourth, while Obama made no further effort to push gun measures through Congress, he continued to talk about gun violence at every opportunity. His final years in office were pock-marked by mass shootings (as has been true from then to now), and he never failed to speak out in person publicly in the aftermath of these events. One might dismiss the significance of these "bully pulpit" moments as ineffective presidential show. As George Edwards has persuasively argued, "presidents usually fail in their efforts to move the public to support them and their policies."³⁴ Obama's circumstances were, however, somewhat different, in that the public already supported stronger gun measures, yet it was clear from the failed attempt to win a new gun law in Congress that future congressional efforts were doomed. Still, Obama persisted in pounding the pulpit, which served two purposes: it kept the issue on the

national agenda, and gave added hope and encouragement to the new generation of gun safety advocates and organizations that emerged after Sandy Hook.

The Gun Safety Movement 2.0

The post-Sandy Hook shooting political environment spurred the creation of a new generation of gun safety organizations. In 2014, former New York City Mayor and billionaire Michael Bloomberg reorganized and expanded a gun safety group he had formed in 2006, Mayors Against Illegal Guns. The new entity, called Everytown for Gun Safety, combined and expanded Bloomberg's former group with another new group, Moms Demand Action for Gun Sense in America. The Moms group claimed over 200,000 members as of 2016. After combining with Everytown, it claimed a total membership of nearly 1.3 million as of 2017. The Moms group had logged some successes by pressuring businesses around the country through publicity and threat of boycott to not allow gun carrying in their places of business. These tactics proved effective in persuading businesses like Starbucks, Chipotle, Chili's, Sonic, Kroger, Panera, and Target to ban gun carrying. Bloomberg pledged to spend \$50 million of his own money to advance his agenda, including the building of a grassroots organization and heavy spending in the 2014 and 2016 elections.³⁵

The other significant gun control organization to emerge was formed by former congresswoman Gabrielle Giffords (D-AZ) and her husband Mark Kelly, a retired Navy captain and former astronaut. After Giffords survived a near-fatal shooting in 2011, the two formed Americans for Responsible Solutions in 2013. Their organization was also spurred, at least in part, by Sandy Hook. Both are gun owners and professed supporters of the Second Amendment who seek to reach out to gun owners, though their organization focuses on solutions to gun

violence. In addition, they raised and spent \$20 million for the 2014 elections—a significant accomplishment for the new organization. In the 2016 elections, they spent about \$13 million; in 2018, they spent about \$18 million. In 2016, the Giffords/Kelly group merged with the Law Center to Prevent Gun Violence, a gun safety research organization founded in 1993, and now goes by the umbrella name Giffords. Kelly entered politics directly in 2020 when he ran for and was elected to the U.S. Senate from Arizona as a Democrat (he won re-election to a full term in 2022).³⁶

These groups sought to replicate the successes that marked the NRA’s political activities in terms of grassroots group mobilization, electoral competition, money spent, and state policy change. To that end, they have pursued a three-part strategy similar to that of the NRA: the raising and spending of large sums of money comparable to that spent by the NRA; the establishment and cultivation of a motivated and committed grassroots base of supporters around the country; and playing the long game, meaning that they wanted to maintain and deepen their political influence over time, and not limit their efforts to a single election or to the immediate aftermath of shooting events that only temporarily rouse the attention of the nation.

Despite these organizations’ differences, their common policy focus was on measures with wide and clear public support, including universal background checks for gun purchases, improved record keeping, more effective crackdowns on gun trafficking, ammunition magazine limits, extreme risk protection order laws (also called “red flag” laws), and measures to keep guns from children and those at risk for suicide. These groups and the gun safety cause met considerable success in the 2018 midterm elections.³⁷

Conclusion: Social Regulatory Policy is Hard

Social regulatory policy in general, and gun policy in particular, are difficult and politically costly policies to enact, for reasons extensively examined elsewhere.³⁸ Yet presidents have succeeded in enacting national gun policy measures at times in the past, so it cannot simply be dismissed as an impossible task. That is the first of four lessons to draw from this analysis.

In his first two years in office, with Obama's party in firm control of both houses of Congress, he possessed the resources to act. But one would be hard-pressed to quibble with his administration's strategic decision to elevate numerous other priorities, most notably economic recovery and health care reform, as its top priorities. In this respect, Obama did what all presidents must do: apply policy triage to identify and promote a few top priorities.³⁹ The loss of full Democratic party control of the two houses of Congress in the remaining six years of his presidency (the Senate remained in Democratic hands from 2010 to 2014) pushed gun policy to the outer edges of possible achievement.

Second, eight years of Democratic party abandonment of gun safety advocacy in the first decade of the Twenty-first century made Obama's strategic decision of gun policy avoidance in his first term a logical step if for no other reason than because his own party was not already on board with such a step. Any new gun policy advocacy would have also necessitated a degree of party rallying that would have complicated the effort. Third, unforeseen events can scramble agenda-setting—in this case, the 2012 Sandy Hook massacre. That heinous event not only moved Obama and the country, but eventually set in motion a whole new gun safety movement which Obama's persistent pulpit-thumping surely helped foster. Fourth, interest group organization and activism can weigh importantly in presidential policymaking. The rise of a new generation of gun safety organizations has succeeded in altering the NRA's traditional hegemony in gun politics (along with the NRA's much-publicized self-inflicted corruption, financial, and

legal problems). The Obama administration ended in 2016 just as the new generation of gun safety organizations began to see political results.

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