Introduction

For US gun violence, the year 2012 was the best of times and the worst of times. Gun crime had declined dramatically over two decades, but rampage shootings, while difficult to define, appeared to have significantly increased. These massacres typically attracted intense national and international attention, none more so than the December 14, 2012, massacre at Sandy Hook Elementary School in Newtown, Connecticut. Adam Lanza, a reclusive twenty-year-old who had exhibited serious psychological problems since childhood, killed his mother with a rifle she kept in their shared home. Then armed with her AR-15 assault weapon, a semiautomatic pistol, and more than two hundred rounds of ammunition (all purchased legally by his mother), he drove to Sandy Hook Elementary School, where he gunned down twenty first graders and six teachers and staff before committing suicide. Given the children’s tender ages and the appalling number of fatalities (the most in any primary or secondary school shooting in US history), this massacre prompted outpourings of sympathy and explosions of national outrage. Since Democrats controlled the White House and the US Senate, the Sandy Hook massacre spurred the strongest push in a generation for stronger federal gun controls.

Within days of the massacre, President Obama vowed to use the full authority of his office to prevent future school shootings. He instructed an interagency taskforce, headed by Vice President Joe Biden, to develop “a multifaceted approach to preventing mass shootings like the one in Newtown, Conn. and the many other gun deaths that occur each year.” On January 20, 2013, after consulting scores of advocacy groups and lawmakers, the taskforce urged Congress to restore the federal assault weapons ban, impose a ten-round capacity limit on ammunition-feeding devices, pass a universal background-checking law on purchasers, and enhance punishments for straw purchasers. The administration mustered only forty Senate votes in favor of a
ban on assault weapons and large-capacity magazines. The Manchin-
Toomey bill to establish universal background checking on gun pur-
chasers garnered fifty-four votes, six short of the number needed to
overcome a filibuster.³ (The president immediately issued two dozen
modest executive orders recommended by the taskforce.)⁴

The Sandy Hook massacre had a more significant legislative impact
at the state level. In the year following the shootings, a majority of states
passed gun laws, although more states weakened their gun controls than
strengthened them.⁵ Among pro-gun-control laws, New York State’s Se-
cure Ammunition and Firearms Enforcement Act (the SAFE Act) stands
out as the first and most comprehensive.

New York had long been a strong gun control state and New York City
even stronger; the state had significantly strengthened its gun control re-
gime with a comprehensive package of initiatives in 2000. However, im-
mediately after Sandy Hook, Governor Andrew Cuomo committed the
state to enacting a new omnibus gun control law. Drafted in mere weeks
by a team of the governor’s close advisers, the thirty-nine-single-spaced-
page bill contained at least ten separate gun control initiatives, including
strengthened bans on assault weapons and large-capacity ammunition-
loading devices; universal background checking for firearms purchasers;
ammunition seller licensing and sales reporting; ammunition purchaser
background checking; mandatory reporting by mental health profes-
sionals on patients believed to be mentally ill and dangerous; disarma-
ment of persons reported as mentally ill and dangerous; disarmament
of persons subject to domestic violence protection orders; quinquennial
recertification of handgun licenses; and numerous new gun offenses and
sentence enhancements. The SAFE Act breezed through the state legis-
lature in under twenty-four hours, practically without debate. The gov-
ernor signed it into law on January 13, 2013, a few days before President
Obama’s interagency taskforce was scheduled to deliver its recommen-
dations. Governor Cuomo boasted that the SAFE Act was “the toughest
gun control law in the nation” and a model for the rest of the country.

Politically, New York is a “true blue” state. Fiscally, it is a high tax and
spend state. It has a long history of gun control and a relatively low level
of gun ownership and gun violence. It is practically an ideal jurisdiction
for gun control experimentation and, in turn, for assessing the potential
and limitations of politically feasible maximal state-level gun control.
Therefore, when we launched our case study, we did not anticipate the depth and breadth of anti–SAFE Act opposition, especially from county officials and sheriffs outside the New York City metropolitan area. Nor did we anticipate the fiscal and technological obstacles that made it impossible for the state to implement several SAFE Act strategies.

This case study aims to move the gun control debate beyond the desirability of proposed laws. Historically, advocacy groups, politicians, and commentators have shown little, if any, interest in how existing federal and state gun control laws are implemented and enforced, nor concern for the implementability and enforceability of proposed new laws. Gun control proposals are discussed as if they are self-executing and self-enforcing. In fact, much gun control regulation is poorly implemented and enforced, sometimes not implemented or enforced at all. This should direct attention to the administrative, fiscal, and legal obstacles that blunt the effects of various on-the-books gun controls.

Consider that the Brady Campaign to Prevent Gun Violence and the Giffords Law Center to Prevent Gun Violence publish annual “scorecards” that grade and rank each state on gun control. A state’s score is based on its laws on the book — no matter how effectively the laws are implemented and enforced and no matter how easily they can be circumvented. For example, a state gets credit for banning large-capacity magazines manufactured after a specified date, although it is practically impossible to tell when a particular magazine was manufactured. This means there is no way to enforce the law against someone who possesses a large-capacity magazine, since a possessor can always claim to have thought that the magazine was manufactured before the cut-off date. Similarly, laws requiring guns to be safely stored at home are almost completely unenforceable; police agencies lack the willingness, resources, and authority to enter homes to check on storage.

We recognize that laws on hot-button social issues have huge symbolic importance for their partisans. They publicly acknowledge a problem and, more importantly, promise a solution. Passing laws affirms proponents’ values and energizes their cause. If, subsequently, a law is shown not to have achieved its aim, because the problem at which it is directed persists, politicians can double down, proposing more laws. Passing laws is also part of the business model for advocacy groups, which raise money by announcing a legislative agenda and take credit
for its realization. This is why gun control is a central issue in the “culture wars.”

Politicians take credit for passing laws, not for overseeing their implementation and enforcement. It is easy to rally public opinion in favor of “taking back our streets,” “preventing the slaughter of schoolchildren,” and “defeating special interests.” Calling for more and better implementation and enforcement triggers yawns. Indeed, as this book attests, it is very difficult to even determine the extent to which a law has been implemented and enforced. Finding out how state, county, and local agencies are carrying out their SAFE Act responsibilities required patience, persistence, and good luck over several years. Some agencies, the State Police in particular, seem to regard the execution of their gun control responsibilities as a secret.

When gun control laws are evaluated, it is almost always by trying to attribute changes in gun violence to changes in gun laws. These studies try to control for independent variables other than the law being tested. The point is that a law was enacted and firearm harms decreased at some point(s) after a law was passed, or at least did not increase as much as in a matched jurisdiction or jurisdictions without the law being tested. These studies do not require data on how, or even whether, the law in question was implemented and enforced.

Even when no reduction of firearm harms is found, many gun proponents insist on a gun control law’s efficacy. A good example is banning assault weapons, which still ranks at the top of the gun control agenda despite the best study of the 1994 federal assault weapons ban having found no measurable effect on gun casualties (not surprisingly, since 90 percent of gun casualties are inflicted by handguns).

This book is not a critique of longitudinal and cross-sectional research methods and other before-and-after gun control law evaluations. This research is valuable, although it is difficult to sort through findings pointing in different directions. We aim to supplement that research corpus via a different empirical strategy: an in-depth case study of how, after five years, New York’s omnibus SAFE Act has been, and has not been, implemented, enforced, and circumvented. We argue that if one or more SAFE Act provisions was not implemented (for example, ammunition background checking) or, if implemented, not enforced (for example, prohibition of large-capacity magazines), it is unlikely to have
reduced gun fatalities and injuries. This is especially true of regulatory requirements that can easily be evaded.

Admittedly, “unlikely” does not mean impossible. A law could have real-world effects even if it is not implemented or enforced at all. Perhaps just the announcement of a new law causes some people to change their behavior because they fear apprehension and punishment, the law changes their opinion about the safety or morality of the conduct that the law seeks to change, or they are habitually law-abiding. If gun control laws produce effects without being implemented or enforced, we will have learned something important about how law works. If unimplemented and unenforced gun control laws do not “work,” we will have learned something important about what a successful gun control regime requires.

This case study of the SAFE Act demonstrates that the efficacy of gun control laws is also undermined by the ease with which they can be circumvented. An earlier book by Jacobs, _Can Gun Control Work?_, critiqued the 1993 federal Handgun Violence Prevention Act (“Brady Law”), which required federally licensed firearms dealers (FFLs) to submit a prospective gun purchaser’s name and other identifying information to the FBI for background checking. If FBI personnel find the prospective purchaser’s name in a database of firearms-disqualified persons, they instruct the FFL not to complete the sale. Proponents claim that the law has prevented several million dangerous persons from obtaining a gun. Jacobs pointed out that persons whose gun purchases are blocked by the FBI, or persons deterred from attempting to purchase a gun from an FFL because they anticipate being rejected, can easily acquire a gun on the secondary market (or on the black market). They can respond to a “gun for sale” ad or place their own “gun wanted” ad in a newspaper or on a convenient bulletin board. These days, they can make contact with a private seller on a website devoted to putting prospective private sellers and purchasers in touch with one another. The Brady Law left private sales completely unregulated—no background checks, no forms to fill out, no reports to government authorities. Some pundits refer to this Brady Law lacunae as “the gun show loophole,” but it is more like a black hole, because it exempts from background checking gun acquisition from anyone other than an FFL. (It is estimated that 40 percent of gun transfers involve non-FFLs.) That the Brady Law could
be circumvented by simply placing an ad in the paper, posting a gun-wanted message on a bulletin board, or recruiting a “straw purchaser” casts serious doubt on its efficacy. This skeptical conclusion is supported by Duke economist Phil Cook, the nation’s preeminent empirical gun control researcher who, using multiple regression analysis, found that the Brady Law had no effect on gun homicides.\(^7\) Still, it took more than a quarter century for gun control proponents to begin campaigning for universal gun purchaser background checking. This book cautions that it is one thing to pass a universal-background-checking law and another thing to implement and enforce it. The SAFE Act’s universal-background-checking law has only been partially implemented, has hardly been enforced, and is easily circumvented.

Although this book illuminates on-the-ground obstacles to implementing and enforcing a wish list of enacted gun controls in a strongly pro-gun-control state, it is not an “anti-gun-control” book. Rather, it is realistic and tough-minded. Even where there is strong political support for keeping guns out of the hands of dangerous persons, as there is in New York, implementing and enforcing a regulatory regime that can achieve that goal, even partially, is an enormous political and administrative challenge. This book is for readers who want to understand the challenges and complexities of controlling access to weapons in a nation where more than three hundred million guns are already in private hands, whose Constitution guarantees the right to keep and bear arms, and whose leading gun owners’ advocacy organization is consistently rated the nation’s most effective single-issue lobbyist. (Given ubiquitous and justified concern about conflicts of interest in the gun control debate, the reader should know that this book’s authors have never been members of, nor have they ever received grants, financial support, or remuneration from, any gun owners’ rights or gun control advocacy organization; nor are we gun owners.)

Effective gun control is often equated with passing “sensible” laws. While it would be absurd to argue that no gun control law can diminish gun crime, suicides, accidents, rampage shootings, or the number of casualties when rampage shootings occur, enacting laws is, at best, only a first step toward effective gun control. If gun control laws are to be more than political theater, there must be effective implementation and enforcement. Consequently, there is much that other states’ policy
makers, executive branch regulators, and law enforcement officials can learn from New York’s difficulties in implementing and enforcing “the toughest gun controls in the nation.” The SAFE Act’s first five years highlight the critical importance of sustained political commitment to implementing and enforcing gun controls, coupled with sufficient resources, regulatory competence, state and local government cooperation, and law enforcement capacity.