

No. 07-15763

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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RUSSELL ALLEN NORDYKE, et al.,

*Plaintiffs-Appellants,*

v.

MARY V. KING, et al.

*Defendants-Appellees.*

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Appeal from a Judgment of the United States District Court  
For the Northern District of California  
Hon. Martin J. Jenkins  
(CV-99-04389-MJJ)

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**BRIEF AMICUS CURIAE OF  
THE CALGUNS FOUNDATION, INC.  
IN SUPPORT OF APPELLANTS SEEKING REVERSAL**

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## **CORPORATE DISCLOSURE STATEMENT**

The Calguns Foundation, Inc., has no parent corporations. No publically traded company owns 10% or more of Amicus Corporation's stock.

Dated: August 18, 2010

Respectfully submitted,  
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## **INTERESTS OF AMICUS CURIAE**

The Calguns Foundation, Inc. (“CGF”) is a non-profit organization incorporated under the laws of California with its principal place of business in Redwood City, California. The purposes of CGF include supporting the California firearms community by promoting education for all stakeholders about California and federal firearm and ammunition laws, rights and privileges, and defending and protecting the civil rights of California gun owners.

CGF members and supporters, which include residents of Alameda County, are directly burdened by the ordinance’s impact reducing their ability to acquire firearms and are impacted by any court decision that defines the scope of their Second Amendment rights. CGF members have local knowledge regarding the market for firearms and the impact of crime in Alameda County.

## **CONSENT TO FILE**

All parties have consented to the filing of this brief.

## ARGUMENT

The conventional understanding of fundamental rights in constitutional law recognizes three distinct conceptual issues. First, there is the foundational question of whether a right does exist. Second, it must be determined if the right has been infringed. Third, there is the burden of proving whether any infringement can be justified.

This brief concentrates on the third component, as applied to the County of Alameda's ordinance banning guns at gun shows at the Alameda County Fairgrounds (Code of Alameda County § 9.12.120, the Ordinance), demonstrating that the County's infringement is an undue burden since it is too severe and lacks a legitimate, rational justification. In reviewing the record, County has offered no facts to support its assertion that banning guns at gun shows will or has reduced crime or enhanced public safety.

To accomplish the above analysis, this brief proffers objective public data contrasting the substantial negative affect to County's residents' access to firearms and the Ordinance's lack of impact on crime.

### **I. The Gun Show Ban Creates an Undue Burden on the Residents of Alameda County and Their Ability to Acquire Firearms for Self Defense**

Even undue burdens on individual rights are unconstitutional – see *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992), *Hodgson v.*

*Minnesota*, 497 U.S. 417, 458-459 (1990) (O'Connor, J., concurring in part and concurring in judgment in part); *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502 (1990).

Appellees assert that their banning gun shows at the Fairgrounds has no impact on County residents' ability to possess a handgun for self defense in their home.<sup>1</sup> Ability to acquire firearms, however, is a necessary precondition to the right to keep and bear arms. *Andrews v. State*, 50 Tenn. 165, 8 Am. Rep. 8, 13 (1871) – cited favorably in *District of Columbia v. Heller*, 554 U.S. \_\_\_, 128 S. Ct. 2783, 2806 (2008).

In California, it is generally unlawful for a person who is not a licensed firearms dealer pursuant to Penal Code section 12071 to sell, loan, or otherwise transfer a firearm to a non-licensed person unless the sale, loan, or transfer is completed through a licensed firearms dealer.<sup>2</sup> Access to licensed firearms dealers is, therefore, absolutely necessary to the lawful acquisition of firearms in California.

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<sup>1</sup> See Appellees' Supplemental Brief, p.4, in which Appellees allege: "The narrow right acknowledged in *Heller*, individual possession of a handgun in the home for personal self-defense, has no relevance to the lawsuit."

<sup>2</sup> See Cal. Penal Code §§ 12071, 12072, and 12082. See also California Department of Justice - "California Firearm Laws – 2007" <http://ag.ca.gov/firearms/forms/pdf/Cfl2007.pdf>. (Last visited August 16, 2010.)

Gun shows at the Fairgrounds make thousands of firearms available, at one location, for purchase by the thousands of Alameda County resident attendees. [Joint Statement of Undisputed Facts ¶¶35,-37.] California’s gun laws permit a purchaser to initiate the transaction at the gun show and then pick the firearm up at a convenient show-arranged local firearms dealer<sup>3</sup> after 10 days, but before 30 days has elapsed.

According to the ATF, larger gun shows result in the sale of over 1,000 guns over a weekend<sup>4</sup> and have anywhere from 50 to as many as 2,000 vendor tables.<sup>5</sup> The extensive selection and number of firearms and dealers available at gun shows at the Fairgrounds, with the traditional ‘every-6-weeks’ schedule, materially increases lawful access to and acquisition of firearms for residents of Alameda County.

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<sup>3</sup> Cal. Penal Code § 12071(b)(1)(B).

<sup>4</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives’ Investigative Operations at Gun Shows – June 2007,” <http://www.usdoj.gov/oig/reportss/ATF/final.pdf> at page 6. (Last visited August, 16,2010.)

<sup>5</sup> Bureau of Alcohol, Tobacco, and Firearms – “Gun Shows: Brady Checks and Traces” <http://www.atf.gov/publications/download/treas/treas-gun-shows-brady-checks-and-crime-gun-traces.pdf> at page 4. (Last visited August 16, 2010.)

Yet, in Alameda County, the sources for acquisition of firearms have been targeted for extinction.<sup>6</sup> *Rohmer v. Evans*, 517 U.S. 620 (1996).

Through the targeted efforts of the City of Oakland<sup>7</sup>, the ATF<sup>8</sup> and Alameda County<sup>9</sup>, the total number of firearms dealers has decreased considerably over the last 20 years.

As a long-established and normal household resource, the area telephone carrier “yellow pages” provide key insight to the contemporaneous public understanding of the retail firearms market. According to our study of all business listings in the “Guns and Gunsmiths” category of telephone carrier directories for the three markets in Alameda

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<sup>6</sup> In addition to the findings presented here, the County has opined that it should not provide “[. . .] place for people to display guns for worship as deities for the collectors who treat them as icons of patriotism.” [JSUF ¶¶ 9, 11.]

<sup>7</sup> Oakland Municipal Code Chapter 5.26.

<sup>8</sup> E.g. “In 1993 and 1994, Congress added several safeguards to ensure that only legitimate gun dealers obtain Federal licenses, including increased fees and certification requirements. Following ATF’s implementation of those provisions, the number of Federal firearms licensees dropped from 284,117 in 1992 to 103,942 in 1999.” Bureau of Alcohol, Tobacco, and Firearms - “Commerce in Firearms in the United States – February 2000” [http://www.mayorsagainstillegalguns.org/downloads/pdf/Commerce\\_in\\_Firearms\\_2000.pdf](http://www.mayorsagainstillegalguns.org/downloads/pdf/Commerce_in_Firearms_2000.pdf) at p. 1. (Last visited August 16, 2010.)

<sup>9</sup> See Code of Alameda County § 9.12.120, prohibiting the possession of firearms on County Property, including the Fairgrounds.

County (Oakland, Fremont, and the “Tri-Valley” areas), there were 26 firearms dealers in Alameda County in 1990. That number decreased by 31% to 18 firearms dealers by 1999 – the year the ordinance was passed. By 2009, the total number of firearms dealers remaining in Alameda County had shrunk to only 4 dealers, an 85% drop in the number of firearm dealers since 1990. This decline has materially impacted the accessibility of firearms by strongly increasing the distance residents must travel to acquire firearms.

In California, the distance to a firearms dealer is particularly important due to the mandatory 10-day waiting period<sup>10</sup> to acquire a firearm. Especially for those of lower income and the disabled, travelling long distances to and from firearm dealers that are likely outside the footprint of public transit twice over 30 days’ time is a substantial hardship.

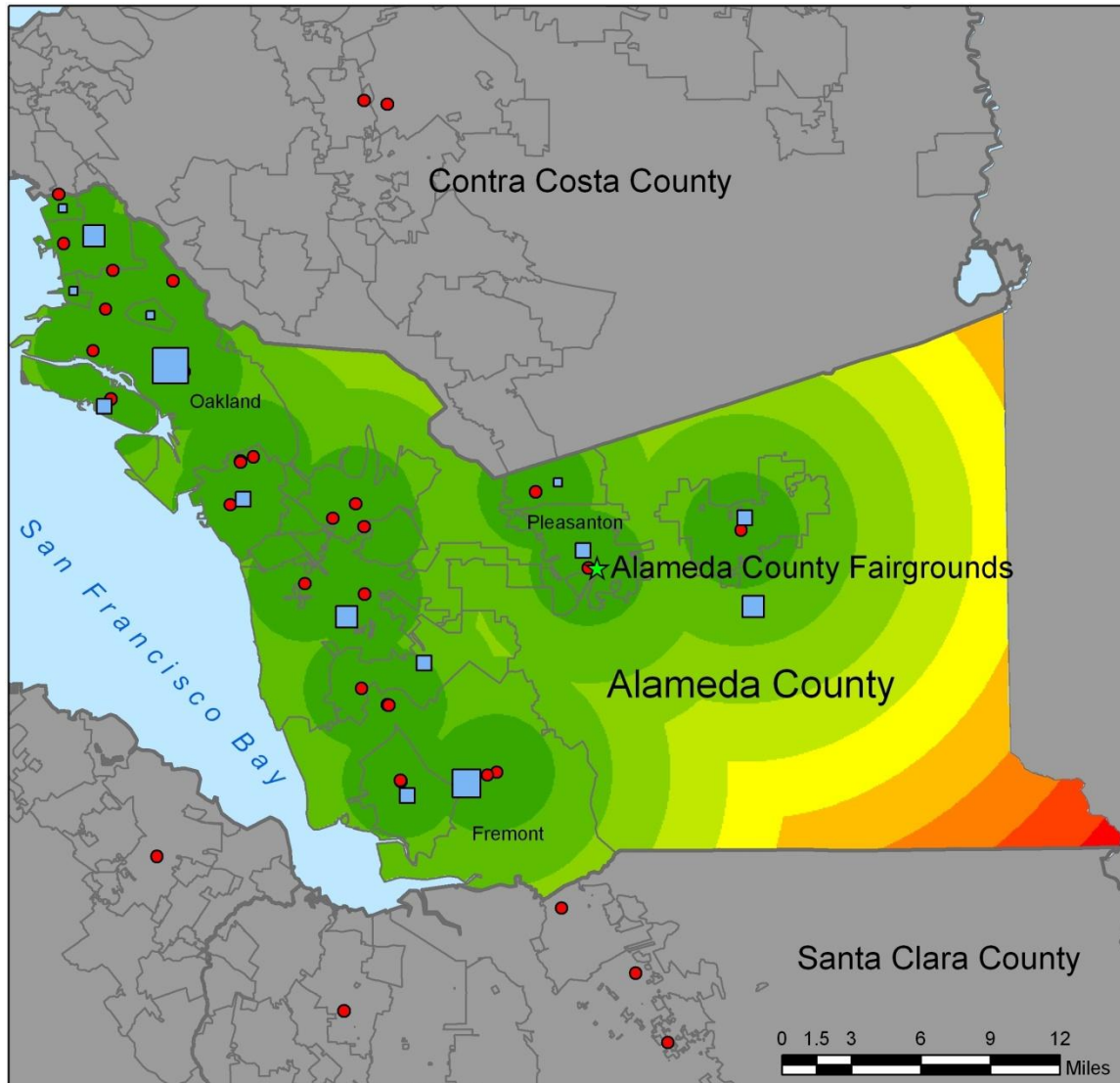
The following maps show the distance to firearm dealer locations, including the Fairgrounds where gun shows were held prior to the enactment of the Ordinance, for the years 1990, 1999, and 2009. These maps were created by plotting all businesses from the “yellow pages” study for the respective year, including those listed dealers in nearby counties. The corresponding table of all firearm dealer business listings for 1990 through 2009 is included as Appendix A.

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<sup>10</sup> See Cal. Penal Code § 12072(c)(1).

## Map 1

### Gun Dealers in Alameda County Telephone Directories - 1990



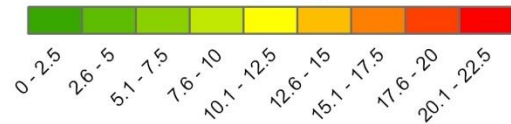
#### Legend

- ★ Alameda\_Co\_Fairgrounds
- Gun Stores 1990

#### 1990 Population

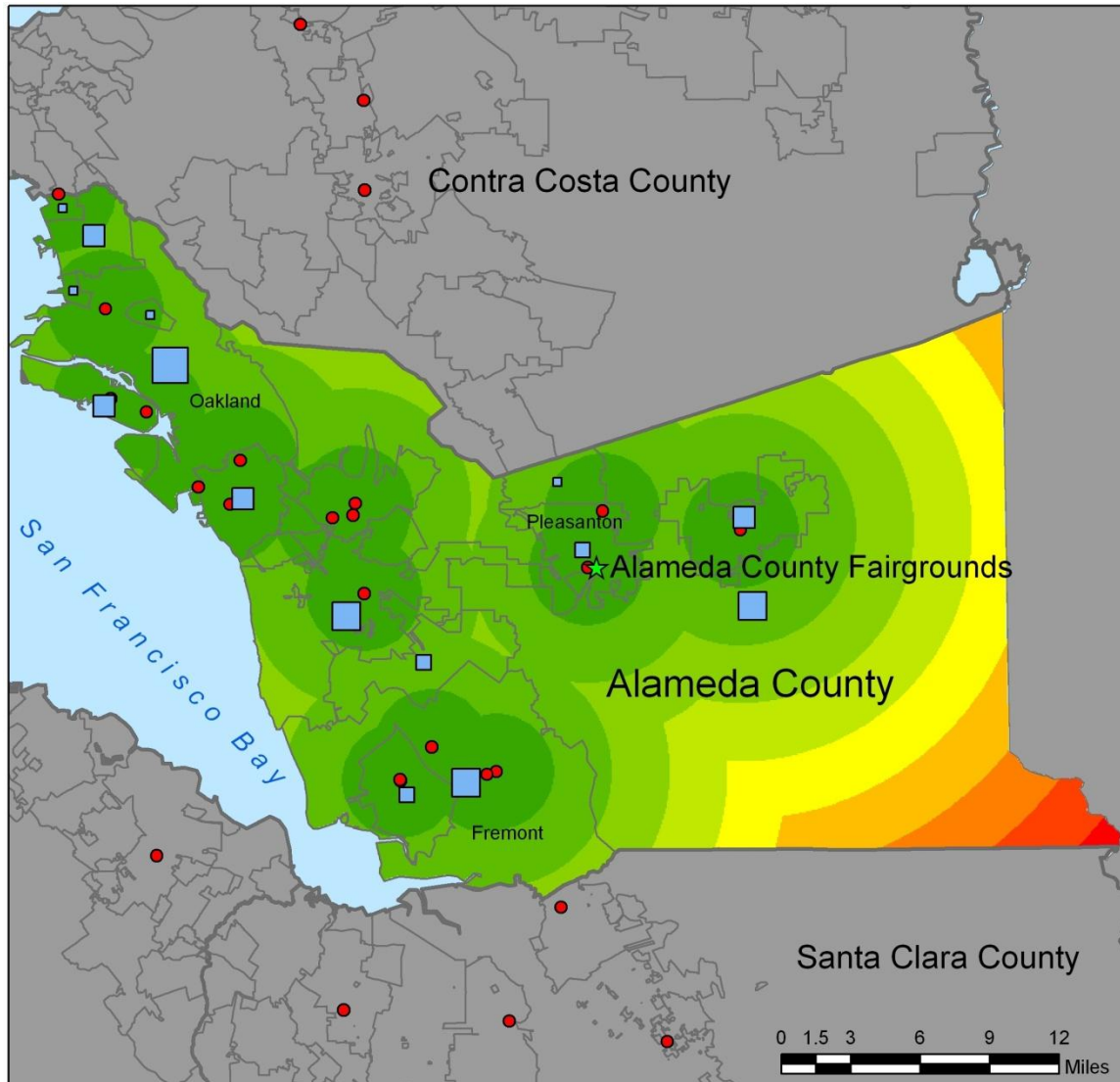
- 5740 - 23229
- 23230 - 73979
- 73980 - 120020
- 120021 - 173339
- 173340 - 372242

#### Distance to Gunstore (miles)



## Map 2

### Gun Dealers in Alameda County Telephone Directories - 1999



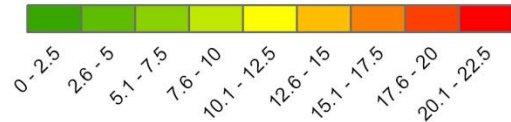
#### Legend

- ★ Alameda\_Co\_Fairgrounds
- Gun Stores 1999

#### 1999 Population

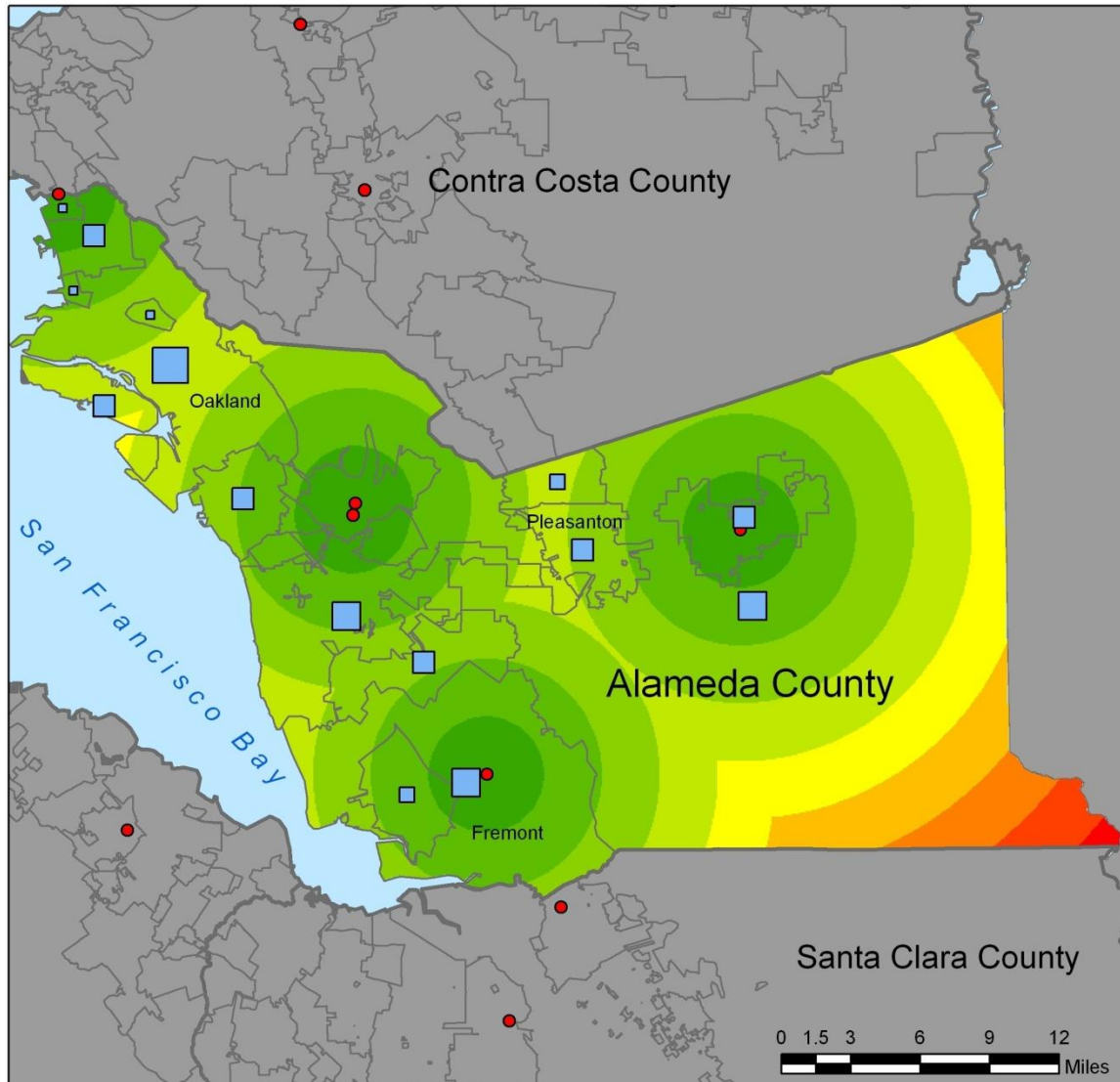
- 6824 - 25045
- 25046 - 64409
- 64410 - 102268
- 102269 - 197708
- 197709 - 394882

#### Distance to Gunstore (miles)



### Map 3

#### Gun Dealers in Alameda County Telephone Directories – 2009



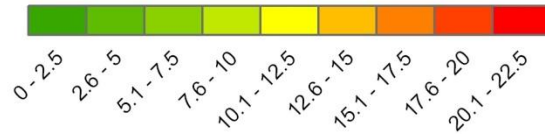
#### Legend

● Gun Stores 2009

#### 2009 Population

- 10096 - 16898
- 16899 - 47953
- 47954 - 107250
- 107251 - 215787
- 215788 - 425368

#### Distance to Gunstore (miles)



In 1990, an Alameda city resident was within 2.5 miles of two firearms dealers. By 2009, that same resident would have to travel approximately 10 miles each way on two separate occasions – 40 miles total – to purchase a firearm for self defense. A resident of the Allendale neighborhood of east Oakland now faces four similarly-burdensome trips to a gun store under current conditions.

Equally striking is the impact upon residents of the Dublin-Pleasanton-San Ramon “Tri-Valley” area. Once just steps from Appelants’ gun shows held at the Fairgrounds, these residents witnessed their respective one-way distance to a firearms dealer increase over 300%, from under 2.5 miles in 1990, to over 9 miles in 2009.

The overall increase to one-way travel to a gun dealer from every area of Alameda County is mapped in Appendix C.

## **II. Crime Statistics Do Not Show a Decrease in Crime After the Gun Show Ban was Passed**

The Supreme Court rejected rational basis as the standard of review for Second Amendment Claims in *District of Columbia v. Heller*, 554 U.S. \_\_\_, 128 S. Ct. 2783 at 2818 n. 27 (citing *United States v. Carolene Products Co.*, 304 U. S. 144,152, n. 4 (1938).) In *McDonald v. City of Chicago*, 561 U.S. \_\_\_, 177 L. Ed. 2d 894 (2010), the Court found that the right to keep and bear arms was fundamental. (“In sum, it is clear that the

framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.”) As a fundamental enumerated right, the standard of review for laws infringing the Second Amendment should be strict scrutiny.

However, for the Ordinance to pass even the lesser review of intermediate scrutiny the County must show a means-end fit:

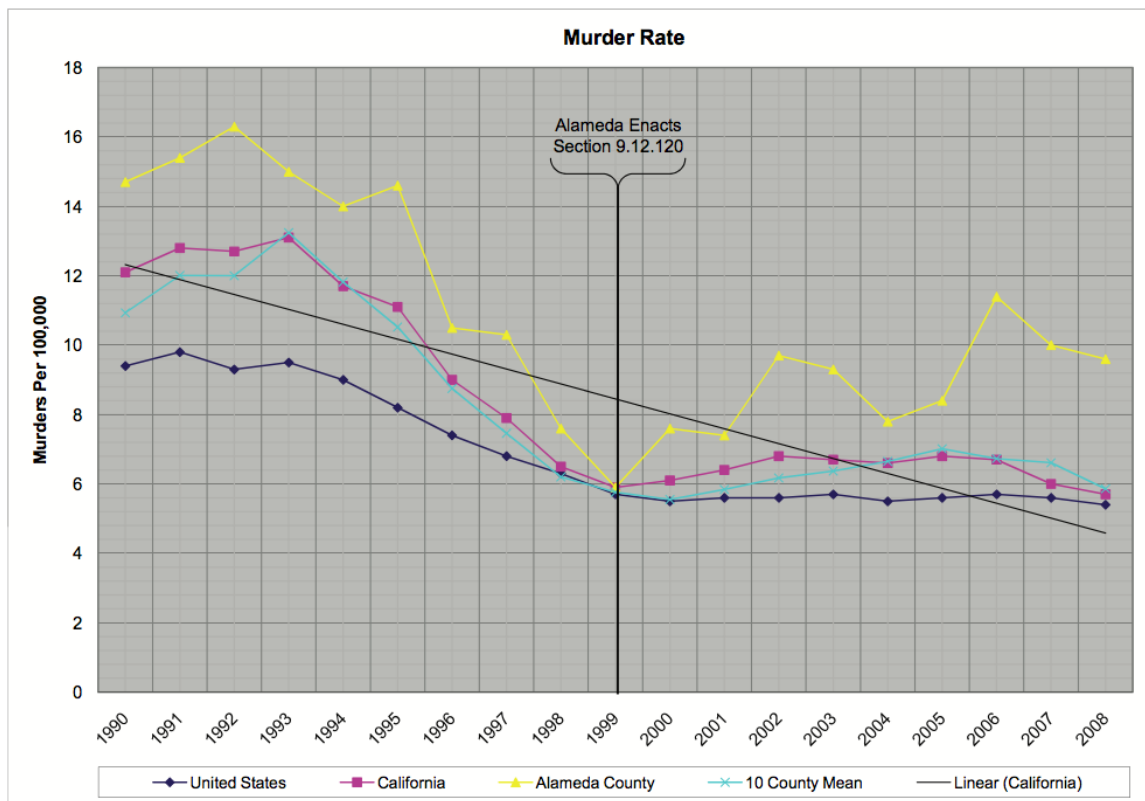
[A] municipality [cannot] get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in [Playtime Theatres ]. If plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance.

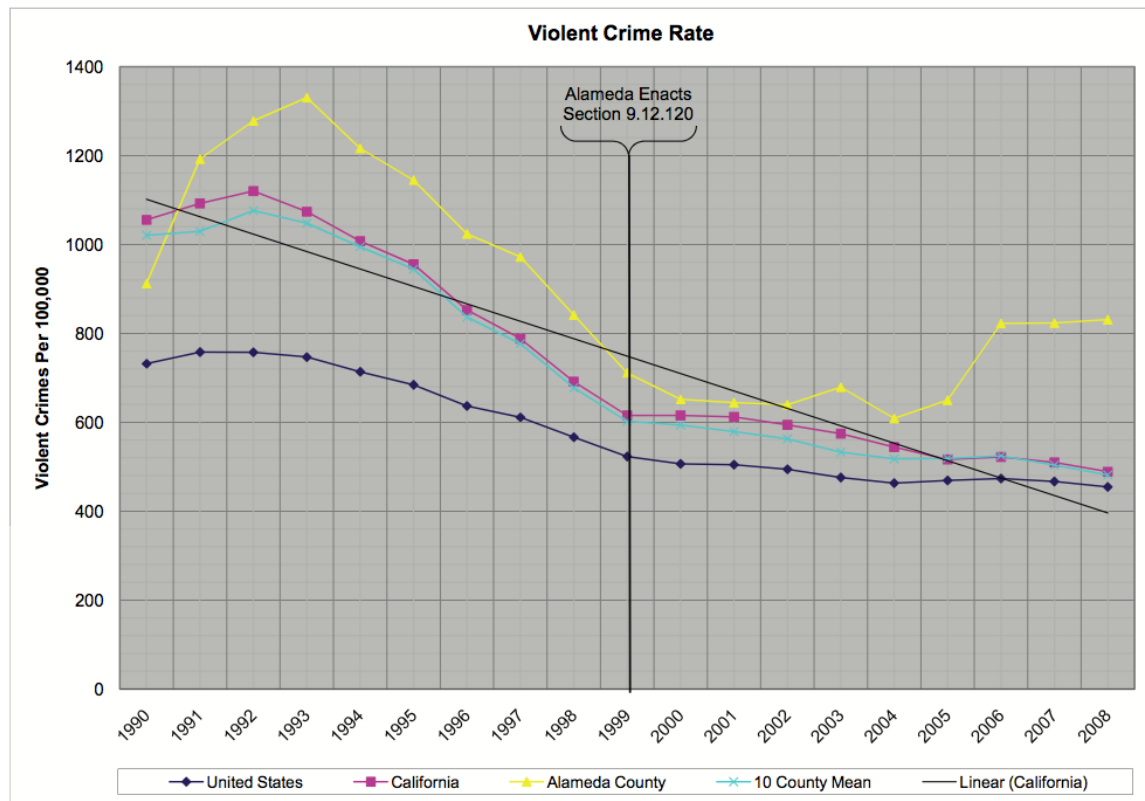
*Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 438-39.

There has never been a murder or violent crime at a gun show at the Alameda County Fairgrounds. [JSUF ¶¶ 33, 34, 43,44, 49, 50, and 85.] Alameda’s unsupported legislative “findings” argue that, “[p]rohibiting the possession of firearms on County property will promote the public health and safety by contributing to the reduction of gunshot fatalities and injuries in the County.” Alameda County Code § 9.12.120(a). However, the ends that the Ordinance seeks to serve are not reflected in the County’s murder or violent crime rates since it was enacted.

Figures A and B, respectively (below), show the murder rate and the violent crime rate per 100,000 (by year) in Alameda County, the State of California, the United States, and the mean of the 10 most populous California counties, excluding Alameda County (“10 County Mean”). The data are taken from U.S. Department of Justice Bureau of Justice Statistics and FBI Uniform Crime Reports obtained via RAND Corporation and provided in table form in Appendix B.

**Figure A**



**Figure B**

Of the ten counties that make up the 10 County Mean, nine have no bans on gun shows on county property. Los Angeles County banned gun shows at the Pomona Fairplex in September, 1999;<sup>11</sup> however, gun shows still occur in Los Angeles County at the Glendale Civic Auditorium.<sup>12</sup> San Francisco County does not host a gun show within the county but the State-

<sup>11</sup> Los Angeles County Municipal Code §13.67.030.

<sup>12</sup> See “Glendale Gun Show Webpage” <http://culturemob.com/events/5866925-glendale-gun-show-ca-glendale-greenbriar-91208-glendale-civic-auditorium>. (Last visited August 16, 2010.)

owned Cow Palace, a venue which lies just 177 feet from the San Francisco County line, routinely hosts some of the largest gun shows in California billed as the “San Francisco Gun Show.”<sup>13</sup> The counties in the 10 County Mean serve as a strong and relevant comparison to Alameda County as they have similarly-dense urban populations with corresponding gang and drug-related crime problems.

Both Figures A and B show that in the eight years since the enactment of the Ordinance, Alameda’s murder and violent crime rates have both increased while the other 10 counties have seen their rates of both crime metrics either effectively stay the same or decrease.

The 10 County Mean murder rate in 2008 (the most recent year that full data is available) was 5.86 per 100,000 people, while Alameda County recorded 9.60 per 100,000 people that same year. The violent crime rate for the 10 County Mean in 2008 was 481.44 per 100,000 people; Alameda County’s was nearly double that at 831 per 100,000.

The crime rate data show that the County’s ban on gun shows at the Fairgrounds has not had any perceptible positive impact on either the murder rate or violent crime in Alameda County. The County has witnessed their

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<sup>13</sup> See “Crossroads Gunshows Website” <http://crossroadsgunshows.com/gunsched.htm>. (Last visited August 16, 2010.)

murder rate increase by 7.13% since enactment of the Ordinance while the 10 County Mean murder rate only increased 0.35% over the same period.

The violent crime rate increased in Alameda County by 2.21% after enactment of the Ordinance while the same violent crime rate decreased by 2.43% over the same period in the 10 County Mean.

From this raw data and the associated trends it is obvious that banning gun shows on County property in Alameda County has had no discernable positive effect on public safety in Alameda County.

### **CONCLUSION**

The Alameda Ordinance has a significant negative effect on the availability and procurement opportunities of firearms in Alameda County, which infringes on County residents' right to keep and bear arms. The Ordinance has had no beneficial effect on crime. Therefore, the Ordinance should be interpreted narrowly in order to allow lawful gun shows to resume at the Alameda County Fairgrounds.

Dated: August 18, 2010

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## **APPENDIX A**

<b>FIREARMS DEALERS, BY YEAR/COUNTY 1990-2009</b>							
<b>BUSINESS NAME</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>	<b>COUNTY</b>	<b>1990</b>	<b>1999</b>	<b>2009</b>
A-A Guns	6416 Telegraph Ave.	Oakland	94609	Alameda	x		
Ace Loan Ofc	26619 Mission Blvd.	Hayward	94544	Alameda	x	x	
Alameda Sportsman	1409 Encinal Ave.	Alameda	94501	Alameda	x	x	
American Outdoor Sports Supply Inc. / J&R Sports	2558 Old First St.	Livermore	94550	Alameda	x	x	x
Andreotti Firearms and Sporting	3636 Castro Valley	Castro Valley	94546	Alameda		x	x
California Firearms & Sporting Goods	2879 38th Ave.	Oakland	94619	Alameda	x		
Castro Valley Gun Shop	22287 Redwood City Rd.	Castro Valley	94546	Alameda	x	x	x
Chelsies Guns and Gunsmiths	564 E. 14th St.	San Leandro	94577	Alameda		x	
Chets Gun Room / Moulton's	2560 San Carlos Ave.	Castro Valley	94546	Alameda	x	x	
Combat Arms	2869 Grove Way	Castro Valley	94546	Alameda	x		
Competition Gun Works	1911 Fairway Dr.	San Leandro	94577	Alameda	x	x	
F&F Guns / RB Cast Bullets	7187 Rich Ave.	Newark	94560	Alameda	x	x	
Fremont Discount Guns	17471 Fremont Blvd.	Fremont	94555	Alameda	x		
Fremont Gun and Supply	17070 Fremont Blvd.	Fremont	94555	Alameda	x		
Fremont Jewelery and Loan	40880 Fremont Blvd.	Fremont	94538	Alameda	x	x	
Gatling Gun Sales	7135 Pinehaven Rd.	Oakland	94611	Alameda	x		
Greenback Pawnbrokers	7102 Thornton Ave.	Newark	94560	Alameda	x	x	
Hayward Shooters Supply	23874 Hesperian Blvd.	Hayward	94541	Alameda	x		
Irvington Arms	40927 Grimmer Blvd.	Fremont	94538	Alameda		x	x
Kodiak Gun Shop	596 E. 14th	San Leandro	94577	Alameda	x		
M and L Sports and Trades	32146 Alvarado Blvd.	Union City	94587	Alameda	x		
M and N Armory	4855 Peralta Blvd.	Fremont	94536	Alameda		x	
Miller Custom Rifles	655 Dutton Ave.	San Leandro	94577	Alameda	x		
Outdoor World	3903 Santa Rita Rd.	Pleasanton	94588	Alameda		x	
Professional Police Supplies	722 Clay St.	Oakland	94607	Alameda	x		
San Leandro Rifle and Pistol Range	3001 Davis	San Leandro	94577	Alameda		x	
Shorman Sport Shop	801 University Ave.	Berkeley	94710	Alameda	x		
Siegles Guns	506 West MacArthur Blvd.	Oakland	94609	Alameda	x	x	
The Traders	685 E. 14th	San Leandro	94577	Alameda	x		
Tri County Guns	2836 Johnson Ave.	Alameda	94501	Alameda	x	x	
Tri-City	40900 Grimmer Blvd.	Fremont	94538	Alameda	x	x	
Waynes Gun Shop	7423 Amador Valley Blvd.	Dublin	94568	Alameda	x		
<b>SUBTOTAL COUNTY</b>					<b>26</b>	<b>18</b>	<b>4</b>

<b>FIREARMS DEALERS, BY YEAR/COUNTY 1990-2009</b>							
<b>BUSINESS NAME</b>	<b>ADDRESS</b>	<b>CITY</b>	<b>ZIP</b>	<b>COUNTY</b>	<b>1990</b>	<b>1999</b>	<b>2009</b>
American Gun Exchange	210 G St.	Antioch	94509	Contra Costa		x	
Antioch Armory	625 W. 3rd	Antioch	94509	Contra Costa			x
Canyon Sports	887 Howe Rd.	Martinez	94553	Contra Costa		x	x
Contra Costa Collectibles	1429 Cypress St.	Walnut Creek	94596	Contra Costa		x	x
Hogans Sports	1500 Contra Costa Blvd.	Pleasant Hill	94523	Contra Costa	x	x	
Old West Gun Room Inc.	3509 Carlson Blvd.	El Cerrito	94530	Contra Costa	x	x	x
White Bears	1500 Monument Blvd.	Concord	94518	Contra Costa	x		
<b>SUBTOTAL COUNTY</b>					<b>3</b>	<b>5</b>	<b>4</b>
Bullseye Precision Indoor Shooting Range	1281 Andersen Dr.	San Rafael	94901	Marin			x
Marin Firearms	516 Alameda Del Prado	Novato	94949	Marin		x	x
<b>SUBTOTAL COUNTY</b>					<b>0</b>	<b>1</b>	<b>2</b>
SF Gun Exchange	124 2nd St.	San Francisco	94105	San Francisco	x	x	
<b>SUBTOTAL COUNTY</b>					<b>1</b>	<b>1</b>	<b>0</b>
H and H Enterprise Gunshop	1001 Jefferson Ave.	Redwood City	94063	San Mateo	x	x	
Imbert and Smithers Inc.	1144 El Camino Real	San Carlos	94070	San Mateo			x
<b>SUBTOTAL COUNTY</b>					<b>1</b>	<b>1</b>	<b>1</b>
Ambler Arms & Ammunition	200 Sierra Way	Milpitas	95132	Santa Clara	x		
Eddy's Sport Shop	889 Castro St.	Mountain View	94041	Santa Clara	x	x	
Kerleys Hunting Fishing and Outfitters	20301 Stevens Creek Blvd.	Cupertino	95014	Santa Clara		x	
Milpitas Gun & Pistol Range / Target Masters West	122 Minnis Circle	Milpitas	95035	Santa Clara	x	x	x
Reeds Indoor Range / National Shooting Club	1100 Duane Ave.	Santa Clara	95054	Santa Clara		x	x
Reeds Sport Shop	3020 Alum Rock Ave.	San Jose	95127	Santa Clara	x	x	
<b>SUBTOTAL COUNTY</b>					<b>4</b>	<b>5</b>	<b>2</b>
Honest John's Gun Shop	528 Capitol St.	Vallejo	94590	Solano	x		
Vacaville Surpus and Armory	501 Main St.	Vacaville	95688	Solano		x	
<b>SUBTOTAL COUNTY</b>					<b>1</b>	<b>1</b>	<b>0</b>
Beeman Precision Arms Inc.	3440 Airway Dr.	Santa Rosa	95403	Sonoma	x		
<b>SUBTOTAL COUNTY</b>					<b>1</b>	<b>0</b>	<b>0</b>
<b>TOTAL COUNTIES PER YEAR</b>					<b>37</b>	<b>32</b>	<b>13</b>

## **APPENDIX B**

**Population, 10 Largest CA Counties  
(used for "10 County Mean")**

Population	1999
Los Angeles	9,330,171
Orange	2,776,163
San Diego	2,751,011
San Bernardino	1,667,189
Santa Clara	1,658,055
Riverside	1,490,474
Alameda*	1,412,315
Sacramento	1,185,132
Contra Costa	928,482
Fresno	785,020
San Francisco	762,359

\* Alameda shown for reference only; excluded from "10 County Mean"

Source: CA Dept. of Finance

From: CA DOF (<http://www.dof.ca.gov/research/demographic/reports/estimates/e-4/1991-2000>)

**Violent Crimes per 100,000**

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
United States	729.60	758.20	757.70	747.10	713.60	684.50	636.60	611.00	567.60	523.00	506.50	504.50	494.40	475.80	463.20	469.00	473.60	466.90	454.50
California	1,055.30	1,092.30	1,120.10	1,073.70	1,007.40	955.70	852.50	787.90	691.50	615.60	615.30	612.20	594.30	574.50	544.30	516.20	521.90	509.80	488.80
10 County Mean	1,020.56	1,029.68	1,076.05	1,047.95	994.86	944.46	836.64	776.94	677.55	602.11	593.48	578.86	562.71	532.74	517.82	518.92	524.58	503.63	481.44
Alameda County	912.10	1,192.20	1,278.00	1,330.50	1,216.20	1,144.90	1,023.80	971.80	841.50	711.40	651.80	644.10	639.70	679.20	608.80	649.80	822.50	823.30	831.00
Contra Costa County	817.80	811.90	875.80	834.20	746.80	698.30	621.20	635.10	560.40	481.70	474.10	454.50	434.70	421.80	398.50	442.80	465.30	477.50	438.50
Fresno County	1,028.00	1,018.40	1,100.60	1,125.10	1,250.50	1,154.30	1,030.40	966.80	881.70	803.30	745.50	784.30	617.30	597.60	596.50	630.80	544.00	486.40	461.90
Los Angeles County	1,764.40	1,807.90	1,793.80	1,671.10	1,488.30	1,402.60	1,266.00	1,126.30	982.20	887.70	933.70	930.30	907.10	849.60	758.40	652.60	634.10	616.90	580.40
Orange County	528.60	571.80	544.70	531.20	545.00	504.30	457.40	418.50	347.30	315.30	299.90	297.40	280.00	276.20	275.10	279.90	272.10	265.80	245.80
Riverside County	1,054.80	1,076.00	1,038.90	1,090.50	1,095.90	956.60	821.40	801.00	708.30	631.20	615.70	610.40	578.40	530.80	469.90	458.60	477.40	455.10	398.70
Sacramento County	866.80	927.70	883.40	925.30	956.50	938.20	796.30	784.40	675.60	588.00	585.50	581.70	633.30	590.30	680.70	706.40	781.80	683.40	652.60
San Bernardino County	1,071.50	900.50	1,138.70	1,081.40	954.30	927.80	794.10	701.20	601.80	542.00	531.00	577.10	558.00	550.80	517.00	498.90	497.10	505.20	512.40
San Diego County	855.30	970.80	975.40	878.20	885.80	790.60	704.60	659.80	593.50	500.70	484.80	510.20	482.30	470.60	460.90	455.50	443.10	441.00	411.10
San Francisco County	1,731.90	1,684.90	1,881.00	1,818.10	1,454.20	1,462.70	1,318.90	1,113.90	945.70	835.70	839.20	582.00	773.00	729.90	728.80	758.40	825.50	795.90	815.00
Santa Clara County	486.50	526.90	528.20	524.40	571.30	609.20	556.10	562.40	479.00	435.50	425.40	460.70	363.00	309.80	292.40	305.30	305.40	309.10	298.00

**Murders (Willful Homicide) per 100,000**

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
United States	9.40	9.80	9.30	9.50	9.00	8.20	7.40	6.80	6.30	5.70	5.50	5.60	5.60	5.70	5.50	5.60	5.70	5.60	5.40
California	12.10	12.80	12.70	13.10	11.70	11.10	9.00	7.90	6.50	5.90	6.10	6.40	6.80	6.70	6.60	6.80	6.70	6.00	5.70
10 County Mean	10.93	12.01	12.00	13.24	11.82	10.52	8.75	7.46	6.20	5.76	5.55	5.84	6.17	6.37	6.65	7.01	6.73	6.61	5.86
Alameda County	14.70	15.40	16.30	15.00	14.00	14.60	10.50	10.30	7.60	5.90	7.60	7.40	9.70	9.30	7.80	8.40	11.40	10.00	9.60
Contra Costa County	8.80	13.10	10.40	13.40	14.00	9.30	8.20	7.10	6.00	6.20	5.90	5.10	4.90	7.50	7.50	7.90	9.00	9.40	7.30
Fresno County	13.90	11.80	17.80	17.60	16.60	14.10	12.20	10.80	7.30	5.40	4.70	7.50	7.50	7.00	8.00	8.70	8.20	8.00	7.00
Los Angeles County	20.00	20.60	21.10	21.10	18.00	18.00	14.90	12.40	10.00	9.20	10.40	11.10	11.80	10.60	10.30	10.50	9.90	8.40	7.80
Orange County	6.20	6.30	7.00	7.70	6.70	6.40	4.20	3.80	3.10	3.30	2.00	2.20	2.60	2.20	2.70	2.50	2.60	2.50	2.30
Riverside County	10.90	13.00	10.10	12.20	12.50	9.80	8.00	7.90	7.20	6.00	5.10	5.90	6.70	5.50	5.10	5.80	5.50	5.20	4.30
Sacramento County	8.60	11.30	8.40	13.20	11.30	9.20	8.30	7.60	6.30	6.90	6.10	6.30	6.50	6.30	6.80	8.00	7.10	6.50	6.80
San Bernardino County	14.50	14.90	15.40	16.60	15.60	14.30	11.60	9.10	9.00	6.60	8.40	7.20	7.90	8.80	8.70	8.90	8.10	7.80	5.80
San Diego County	8.70	10.90	9.50	9.40	7.80	7.40	6.20	4.60	3.10	3.70	3.40	3.20	3.00	4.30	4.20	3.20	4.10	3.50	2.90
San Francisco County	13.90	13.10	15.90	17.30	12.20	13.20	10.90	7.60	7.40	8.10	7.50	7.90	8.60	8.70	11.10	12.10	10.70	12.30	11.70
Santa Clara County	3.80	5.10	4.40	3.90	3.50	3.50	3.00	3.70	2.60	2.20	2.00	2.00	2.20	2.80	2.10	2.50	2.10	2.50	2.70

**California Data**

Source: FBI, Uniform Crime Reports

From: RAND (<http://ca.rand.org/stats/community/crimerate.html>)

**US Data**

Source: FBI's Uniform Crime Reports via USDOJ Bureau of Justice Statistics

From: US Dept. of Justice Bureau of Justice Statistics (<http://bjsdata.ojp.usdoj.gov/dataonline/Search/Crime/State/TrendsInOneVar.cfm>)

**Violent Crimes per 100,000**

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>United States</b>	729.60	758.20	757.70	747.10	713.60	684.50	636.60	611.00	567.60	523.00	506.50	504.50	494.40	475.80	463.20	469.00	473.60	466.90	454.50
<b>California</b>	1,055.30	1,092.30	1,120.10	1,073.70	1,007.40	955.70	852.50	787.90	691.50	615.60	615.30	612.20	594.30	574.50	544.30	516.20	521.90	509.80	488.80
<b>10 County Mean</b>	1,020.56	1,029.68	1,076.05	1,047.95	994.86	944.46	836.64	776.94	677.55	602.11	593.48	578.86	562.71	532.74	517.82	518.92	524.58	503.63	481.44
<b>Alameda County</b>	912.10	1,192.20	1,278.00	1,330.50	1,216.20	1,144.90	1,023.80	971.80	841.50	711.40	651.80	644.10	639.70	679.20	608.80	649.80	822.50	823.30	831.00

**Murder (Willful Homicide) per 100,000**

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>United States</b>	9.40	9.80	9.30	9.50	9.00	8.20	7.40	6.80	6.30	5.70	5.50	5.60	5.60	5.70	5.50	5.60	5.70	5.60	5.40
<b>California</b>	12.10	12.80	12.70	13.10	11.70	11.10	9.00	7.90	6.50	5.90	6.10	6.40	6.80	6.70	6.60	6.80	6.70	6.00	5.70
<b>10 County Mean</b>	10.93	12.01	12.00	13.24	11.82	10.52	8.75	7.46	6.20	5.76	5.55	5.84	6.17	6.37	6.65	7.01	6.73	6.61	5.86
<b>Alameda County</b>	14.70	15.40	16.30	15.00	14.00	14.60	10.50	10.30	7.60	5.90	7.60	7.40	9.70	9.30	7.80	8.40	11.40	10.00	9.60

**Violent Crimes Annual Change (1999 baseline)**

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>United States</b>	-	3.92%	-0.07%	-1.40%	-4.48%	-4.08%	-7.00%	-4.02%	-7.10%	-7.86%	-3.15%	-0.39%	-2.00%	-3.76%	-2.65%	1.25%	0.98%	-1.41%	-2.66%
<b>California</b>	-	3.51%	2.55%	-4.14%	-6.17%	-5.13%	-10.80%	-7.58%	-12.24%	-10.98%	-0.05%	-0.50%	-2.92%	-3.33%	-5.26%	-5.16%	1.10%	-2.32%	-4.12%
<b>10 County Mean</b>	-	0.89%	4.50%	-2.61%	-5.07%	-5.07%	-11.42%	-7.14%	-12.79%	-11.13%	-1.43%	-2.46%	-2.79%	-5.33%	-2.80%	0.21%	1.09%	-3.99%	-4.41%
<b>Alameda County</b>	-	30.71%	7.20%	4.11%	-8.59%	-5.86%	-10.58%	-5.08%	-13.41%	-15.46%	-8.38%	-1.18%	-0.68%	6.17%	-10.37%	6.73%	26.58%	0.10%	0.94%

**Violent Crime 1990 to 2008 Mean Change**

	PRE	POST
<b>United States</b>	-3.57%	-1.53%
<b>California</b>	-5.67%	-2.51%
<b>10 County Mean</b>	-5.54%	-2.43%
<b>Alameda County</b>	-1.88%	2.21%

**Murder (Willful Homicide) Annual Change (1999 baseline)**

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>United States</b>	-	4.26%	-5.10%	2.15%	-5.26%	-8.89%	-9.76%	-8.11%	-7.35%	-9.52%	-3.51%	1.82%	0.00%	1.79%	-3.51%	1.82%	1.79%	-1.75%	-3.57%
<b>California</b>	-	5.79%	-0.78%	3.15%	-10.69%	-5.13%	-18.92%	-12.22%	-17.72%	-9.23%	3.39%	4.92%	6.25%	-1.47%	-1.49%	3.03%	-1.47%	-10.45%	-5.00%
<b>10 County Mean</b>	-	9.88%	-0.08%	10.33%	-10.73%	-11.00%	-16.83%	-14.74%	-16.89%	-7.10%	-3.65%	5.23%	5.65%	3.24%	4.40%	5.41%	-3.99%	-1.78%	-11.35%
<b>Alameda County</b>	-	4.76%	5.84%	-7.98%	-6.67%	4.29%	-28.08%	-1.90%	-26.21%	-22.37%	28.81%	-2.63%	31.08%	-4.12%	-16.13%	7.69%	35.71%	-12.28%	-4.00%

**Murder (Willful Homicide) 1990 to 2008 Mean Change**

	PRE	POST
<b>United States</b>	-5.29%	-0.57%
<b>California</b>	-7.31%	-0.25%
<b>10 County Mean</b>	-6.35%	0.35%
<b>Alameda County</b>	-8.70%	7.13%

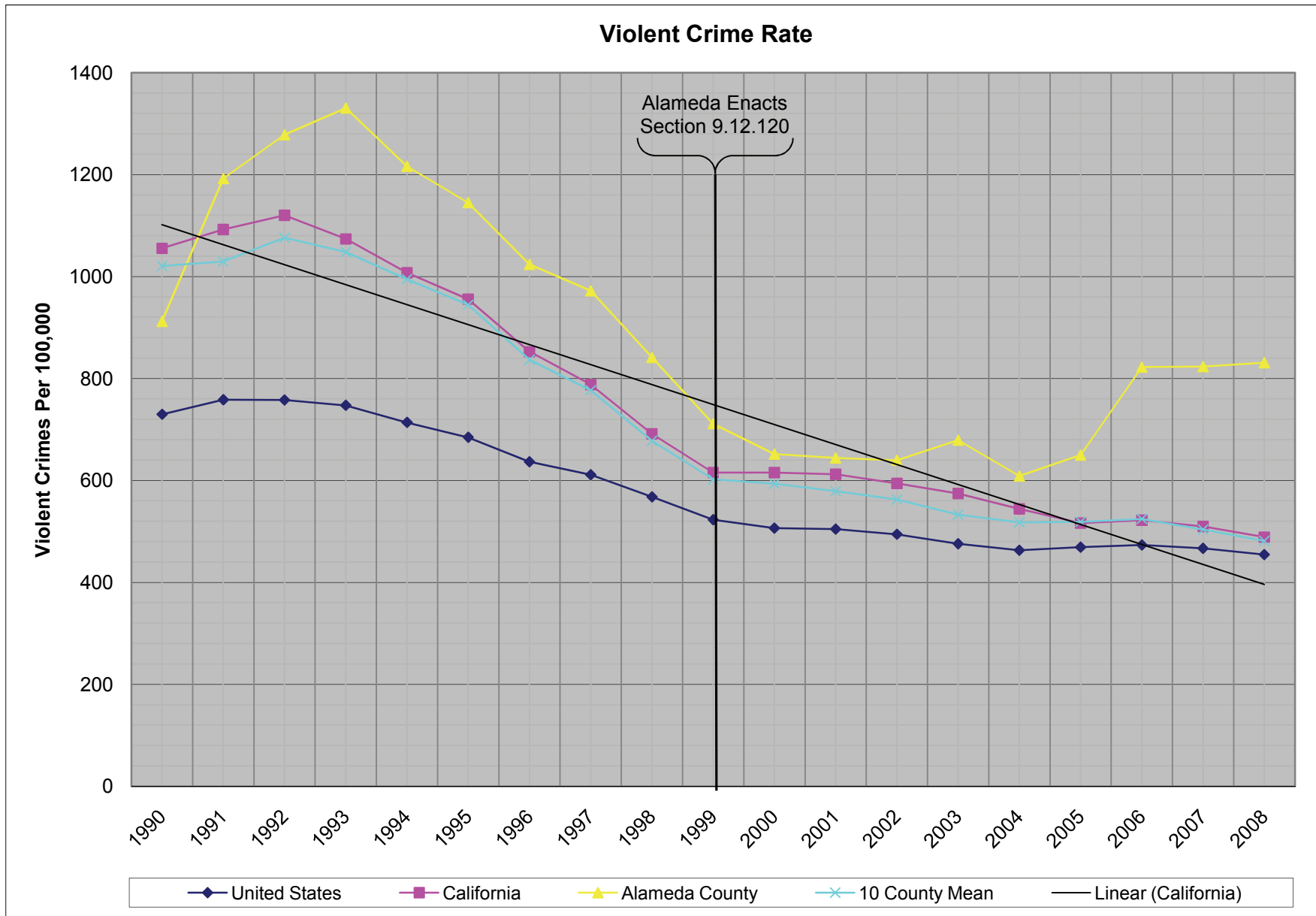
Source: FBI, Uniform Crime Reports

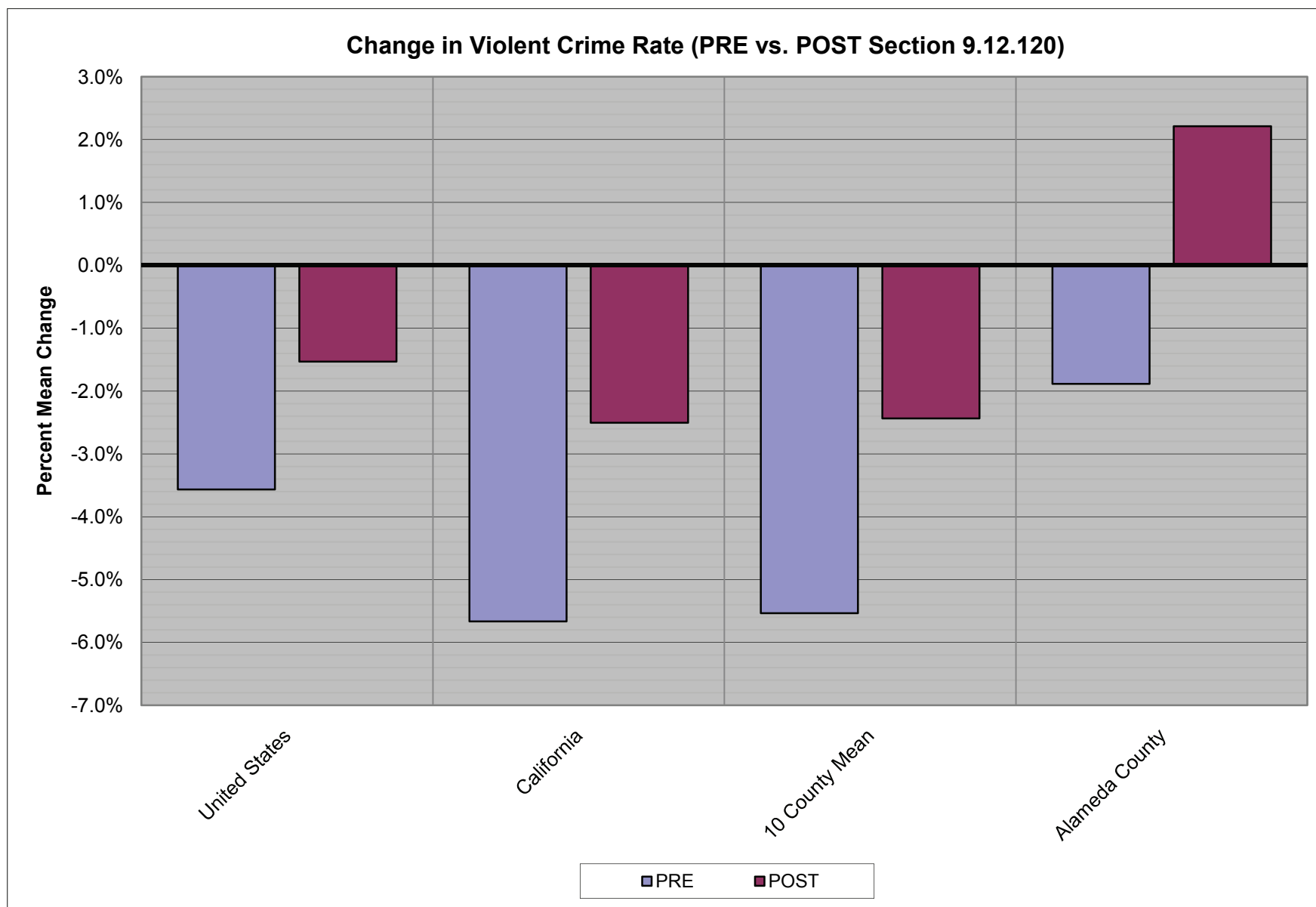
From: RAND (<http://ca.rand.org/stats/community/crimerate.html>)**Murder (Willful Homicide) and Violent Crime Rates in the US**

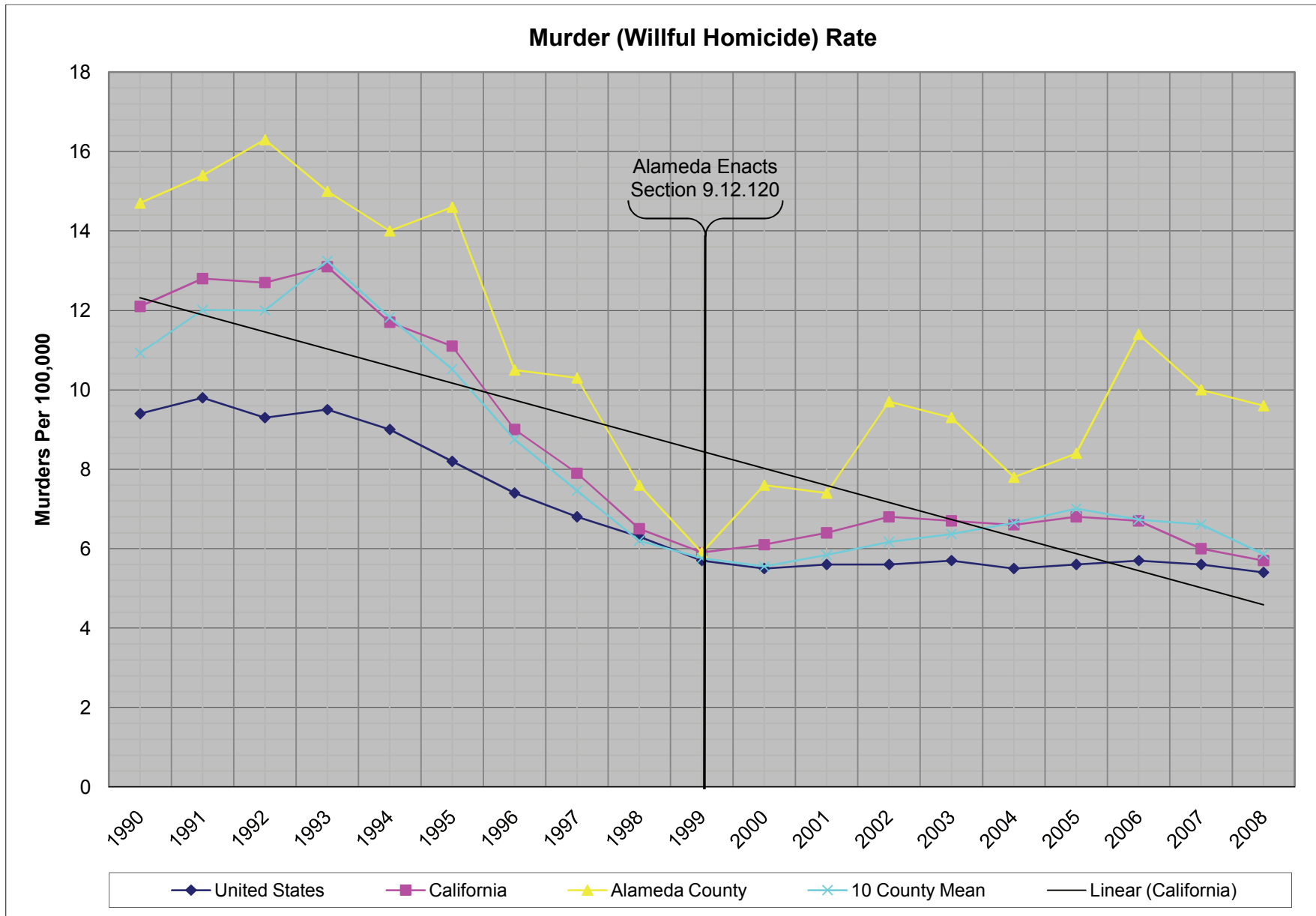
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>Violent Crimes</b>	729.60	758.20	757.70	747.10	713.60	684.50	636.60	611.00	567.60	523.00	506.50	504.50	494.40	475.80	463.20	469.00	473.60	466.90	454.50
<b>Murders</b>	9.40	9.80	9.30	9.50	9.00	8.20	7.40	6.80	6.30	5.70	5.50	5.60	5.60	5.70	5.50	5.60	5.70	5.60	5.40

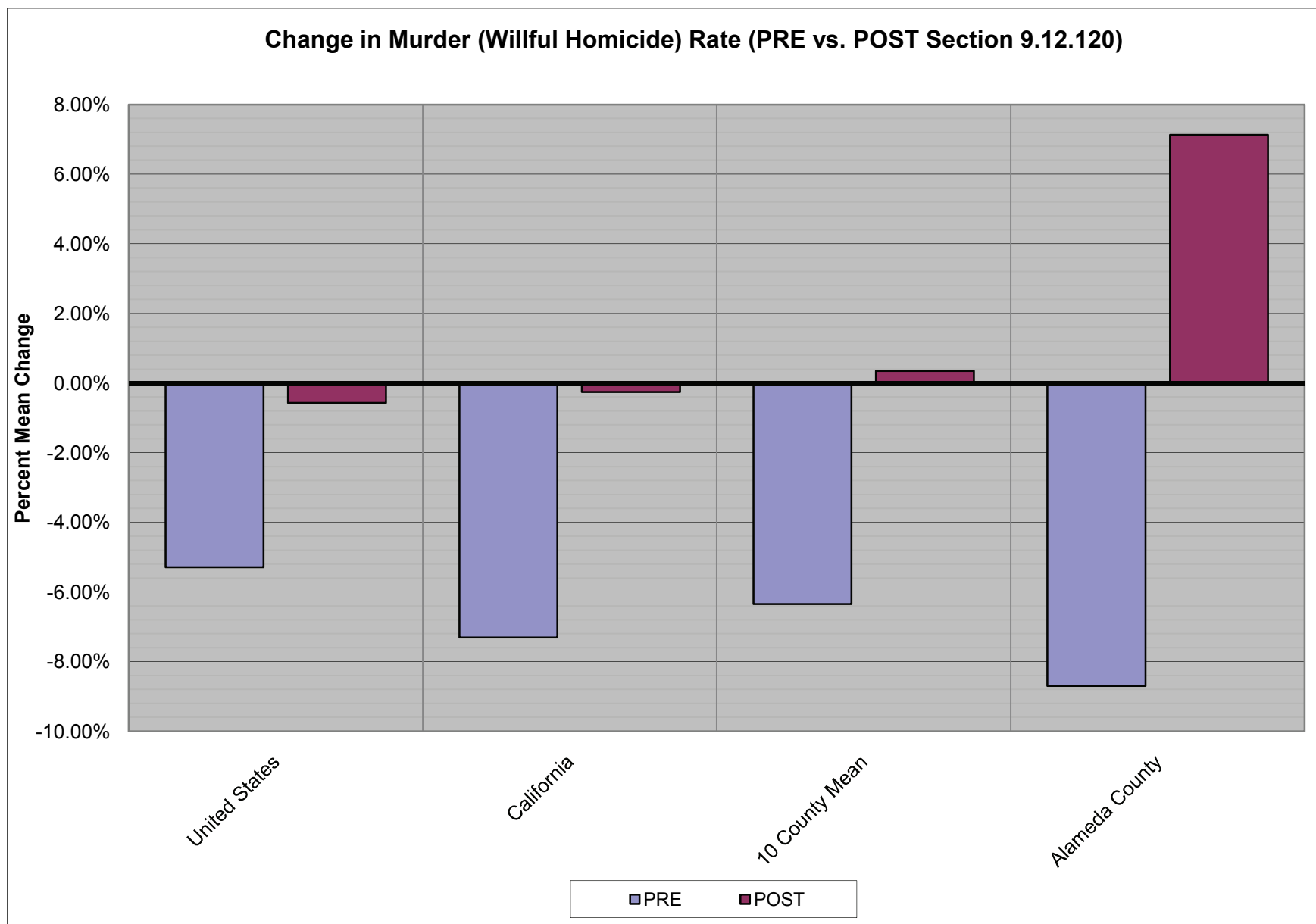
Source: FBI's Uniform Crime Reports via USDOJ Bureau of Justice Statistics

From: US Dept. of Justice Bureau of Justice Statistics (<http://bjsdata.ojp.usdoj.gov/dataonline/Search/Crime/State/TrendsInOneVar.cfm>)



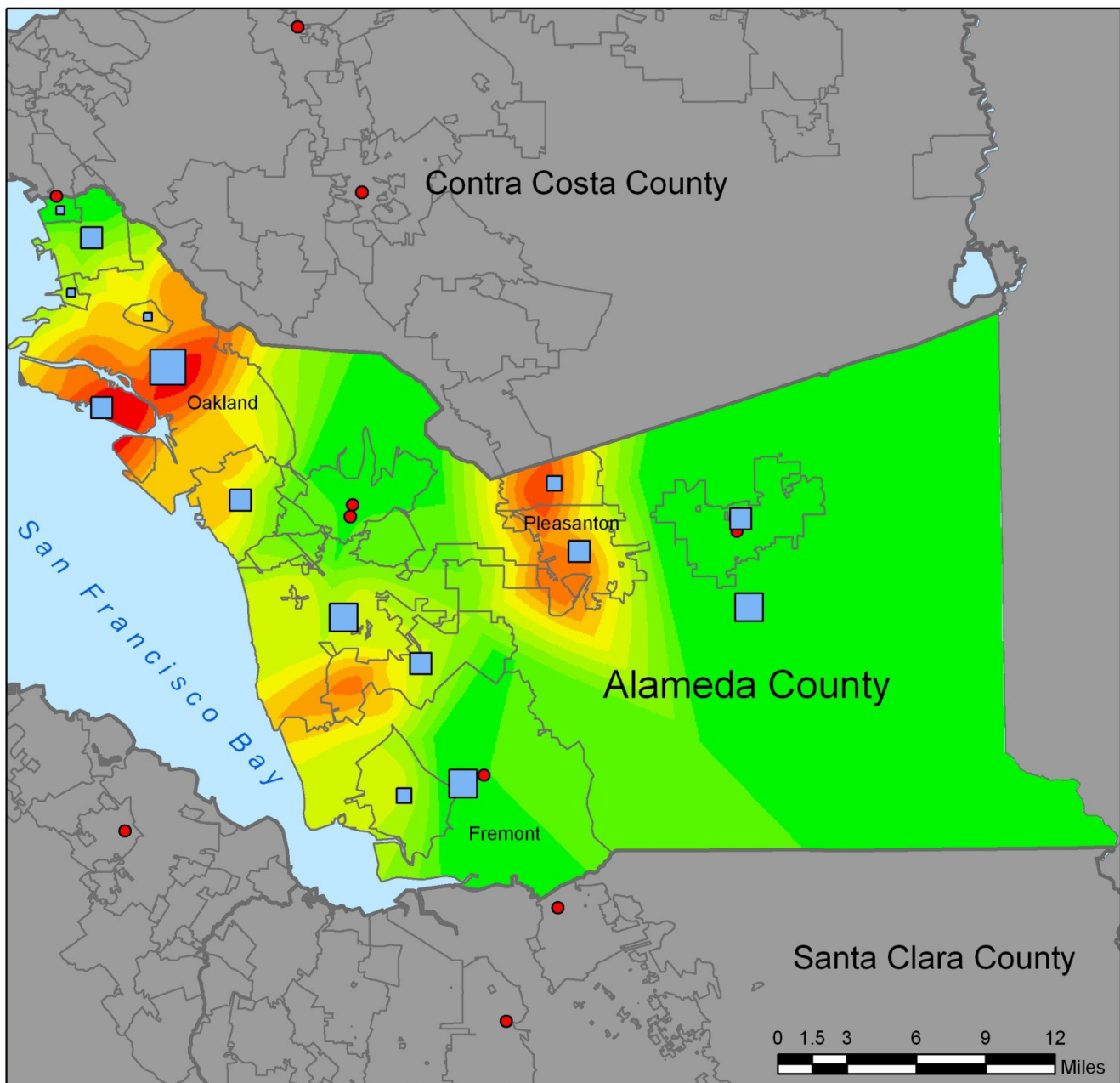






## **APPENDIX C**

# Gun Dealer Change in One-Way Distance (Natural Breaks) – 1990 through 2009



## Legend

● Gun Stores 2009

### 2009 Population

- 10096 - 16898
- 16899 - 47953
- 47954 - 107250
- 107251 - 215787
- 215788 - 425368

### Change in Distance to Gunstore (miles)



CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATIONS, TYPEFACE REQUIREMENTS, AND  
TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 2,450 words, excluding the parts of the brief excluded by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirement of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared proportionately spaced typeface using Word 2007 in 14 point Times New Roman font.

By: s/ Jason Andrew Davis  
Jason Andrew Davis  
Counsel for Amicus Curiae  
Dated: August 18, 2010

9th Circuit Case Number: 07-15763

### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 18, 2010.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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San Jose, CA 95113

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of August, 2010.

s/ Jason Andrew Davis  
\_\_\_\_\_  
Jason Andrew Davis