

FINAL REPORT

Citizens' Assembly for Critical
Thinking About the United States

e-CACTUS: Fall 2013



*What Should We Do About the
Second Amendment?*

Keep It? Amend It? Repeal It?



**Fifteen members of CACTUS
participated in the writing of this report.**

Final report

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*In the Canadian citizens' assembly model, the assembly is divided into three phases, with public hearings being the middle phase. In this e-CACTUS, because of the on-line nature and the compacted time frame, public input took the form of a public on-line discussion board, open during the end of the learning phase and throughout the deliberation phase.

Foreword:

The Second Amendment was always near the top of the list when we asked students for ideas for future CACTUS topics. However, we resisted choosing this topic up until this year because we were not sure whether we could get a healthy mix of Assembly members who would be willing to seriously study and address the topic. Once again, however, we are delighted to report that e-CACTUS surprised us in positive ways. As we suspected, the Assembly was made up, so far as we could tell, of gun enthusiasts; however they were gun enthusiasts who were not ideologically rigid and who expressed an awareness that their mandate involved finding a solution that addressed the interests and concerns of all sides, balancing the concept of gun owners' rights with room for reasonable regulation. And several of them were excellent writers which made for some lively discussion board interactions.

Special thanks to our Graduate Assistant, Luke Morgan, to those members of CACTUS who helped us haul equipment between our first floor supply cabinet and our second floor meeting room for our on-campus meetings, and to those members of the campus community and public who posted on our public discussion board. Our efforts to make CACTUS more than "just a class" depended in large part, as always, on those students, faculty, administrators, and others who were willing to model the role of engaged citizens taking a stand on an issue of public importance.

A word about this Final Report: The entire Assembly ideally has a hand in compiling and approving the Final Report. Unfortunately because the end of CACTUS coincides with the end of the semester, it is a very busy time for our students. This is particularly true in a partial-semester CACTUS, as this one was, in which the whole process is very compacted. Most CACTUS members wrote sections for the report. Special thanks goes to Daniel Thomas who took these and wrote a compilation of them. We have used much of what he wrote but also tried to include enough of the language of other Assembly members that they would be able to recognize their own contributions. This has required some editing by the CACTUS directors for the purpose of avoiding overlap and providing flow. We have also edited for punctuation and spelling errors but as much as possible we have kept this report in the words of the student Assembly members.

Dr. Jane Rainey, Professor of Political Science and CACTUS Co-Director

Dr. Glenn W. Rainey, Jr., Professor of Political Science and CACTUS Co-Director

INTRODUCTION

Political Science 301 (CACTUS) provided each student with a very organized, informative style of learning. Rather than this being viewed as a course to take at the university, it is recognized as a group of citizens gathered together to deliberate over the current Second Amendment. It was an Assembly of citizens becoming informed, educated thinkers about a particular subject dealing with the United States. This e-CACTUS was formed to educate and advance the knowledge and understanding of the students here at ECU about the 2nd amendment. Through participation in e-CACTUS the student body would become informed, as well as engaged in the thoughts and workings of the United States Constitution.

E-CACTUS served not only as a tool for educating the students of ECU, but also the public. E-CACTUS was both an on-line Assembly and a hybrid online class, with only two on-campus meetings. The majority of the work was done through assignments over sections of the books, as well as an online discussion board. This online deliberation was essential for the success of this Assembly. The goal of e-CACTUS in this class was to analyze, interpret, and even come up with the possibility of changing the 2nd Amendment to the Constitution, the right to keep and bear arms. In order to do so, we divided into groups and came to a conclusion through voting on our beliefs in such a way that it mirrors the democracy which this country is founded upon. The purpose of this was not only to create a fair assessment of beliefs, but to educate the student body and public of the interworking of government and to analyze and discuss the 2nd Amendment from both an academic perspective as well as the public attitudes of the United States of America. In doing this, the course

was divided into “phases”. There was the learning phase and the deliberation phase. In the learning phase, the students were assigned heavy readings as well as discussion boards, and writing assignments to accompany the readings. This presented each student with not only the material to be thought about but also the motivation to get their thoughts on paper for the rest of the class to read and comment on. After each of the books assigned were read, the course moved into the deliberation phase. With this, there were three things that were expected of the students: intensified class discussions through the use of Blackboard’s discussion boards, answering questions about the public forum, and lastly, writing written responses to questions posed by the instructors.

DEMOGRAPHICS

We had quite the motley crew in this Assembly! A few gun owners, some ex-military, some parents, veterans of CACTUS courses, those interested in the political process, some interested only on account of the 2nd Amendment, some people who wanted to broaden their educational horizons, and some who just wanted to debate a little, those who came in knowing very little about gun-regulation, and those who knew a lot about it. Most of us were from the best state in the lower 48 (Kentucky, of course), but several of the students have gotten to travel the world and see how things work in different corners of the Earth. That brings a lot to the table in ethical debates like the ones we engaged in—it is quite easy to forget about humanity outside of one’s own immediate community.

Most of us are pursuing unique, various educational goals, but this is exactly what CACTUS needs to thrive. If there were a council of citizens gathered to make a group decision such as we were (but to actually alter laws), one would not want a room fully comprised of lawyers, politicians and POL majors (no offense!) because if people truly want to change the way their country operates, it would be beneficial to have people from all walks of life collaborating. Teachers, police officers, blue-collared workers, pilots, engineers, nurses, etc....folks with no political financial backing to impede their honest feelings, judgments and observations.

A summary of all of the types of people within this CACTUS is hard to give. There was a wide variety of majors including: political science, criminal justice, broadcasting, public relations, geology, business, physics, art and sciences, public administration, biology, American sign language, and sociology. This shows that people interested in politics and those that have majors almost completely unrelated have joined together in the Assembly. Even the numerous hobbies people have listed account to the diversity within the assembly. The hobbies listed include: shooting, reading, writing, drinking whiskey, drinking coffee, playing video games, reading comic books, traveling, hiking, kayaking, skeet and trap, sailing, watching sports, aikido, and riding motorcycles. There were people from here in Kentucky to Tennessee and Virginia. In the personal introductions it was also expressed that some have a lot of experience with law and have been involved with the military while a lot have hardly any dealings at all and want to learn more about how this country works. The types of people in the Assembly made for an exciting combination. The Assembly has done a very astounding job with obtaining a very

diverse group. It is because of this diverse group that the Assembly was able to obtain the best resolution for the understanding of the Second Amendment.

After reading the personal pages you really see the backgrounds of people and how it would affect their opinions on this issue. We had some single mothers who may worry about their children in schools with the number of school shootings that have happened. We had military men who have seen first hand what a gun can do, but may know how important they are for protection. We had political science majors who always have something to contribute in discussion on numerous political topics! We also had people who like to hunt who of course need a firearm to do so. This combination of people helped to create a broad discussion because we all had our own story, our own way of life, and we all saw the Second Amendment rights differently. It has been a wonderful experience learning with this group!

Learning Phase

First on-campus meeting

When we came together for our first of two on campus meetings on October 17th, 2013, we were welcomed with a name tag to put on us, a card with our name and all kinds of important papers in a red folder, and we went over a few things that were important for us as students to know for this Assembly that was also a class. Our instructors introduced themselves and started the Assembly with a brief overview of what it would entail. We began with a brief discussion of the syllabus so the Assembly would all be on the same page as we knew we would soon be separated from each other, but still needed to continue with vibrant debate and compromise via the internet.

CACTUS officially began with the singing/watching of the national anthem. We introduced ourselves and told why we had signed up for CACTUS in order to get to know one another while simultaneously seeing that everyone is from a different walk of life so we knew that we were going to have an open minded perspective of the Second Amendment. One of the papers that was in our folders was a petition, and we had to come up with something that we either thought was funny or serious that we wanted to make happen or ban. We had each other sign or reject the petition in question, which served two main purposes. The first purpose was an ice-breaker to meet as many members of the group as one could. The second was to get to introduce each other's interests and main concerns involving a governing body. This was a training exercise for us as well as a "get to know you" exercise for the class to complete. On the petition we were to write something we wanted to be changed, whether it be funny or serious and then proceed to get as many signatures as we could. It showed that we can have our own opinions and voice them if we believe them, which is one of the CACTUS objectives is for students. It was a good way for us to talk among ourselves and try to get to know each other. One Assembly member commented, "I remember there was one serious petition I read and actually disagreed with and felt bad for not accepting it but then realized that was what the class was about."

After the petition, we proceeded to break off into groups, and then talk about values and etiquette items to be addressed for the remainder of the semester and how we wanted the discussions to be held online. We delegated a secretary to record our thoughts and began listing items we wanted to be told to the Assembly as

a whole, and then prioritizing them. We then came back as a whole and conversed about what each group got. When you are not face to face with someone it becomes easier to personally attack them in a response. We discussed that the purpose of CACTUS, while it relies on opinion, is not to attack the beliefs of others. We decided that the most important things to remember when responding were common courtesy, respect for others, timely responses, and credible sources of research, and to make sure that we could see ways to collaborate on ideas to come to a final conclusion by the end of the semester. We had a little break and got to enjoy cider, cookies, nuts, etc. Then we got into different groups to discuss on what grounds the Second Amendment needs to be analyzed. Among these were several options dealing with historical, political, or defensive ideologies. This gave us a greater insight as to where the Second Amendment may lie in the hearts and minds of our peers. We had a list of things dealing with the Second Amendment and our job was to prioritize which go at the top and which at the bottom. We once again did so, and conversed as a whole for the ending of the meeting. Before leaving, we took a group picture. It seemed that the first meeting brought each person a sense of accomplishment and an overall feeling of "coming together" within the Assembly.

We would not meet again in person until the last week of the semester. However, in between the two meetings, there had to be some sort of discussion on the topic at hand. With this course, there is no way to complete it without some sort of deliberation on the topic. As said earlier, the approach the instructors took with this particular class was that it was to be viewed as more of an actual group of citizens to accomplish a goal. If it were a normal course, it would be acceptable to

just read chapters and then write responses on the questions; however, since we were dealing with the United States Constitution and politics, a lot of it was discussion and debates to come to an agreement and explain each side. The deliberation phase of this course was where most of the discussions and conclusions come from.

The discussion and understanding of the 2nd Amendment included the following aspects: the history of the 2nd Amendments, the evolution of the 2nd Amendment, and the pros and cons of repealing the 2nd Amendment. The purpose of such discussion and understanding was to answer the question of whether the 2nd Amendment is applicable as worded to modern times. In discussing this question, the Assembly ran into a series of sub-questions that spawned off the main question. This process would include determining whether we should keep the 2nd Amendment as is, repeal the 2nd Amendment, or propose a new (28th) Amendment. Within each of these solutions, reasoning must be established in order to make sure the absolute best outcome has been achieved. These questions were presented from one another in our online discussion, as well as in the books which we were required to read.

The assigned texts as well as the online discussions had one true goal. The ultimate goal of e-CACTUS was to establish an understanding of the 2nd Amendment, as well as create an understanding of how democracy works within the United States. In order to establish such understanding, readings from authors such as Saul Cornell and Mark Tushnet were in order. (See below.) These readings provided

detailed information about the origination, history, and evolution of the 2nd Amendment. They provided facts about the subject as well as insight into what the 2nd Amendment has become and will become. In addition to these readings, the Assembly used online discussion to express our own views of the 2nd Amendment as well to look at what others in the Assembly believed. It seemed almost unanimous however that we believed the 2nd Amendment needed to be repealed or changed to provide better understanding, as well as better protection of rights everyone felt they all should possess.

The idea of keeping and bearing arms presented itself when the people of the States felt their rights were being stripped away by foreign and domestic tyranny. It was through this struggle the States found it in their best interest to create the idea of the militia, also known as the 'minutemen.' "The original understanding of the Second Amendment was neither an individual right of self-defense nor a collective right of the states, but rather a civic right that guaranteed that citizens would be able to keep and bear those arms needed to meet their legal obligation to participate in a well-regulated militia... Citizens had a legal obligation to outfit themselves with a musket at their own expense and were expected to turn out at a minute's notice to defend their community, state, and eventually their nation (Cornell 2)." It was the militia which the Second Amendment protected originally. However, the circumstance for the militia changed drastically over the years. As years passed, and the United States started to develop into a powerful country, there was no longer a need for a militia. There was only a need for a standing army. The militia was disbanded to be a part of the National Guard, and therefore the original purpose of

the Second Amendment had been lost. Because of this, a battle of interpretation and meaning is still being argued today. This was the purpose of the Assembly. We took upon ourselves to answer this 222 year old ever changing conflict. The following is a more detailed description of each of the major readings.

Readings:

A Well-Regulated Militia: the Founding Fathers and the Origins of Gun Control in America is a book written by Saul Cornell in 2006 and published by Oxford University Press. It is focused around the heated gun control debate here in America. It is a book about the history of the Second Amendment. The Second Amendment poses controversy over what its purpose is exactly, and Americans are divided over this widely discussed and debated topic. Two sides of the debate exist, one side stating that the Second Amendment protects the individual's right to keep and bear arms, and the other side stating that the Second Amendment's purpose is to protect the state's rights to have their own militias. Cornell discusses how the original meaning of the Second Amendment was to escape tyranny. "The first statements of the right to bear arms in American constitutional law were clearly aimed at protecting the militia against the danger of being disarmed by the government, not at protecting individual citizens' right of personal self-defense (Cornell 4)." The militia was used to organize events, to protect the community, and State. The militia were the police, and military. Since then, we have established our own federal police and military. Over time, as the need for a militia has changed, so has the understanding of the Second Amendment. The militia became the National Guard, regulated by the federal government that the Second Amendment protects

against, and therefore the meaning of the Second Amendment has been lost. Cornell discusses the history of the Second Amendment through a series of issues, court cases, and various other explanations. He lays down that the founding fathers put this in the Constitution so the states would have a right to have their own militias to rise up against the federal government. Each man had to have a firearm to be a part of this militia. Is this not a bit outdated? If most Americans knew this would they still have the same opinions as they do now?

In the book, Cornell shows that both gun owners' rights activists and gun control advocates are wrong. He argues that the founders of America saw the right to own a gun as neither an individualistic right, nor as a collective right only reserved for a well regulated militia, but instead as a civic right for every able bodied white male to partake in so that they could contribute to a well regulated militia and so that the need for standing armies were avoided. He argues that the founders' original intentions behind the Second Amendment give neither side in the debate what they actually want, and he argues that the attitudes and arguments that are expressed today come from the nineteenth century and not from the Founders era. The modern debate, Cornell reveals, has its roots in the nineteenth century, during America's first and now largely forgotten gun violence crisis, when the earliest gun control laws were passed and the first cases on the right to bear arms came before the courts. He argues that modern day guns rights activists, such as members of the NRA would actually dislike the original intentions behind the Amendment because it is not about individual rights at all, and that a well regulated militia allows for far more restrictions than members of the NRA would be

comfortable with. Gun control advocates argue that the Second Amendment right to own a gun is solely tied to the collective right of the militia, which is an outdated idea, and therefore gun would serve no purpose at all in this day in age. All in all, Cornell provides an excellent comprehensive view of the passionate Second Amendment debate that still rages on today.

Mark V. Tushnet, a professor at Harvard Law, wrote the book *Out of Range: Why the Constitution Can't End the Battle over Guns* in 2007. With this book Tushnet explores competing interpretations of the Second Amendment and discusses how the entanglement of views on guns in the nation's culture wars is affecting the ability to reach a neutral compromise on gun policies. A quote from Tushnet that pretty much summarizes his book best is found on page xiv, "The Second Amendment and its meaning are no longer fought on legal and policy grounds alone. Disputes over gun policy have become deeply enmeshed in the culture wars between liberals and conservatives, between people who live in cities and people who live in the country. The Second Amendment is one of the arenas in which we as Americans try to figure out who we are." This quote summarizes best because it touches on the major points of his book in a few short sentences. Tushnet explains how neutrality is nearly impossible when it comes to the gun control debate simply because different people in different regions of the United States have different needs, wants, fears, etc. Lastly, and most importantly Tushnet goes into great detail as to explain the original intent of the Second Amendment. The book talks about the traditions and court cases challenging the Amendment and what it did for our country, i.e the Slaughterhouse cases, *United States v. Miller*, and the list goes on.

Tushnet does a great job going back in history to explain the true meaning and interpretations of the Second Amendment and how we got to where we are today with it. Tushnet takes a stand-offish approach to the debates about the Second Amendment. He essentially breaks down the combatants into two groups: Pro-gun-rights and Pro-gun-control. Tushnet analyzes the arguments constantly made by each side, exposing fallacies preached as truths, but also praising legitimate points made by each side. It seems to be a pretty fair examination, especially considering the flaring emotions we Americans tend to experience when talking about such a heated topic. What Tushnet ultimately does is to look for an answer to the underlying problem of the American gun debate: how do we reduce blue-on-blue violence in our nation? He ultimately shows the arguments on both sides to be little more than ammunition for politicians working towards their next campaign, either by boosting their own agendas or slandering their opponents'. Tushnet points out time and time again that political victories from both pro-gun-right and pro-gun-control groups have done very little to change our country's deep-seated tradition of violence. This book was an insightful look into a very old debate, and it left at least some Assembly members with a feeling of "We have been asking the wrong questions all this time!".

Relevant Recent Supreme Court Cases

The court case *D.C v. Heller* challenged what rights the Second Amendment protected. The Second Amendment is written to say "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear

Arms, shall not be infringed.” Handgun possession was banned under District of Columbia law. The law prohibited the registration of handguns and made it a crime to carry an unregistered firearm. Furthermore all lawfully owned firearms had to be kept unloaded and disassembled or bound by a trigger lock unless they are being used for lawful recreational activities or located in a place of business. The U.S. Supreme Court in 2008 held that the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and a right to use that arm for traditionally lawful purposes such as self-defense within the home.

The Court in the case *McDonald v. Chicago*, considered whether the Second Amendment right to keep and bear arms was enforceable against the States through incorporation of the Second Amendment through the Due Process Clause of the Fourteenth Amendment. The ending result and change to the Second Amendment was that the Court reiterated that the Second Amendment guarantee of the right to keep and bear arms was an individual liberty, and extended those protections by limiting the power of states to prohibit or control individual firearm ownership.

Public Input Phase

As part of the Assembly, a public discussion board was created at the CACTUS website (www.cactus.eku.edu) where students and others could discuss their opinions and beliefs about the Second Amendment. This allowed the Assembly the opportunity for those in the public to input their voice which ultimately would help the Assembly reach their conclusion. In this way e-CACTUS allowed for the public to

be a part of the informative and opinion side of the Assembly. Even though the Assembly's on-line discussions were important, it was also made known that the views each student has is not the only opinions on the matter. Each student went through the learning phase and learned about the Second Amendment in depth; however the instructors pointed out that on a public discussion forum, the citizens may not be as informed as us, therefore, each student was asked to get on the public forum presented on the website and read the responses and discuss them. This was a very important step before the deliberation phase. It was a way of showing the students that the public has their own opinions on the matters at hand, and want their voice to be heard just as we do as a class. It allowed us to listen to them and speak on behalf of their understanding and explain to them that what they are saying is either correct or misunderstood. One Assembly member summed it up: "The way that I personally took this part of the phase was that those responses were once me. A lot of them presented ideas that I personally believed before I joined this Assembly. They are very right and left wing views, or in other words, extremes. CACTUS opened us up to the idea that there are truly two sides to the Second Amendment debate and both have valid and a lot of times, misunderstood ideas."

One person on the public discussion board stated: "Ambiguity in the Second Amendment is a bit exaggerated. The second part of the Amendment ("...the right of the people to keep and bear arms, shall not be infringed") is much different than the first part ("A well-regulated Militia, being necessary to the security of a free state...")" This showed the Assembly that there was confusion in the wording because of the militia clause of the preamble. A person from Georgia, involved in the

public discussion board, stated: "I believe that the Second Amendment should stay unamended and unchanged. As soon as the Constitution was drafted, many people were split on how the government should be run. These two camps fell under Thomas Jefferson and Alexander Hamilton. Jeffersonians took a more conservative approach to the Constitution and said that government should only do what it must within the limits of the Constitution. Hamiltonians took a more liberal, less strict approach and said that government should do what is deemed good for the country, regardless of the Constitutional wording. This led to the formation of the first political parties, and is what has shaped the diplomatic process of our country ever since." This person helped the Assembly see that there was history and heritage to the 2nd Amendment. The history of the Second Amendment has helped lead to the development of other things that have helped shape the current beliefs in the United States.

These are just two of many posts on the e-CACTUS public discussion board. These opinions and discussions helped the Assembly address and understand different views of the public so as to become better informed. This, as you remember, is the goal of CACTUS--to become informed citizens capable of making rational decisions based upon the understandings of the information they had received. As you can see, this is exactly what the Public Discussion board has allowed.

Many of the people in the public discussion board said that they think there should not be any changes to the Second Amendment; however there are various points made as to why they think this. For starters, two people stated that the

founding fathers saw it as a right. If we were to infringe upon an individual's right to own a firearm then the population would not be safe to protect itself if there were to ever be an invasion upon us. We can depend on the military, but when something becomes as serious as "every man for himself" (which would be very rare) the individuals wouldn't be able to protect themselves. Another point found in the public discussion board was that if we limit gun rights we won't be able to protect ourselves from our own domestic criminals. Criminals don't follow the law anyway so why would this one be any different. Chances are you will have a good law-abiding citizen who won't be able to defend themselves when a criminal breaks into their house with a gun. Thirdly, some people seem to think that without this amendment we wouldn't be able to have the military to protect us because it states a well-regulated militia in the Amendment. They are afraid that all protection would cease to exist which isn't good for anyone. What we didn't see in the public discussion is much talk about how infringing on their right would ultimately protect them. Many people on the discussion board were arguing points in which the assembly was also arguing. These arguments are both that we should not change the 2nd amendment and some say we should. Jessica from Richmond KY stated, "I believe the Second Amendment along with the other Bill of Rights should remain untouchable. The right to bear arms is in my opinion the most important right we have as American Citizens." Jenean from Stanford says, "The Second Amendment should be the first amendment, as no freedom survives without the ability to preserve one's life; even God-given rights are meaningless if you're dead or enslaved." But Ollie from Richmond states, "In the amendment gun ownership is for

a militia and it is to be a well regulated one. To "regulate" ownership we have laws that ban the ownership of automatic weapons except to collectors, etc."

It seems clear that most of the people on the discussion forum stated that we should keep the Second Amendment as is and not change it. Some said we need to alter the language, but keep the meaning of what some claim is their "God given right." It was interesting to see that those on the discussion board were sharing similar thoughts and beliefs as some in the Assembly.

Deliberation Phase

Finally the CACTUS Assembly deliberated on what to do with the Second Amendment that will serve the American citizens of today. The Assembly debated on whether to keep the Amendment the way it is today, change it, or to repeal it altogether. All members were required to comment on the pros of each option during week seven of our Assembly. While discussing keeping the Second Amendment the way it was written, members had many of the same opinions. A lot of the comments made during this part of the deliberation agreed that while the Second Amendment may not have original intent or the same meaning it once had, there is good reason to keep the Amendment the same. Other pros brought up in the discussion posts were keeping with the values of heritage and tradition and also would limit confusion on the citizenry as a whole if we, the Assembly, left the Amendment untouched.

The next option members commented on was the option to repeal the Second Amendment. Under this discussion the Assembly gave their educated opinions on

whether Congress or state governments should have an increase or decrease in the power they already have. Again, there were differing opinions but most came back to the point that regardless if we were to get rid of the Second Amendment, and states enacted gun regulations, every citizen should deserve the right to have a weapons for self defense purposes. Lastly, the members of the Assembly deliberated on making changes to the current Second Amendment by creating a 28th Amendment. There was a lot of agreement in this discussion that suggested eliminating or editing the preamble would be the best way to update and modernize the Second Amendment so that it best serves today's citizens.

The deliberation phase of Political Science 301 was a tough and long road; however it was very informative and well organized. Breaking the course into two phases allowed the students to not be overwhelmed and let them learn about the Second Amendment before going straight into uninformed discussions on the topic which wouldn't allow for room to compromise. Since it was broken up, the students were educated over time on the matter and could deliberate in a more educated environment rather than "I want my guns" vs. "Guns are bad". Even though a lot of the deliberation phase was a lot of discussions between classmates and the public, it is also important that the instructors posed questions to us that needed to be addressed. The two professors sent weekly questions and written assignments out to the class that planted important ideas in the heads of each student that made them think even more in depth about the Second Amendment. Each written assignment had two parts to it that each student was required to complete. These not only got the minds brainstorming but a lot of the time they seemed to force the

students to break free of their comfort zones and think about the other side. A lot of people came into the course with their minds already made up on the subject of guns and gun rights, however, these questions required students to look at both sides of the argument and understand that one side is not the only legitimate reasoning.

It is because of the heated battle between the interpretations of the 2nd Amendment that CACTUS started their deliberation. It was important to e-CACTUS to understand that everyone in the Assembly has an equal say as well as a fair vote on what the Assemblies actions have been. Therefore in saying this, e-CACTUS has made sure that all options have been given the same fair and equal consideration.

The Assembly has been highly educated in the situation of the 2nd Amendment. With the information gathered by the readings, as well as the opinions gathered by the public discussion board the Assembly was more than capable of creating a solution. It was now time for the Assembly to formulate a result by taking all the information gathered to reach the perfect conclusion that will effectively answer the question of what to do about the Second Amendment.

Second on-campus meeting

The second and final meeting of the Assembly was a meeting filled with a variety of deliberation and thoughtful conversation. The goal of the Assembly was to create two alternatives to the decision at hand, with one being a solution to which we could post in a referendum. The starting options for our alternatives were: Keep the Second Amendment as is, Repeal the Second Amendment, or Propose the 28th

Amendment. The preliminary vote taken by the Assembly, which gave each member two votes on any of the three solutions, showed a slight difference in opinion on the solutions. It was obvious the Assembly wanted to propose a 28th Amendment, with sixteen votes in favor of ratification. The difference in opinion lay in coming to an agreement upon repealing the Amendment or leaving it as is. The Assembly broke into small groups to deliberate on the two controversial alternatives. Many pros and cons of each were discussed. The main argument for keeping the Second Amendment as is was the current amendment has been effective for the last two hundred and twenty-two years—why would the assembly change something that does not need change? The prominent argument for repealing the amendment had much to do with states’ rights and control over gun laws. Many members of the small groups felt that the states already make all of the decisions concerning gun rights and control—why not repeal the outdated federal amendment on arms and leave gun control issues solely to the states. Both arguments make valid points pertaining to the current situation affecting the Second Amendment. After debate the Assembly decided to adhere to the second vote and leave our second alternative as leaving the Second Amendment as is.

Eight Assembly votes went toward leaving the amendment as is while six votes stood for repealing the amendment. The Chair did not feel as if he could make a decision between the other two options based on a single vote. The Chair then asked for someone to speak for each of the options. The arguments were as followed:

The argument for keeping the 2nd Amendment as is: It has worked for 222 years and if this right was going to be altered, what other rights were going to be changed because of this.

The argument for repealing the 2nd amendment is: The states already decide what we are allowed to do with firearms, why not fully give them this right officially.

Upon these arguments, the Chair asked for a second vote.

Upon a second vote on the two split alternatives the assembly cast eight votes to leave the amendment as is and seven votes to repeal the amendment.

The majority of the discussion of the night had to do with the text and reasoning behind proposing the 28th Amendment. First the Assembly outlined exactly what was necessary when proposing this amendment. We gathered there was a need for limited, specific changes, an improvement in the general language of the amendment, and the amendment must be written with great detail. Moving on in our discussions the small groups outlined what they did and did not like about the current amendment. The first problem both small groups ran in to was the militia clause of the amendment. The assembly felt this clause was outdated and no use in the Constitution today. The idea to update the terminology of the clause was proposed and the assembly came to a consensus on a clause stating, "A responsible citizenry shall..." We felt a responsible citizenry was a timeless and less ambiguous description of the American citizens who will be governed by the amendment. Within the groups, it seemed clear the desired outcome was to use more and detailed language. The group wanted to define the term 'arms,' give a better

explanation of meaning, and drop the 'militia' clause. Through discussion within the group, it was clear the Assembly needed to keep the term 'arms,' as to not have to list every weapon. The groups also felt as if they wanted to give the States power to regulate the gun laws. The groups felt there needed to be some sort of federal regulation as well in order to keep transporting and concealing of weapons in other States regulated. After this discussion the whole Assembly arrived at a final consensus, and has a finished amendment proposal. The final proposed Amendment read:

"An Amendment to the Constitution of the United States:

Section 1.

The Second Amendment is hereby repealed.

Section 2.

A responsible citizenry shall have the right to keep and legally utilize arms for national and self defense, and for recreation.

Section 3.

The states may regulate the ownership and use of arms in a manner not inconsistent with Section 2 of this amendment."

Then we voted on it, got our final exams handed out, pictures taken, certifications given out, and free pretty red t-shirts!! All the things on our agenda got done and we all had fun doing so!!

The Citizens' Assembly was an amazing way to learn about the history and thought of an Amendment, and just how democracy being involved with each decision is the best possible way to finding a fair and equal solution. It is through the

Assembly and Saul Cornell that the understanding that every citizen has an equal stake in how the future of America will be. “Defining and implementing a new paradigm for the Second Amendment is something all Americans have a stake in (Cornell 218).”

Appendix One: Mandate

e-CACTUS MANDATE 2013

A. The 2013 on-line Citizens' Assembly for Critical Thinking about the United States (e-CACTUS) must study the Second Amendment and consider whether to recommend keeping the Second Amendment-----as it is, changing it through a new Constitutional amendment, or repealing it through a new Constitutional amendment.

B. In carrying out this mandate, the Assembly must:

First, become well informed as to the history of the Second Amendment in the United States, and its precedents in English and colonial history, interpretations and applications of the Second Amendment by the Supreme Court, and use of the Second Amendment by all sides in the current debate about guns;

Second, study the concept and application of gun rights in other democracies and in the states, particularly Kentucky;

Third, consider the role and policy positions of interest groups on all sides of the gun debate[

Fourth, consult with other citizens in the Eastern Kentucky University community of students, faculty, and staff, as well as interested members of the broader community, and provide them the opportunity to make submissions to CACTUS in writing on the CACTUS public discussion board;

Fifth, develop at least two alternative models for change which could involve rewriting the Second Amendment to provide more specificity to broaden gun owners' rights and/or to allow Constitutional protection for more extensive gun control, or repealing the Second Amendment and giving states or the federal government more power to determine their policies; and then debate and decide between the two models;

Sixth, re-examine the current status of the Second Amendment in the U.S. and then deliberate and decide between the status quo and the chosen alternative proposal.

C. If the Assembly recommends adoption of a change in the current status of the Second Amendment, the change must be described clearly and in detail in the final report, to be completed by December 9, 2013. and if a new amendment is required, proposed language for it must be included.

D. If the Assembly recommends keeping the Second Amendment unchanged, the final report must explain the reasons for judging this policy to be preferable to the alternative model most favored by the Assembly.

E. The decision described in section A must

- a. be limited to the determination of the appropriateness or inappropriateness of the current Second Amendment; and
 - b. take into account the potential effects on other parts of the Constitution and be consistent with the basic principles of representative democracy.
- F. Issues that arise in deliberations or on the public discussion board that are beyond the scope of the mandate but that the Assembly may believe to be significant and relevant to the process may be addressed in the final report.
- G. Whether or not the Assembly chooses to replace or alter the Second Amendment, it must produce a clearly-worded referendum question to this effect to be voted on by the university community and a clearly-worded explanation to be posted with the referendum question.
- H. The Assembly should make its decision and approve a referendum question no later than December 5, 2013, and should complete and approve its final report no later than December 9, 2013.
- I. The referendum question must be posted no later than December 6, 2013, and voting will continue through December 11, 2013. The decision of the voters shall be e-mailed to the Assembly as soon as it is completed and announced on the CACTUS web page, ECU Today, and ECU Students Today no later than the first week of classes in January, 2014.

**Appendix Two: Other Concerns not included in the proposed
Amendment but considered worthy of mention:**

Throughout the duration of CACTUS discussions about the Second Amendment many possible additions were mentioned. Some were even discussed in length but in the end found unnecessary to add to the 28th amendment created. One of these discussed included the mention of more restrictions concerning the purchase, owning, and trading of guns. It was mentioned that the public held a strong opinion that more restrictions would be beneficial but that over-restricting was unsupported. It was discussed that the possible incorporation of annual background checks and even mental stability tests could cover this need for more restrictions. Adding in this detail would have the potential to stop some violent crimes involving guns. While it would not be able to prevent every criminal from obtaining a gun it could weed out many potential threats. Also many purchases and trades at gun shows could become safer if licenses proving regular background checks were required to be shown or something similar. This would allow for the government to have a better watch on potential gun owners etc. but not have records about every gun. It was discussed that the mental stability tests had the potential to inhibit veterans and so mostly disregarded by the group. All of these factors were considered but the topic did not reach top priority in the end. The amendment details were instead left more open to interpretation and the potential of background checks left more to the states' judgment and

enforcement. Even the matter of laws concerning safe gun storage were discussed but left to be added by state discretion. The assembly felt it was more beneficial not to create an overly lengthy and complicated 28th amendment.

Guns and Education: Currently there are two forms of civilian gun education. The hunter education course and the concealed carry of a deadly weapon (CCDW) license program that is offered by some states, of which Kentucky is included. The hunter education course is based around recreation uses of guns and children in the course are often accompanied by guardian, the classes are based on safe handling and uses limited to recreation. The CCDW license program is a 8 hour course about safety, common handling, live fire, and safe transport for legal gun owners over the age of 21. However, the CACTUS Assembly discussed the possibility of offering a third type of education program. A program to teach young kids about respecting and safely disregarding guns unless parents are involved with their own gun related parenting techniques. This program was discussed to be implemented by the local Sheriff's office by going to all the elementary schools and teaching kids about guns and how guns should not be feared, but also left alone without parents being involved. Similar to how the D.A.R.E. program is already active in schools. Furthermore, the idea of improving the education aspect of the CCDW license program was briefly discussed earlier in the discussion board and the second meeting of CACTUS. The idea was that with better informed legal gun users, the overall population of gun owners would eventually become better and safer users as

time goes on. However, the Assembly came to the conclusion that safe gun owners at the moment are the ones who take the time and care about becoming as safe as possible. From familiarizing one's self with surrounding state gun laws during travel, to knowing where one should or should not carry a deadly weapon. Education is important for safe gun use, and hopefully different programs will arise, but for now, the safest education comes to the men and woman who take a initiative to be as safe as possible when using and storing their weapons.

Appendix Three: Sources

e-CACTUS Public Discussion board – www.cactus.eku.edu

Cornell, S. (2007). *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America*. New York, New York : Oxford University Press.

Tushnet, M. V. (2007). *Out of Range: Why the Constitution Can't End the Battle Over Guns*. New York, New York: Oxford University Press.

District of Columbia v. Heller, 554 U.S. 570 (2008)

McDonald v. Chicago, 561 U.S. 742 (2010)

Appendix Four: Referendum Question and Results

Referendum Statement e-CACTUS, Fall, 2013

The Citizens' Assembly for Critical Thinking about the United States, after studying and deliberating about the Second Amendment in the United States Constitution and the right to keep and bear arms in American society, has voted thirteen to three to recommend adoption of the following amendment to the Constitution. If adopted, it would become the Twenty-eighth Amendment:

An Amendment to the Constitution of the United States:

Section 1.

The Second Amendment is hereby repealed.

Section 2.

A responsible citizenry shall have the right to keep and legally utilize arms for national and self defense, and for recreation.

Section 3.

The states may regulate the ownership and use of arms in a manner not inconsistent with Section 2 of this amendment.

Reasons:

The meaning of the Second Amendment, with its preamble linking possession of arms by the people with service in a militia,

has been subject to continuing controversy and confusion, and is being interpreted in a context very different from the one for which it was originally written. The modern context includes access to weapons capable of mass murder on a scale unknown when the Second Amendment was originally conceived. A new, more clearly worded statement is needed in the Constitution that recognizes the fundamental right of citizens to own and use arms appropriate for self-defense and recreational purposes, and for national defense in extreme circumstances, but that also recognizes the need to restrict access to arms which are primarily military in nature, not essential to self-defense or appropriate for commonly practiced recreational use, and that are particularly suited to mass murder.

Controversy and confusion about the role of arms in society has been encouraged by ignorance about firearms, by careless misuse of arms, and by acts of mass murder, committed by persons who are emotionally ill but still have access to arms capable of rapid, multiple killings. Constitutional language is needed which will allow government in the United States, at both the federal and the state levels, to encourage and support education and responsible behavior with respect to arms, and to refine regulations to prevent ownership and irresponsible use of arms by the mentally ill and by violently anti-social individuals.

Given the extensive social, economic, and cultural variations among the states, state governments must have a firmly established Constitutional authority to regulate possession and use of arms within their borders, in order to adapt their regulations to local conditions. The Federal government must be able to address national problems or needs with legislation of national scope.

Regulations and restrictions of the type that might be justified by the language used in the proposed amendment are already widely accepted and practiced, and are consistent to a large degree with contemporary judicial interpretations of the U.S. and state Constitutions. As currently worded, however, the Second

Amendment provides only vague, subjective, and controversial justification and guidance regarding the balance between government authority and personal freedom with regard to arms. An important civil liberty is thereby particularly susceptible to subjective interpretation and the whims of political advantage. It is time to put clearer, more contemporary, more specific language in place.

BALLOT QUESTION:

Do you support the recommendation of CACTUS to replace the current Second Amendment with the proposed new amendment?

Yes

No

RESULTS:

YES - 103 27%

NO - 284 73%