

**Written Questions for Eric Holder
From Senator Hatch**

1. As you know, the Supreme Court held in *District of Columbia v. Heller* that the Second Amendment to the U.S. Constitution protects an individual's right to keep and bear arms. In your hearing on January 15, you did not change your personal view that the Second Amendment protects only a collective right connected to service in an organized militia, and you offered two examples of gun control measures which you believed would be constitutional under *Heller*. Since you were willing to offer such speculation regarding measures such as closing the so-called "gun show loophole," please provide your conclusion about whether the gun control measures listed below, which you have endorsed in the past, would be constitutional under *Heller*.

- **Limiting handgun purchases to one per month**
- **Three-day waiting period for purchasing handguns, even with the federal instant background check in place**
- **Raising the age for handgun possession to 21**
- **Requiring that a record of every firearm sale be provided to the Bureau of Alcohol, Tobacco, Firearms, and Explosives**

If confirmed as Attorney General, my first priority with respect to guns will be to ensure that the illegal possession and use of firearms are effectively prevented and forcefully prosecuted. In doing so, I will respect the constitutional right to bear arms, as recently articulated by the U.S. Supreme Court in the *Heller* decision.

I have supported legislation to reduce gun violence, but with respect to any such proposal I will consult with law enforcement authorities concerning the need for such provisions and with lawyers at the Department of Justice concerning the possible impact of any particular proposal on the rights recently enunciated by the Supreme Court in the *Heller* case.

2. In an October 2001 op-ed in the *Washington Post*, you equated gun shows with criminal enterprises designed to give criminals and terrorists easy and undetectable access to weapons. You even referred to the so-called "gun show loophole" as a "terrorist loophole." Yet a report that same year from the Justice Department showed that less than one percent of guns used in criminal activity, let alone terrorist activity, were purchased by the offender at a gun show. Do you still believe that gun shows facilitate terrorism?

I will review the report identified in this question and consult with law enforcement officials and other experts to examine the impact of gun shows and other activities on the use of guns in terrorism and criminal enterprises. I remain concerned with any activity that has the potential to get guns in the hands of terrorists and criminals.

3. The Interior Department recently changed the rules for carrying firearms in national parks and wildlife refuges. Citizens traveling on or through most land under the Interior Department's jurisdiction may now transport and carry concealed firearms for

lawful purposes if allowed by the state laws in which the land is located. This eliminated a patchwork of regulations governing different federal land managed by different federal agencies. In the past, when you have advocated limiting handgun purchases to one per month, you stressed the need for a uniform approach, even at the state level. You will not be the Interior Secretary, but I am wondering what your view is of this new uniform policy, allowing the transport and carrying of lawfully obtained firearms on federal land.

I had had no occasion to analyze the new regulation. Any position I would take on this matter would take account of the safety of law enforcement officers working on federal lands and the safety of visitors to federal land, as well as the views of other stakeholders.

- 4. As Attorney General, you will have an important role to play in the judicial appointment process. Since the Judiciary Act of 1789, judges take an oath “to administer justice without respect of persons” and to do equal justice to the poor and to the rich. In contrast, some say judges should decide cases based on their personal empathy, values, or concerns, that is, what is in their heart. Which of these contrasting views of the judicial role is closest to your view?**

Should judges be impartial no matter which parties or interests are before them or should judges take sides depending on their personal empathy and values?

I believe that it is important to appoint judges who have the intellect and temperament required, and who are committed to following the law and dispensing justice in an impartial manner. I also believe that the federal bench should be composed of people with diverse backgrounds and life experiences.

- 5. Do you believe it is appropriate for judges to use the decisions of foreign courts or such things as public opinion in foreign countries to determine the meaning of the U.S. Constitution? Please explain the basis for your answer.**

Our system of laws is based on the examples of many other nations’ systems, including primarily the English system of common law, and while it can sometimes be constructive to examine the decisions of foreign courts, decisions of United States District and Circuit Courts should be based on the U.S. Constitution, laws and precedents.

- 6. As we have in the past, Chairman Leahy and I will be working in this Congress to reform the patent system. Protecting new ideas and encouraging investment in innovation and creativity are more important than ever for our economy. Last year, Congress passed the PRO-IP bill that Chairman Leahy, Senator Specter and I helped to fashion. It provides that Computer Hacking and Intellectual Property Crime Units are to be assigned to at least two Assistant U.S. Attorneys. Can I have your assurance that, if confirmed, IP prosecution will not take a back seat to other important matters and that you will continue developing a core of federal prosecutors specializing in IP prosecution?**

I will ensure that protection of intellectual property and prosecutions of those who violate federal intellectual property law will remain a sufficient priority, and I look forward to working with the Committee on these issues. This was an issue I focused on when I was United States Attorney in the District of Columbia.

- 7. Attorney General Mukasey has decided that aliens have no constitutional right to challenge deportation orders based on lawyer error. This reversed a 15-year-old precedent. It is my understanding that the new opinion reduces, but does not eliminate, the chances of aliens succeeding on claims of ineffective assistance of counsel. Do you have an opinion on this recent decision?**

The Constitution guarantees due process of law to those who are the subjects of deportation proceeding. I understand Attorney General Mukasey's desire to expedite immigration court proceedings, but the Constitution requires that those proceedings be fundamentally fair. For this reason, I intend to reexamine the decision should I become Attorney General.

- 8. As the ranking member of the Antitrust Subcommittee, I am concerned about executive agencies granting their own special exceptions to the antitrust laws. For example, the Department of Transportation is reviewing applications for antitrust immunity from the Star Alliance and the One World Alliance. Controversy exists regarding whether the transaction involving DHL and UPS constitutes a merger. I feel strongly that Transportation should defer to Justice and use the same level of scrutiny and the same standards that have been applied in previous antitrust application. Can you tell me what the incoming administration's policy will be on this matter?**

I agree that the antitrust laws should be applied consistently, regardless of which agency plays a leading role. I will work with the Department of Transportation and the Antitrust Division of the Department of Justice to ensure that the law is applied in a consistent and even-handed manner.

- 9. I remain very upset about the current inequitable treatment in the so-called Bowl Championship Series.**

Teams playing in these bowl games receive significant financial compensation. But recent events only underscore the continued unfair exclusion of teams that clearly should be playing in a National Championship game. My concern about this goes back some time and I chaired a hearing of this committee on the issue when I was chairman. More recently, the Attorney General of Utah announced that he is launching an investigation. Both the President-elect and Vice President-elect have criticized the BCS process. If you are confirmed, will you have the Department of Justice launch its own investigation?

As a sport fan, I too find frustrating the lack of a system in college football that results in a true championship game where the champion is decided on the field, as in other sports with playoff or other systems. Without prejudging whether an investigation is warranted, I will

consult with the Attorney General of Utah about the basis of his investigation.

- 10. I have some questions about existing Department of Justice initiatives or programs. The first is enforcement of the obscenity and child pornography laws. I have criticized both Republican and Democratic administrations over their lax enforcement of the obscenity laws. I believe the current Justice Department's enforcement strategy is misguided. They target only the most extreme obscene material so that convictions are all but guaranteed but the impact on the industry is minimal because that material is not widely produced or consumed. In a memo you sent to U.S. Attorneys in June 1998, you urged a focus on major producers and interstate distributors and cases where there is evidence of organized crime involvement. With the development of the Internet, this corrosive and destructive material is even more widely and easily distributed. It harms individuals, families, and communities. How important will this be in your Justice Department? Do you have any thoughts on these enforcement strategy issues?**

I agree that the development of the Internet has radically changed the dissemination of unlawful content and requires a reexamination of enforcement strategies. I also agree that protecting children and families is critical, and I will make that a priority. I will consult with Department officials and seek the views of others concerning the best means of effectively enforcing federal obscenity and child pornography laws.

- 11. There ought to be more unanimity regarding child pornography, but here too I have questions that arise from the Clinton Justice Department's record. I realize my questions stem from the first Clinton term, when you were a U.S. Attorney and not yet Deputy Attorney General, but that is the Department and the Attorney General you served. I wonder whether you would do things differently now. The Clinton Justice Department attempted to change how the federal child pornography statute is interpreted and applied. They tried to make the statute so narrow that it would be much more difficult to enforce. In fact, they attempted to make that change in a case titled *United States v. Knox*, where the child pornographer had already been convicted. The Clinton Justice Department went to the appellate court and asked that the statute be construed differently. They also asked that the child pornographer's conviction, obtained when President George H.W. Bush was still in office, be overturned. Thankfully, the U.S. Court of Appeals rejected this bizarre new twist on the statute. The House voted 425-3 to say this is not how the statute should be enforced, and the Senate voted 100-0 to condemn what the Justice Department had done. This disgraceful move was initiated by the Justice Department. It was their agenda to change the law in a way that put children at risk. Were you aware of this very high-profile controversy, and did you have any opinion on it? Under your leadership, will you seek to maximize the protection of children in the decisions you make about cases, construction and application of statutes, etc.?**

I was not involved in the controversy referenced in the question. If confirmed, I will make protection of children a priority, consistent with the proper interpretation of statutes.

12. There has been much discussion about how the Civil Rights Division will operate under your leadership. While you have spoken about reinvigorating the traditional role of the division, its role has expanded in recent years. One new initiative, for example, is trafficking in human beings. The current administration has, properly in my view, framed this issue as modern-day slavery. Last month, Congress passed legislation reauthorizing the Trafficking Victims Protection Act, which I cosponsored. Do you agree that this should continue to be a priority for the Justice Department? Do you anticipate pursuing the issue in the same civil rights context?

Yes. If confirmed, I will maintain a strong DOJ commitment to combat human trafficking.

13. The civil rights division has also stepped up protection of another fundamental liberty, the right to exercise religion and be free from religious discrimination. Religious freedom is the first individual right mentioned in the First Amendment. The Bush administration made religious freedom a priority from the start, and created the position of Special Counsel for Religious Discrimination within the civil rights division. Will you direct the civil rights division to continue this important work, and will you maintain this special counsel position?

If confirmed, I will maintain a strong DOJ commitment to protecting religious liberty. It is too soon to say which particular positions will be maintained in the Division, but I look forward to a top-to-bottom review of the Division and its sections.