

Biden's Pick To Lead Enviro At DOJ Is Appellate Vet

By Juan Carlos Rodriguez

Law360 (March 16, 2021, 4:28 PM EDT) -- President Joe Biden's pick to lead the environmental division of the U.S. Department of Justice is a well-known practitioner in Washington, D.C., who has spent the bulk of his career in government service and had a stint at Reed Smith LLP, with a long track record of arguing high-profile appeals.

Todd Kim was announced Monday as Biden's choice for assistant attorney general for the DOJ's Environmental and Natural Resources Division. If confirmed by the U.S. Senate, he will have an important role in defending Biden's environmental initiatives, which will likely run the gamut from climate change-related regulations to environmental justice actions to water quality rules and beyond.



Todd Kim

A longtime solicitor general for the District of Columbia, Kim had a role in significant appeals involving the district, including arguing before the U.S. Supreme Court in a qualified immunity case. He also worked at DOJ in the late 1990s and early 2000s, as an appellate attorney. From 2018 through January, he was a partner in Reed Smith's appellate practice.

John Cruden, a principal at Beveridge & Diamond and a former head of the Environmental and Natural Resources Division himself, knew Kim during his time at the Justice Department. Cruden called him a "bright person" who gets along well with others, which would serve him well in the new job.

"This is obviously a legal position, but it's also a management and leadership position," Cruden said Tuesday. "You have 650 people, 10 different sections and lawyers across the United States."

Since Biden's first week in office, Kim has been serving as the Department of Energy's deputy general counsel for litigation, regulation, and enforcement. From 2018 to January, Kim was a partner at Reed Smith LLP in the firm's appellate practice. His move to private practice followed nearly a dozen years as the District of Columbia's first solicitor general.

In October 2017, Kim made his first appearance in front of the U.S. Supreme Court during oral arguments in *D.C. v. Wesby*, a case involving a late-night house party with strippers. Kim told the justices that D.C. police officers that entered the house and arrested 21 partygoers for unlawful entry had probable cause and were entitled to qualified immunity from Fourth Amendment claims of false arrest.

The Supreme Court agreed, reversing the D.C. Circuit and handing Kim a win.

While that may have been the biggest stage of Kim's professional career, he was no stranger to the spotlight and other high-pressure situations. Cruden said Kim is a concert pianist who has performed in some high-profile venues, and in 2004, he was a contestant on "Super Millionaire," an offshoot of the popular TV game show, "Who Wants to Be a Millionaire?"

Kim won \$500,000 by correctly answering several questions posed to him by then-host Regis Philbin, including this one, which won him all the money: "The first condom commercial to air on network TV ran in 1991 during the broadcast of what TV series?"

Kim was guided to the correct answer — the show was called "Herman's Head" — by past \$1 million winner Nancy Christy, who was part of a "Three Wise Men" panel that also included astrophysicist Neil deGrasse Tyson and author Anthony DeCurtis.

Other big legal matters Kim has worked on include the defense of the District of Columbia's law prohibiting the possession of "usable handguns" in the home, which in 2008 was overturned by the high court in *D.C. v. Heller*.

During his time at the DOJ, Kim worked on many appellate matters including winning one of two landmark decisions at the Sixth Circuit that upheld Clean Water Act jurisdiction over wetlands adjacent to navigable waters. The U.S. Supreme Court in 2006 would step in and reverse these decisions in *Rapanos v. U.S.*, and both the Obama and Trump administrations would go on to craft rules defining what constitute "waters of the United States" under the act.

For Reed Smith, Kim was part of a team that successfully defended a Hyundai financing company that knocked out a proposed class action over allegedly unlawful fees in New Jersey state court.

He was also part of a team that unsuccessfully fought to help three transgender women who had become active in outreach to the LGBTQIA+ community and wanted to change their legal names but had felony convictions from 10 or more years ago. In July a Commonwealth of Pennsylvania ruled that state law prohibits the name changes and dismissed the case.

Both industry-side lawyers and environmental groups expressed respect for Kim.

"Todd is smart, dedicated to the environment and to the division, easy-going, and well-liked," Crowell & Moring LLP partner Thomas Lorenzen, who has represented opponents of the Obama administration's regulations on power plants and chemical companies in other contexts, said Tuesday. "He'll make a fantastic AAG, and I think the division will thrive under his leadership. He and the division will have their hands full, given the administration's ambitious agenda, but together I expect they'll be up to the task."

And Sambhav Sankar, Earthjustice's senior vice president for programs, also had good things to say about Kim.

"He's a really good, solid professional pick," Sankar said. "He is a genuinely good human being who has great judgment, plus he is humble, thoughtful and a good listener."

Kim has a bachelor's degree from Harvard College and a law degree from Harvard Law School.

--Additional reporting by Jimmy Hoover, Bill Wichert, Matthew Santoni and Michael Phillis. Editing by Peter Rozovsky.

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