Sens. Grill Trump’s Pick To Head DOJ Environmental Division

By Michael Macagnone

Law360, Washington (June 28, 2017, 3:28 PM EDT) -- President Donald Trump’s pick to be the top environmental law official at the U.S. Department of Justice faced skeptical Democrats on a Senate panel on Wednesday, with Kirkland & Ellis LLP partner Jeffrey Bossert Clark fielding questions about his private practice and views on climate change.

Democrats on the Senate Judiciary Committee used much of their time at Wednesday’s hearing — which also featured nominees to the DOJ’s Office of Legal Policy and D.C. District Court — to grill Clark about his past representation for entities such as BP PLC following the Deepwater Horizon oil spill and his own public writings on climate change. Clark is the nominee to be the assistant attorney general for the DOJ’s Environment and Natural Resources Division.

Clark, who also served in former President George Bush’s Justice Department as a deputy assistant attorney general for the ENRD, has written about his skepticism of the Chevron doctrine for judicial deference to federal agencies as well as the soundness of administrative actions against greenhouse gases. Still, Clark vowed before the committee that he would faithfully push the administration’s policies on those issues, separate from his personal beliefs.

“As a private advocate of [my clients], it was my job to bring zealous representation of them,” Clark said. “It would be my job to bring that same zealous representation to my government clients.”

During an extended exchange with committee ranking member Sen. Dianne Feinstein, D-Calif., Clark said that if he stated his personal views publicly, they could be used against the government, and were not relevant to the course of his duties.

“I think that [the danger of greenhouse gases] is a question for the policy-making agencies or the science agencies and the EPA,” Clark said.

“I think they are very relevant; you are going to represent us on the environment, so I want to know what you think about greenhouse gas,” Feinstein said.

Clark stood by his past writings that say the science behind climate change is “contestable,” and he said “there are clearly scientists and private entities that disagree with regulation in that area” and “as a legal matter, that science can and has been contested in court.”

When asked about his views on climate change, Clark did not answer and spoke about a case he handled at the Bush DOJ in which an individual allegedly sent workers into unsafe conditions to remove asbestos.

At one point, Sen. Sheldon Whitehouse, D-R.I., interjected to complain that Clark was not answering the questions.

“It is not up to the witness to have a right to rephrase a senator’s question and answer a different question,” Whitehouse said.

Others, including Sen. Dick Durbin, D-Ill., questioned Clark and the other nominees about their
membership in the Federalist Society. Clark was listed on the Federalist Society’s website as chairperson of its environmental law and property rights practice group executive committee, and has also served as a member of the governing council of the American Bar Association’s Administrative Law Section.

Republicans on the committee pushed back on Democrats’ criticism, with committee chairman Sen. Chuck Grassley, R-Iowa, praising Clark’s “exemplary legal record.”

“I think it needs to be pointed out that a nominee’s personal views if they are to do their jobs, are not relevant,” Grassley said. “For the simple reason that these lawyers are responsible for defending the positions of their government client in the same way they would a private client.”

Sens. Mike Lee, R-Utah, and Thom Tillis, R-S.C., pushed back on the criticism of Clark’s membership in the Federalist Society, saying that it was not unprecedented or disqualifying for an administrative nominee to belong to the organization.

If confirmed, Clark will join U.S. Environmental Protection Agency Administrator Scott Pruitt at the forefront of implementing the Trump administration’s environmental policy, which has thus far focused on rolling back many of the regulations promulgated by the Obama administration, from climate change-related rules to clean water policies.

--Additional reporting by Juan Carlos Rodriguez. Editing by Stephen Berg.

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