

Prepared Statement by U.S. Senator Chuck Grassley (R-Iowa)
Ranking Member, Senate Judiciary Committee
Hearing on Nominations of Kristen Clark and Todd Kim to be Assistant Attorneys General
Wednesday, April 14, 2021

We are here to evaluate two nominees for top positions at the Department of Justice: Kristen Clarke to be Assistant Attorney General of the Civil Rights Division and Todd Kim to be Assistant Attorney General of the Environment and Natural Resources Division.

As I've said before, I hope Judge Garland meant it when he said he wants to keep politics out of the Justice Department. I'd like to see a real commitment to do that from the nominees today.

I don't want to see a return to the Holder days but I worry we may be on that road. For example, the Justice Department has a Deputy Assistant Attorney General in its prestigious Office of Legal Counsel out there tweeting criticisms of Supreme Court opinions and giving his views on Republicans political prospects and voter-integrity legislation. That's senior management in the Department's most apolitical division moonlighting as a political pundit. I see that and it makes me wonder about the judgment and impartiality of the Justice Department's political leadership. Judge Garland needs to get his house in order.

We'll see if the nominees today agree with that assessment.

Turning to the nominees, I won't mince words. Ms. Clarke is very controversial. That said, I do appreciate the conversation she and I had, and I want to commend her for being forthcoming with the Committee. I don't doubt that Ms. Clarke is a capable attorney who is sincerely committed to progressive causes. What I'm going to want to see is whether she can put that partisan commitment aside and do the work of an apolitical civil rights enforcer.

For example just last summer she wrote a piece called, "I Prosecuted Police Killings. Defund the Police – But Be Strategic." I'm sure we'll hear the usual Democratic refrain today that nominees don't really mean it when they say defund the police, but the fact is that she said it. Is Ms. Clarke going to use her perch at the Civil Rights Division to strategically defund the police by other means?

Ms. Clarke has taken positions on religious liberty that are, I believe, limited and potentially unfair to believers. Will she put these views aside and enforce the rights of believers to the extent mandated by the courts?

Ms. Clarke is a strong believer in voting rights. So am I. But I'm also a strong believer in secure elections. Will Ms. Clarke continue to view efforts to secure our elections as voter suppression when she's in charge of enforcing our voting laws?

Like Ms. Gupta before her, Ms. Clarke has launched many personal attacks on federal judges—especially Justice Kavanaugh. Chairman Durbin has in the past compared this practice to Senators Ashcroft and Sessions opposing judicial nominees, but I think it's different. Evaluating judicial nominees is part of our

constitutional duty. It's different for litigators and aspiring government lawyers to go around attacking federal judges publicly. Questioning the integrity of judges and then eagerly appearing before them means that you either aren't looking out for your client's best interests or that you didn't really mean your attacks to begin with.

Mr. Kim is less controversial. Nominated to run the Environment and Natural Resources Division—while it's still called that—he has a distinguished career as a courtroom advocate. I don't think I agree with him on much politically but elections have consequences and based on his record I think he will enforce the rule of law at the Justice Department.

I will say that some of the activity at the Justice Department implicating his division concerns me. At the policy level President Biden wants to shift its focus from enforcing the laws as passed to protecting so-called "environmental justice." I don't think this is consistent with the depoliticized Justice Department Judge Garland promised us. So I hope Mr. Kim will push back on any instructions to go beyond what the law requires.

The Biden Justice Department is also in the unprecedented practice of acceding to nationwide injunctions against environmental rules in the lower courts. This is an attack on the rule of law and the Administrative Procedure Act. President Biden is entitled to change environmental rules consistent with statute, but he should do it through the rulemaking process and not through litigation tricks.

I hope Mr. Kim will push back on this, too. Regulation by California Judge can become Regulation by Texas Judge before you know it.

With that, I'd like to welcome the nominees and I look forward to hearing from them.

