

EDF's Secret Weapon, Attorney Vickie Patton

“She has the tenacity of a bulldog and the genius of an Einstein.” That’s how former NYU law school dean Richard Revesz describes his one-time student Vickie Patton, now EDF’s general counsel.

EDF is well known and highly regarded for its commitment to science and economics. Perhaps less well known, however, is EDF’s remarkable legal work. Since our founding more than 50 years ago, defending the environment in court has been an EDF hallmark.



EDF's legal superstar, Vickie Patton.

Today, under Vickie’s leadership, EDF remains a powerful force in the defense of America’s bedrock environmental laws. She has assembled and mentored an A-team of environmental lawyers who are on the front lines of today’s fierce battles with the Trump administration. And she feels extremely fortunate to work with tested litigators, bold advocates and outstanding legal fellows and interns – deeply dedicated to protecting human health, climate safety and a sustainable environment through law.

Vickie’s passion for the environment stems from an Arizona childhood in the fragile Sonoran Desert where the depletion of ground water in the rapidly growing Sunbelt was a major public concern. Before joining EDF she worked for almost a decade at the Environmental Protection Agency. Her

achievements there were recognized when she won the agency's highest honor, the Gold Medal for Exceptional Service.

Vickie will never tell you this herself, which is one reason her staff holds her in such high regard. Inside EDF, she is known for her tenacity, her brilliance as a legal strategist and her warmth. Vickie took some time from her busy schedule to talk about the high stakes in our ongoing legal battles with the Trump administration.

Why did you become an environmental attorney?

When I was an undergrad at the University of Arizona studying hydrology in the 1980s, I wrote a note to myself about the purpose of studying law and pairing it with science. I committed myself to becoming an environmental attorney working in the public's interest. I still have it.



Vickie, hard at work in her Boulder, CO, office.

When considering law school, I did not know the strongest programs in environmental law, and in fact I didn't even know any lawyers. But I did some research and found an outstanding program with a strong commitment to public interest law in New York City, at New York University.

Early on, I went to one professor's office and said, "My name is Vickie, and I want to learn everything I can from you about environmental law."

That professor, Richard Revesz, has remained a mentor for more than 30 years. He is an extraordinary person, leads the venerable American Law Institute, founded and leads the Institute for Policy Integrity and has had a transformative impact on environmental law and policy. In 2013, Supreme Court Justice Elena Kagan called him “the best law school dean of the last decade.”

How did you connect with EDF?

In my third year at NYU, I worked at EDF. Several days a week I would walk the roughly 24 blocks from law school up to EDF’s offices in lower Manhattan. I loved the way that EDF based its advocacy on law, science and economics. It was a true inspiration for me, and it remains the basis of everything we do today.

While in law school, I also worked at the EPA during the summers, and went straight back after graduation to the agency’s Office of the General Counsel. I stayed for eight years.

What was it like working at EPA?

From the very beginning of my time at EPA I was thrown into the maelstrom of implementing the 1990 Clean Air Act Amendments, in which EDF had played such an important role. The Clean Air Act was strengthened to clean up air toxics, address depletion of the ozone layer, protect human health and curb acid rain.

The 1990 law prescribed an innovative approach to tackling acid rain: an enforceable and declining limit on pollution to slash contaminants from coal plants and a cost-effective system to achieve the pollution reductions. The program’s primary champion was EDF, and the program and its successors have virtually eliminated sulfur dioxide from coal-fired power plants. We can do the same in eliminating the climate pollution from fossil fuel power plants. As a nation, we have now virtually desulfurized the power sector, saving tens of thousands of lives annually and making made major strides in addressing acid rain, all at a fraction of the cost predicted by numerous opponents of clean air progress.

I was inspired by the professionalism and expertise of EPA's staff and how devoted they are to protecting the environment. Many of the people I worked with are still there, carrying on the fight in the incredibly hostile environment of the Trump administration. When I started at EPA, the agency's administrator was the extraordinary William Reilly, who was appointed by President George H.W. Bush and was devoted to a clean environment and the effective management of the agency. Today we have Andrew Wheeler, a former coal lobbyist who is undermining almost every environmental protection.

In the beginning, there was so much work, it was all new. It was so high-impact. It was a wonderful opportunity for me as a young attorney to grow and learn. It probably wasn't so good for the country to have someone so inexperienced working on these issues!



The Navajo Generating Station coal plant, near Page, Arizona, is being decommissioned in part due to EDF's advocacy.

I spent the next eight years working on clean air issues at EPA. I worked on many examples of good-faith collaborative solutions. Maybe the best example was the cleanup of a major coal plant near the Grand Canyon, the Navajo Generating Station. An agreement among diverse interests called for a 90% reduction in the massive sulfur pollution from the plant, which discharged more sulfur pollution than the entire Los Angeles basin and was polluting the air for many miles downwind. Native American families and communities including thousands of Navajo families without access to electricity were severely affected by the array of pollution created in

delivering power and water to distant western cities. The historic agreement was between two environmental groups, the Environmental Defense Fund and the Grand Canyon Trust, and the plant owners, and it was an initiative of President George H.W. Bush and officials at EPA.

This collaborative solution was announced by the President on the south rim of the Grand Canyon. I was there as the lead EPA attorney and was deeply affected by the important role that EDF and the Grand Canyon Trust played in catalyzing a solution through litigation.

What are the highlights of your work at EDF?

I started as an attorney in the Boulder, Colorado, office. It was a wonderful change, not least because it allowed me to return to the West, where my roots are.

EDF has been a remarkable experience. There are extraordinary opportunities here to achieve transformative change. It's important to actively create windows of opportunity. When they open, you need to push them open wider, and do all you can to take bold action. EDF is a place that also provides tremendous opportunity for innovation. That's really important for progress.

And it's been very rewarding. EDF spearheaded the first legal victory in the Trump era, striking down Scott Pruitt's unlawful suspension of oil and gas pollution limits. In summer of 2017, we were preparing for the administration to roll back the oil and gas methane pollution limits. It was really hard to tell what the timing would be, because the administration was operating in so much secrecy. The government under Trump is so opaque.

There were some early actions they took undermining pollution limits for oil and gas. After the Trump EPA withdrew an information request seeking data from the oil and gas industry, our colleagues and allies in the community were saying we should sue. We were struggling because we thought something bigger was coming, where the administration would try to tear down the whole edifice of methane pollution limits.

Protecting the enforceable nationwide pollution limits on methane, a potent warming gas, was crucial, and we didn't have the resources to litigate over both. So we were ready when the administration showed its hand. Not only

did we strike down their unlawful suspension of the methane pollution limits, but those limits are still in effect today protecting millions of people from methane, smog-forming contaminants and toxic benzene. Unfortunately, the Trump EPA is now working to finalize another attack on those safeguards.

There were many other cases where the Trump administration used the same playbook, and the judicial precedent we secured in the oil and gas pollution case has been pivotal. They tried to unlawfully suspend a program to protect against discrimination in low income housing. They tried to unlawfully suspend rules protecting communities and first responders from chemical emergencies. The same tactic was repeated everywhere at the beginning of the Trump administration. But because of a case that EDF brought, the administration lost in many other areas. The methane case created a precedent that just had tremendous ripple effects.

How do you prepare for a case?

It's an arduous process of research, analysis and writing that requires tremendous dedication by our attorneys with, often, top technical experts. And because we have limited resources, the single most important decision is determining which cases to litigate in the first place to ensure our litigation is leveraging the protection of human health and the environment.

What has been the high point of your career at EDF?

An unforgettable moment of my career came on April 2, 2007, when two hugely consequential Supreme Court decisions were announced.

The first case was EDF v. Duke Energy, a longshot case that ended with a win. On that day in April, the Court announced its ruling that coal-burning power plants and industrial smokestacks had to adhere to the Clean Air Act's protections to install modern air pollution controls when they upgraded their facilities. For decades power companies had expanded existing facilities rather than building new plants, a dodge to avoid the expense of installing new air pollution control technology – even though the law specifically requires it – or choosing to instead invest in fundamentally clean power. Coal-fired power plants discharging smog-forming nitrogen oxides, mercury, lethal particulates and climate pollution were still operating long past their

expected lifespan because power companies were exploiting this loophole. The Duke Energy case began in December 2000, when the Clinton Justice Department filed a Clean Air Act enforcement case against the company, which has more than seven million customers, mostly in the Carolinas, Florida and a couple Midwestern states. EDF intervened in support of the enforcement action to make sure the power companies owning coal plants in this case and nationwide were responsible for the serious health effects on surrounding communities. This accountability is crucial in leveling the playing field between high pollution coal plants and zero polluting clean energy resources like wind and solar.

We charged that Duke had made major expansions at many power plants but hadn't updated pollution controls, which is required under the Clean Air Act.

EDF lost at the district court level, and an appeals court affirmed the lower court's ruling. By then, the Administration had changed and Vice President Cheney was trying to dismantle these very Clean Air Act safeguards. As a result, the EPA wanted to adopt the damaging appeals court decision as national policy. It looked hopeless, and our only avenue forward was appealing to the Supreme Court. Many legal experts thought it was such a long shot that the high court would even hear the case.

Many people told me to drop the case and move on, but I wasn't about to give up.

I reached out to EDF board member and Harvard law professor Richard Lazarus and said, "We've got to take this case to the Supreme Court. Do you know anyone who can represent us in a case with long odds, with little compensation, a case opposed on all sides?" Lazarus recommended Sean Donahue, a brilliant attorney who often represents nonprofit organizations. I called Sean late that night and said, "Here's this beyond difficult case. We want to petition the Supreme Court to take it up and reverse the Fourth Circuit. Many have advised us to give up, but we think the lower courts were mistaken." Donahue agreed. It seemed like a lost cause, but we had to try.

And what happened?

Remarkably, the Court agreed to hear the case, and in April 2007 the Justices announced their decision in *Environmental Defense v. Duke*. I was on pins

and needles, and I was both shocked and elated — we had won. It marked only the third environmental law case in 35 years that the high court heard where environmental groups alone had petitioned for review over the objections of the government. EDF President Fred Krupp released a statement at the time that said, “The high court’s decision upholding these clean air safeguards means we’ll have healthier air and less childhood asthma. We’re very proud of our work in this case — it’s going to make a real difference in people’s lives.” I call Sean Donahue, who did such an extraordinary job on this case, our Jedi Master. Sean has briefed and argued many other major cases for us since, and has had an extraordinary impact in addressing climate change and protecting human health through the rule of law.



EDF board member and Harvard law professor Richard Lazarus with Vickie.

But that wasn’t the only, or even the most important, decision handed down on that sunny day in April. In the case of *Massachusetts v. EPA*, the court ruled that EPA has the authority and the legal responsibility under the Clean Air Act to tackle greenhouse gas pollution, including methane and carbon dioxide, which endanger human health and the environment. EDF was tremendously proud to be a party to the case and immeasurably grateful to Georgetown law professor Lisa Heinzerling and now Judge James Milkey, the courageous and dedicated attorneys for Massachusetts who led the briefing and argued the case.

You can’t really overestimate the importance of this decision. Massachusetts

v. EPA provided the legal underpinnings for major actions taken by the Obama administration to fight climate change by limiting dangerous air pollution, including the landmark clean car standards, the Clean Power Plan, which limits greenhouse gases from new and existing power plants, and limits on the dangerous methane pollution from oil and gas.

Both of these historic Supreme Court cases were argued in November 2006. I will never forget the interminable wait from November until the high court ruled on both. That day, April 2, 2007, stands indelibly stamped in my mind as one of our nation's most important days for protection of human health and the environment for millions of Americans through the rule of law.



The Jedi Master: Sean Donahue on the steps of the Supreme Court.

And what about the Trump administration?

Donald Trump and his Administration are attempting to upend almost every public health and environmental regulation on the books. Even a 100-year old treaty protecting migratory birds is under threat. The defining issue of our time is global climate change, but Trump doesn't even recognize it as a problem. He once called it a hoax. He has withdrawn the U.S. from the Paris Climate Agreement, an international pact to limit greenhouse gases, and he has taken many actions to undermine crucial climate protections and clean air safeguards. He's even attacked the long-standing authority of the states to take action.

But I believe the state attorneys general, environmental groups and private

sector allies will prevail because our litigation is anchored in the law and the facts. Although Trump has tried to unravel or eviscerate nearly 100 environmental regulations, virtually all of these actions have been overturned in court or are facing ongoing litigation. We think that all these threats will continue as the administration rushes to lock in its damaging attacks on public health and the environment before the November elections and tries to effectuate new and dangerous rollbacks favored by key supporters. But we'll be there to challenge them and enforce the rule of law with our many partners and allies.

The Trump administration's actions have been slowed and sometimes stopped by the sloppiness and carelessness of its legal work. The administration's effort to roll back Clean Car rules, for example, contains many errors and ignored the documented objections of EPA's senior career experts. The administration is even trying to block states like California from setting more protective standards, although that is their right by law under the Clean Air Act since 1967.

The Trump administration's disdain for public participation, science and the rule of law makes its actions vulnerable. And the engagement of the public is so important that we are holding the Trump administration accountable for the profound human suffering in the courts of law and public opinion. The recklessness of the Trump administration's actions has been reinforced by the numerous leading businesses that have opposed many rollbacks in public and in court.

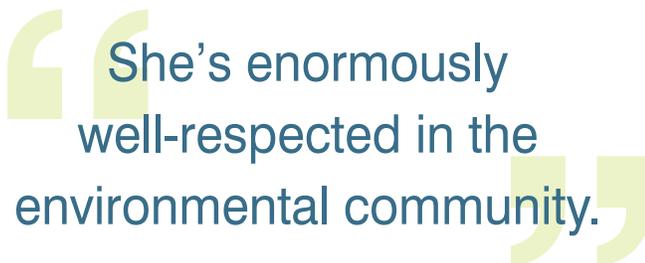
The Trump administration is now seeking more sweeping, systemic changes — fundamental changes to how regulations are developed. They are trying to make the best-available science out of bounds. They are also trying to adopt rules that would prohibit meaningful consideration of the human health benefits, such as the deadly impacts of particle pollution, in determining whether to adopt air pollution limits. The administration is aggressively seeking to block state regulations and leadership by challenging the constitutionality, for example, of California's voluntary cooperation with Quebec to cut climate pollution.

How are we countering the administration's actions?

Our strategic goals are to save thousands of lives and to help secure science-based climate pollution reductions by reducing the huge volumes of

climate and air pollution from the single largest sources and to prevent this administration from inflicting permanent damage to our environmental laws including crucial new laws like the 2016 bipartisan update to the Toxic Substances Control Act. Other top priorities: to help drive today's investments in clean solutions, and to be on the strongest possible footing to secure transformative progress if a new President is elected in November. If not, our litigation, with numerous partners and allies, will determine whether environmental law can protect millions of people now and for generations to come. We have more than 30 active lawsuits against the administration. As I mentioned, nearly all of the administration's reckless rollbacks and attacks on the states have been overturned or are now under litigation.

Part of the credit goes to our tremendous team of attorneys, plus policy and technical experts who work with me in Colorado and Washington, D.C. along with expert consultants, including many who formerly served in senior posts at EPA. Credit also goes to our wonderful partners and allies who are diligently working in the court of law and



She's enormously well-respected in the environmental community.

Richard Revesz

the court of public opinion to protect these safeguards and the numerous organizations and attorneys working to protect many other safeguards under attack. My tremendous colleagues are inspiring in their dedication to protect human health and the environment at the darkest time I have worked on these issues over the past 30 years. And they are strategic and collaborative in working with many groups and partners in our community, and with states and private sector allies. They help build a bulwark anchored in law and help defend life-saving protections for all Americans.

We are also pursuing initiatives to weave climate risk more thoroughly into the fabric of the law including the duty of care that is required under the law in a changing climate and to demand mandatory disclosures of climate risk under securities law to give investors, small and large, the fundamental information they need to assess which companies are and are not taking serious risk management action in response to climate change. In the securities arena, we've worked in the past with a broad coalition to encourage the U.S. Securities and Exchange Commission to adopt a climate

risk disclosure framework for publicly traded companies that urgently needs updating and strengthening. Industry standards are shifting at last, and financial companies are starting to connect financial risk to climate risk. The world's largest asset manager, Blackstone, acknowledged recently that climate risk is investment risk and called for transparent and standardized disclosures.

What do you do in your personal life to protect the environment?



Vickie's passion for the environment extends to her life outside of the courtroom.

Like most people, I try to do what I can. I live in a passive solar home that was the first of its kind constructed in the aftermath of the 1970s energy crisis. I had a comprehensive energy audit, energy efficiency improvements and natural air flow systems undertaken to avoid the need for energy intensive air conditioning. I have solar panels on the roof of my home. I have an electric vehicle that I charge with the solar panels. These

personal actions are no substitute for the government policies needed for transformative change. I've spent my professional life trying to advance and defend transformative government action to protect human health and the environment. There's no shortage of opportunities for bold progress, and I am going to keep trying.

For more information, please contact EDF Member Services at 800-684-3322 or email members@edf.org.

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