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Continuity in the Presidency: Gaps and Solutions Building on the Legacy of the 25th Amendment

Fordham Law School

Feerick Center for Social Justice

Fordham Law Review

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Continuity in the Presidency: Gaps and Solutions

*Building on the Legacy of the
25th Amendment*

September 27, 2017

Fordham University
McNally Amphitheatre, 140 West 62nd Street, New York City



FORDHAM UNIVERSITY
THE SCHOOL OF LAW

About the Symposium

This symposium builds on the legacy of the 25th Amendment by reflecting on the amendment's development and considering proposals to further improve the succession system, 50 years after the amendment's ratification.

Since its ratification on February 10, 1967, the 25th Amendment has helped ensure that the nation will always have an able president. It resolved constitutional ambiguities and gaps by clarifying the status of successors to the presidency and creating procedures for declaring the president unable and filling vice presidential vacancies.

The American Bar Association and the *Fordham Law Review*, two of this symposium's sponsors (the ABA through its Standing Committee on Election Law), supported the 25th Amendment's development. The ABA convened a special 12-lawyer conference group whose recommendations influenced the amendment's content. The ABA also mobilized a national grassroots campaign to secure the amendment's passage by Congress and ratification in the states.

The *Fordham Law Review* contributed to the amendment by publishing three widely distributed articles by John D. Feerick between 1963 and 1965 that helped inform and promote the amendment's drafting and ratification. The Law Review continued publishing material

related to the 25th Amendment in the following decades. Former Fordham Law Dean William M. Treanor once observed that “[n]o other law review has published so much important scholarship on the issue of presidential succession.”

The sponsors welcome the opportunity to continue their engagement on presidential succession issues. During the symposium's first panel, students from Fordham Law's second Presidential Succession Clinic will present recommendations they developed over the course of the last academic year. Leading experts in constitutional law and presidential succession and inability will then comment on the recommendations.

The second panel will discuss the 25th Amendment's development with insights from participants in the process and scholars who have studied it. The final panel will feature preeminent experts highlighting reform proposals and discussing events over the past 50 years that illustrate the need for reform.

The 25th Amendment would not be part of the Constitution but for the contributions of countless public-minded citizens, government officials, and organizations. This symposium seeks to carry on the spirit of civic engagement that inspired them.

This symposium is presented by the Feerick Center for Social Justice at Fordham Law School, *Fordham Law Review*, the ABA Standing Committee on Election Law, and the Bipartisan Policy Center. The organizers are grateful to Judy and Dennis Kenny for their generous support of today's symposium and reception. This symposium is dedicated to former Senator Birch Bayh of Indiana, one of the great legislators of his time and author of two constitutional amendments.

Agenda

Registration 8:15 – 9:00 a.m.

Opening Remarks 9:00 – 9:15 a.m.

Julia M. MacAllister
Editor-in-Chief, *Fordham Law Review*

John D. Feerick
Norris Professor of Law, Fordham Law School

Matthew Diller
Dean and Paul Fuller Professor of Law,
Fordham Law School

Panel 1 9:15 – 11:30 a.m. (break:10:15 –10:30 a.m.)
**Recommendations of Fordham University School of Law's
Second Presidential Succession Clinic**

Moderator

John Rogan
Adjunct Professor, Fordham Law School

Student Presenters from the Presidential Succession Clinic

Respondents

Roy Brownell II
Washington, D.C., Attorney

Joel K. Goldstein
Vincent C. Immel Professor of Law, St. Louis University
School of Law

Rose McDermott
David and Mariana Fisher University Professor of
International Relations, Brown University

Remarks 11:30 – 11:45 a.m.

Elizabeth Yang
Deputy Director, American Bar Association

Lunch 11:45 a.m. –1:15 p.m.

Remarks 1:15 –1:30 p.m.

Linda A. Klein
Immediate Past President, American Bar Association

Panel 2 1:30 – 3:15 p.m.
Crafting the Twenty-Fifth Amendment

Moderator

Linda A. Klein
Immediate Past President, American Bar Association

Panelists

Lowell Beck
Former Assistant Director, American Bar Association –
Washington, D.C., Office

Jason Berman
Legislative Aide to Former Senator Birch Bayh

John D. Feerick
Norris Professor of Law, Fordham Law School

Joel K. Goldstein
Vincent C. Immel Professor of Law, St. Louis University
School of Law

Rebecca Lubot
Lecturer, Rutgers University

Panel 3 3:30 – 5:15 p.m.
**After the Twenty-Fifth Amendment:
The Need for Additional Reforms**

Moderator

Akhil Reed Amar
Sterling Professor of Law, Yale Law School

Panelists

Lawrence K. Altman
Medical Reporter, *The New York Times*

Roy Brownell II
Washington, D.C., Attorney

John C. Fortier
Director of the Democracy Project,
Bipartisan Policy Center

Robert E. Gilbert
Professor Emeritus, Northeastern University

James M. Ronan
Professor, Villanova University

Closing Remarks 5:15 – 5:30 p.m.

Akhil Reed Amar
Sterling Professor of Law, Yale Law School

Reception 5:30 – 6:30 p.m.

About the Organizers

The **Feerick Center for Social Justice** at Fordham Law School promotes the rights and addresses the problems facing New Yorkers in need. The center works with a broad array of Fordham and outside partners (student groups, centers, nonprofit organizations, legal services providers, and public sector agencies) to respond to the challenges of those needs. Through education and collaboration, the center engages Fordham students, alumni, and faculty to create and implement short- and long-term innovative solutions critical to lasting change. The Feerick Center's work reflects the motto and mission of Fordham Law School—"In the Service of Others"—and Fordham University's expansive Jesuit mission and vision. Learn more: law.fordham.edu/feerickcenter

The *Fordham Law Review* is a scholarly journal serving the legal profession and the public by discussing current legal issues. Approximately 75 articles, written by students or submitted by outside authors, are published each year. Each volume comprises six books, three each semester, totaling over 3,000 pages. Within its six issues, the Law Review publishes five symposia: The Robert L. Levine Lecture, the Philip D. Reed Lecture, an annual ethics symposium, and two additional symposia on varying topics each year. In the United States, the *Fordham Law Review* is the eighth most cited law review in other legal journals and in judicial decisions, according to a recent study by Washington & Lee University. Managed by a board of 20 student editors, the Law Review is a working journal, not merely an honor society. Still, Law Review membership is considered among the highest scholarly achievements at the Law School.

Learn more: www.fordhamlawreview.org

The **Standing Committee on Election Law** is part of the American Bar Association's Division for Public Services, which is dedicated to applying the knowledge and experience of the legal profession to promotion of the public good. The standing committee was created in 1973 with the purpose of developing and examining ways to improve the federal electoral process. In 1979, a 10-member Advisory Commission was created consisting of representatives of Congress, the president of the League of Women Voters, the chairman and vice chairman of the Federal Election Commission (FEC), election law attorneys, and academics. The Standing Committee and its Advisory Commission are nationally recognized election law experts who are charged with representing the Association's commitment to ensure that the nation's election laws are legally sound and are drafted to permit the broadest, least restrictive access by Americans to the ballot box.

Learn more: www.americanbar.org/groups/public_services/election_law.html

The **Bipartisan Policy Center** is a nonprofit organization that combines the best ideas from both parties to promote health, security, and opportunity for all Americans. BPC drives principled and politically viable policy solutions through the power of rigorous analysis, painstaking negotiation, and aggressive advocacy.

Learn more: bipartisanpolicy.org

CLE Credits and Materials

CLE credits have been approved in accordance with the requirements of the New York State CLE Board for six transitional and nontransitional professional practice credits.

CLE materials are available for download at law.fordham.edu/clematerials.

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