The Fordham Law Review presents

Civil Litigation Reform in the Trump Era: Threats and Opportunities

Friday, February 23, 2018
9:15 a.m. – 4:45 p.m.
Skadden Conference Center
Costantino Room
ABOUT THE SYMPOSIUM

In the first year of the Trump presidency, several litigation reform bills passed the House of Representatives. The fate of these bills remains uncertain, but the set of issues they raise will not disappear anytime soon. Legal reform advocates see an opportune moment to pursue an aggressive reform agenda, while critics view the bills as threats to civil justice. In addition, the Trump administration has been at the center of a swirl of litigation, raising issues about the role and processes of civil justice. This daylong symposium will address the prospects of civil litigation reform in the Trump era, taking seriously both the threat to the justice system and the opportunities for improving the litigation process.

ABOUT THE FORDHAM LAW REVIEW

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. Papers from this symposium will be published by the Fordham Law Review in fall 2018.

In the United States, the Fordham Law Review is the ninth most cited law review in other legal journals and the seventh most cited law review in judicial decisions, according to a recent study by Washington & Lee University. Managed by a board of twenty 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.

For more information, please visit: www.fordhamlawreview.org

A2J Initiative

at Fordham Law School

The A2J Initiative at Fordham Law focuses the collective public service energy of the School to deliver on the promise of equal justice, which lies at the core of our concerns as a service-oriented institution and is the foundational bedrock of our constitutional society, through teaching, direct service, and scholarship, research and advocacy. The following centers and institutes, in particular, pursue access to justice issues in their work: Center on Race, Law and Justice; Coalition for Debtor Education; Feerick Center for Social Justice; Institute on Religion, Law and Lawyer’s Work; Leitner Center for International Law and Justice; National Center for Access to Justice; Public Interest Resource Center; Stein Center for Law and Ethics; and Urban Law Center.

Learn more: law.fordham.edu/atoj
8:45 – 9:15 a.m.: Check-in & Breakfast

9:15 – 9:30 a.m.: Welcome Remarks
Matthew Diller, Dean and Paul Fuller Professor of Law, Fordham Law School
Howard Erichson, Professor of Law, Fordham Law School

9:30 – 11:00 a.m.: Understanding the Landscape
Rights and Retrenchment in the Trump Era
Stephen B. Burbank, David Berger Professor for the Administration of Justice, University of Pennsylvania Law School
Sean Farhang, Professor of Law and Associate Professor of Public Policy and Political Science, University of California, Berkeley

Beyond “Alternative Facts”: Uncovering the Truth About Federal Class Actions
Deborah R. Hensler, Judge John W. Ford Professor of Dispute Resolution, Stanford Law School
Jonah Gelbach, Professor of Law, University of Pennsylvania Law School

Defendant-Centric Jurisdiction
Scott Dodson, Associate Dean for Research and James Edgar Hervey Chair in Litigation, UC Hastings College of Law

Moderator: Benjamin C. Zipursky, James H. Quinn ’49 Chair in Legal Ethics and Professor of Law, Fordham Law School

11:00 – 11:15 a.m.: Break

11:15 a.m. – 12:30 p.m.: Understanding the Current Legislative Proposals
Howard Erichson, Professor of Law, Fordham Law School
John Beisner, Partner, Skadden, Arps, Slate, Meagher & Flom LLP
Myriam Gilles, Vice Dean and Paul R. Verkuil Chair in Public Law, Cardozo School of Law
J. Maria Glover, Associate Professor of Law, Georgetown University Law Center

12:30 – 1:30 p.m.: Lunch

1:30 – 3:00 p.m.: Multidistrict Litigation Reform
The Looming Fight for the Soul of MDL
Andrew Bradt, Assistant Professor of Law, University of California, Berkeley

Information Economics of MDL
Alexandra D. Lahav, Ellen Ash Peters Professor of Law, University of Connecticut School of Law

MDL Rules
Honorable Lee Rosenthal, Chief Judge, United States District Court, Southern District of Texas

MDL Reform: Defendant Perspective
John Beisner, Partner, Skadden, Arps, Slate, Meagher & Flom LLP

Moderator: Alexandra Lahav, Ellen Ash Peters Professor of Law, University of Connecticut School of Law

3:00 – 3:15 p.m.: Break

3:15 – 4:15 p.m.: The Bigger Picture
State and Federal Civil Litigation Reform
Mark Behrens, Co-Chair, Public Policy Practice Group, Shook, Hardy & Bacon L.L.P.

Nationwide Injunctions
Honorable Lee Rosenthal, Chief Judge, United States District Court, Southern District of Texas

Moderator: Alexandra Lahav, Ellen Ash Peters Professor of Law, University of Connecticut School of Law

4:15 – 4:45 p.m.: Closing Thoughts
All Panelists

Moderator: Howard Erichson, Professor of Law, Fordham Law School
SPEAKERS

Mark Behrens
Co-Chair, Public Policy Practice Group,
Shook, Hardy & Bacon L.L.P.
Mark Behrens co-chairs the Public Policy Group of Shook, Hardy & Bacon LLP, an international law firm that represents primarily corporate defendants in complex civil litigation. A substantial part of Behrens’ practice is working to improve the civil litigation environment through legislation; in the courts through amicus curiae briefs; through legal scholarship and judicial education; and in the court of public opinion. In 2016, he received the International Association of Defense Counsel’s highest award for his work as Civil Justice Response Committee chair. In 2015, he received the U.S. Chamber Institute for Legal Reform’s Individual Achievement Award. Behrens is a member of the American Law Institute. In 2010, he taught Advanced Torts as a distinguished visiting practitioner in residence at Pepperdine University Law School. Earlier, he served on the adjunct faculty of American University Washington College of Law. Behrens received his J.D. from Vanderbilt University Law School and his B.A. from the University of Wisconsin.

Andrew Bradt
Assistant Professor of Law, University of California, Berkeley
Andrew Bradt is assistant professor of law at the University of California, Berkeley, where he teaches courses on civil procedure, conflict of laws, mass-tort litigation, and remedies. His recent scholarship focuses on the historical development of multidistrict litigation. Among other publications, Bradt is a co-author, with Geoffrey Hazard, William Fletcher, and Stephen Bundy, of the casebook Pleading and Procedure (Foundation Press, 11th ed. 2015). Prior to joining the Berkeley faculty, Bradt was a Climenko fellow and lecturer in law at Harvard Law School, and was in private practice with the law firms Jones Day and Ropes & Gray. He served as a law clerk to the Hon. Robert A. Katzmann of the Second Circuit and the Hon. Patti B. Saris of the District of Massachusetts. He is a graduate of Harvard Law School and Harvard College.

John Beisner
Partner, Skadden, Arps, Slate, Meagher & Flom LLP
John Beisner is national chair of Skadden’s Mass Torts, Insurance, and Consumer Litigation Group and is resident in the firm’s Washington office. Over his 40-year career, he has represented defendants in a wide range of high-visibility litigation and enforcement matters at both the trial and appellate court level. He has been involved in defending more than 650 class actions and has served as lead counsel for defendants in numerous federal multidistrict litigation proceedings. Beisner is a frequent writer and speaker on legal reform issues and regularly testifies before congressional committees on civil litigation matters. He is a 1978 graduate of the University of Michigan Law School and is a member of the council of the American Law Institute.

Stephen B. Burbank
David Berger Professor for the Administration of Justice, University of Pennsylvania Law School
Stephen B. Burbank, the David Berger Professor for the Administration of Justice at the University of Pennsylvania, teaches and writes about civil procedure, complex litigation, international civil litigation, judicial administration, judicial behavior, and judicial independence and accountability. His most recent book, co-authored with Sean Farhang, is Rights and Retrenchment: The Counterrevolution Against Federal Litigation. He has served as visiting professor at Harvard Law School (five times), the University of Michigan, Goethe University (Frankfurt), and the University of Cambridge. Burbank was reporter of judicial discipline rules for the Third Circuit and of that circuit’s task force to study Rule 11; served as a member of the National Commission on Judicial Discipline and Removal; and was a principal author of the Commission’s report. The first general counsel of the University of Pennsylvania, since 2002 Burbank has served as special master and system arbitrator of the National Football League.
Scott Dodson

Associate Dean for Research and James Edgar Hervey Chair in Litigation, UC Hastings College of Law


Howard Erichson

Professor of Law, Fordham Law School

Howard Erichson is a professor of law at Fordham Law, where he teaches civil procedure, complex litigation, professional responsibility, and torts. His scholarship focuses on the procedure and ethics of civil litigation, with particular attention to class actions, mass torts, and other complex disputes. His work has explored the boundaries between class and non-class mass litigation; between adjudication and settlement; and between procedural and ethical mechanisms for protecting clients and class members. Professor Erichson is the past chair of the Civil Procedure Section of the Association of American Law Schools and was an adviser to the American Law Institute’s Principles of the Law of Aggregate Litigation. He is the author of the book Inside Civil Procedure and co-author of the casebook Complex Litigation, and his articles have appeared in the Cornell Law Review, Michigan Law Review, University of Pennsylvania Law Review, and other leading publications.

Jonah Gelbach

Professor of Law, University of Pennsylvania Law School

Professor of Law, University of Pennsylvania Law School


Sean Farhang

Professor of Law and Associate Professor of Public Policy and Political Science, University of California, Berkeley

Sean Farhang is professor of law and public policy, and associate professor of political science. His research interests focus mainly on civil litigation, and the role of litigation and courts in regulatory implementation, with a particular interest in the political and institutional forces that shape it. His first book, The Litigation State: Public Regulation and Private Lawsuits in the U.S. (Princeton University Press, 2010), examines the sources of private litigation in the enforcement of federal law, stressing Congress’s role in enacting incentives calculated to mobilize this form of regulatory implementation in the American separation of powers context. His second book, Rights and Retrenchment: The Counterrevolution Against Federal Litigation (with Stephen Burbank, Cambridge University Press, 2017), examines the emergence and development of the political and legal movement to restrict opportunities and incentives for private enforcement of federal law through litigation. Other ongoing work focuses on judicial behavior bearing on civil justice issues.
Myriam Gilles
Vice Dean and Paul R. Verkuil Chair in Public Law, Cardozo School of Law
Myriam Gilles specializes in class actions and aggregate litigation, and has written extensively on class action waivers in arbitration clauses. She also writes on structural reform litigation and tort law. Her articles have appeared in top law reviews, including Chicago, Columbia, Michigan, and Penn. Professor Gilles teaches Torts, Products Liability, Class Actions & Aggregate Litigation. In 2004, she was a visiting professor at the University of Virginia Law School and in 2005-06, was a fellow in the Program of Law and Public Affairs at Princeton University.

J. Maria Glover
Associate Professor of Law, Georgetown University Law Center
J. Maria Glover teaches and writes in the areas of civil procedure, complex litigation, and modern litigation theory and practice at Georgetown University Law Center. Glover’s scholarship on class actions, multidistrict litigation, and other complex litigation issues has been featured in the Yale Law Journal, the NYU Law Journal, the University of Pennsylvania Law Review, and the Vanderbilt Law Review, among others. Before coming to Georgetown, Glover was a Climenko fellow and lecturer in law at Harvard Law School. Previously, she clerked for Judge J. Harvie Wilkinson III on the United States Court of Appeals for the Fourth Circuit and then practiced as a member of the Supreme Court and Appellate Practice Group at Mayer Brown LLP in Washington, D.C.

Deborah R. Hensler
Judge John W. Ford Professor of Dispute Resolution, Stanford Law School
Deborah R. Hensler is the Judge John W. Ford Professor of Dispute Resolution and associate dean for graduate studies at Stanford Law School, where she teaches courses on complex and transnational litigation; the legal profession; and empirical research methods, and leads the doctoral research colloquium. From 2000 to 2005, she was the director of the Stanford Center on Conflict and Negotiation. Hensler has written extensively on mass claims and class actions and is the lead author of Class Actions in Context: How Economics, Politics and Culture Shape Collective Litigation (2016), and Class Action Dilemmas: Pursuing Public Goals for Private Gain (2000), the coeditor of The Globalization of Class Actions (2009), and the founder of Stanford’s Global Class Actions Exchange website (globalclassactions.stanford.edu/). Hensler has taught classes on comparative class actions and empirical research methods at the University of Melbourne (Australia), Universidade Católica Portuguesa (Lisbon), University of Hong Kong, and Paris-Dauphine Université, and holds a personal chair in empirical legal studies on mass claims at Tilburg University (Netherlands). In 2014 she was awarded an honorary doctorate in law by Leuphana University (Germany). Prior to joining the Stanford faculty, Hensler was director of the RAND Institute for Civil Justice. She is a member of the American Academy of Arts and Sciences and the American Academy of Political and Social Sciences. Professor Hensler received her A.B. in political science summa cum laude from Hunter College and her Ph.D. in political science from the Massachusetts Institute of Technology.

Alexandra D. Lahav
Ellen Ash Peters Professor of Law, University of Connecticut School of Law
Alexandra D. Lahav is the Ellen Ash Peters Professor at the University of Connecticut (UCONN) School of Law. Her research focuses primarily on the justice system and on finding innovative solutions to the problems participants in that system face. Her book In Praise of Litigation (Oxford 2017) makes the case that litigation is a social good that promotes democracy. She is also a co-author of a popular civil procedure casebook. She regularly speaks at academic and practitioner conferences on subjects relating to complex litigation and the justice system more generally. In addition to teaching at UCONN, she has also been a visiting professor at Columbia, Harvard, and Yale law schools.

Honorable Lee Rosenthal
Chief Judge, United States District Court, Southern District of Texas
Chief Judge Lee H. Rosenthal was appointed a United States District Court judge for the Southern District of Texas, Houston Division in 1992. Before then, she was a partner at Baker Botts in Houston, Texas, where she tried civil cases and handled appeals in the state and federal courts. She received her undergraduate and law degrees from the University of Chicago and served as law clerk to Chief Judge John R. Brown, United States Court of Appeals for the Fifth Circuit. In addition to serving as a district court judge for almost 25
years, Judge Rosenthal has been invited to sit by designation with courts of appeals around the country.


Judge Rosenthal became chief judge of the Southern District in November 2016. The Fifth Circuit judges selected her as their district judge representative on the Judicial Conference of the United States for a three-year term, which began in October 2016.

Judge Rosenthal is a member of the American Law Institute (ALI), where she serves as an adviser on the project to revise the Model Penal Code sections on sexual assault and on the Conflict of Laws restatement. She was an adviser for the Restatement of Employment Law, the Aggregate Litigation project, and the Transnational Rules of Civil Procedure project. In 2007, she was elected to the ALI Council and from 2011 to 2016 was chair of the Projects Committee. She currently serves as the ALI’s second vice president.

Judge Rosenthal has taught, written, and lectured extensively, concentrating on topics in complex litigation and civil procedure, including federal courts, class actions, and electronic discovery.

Judge Rosenthal served on the board of trustees of Rice University in Houston, Texas, from 2008 to 2016, chairing the Academic Affairs Committee. She currently serves on the Board of the Baylor College of Medicine and chairs the Academic Affairs Committee. She has served on the Duke University School of Law Board of Visitors, and she has served as president of the District Judges Association of the Fifth Circuit.

Judge Rosenthal is the 2012 recipient of the Lewis F. Powell Jr. Award for Professionalism and Ethics given by the American Inns of Court, and she is a three-time recipient of the Trial Judge of the Year Award from the Texas Association of Civil Trial and Appellate Specialists. In 2014, Judge Rosenthal was elected to the American Academy of Arts and Sciences.

Benjamin C. Zipursky
James H. Quinn ’49 Chair in Legal Ethics and Professor of Law, Fordham Law School

Benjamin C. Zipursky is a professor of law at Fordham Law School, where he holds the James H. Quinn ’49 Chair in Legal Ethics and has twice served as associate dean (2001–2003; 2010–2013). A winner of Fordham’s Teacher of the Year Award in 2015, he has also taught as a visiting professor at Columbia Law School, Harvard Law School, and Vanderbilt Law School. Professor Zipursky is a leading scholar in torts and legal theory, and has published more than 70 articles and chapters on subjects ranging from punitive damages and conflicts of interest in mass tort litigation to the varieties of pragmatism within legal philosophy. He has lectured extensively in the United States and abroad, and he is the co-author of a leading casebook, Torts: Responsibility and Redress (with J. Goldberg & A. Sebok, 4th ed. 2016) and The Oxford Introductions to U.S. Law: Torts (with J. Goldberg, 2010).
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