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### ARTICLES

GRANDPARENTS RAISING GRANDCHILDREN  
 AND THE IMPLICATIONS FOR  
 INHERITANCE

*Kristine S. Knaplund* 1

Today in the United States, thousands of grandparents are raising their young grandchildren because the children's parents are ill, disabled, imprisoned, or otherwise unable to care for them. Although most grandparents assume the arrangement is temporary, and thus no courts or social service agencies are involved, in fact more than forty percent of the time the care continues for five years or more. If the grandparent dies intestate, laws in all fifty states provide that the grandchild's absent parent inherits all. The grandchild, although raised as a child of the grandparent, inherits nothing. This Article examines existing doctrines, such as equitable adoption and pretermitted child statutes, and policies adopted in other countries, such as family maintenance systems, and their effects on the grandchildren. In the end, this Article concludes that the simplest solution of writing a will to avoid intestacy statutes may be the best.

PRUDENTIAL STANDING AND THE DORMANT  
 COMMERCE CLAUSE: WHY THE "ZONE OF  
 INTERESTS" TEST SHOULD NOT APPLY TO  
 CONSTITUTIONAL CASES

*Bradford C. Mank* 23

The Fifth Circuit in *National Solid Waste Management Ass'n v. Pine Belt Regional Solid Waste Management Authority* used the prudential "zone of interests" standing test to bar the plaintiffs, who met constitutional standing requirements, from filing a facial, per se challenge under the dormant Commerce Clause, which prohibits state or local laws that interfere with interstate commerce. The Supreme Court had invalidated as facially discriminatory a similar flow control ordinance requiring all local waste be processed by a government-approved processor, thus excluding all other in-state or out-of-state firms. This Article will show that tying the murky "zone of interests" test to the ill-defined dormant Commerce Clause doctrine is counterproductive. Courts should require constitutional litigants to show only that they have constitutional standing without the additional hurdle of meeting the "zone of interests" standing test.



THE FDA DEFENSE: VIOXX® AND THE ARGUMENT  
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Liability for injuries caused by defective drugs generally is premised on the failure of manufacturers to warn physicians of the risks associated with the product. Federal regulation of pharmaceuticals by the Food and Drug Administration raises the question whether the Agency's authority preempts common law tort claims for injuries caused by defective drugs. Traditionally, courts have taken the position that FDA regulation of prescription drugs imposes only minimum standards. The FDA once considered products liability lawsuits to be supportive of the Agency's goal of promoting drug and medical device safety. The Agency has since reversed its position on the benefits of civil litigation, and now contends tort claims interfere with its ability to regulate the market. In January 2006, the FDA introduced a new rule encouraging courts to recognize a broad preemption doctrine that would immunize manufacturers from civil liability when the FDA previously approved a product for sale.

THE CONSTITUTIONAL FUNCTION OF BIOLOGICAL  
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MOTHER'S CONSENT TO THE BIOLOGICAL  
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This Article argues that a father's biological connection to a child is constitutionally significant principally because it evidences the consent of the biological mother to the father's parental relationship with the child. The biological mother's consent is critical because she is the initial "constitutional parent." Her constitutional parental rights arise from her role nourishing the child in her womb and enduring the pain and danger of childbirth. This labor gives her a constitutionally protected voice in the child's upbringing including a right to decide generally who else shall be allowed to develop a parental relationship with the child. Only if the father himself sufficiently labors in developing a functional parental relationship with the child prior to the mother's withdrawal of her consent to his co-parenting will the Constitution protect his relationship with the child. This "labor-with-consent" theory of constitutional parental rights also should be applied to the claims for constitutional protection of parental rights by functional parents, egg donors, gestational surrogate mothers, and intended parents.

JUDICIAL FOLLIES: IGNORING THE  
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Bankruptcy Code § 109(g)(2) is an eligibility provision that is intended to prevent debtors from filing abusive repetitive petitions when the debtor has voluntarily dismissed a bankruptcy case after the filing of a motion for relief from the automatic stay. In applying this provision, the federal courts have adopted four different approaches, which are referred to as (1) the mandatory approach, (2) the discretionary approach, (3) the “causal connection” approach, and (4) the “pending” approach.

This Article demonstrates that the mandatory approach is the correct view, and it asserts three novel legal theories to explain why the other approaches are clearly erroneous (including misinterpretations of Congressional intent, and mischaracterization of a part of speech). Based upon the Supreme Court’s rule of statutory interpretation, the legislative history of § 109(g)(2), and application of the 2005 Bankruptcy Act, this Article concludes that the unambiguous language of § 109(g)(2) must be applied.

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