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### ARTICLES

- WHO SHOULD DEFINE ARIZONA’S CORPORATE ATTORNEY–CLIENT PRIVILEGE?: ASSERTING JUDICIAL INDEPENDENCE THROUGH THE POWER TO REGULATE THE PRACTICE OF LAW** *Ted Schneyer* 419

There is currently widespread concern at the state and federal levels about threats to “judicial independence.” Recent proposals by some members of the Arizona Legislature to strip the Arizona Supreme Court of its constitutional authority to have the final word on rules of evidence and civil procedure are an example. This Article recounts the tumultuous history of Arizona’s corporate attorney–client privilege. It explores how the court might best address the constitutionality of a 1994 statute that “overruled” its earlier decision defining the proper scope of the corporate attorney–client privilege. While the court’s chief device for preserving its independence in the face of undue legislative intrusion is the constitutional separation-of-powers principle, it is unclear which specific power the court should rely on. The Article develops the novel argument that the judiciary’s authority to regulate the practice of law empowers the court to strike down the corporate-privilege legislation and assert its independence.

- DRAWING THE LINE: THE LEGAL, ETHICAL AND PUBLIC POLICY IMPLICATIONS OF REFUSAL CLAUSES FOR PHARMACISTS** *Claire A. Smearman* 469

Nationwide, state legislatures are embroiled in the controversy over “conscience clause” legislation that permits pharmacists to refuse to fill prescriptions for contraception, including emergency contraception, on the basis of religious or moral belief. Refusal clauses for pharmacists create a clash of constitutional rights, pitting the religious freedom claims of pharmacists against the reproductive rights claims of their women customers. This Article traces the history and development of refusal clauses and describes the context in which the debate takes place, including the role the abortion controversy plays and the recent decision of the FDA approving over-the-counter sale of emergency contraception to adult women. Using the framework of feminist legal methodology, the Article examines the harms alleged both by the women denied access to contraception and the pharmacists who refuse to dispense it. The Article also analyzes Supreme Court cases interpreting the First and Fourteenth Amendments as they apply to refusal clauses. It concludes by recommending legislation that would require all pharmacies, not pharmacists, to dispense legal contraception, thereby protecting



the reproductive rights of women while allowing for the limited accommodation of individual pharmacists in conformity with current constitutional jurisprudence.

ENCOURAGING CONSERVATION ON PRIVATE  
LANDS: A BEHAVIORAL ANALYSIS OF  
FINANCIAL INCENTIVES

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This Article analyzes the design of conservation incentives in light of behavioral psychology research and suggests ways to improve their efficacy. Private lands play a critical role in biodiversity preservation, open-space conservation, ecosystem services, and wetlands management. Traditional command and control regulation has not adequately addressed environmental harms on private lands because of the costs of regulating large numbers of geographically dispersed landowners, the difficulty of using regulation to promote active management, and strong public resistance. In response, the use of financial incentives for conservation and stewardship on private lands has grown dramatically in the past two decades. As conservation incentives have proliferated, however, it has become apparent that these tools have their own structural deficits and costs. Psychological research offers insight into designing incentives, specifically direct payment programs and perpetual conservation easements, to maximize their impact and reduce enforcement costs. First, the research indicates that durable change in stewardship behavior typically requires ongoing, intermittent reinforcement through staggered or outcomes-based payments. Second, psychological literature on the “crowding out” of voluntary motivation highlights the importance of program administration and incentive size. Last, the Article considers ways to restyle administration to increase participation and market incentives more effectively.

NOTES

THE PUBLIC’S RIGHT OF ACCESS TO THE  
MILITARY TRIBUNALS AND TRIALS OF  
ENEMY COMBATANTS

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This Note discusses the public’s First Amendment right of access to the military proceedings used to try terror detainees held at Guantanamo Bay. Article III judicial review of closure determinations serves as a needed check on executive power and ensures the protection of the public’s constitutional rights.

BEST EFFORTS?: DIFFERING JUDICIAL  
INTERPRETATIONS OF A FAMILIAR TERM

*Zachary Miller* 615

Courts apply a variety of standards when analyzing performance in light of a “best efforts” obligation. Considering the confusion these different standards create, a universal approach is necessary. This Note argues that courts should apply an exacting standard with objective and subjective elements when analyzing a best efforts clause.

DON'T TREAD ON ME: WOULD A BRITISH  
SOLUTION TO ANTI-SOCIAL BEHAVIOR  
TRAMPLE THE U.S. BILL OF RIGHTS? *Jonathan Pinkney-Baird* 639

Anti-Social Behaviour Orders (“ASBOs”) controversially allow British courts to enjoin individuals from a broad range of otherwise legal activities, subject to the threat of criminal sanctions. This Note compares ASBOs with public nuisance injunctions directed against anti-social behavior in the United States, and considers possible constitutional restraints on the use of ASBO-type orders here.

**ARIZONA CASE NOTES**

*IN RE KING*: IS REHABILITATION FROM SERIOUS  
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King, an applicant for admission to the Arizona Bar, had been convicted of attempted murder almost three decades prior to his application. In a four-to-one decision, the Arizona Supreme Court denied King admission to the Bar and made it “virtually impossible” for future applicants convicted of serious crimes to satisfy the Bar’s character and fitness requirements.

*FEARNOW V. RIDENOUR, SWENSON, CLEERE &  
EVANS, P.C.*: ENCOURAGING FIRMS TO PUNISH  
DEPARTING ATTORNEYS? *Karen E. Komrada* 677

The Arizona Supreme Court, with one justice dissenting, gave a narrow interpretation to Ethical Rule 5.6(a) of the Arizona Rules of Professional Conduct. The decision holds that agreements that inflict financial penalties on lawyers who choose to leave firms and compete with them are valid, so long as they are reasonable.