While the November 8, 2016 election is best known for the election of Donald J. Trump as President, Republicans had a banner year in Kentucky, where they won control of the State House for the first time in nearly a century. With Gov. Matt Bevin (R-Kentucky) already in office, the General Assembly set out to enact some very socially conservative laws, especially with respect to church and state issues. Local governments also took this lead as well.

At the state level in Frankfurt (the State Capitol), Republicans enacted a new law called the “Religious Freedom Act of 2017”. This turned out to be similar to many other so-called religious freedom bills passed in other states. This bill was a bit different, however, in that its preamble recognized the unique role that religion had played in Kentucky’s history. It encouraged each of Kentucky’s 120 counties to recognize this heritage. While Kentucky is a mostly evangelical Protestant state, it does have some pockets of Roman Catholicism and is also the birthplace and resting place of boxing legend Muhammad Ali. The law tried to encourage counties to erect displays to highlight Kentucky’s religious heritage and added the proviso that if any county or city is sued, that the State would cover the legal expenses of any lawsuits. In the City of Bardstown, in Nelson County, which is often known as the “Cradle of Kentucky Catholicism”, county leaders decided to erect several life size busts of famous persons from the county to be placed in front of the old county courthouse, now the local visitor center, which is still owned by the county. In the end, the county decided to commission four statutes, which would be paid largely from a local tax on hotels and restaurant receipts. They would include Bishop Benedict Flaget, the first Roman Catholic Bishop of Bardstown, Thomas Merton, a Trappist monk from a local abbey who was both a religious figure and noted author, James Beam, better known as Jim Beam, to reflect the distilling heritage of the area, and Stephen Foster, the man who wrote “My Old Kentucky Home”, the state’s anthem. A group of local residents objected to the two religious figures being paid for and placed in front of the visitor’s center and have sued in federal court in Owensboro.

The Legislature also decided that based on the commercial success of the Creation Museum in the State, that they would grant tax breaks to a private company that was building a life-sized replica of Noah’s Ark. The display would charge an entrance fee and would be based off of a literal interpretation of the story of Noah’s Ark found in Genesis Chapters 6-9. This includes things if read literally that Noah was 600 years old at the time, he built the ark in a few days after being commanded to do so by God, and that the entire earth was flooded by the deluge. In addition to the tax breaks, the state would also, at taxpayer expense, pay for signs on I-75 directing motorists which exit to take to reach the site. The sponsors of the bill seemed to have different motivations. Sen. Albert Robinson (R-London) wanted to see the museum built so that people would see Kentucky’s dedication to what he said were “the Judeo-Christian values that our country was founded on”. However, a local legislator, Rep. Brian Linder (R-Dry Ridge) thought that it would bring tourist to the area, thus boosting the local economy. However, Rep. Mary Lou Marizan (D-Louisville) opposed this bill saying that this was not a wise or legal use of taxpayer money. However, the bill passed the Senate 33-5 and the House 86-14, with all the Republicans and the majority of Democrats in each chamber backing it. Gov. Bevin promptly signed it. However, several taxpayers in Kentucky have decided to sue in federal court in Lexington against this expenditure because they feel that it violates the Establishment Clause of the U.S. Constitution.

At the local level, the Trimble County School Board had decided that they would change the science curriculum so that science teachers were not allowed to offer any references as to the origin of humans, so not allowing creationism or the theory of evolution to be taught. However, that was not the end of the story on this issue. A school sponsored field trip to the Creation Museum located in the county was added to the school schedule for all high school freshmen to attend. The cost of entrance at the museum would be paid for by the school system from tax dollars, but the museum has decided that they will let in school groups at a discounted rate of $2 per student and $5 per teacher. The school was also going to pay for the lunch for all that attended at the Golden Corral Buffet in nearby Erlanger at a cost of about $10 per student. Students were required to attend, but could “opt-out” with a letter from their parents. They would be required to attend school that day and perform alternative assignments by being placed in the study-hall room all day. Failure to attend would not negatively affect their grades. All of the science faculty would be required to chaperone the students. The museum argues for a literal interpretation of the Book of Genesis that the earth was created in six 24 days, that the earth is only a few thousand years old, that humans and dinosaurs were on the earth at the same time, and argues against the theory of evolution. The founder of the museum says he has scientific evidence to back up his displays and arguments, but many of the displays quote directly to the Book of Genesis. The members of the School Board in question are all evangelical Protestants, as are most of the people in the county. A group of several parents did not believe that this practice should be allowed because the school was using tax dollars for admission and lunch, buses and employees for the trip, and they felt their children would be unfairly stigmatized for not attending. They have also filed a lawsuit in federal court in Covington based on this violating the Establishment Clause of the Constitution.

You may want to visit the museum’s website for a better understanding of what their view is on creationism versus evolution: <https://creationmuseum.org/>

And the Ark Encounter Museum: <https://arkencounter.com/>

However, not all of Kentucky was so conservative. The merged city/county of Metro Louisville (“Louisville”) decided to go the other route. They passed a very strict non-discrimination ordinance targeting discrimination against the LGBT community. It applied to all public employers in the city as well as any organization that received public money from the city. A Southern Baptist affiliated group in the city had taken public funds to provide housing to the homeless population of the largely poor part of the city known as the West End. Given their religious with this conservative denomination, they believe that homosexuality is a sin and therefore refused to employ any openly LGBT individual, and had a policy of firing them if they found out. Once the city passed this ordinance and found out about the group’s policy, they sent them a letter notifying them that they would either have to comply with the anti-discrimination ordinance against the LGBT community or lose their funds. Since public funds were their main source of revenue, the group would have to lay off nearly all its employees very quickly if they failed to comply. They were to notify the city in ten days and their response was that this ordinance violated both the Free Exercise Clause as well as the Religious Freedom Restoration Act (RFRA). The group filed a lawsuit in federal district court in Louisville.

You are a new staff attorney for the Attorney General Andy Beshear. The Attorney General is charged with defending the constitutionality of both state and local laws. However, Beshear, feels that he should not defend particular laws if the law tells him will be found to be unconstitutional. In order to determine this, Beshear has asked you to prepare a legal memorandum analyzing the constitutionality of each of these four laws. He would remind you that you are only to consider cases mentioned so far in the textbook or in online lectures. He would also state that all cases should be cited in proper Bluebook form and any quotations to a case from the book should use the book number after the comma, so you are not required to find it within the case. Beshear also wants to remind all of his attorneys that plagiarism is unacceptable, so if you take quotes from some legal website to help describe a case, please cite them.

Beshear suggests that this legal memorandum start with a very brief description of the facts before us (summarize them, don’t copy and paste from this assignment!), and then move on to the legal analysis of each issue, using the IRAC (Introduction, Rule, Application, and Conclusion) method discussed before and to be sure to consider all relevant legal tests for each issue. He also wants each attorney to take a position in the conclusion as to why each provision is constitutional after explaining the application of the law that led you to arrive at that position.

Beshear would also remind you that the longest answers are not necessarily the best ones, but those that best analyze the issue as succinctly as possible. Beshear thinks that it will probably take a person 8-12 double spaced pages to correctly analyze these issues, but that is not a hard and fast page limit. Some students may need more pages, while some may need less.