You have recently been hired as an Assistant Attorney General in the state of Texas for Attorney General Ken Paxton. He took office after winning the job in 2014 when then Attorney General Greg Abbott was elected Governor. While Texas is rapidly become a very diverse state, with the majority of the people there being non-white, the electorate in the state is still very white, very conservative, and very Republican. All 29 statewide elected positions in the state are Republican, and the party has large majorities in the State Legislature. Texas has been known to “push the envelope” on very conservative legislation in the past decade.

His office is charged with defending laws passed by the State Legislature, counties, cities, and school boards. The office must also defend actions taken by those officials. However, if he reasonably believes that a law is unconstitutional, he has the option of not defending it. A large part of your job is to research laws that have been challenged in court to provide his guidance on this the law is able to be defended. On your first day, he places several files on your desk asking for your analysis in the form of a memorandum.

The first issue comes from the University of Texas at Austin, which has been in litigation for many years over its admissions policies. Feeling that at their policy that was upheld in *Fisher* was not getting enough minority students into the upcoming freshman class, the university changed its policy so that the top 10% of all high school graduating classes gained admission, but then also made a change that if a high school had a majority of students whose parents were below the poverty line, then they would accept the top 20% if they applied. It just so happened that every one of the schools that this applied to had student body makeup that was at least 75% non-white. A white applicant from The Woodlands, a very wealthy suburb of Houston was in the top 12% of his school’s class, but this new policy had meant that all the freshman slots were taken up by the automatic acceptance policy, leaving no other slots for other students. He challenged the new policy as discriminating against him as a person that was from a wealthy part of the state and as a white student, since minority students were admitted under the new policy with lower SAT and GPA’s than him. Paxton asks you to evaluate the constitutionality of the new policy.

Texas also wants to try to discourage illegal immigration. The State Legislature passes a new law stating that schools will be responsible for checking into the immigration status of all public school students, and to pay special attention to those with Spanish sur-names. Students at these schools are required to bring these documents to school administrators within one week of the first day of class. However, if they do not bring these documents, they will not be removed from the school, but the state will not provide free textbooks to these students (while others that comply will get them), they will not be able to participate in any extra-circular activities, and will not be able to receive any free or reduced lunches or breakfasts. The Mexican American Legal Defense Fund (MALDEF) is challenging the constitutionality of this law. Paxton wants you to investigate its constitutionality.

The next case comes from the City of Arlington and its school district. Arlington sits between Dallas and Fort Worth, and has experienced rapid growth in the past few decades. Because of this, the district has had to build several new high schools. The school district is also quite diverse. 45% of students are Latino, 30% are white non-Hispanic, and 25% are African-American. The minority students percentages have risen while the white non-Hispanic students have declined. The district originally had three high schools, but two new high schools were just finished. The district had been under a court ordered de-segregation plan for many years with the three high schools, where each had a racial balance within +/-10% of the overall student population demographics. With the growth in the area, in the past they had just built on to the existing structures. Now there are two new schools. The majority of the school board is made of non-Hispanic whites and they pass a new student assignment plan.

|  |  |  |  |
| --- | --- | --- | --- |
|  | Hispanic | White | Black |
| School 1 | 20 | 5 | 75 |
| School 2 | 85 | 10 | 5 |
| School 3 | 75 | 10 | 15 |
| School 4 | 5 | 90 | 5 |
| School 5 | 40 | 35 | 25 |

As one can see, the new schools will have one with a black majority, one with a white majority, two with a Hispanic majority, and one will be mixed. Civil rights groups, including MALDEF have challenged this plan, saying that it is leading to segregation of students. However, the school board has said that this simply reflects where students live and means that no student will have to be bused more than 20 minutes from their homes. Paxton wants your advice on the constitutionality of this plan.

The final case comes from the very liberal city of Austin, which on a political results map looks like a blue island in a seat of red. The city recently changed its governmental structure to elect a county-wide mayor, and ten district elected city council members. Not liking money in politics, Austin imposed several new campaign finance restrictions on candidates, including challengers and incumbents. The first restriction places a limit of $36,500 that can be raised total in a four year period per candidate from all persons or entities outside the City of Austin, while candidates can raise unlimited amounts from sources inside Austin, subject to a $350 per year limit. The next restriction prohibits candidates from raising any funds at all other than six months before an election. A council member, Don Zimmerman, has challenged both of these restrictions. Paxton wants you to let him know his options here as to its constitutionality. (Note: you will want to try to limit yourself to cases from Chapter 14 on this one!).

In order to determine this, Paxton has asked you to prepare a legal memorandum analyzing the constitutionality of each of these issues. 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. Paxton 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.

Paxton also wants you to specifically tell what levels of scrutiny you are using for your analysis.

Paxton 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.

Paxton 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. Paxton 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.