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March 22, 1999

Honorable John Cornyn  
Attorney General of Texas  
P.O. Box 12548  
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RQ-0044-JC RECEIVED  
FILE # ML-40734-99 MAR 22 1999  
I.D. # 40734 Opinion Committee

Dear General Cornyn:

I respectfully request your legal opinion on the following issue:

Whether or not, in the absence of a U.S. Supreme Court decision clarifying conflicting opinions, higher education institutions in Texas are prohibited under the *Hopwood* decision from considering race in decisions regarding student financial assistance.

The Fifth Circuit Court of Appeals decision in *Hopwood v. State*, 78 F.3d 932 (5th Cir. 1996), *reh'g en banc denied*, 84 F.3d 720 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581 (1996), declared that The University of Texas School of Law may not use race as a consideration in its enrollment criteria. Subsequent to this decision, Attorney General Dan Morales issued Letter Opinion No. 97-001 stating that this prohibition against consideration of race applied to decisions on student financial assistance as well.

Because the other two states in the Fifth Circuit are under prior federal court orders, Texas is the only state in the Fifth District subjected to the *Hopwood* restraints. Furthermore, because some authorities believe the *Hopwood* decision is in conflict with other circuit court opinions, states in other circuits are also not being held to the restrictions in *Hopwood*.

As a result of the dissension among the states and courts, higher education institutions in Texas are the only such institutions in the United States which must operate under the *Hopwood* restraints, resulting in a serious "brain drain" of the top minority students from Texas to other states which are able to offer student financial assistance using race as a consideration.

I hereby request that you revisit Letter Opinion No. 97-001 issued by Attorney General Morales on the question of whether or not, in the absence of a U.S. Supreme Court decision clarifying the matter, higher education institutions in Texas are prohibited from considering race in decisions regarding student financial assistance.

Thank you in advance for your consideration of this issue.

Yours very truly,

A handwritten signature in cursive script that reads "Bill Ratliff". The signature is written in black ink and is positioned above the printed name.

William R. Ratliff  
State Senator