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MEMORANDUM

The Texas legislature has recently enacted a new law severely limiting abortions in the State of Texas. The law, which was passed in May 2021 and went into effect on September 1, 2021, says that any pregnancy in which a heartbeat is detected cannot be aborted. That effectively means if you are six weeks pregnant, you cannot have an abortion in the state of Texas, because that is around when most fetal cardiac activity can be detected.

The law makes no exceptions for rape, sexual abuse or incest. The law creates a civil remedy for the public to police abortions. It allows people to sue an abortion provider or anyone else they suspect is “aiding and abetting” abortions after that six-week mark. So the woman seeking an abortion in Texas herself cannot be sued, but the provider could, or the person who drove her there, or the counselor who referred her, and on and on. The law sets a \$10,000 award (to be paid by the defendant) for any successful lawsuit to stop an abortion. Currently, the U.S. Supreme Court has refused to step in to stop the law from going into effect.

Mandy Cool, a twelve year old girl with severe mental and physical limitations rendering her unable to care for herself, was living in a State-run group home for special needs children in Houston, Texas. Mandy’s parents died in a plane crash three years earlier and no other family member stepped forward to care for her. At the Home, Mandy was fed three meals a day, bathed, and provided various therapies. After the law went into effect, Billy Crooklyn, a Certified Nursing Assistant (CNA), began working the night shift (9 p.m. to 5 a.m.) at the Home and was assigned to the area near Mandy’s room. To help her sleep at night, Mandy was given sleep medication. One evening while Billy was working, he went into Mandy’s room, raped her as she slept and then went back to work. Two months later, during a routine physical, the nurse director discovered that Mandy was eight weeks pregnant. After a police investigation, Billy was arrested for raping Mandy and was ultimately sentenced to thirty years in prison.

Knowing that Mandy will never be able to take care of herself or a child, the Nurse Director decided to refer Mandy to a physician who performs abortions in Beaumont, Texas. The Physician, Dr. Paul Empath, whose daughter was similarly mentally and physically challenged as Mandy, felt it was his duty to abort the fetus to improve Mandy’s quality of life. After the abortion procedure, Billy sent a letter to the Home to get an update on Mandy’s pregnancy. The letter was addressed to the nursing director, who, when she received the letter, was so incensed, she wrote Billy back and informed him that Mandy had an abortion. Billy was outraged and decided to give Power of Attorney (POA) to his cousin, Jimmy Lowlife, to file suit against the nursing director and Dr. Empath.

You are a defense attorney for either the nursing director or Dr. Empath. In no more than three (3) pages one-sided (1.5-double spaced 11 or 12 point font), discuss and argue the constitutionality of the new law, any defenses you feel apply, and the likelihood of prevailing given the current state of case law. Assume Roe v. Wade and Planned Parenthood v. Casey are not overturned.