2020 LEX Scholarship Essay Prompt

Emily Batson is a movie star known for her impeccable style and poise. A lifelong resident of Los Angeles, California, she began her career as a child actress, most famous for her role portraying a scholarly magician at a school for child magicians. Because of her early fame, most Americans watched her grow from a gangly child to an awkward teenager to a beautiful young starlet frequently gracing the cover of fashion magazines. Last month, she once again made headlines when a video was released purporting to show her having sex with several different men. Ms. Batson denies that the tape is real and claims that the video is a computer-generated fake created by her ex-boyfriend, Archer Underroad, in an attempt to harass and defame her. As a result of the release of this video, Ms. Batson was fired as the spokeswoman for Pretty Girl Cosmetics and as a model for Changing Channel. Ms. Batson has sued Mr. Underroad pursuant to the new law in the state of California, prohibiting the use of deepfake technology to create pornography. The lawsuit includes claims for defamation, intentional infliction of emotional distress and invasion of privacy caused by the release of the video.

Deepfakes are artificial video or audio recordings that look and sound just like the real thing. Deepfakes use deep learning technology (a branch of artificial intelligence) to create a fake image, hence the name deepfake. The most sophisticated forms use two types of software running simultaneously: one which creates fake images and a second, which is trained to detect the fakes. Each time the second program detects a defect, the first program corrects to eliminate the errors and repeats the process until the other software can no longer detect any defects. The resulting fake images are often so realistic that viewers can no longer distinguish between the original images and the images generated by computers.

Initially, Hollywood special effects studios used this technology, but now deepfake software is freely available through open sources on the internet. Deepfake technology uses artificial intelligence to learn what a source's face would look like at a variety of angles and then transposes that face onto a target, usually an actor, like a mask. This software is often used to create political propaganda but is most popular in the field of celebrity pornography. A study conducted in the state of California revealed that over 90% of the 15,000 deepfakes reviewed were pornographic, and all of them targeted women. As a result, the state of California passed legislation making it possible for a resident of the state of California to sue anyone who uses deepfake technology to place them in pornographic material without their consent.

Mr. Underroad has neither admitted nor denied the allegations that he made the video; however, he has challenged the law prohibiting such behavior as an unconstitutional limit on his freedom of speech. He previously argued the video was merely a parody created as a joke during their relationship. It is his position that, as a public figure, Ms. Batson is not entitled to recover damages because no reasonable person would have believed the video was factual.

Draft an essay addressing *either* the constitutionality of the legislation regarding deepfakes *or* the necessity of the legislation as well as the likely outcome of the Batson v. Underroad case. Does this legislation unfairly restrict individual freedoms guaranteed by the First and Fourteenth Amendments? Is such legislation necessary, or are their other laws in place that can protect the alleged victims? The essay should take the form of an advocacy position grounded in authority, and not be based only on personal opinion grounded in emotion. Citation to relevant authority -- both primary and secondary -- is critical. It is not necessary to address potential tort or tort related issues in this essay.