

Question I (Bad Frog candy) (50 points)

fully protected speech? BF argues even though on label-satire-social commentary------(3) _____

protected symbolic speech?-BF argues satisfies Spence test-intended to communicate a message and message likely to be understood by audience particularly because finger is generally recognized symbol & slogans that accompany the frog and the name of the company------(4) _____

as protected symbolic speech analyzed under O'Brien-within power of authority, substantial interest to protect young children, narrowly tailored, gov't int unrelated to suppression of expression-BF argues gov't interest is related to suppression of expression-regulated only because of message communicated by frog-so fails O'Brien and so apply strict scrutiny--(5) _____

strict scrutiny - gov't argues compelling interest to protect young children particularly when offensive frog appears on label of product designed to appeal to children like Joe Camel necessary means? gov't argues least restrictive-can still sell product in many other ways-(4) _____

BF argues too restrictive of adult access in order to protect children-kept off shelf in most places people buy candy, ineffective means to achieve ends, access only behind counter chills adult audience (treated like adult entertainment)------(4) _____

commercial speech - BF argues label is a form of adv'g-communicates source of product, not false, misleading or illegal------(3) _____

gov't argues unprotected - labels don't communicate any information to consumers------(3) _____

Central Hudson test-not false or misleading, sub'l int, directly advance, narrowly tailored(2) _____

gov't argues sub'l interest in protecting minors from profane ads, ban on labels in places where children could be found would directly advance that interest; restriction is narrowly tailored because only applies to young children, only in places where they can be found and allows sales to adults & BF argues doesn't directly advance given prevalence of profanity throughout our culture & not narrowly tailored------(6) _____

fighting words - while giving the finger could be fighting wds in the right circumstance not here because no face to face exchange and not directed at a particular individual------(3) _____

obscenity-not obscenity because no appeal to the prurient interest even though reference to a sexual act------(3) _____

content-based decision by gov't-based on message communicated-concern with the primary effect of speech on child audience not a secondary effect (see strict scrutiny above)------(3) _____

prior restraint -unbridled admin discretion to restrict label------(2) _____

vagueness of basis for gov't decision------(2) _____

miscellaneous _____ (3) _____

Question II (Denver Performing Arts Complex)(40 points)

trad'l public forum -it used to be a street, still functions as a street, treat it like a street vs. not a public street any longer no matter what it used to be------(3) _____

Kennedy forum-physical characteristics-like street w/store & restaurants-like airport concourse-used as a walkway, generally open to the public-even if you don't have tickets, compatible with many forms of expression (subject to reas TPM regs) vs. an internal narrow walkway within complex, not like a public street & often crowded & not suitable for expression------(6) _____

designated forum -clearly no intent to create a forum based on regulation------(3) _____

nonforum-principal purpose for other than speech and not traditional forum; as a nonforum rules need to be reasonable and not viewpoint based; gov't argues rule satisfies that test and musicians argue it doesn't because bans all expression and unreasonable just like ban on distribution of literature in airport (O'Connor opinion)------(5) _____

reasonable time, place and manner restriction - content neutral, important objective (safety, avoid disruption), narrowly tailored (but total ban on most expression in the complex), ample alternative avenues (such as 14th Street but there can only reach half of patrons)------(5) _____

Nature of speech-labor dispute-political speech-fully protected so turns on forum type-----(3) _____

music-symbolic expression in context of musicians dispute w/ ballet company------(1) _____

Spence test-intended to communicate and likely it would have been understand------(2) _____

O'Brien test-unrelated to suppression of expression, substantial interests as expressed in regulation, turns on issue of whether it is narrowly tailored so return issue of whether it is a reasonable TPM reg------(3) _____

overbreadth challenge-do illegitimate applications (where no interference with traffic flow) dwarf legitimate applications(more like Jews for Jesus or Heffron)?------(3) _____

vagueness of regulation------(1) _____

as applied - a particularly important location for the orchestra's protest even if not for other speech so as to orchestra no ample alternatives, disruptive vs. nondisruptive------(2) _____

miscellaneous _____(3) _____

Question III (lawn sign ordinance) (30 points)

regulates fully protected political speech (as well as commercial speech & other speech)-(2) _____

place - lawn of private home-speech rights are at a maximum as the Court said in Ladue-(2) _____

reasonable time, place, manner ordinance------(1) _____

content neutral-not by viewpt or topic vs. based on if subj matter is temp'y or permanent(3) _____

substantial gov't interests - safety and aesthetics------(2) _____

narrowly tailored-only limit as to number, size & length of time- ample alternative avenues -still leaves lawn signs but subject to limits so distinguishable from Ladue and leaves other means of expression, but limit on number infringes on speech and also limit on length of time------(5) _____

if content based-apply strict scrutiny------(3) _____

unlike Discovery Network-no dif treatment of pol & comm'l for aesthetics or safety------(1) _____

permit scheme -if want to leave up for longer than 15 days- prior restraint -subject only to good cause limit which is vague and gives Zoning Officer has too much discretion or argue that, in context of statute, meaning of good cause is clear because it must be some reason that makes the sign relevant even though the event it references has now passed------(4) _____

as applied vs. facial challenge (overbreadth claim-impermissible vs. permissible apps)---(4) _____

miscellaneous _____(3) _____