

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) _____