Question I (Bad Frog candy) (50 points)

fully protected speech? BF argues even though on label-satire-social commentary

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

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

strict scrutiny - gov’t 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

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)

commercial speech - BF argues label is a form of adv’g-communicates source of product, not false, misleading or illegal

gov’t argues unprotected - labels don’t communicate any information to consumers

Central Hudson test-not false or misleading, sub’l int, directly advance, narrowly tailored

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

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

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

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)

prior restraint -unbridled admin discretion to restrict label

vagueness of basis for gov’t decision

miscellaneous