

Middle School Cannot Ban ‘I ♥ boobies!’ Bracelets

Banning two middle-school students from wearing bracelets with the slogan “I ♥ boobies! (KEEP A BREAST)” in school violates the students’ right to free speech, a divided en banc panel of the Third Circuit found.

The bracelets are part of a nationally recognized breast-cancer-awareness campaign sponsored by the Keep A Breast Foundation. The bracelets were designed to “start a conversation” about breast cancer and performing self-examinations.

Two female students wore the bracelets for several weeks as they attended Easton Area Middle School without incident. In October, during Breast Cancer Awareness Month, school administrators announced they were banning the bracelets because they contained the word “boobies,” which they determined was vulgar and lewd. The two students received in-school suspensions and were banned from attending the Winter Ball. The District Court granted the students’ request for an injunction to prohibit the enforcement of the ban.

The appellate court ruled 5-4 that because the “bracelets are not plainly lewd and express support for a national breast-cancer-awareness campaign—unquestionably an important social issue—they may not be categorically restricted.” The appellate court said the school cannot restrict the bracelets if the language “can plausibly be interpreted as political or social speech.”

“Some schools, if empowered to do so, might eliminate all student speech touching on sex or merely having the potential to offend,” the court explained. “Indeed, the Middle School’s administrators seemed inclined to do just that. They initially testified that they could ban the word ‘breast,’ even if used in the context of a breast-cancer-awareness campaign, because the word, by itself, ‘can be construed as [having] a sexual connotation.’”

The four dissenting justices wrote that this was a “close case” in that the bracelets “would seem to fall into a gray area between speech that is plainly lewd and merely indecorous. Because I think it objectively reasonable to interpret the bracelets, in the middle school context, as inappropriate sexual innuendo and double entendre, I would reverse the judgment of the District Court and vacate the preliminary injunction.”

B.H. and K.M. v. Easton Area School District, Third Cir. No. 11-2067.