

US court: Pa. school can't ban 'boobies' bracelets

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PHILADELPHIA (AP) - A federal appeals court ruled Monday that a Pennsylvania school district cannot ban "I (heart) Boobies!" bracelets, rejecting the district's claim that the slogan - designed to promote breast cancer awareness among young people - is lewd.

The 3rd U.S. Circuit Court of Appeals also concluded that school officials didn't prove the bracelets were disruptive. "Because the bracelets here are not plainly lewd and because they comment on a social issue, they may not be categorically banned," Judge D. Brooks Smith wrote in the 9-5 decision. The ruling is a victory for two Easton Area School District girls who challenged the school rule in 2010 with help from the American Civil Liberties Union. Easton is one of several school districts around the country to ban the bracelets, which are distributed by the nonprofit Keep A Breast Foundation of Carlsbad, Calif.

ACLU lawyer Mary Catherine Roper said the ruling supports the rights of students to discuss important topics.

"It explicitly says school children talk about important things, and when they (do) ... that's the kind of speech we want to protect and promote," Roper said.

The teens, Brianna Hawk and Kayla Martinez, testified that they merely hoped to promote awareness of the disease at their middle school. They filed suit when they were suspended for defying the ban on their school's Breast Cancer Awareness Day.

In their dissent Monday, the five judges said the majority had wrongly reasoned that schools cannot limit student speech involving social commentary, even if it "could reasonably be deemed lewd, vulgar, plainly offensive, or constituting sexual innuendo."

The school district kept the litigation alive, appealing when a lower court judge ruled for the girls. District solicitor John Freund complained that Smith's ruling leaves schools with little guidance about where they can draw the line. "The majority, in the 74-page opinion, leaves school districts in the lurch as to which standards to apply when increasingly aggressive double-entendres come into school in the guise of some social or political cause," he said.

Easton officials have 90 days to decide whether to appeal to the U.S. Supreme Court. Freund did not expect a quick decision, and questioned whether any one district has the duty "to make constitutional law for everyone else" in an era of budget constraints. He believes the bracelets have a sexual undertone that invites disruption in the classroom. "Middle school is a witch's brew of hormones and curiosity," Freund argued in previous court sessions, when he called the bracelets "cause-based marketing energized by sexual double-entendres."

The full appeals court elected to hear the school district's appeal in February rather than leave it to a three-judge panel. During those arguments, Judge Dolores Sloviter said she did not see the slogan as sexual, and told the packed courtroom that she had once lost a colleague on the court to breast cancer.

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