



Breast Cancer Awareness Bracelets and the First Amendment

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Where do you stand on “I (Heart) Boobies!” bracelets?

Schools across the country have recently grappled with the scope of students’ First Amendment rights within the context of students wearing “I (Heart) Boobies!” bracelets. The bracelets at issue are sold by Keep a Breast Foundation, whose mission is to “expose young people to methods of prevention, early detection and support, and to increase breast cancer awareness.” The Foundation’s website explains that the purpose of the “I (Heart) Boobies!” campaign is to “speak to young people in their own voice about a subject that is scary and taboo.”

Are “I (Heart) Boobies!” bracelets distracting?

Schools across the country have banned the “I (Heart) Boobies!” bracelets, arguing that the bracelets are distracting students and causing a “substantial disruption” in the classroom. Conversely, students argue that by wearing the bracelets, they are non-disruptively seeking change and promoting awareness for breast cancer.

Schools faced similar issues in 1969, when students wore black armbands to school in protest of the Vietnam War. In *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), the Supreme Court formally recognized that “students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” accordingly finding for the students. While the students were permitted to wear the black armbands, the Court also noted school officials may restrict students’ free speech when the speech causes a “material or substantial disruption” in the classroom. Today, school officials in the present case argue that bracelets meet this substantial disruption burden and thus are justified in restricting students’ First Amendment rights and banning the bracelets.

Are “I (Heart) Boobies!” bracelets vulgar?

Some school officials are also relying on *Bethel School District v. Fraser*, 478 U.S. 675 (1986), where the Supreme Court held that school officials may prohibit students from using “lewd, vulgar, or offensive terms at school, regardless of whether the speech causes a substantial disruption.” In *Fraser*, a high school student was disciplined following his speech at a school assembly, which contained an explicit sexual metaphor. In the present case, school officials argue that the bracelets at issue are similar to the speech in *Fraser*, and that in order to “teach the shared values of our society” students must be prohibited from wearing these bracelets to

school.

What do courts think about “I Heart Boobies!” bracelets?

Wisconsin: In *K.J. v. Sauk Prairie School District*, 2012 U.S. Dist 3:11-cv-00622-bbc (W.D. Wis. Feb. 6, 2012), the court agreed with school officials that wearing something with the word “boobies” on it is distracting and not appropriate for school. The court held that the bracelets “use a vulgar and sexually provocative statement to draw attention to a worthy social cause.”

Pennsylvania: In *B.H. v. Easton Area School District*, 2011 U.S. Dist. LEXIS 39483 (E.D. Pa. Apr. 12, 2011), the court agreed with students and found “there were no incidents presented to the court of any disruption prior to the School’s bracelet ban” and at most, there was only a general fear of disruption, which was below the standard that *Tinker* requires for a restriction to be constitutional. The court also held that under *Fraser*, the “bracelets cannot reasonably be considered to be lewd or vulgar because they are intended to be and they can reasonably be viewed as speech designed to raise awareness of breast cancer and to reduce social stigma...”

Since courts are inconsistent on this issue and cases involving similar possible speech issues, each case must be looked at individually. If your institution has questions or concerns about this topic and you would like further information, please email Jim Ryan at jryan@cullenanddykman.com or call him at 516-357-3750. A special thanks to Hayley Dryer, a third-year law student at Benjamin N. Cardozo School of Law, for helping with this post.