

## Boobies, Bracelets and Free Speech in School

How far should students be allowed to go in supporting a cause?

August 22, 2013 By Suzi Parker

When the Keep A Breast Foundation, a breast cancer awareness group, launched their “I Boobies” silicone bracelets, they probably didn’t anticipate the trinkets would put them at the center of a free speech debate.

But such is the case, as the bracelets—aimed at young adults—have been causing controversy at several schools across the country, including educational outposts in Wyoming and Indiana.

This week, a federal judge agreed with a Fort Wayne, Indiana, school district’s ban on the bracelets, ruling that they were disruptive. The ACLU of Indiana filed the lawsuit last year on behalf of a girl whose bracelet was taken away from her at school (she wore it in honor of her mother, who was a breast cancer survivor). U.S. District Judge Joseph VanBokkelen said that students weren’t mature enough to handle the word “boobie,” and claimed students were wearing the bracelets as a way to say the word and incite giggles.

But earlier this month in Pennsylvania, a federal appeals court ruled that a school couldn’t prevent students from wearing the boobie bracelets because the message isn’t lewd. Free speech advocates called that ruling a victory.

“This is a powerful political statement by students with no sexual overtones,” says Mark Naison, a professor at Fordham University. “It should be protected by the courts. School districts that seek to suppress them are limiting freedom of speech and student self-expression, attributes we should treasure more than ever at a time when our schools are deluged with tests.”

However, the question remains: Just how much free speech rights do students really have in school? Unfortunately, the answer is murky.

In 1969 the ACLU represented Mary Beth Tinker, who wanted to wear a black armband at school to protest the Vietnam War. In that case, *Tinker v. Des Moines*, the U.S. Supreme Court ruled that students don’t “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

But the Tinker case was just the beginning.

In another Supreme Court case in 1988, the Court stated that school administrators could edit school newspaper articles they found inappropriate—a definite strike against students’ rights. And as we saw in Indiana and Pennsylvania this month, the lower courts are often divided on censoring free speech. In June, a federal district court in Michigan ruled that a student had free speech rights when he said that he was against homosexuality.

Every year, students across the country are suspended and expelled for expressing their political statements on T-shirts and other pieces of clothing—but the reasoning behind what’s silenced versus what’s supported seems to vary from case to case. Earlier this year, a student in Texas was told he could not wear his rosary in class. In 2007, the U.S. Supreme Court upheld the political free speech of a middle-school student who wore a T-shirt in 2004 that called President George W. Bush a “Chicken-Hawk-in-Chief” who was engaged in a “World Domination Tour.” But that same year, the court upheld the suspension of a student who unfurled a banner reading, “BONG HiTS 4 Jesus” on a sidewalk during a school event. Why? Because it could have been an endorsement of drug use, which was against school policy.

At issue in the boobies case is whether the word itself is “plainly lewd.” In Indiana, it is. In Pennsylvania, it isn’t—according to the courts. Either way, the rubber bracelet drama is far from over.

The Pennsylvania school district could appeal to the U.S. Supreme Court. And another slogan used by the Testicular Cancer Awareness Project could end up in court as well. The project sells “feelmyballs” bracelets, which students are wearing across the country. The Pennsylvania court declined to address those bracelets, but it’s only a matter of time before a student pushes the envelope by wearing one in front of a teacher who becomes offended.

The Constitution may allow for free speech, but that doesn’t mean—as history has proven—that students can expect to say or wear anything without punishment. They can’t always expect the courts to be on their side, either. But strong beliefs and a good fight for a cause and free speech can go a long way—sometimes, all the way to the Supreme Court.