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Breast Cancer Bracelets Case May Visit Top Court.

By Gregg Toppo USA Today

A free-speech case involving a Pennsylvania middle school principal, Breast Cancer Awareness Day and a pair of rubber "I (Heart) Boobies!" bracelets may be headed to the U.S. Supreme Court.

The Easton, Pa., school board late Tuesday voted to challenge a federal court's decision saying the bracelets aren't lewd material.

"I think what this case is really about is: Who should be able to decide what is or is not lewd or improper expression in the context of a public school," said the school district's attorney, John E. Freund III.

The case started in 2010 when two girls, then ages 12 and 13, challenged the school's ban on the bracelets, which are designed to promote breast cancer awareness among young people. The students, Brianna Hawk and Kayla Martinez, said they merely hoped to foster knowledge of the disease at their middle school. They filed suit when they were suspended for defying the ban on Breast Cancer Awareness Day.

At least three lawsuits have taken aim at "Boobies" bracelet bans, the American Civil Liberties Union (ACLU) said. Several school districts have backed down on bans after the group said it would defend students' rights to wear the bracelets, said Mary Catherine Roper of the ACLU of Pennsylvania.

Kimmy McAtee, a spokeswoman for the non-profit Keep A Breast Foundation of California, which distributed the bracelets, said the items are "a great conversation starter and ... that the school should have created a conversation about breast health vs. banning them."

McAtee said the group chose the word "boobies" because it "makes people feel comfortable about talking about breast cancer."

"A lot of young girls need to start this conversation as they're going through puberty, as they're learning about their bodies, as they're learning how to make choices for themselves," she said.

Banning the bracelets on Breast Cancer Awareness Day "definitely created a mixed message" for the Easton students, she said. "They were very upset that they had gotten suspended and felt that it was within their right to stand up for themselves."

But Freund said it was "never, ever the intent of the district" to stifle the students' viewpoint. "It was the intent of the district to enforce their dress policy." He said the policy aims to discourage "the sexualization of clothing and attire and to keep kids focused on learning."

Principal Angela DiVietro, herself a breast cancer survivor, acted appropriately, he said. The bracelets represented "a trivializing" of a serious issue for her and other survivors. "These kinds of cutesy appeals trivialize their experience," he said.

In August, the 3rd U.S. Circuit Court of Appeals upheld a lower court's decision in favor of the girls, saying the district didn't prove the bracelets are disruptive.

But Freund said Wednesday the court in essence took away the district's right to enforce its own policy. "We see it as a move away from the use of local standards to more centralized thinking," he said. "We think that is destructive of local control and will promote less-civil discourse."

DiVietro had decided, he said, that "I (heart) Boobies" was "a sexual double entendre which was prohibited under the school's dress policy."

"The focus of the principal was that this really suggested a prurient interest in the female breast, which is an interest that does not have to be encouraged among seventh-grade boys," he said.