

methods of prevention and early detection. The “I ♥ Boobies” campaign, which has spread nationally, is designed to reach young people in a language that they will find more fun and less threatening than other discussions about breast cancer, and is intended to engage young people in dialogue about early detection and treatment for what is the leading cause of death among women under age 40.

2. Despite the fact that the two Plaintiffs and many other students had worn the bracelets for more than a month without creating material and substantial disruption to school operations, in October the school banned the bracelets. In refusing Plaintiffs’ request to rescind the ban, the school has justified it by claiming that some students are “uncomfortable when learning about and discussing human sexuality topics,” that the bracelets apparently prompted some male students to make inappropriate comments about girls’ breasts, and that some staff members were “offended” by the bracelets. But the First Amendment does not allow schools to censor students’ speech merely because some students and teachers are offended by the non-vulgar educational message, and silencing the speakers because other students may react inappropriately would amount to a constitutionally impermissible heckler’s veto. Because the school cannot meet its burden to show that the

bracelets have caused a substantial and material disruption, the ban violates Plaintiffs' First Amendment rights.

3. Plaintiffs seek preliminary, and thereafter permanent, injunctive relief to vindicate their First Amendment right to wear their "I ♥ Boobies!" bracelets to express their support for breast cancer awareness and prevention, and to end the school's retaliatory and punitive measures, which include a ban on the girls' attendance at this Friday's school dance.

JURISDICTION

4. This action seeks to vindicate rights protected by the First and Fourteenth Amendments to the United States Constitution and is brought under 42 U.S.C. § 1983. The Court has jurisdiction over this civil rights action pursuant to 28 U.S.C. § 1331(a) and § 1343(a)(3) and (4). This Court has jurisdiction pursuant to 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

PARTIES

5. B.H. is a thirteen-year-old eighth grader at Easton Area School District Middle School in Easton, Pennsylvania. B.H. lives with her family in Easton, Pennsylvania. She is represented by her mother, Jennifer Hawk.

6. K.M. is a twelve-year-old seventh grader at Easton Area School District Middle School in Easton, Pennsylvania. K.M. lives with her family in Easton, Pennsylvania. She is represented by her mother, Amy McDonald-Martinez.
7. Defendant Easton Area School District (“EASD” or the “District”) is a political subdivision of the Commonwealth of Pennsylvania. EASD maintains its administrative office at 1801 Bushkill Drive, Easton, Pennsylvania 18040.

FACTS

8. Plaintiffs are seventh and eighth grade students, respectively, in the EASD Middle School 7-8 Building. The Middle School is a large complex that holds two separate schools: the fifth and sixth graders have a separate entrance, separate classrooms and separate lunchrooms from the seventh and eighth graders.
9. At the beginning of September 2010, K.M. and her mother travelled to the Lehigh Valley Mall (a drive of about twenty minutes) to purchase an “I ♥ Boobies!” bracelet for K.M. K.M. had learned of the bracelets over the summer from her friends who had them. K.M. wanted to wear the bracelet to show her concern over breast cancer and to honor the memory of her recently

deceased aunt, who had breast cancer. She and her mother later purchased several more bracelets.

10. B.H. purchased her first “I ♥ Boobies!” bracelet in late September – she had first seen the bracelets on friends at school. She wanted to show her support for breast cancer awareness and prevention, and also to honor a close friend of her family who had died of the disease. Since wearing the bracelet, B.H. has learned of many more people – including teachers and friends at school – who have lost family members to breast cancer, because wearing the bracelets leads to conversation about the disease.
11. The “I ♥ Boobies” bracelets have been popular at the EASD Middle School 7-8 Building since the start of the Fall 2010 term. Dozens, if not hundreds, of students wore them throughout September. Some teachers expressed opposition to the bracelets and would tell students to turn them inside-out or take them off. Apart from discussions initiated by teachers regarding whether students could wear the bracelets, there was no disruption of class time as a result of the bracelets. Nor was there substantial disruption out of class.
12. The “I ♥ Boobies” bracelets are part of a nationwide, award winning campaign of youth outreach and education. Breast cancer is the leading

cause of cancer deaths in young women under the age of 40, but many young people mistakenly believe that breast cancer is only a problem for older women. Although the incidence of breast cancer in young women is much lower than that of older women, young women's breast cancers are generally more aggressive and are diagnosed at a later stage, resulting in lower survival rates.

13. Keep A Breast believes that the best way to reach, educate and impact young people is by speaking to them in a voice they can relate to – according to the Foundation's Facebook page, 63.6% of visitors are young women and men between the ages of 13 and 24. By reaching this age group, Keep A Breast fills an important gap not currently being addressed by other breast cancer awareness organizations. Pink ribbons might not resonate with some youth as passionately as the "I ♥ Boobies" and other Keep A Breast outreach programs. Keep A Breast works with artists, athletes, celebrities, and musicians whom young people look up to and reaches out to youth in the places they go, like music festivals, and surf and skate contests.
14. Seeing a bracelet with "I ♥ Boobies!" on it is a conversation starter that leads to discussion and awareness of issues affecting young people. Keep A Breast encourages people to use the bracelets as an opportunity to start a

conversation about breast cancer prevention, body image, early detection, and the importance of living a healthy lifestyle. The Keep A Breast programs face body image taboos head on and by doing so, help young people break down the barriers of embarrassment and fear. Young people struggle with body image, which is particularly concerning because the relationship between body image and breast cancer is a crucial one, as it relates directly to young women's willingness to check their breasts for signs of cancer.

15. The "I ♥ Boobies!" bracelets have stirred controversy in a few other school districts across the state and nation. This is the first lawsuit to challenge a school's censorship of these bracelets.
16. Some time in the middle of October, school officials announced that students who wished to wear the "I ♥ Boobies" bracelets would have to turn them inside-out. At least one teacher then complained because the inside of the bracelets says "keep-a-breast.org".
17. On or about October 25, 2010, the Middle School administration announced that the bracelets would no longer be permitted in the school. At the same time, students were told that anyone who received a suspension would be barred from school dances for thirty days.

18. After that announcement, K.M. told her mother that she wanted to continue wearing the bracelets because she thought it was such an important message. K.M. and her mother then did research on the Internet to learn more about breast cancer and the Keep A Breast campaign. K.M. learned that many young women develop breast cancer, that the youngest girl to have been diagnosed with breast cancer was ten years old, and that the purpose of the Keep A Breast campaign is to teach young women how to detect breast cancer early, in order to improve their chances of survival.
19. This additional knowledge convinced K.M. that it was even more important to keep spreading the message about breast cancer. She asked her mother if she could wear the bracelets for the school's Breast Cancer Awareness Day on October 28, when students and staff were encouraged to wear pink and otherwise express their support of the fight against breast cancer. K.M.'s mother agreed.
20. After the bracelets were banned, B.H. also asked her mother if she could continue to wear the bracelets, because she believes that the bracelets are effective in getting young people to think and talk about breast cancer. On October 27, a school administrator saw B.H.'s bracelets and after she was taken to the principal's office she removed them.

21. On October 28, K.M. and B.H. both wore their Keep A Breast bracelets, but kept them under their sleeves during the morning. At lunch they sat together and decided to push up their sleeves and show the bracelets. A lunch monitor noticed the bracelets and told the girls to remove them. The girls responded that they had their parents' permission to wear the bracelets and that they would not take them off. They were then taken to the eighth grade principal's office.
22. In the principal's office, K.M. was instructed to remove the bracelet, but she again said that she had her mother's permission and the right to wear the bracelet. The principal called Mrs. McDonald-Martinez, who confirmed that she had given K.M. permission to wear the bracelet despite the ban. When Mrs. McDonald-Martinez was informed that K.M. would be given in-school suspension for the infraction, she took K.M. home for the duration of the suspension.
23. B.H. also informed the principal that she had permission to wear the bracelets. The principal immediately called Mrs. Hawk and informed her that her daughter would be placed on in-school suspension.
24. The Plaintiffs were suspended for the remainder of October 28 and all day October 29. Each family received a letter more than a week later stating that

the girls had been suspended for “DISRUPTION,
DEFIANCE/DISRESPECT”.

25. At no time was there any disruption of classes or school operations as a result of either Plaintiff wearing her bracelets.
26. At no time did either girl make inappropriate, rude, or insulting remarks to anyone.
27. In addition to the suspension, Plaintiffs were told that they could not attend the middle school dance on November 19, as well as other extracurricular activities.
28. Beginning November 4, 2010, counsel for Plaintiffs exchanged letters and telephone calls with counsel for EASD, asking that Plaintiffs be permitted to resume wearing the bracelets. Those negotiations continued until Friday, November 12.
29. On November 9, Counsel for EASD sent a letter to counsel for the Plaintiffs setting forth EASD’s reasons for banning the bracelets, claiming that some middle school students are uncomfortable with discussion of the human body; that some male middle school students have made embarrassing comments to female students about their breasts; that the students who defied the ban were then observed “high-fiving” each other in the cafeteria; and that

some public school teachers believe the bracelets trivialize the subject of breast cancer and are personally offended by the bracelets' "cutesy" treatment of the disease.

30. The middle school dress code does not prohibit bracelets with messages. It does prohibit dress that is in "poor taste", including:

clothing imprinted with nudity, vulgarity, obscenity, profanity, and double entendre pictures or slogans, including those relating to alcohol, tobacco, drugs, weapons and violent acts....

The dress code also provides that any article of clothing or personal effect not specifically listed is subject to administrative review to determine whether it is in "poor taste".

31. The dress code is unconstitutionally overbroad and vague, on its face and as applied to B.H. and K.M., in that it allows the principal to ban expressive clothing that the principal deems in "poor taste", without regard to whether that expression causes a material and substantial disruption to the school day or is lewd and indecent.
32. The District's vague and overbroad policies prohibit and chill speech that is protected by the First Amendment.
33. Defendant's punishment of B.H. and K.M. amounts to retaliation for constitutionally protected activity.

34. Defendant's actions are producing ongoing irreparable harm for which there is no adequate remedy at law.

CLAIMS

Count I: First Amendment to the United States Constitution The Prohibition of the Keep A Breast Bracelets

35. Defendant's prohibition of the "I ♥ Boobies! (Keep a Breast)" bracelets violates the Plaintiffs' right to free expression under the First Amendment to the U.S. Constitution, as applied to the states by the Fourteenth Amendment, and 42 U.S.C. § 1983, because there is no reason to believe that the bracelets will cause a material and substantial disruption to the school day or otherwise fall into one of the narrow categories of student speech that can be regulated by the school, including language that is lewd and indecent.

Count II: First Amendment to the United States Constitution The Punishment of B.H. and K.M.

36. Defendant's suspension of B.H. and K.M. and their exclusion from extra-curricular activities is unconstitutional retaliation against Plaintiffs on account of their protected speech and therefore violates their rights under the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, and 42 U.S.C. § 1983.

Count III: First Amendment to the United States Constitution
District's Dress Code

37. Defendant's dress code is unconstitutionally vague and/or overbroad, both on its face and as applied to Plaintiffs, because it allows the principal to ban expressive clothing that the principal deems in "poor taste", without regard to whether that expression causes a material and substantial disruption to the school day or otherwise falls into one of the narrow categories of student speech that can be regulated by the school, including language that is lewd and indecent, and thus violates the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully request that this Court provide the following relief:

- (a) Declare that the Defendant's ban on the bracelets violates the Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution;

(b) Declare that the Defendant's disciplinary actions against Plaintiffs for wearing their bracelets violates the Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution;

(c) Declare that the Defendant's dress code policy is excessively vague and substantially overbroad, and thereby violates the First and Fourteenth Amendments to the United States Constitution;

(d) Enjoin the Defendant from any continuing punishment or sanction against Plaintiffs on account of their constitutionally protected speech, including:

(i) reinstating to Plaintiffs all privileges to which they were and may be entitled as if no disciplinary infraction had occurred;

(ii) expunging from Plaintiffs' school records all references to the incident in question and the suspensions resulting therefrom;

(e) Enjoin Defendant from enforcing the school dress code against students for wearing Keep A Breast Foundation bracelets that say "I ♥ Boobies! (Keep A Breast)";

(f) Award Plaintiffs' costs and attorney's fees pursuant to 42 U.S.C.

§ 1988; and

(g) Grant such other relief as this Court deems just and appropriate.

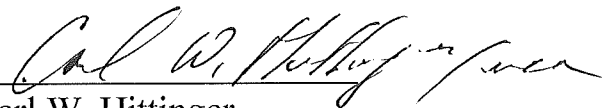
Respectfully submitted,

Date: November 15, 2010.



Mary Catherine Roper
Attorney ID 71107
M.M. Tack-Hooper
Attorney ID 307828
AMERICAN CIVIL LIBERTIES
FOUNDATION OF PENNSYLVANIA
P.O. Box 40008
Philadelphia, PA 19106
(T) 215.592.1513 ext. 116
(F) 215.592-1343
mroper@aclupa.org

Witold J. Walczak
Attorney ID 62976
AMERICAN CIVIL LIBERTIES
FOUNDATION OF PENNSYLVANIA
313 Atwood Street
Pittsburgh, PA 15213
Telephone: (412) 681-7736
vwalczak@aclupa.org



Carl W. Hittinger
Attorney ID 50250
Monique Myatt Galloway
Attorney ID 308039
DLA Piper LLP (US)
1650 Market Street, Suite 4900
Philadelphia, PA 19103
(T)(215) 656-2449
(F)(215) 606-2149
Carl.hittinger@dlapiper.com

Seth Kreimer
Attorney ID 26102
3400 Chestnut St.
Philadelphia Pa. 19104
215-898-7447
skreimer@law.upenn.edu

Attorneys for Plaintiffs

VERIFICATION

I, Jennifer Hawk, hereby affirm under the penalties of perjury as follows:


1. I am over the age of 18 and otherwise competent to testify.
2. The factual allegations in the foregoing Verified Complaint are, to the best of my knowledge and belief, true and accurate.

/s/  _____
Jennifer Hawk

November 12, 2010

VERIFICATION

I, B.H., am the daughter of Jennifer Hawk and a minor Plaintiff identified in this action. I hereby affirm under the penalties of perjury that the factual allegations in the foregoing Verified Complaint are, to the best of my knowledge and belief, true and accurate.

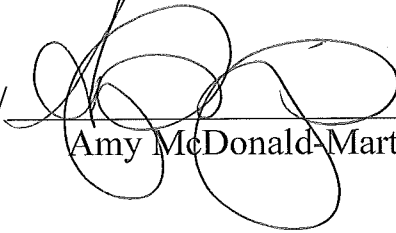
/s/  _____
B.H. (a minor)

November 12, 2010

VERIFICATION

I, Amy McDonald-Martinez, hereby affirm under the penalties of perjury as follows:

1. I am over the age of 18 and otherwise competent to testify.
2. The factual allegations in the foregoing Verified Complaint are, to the best of my knowledge and belief, true and accurate.

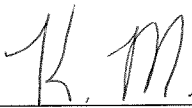
/s/ 

Amy McDonald-Martinez

November 12, 2010

VERIFICATION

I, K.M., am the daughter of Amy McDonald-Martinez and a minor Plaintiff identified in this action. I hereby affirm under the penalties of perjury that the factual allegations in the foregoing Verified Complaint are, to the best of my knowledge and belief, true and accurate.

/s/ 

K.M. (a minor)

November 12, 2010