

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

12 MAY 18 AM 10:01

ROBERT W. TAGOVICH
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

J.A., a minor child by her next friend, mother,
and legal guardian, Julie Andrzejewski,)
)
Plaintiff,)
)
v.) No.
)
SUPERINTENDENT, FORT WAYNE)
COMMUNITY SCHOOLS, in her official)
capacity,)
)
Defendant.)

1:12 CV 155 JTM

Complaint for Declaratory and Injunctive Relief

Introduction

1. J.A. is sophomore at one of the high schools operated by the Fort Wayne Community Schools. For a number of months she has worn a bracelet inscribed with the message "i ♥ boobies!" on it that her mother purchased for her. The bracelet contains the website address of the Keep a Breast Foundation, a not-for-profit organization that is dedicated to increasing breast cancer awareness among young persons and to assisting in the eradication of breast cancer. Proceeds from the sale of the bracelet went to the fight against breast cancer. This is an issue of extreme importance to J.A. as her mother is a breast cancer survivor and J.A. wishes to do all that is possible to fight against breast cancer and to honor and support her mother. However, after wearing the bracelet for a number of months the bracelet was confiscated by school personnel, although it was later returned. She has been informed by school personnel that she is not allowed to wear the bracelet to school. J.A. has a right, protected by the First Amendment of the United States Constitution, to wear the bracelet and appropriate injunctive and declaratory relief is therefore sought.

Jurisdiction, venue, and cause of action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
3. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201, 2202.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1337.
5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

6. J.A. is a minor child who attends one of the high schools that are part of the Fort Wayne Community Schools. Her mother, Julie Andrzejewski, brings this action as her next friend.
7. The Superintendent of the Fort Wayne Community Schools is the chief executive officer of the school corporation and is sued in her official capacity pursuant to Fed. R. Civ. P. 17(d).

Facts

8. J.A. is a sophomore at one of the high schools within the Fort Wayne Community Schools.
9. In December of 2011, while at a local mall with her mother, she and her mother purchased a silicone bracelet with the phrase on it “i ♥ boobies!” along with a parenthetical (Keep A Breast). The inside of the bracelet contains “keep-a-breast.org,” which is the website address of the Keep A Breast Foundation.
10. The website indicates that the Keep A Breast Foundation is a non-profit organization that has the mission “to help eradicate breast cancer by exposing young people to methods of prevention, early detection and support. Through art events, educational programs and fundraising efforts, we seek to increase breast cancer awareness among young people so they are

better equipped to make choices and develop habits that will benefit their long-term health and well-being.” www.keep-a-breast.org/about/.

11. The website further notes that the organization’s “I Love Boobies” Campaign is a unique national campaign that develops a new approach and positive style of communication about breast cancer. The campaign is meant to encourage young people to target their breast health. The . . . bracelets act as an awareness-raising tool, allowing young people to engage and start talking about a subject that is scary and taboo and making it positive and upbeat.” www.keep-a-breast.org/programs/i-love-boobies/.

12. It is J.A.’s understanding that the bracelet is designed to assist in the fight against breast cancer. A portion of the proceeds from the purchase of the bracelet went to organizations fighting breast cancer.

13. This is an extremely important issue for J.A. inasmuch as her mother, with whom she lives, is a breast cancer survivor. She believes that the bracelet serves an important function of assisting with breast cancer health with financial support. She also believes that this is a tangible way of demonstrating her continued commitment to her mother.

14. Accordingly, beginning in December of 2011, she began to wear the bracelet to school.

15. She therefore wishes to wear the bracelet for expressive purposes – to inform persons that she wishes to fight breast cancer, as well as to honor her mother.

16. She wore this bracelet for a number of months at school.

17. Many other students at her school wore bracelets with the identical message.

18. J.A. is not aware that students reacted inappropriately or caused disruptions of the educational environment as the result of wearing the bracelets to school.

19. J.A.’s wearing of the bracelet did not cause any disruption or interference with the

educational functions of the high school.

20. Nevertheless, in March of 2012, after wearing the bracelet to the high school for a number of months, an assistant principal at the high school made her remove the bracelet and confiscated it, although it was later returned to her.

21. Her mother went to the school and spoke to the assistant principal and principal.

22. However, J.A. has been told that she can no longer wear the bracelet.

23. The school has prohibited students from wearing the bracelets. In fact, teachers have cut them off the wrists of students wearing them.

24. J.A. is aware that, according to the Fort Wayne Community Schools Handbook students are not allowed to:

- wear “inappropriate clothing or other attire that may disrupt the classroom” including “other clothing with slogans, sayings, or messages that are solicitous, profane, obscene.”
- have “any written material or pictures that convey an offensive, obscene, threatening, demeaning or sexually suggestive message.”
- engage in any “action that disrupts or interferes with educational activities or the school environment.”

25. The bracelet, and its message did not, and will not, create disruption or interfere with the educational environment. Nor is the message offensive, obscene, threatening, demeaning or inappropriately sexually suggestive. The bracelet promotes breast cancer awareness, which she believes is an important cause, and that is the reason she wants to wear it as well to honor and support her mother.

26. J.A. would like to be able to wear the bracelet to school but reasonably believes that if she does so she will be subject to discipline by the school.

27. J.A. will be a junior in the same high school for the 2012-2013 school year.

28. At all times defendant was acting under color of state law and continues to act under

color of state law.

29. Plaintiff is being caused irreparable harm for which there is no adequate remedy at law.

Legal claim

30. The actions of the defendant in denying J.A. the ability and right to wear the "i ♥ boobies!" bracelet violates the freedom of speech and expression which J.A. possesses by virtue of the First Amendment to the United States Constitution and is therefore unconstitutional.

Relief requested

WHEREFORE, plaintiff requests that this Court:

- a. Accept jurisdiction of this case and set it for hearing.
- b. Declare that defendant has violated the First Amendment as specified above.
- c. Enter a preliminary injunction, later to be made permanent, enjoining defendant from preventing J.A. from wearing the "i ♥ boobies!" bracelet to school and enjoining defendant from disciplining J.A. in any way for wearing the bracelet.
- d. Award plaintiff her costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
- e. Award all other proper relief.

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Attorney for Plaintiff

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

J.A.

DEFENDANTS

Superintendent, Fort Wayne Community Schools

(b) County of Residence of First Listed Plaintiff Allen
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Kenneth J. Falk, ACLU of Indiana, 1031 E. Washington St., Indianapolis, IN
46202 317/635-4059 ext. 104

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | X 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/>	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury		PERSONAL PROPERTY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other		<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark		<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights		Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
							<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions			

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|--|---|--|---|--|---|--|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|--|---|--|---|--|---|--|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC s. 1983Brief description of cause:
Refusal of the school corporation to allow the minor plaintiff to wear a breast cancer awareness bracelet to school violates the First Amendment.**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ injunction CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Miller

DOCKET NUMBER 4:12-cv-00004 RLM-APR

DATE

SIGNATURE OF ATTORNEY OF RECORD

May 15, 2012

Kenneth J. Falk

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFFP _____ JUDGE _____ MAG. JUDGE *INN 100 132*