

EN BANC

[G.R. No. 168338, February 15, 2008]

FRANCISCO CHAVEZ, PETITIONER, VS. RAUL M. GONZALES, IN HIS CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF JUSTICE; AND NATIONAL TELECOMMUNICATIONS COMMISSION (NTC), RESPONDENTS.

DECISION

PUNO, C.J.:

A. Precis

In this jurisdiction, it is established that freedom of the press is crucial and so inextricably woven into the right to free speech and free expression, that any attempt to restrict it must be met with an examination so critical that only a danger that is clear and present would be allowed to curtail it.

Indeed, we have not wavered in the duty to uphold this cherished freedom. We have struck down laws and issuances meant to curtail this right, as in *Adiong v. COMELEC*,^[1] *Burgos v. Chief of Staff*,^[2] *Social Weather Stations v. COMELEC*,^[3] and *Bayan v. Executive Secretary Ermita*.^[4] When on its face, it is clear that a governmental act is nothing more than a naked means to prevent the free exercise of speech, it must be nullified.

B. The Facts

1. The case originates from events that occurred a year after the 2004 national and local elections. On June 5, 2005, Press Secretary Ignacio Bunye told reporters that the opposition was planning to destabilize the administration by releasing an audiotape of a mobile phone conversation allegedly between the President of the Philippines, Gloria Macapagal Arroyo, and a high-ranking official of the Commission on Elections (COMELEC). The conversation was audiotaped allegedly through wire-tapping.^[5] Later, in a *Malacañang* press briefing, Secretary Bunye produced two versions of the tape, one supposedly the complete version, and the other, a spliced, "doctored" or altered version, which would suggest that the President had instructed the COMELEC official to manipulate the election results in the President's favor.^[6] It seems that Secretary Bunye admitted that the voice was that of President Arroyo, but subsequently made a retraction.^[7]
2. On June 7, 2005, former counsel of deposed President Joseph Estrada, Atty. Alan Pagua, subsequently released an alleged authentic tape recording of the wiretap. Included in the tapes were purported conversations of the President, the First Gentleman Jose Miguel Arroyo, COMELEC Commissioner Garcillano,

and the late Senator Barbers.^[8]

3. On June 8, 2005, respondent Department of Justice (DOJ) Secretary Raul Gonzales warned reporters that those who had copies of the compact disc (CD) and those broadcasting or publishing its contents could be held liable under the Anti-Wiretapping Act. These persons included Secretary Bunye and Atty. Pagua. He also stated that persons possessing or airing said tapes were committing a continuing offense, subject to arrest by anybody who had personal knowledge if the crime was committed or was being committed in their presence.^[9]
4. On June 9, 2005, in another press briefing, Secretary Gonzales ordered the National Bureau of Investigation (NBI) to go after media organizations "*found to have caused the spread, the playing and the printing of the contents of a tape*" of an alleged wiretapped conversation involving the President about fixing votes in the 2004 national elections. Gonzales said that he was going to start with **Inq7.net**, a joint venture between the **Philippine Daily Inquirer and GMA7** television network, because by the very nature of the Internet medium, it was able to disseminate the contents of the tape more widely. He then expressed his intention of inviting the editors and managers of Inq7.net and GMA7 to a probe, and supposedly declared, "I [have] asked the NBI to conduct a tactical interrogation of all concerned."^[10]
5. On June 11, 2005, the NTC issued this press release:^[11]

NTC GIVES FAIR WARNING TO RADIO AND TELEVISION OWNERS/OPERATORS TO OBSERVE ANTI-WIRETAPPING LAW AND PERTINENT CIRCULARS ON PROGRAM STANDARDS

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Taking into consideration the country's unusual situation, and in order not to unnecessarily aggravate the same, the NTC **warns** all radio stations and television network owners/operators that the conditions of the authorization and permits issued to them by Government like the Provisional Authority and/or Certificate of Authority explicitly provides that said companies shall not use [their] stations for the broadcasting or telecasting of false information or willful misrepresentation. Relative thereto, it has come to the attention of the [NTC] that certain personalities are in possession of alleged taped conversations which they claim involve the President of the Philippines and a Commissioner of the COMELEC regarding supposed violation of election laws.

These personalities have admitted that the taped conversations are products of illegal wiretapping operations.

Considering that these taped conversations have not been duly authenticated nor could it be said at this time that the tapes contain an accurate or truthful representation of what was recorded therein, it is the position of the [NTC] that the continuous airing or broadcast of the said taped conversations by radio and television stations is a continuing violation of the Anti-Wiretapping Law and the conditions of the Provisional Authority and/or Certificate of

Authority issued to these radio and television stations. It has been subsequently established that the said tapes are false and/or fraudulent after a prosecution or appropriate investigation, the concerned radio and television companies are hereby **warned that their broadcast/airing of such false information and/or willful misrepresentation shall be just cause for the suspension, revocation and/or cancellation of the licenses or authorizations issued to the said companies.**

In addition to the above, the [NTC] reiterates the pertinent NTC circulars on program standards to be observed by radio and television stations. NTC Memorandum Circular 111-12-85 explicitly states, among others, that "all radio broadcasting and television stations shall, during any broadcast or telecast, cut off from the air the speech, play, act or scene or other matters being broadcast or telecast the tendency thereof is to disseminate false information or such other willful misrepresentation, or to propose and/or incite treason, rebellion or sedition." The foregoing directive had been reiterated by NTC Memorandum Circular No. 22-89, which, in addition thereto, prohibited radio, broadcasting and television stations from using their stations to broadcast or telecast any speech, language or scene disseminating false information or willful misrepresentation, or inciting, encouraging or assisting in subversive or treasonable acts.

The [NTC] will not hesitate, after observing the requirements of due process, to apply with full force the provisions of said Circulars and their accompanying sanctions on erring radio and television stations and their owners/operators.

6. On June 14, 2005, NTC held a **dialogue** with the Board of Directors of the *Kapisanan ng mga Brodkaster sa Pilipinas (KBP)*. NTC allegedly assured the KBP that the press release did not violate the constitutional freedom of speech, of expression, and of the press, and the right to information. Accordingly, NTC and KBP issued a **Joint Press Statement** which states, among others, that:
- [12]

- § NTC respects and will not hinder freedom of the press and the right to information on matters of public concern. KBP & its members have always been committed to the exercise of press freedom with high sense of responsibility and discerning judgment of fairness and honesty.
- § NTC did not issue any MC [Memorandum Circular] or Order constituting a restraint of press freedom or censorship. The NTC further denies and does not intend to limit or restrict the interview of members of the opposition or free expression of views.
- § What is being asked by NTC is that the exercise of press freedom [be] done responsibly.
- § KBP has program standards that KBP members will observe in the treatment of news and public affairs programs. These include verification of sources, non-airing of materials that would constitute inciting to sedition and/or rebellion.

- § The KBP Codes also require that no false statement or willful misrepresentation is made in the treatment of news or commentaries.
- § The supposed wiretapped tapes should be treated with sensitivity and handled responsibly giving due consideration to the process being undertaken to verify and validate the authenticity and actual content of the same.”

C. The Petition

Petitioner Chavez filed a petition under Rule 65 of the Rules of Court against respondents Secretary Gonzales and the NTC, “praying for the issuance of the writs of *certiorari* and prohibition, as extraordinary legal remedies, to annul void proceedings, and to prevent the unlawful, unconstitutional and oppressive exercise of authority by the respondents.”^[13]

Alleging that the acts of respondents are violations of the freedom on expression and of the press, and the right of the people to information on matters of public concern,^[14] petitioner specifically asked this Court:

[F]or [the] nullification of acts, issuances, and orders of respondents committed or made since June 6, 2005 until the present that curtail the public’s rights to freedom of expression and of the press, and to information on matters of public concern specifically in relation to information regarding the controversial taped conversion of President Arroyo and for prohibition of the further commission of such acts, and making of such issuances, and orders by respondents.^[15]

Respondents^[16] denied that the acts transgress the Constitution, and questioned petitioner’s legal standing to file the petition. Among the arguments they raised as to the validity of the “fair warning” issued by respondent NTC, is that broadcast media enjoy lesser constitutional guarantees compared to print media, and the warning was issued pursuant to the NTC’s mandate to regulate the telecommunications industry.^[17] It was also stressed that “most of the [television] and radio stations continue, even to this date, to air the tapes, but of late within the parameters agreed upon between the NTC and KBP.”^[18]

D. The Procedural Threshold: Legal Standing

To be sure, the circumstances of this case make the constitutional challenge peculiar. Petitioner, who is not a member of the broadcast media, prays that we strike down the acts and statements made by respondents as violations of the right to free speech, free expression and a free press. For another, the recipients of the press statements have not come forward—neither intervening nor joining petitioner in this action. Indeed, as a group, they issued a joint statement with respondent NTC that does not complain about restraints on freedom of the press.

It would seem, then, that petitioner has not met the requisite legal standing, having failed to allege “such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the Court so largely depends for illumination of difficult constitutional

questions.”^[19]

But as early as half a century ago, we have already held that where serious constitutional questions are involved, “the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside if we must, technicalities of procedure.”^[20] Subsequently, this Court has repeatedly and consistently refused to wield procedural barriers as impediments to its addressing and resolving serious legal questions that greatly impact on public interest,^[21] in keeping with the Court's duty under the 1987 Constitution to determine whether or not other branches of government have kept themselves within the limits of the Constitution and the laws and that they have not abused the discretion given to them.

Thus, in line with the liberal policy of this Court on *locus standi* when a case involves an issue of overarching significance to our society,^[22] we therefore brush aside technicalities of procedure and take cognizance of this petition,^[23] seeing as it involves a challenge to the most exalted of all the civil rights, the freedom of expression. **The petition raises other issues like the extent of the right to information of the public. It is fundamental, however, that we need not address all issues but only the most decisive one which in the case at bar is whether the acts of the respondents abridge freedom of speech and of the press.**

But aside from the primordial issue of determining whether free speech and freedom of the press have been infringed, the case at bar also gives this Court the opportunity: (1) to distill the essence of freedom of speech and of the press now beclouded by the vagaries of motherhood statements; (2) to clarify the types of speeches and their differing restraints allowed by law; (3) to discuss the core concepts of prior restraint, content-neutral and content-based regulations and their constitutional standard of review; (4) to examine the historical difference in the treatment of restraints between print and broadcast media and stress the standard of review governing both; and (5) to call attention to the ongoing blurring of the lines of distinction between print and broadcast media.

E. Re-examining The law on freedom of speech, of expression and of the press

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.^[24]

Freedom of expression has gained recognition as a fundamental principle of every democratic government, and given a preferred right that stands on a higher level than substantive economic freedom or other liberties. The cognate rights codified by Article III, Section 4 of the Constitution, copied almost verbatim from the First Amendment of the U.S. Bill of Rights,^[25] were considered the necessary consequence of republican institutions and the complement of free speech.^[26] This preferred status of free speech has also been codified at the international level, its recognition now enshrined in international law as a customary norm that binds all nations.^[27]