

Republic of the Philippines
Court of Appeals
Manila

PHILIPPINE PRESS INSTITUTE,
NATIONAL UNION OF JOURNALISTS
OF THE PHILIPPINES, CENTER FOR
MEDIA FREEDOM AND
RESPONSIBILITY, PHILIPPINE CENTER
FOR INVESTIGATIVE JOURNALISM,
NEWSBREAK, PROBE PRODUCTIONS,
CENTER FOR COMMUNITY
JOURNALISM AND DEVELOPMENT,
UP COLLEGE OF MASS
COMMUNICATIONS, ABS-CBN NEWS
AND PUBLIC AFFAIRS, FERNANDO A.
ABOGO, JR.,DANILO A. ARAO,
RICKY CARANDANG, ARNOLD CLAVIO,
SHEILA CORONEL, GEORGINA R.
ENCANTO, ANNA LIZA EUGENIO,
FEDERICO E. FERNANDEZ, GLENDA
GLORIA, ANA PATRICIA HONTIVEROS-
PAGKALINAWAN, RODNEY JALECO,
MARITNESS JIMENEZ, JAILEEN F.
JIMENO, ED LINGAO, JADE LOPEZ,
JO ANN Q. MAGLIPON, MALOU
MANGAHAS, SYLVIA MAYUGA,
TINA MONZON-PALMA, HENRY
OMAGA-DIAZ, ROWENA PARAAN,
JOSE PAVIA, MARIA A. RESSA, LYN
RESURRECCION, MARIA CRISTINA
V. RODRIQUEZ, JOSELITO SARACHO,
DAVID JUDE STA. ANA, LOURDES E.
SIMBULAN, JESSICA A. SOHO,
MARIA LOURDES TALOSIG, LUIS V.
TEODORO, JOSE TORRES, NESSA
VALDELLON, ANTONIO T.
VELASQUEZ, ROSARIO S. VILLA,
CLAUDE VITUG, MARITES VITUG,

Petitioners,

- versus -

CA G.R. SP No.
For: *Certiorari*, **Prohibition**,
Temporary Restraining Order
and **Preliminary Injunction**

EXECUTIVE SECRETARY EDUARDO R.
ERMITA, JUSTICE SECRETARY RAUL
GONZALEZ, DIRECTOR GENERAL
ARTURO LOMIBAO AND NATIONAL
TELECOMMUNICATIONS COMMISSION
CHAIRMAN RONALD OLIVAR SOLIS,

Respondents.

x ----- x

P E T I T I O N

COME NOW PETITIONERS, by counsel, to this Honorable Court respectfully state that:

Opening Statement

In this proceeding, petitioners ask this Honorable Court:

- *To prohibit the Executive Secretary, the Secretary of Justice, the Director General of the Philippine National Police, the Chairman of the National Telecommunications Commission and their officers, agents or other persons acting under their authority or supervision, from stopping, prohibiting or censoring the publication or airing of speech based upon its message, subject-matter, or political color or content.*
Petitioners respectfully submit that only a court, with its accompanying due process safeguards, may impose content-based prior restraints, when the grounds therefor are duly proved.
- *To prohibit the Executive Secretary, the PNP, the DOJ, and the NTC and their officers, agents or other persons acting under their authority or supervision, from imposing any form of content-based prior restraint on the press, be it formal or informal, direct or in the form of disguised or thinly veiled threats of administrative sanction or criminal prosecution.*

Petitioners respectfully submit that the threat of official intervention--in the form of administrative sanction or criminal prosecution-- is just as damaging to a free press as the fact of it.

Petitioners further respectfully ask this Honorable Court:

- *To annul and set aside the issuances of the NTC that prohibit the press from airing or broadcasting news and commentary that, in the NTC's sole and unfettered discretion, are "subversive," which "tend" to propose or incite treason, rebellion or sedition, or which constitute "rebellious/terrorist propaganda, comments, information, interviews and other similar or related materials."*

Petitioners respectfully submit that the NTC does not have any lawful power, authority or jurisdiction to prohibit these things, much less to judge what is subversive (when the crime of subversion has long been repealed), what merely "tends" to propose or incite sedition or rebellion (whatever that means to the NTC), and what constitutes "rebellious/terrorist propaganda, comments and the like (whatever that means to the NTC).

The dangers of unreviewable administrative actions imposing prior restraints on the press are as ancient as dictators. Petitioners seek the intervention of this Honorable Court to stop the use of the strong arm of the law to exclude speech protected by the Constitution.

I. Nature of Petition

- I.1 This is a petition for *certiorari* and prohibition with application of Temporary Restraining Order and Preliminary Injunction under Rules 58, 63 and 65 of the Rules of Court.
- I.2 Its purposes are:
- (a) To prohibit:
- (i) The Executive Secretary, the Secretary of Justice, the Director General of the Philippine National Police, the Chairman of the National Telecommunications Commission and their officers, agents or other persons acting under their authority or supervision, from stopping or prohibiting or censoring the publication or airing of news and commentary based upon its contents;
- (ii) Respondents, either personally or through any of their officers, agents or other persons acting under their authority or supervision, from:
- (i) Enforcing, implementing, and/or carrying out the above issuances and/or orders and instructions given pursuant to the above issuances;
- (ii) Issuing, enforcing, implementing or carrying out any guidelines, orders, instructions and the like that similarly infringe on the constitutional rights invoked herein;
- (iii) Threatening, warning or intimidating the press, by public statements and other means, that they may

be administratively sanctioned and/or criminally prosecuted for sedition, inciting to sedition, rebellion, subversion, if they broadcast or telecast any speech "if the tendency thereof is to propose and/or incite treason, rebellion or sedition...xxx" or on similar grounds;

- (iv) Prohibiting, in advance, the airing of so-called "rebellious/terrorist propaganda, comments, interviews, information and other similar and or related materials..." or any "broadcasting or telecasting...[that will] incite, encourage or assist in subversive...acts" or on similar grounds;
- (v) Or from practicing any other form of informal censorship, prior restraint and/or acts that are *ultra vires* or exceed their lawful power, authority and jurisdiction.

(b) To annul and set aside the following issuances of the respondent National Telecommunications Commission (NTC), or such portions thereof that violate the Constitution and/or exceed the lawful jurisdiction of the NTC:


- i) NTC Memorandum Circular No. 01-01-01 dated 17 January 2001;
- ii) NTC Memorandum Circular No. 11-12-85 (Subject: Revision of Memorandum Circular No. 3-04-85 Re: Program Standards); and
- iii) NTC Memorandum Circular No. 22-89 dated 05 December 1989; and

iv) NTC Memorandum Circular No. 01-03-2006 dated 03 March 2006.

Certified true copies of these memorandum circulars are attached hereto as Annexes "A", "B", "C" and "D" as an integral part of this Petition.

II. Parties

II.1 The following petitioners are duly incorporated non-governmental organizations, composed of journalists:

- a) **Philippine Press Institute (PPI)**, is a non-stock, non-profit organization composed of newspaper and magazine publishers;
- b) **National Union of Journalists of the Philippines (NUJP)**, is a guild of Filipino media practitioners and is the Philippine affiliate of the International Federation of Journalists, the world's largest organization of journalists;
- c) **Center for Media Freedom and Responsibility (CMFR)**, is a private non-stock, non-profit organization which aims to uphold press freedom;
- d) **Philippine Center for Investigative Journalism (PCIJ)**, is a multi-awarded non-profit media agency specializing in investigative reporting, training, research and multi-media productions;
- e) **Newsbreak** is a news and current affairs magazine, whose writers have won awards for journalism;
- f)  **Probe Productions** is a Filipino-owned, independent television production company;

- g) **Center for Community Journalism and Development (CCJD)**, is a non-stock, non-profit organization for journalists working with communities, citizens and institutions for social change.
- II.2 Petitioner **UP College of Mass Communications** is a college within the University of the Philippines system that teaches journalism and broadcast communications.
- II.3 Petitioner **ABS-CBN News and Current Affairs Group** is a division of ABS-CBN Broadcasting Corporation.
- II.4 Individual petitioners are highly respected/multi-awarded journalists from print and broadcast media and from the academe:
- a) **Fernando A. Abogo, Jr.** is the News Editor of ABS-CBN Channel 2;
 - b) **Danilo A. Arao** is a member of the faculty of the UP College of Mass Communications;
 - c) **Ricky Carandang** is a broadcast journalist, associated with the ABS-CBN News Channel, ABS-CBN Broadcasting Network;
 - d) **Arnold Clavio** is a television and radio news anchor, associated with GMA-7 and DZBB;
 - e) **Shiela Coronel** is the Executive Director of the Philippine Center for Investigative Journalism;
 - f) **Georgina R. Encanto** is a member of the faculty of the UP College of Mass Communications, and was formerly its dean;
 - g) **Anna Liza Eugenio** is the Senior News Editor of ABS-CBN Channel 2;
 - h) **Federico E. Fernandez** is the Executive Producer of Primetime News airing over ABC-5;
 - i) **Glenda Gloria** is the Managing Editor of Newsbreak;

- j) **Ana Patricia Hontiveros-Pagkalinawan** is a current affairs host and news anchor of the ABS-CBN News Channel (ANC), ABS-CBN Broadcasting Network;
- k) **Rodney Jaleco** is the Senior News Editor of ABS-CBN Channel 2;
- l) **Maritess Jimenez** is the head, News Desk, of GMA-7;
- m) **Jaileen F. Jimeno** is the Program Unit Manager of *Debate*, *Imbestigador* and *Lovely Day* aired over GMA-7;
- n) **Ed Lingao** is the Vice President for Operations of ABC-5;
- o) **Jade Lopez** is Manager for Operations, News and Public Affairs of ABC-5;
- p) **Jo Ann Maglipon** is the Editor-in-Chief of Yes! Magazine and Hi! Magazine and a Member of the Board of Newsbreak;
- q) **Malou Mangahas** is a member of the Board of Editors of the Philippine Center for Investigative Journalism, the Training Consultant to the Public Affairs Department of GMA Network Center and Editorial Consultant of *Debate*;
- r) **Sylvia Mayuga** is a freelance journalist;
- s) **Tina Monzon-Palma** is a news anchor and public affairs host of the ABS-CBN News Channel (ANC), ABS-CBN Broadcasting Network;
- t) **Henry Omega-Diaz** is a news anchor associated with ABS-CBN Channel 2;
- u) **Rowena Paraan** is the Associate Editor of Philippine Graphic;
- v) **Jose Pavia** is the Executive Director of the Philippine Press Institute;
- w) **Maria A. Ressa** is the Vice President for News and Public Affairs, ABS-CBN Broadcasting Network;
- x) **Lyn Resurreccion** is the Section Editor of Business Mirror;
- y) **Maria Cristina V. Rodriguez** is a freelance journalist;

- z) **Joselito Saracho** is the Head of News Production at ABS-CBN News Channel, ABS-CBN Broadcasting Network;
- aa) **David Jude Sta. Ana** is the Head of Features, ABS-CBN News, Channel 2;
- bb) **Lourdes E. Simbulan** is a member of the faculty of the UP College of Mass Communications;
- cc) **Jessica A. Soho** is the Vice President for News/News Director at GMA-7;
- dd) **Maria Lourdes Talosig** is Associate Producer-News Desk of GMA-7;
- ee) **Luis V. Teodoro** is a columnist at Business Mirror and was former dean of the UP College of Mass Communications;
- ff) **Jose Torres** is associated with iGMA;
- gg) **Nessa Valdellon** is the Vice President for Public Affairs of GMA-7;
- hh) **Antonio T. Velasquez** is a Senior Correspondent of ABS-CBN News;
- ii) **Rosario S. Villa** is the Head of News Gathering of ABS-CBN Channel 2;
- jj) **Claude Vitug** is the Senior Editor of ABS-CBN Channel 2;
- kk) **Marites Vitug** is the Editor-in-Chief of Newsbreak.

Petitioners may all be served with notices, resolutions and orders through counsel at 2nd Floor, Eastside Building, 77 Malakas Street, Baranggay Pinyahan, Diliman, Quezon City.

II.5 Respondent **Eduardo R. Ermita** is the Executive Secretary and is being sued in such capacity; he may be served with summons, processes, notices and other court papers at his official station at the New Executive Building, *Malacanan* Palace, Manila.

- II.6 Respondent **Raul Gonzalez** is the Secretary of the Department of Justice and is being sued in such capacity. He may be served with summons, processes, notices and the like at his official station at the Department of Justice, Padre Faura, Manila.
- II.7 Respondent **Ronald Olivar Solis** is the Chairman of the National Telecommunications Commission and is being sued in such capacity. He may be served with summons, processes, notices and the like at his official station at the National Telecommunications Commission, NTC Building, BIR Road, East Triangle, Diliman, Quezon City.
- II.8 Respondent **Arturo Lomibao** is the Director General of the Philippine National Police and is being sued in such capacity. He may be served with summons, processes, notices and the like at his official station at PNP Headquarters, Camp Crame, Quezon City.

III. Statement of Material Dates

III.1 The questioned NTC memorandum circulars were issued on the following dates:

- | | | |
|----|-------------------|-------------------------|
| a) | NTC MC 01-01-01 | 17 January 2001 |
| b) | NTC MC 11-12-85 | no specific date (1985) |
| c) | NTC MC 22-89 | 05 December 1989 |
| d) | NTC MC 01-03-2006 | 03 March 2006 |

3.02 While the first three questioned circulars were issued some time ago, they have only recently been invoked by the respondent NTC Chairman, who has in the last two weeks repeatedly reminded the press, through public announcements that the NTC will strictly enforce these circulars. The last questioned circular was issued only a few days ago. Certified true copies of

these circulars are attached to this Petition as **Annex "A", "B", "C" and "D"** respectively. The other questioned actions of the respondents all took place within the last two weeks.

3.03 Petitioners were able to secure certified true copies of the above-mentioned circulars only on 06 March 2006.

IV. Facts

IV.1 On 24 February 2006 the President of the Philippines declared a state of national emergency, citing a *“tactical alliance”* and *“concerted and systematic conspiracy”* between elements in the political opposition, *“authoritarians of the extreme left, represented by the NDF-CPP-NPA, and the extreme right, represented by military adventurists,”* whose claims *“have been recklessly magnified by certain elements of the national media.”*¹ After finding that the activities of the above-mentioned conspirators, and their *“consequences, ramifications and collateral effects constitute a clear and present danger to the safety and integrity of the Philippine State and of the Filipino people,”* the President invoked her powers as President and commander-in-chief, and ordered the Armed Forces of the Philippines *“...to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well as any act of insurrection or rebellion and to enforce obedience to all the laws and to all decrees, orders, and regulations promulgated by me personally or upon my direction...xxx”*²

IV.2 On the same date, President Arroyo issued General Order No. 5, reiterating the provisions of Proclamation No. 1017, but adding the phrase *“terrorism”* and directing the Philippine National Police, in

¹ First and Third Whereas Clauses, Proclamation No. 1017, 24 February 2006

² *Id.*

addition to the AFP, *“to immediately carry out the necessary and appropriate actions to suppress and prevent acts of terrorism and lawless violence.”*³

IV.3 Early in the morning of 25 February 2006 the Philippine National Police raided both the office and the printing press of the Daily Tribune, a national newspaper. As publicly admitted by PNP Chief Lomibao when he appeared for the budget hearing before the Senate of the Philippines on 01 March 2006, the raid was based on General Order No. 5. As far as Petitioners are aware, no search warrant was issued by a civilian judge for the raid.⁴

IV.4 Sometime in the day of 25 February 2006 PNP Chief Lomibao called a press conference where he announced to the throng of reporters and journalists present that:

"Today we are treading on abnormal times as seen in unfolding events during the week, the attempt by some military adventurists to join forces with communist terrorists and other personalities with proven agenda to grab power.

The military has effectively crushed the plot but some people responsible for it are still out there. As a consequence, the President of the Republic has declared a state of national emergency.

To contain this clear and present threat, General Order No. 5 empowers the Armed Forces of the Philippines and the Philippine National Police to immediately carry out necessary and appropriate actions and measures to suppress and prevent acts of terrorism and lawless violence.

With this clear mandate from General Order No. 5 we will carry out appropriate action and security measures to prevent an escalation of the situation. This if in our judgment anybody, group or business establishment will contribute to the exacerbation of the national emergency we will carry out what is reasonably

³ Last two paragraphs, G.O. No. 5.

⁴ TSN, Committee of the Whole (Senate Resolution No. 47-The General Appropriations for FY 2006), March 1, 2006, 3:02 pm, page 6.

necessary and appropriate to suppress and prevent it pursuant to General Order No. 5.

We believe that our actions along this line are not whimsical and arbitrary. Today we have carried out the following: temporary takeover of Daily Tribune. Reports indicate that Daily Tribune has been engaged in a concerted effort and systematic conspiracy with known elements out to bring down a duly constituted government since May 2004, which renders it a clear and present danger to the country and its people.

Until yesterday when a civilian-backed military uprising was crushed by authorities, the Daily Tribune was deeply engaged in continuing propagation of disinformation and publication of seditious and scurrilous remarks or articles.

The press conference was broadcast over the radio and telecast nationwide. During the open forum that followed the reading of his prepared statement, Director General Lomibao had the following exchange with the press:

Q: Your order said that the Daily Tribune was engaged in conspiracy. What do you intend to do at the Daily Tribune?

A: We have temporarily taken over the Daily Tribune and we will recommend that the government will direct operations of the Daily Tribune. At least they will review whatever publications that the Daily Tribune newspaper is publishing. We are not closing it. We are just going to review. Recommend to government a review of all the articles that will be published.

xxx

Q: Aside from Tribune, are there other newspapers targeted for takeover?

A: Well, it will depend if they do not follow the standards and the standards are if they will contribute to instability in government. If they do not subscribe to what is in General Order No. 5 and Presidential Proclamation 1017. That will be left to the judgment of the Philippine National Police and other agencies that are empowered to implement the GO.

xxx

Q: Aren't we supposed to be a free country? Are we under martial law?

A: I said we find shelter in General Order No. 5. So if you go back to General Order No. 5 the reason of the issuance is contained there and if I cite some of it, actions that hurt the Philippine State by obstructing governance including hindering the growth of the economy and sabotaging the people's confidence in government and their faith in the future of this country. These are the standards that were set.

xxx

Q: Ibig sabihin lahat ng lumalabas sa media strictly monitored ng PNP?

A: As I said we have standards. If they do not conform to the standards then we will evaluate and if in our judgment they do not subscribe to the standards then we will recommend.

By the way, we have taken over the Daily Tribune. We have temporarily taken over the Daily Tribune. The operations will continue but as I've said, we will review the content and the substance of the intended publication until the national emergency will be lifted or until the courts so decide.

xxx

Q: Radio and TV stations also threatened to be taken over?

A: If they conform to the standards, if they contribute to an atmosphere of instability, then we will see. This is a continuing evaluation.

The following day, the headlines of the Philippine Daily Inquirer announced **"PNP CHIEF WARNS MEDIA (ORGANIZATIONS FACE TAKEOVER IF THEY DON'T FOLLOW 'GOV'T STANDARDS')."** A copy of the same dated 26 February 2006, is attached hereto as **Annex E**. In the days that followed, General Lomibao repeated these statements to the national media, and made thinly veiled threats of administrative sanctions, temporary

takeover, closure, and/or criminal prosecution if the national media were to publish or air reports that “contribute” to “national instability.”

IV.5 Respondent Secretary Gonzalez, for his part, on 27 February 2006 issued the memorandum quoted below:

(DOJ letterhead)
27 February 2006

MEMORANDUM

To: REGIONAL DIRECTOR-NBI
Subject: Implementation of Proclamation 1017

You are hereby directed to immediately monitor the following:

1. Newspapers Panay News and Informer, and take note of news stories and commentaries/editorials, which may be considered as inciting readers to sedition.
2. All radio stations in connection with commentaries and news reports in violation of the guidelines __ (set?) by the KBP as well as those which intend to incite people to sedition.

A day to day report is necessary.

For your immediate action and implementation.

(Sgd.) Secretary Raul Gonzalez

A copy of the Memorandum is attached as **Annex F**; see also a copy of headline articles appearing in the Sun Star Cebu issue dated 03 March 2006, which is attached hereto as **Annex F-1**.

IV.6 Respondent Solis, for his part, publicly "reminded" the broadcast media that the NTC would strictly enforce the following NTC memorandum circulars:

- i) NTC Memorandum Circular No. 01-01-01 dated 17 January 2001, which provides:

"Whereas, the National Telecommunications Commission has received sufficient and reliable information from the Office of the Press Secretary of suspicious elements who are out to create a destabilization move against the duly constituted government;

Whereas, radio broadcasting and television stations are duty bound to provide adequate public service which include, among others, airing of fair and balanced reporting;

Whereas, in the interest of justice and fair play and all laws in connection therewith such as radio broadcasting and television stations' franchises and authorities, Memorandum Circular 11-12-85 is hereby reiterated, as follows:

"5" All radio broadcasting and television stations shall provide adequate public service time; shall conform to the ethics of honest enterprise; and shall not use its stations for the broadcasting and/or telecasting of obscene or indecent language, speech, play, act or scene, or for the dissemination of false information or willful misrepresentation, or to the detriment of the public health or to incite, encourage or assist in subversive or treasonable acts.

"6" 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 matter being broadcast and/or telecast, if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or language used therein or the theme thereof is indecent or immoral.

In addition, the airing of rebellious/terrorist propaganda, comments, interviews, information and other similar or related materials shall be prohibited.

All broadcast media entities, radio or television must conform with the abovementioned guidelines."

- ii) NTC Memorandum Circular No. 11-12-85 (Subject: Revision of Memorandum Circular No. 3-04-85 Re: Program Standards), which is quoted in the above-quoted memorandum circular (NTC MC No. 01-01-01), and

which was issued only several months before the fall of the Marcos regime; and

- iii) NTC Memorandum Circular No. 22-89 dated 05 December 1989, which contains the same provisions as NTC MC 01-01-01 quoted above, and which was issued during the 1989 *coup d' etat*.

4.7. On 02 March 2006, Secretary Gonzalez publicly announced that the government would still expect the media to follow the guidelines on media coverage even after the lifting of the state of national emergency. A copy of the article appearing in the Philippine Daily Inquirer, dated 02 March 2006, is attached hereto as **Annex G**.

4.8. On 03 March 2006, President Arroyo issued Proclamation 1021 declaring that the state of national emergency had "*ceased to exist*." Despite this proclamation however, Respondents Secretary Gonzalez, Director General Lomibao and NTC Chair Solis continue to monitor and review the content of publications, broadcasts, and/or telecasts; Respondents continue to threaten the press, directly or indirectly, that if they do not toe the line they will be administratively sanctioned or criminally prosecuted; and Respondents continue to impose content-based prior restraint in violation of the Constitution and existing laws.

4.9. On the same date of 03 March 2006, respondent Solis, as NTC Chairman, issued NTC Memorandum Circular No. 01-03-2006 where he reiterated NTC MC No. 11-12-85 and NTC MC No. 22-89, and ordered that "*(a)ll broadcast media and cable TV entities must conform to all the above-mentioned guidelines*." This circular, in addition, provided that:

“...all complaints against any KBP member directly filed with the DOTC or the NTC for violation of broadcast laws, NTC Rules and Regulations and KBP Radio and Television Codes and relevant circulars shall immediately be remanded to the KBP Standard Authority for consideration and adjudication. While all complaints against any other broadcast entity, upon due notice and hearing, shall be immediately acted upon by NTC.”

- 4.10. On 05 March 2006, the headline of the Philippine Daily Inquirer stated as follows: **“7 MORE IN MEDIA WATCHED (DOJ CHIEF SAYS MONITORING STILL ON; DILG CHIEF SAYS OTHERWISE).”** [Copy attached hereto as **Annex H**]. In justifying the continued media watch Secretary Gonzalez cited the Revised Penal Code provisions on Inciting to Sedition, Sedition, Rebellion, and Libel as his basis. Secretary Gonzalez also announced that the DOJ was reviewing the footage of ABS-CBN’s coverage of the February 26 standoff at the Marine Headquarters in Fort Bonifacio.
- 4.11. Thus, despite the apparent lifting of Proclamation No. 1017, respondents have continued their efforts to muzzle and gag the press, by means of formal and informal censorship or prior restraint, including thinly veiled threats of administration action and sanctions, and/or criminal prosecution.
- 4.12. The foregoing issuances, public announcements, threats and/or warnings are meant to have a "chilling effect" on the press and their ability to air speech protected by the Constitution.
- 4.13. The respondents’ foregoing public announcements, threats and/or warnings, addressed to members of the press and their organizations, are likewise invalid and unlawful, since the threat of official intervention is just as damaging to a free press as the fact of it.

4.14. Respondent NTC, in addition, has continued to enforce NTC memorandum circulars prohibiting "subversive" activities when the Anti-Subversion Law, R.A. 1700 as amended, has long been repealed. The NTC has continued to prohibit the broadcast or telecast of any material that "tends" to propose or incite rebellion or sedition, when the law does not punish mere "tendency" but rather only the actual commission of the above offenses. The NTC has continued to prohibit the airing of "rebellious/terrorist propaganda, comments, interviews, information and other similar or related materials" without in any way defining these terms or at least providing guidelines for its determination. The questioned circulars are vague and sweep unnecessarily broadly; invade the areas of protected freedoms; unlawfully restrict expression based on its message, subject matter and content; exceed the lawful power, authority and jurisdiction of the respondent NTC; have compromised the independence of the press; and constitute precisely the kind of informal censorship and prior restraint prohibited by the Constitution.

4.15. The issues raised in this case are of transcendental importance, since they affect the freedoms of speech and of the press, preferred rights which stand on a higher level than substantive economic or other liberties; and which are the indispensable condition of nearly every other form of freedom.

5. Issues

5.7. Whether or not respondents acted without or in excess of their jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, or in violation of the Bill of Rights of the Constitution, in

imposing content-based prior restraints on the press, both direct and in the form of thinly veiled threats or warnings of administrative sanction or criminal prosecution; and there is no appeal, or plain, speedy and adequate remedy in the ordinary course of the law to obtain relief against the same.

- 5.8. Whether or not the respondent National Telecommunications Commission has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, or in violation of the Bill of Rights of the Constitution, in prohibiting the press from publishing or airing speech that, in the NTC's sole and unfettered discretion, are "subversive," which "tend" to propose or incite treason, rebellion or sedition, or which constitute "rebellious/terrorist propaganda, comments, information, interviews and other similar or related materials;" and there is no appeal, or plain, speedy and adequate remedy in the ordinary course of the law to obtain relief against the same.

6. Grounds for Granting Certiorari and Prohibition

A. The law.

6.01. Section 4, Article III, of the 1987 Constitution provides:

SEC. 4. No law shall be passed abridging the freedom of speech, expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

- 6.2. In *ABS-CBN Broadcasting Corp. v. COMELEC*,⁵ the Honorable Chief Justice of the Supreme Court summarized the nature and scope of freedoms of speech and of the press as follows:

"The freedom of expression is a fundamental principle of our democratic government. It is a preferred right and, therefore, stands on a higher level than substantive

⁵ 323 SCRA 811 (2000);

economic or other liberties. x x x (T)his must be so because the lessons of history, both political and legal, illustrate that freedom of thought and speech is the indispensable condition of nearly every other form of freedom.' [citing *Salonga v. Cruz Pano* and other cases].

Our Constitution clearly mandates that no law shall be passed abridging the freedom of speech or of the press. In the landmark case *Gonzalez v. COMELEC*, this Court enunciated that at the very least, free speech and a free press consist of the liberty to discuss publicly and truthfully any matter of public interest without prior restraint.

The freedom of expression is a means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social and political decision-making, and of maintaining the balance between stability and change. It represents a profound commitment to the principle that debates on public issues should be uninhibited, robust, and wide open. X x x And paraphrasing the eminent Justice Oliver Wendell Holmes, we stress that the freedom encompasses the thought we hate, no less than the thought we agree with."

xxx

Unquestionably, this Court adheres to the "clear and present danger" test. X x x "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

A limitation on the freedom of expression may be justified only by a danger of such substantive character that the state has a right to prevent. Unlike in the 'dangerous tendency' doctrine, the danger must not only be clear but also present. 'Present' refers to the time element; the danger must not only be probable but very likely to be inevitable.' The evil sought to be avoided must be so substantive as to justify a clamp over one's mouth or a restraint of a writing instrument. (citing *Adiong v. COMELEC*)

6.3. On prior restraint and its "chilling effect," the authorities hold that:

Doctrinally, the Court has always ruled in favor of the freedom of expression, and any restriction is treated an exemption. The power to exercise prior restraint is not to be presumed; rather the presumption is

against its validity. And it is respondent's burden to overthrow such presumption. Any act that restrains speech should be greeted with furrowed brows, so it has been said.

To justify a restriction, the promotion of a substantial government interest must be clearly shown. Thus:

"A government regulation is sufficiently justified if it is within the constitutional power of the government, if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

Hence, even though the government's purposes are legitimate and substantial, they cannot be pursued by means that broadly, stifle fundamental personal liberties, when the end can be more narrowly achieved. (Underscoring added)⁶

6.04. On regulations that are unconstitutionally vague or overbroad, the authorities hold that:

A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity.' The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.⁷ [footnotes omitted]

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Regulation of free speech must not be drawn in such broad and indefinite terms as to leave virtually unlimited discretion to those administering the regulation as would allow them to restrict speech with which they disagree.⁸

⁶ ABS-CBN BROADCASTING CORPORATION vs. COMMISSION ON ELECTIONS, G.R. No. 133486, January 28, 2000.

⁷ Joseph Ejercito Estrada v. Sandiganbayan (Third Division) and People of the Philippines, G.R. No. 148560. November 19, 2001.

⁸ See SCHWARTZ p. 282 great case re absolute ban on marches Williams v. Wallace, 240 F. Supp. 100, 107 (M.D. Ala. 1965).

B. The Executive Department, represented here by the Executive Secretary, the Secretary of Justice, the Director General of the Philippine National Police, the Chairman of the National Telecommunications Commission and their officers, agents or other persons acting under their authority or supervision, have no lawful power, authority or jurisdiction to stop or prohibit the publication or airing of speech based upon its contents.

6.5. It being settled jurisprudence that the power to exercise prior restraint is not to be presumed, and in fact the presumption is against its validity, it is the respondents' burden to overthrow the presumption, by showing that:

To justify a restriction, the promotion of a substantial government interest must be clearly shown. Thus:

A government regulation is sufficiently justified if it is within the constitutional power of the government; if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.' Hence, even though the government's purposes are legitimate and substantial, they cannot be pursued by means that broadly stifle fundamental personal liberties, when the end can be more narrowly achieved.⁹

Content-based prior restraint by the respondents not within their constitutional and statutory powers. The NTC's lawful power, authority and jurisdiction is limited only to that which is conferred by law. In *Radio Communications of the Philippines, inc. vs. National Telecommunications Commission and Kayumanggi Network Incorporated*,¹⁰ the Supreme Court discussed the jurisdiction of the NTC, to wit:

Pursuant to Presidential Decree No. 1 dated September 23, 1972, reorganizing the executive branch of the National Government, the Public Service Commission was abolished and its functions were transferred to three specialized regulatory boards, as follows: the Board of

⁹ ABS-CBN Broadcasting Corp. v. COMELEC, 323 SCRA 811 (2000)

¹⁰ G.R. No. L-68729, May 29, 1987.

Transportation, the Board of Communications and the Board of Power and Waterworks. The functions so transferred were still subject to the limitations provided in sections 14 and 15 of the Public Service Law, as amended. With the enactment of Executive Order No. 546 on July 23, 1979 implementing P.D. No.1, the Board of Communications and the Telecommunications Control Bureau were abolished and their functions were transferred to the National Telecommunications Commission (Sec. 19(d), Executive Order No. 546). Section 15 of said Executive Order spells out the functions of the National Telecommunications Commission as follows:

Sec. 15. Functions of the Commission.-The Commission shall exercise the following functions:

- a. Issue Certificate of Public Convenience for the operation of communications utilities and services, radio communications petitions systems, wire or wireless telephone or telegraph system, radio and television broadcasting system and other similar public utilities;
- b. Establish, prescribe and regulate areas of operation of particular operators of public service communications; and determine and prescribe charges or rates pertinent to the operation of such public utility facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such charges or rates;
- c. Grant permits for the use of radio frequencies for wireless telephone and telegraph systems and radio communication systems including amateur radio stations and radio and television broadcasting systems;
- d. Sub-allocate series of frequencies of bands allocated by the International Telecommunications Union to the specific services;
- e. Establish and prescribe rules, regulations, standards, specifications in all cases related to the issued Certificate of Public Convenience and administer and enforce the same;
- f. Coordinate and cooperate with government agencies and other entities concerned with any aspect involving communications with a view to continuously improve the communications service in the country;
- g. Promulgate such rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective

competition among private entities in these activities whenever the Commission finds it reasonably feasible;

h. Supervise and inspect the operation of radio stations and telecommunications facilities;

i. Undertake the examination and licensing of radio operators;

j. Undertake, whenever necessary, the registration of radio transmitters and transceivers; and

k. Perform such other functions as may be prescribed by law.

Based on these provisions, the NTC is clearly bereft of any authority to judge matters regarding the content of a broadcast or publication.

6.6. **Power to impose content-based prior restraint lodged only with the courts, and only after due process safeguards are followed.** The power

to silence speech by means of prior restraint is not one that we should take lightly. That power is best lodged with the courts:

It is proper that federal judges rather than legislators or executive branch administrators be the guardians of free expression... The late professor Alexander Bickel pointed out that judges have 'the leisure, the training, and the insulation to follow the ways of the scholar in pursuing the ends of government' Only a judicial determination in First Amendment cases, the Supreme Court, has said, 'ensures the necessary sensitivity to freedom of expression.'

First Amendment due process requires the government to prove that speech is unprotected by the First Amendment rather than requiring the media to prove the expression is protected. The government bears the burden of proof so that the media will not become defensive and censor themselves... Similarly, the government bears the burden of proving why a publication might be so dangerous to the national security that publication should be halted...

Central to First Amendment doctrine is the assumption that the government should not regulate the content of expression. Unless the government has a compelling interest, the Supreme Court has said, the constitutional guarantee of freedom of expression means that 'government has no power to restrict expression

because of its message, its ideas, its subject matter, or its content.’ Where regulation restrict the content of political, social, and artistic expression, skeptical judges subject the regulations to an analysis called strict scrutiny to ensure that the regulations are (1) justified by a compelling government interest and (2) narrowly drawn so as to impose the minimum abridgment of free expression. The Constitution is more tolerant toward content-neutral regulations—such as restrictions on the times and routes of parades—which may impinge slightly on freedom of expression but are not aimed at regulating the content of the speaker’s expression, only the time, place, and manner of expression...¹¹

6.7. **Restrictions imposed by respondents on free speech are far greater**

that what is needed to address legitimate government interests. Our

jurisprudence has a strong bias against prior restraint especially when subsequent punishment would meet the needs of the State. Thus, *“even though the government's purposes are legitimate and substantial, they cannot be pursued by means that broadly, stifle fundamental personal liberties, when the end can be more narrowly achieved.”*¹² There is no showing that by permitting the media to operate in its usual manner and to report matters it would normally broadcast or publish would pose a substantial danger to the state. The Revised Penal Code punishes the crimes of Rebellion or Insurrection, Conspiracy or proposal to commit rebellion or insurrection, Inciting to rebellion or insurrection, Disloyalty of public officers or employees, Sedition, Conspiracy to commit sedition, and Inciting to Sedition.¹³ Hence, even assuming that the government indeed has legitimate concerns behind its actions, our laws are sufficient to address them. A more appropriate response is

¹¹ Kenneth C. Creech, *Electronic Media Law and Regulation* (United States: Focal Press, 1996), p. 32 citing *New York Times v. United States*, 403 U.S. 713 (1971).

¹² *ABS-CBN Broadcasting Corporation vs. Commission on Elections* G.R. No. 133486. January 28, 2000.

¹³ REVISED PENAL CODE, Chapter One, Title Three.

subsequent punishment, as this would not deprive the people of their right to information on matters of public interest and concern.

The freedom to comment on public affairs is essential to the vitality of a representative democracy. In the 1918 case of *United States v. Bustos* (37 Phil. 731) this Court was already stressing that.

The Interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted.¹⁴

- 6.8. **Exercise of prior restraint by respondents is directly related to the suppression of free speech.** Unlike content-neutral prior restraint, which only restricts free speech incidentally, the acts of the respondents have no other purpose except to suppress speech critical of the present administration. Respondents have, in short, become instruments for excluding, from public discussion, speech that is not only protected by the Constitution but which goes to the very heart of our democratic system.

C. The respondents' public threats and/or warnings, addressed directly to the petitioners and other members of the press and their organizations, are likewise invalid and unlawful, since the threat of official intervention is just as damaging to a free press as the fact of it.

- 6.9. The respondents' foregoing public pronouncements threatening and/or warning the press, directly and indirectly, of administrative punishment, take over, closure, and/or criminal prosecution, were meant to have a "chilling effect" on the press and their ability to air

¹⁴ *Eastern Broadcasting v. Dans, Jr.* 137 SCRA 628 (1985).

speech protected by the Constitution. That some journalists have managed to maintain their independence and ability to exercise their calling freely, despite the respondents' acts, does not legitimize the latter or negate their chilling effect.

- 6.10. A public pronouncement, warning or threatening the press that they may face administrative sanctions, takeover, closure, and/or criminal prosecution if they "contribute to political instability" or on similar grounds is like the proverbial sword of Damocles. That it hangs over every journalist can be, or is even more effective, than the actual punishment itself.
- 6.11. To paraphrase from the decision of the United States Supreme Court in *Banham Books v. Sullivan*,¹⁵ journalists do not lightly disregard the thinly veiled threats of a public officer that criminal proceedings will be filed against them if they do not come around. It would be naïve to assert that this form of informal censorship is merely a restatement or a reminder of the law. By adopting this practice, the respondents have obviated the need to employ criminal sanctions and at the same time eliminated the safeguards of the criminal process. Criminal penalties for proposal and inciting to sedition and rebellion, as well as the crimes of sedition and rebellion themselves, may only be imposed after a judicial determination has been made in a trial surrounded with the procedural safeguards of the criminal justice system. These safeguards are nowhere present in the NTC and in the questioned NTC circulars.
- 6.12. Thus, in making these public pronouncements/threats/warnings, the respondents have acted without or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction.

¹⁵ 372 U.S. 58 (1963)

D. In issuing the questioned circulars, respondent NTC has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and in violation of the Bill of Rights of the Constitution.

6.13. The questioned NTC circulars unlawfully restrict expression based on its message, subject matter and content; in issuing these circulars, the NTC exceeded the power, authority and jurisdiction conferred on it by law, and/or gravely abused its discretion. As already pointed out, the NTC's lawful power, authority and jurisdiction is limited only to that which is conferred by law. Justice Gutierrez, in *Radio Communications of the Philippines, inc. vs. National Telecommunications Commission and Kayumanggi Network Incorporated*,¹⁶ discussed the jurisdiction of the NTC, to wit:

Pursuant to Presidential Decree No. 1 dated September 23, 1972, reorganizing the executive branch of the National Government, the Public Service Commission was abolished and its functions were transferred to three specialized regulatory boards, as follows: the Board of Transportation, the Board of Communications and the Board of Power and Waterworks. The functions so transferred were still subject to the limitations provided in sections 14 and 15 of the Public Service Law, as amended. With the enactment of Executive Order No. 546 on July 23, 1979 implementing P.D. No.1, the Board of Communications and the Telecommunications Control Bureau were abolished and their functions were transferred to the National Telecommunications Commission (Sec. 19(d), Executive Order No. 546). Section 15 of said Executive Order spells out the functions of the National Telecommunications Commission as follows:

Sec. 15. Functions of the Commission.-The Commission shall exercise the following functions:

- a. Issue Certificate of Public Convenience for the operation of communications utilities and services, radio communications petitions systems, wire or wireless telephone or telegraph system, radio and television broadcasting system and other similar public utilities;
- b. Establish, prescribe and regulate areas of operation of particular operators of public service communications; and determine and prescribe charges or rates pertinent to

¹⁶ G.R. No. L-68729, May 29, 1987.

the operation of such public utility facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such charges or rates;

c. Grant permits for the use of radio frequencies for wireless telephone and telegraph systems and radio communication systems including amateur radio stations and radio and television broadcasting systems;

d. Sub-allocate series of frequencies of bands allocated by the International Telecommunications Union to the specific services;

e. Establish and prescribe rules, regulations, standards, specifications in all cases related to the issued Certificate of Public Convenience and administer and enforce the same;

f. Coordinate and cooperate with government agencies and other entities concerned with any aspect involving communications with a view to continuously improve the communications service in the country;

g. Promulgate such rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible;

h. Supervise and inspect the operation of radio stations and telecommunications facilities;

i. Undertake the examination and licensing of radio operators;

j. Undertake, whenever necessary, the registration of radio transmitters and transceivers; and

k. Perform such other functions as may be prescribed by law.

Based on these provisions, the NTC clearly has never been authorized or given the jurisdiction to make any content-based prior restraints.

6.14. The jurisdiction, powers and authority of the NTC do not include the power to exercise content-based prior restraint. The NTC was never granted the power to prohibit, in advance of airing, any

broadcast or telecast that in its sole and unfettered discretion, is subversive, rebellious or "tends" to propose or incite sedition, rebellion.

- 6.15. Even according to standards set in the United States, from which our jurisdiction has adopted a number of constitutional doctrines, restrictions based on content are not regarded lightly:

Central to First Amendment doctrine is the assumption that the government should not regulate the content of expression. Unless the government has a compelling interest, the Supreme Court has said, the constitutional guarantee of freedom of expression means that "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."¹⁷ Where regulation restrict the content of political, social, and artistic expression, skeptical judges subject the regulations to an analysis called strict scrutiny to ensure that the regulations are (1) justified by a compelling government interest and (2) narrowly drawn so as to impose the minimum abridgment of free expression. The Constitution is more tolerant toward content-neutral regulations - such as restrictions on the times and routes of parades - which may impinge slightly on freedom of expression but are not aimed at regulating the content of the speaker's expression, only the time, place, and manner of expression...¹⁸

- 6.16. The very concept of regulation that has been consistently adopted in this country, except for the dark days of the Marcos dictatorship, has been one of self-regulation; as may be seen from the KBP Television and Radio Codes and the various Codes of Ethics of print journalists.
- 6.17. But there is yet another reason why the questioned NTC circulars should be annulled: for they have been issued with grave abuse of discretion amounting to lack or excess of jurisdiction, and in patent violation of the Constitution. To paraphrase Justice William J. Brennan, Jr. of the Supreme Court of the United States, the questioned NTC circulars are a form of state regulation that has been super-imposed

¹⁷ *Police Dep't v. Mosley*, 408 U.S. 92 (1972).

¹⁸ Kenneth C. Creech, *Electronic Media Law and Regulation* (United States: Focal Press, 1996), p. 33.

upon the State's criminal regulation of sedition, rebellion and other political offenses. In thus obviating the need to employ criminal sanctions, the State has at the same time eliminated the safeguards of the criminal process. Criminal sanctions may be applied only after a judicial determination has been made, which comes only after a trial and its accompanying due process safeguards. In contrast, the questioned NTC circulars provide no such safeguards. On the contrary, they give the NTC unbridled discretion and unfettered power to exclude speech that is protected by the Bill of Rights of the Constitution.¹⁹

- 6.18. The questioned NTC circulars, in short, impose nothing less than a system of prior administrative restraints in patent excess of the power, authority and jurisdiction granted it by law, and in gross violation of the Constitution.
- 6.19. **The questioned NTC memorandum circulars prohibit "subversive" activities when the Anti-Subversion Law, R.A. 1700 as amended, has long been repealed.** The Anti-Subversion Law, R.A. 1700 as amended, was repealed in 1992 by R.A. 7636. The NTC, therefore, has no legal basis, authority, power or jurisdiction to prohibit the airing of language, speech, plays, acts or scenes that "incite, encourage or assist in subversive...acts." In fact, the actuations of herein Respondents breath life to the fears that motivated such repeal in the first place:

For as long as RA No. 1700 is in our statute books, it is a sword of Damocles dangling above the head of every citizen who would quickly shun of the enjoyment of his fundamental rights if only to avert probable prosecution under the Anti-Subversion Act.

¹⁹ See *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963), a case involving prior restraint for alleged violation of the obscenity law.

Regulation in this case partakes of the nature of oppression. Such is the chilling effect of RA No. 1700 on the freedom of expression and the right of association.

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One of them certainly is the right to dissent. One can differ, even object, one can express dissatisfaction with things as they are. There are times when one not only can but must. Such dissent can take the form of the most critical and disparaging remarks. They may give offense to those who wield power and influence. Nevertheless, dissenters are entitled to constitutional protection. Even those who oppose a democratic system of government cannot be silenced. Any citizen may dissent without fear that he incurs a penal sanction. That is the essence of freedom of expression.²⁰

The NTC has no business prohibiting acts that have long been decriminalized.

The NTC cannot arrogate unto itself the power to legislate what is or is not a criminal offense, especially where, as here, Congress has already spoken.

6.20. **The questioned NTC circulars prohibit the broadcast or telecast of any material that "tends" to propose or incite rebellion or sedition, when this is not within the lawful power, authority or jurisdiction of the NTC; and is, moreover, unconstitutional.** It is a simple truth we live by that a democratic system like ours does not punish or prohibit a "tendency" to commit a crime but only the commission of the crime itself. This is obvious from our criminal law and jurisprudence, which punish only those crimes that have reached the attempted, frustrated or consummated stage.

6.21. By assuming the power to prohibit the "tendency" to commit crimes, and the sole and unfettered discretion to determine what "tends" to propose or incite rebellion or sedition, the NTC has pre-empted the criminal process and encroached on the judiciary's power to punish

²⁰ Sponsorship Speech of Senator Raul Roco in support of Senate Bill No. 508, entitled "An Act Repealing Republic Act Numbered One Thousand seven Hundred, as Amended, Otherwise Known as Anti-Subversion Act."

persons for committing criminal acts. Worse, it has done so without providing for any due process safeguards, such as notice and hearing, before any sanctions are imposed. Worst, it does not even provide a mechanism for judicial review, as if it were above the law.

- 6.22. Webster's dictionary defines "tendency" as "the quality of tending towards something or of tending to do something."²¹ By this definition, any broadcast or telecast that is even remotely inclined or disposed in favor of those who have been identified by the government as the leaders of the rebellion is suspect, and susceptible of prohibition. By this definition, any journalist can easily be tagged and blacklisted by the NTC.
- 6.23. The NTC, therefore, has violated not only its statutory authority, power, and jurisdiction, but has also patently offended the Constitution.
- 6.24. **The questioned NTC circulars, moreover, are void for vagueness and overbreadth.** An unconstitutionally vague law is one that is written so unclearly that persons "of common intelligence must necessarily guess at its meaning and differ as to its application."²² A vague law is unconstitutional because it inhibits speech by making speakers unnecessarily cautious.²³ An overbroad law, unlike a vague one, may be quite clear about what it prohibits, but it prohibits too much.²⁴
- 6.25. The questioned NTC circulars do not provide any definition of "tendency" to propose or incite rebellion or sedition. They do not indicate what facts or factors are relevant in making the determination

²¹ The New Lexicon Webster's Dictionary of the English Language, (New York: Lexicon Publications, Inc., 1991) p. 1018.

²² *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926).

²³ Kenneth C. Creech, *Electronic Media Law and Regulation* (United States: Focal Press, 1996), p. 35 citing Anthony Amsterdam, "The Void for Vagueness Doctrine," 109 *U. Pa. L. Rev.* 67 (1960).

²⁴ Kenneth C. Creech, *Electronic Media Law and Regulation* (United States: Focal Press, 1996), p. 36.

that a broadcast or telecast has a "tendency" to propose or incite rebellion or sedition. Rather, the circulars leave it to the sole discretion and unfettered power of the NTC to decide what constitutes such "tendency." The journalist is left to speculate whether his broadcast or telecast will offend the "tendencies" of the Commission. This system, it must be emphasized, not only invites but encourages arbitrary and despotic decisions by the NTC.

- 6.26. The questioned NTC circulars prohibit the airing of "rebellious/terrorist propaganda, comments, interviews, information and other similar or related materials" without in any way defining these terms or at least providing guidelines for its determination. The preceding discussion holds true here as well. There are no standards or guidelines for determining what constitutes "rebellious/terrorist propaganda, comments, interviews, information or other similar or related materials." While the term "rebellious" may refer to the conduct of someone who is engaged in the crime of rebellion, it may also mean an attitude of being confrontational, say, vis-à-vis the State. The NTC does not have the power, authority or jurisdiction to make that determination, for that lies solely with the courts.
- 6.27. The NTC is being used as an instrument to exclude unpopular views from public discussion. It should be obvious, from the foregoing discussion, that the NTC is merely being used as a tool to exclude unpopular views from public discussion. The fact that the questioned circulars are vague and capable of myriad interpretations; and that they give exclusive and unbridled discretion to the NTC to determine what is subversive, or which tends to propose or incite rebellion or sedition, or which constitutes the airing of rebellious/terrorist propaganda,

comments and other similar or related materials, is anathema to our democratic system. To allow the NTC to continue exercising these unlawful powers will compromise not only the independence of the press but also the very fabric that ties our nation together.

- 6.28. The questioned NTC circulars, in sum, constitute precisely the kind of informal censorship and prior restraint prohibited by the Bill of Rights of the Constitution. To quote Justice Douglas, "(t)he evils of unreviewable administrative action of this character as ancient as dictators."

E. There is no appeal, or plain, speedy and adequate remedy in the ordinary course of the law to obtain relief against the respondents' acts and the questioned issuances.

- 6.29. The respondents are bent on continuing their unlawful acts and enforcing their unlawful issuances; it would, therefore, be a waste of time and an exercise in futility to seek redress or relief from them.

- 6.30. The danger of a failure of justice; the need to promptly relieve petitioners of the injurious effects of respondents' continued actions; the oppressive and patently illegal nature of respondents' acts and issuances; the urgent need to resolve a question of law that involves the public interest; and the need to dispel as quickly as possible any doubt regarding the rights of free speech, expression and the press, show that there is no appeal, or plain, speedy and adequate remedy in the ordinary course of the law to obtain relief.²⁵

D. Grounds for Provisional Relief

²⁵ *Silvestre v. Torres*, 57 Phil. 885; *Jaca v. Davao Lumber CO.*, 113 SCRA 107; *Vivo v. Cloribel*, 18 SCRA 713; *Central Bank v. Cloribel*, 44 SCRA 307; and *Co Chuan Seng v. Court of Appeals*, 128 SCRA 308.

- 7.1. Petitioners are entitled, by right, to the relief they seek, as the preceding paragraphs show, and the whole or part of the relief consists in restraining the commission or continuance of the acts complained of, provisionally and perpetually.
- 7.2. However, unless restrained, respondents will continue the acts complained of which are in violation of Petitioners' rights.
- 7.3. The continuance of the acts complained of will definitely work injustice to Petitioners.
- 7.4. Petitioners' application for a temporary restraining order and preliminary injunction is verified, and shows facts entitling them to the relief demanded.
- 7.5. A temporary restraining order is most urgently needed to prevent any violation, or further violation, of petitioners' aforementioned rights and to preserve their rights pending these proceedings.
- 7.6. Considering the primacy of the right of free expression and a free press, the matter must be considered of such extreme urgency. Petitioners will suffer grave injustice and irreparable injury and are, thus, constrained to pray that the Honorable Court issue *ex parte* a 20-day restraining order enjoining the operation and enforcement of the questioned circulars and acts of respondents; petitioners further pray that within the said 20 days, the Honorable Court conduct a summary hearing to determine whether the temporary restraining order should be extended until the application for preliminary injunction can be heard. In the alternative, Petitioners request that the Court to which this application is made issue a 20-day *ex parte* temporary restraining order, and within that period, order the respondents to show cause why the

preliminary injunction should not be granted, and accordingly resolve the same after notice and opportunity to be heard is given the latter.

- 7.7. A preliminary injunction should likewise issue against respondents for the same reasons stated above and in the following paragraphs.

Prayer

WHEREFORE, petitioners respectfully pray the Honorable Court:

1. To **GIVE DUE COURSE** to the Petition and **issue a TEMPORARY RESTRAINING ORDER (TRO)** immediately upon receipt of this Petition, on such terms as it may deem just, to restrain the respondents, and their officers, agents or other persons acting under their authority or supervision, from stopping, prohibiting or censoring the publication or airing of speech based upon its message, subject-matter, or political color or content, and/or from imposing any prior restraint on the press, be it formal or informal, direct or in the form of disguised or thinly veiled threats of administrative sanction or criminal prosecution; within the lifetime of the TRO, order respondents to show cause why the TRO should not be converted into a writ of preliminary injunction;
2. Due to the nature and urgency of this Petition, to immediately set for hearing/oral argument petitioners' application for a temporary restraining order/preliminary injunction and/or on the merits of the Petition, as this Court may deem appropriate;
3. To **DIRECT** respondents to comment, not file a motion to dismiss, and thereafter to render judgment in petitioner's favor, thus:
 - 3.1 Making the preliminary injunction permanent;

- 3.2 Prohibiting the Executive Secretary, the Secretary of Justice, the Director General of the Philippine National Police, the Chairman of the National Telecommunications Commission and their officers, agents or other persons acting under their authority or supervision, from stopping, prohibiting or censoring the publication or airing of speech based upon its message, subject-matter, or political color or content, and/or from imposing any prior restraint on the press, be it formal or informal, direct or in the form of disguised or thinly veiled threats of administrative sanction or criminal prosecution.
- 3.3 Annuling and setting aside NTC Memorandum Circulars Nos. 01-01-01, 11-12-85. 22-89 and 01-03-2006 (Annexes "A", "B", "C" and "D" of this Petition) and any other issuances of the NTC that prohibit the press from airing or broadcasting news and commentary that, in the NTC's sole and unfettered discretion, are "subversive," which "tend" to propose or incite treason, rebellion or sedition, or which constitute "rebellious/terrorist propaganda, comments, information, interviews and other similar or related materials."

Petitioners pray for all other legal, just and equitable relief.

Quezon City for Manila, 8 March 2006.

**FREE LEGAL ASSISTANCE GROUP
[FLAG]**

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Service by registered mail made on:

THE SOLICITOR GENERAL

134 Amorsolo Street
Legaspi Village, Makati City

**SECRETARY EDUARDO R. ERMITA
THE EXECUTIVE SECRETARY**

New Executive Building
Malacanan Palace, Manila

**SECRETARY RAUL GONZALEZ
THE SECRETARY OF JUSTICE**

Department of Justice, Padre Faura, Manila

**CHAIRMAN RONALD OLIVAR SOLIS
NATIONAL TELECOMMUNICATIONS
COMMISSION**

NTC Building, BIR Road, East Triangle
Diliman, Quezon City

DIRECTOR GENERAL ARTURO LOMIBAO

General Headquarters, Philippine National Police
Camp Crame, Cubao, Quezon City

EXPLANATION

Service of the Petition was made on respondents by registered mail on even date due to the distance and number of respondents that made it impracticable and counter-productive to serve the same on them personally. Filing of this Petition is, however, being done personally.