

SC Favors Airing of 'Hello, Garci'

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by Aries Rufo (Newsbreak online)

The Supreme Court Tuesday voted 9-6 in favor of airing the controversial "Hello, Garci" tape from the 2004 presidential election period which the National Telecommunications Commission (NTC) and the Secretary of Justice had warned radio stations and television networks against playing.

In finding merit in the petition filed by former Solicitor General Francisco Chavez against the NTC and Justice Secretary Raul Gonzalez, the tribunal sustained the constitutionally enshrined freedom of speech and information over government attempts to undermine it. Those who voted to sustain Chavez's petition are Chief Justice Reynato Puno, Justices Leonardo Quisumbing, Antonio Carpio, Consuelo Ynares-Santiago, Angelina Gutierrez, Alicia Austria-Martinez, Conchita Carpio-Morales, Adolfo Azcuña, and Ruben Reyes. The magistrates who voted in favor of NTC are Justices Eduardo Nachura, Dante Tinga, Renato Corona, Minita Chico-Nazario, Presbiterio Velasco, and Teresita Leonardo-de Castro.

The decision is expected to be released Friday. The majority decision will be penned by the Chief Justice. The "Hello, Garci" tapes contained wiretapped conversations between President Arroyo and then elections commissioner Virgilio Garcillano at the height of vote canvassing in Mindanao in 2004. In the tape, Ms. Arroyo was heard giving orders to Garcillano to contain the lead of her rival, Fernando Poe Jr.

The opposition said that figures from certificates of canvass from provinces mentioned in the tape showing the President leading were not supported by the more basic election documents, such as the election returns from the precincts. The returns supposedly showed Poe winning. However, Ms. Arroyo's allies in Congress refused to admit the evidence being submitted by opposition during the canvassing.

SWING VOTES

The "Hello, Garci" tape was exposed only in 2005 by an agent of the Intelligence Services of the Armed Forces of the Philippines (ISAFP) who belonged to the group that conducted the wiretapping. The Chavez petition was the first test case of whether the Supreme Court led by Chief Justice Reynato Puno would be independent of Malacañang. Except for three, excluding Puno, all justices in the Supreme Court are appointees of President Arroyo. Puno was appointed to the Court by President Fidel Ramos, and named chief justice by Ms. Arroyo in December 2006. Newsbreak reported on Monday that voting could be close, with one or two justices providing the swing vote.

Reports reaching us today showed that the swing votes came from Senior Justice Quisumbing and Justice Reyes.

The tribunal deliberated on the issue for more than two years. Sources privy to the deliberations said the discussions had been intense that there were subtle efforts from some camps to delay the voting for a few more weeks.

'IT'S PRIOR RESTRAINT'

Chavez's complaint was prompted by a press release issued by the NTC, warning radio and TV stations that their licenses would be cancelled if they aired the wiretapped phone conversation. The agency said the material was illegal, could be "fraudulent," and was inciting to rebellion.

At the time, Justice Raul Gonzalez also made a threat that anyone found to be in possession of the controversial audio tape would be liable for violation of Anti-Wiretapping law which is punishable by up to six years in prison.

Chavez asked the court to issue a temporary restraining order and for the SC to prohibit the NTC and Gonzalez from further issuing orders that could curtail the public's right to information.

Chavez said the twin warnings violated freedom of information and of the press and the right of the people to information on matters of public concern. He argued that the wiretapped conversations had assumed a public character and prohibiting its broadcast would deny citizens free access to information on a public concern. Chavez said that the agencies acted with grave abuse of discretion since their warnings constitute prior restraint, which is the first prohibition of the free speech and press clause.

'NO, JUST FAIR WARNING'

In its counter-argument, the Office of the Solicitor General, representing the NTC and Gonzales, sought the dismissal of Chavez position on the ground that there was no actual controversy that has to be settled in the first place.

The Sol-Gen said that the NTC press release "only serves as a fair warning" and does not constitute a crackdown on the broadcast media. The Sol-Gen also said that Chavez only based his petition to restrain Gonzalez on newspaper reports that are at best "without probative value."