EDITORIAL

THE US BLOCKADE AGAINST CUBA IS A VIOLATION OF THE FIRST AMENDMENT CONSTITUTIONAL RIGHTS OF US CITIZENS

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In December 2021 over 300 artists, performers and writers signed a letter calling on the Government of Cuba to “respect the fundamental role that art and artists play in society”. They went on to say that: “Art should be free from censorship and oppression, in Cuba and everywhere.”1 How many of the letter’s signatories would include the United States in the word “everywhere” when referring to unidentified countries where the arts are regulated and constrained by their governments? In particular, governments that decide if an artist may perform or exhibit and on what terms? Well, they should include the US among such countries, because it belongs there.1

Under US law artists are prohibited from exhibiting their work in Cuba unless the US Department of the Treasury “authorizes” them to do so by issuing a licence based upon its approval of a written application. Actors and musicians may not perform in Cuba; again, unless the US government permits it. Workshops and clinics are banned in Cuba, as well as professional conferences and meetings. These prohibitions are not trivial, they are found in regulations enforced under the authority of the Trading with the Enemy Act, a statute that includes both civil and criminal penalties for its breach.

In theory at least licences are obtainable from the government allowing the participation of US citizens in performances and art exhibitions in Cuba. How, though, is this supposed to work? As mentioned above, a license must be preceded by a written application; what must be included in such a request? For example, it is logical to assume that an artist will be required to provide the Treasury Department with a set of photographs of the paintings he/she has been invited to exhibit at, say, the


DOI:10.13169/intejcubastud.14.1.0011
National Museum of Fine Arts of Cuba? And what else, an explanation of the works and their meaning? A resumé perhaps, establishing the bona fides of the artist? Then what happens? Does an official decide if the works are worthy – in subject and execution – of exhibit in Cuba? What else is he or she to do? On what other possible grounds could the required application be evaluated and processed except on the basis of the content and perceived value of the art or performance under US Treasury Department review? And what other criteria will be employed in deciding such worthiness? Will the nature of his or her projected Cuban audience be deemed relevant to the application? And back to content analysis: is the license more likely to be granted if the performance is somehow critical of the government of Cuba?

Clearly, the Biden administration must rescind Trump’s Cuba-related restrictions on the First Amendment freedoms of US citizens. But even if those restrictions are reversed by Biden, the continuation of the structure of the embargo (i.e. as codified in the Cuba Assets Control Regulations, CACR) is a standing menace to First Amendment values of freedom of expression (exhibits/performances); academic freedom (in the form of conferences/professional meetings); freedom of association (in the form of workshops/exchanges); and finally, the liberty interest of all US nationals in the freedom to travel internationally in pursuit of new and different cultural experiences. An executive branch-driven approach to US–Cuba policy that relies solely on what are freely rescindable relaxations of the embargo regulations is not enough. Whatever modifications are made, First Amendment freedoms in the US will remain at future risk – as proved by Donald Trump when he picked up the loaded gun of the perennial embargo on Cuba left by Obama in the Oval Office and used it to eliminate public performances, exhibitions, workshops and professional meetings in Cuba. US constitutional grounds of free association and expression offer an instrumental approach to ending the embargo.

This can be achieved by a reprise of the public advocacy undertaken during Obama’s presidency that created and cemented the understanding that a President possesses the constitutional authority to modify the Cuban embargo, even after its purported codification by Congress in the 1996 Helms-Burton Act. Biden must be brought to the next level of understanding: he can terminate the embargo on Cuba. That is, he can not only amend it, but he can end it once and for all.

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2 Reasonable time and place restrictions on rights of speech have been accepted in First Amendment jurisprudence – but content-based prior restraints are never permitted in the US.

3 Robert L. Muse. “The President has the constitutional power to unilaterally terminate the embargo on Cuba”, Global Americans, 8 October 2020. https://theglobalamericans.org/2020/10/the-president-has-the-constitutionalpower-to-unilaterally-terminate-the-embargo-on-cuba/