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Op-ed | Who should be sanctioned in Guyana?

By **Staff Reporter** - July 7, 2020



US Attorney, Bart S. Fisher

By Bart S. Fisher

THERE has been a lot of loose talk by the PPP/C about possible sanctions that might be imposed by the United States and other countries against Guyana and/or its Chief Elections Officer, Keith Lowenfield, if the PPP/C is not declared the winner of the March 2 general election. Quite simply, under the relevant U.S. statutes, the Global Magnitsky Human Rights Accountability Act passed by Congress in 2012, the International Economic Emergency Act of 1977 and the Trading with the Enemy Act, there would be no legal basis for doing such a thing.

The situation is this: Mr. Lowenfield, in his capacity as Chief Elections Officer of the Guyana Elections Commission (GECOM), has determined that, on the basis of valid votes, the APNU +

AFC Coalition prevailed in the election by 5,482 more valid votes than the PPP/C. Mr. Lowenfield found serious fraud on the part of the PPP/C, with ballots cast exceeding the number of persons on the Official List of Electors, ballots for one electoral district in another, duplicate ballots carrying the same number, and missing poll books. In other words, he determined that a simple tabulation of the votes, which would include votes fraudulently cast, would not yield a legitimate, credible result. This line of argument was accepted by the Court of Appeal on June 22, which ruled that Mr. Lowenfield is obliged to produce a result on the basis of more valid votes cast. It is preposterous to assert that the United States could or would impose sanctions if GECOM were to follow the guidance of its Chief Elections Officer, who in turn is following the guidance of the Guyana Court of Appeal.

GECOM's job is to produce a credible recount based on valid votes, and to not accept votes that are not credible. There would be no legal authority in the United States to impose sanctions in this situation. Mr. Fazal Yussuff, the Chairman of the International Center for Democracy, has called for U.S. sanctions against Mr. Lowenfield, citing the U.S. sanctions imposed in 2018 against Roberto Rivas Reyes, for "perpetuating electoral fraud that undermined the Nicaragua's electoral institutions." The Nicaragua precedent is not applicable in this case, in which precisely the opposite has occurred. Mr. Lowenfield has upheld the democratic process in Guyana by refusing to count fraudulently cast ballots. In addition, Mr. Rivas Reyes was also accused of massive corruption.

The U.S. Treasury Department found that despite a government salary of \$60,000 per year, "Rivas has been accused in the press of amassing sizeable personal wealth, including multiple properties, private jets, luxury vehicles, and a yacht." That allegation has not been made against either Mr. Lowenfield or Claudette Singh, the Chairperson of GECOM. Nor is the 2019 Democratic Republic of Congo (DRC) case, in which the U.S. sanctioned three top election officials for alleged corruption tied to its presidential election, relevant for this case. The central allegation in that case was that the officials embezzled funds that were supposed to have been used to carry out a timely democratic vote. That allegation has not been made in the case of Guyana or its election officials.

Any sanctions that the United States would impose against Guyana or GECOM would be controlled by the legal principle enunciated in the case of *United States v. Yoshida International, Inc.*, 326 F. 2d 560 (C.C.P.A. 1973): is the action of the President "reasonably and appropriately related" to the authorizing statute and the action undertaken? To sanction Guyana or any of its officials would stand Magnitsky and the other possibly relevant statutes on their head, by sanctioning those officials whose "offense" was to have an election based on more valid votes cast! The PPP/C, however, does know a thing or two about sanctions and

corruption, having run a narco-state during its tenure in which drug proceeds, according to Freedom House, accounted for between forty and sixty percent of formal economic activity, and money laundering and gold smuggling were endemic problems criticized by the U.S. Department of State. Extra-judicial killings were also a specialty of the house during the reign of the PPP/C. This track record of violence and fraud will surely discourage the United States from imposing sanctions on Guyana for carrying out its democratic election processes.

(Bart S. Fisher is an Attorney and Partner at JJ&B. He holds a Juris Doctor degree from Harvard Law School and a Ph.D. in International Relations from the Johns Hopkins School of Advanced International Studies. He served on the Board of Directors of the Center for Democracy, which monitored elections around the world)

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