

FROM THE COURTS

Eastman Calls Crime-Fraud Argument Against Trump 'Bogus'



SHUTTERSTOCK

Former Chapman University law professor John Eastman denied "any effort to 'obstruct' [the] results" of the 2020 presidential election.

by Meghann M. Cuniff

John Eastman denied "any effort to 'obstruct' results" of the 2020 presidential election in a new filing that calls the Jan. 6 committee's crime-fraud argument "bogus."

The 27-page reply to the committee's criminal theory against former President Donald Trump defends violations of the Electoral Count Act as necessary to fight unconstitutionality, and it says the committee disagreeing with Eastman's legal advice "does not convert his representation of former President Trump into a criminal matter."

He said deposition excerpts from former Vice President Mike Pence's counsel Greg Jacob mischaracterized his advice to Trump, but, even if they didn't, "they do not create a criminal issue when the advice was grounded on a good-faith interpretation of the Constitution."

"The Select Committee has presumably concluded that those who advised the President that no material fraud or illegality existed were correct and that those who offered the opposite advice were incorrect," according to the brief. "The fact that former President Trump reached a different conclusion does not show 'consciousness of wrongdoing.' It merely shows that the President arrived at a view of various factual questions which the Select Committee does not share."

Eastman and his lawyers, as well as House General Counsel Douglas Letter, appeared at Zoom hearing Tuesday with U.S. District Judge David O. Carter in the Central District of California, who last month ordered briefing at Letter's request.

At issue are Eastman's communications—mostly emails—between Jan. 4 and Jan. 7, 2021, through Chapman University, where he was a law professor until his resignation shortly after the Capitol riot. The university was complying with subpoenas from the Jan. 6 committee, which was seeking emails dating back to Nov. 3, 2020, when Carter on Jan. 22 issued a temporary restraining order, then set a privilege review schedule that Letter complained was moving too slowly.

Eastman's initial brief compared his work for Trump to work he'd done after the 2000 presidential election and the 2008 California referendum against same-sex marriage. He said two Chapman law students were "thrilled" to assist him, and he said attorney-client privilege protects his work even on Chapman's servers.

The Jan. 6 committee has objected to Eastman's claims for reasons beyond the crime-fraud exception, including that the client agreement with Trump that was provided by Eastman lacks signatures and thus isn't legally valid. But last week's filing argued the crime-fraud exception in extraordinary detail, revealing new information about the committee's investigation through emails and deposition excerpts while calling for the judge to privately review the emails to see if the crime-fraud exception applies. It said the committee has "at minimum, a good-faith basis" to conclude Trump obstructed an official proceeding, as well as a "good-faith basis" to conclude he conspired to defraud the United States.

But the committee also believes Eastman's Chapman communications will make the case for common law fraud against Trump "and members of his campaign."

The committee referenced emails between Eastman and Jacob, in which Eastman urged Jacob to consider "one more relatively minor violation" of the Electoral Count Act and delay the count by 10 days.

The committee said the emails show Eastman imploring Jacob to "refuse to count electoral votes," but Eastman said he never advocated not counting the votes, only delaying the count. Pence, the House and the Senate had already extended debate past the statutory limit, which Eastman said were the same "technical violations" he advocated by delaying the vote.

"Urging that one exercise constitutional authority without impediment from an unconstitutional statute is not urging of 'illegal action,' but rather a recognition at least as old as *Marbury v. Madison* that the Constitution is superior to a mere statute," according to the brief, signed by Anthony Caso of the Constitutional Counsel Group in Anaheim and Charles Burnham of Burnham & Gorokhov in Washington, D.C.

Eastman last week asked Carter to act as though the U.S. Department of Justice has already charged Trump and order the committee to release "exculpatory information" under *Brady v. Maryland*, but the judge declined, writing, "Here, Dr. Eastman's liberty is not at issue—only his emails."

Meghann Cuniff reports for The Recorder, an ALM affiliate of the Daily Business Review. Contact her at mcuniff@alm.com. On Twitter: @meghanncuniff.



CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **COUNCIL ZONING MEETING** on **March 23, 2022 beginning at 6:00 PM** to consider an amendment to the City's Land Development Code, Chapter 74, "Miscellaneous and Supplementary Regulations," to modify home-based business regulations. The City Council will consider this item for **SECOND READING**. The meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166**.

The City of Doral proposes to adopt the following Ordinance:

ORDINANCE No. 2022-05

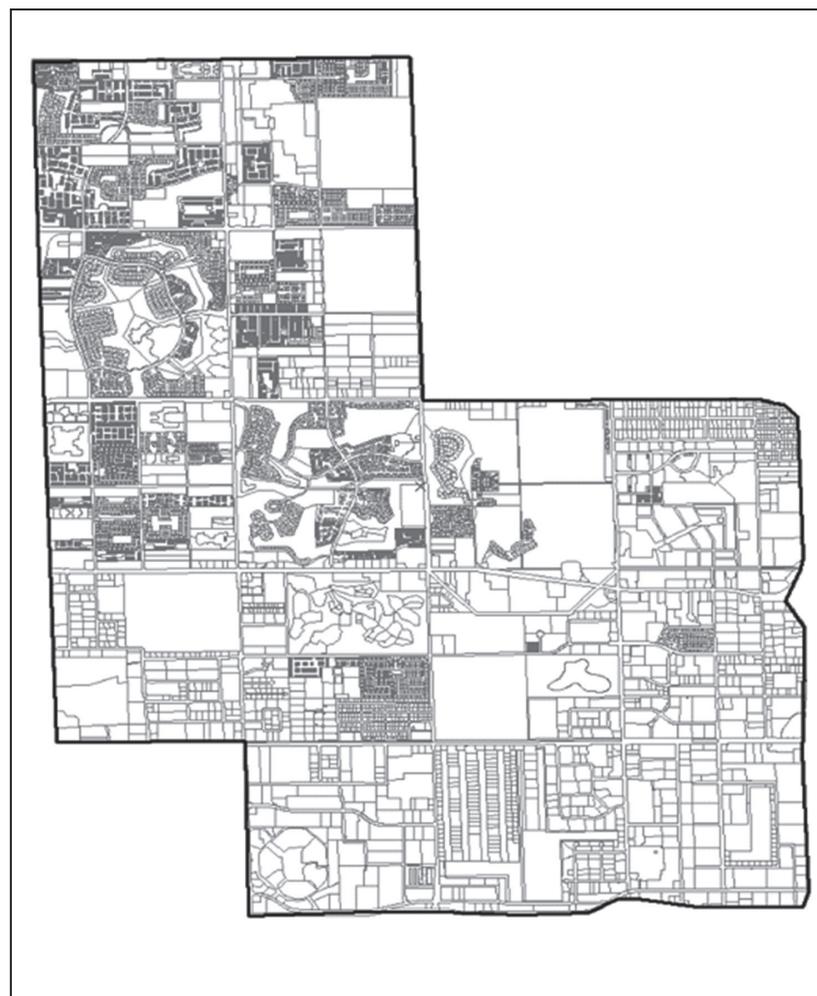
AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING/DENYING A TEXT AMENDMENT TO THE CITY OF DORAL LAND DEVELOPMENT CODE, CHAPTER 74, "MISCELLANEOUS AND SUPPLEMENTARY REGULATIONS," ARTICLE VIII, "MISCELLANEOUS SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 14, "HOME BASED BUSINESS OFFICE," TO MODIFY HOME-BASED BUSINESS REGULATIONS FOR CONSISTENCY WITH SECTION 500.80 "COTTAGE FOOD OPERATORS" AND SECTION 559.955 "HOME-BASED BUSINESSES," FLORIDA STATUTES; PROVIDING FOR INCORPORATION INTO THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 22-03-DOR-15

APPLICANT: City of Doral

REQUEST: The City Manager's Office respectfully recommends that the Mayor and City Councilmembers approve an amendment to the City's Land Development Code, Chapter 74, "Miscellaneous and Supplementary Regulations," to modify home-based business regulations for consistency with section 500.80 and section 559.555, Florida Statutes

Location Map



Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any person who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC
City Clerk
City of Doral

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