

Rejecting coup lawyer Eastman's suit to withhold emails from January 6 Committee

Federal judge declares Trump illegally conspired to overthrow the Constitution

Jacob Crosse, Barry Grey
29 March 2022

In an extraordinary ruling issued on Monday, a federal judge in California wrote that it was “more likely than not” that ex-President Donald Trump illegally “attempted to obstruct the Joint Session of Congress” on January 6, 2021, which was tasked with officially counting the electoral votes.

Rejecting a suit by Trump coup lawyer John Eastman seeking to block the transfer of emails subpoenaed by the House Select Committee on January 6, US District Judge David Carter bluntly summed up what was at stake in the attempted coup. In the “Disposition” section of his 44-page decision, he wrote:

Dr. Eastman and President Trump launched a campaign to overturn a democratic election, an action unprecedented in American history. Their campaign was not confined to the ivory tower—it was a coup in search of a legal theory. The plan spurred violent attacks on the seat of our nation's government, led to the deaths of several law enforcement officers, and deepened public distrust in our political process.

More than a year after the attack on our Capitol, the public is still searching for accountability. ... If Dr. Eastman and President Trump's plan had worked, it would have permanently ended the peaceful transition of power, undermining American democracy and the Constitution. If the country does not commit to investigating and pursuing accountability for those responsible, the Court fears January 6 will repeat itself.

Appeals for the Ninth Circuit and ultimately the US Supreme Court, exposes all the more starkly the refusal to date of the Biden administration and Attorney General Merrick Garland to launch criminal prosecutions of the ringleaders of the coup plot, beginning with Trump himself.

The Democratic Party-controlled House Select Committee has itself held a grand total of one public hearing since its formation on July 1, 2021, almost nine months ago, and has repeatedly pushed back the scheduling of additional public hearings later this year.

It must also be recalled that the failure of Trump's coup, organized with the support of the bulk of the Republican Party and powerful sections of the military/police/intelligence apparatus, and through the mobilization of fascist paramilitary forces, was not due to any serious opposition from Biden and the Democrats. On the contrary, they acted to conceal from the public Trump's plans stated well in advance of January 6 and have since worked to cover up the plot and shield its most important perpetrators.

The judge, a Bill Clinton appointee, ordered Eastman to turn over 101 of the 111 emails sought by the committee. He rejected Eastman's inflated claims of executive privilege in part by invoking the “crime-fraud” exemption. He wrote that both Trump and Eastman knew that their plans to overturn the election results—which included pressuring then-Vice President Mike Pence to reject Biden electors from seven swing states, or, failing that, delay certification of Biden's victory—were in violation of the 1887 Electoral Count Act.

Judge Carter wrote:

The illegality of the plan was obvious. Our nation was founded on the peaceful transition of power, epitomized by George Washington laying down his

The ruling, which is subject to appeal to the US Court of

sword to make way for democratic elections. Ignoring this history, President Trump vigorously campaigned for the Vice President to single-handedly determine the results of the 2020 election. ... Based on this evidence, the Court finds it more than likely that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021.

Carter noted that Attorney General William Barr, the Cybersecurity and Infrastructure Security Agency, multiple state officials, including Georgia Secretary of State Brad Raffensperger, and even some of Trump's own campaign staff told the then-president that the election was legitimate.

The judge pointed in particular to a memo from Trump's personal lawyer Rudy Giuliani that was forwarded to Eastman. The memo game-planned a series of scenarios concerning the January 6 session of Congress.

"This may have been the first time members of President Trump's team transformed a legal interpretation of the Electoral Count Act into a day-by-day plan of action," Carter wrote. "The memo is both intimately related to and clearly advanced the plan to obstruct the Joint Session of Congress on January 6, 2021."

Eastman, then the dean of the law school at Chapman College in Orange, California, played a leading role in Trump's efforts to overthrow the election in the lead-up to January 6. On the eve of the attack, Eastman met with Trump and Pence in the White House in an attempt to convince Pence he could unilaterally reject Biden electors from seven key swing states and either instruct Republican-controlled state legislatures to replace them with Trump electors, or throw the election into the House of Representatives, where a majority of state delegations were Republican-controlled.

In a two-page memo, Eastman emphasized that "the main thing here is that Pence should do this without asking for permission—either from a vote of the Joint Session or from the Court."

Eastman also promoted his coup scheme to hundreds of Republican state legislators and to Republican members of the US House and Senate. Trump hailed Eastman as a top constitutional lawyer at the rally outside the White House on the morning of January 6 where Trump called on his supporters to descend on the Capitol to stop the certification of Biden's victory. Eastman was among the speakers who incited the mob with lies of a "stolen election."

Even as Trump's fascist militias were laying siege to the Capitol, seeking to capture and likely kill Democratic leaders as well as Pence, Eastman was firing off emails to

Pence's legal counsel demanding that Pence halt the certification of the election.

Eastman, who has yet to be arrested, much less charged for his actions, continues to defend Trump's efforts to overthrow the election. During an earlier deposition before the January 6 committee, Eastman refused to turn over any documents and invoked the Fifth Amendment against self-incrimination 146 times.

After Monday's ruling, Charles Burnham, an attorney for Eastman, said in a statement that his client "intends to comply with the court's order."

Trump, for his part, responded by issuing a statement accusing "Radical Left Democrats in Congress and the Unselect Committee" of continuing to "seek the destruction of lives of very good people" and "destroying our country."

Judge Carter's ruling reflects concerns within sections of the ruling class and its state apparatus that the Biden administration's failure to prosecute Trump and his top co-conspirators is enabling Trump's efforts to build a fascist movement and further undermining the political system, potentially fueling a mass social and political movement of the working class in opposition to capitalism.

His blunt assertion that Trump and Eastman are guilty of felonies against the United States was repeatedly cited in a Monday session of the House Select Committee, during which the committee unanimously voted to recommend criminal contempt of Congress charges against former Trump White House advisers Dan Scavino Jr. and Peter Navarro.

So far, only former Trump aide Stephen Bannon has been arraigned on contempt of Congress charges for defying subpoenas from the House Select Committee. Former White House Chief of Staff Mark Meadows has yet to be arraigned, four months after Congress voted to hold him in contempt last December.

Several Democratic members of the Committee, including Zoe Lofgren and Elaine Luria, directly called out Attorney General Garland, demanding that he "do his job" and indict those cited for criminal contempt by Congress.



To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact