

<p><b>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</b>  1437 Bannock St.  Denver, CO 80203</p>	<p>DATE FILED: October 27, 2023 5:35 PM</p>
<p><b>Petitioners:</b>  NORMA ANDERSON, MICHELLE PRIOLA,  CLAUDINE CMARADA, KRISTA KAUFER,  KATHI WRIGHT, and CHRISTOPHER  CASTILIAN,</p> <p>v.</p> <p><b>Respondents:</b>  JENA GRISWOLD, in her official capacity as  Colorado Secretary of State, and  DONALD J. TRUMP,</p> <p>and</p> <p><b>Intervenor:</b>  COLORADO REPUBLICAN STATE CENTRAL  COMMITTEE, and DONALD J. TRUMP.</p>	<p>▲ COURT USE ONLY ▲</p>
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**PETITIONERS' RESPONSE TO INTERVENOR TRUMP'S BRIEF REGARDING  
SPECIFIC INTENT**

Petitioners write briefly in response to Trump's assertion that engaging in insurrection for purposes of Section Three requires "specific intent." This is not so clear; Trump's own brief cites sources suggesting the standard is knowledge rather than intent. *See* Trump Br. on Specific Intent at 2 (citing the Baude & Paulsen definition of "engaged in" to include "'knowingly provided active, meaningful, voluntary, direct support for, material assistance to, or specific encouragements of" insurrection or rebellion).<sup>1</sup> However, the Court need not decide whether intent, as opposed to knowledge or recklessness, is required here; Petitioners will prove that Trump acted with intent. Petitioners would like to clarify a few points regarding the standard for intent.

*First*, Trump's formulation that he must have "consciously intended to engage in an insurrection on 6" is not right. *Id.* at 3. The "intent" requirement is baked into the definition of "engaged in," and is not a separate element. Petitioners thus need not prove that Trump "intended to engage in an insurrection." Rather, to have "engaged" in insurrection, Trump must have done

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<sup>1</sup> Trump also cites this and other sources regarding "engaged in" insurrection without ever saying he *agrees* with their definitions.

something that constitutes engagement, with the intent “of aiding and furthering the common unlawful purpose” of the insurrection or rebellion. 6 James D. Richardson, *A Compilation of the Messages and Papers of the Presidents* 528-31 (1897) (“In Cabinet,” June 18, 1867, summary item 16); *id.* at 552-56 (“War Dep’t, Adjutant-General’s Office, Washington,” June 20, 1867); *see also*, 12 Op. Att’y Gen. 141, 164 (1867) (those who “were engaged in the furtherance of *the common unlawful purpose*” are disqualified (emphasis added)). Here, the “common unlawful purpose” of the insurrection was to disrupt the transfer of Presidential power under the Twelfth Amendment. Trump is disqualified so long as he took voluntary conduct, by word or deed, with the intent to aid this common unlawful purpose. 12 Op. Att’y Gen. 141, 164 (1867).

*Second*, Trump need not have known or intended that his conduct would be illegal or that it would meet the legal definition of engaging in insurrection. *United States v. Blair*, 54 F.3d 639, 643 (10th Cir. 1995) (“[T]he general rule, deeply rooted in the American legal system, is that ignorance of the law or a mistake of law is no defense to criminal prosecution . . . . Thus, a specific intent crime normally does not necessitate proof that the defendant was specifically aware of the law penalizing his conduct.” (quotation omitted)). It is enough that he knew or intended the facts that satisfy the elements of the offense. *Elonis v. United States*, 575 U.S. 723, 735 (2015). (“[A] defendant generally must know the facts that make his conduct fit the definition of the offense,” but need not “know that those facts give rise to a crime.”). Petitioners need not prove that Trump either knew or intended that January 6 amounted to an insurrection or that his conduct would constitute engaging in insurrection; only that he voluntarily took the actions that he did, with the intent to further the common unlawful purpose.

*Third*, “specific intent” may “be inferred from the defendant’s conduct and the overall circumstances.” *People v. Phillips*, 219 P.3d 798, 800 (Colo. App. 2009). For example, “[a] fact finder may infer intent to cause the natural and probable consequences of unlawful voluntary

acts[.]” *People v. Madison*, 176 P.3d 793, 798 (Colo. App. 2007); *see also Farmer v. Brennan*, 511 U.S. 825, 842 (1994) (*mens rea* may be “infer[red] from circumstantial evidence” including “the fact that the risk was obvious”).

Date: October 26, 2023

Respectfully submitted,

/s/ Jason Murray

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