

supervising local election officials, with its offices located at 200 West Washington Street, Room 201, Indianapolis, Indiana 46204.

5. Pursuant to Indiana Code § 3-6-4.1-14, the Election Commission has the power to issue ballots that conform with Indiana law.

6. Venue is proper in this Court under Indiana Trial Rule 75(A)(8).

FACTUAL BACKGROUND

7. The Indiana General Assembly has singled out St. Joseph County for special treatment with respect to the redistricting and election of its county commissioners and county council members.

8. Indiana Code § 36-2-2-4(a) provides the general rule for the drawing of county commissioner districts and applies to 89 of Indiana's 92 counties. The three exceptions are Lake County, Marion County, and St. Joseph County.

9. St. Joseph County is unique among those three counties because, among other things, it has one large city and many rural communities.

10. Pursuant to Indiana Code § 36-2-2-4(a), "[t]he executive shall divide the county into three (3) districts that are composed of contiguous territory and are reasonably compact," and, "[t]he district boundaries . . . must not cross precinct boundary lines and must divide townships only when a division is clearly necessary to accomplish redistricting under this section."

11. Prior to April 1, 2022, St. Joseph County was not eligible to follow the general rule as set forth in Indiana Code § 36-2-2-4(a), but instead was subject to Indiana Code § 36-2-2-4(c), which applied to counties "having a population of more

than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).”

12. Prior to April 1, 2022, St. Joseph County was listed as having a population of 266,931 according to the 2010 U.S. Census.

13. Pursuant to Indiana Code § 36-2-2-4(c) “[t]he executive shall divide the county into three (3) single-member districts that comply with subsection (d),” which dictates that each single-member district must “(1) be compact, subject only to natural boundary lines (such as railroads, major highways, rivers, creeks, parks, and major industrial complexes); (2) contain, as nearly as is possible, equal population; and (3) not cross precinct lines.”

14. Historically, St. Joseph County is the only county in Indiana to be subject to Indiana Code § 36-2-2-4(c).

15. In addition to this unique statutory scheme for the drawing of county commissioner districts, St. Joseph County has also been subject to a special legislative scheme for the election of its county commissioners.

16. In nearly every other county in Indiana, county commissioners are elected by the voters of the entire county. In St. Joseph County, however, voters are only given the right to vote for the commissioner located in the single member district where the voter currently resides.

17. Prior to April 1, 2022, Indiana Code § 36-2-2-5(d) provided, “in a county having a population of (1) more than four hundred thousand (400,000) and less than seven hundred thousand (700,000); or (2) more than two hundred and fifty thousand

(250,000) and less than two hundred seventy thousand (270,000) one (1) member of the executive shall be elected by the voters of each of the three (3) single-member districts established” for the county.

18. Indiana Code § 36-2-2-5(d) further provides, “[i]n other counties, all three (3) members of the executive shall be elected by the voters of the whole county.”

19. Based on the specific population restrictions set forth in Indiana Code § 36-2-2-5(d), this statutory provision applied only to Lake County and St. Joseph County.

20. Accordingly, voters who reside in St. Joseph County (as well as Lake County) have suffered the lesser and unequal right to vote for only one of their three county commissioners, whereas voters in nearly every other Indiana county enjoy the right to vote for all three of their county commissioners.

21. Similar to the manner in which it has been treated for commissioner districts and elections, St. Joseph County has also been governed by a unique statutory scheme for county council districts and elections.

22. Indiana Code § 36-2-3-4(a) establishes the general rule for county council districts and has historically applied to 89 of the 92 Indiana counties; the only exceptions have been Lake County, Marion County, and St. Joseph County.

23. Indiana Code § 36-2-3-4(a) states, “[t]he county executive shall, by ordinance, divide the county into four (4) contiguous, single-member districts that comply with subsection (d).”

24. Indiana Code § 36-2-3-4(a) further provides, “[o]ne (1) member of the fiscal body shall be elected by the voters of each of the four (4) districts,” and “[t]hree (3) at-large members of the fiscal body shall be elected by the voters of the whole county.”

25. In a county subject to Indiana Code § 36-2-3-4(a), there are seven county council members. Three county council members are at-large members elected by voters of the whole county, and four county council members are elected by the voters of each of the four districts.

26. Accordingly, in these counties, each voter may cast a vote for up to four county council members—three at-large members and one from the voter’s district—i.e., a majority of the county council.

27. Prior to April 1, 2022, St. Joseph County had not been subject to Indiana Code §36-2-3-4(a), but was instead controlled by Indiana Code §36-2-3-4(c), which, “applies to a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).”

28. Prior to April 1, 2022, St. Joseph County was the only county in Indiana controlled by Ind. Code § 36-2-3-4(c).

29. Indiana Code §36-2-3-4(c) provides, “[t]he fiscal body shall divide the county into nine (9) single-member districts that comply with subsection (d).”

30. Indiana Code § 36-2-3-4(c) further provides, “[t]hree (3) of these districts must be contained within each of the three (3) districts established under IC 36-2-2-4(c)—the three single-member county commissioner districts—and “[o]ne (1)

member of the fiscal body shall be elected by the voters of each of these nine (9) single-member districts.”

31. Thus, under this special statutory scheme for St. Joseph County, there are nine county council members, each from a single-member district, with three county council member districts nested within each of three county commissioner districts.

32. In previous elections in St. Joseph County, each county voter has been able to cast a vote for only one of nine county council members—each voter may vote only for the county council seat in the district where the voter resides.

33. This unique statutory scheme for county council members/districts has been applicable only to St. Joseph County.

34. Under this special statutory scheme, in previous elections, St. Joseph County voters have suffered lesser and unequal voting rights with respect to the election of both county commissioners and county council members. In previous elections, St. Joseph County voters were permitted to cast a vote for only one of their three county commissioners, and only one of their nine county council members. By contrast, voters in nearly every other county in Indiana may vote for all three of their county commissioners, and four of their seven county council members.

35. According to 2020 U.S. Census data, the population of St. Joseph County increased from 266,931 in 2010 to 272,912 in 2020.

36. Given the 2020 census data, and by the express terms of the statutory provisions that had historically singled it out for special legislative treatment, St.

Joseph County was preparing to no longer be subject to these legislative limitations, and voters throughout the county were expecting to enjoy the full privileges enjoyed by other voters in Indiana with respect to the election of county commissioners and county council members.

37. In an effort to continue to subject St. Joseph County to the special statutory scheme, however, the Indiana General Assembly passed House Enrolled Act 1285 (“HEA 1285”) as part of its 2022 legislative session.

38. On or about March 18, 2022, Governor Eric Holcomb signed HEA 1285 into law.

39. Pursuant to HEA 1285, the Indiana General Assembly revised Indiana Code section 36-2-2-4(c) such that it would no longer apply to counties having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000), but instead would now apply to “a county having a population of more than two hundred fifty thousand (250,000) and **less than three hundred thousand (300,000).**” (emphasis added).

40. Pursuant to HEA 1285, the Indiana General Assembly also revised Indiana Code section 36-2-3-4(c) such that it would no longer apply to counties having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000), but instead would now apply to “a county having a population of more than two hundred fifty thousand (250,000) and **less than three hundred thousand (300,000).**” (emphasis added).

41. At the present time, St. Joseph County is the only county within the state to have a population between 250,000 and 300,000 residents.

42. As such, and despite the fact that St. Joseph County had exceeded the previous population threshold which had forced it to be subject to the aforementioned special legislative scheme, the voters of St. Joseph County are once again being singled out as part of this special legislative scheme without any valid justification as to why its voters should be treated differently than the voters of almost every other Indiana county.

43. Accordingly, Plaintiffs bring this action seeking declaratory relief that the special legislative scheme applicable to St. Joseph County is unconstitutional under multiple provisions of the Indiana Constitution as set out below.

St. Joseph County Voting Tendencies

44. County-wide, St. Joseph County tends to vote for candidates of the Democratic Party, both historically and in recent statewide and national elections.

45. Democratic Party voters in St. Joseph County are largely concentrated within certain geographical areas, including the City of South Bend; whereas Republican Party voters are more widely dispersed throughout the remainder of the county.

46. The combination of the special legislative scheme historically applied to St. Joseph County—which provides county commissioners are elected only by the voters of their single-member districts, and county council members are elected only by the voters of their single-member districts with no at-large members—and the

geographical concentration of Democratic voters within the county has led to skewed results that do not reflect the popular will of the collective population of St. Joseph County.

47. Thus, the special legislative scheme applicable to St. Joseph County effectively frustrates the popular will of a majority of St. Joseph County voters and leads to undemocratic outcomes on a county-wide basis.

The Move to Disenfranchise Minority Voters in St. Joseph County

48. In 2021, and prior to the passage of HEA 1285, the St. Joseph County Board of Commissioners (“the County Board”) passed two resolutions pursuant to Indiana Code §36-2-2-4.7, that would purportedly result in the redistricting of the three county commissioner districts for St. Joseph County, and, if effective, further weaken the voting rights of certain groups of St. Joseph County voters. On November 16, 2021, the Board adopted new commissioner districts for St. Joseph County (“the New Commissioner Districts”) by the passage of Resolution No. R-28-C 2021, with supplemental findings made under Resolution No. R-29-C 2021.

49. The New Commissioner Districts, if effective, would have made significant geographic and demographic changes to the pre-existing commissioner districts for St. Joseph County (“the Old Commissioner Districts”). The result of these changes would have been to further concentrate voters who tend to vote for Democratic Party candidates into a single commissioner district, while ensuring Republican Party control over the other two commissioner districts.

50. Under the Old Commissioner Districts, the minority population of St. Joseph County was more evenly distributed across the three districts than under the New Commissioner Districts.

51. By concentrating minority voters in a single district, the special law had the effect of diluting the effect of minority voters—including plaintiffs Warren Outlaw and Iris Outlaw—across the county.

52. The New Commissioner Districts, if effective, in tandem with the special legislative scheme previously applicable only to St. Joseph County (that disallows county-wide voting for county commissioners or county council members) would have had the effect of further frustrating the popular will of a majority of St. Joseph County voters.

**St. Joseph County Council’s Lawsuit Against
St. Joseph County Board of Commissioners**

53. On or about January 30, 2021, the St. Joseph County Council, as well as the members of the St. Joseph County Council, individually and in their official capacity, filed a lawsuit (“the County Council Lawsuit”) against the St. Joseph County Board of Commissioners, the Commissioners of St. Joseph County individually and in their official capacity, and the St. Joseph County Election Board.

54. As part of the County Council Lawsuit, the St. Joseph County Council sought, among other things: (1) a declaration that St. Joseph County is no longer subject to the aforementioned special legislation due to recent population changes; (2) that the aforementioned special legislation violates the prohibition against Special Legislation as set forth in Article 4, Sections 22 and 23 of the Indiana Constitution;

(3) that the aforementioned special legislation violates the Equal Privileges and Immunities Clause set forth in Article 1, Section 23 of the Indiana Constitution; and
(4) that the aforementioned special legislation violates the Free and Equal Elections Clause set forth in Article 2, Section 1 of the Indiana Constitution.

55. On or about March 2, 2022, the parties to the County Council Lawsuit entered into an Agreed Order (“the Agreed Order”), which subsequently resulted in the dismissal of the County Council Lawsuit.

56. Pursuant to the Agreed Order, the St. Joseph County Council and St. Joseph County Board of Commissioners jointly agreed to a set of New Commissioner District Maps and New Council District Maps.

57. Pursuant to the Agreed Order, the Court noted, “[t]o effectuate the Parties’ agreement, the Court hereby orders that the St. Joseph County Commissioner districts identified and established on the attached Exhibit 1, adopted and approved by a majority of the St. Joseph County Board of Commissioners, shall constitute the validly adopted maps pursuant to Indiana Code § 36-2-2-4(c), and the St. Joseph County Council districts identified and established on the attached Exhibit 2, adopted and approved by a majority of the St. Joseph County Council, shall constitute the validly adopted maps pursuant to Indiana Code § 36-2-3-4(c).”

58. On or about March 1, 2022, a majority of the St. Joseph County Board of Commissioners adopted and approved the St. Joseph County Commissioner districts identified on the New Commissioner District Maps.

59. On or about March 1, 2022, a majority of the St. Joseph County Council adopted and approved the St. Joseph County Council districts identified on the New Council District Maps.

60. While the St. Joseph County Council agreed to dismiss the County Council Lawsuit in exchange for the Court's entry of the Agreed Order, the action failed to resolve the Plaintiffs' present claims regarding the legality of the special legislation scheme, which has singled out St. Joseph County for special treatment respecting the redistricting and election of county commissioners and county council members and has resulted in the disenfranchisement of minority voters.

COUNT I

VIOLATION OF THE INDIANA CONSTITUTION, ARTICLE 4, §§ 22 AND 23 (SPECIAL LEGISLATION)—COUNTY COMMISSIONERS

61. The Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as though fully set forth herein.

62. Indiana Constitution Article 4, §22 provides, “[t]he General Assembly shall not pass local or special laws . . . [r]egulating the election of county and township officers.”

63. Indiana Constitution Article 4, §23 provides, “where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.”

64. At the present time, the process set forth in Ind. Code § 36-2-2-4(c) for county commissioner districts applies **only** to St. Joseph County.

65. At the present time, the two-resolution process set forth in Ind. Code § 36-2-2-4.7(c) for adopting new county commissioner districts applies only to St. Joseph County.

66. At the present time, the single-member district process for county commissioner elections set forth under Ind. Code § 36-2-2-5(d) applies only to St. Joseph County and Lake County.

67. The Plaintiffs refer the special processes set forth in Ind. Code §§ 36-2-2-4(c), 36-2-2-4.7(c), and 36-2-2-5(d) as, “the Special County Commissioner Election Process.”

68. The Special County Commissioner Election Process is special legislation because it does not apply uniformly statewide. Instead, it applies only to St. Joseph County, and thus deviates from the general process applicable to 89 of the 92 Indiana counties under Ind. Code §§ 36-2-2-4(a), 36-2-2-4.7(a), and 36-2-2-5(d).

69. The Special County Commissioner Election Process is unconstitutional special legislation, however, because there is nothing unique about St. Joseph County that requires or justifies deviation from the rules adopted statewide for the redistricting and election of county commissioners.

70. The Special County Commissioner Election Process is unconstitutional, because there is no reason why St. Joseph County voters should suffer lesser and unequal rights to elect county commissioners than voters in nearly every other Indiana county.

WHEREFORE, the Plaintiffs seek an order from the Court: (1) declaring that the Special County Commissioner Election Process, as embodied in Ind. Code §§ 36-2-2-4(c), 36-2-2-4.7(c), and 36-2-2-5(d), is unconstitutional special legislation; (2) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for drawing county commissioner districts under Ind. Code § 36-2-2-4(a); (3) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for adopting new county commissioner districts under Ind. Code § 36-2-2-4.7(a); (4) declaring St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county commissioners under Ind. Code § 36-2-2-5(d), i.e., the county-wide election of all three county commissioners; (5) declaring that the New Commissioner Districts have no legal force or effect; (6) enjoining the use or implementation of the New Commissioner Districts; and (7) granting the Plaintiffs all other just and proper relief.

COUNT II

VIOLATION OF THE INDIANA CONSTITUTION, ARTICLE 4, §§ 22 AND 23 (SPECIAL LEGISLATION)—COUNTY COUNCIL

71. The Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as though fully set forth herein.

72. Indiana Constitution Article 4, § 22 provides, “[t]he General Assembly shall not pass local or special laws . . . [r]egulating the election of county and township officers.”

73. Indiana Constitution Article 4, § 23 provides, “where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.”

74. At the present time, the process set forth in Ind. Code § 36-2-3-4(c) for county council districts and elections (“the Special County Council Election Process”) applies only to St. Joseph County. This process, applicable only to St. Joseph County, deviates from the general process applicable to nearly every other Indiana county under Ind. Code § 36-2-3-4(a).

75. The Special County Council Election Process is special legislation because it does not apply uniformly statewide. Instead, it applies only to St. Joseph County and deviates from the general process applicable to 89 of the 92 Indiana counties under Ind. Code § 36-2-3-4(a).

76. The Special County Council Election Process is unconstitutional special legislation, because there is nothing unique about St. Joseph County that requires or justifies deviation from the rules used statewide for county council member districts.

77. The Special County Council Election Process is unconstitutional special legislation, because there is no reason why St. Joseph County voters should suffer lesser and unequal rights to elect county council members than voters in nearly every other Indiana county.

WHEREFORE, the Plaintiffs seek an order from the Court: (1) declaring that the Special County Council District Process embodied in Ind. Code § 36-2-3-4(c) is unconstitutional special legislation in violation of Ind. Const. Art. 4, §§ 22 and 23; (2)

declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county council members under Ind. Code § 36-2-3-4(a); and (3) granting the Plaintiffs all other just and proper relief.

COUNT III

VIOLATION OF THE INDIANA CONSTITUTION, ARTICLE 1, § 23 (EQUAL PRIVILEGES AND IMMUNITIES CLAUSE)—COUNTY COMMISSIONERS

78. The Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as though fully set forth herein.

79. Article 1, § 23 of the Indiana Constitution (“the Equal Privileges and Immunities Clause”) provides, the “General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.”

80. In nearly every Indiana county other than St. Joseph County, voters possess the right to vote for all three of their county commissioners.

81. Under Ind. Code § 36-2-2-5(d), however, St. Joseph County voters have been permitted in previous elections to cast a vote for only one of three county commissioners. In nearly every Indiana county other than St. Joseph County, voters possess the right to vote for a majority of the members of the county council.

82. Only St. Joseph County voters have been subject to the restrictive scheme of Ind. Code § 36-2-3-4(c) in previous elections, which allowed each voter to cast a vote for only one of nine county council members.

83. Indiana Code § 36-2-2-5(d), violates the Equal Privileges and Immunities Clause, because it deprives St. Joseph County voters of the privileges

afforded to voters in nearly every other county in Indiana to vote for all three of their county commissioners.

84. Indiana Code § 36-2-3-4(c), violates the Equal Privileges and Immunities Clause, because it deprives St. Joseph County voters of the privileges afforded to voters in nearly every other county in Indiana to vote for a majority of their county council members.

85. There is no rational or legitimate basis for depriving St. Joseph County voters of the privileges afforded to voters in other Indiana counties, including the right to vote for all three county commissioners and the right to vote for a majority of the members of the county council.

WHEREFORE, the Plaintiffs seek an order from the Court: (1) declaring that Ind. Code § 36-2-2-5(d) violates the Equal Privileges and Immunities Clause and is unconstitutional, because it deprives St. Joseph County voters of the privilege afforded to residents of nearly every other county to vote for all three county commissioners; (2) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county commissioners under Ind. Code § 36-2-2-5(d), i.e., the county-wide election of all three county commissioners; (3) declaring that Ind. Code § 36-2-3-4(c) violates the Equal Privileges and Immunities Clause and is unconstitutional, because it deprives St. Joseph County voters of the privilege afforded to residents of nearly every other county to vote for a majority of the county council; (4) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of

county council members under Ind. Code § 36-2-3-4(a); and (5) granting the Plaintiffs all other just and proper relief.

COUNT IV

VIOLATION OF THE INDIANA CONSTITUTION, ARTICLE 2, § 1 (FREE AND EQUAL ELECTIONS CLAUSE)

86. The Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs as though fully set forth herein.

87. Article 2, Section 1 of the Indiana Constitution (“the Free and Equal Elections Clause”) provides, “all elections shall be free and equal.”

88. At a minimum, elections can satisfy the “equal” requirement only when the vote of every elector is equal in its influence to the vote of every other elector, and that each ballot is as effective as every other ballot.

89. In nearly every Indiana county other than St. Joseph County, voters possess the right to vote for all three members of the board of county commissioners.

90. Under Ind. Code § 36-2-2-5(d), however, St. Joseph County voters are restricted to voting for only one of the three members of the board of county commissioners.

91. In nearly every Indiana county other than St. Joseph County, voters possess the right to vote for a majority of the members of the county council.

92. Only St. Joseph County voters have been subject to the restrictive scheme of Ind. Code § 36-2-3-4(c), which allows each voter to vote for only one of nine county council members.

93. Indiana Code § 36-2-2-5(d) violates the Free and Equal Elections Clause because, to the extent it still singles out St. Joseph County for special treatment, it deprives St. Joseph County voters of equal influence to cast a vote and elect county commissioners; an influence which is afforded to voters in other counties throughout the State with respect to the election of county commissioners.

94. Indiana Code § 36-2-3-4(c) violates the Free and Equal Elections Clause because, to the extent that it singles out St. Joseph County for special treatment, it deprives St. Joseph County voters of an equal influence to cast a vote and elect county council members that is afforded to voters in other counties throughout the State with respect to the election of county council members.

WHEREFORE, the Plaintiffs seek an order from the Court: (1) declaring that Ind. Code § 36-2-2-5(d) is unconstitutional, because it violates Ind. Const. Art. 2, § 1; (2) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county commissioners under Ind. Code § 36-2-2-5(d), i.e., the county-wide election of all three county commissioners; (3) declaring that Ind. Code § 36-2-3-4(c) is unconstitutional, because it violates Ind. Const. Art. 2, § 1; (4) declaring that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county council members under Ind. Code § 36-2-3-4(a); and (5) granting the Plaintiffs all other just and proper relief.

WHEREFORE, and applicable to all counts of this lawsuit, the Plaintiffs seek the following relief:

a. A declaration that, due to recent population changes, St. Joseph County is no longer subject to special treatment under Ind. Code §§ 36-2-2-4(c), 36-2-2-4.7(c), 36-2-3-4(c), and 36-2-2-5(d);

b. A declaration that, due to recent population changes, St. Joseph County is now subject to the statutory provisions generally applicable to other Indiana counties, including Ind. Code §§ 36-2-2-4(a), 36-2-2-4.7(a), 36-2-3-4(a), and 36-2-2-5(d), i.e. the county-wide election of all three county commissioners;

c. A declaration that the New Commissioner Districts have no legal force or effect;

d. A declaration that Ind. Code §§ 36-2-2-4(c), 36-2-2-4.7(c), 36-2-3-4(c), and 36-2-2-5(d) are unconstitutional special legislation in violation of the Indiana Constitution, Article 4, §§ 22 and 23;

e. A declaration that Ind. Code §§ 36-2-3-4(c) and 36-2-2-5(d) are unconstitutional because they violate the Equal Privileges and Immunities Clause, Indiana Constitution, Article 1, § 23;

f. A declaration that Ind. Code §§ 36-2-3-4(c) and 36-2-2-5(d) are unconstitutional because they violate the Free & Equal Elections Clause, Indiana Constitution, Article 2, § 1;

g. A declaration that St. Joseph County is subject to the general rule applicable to other Indiana counties for dividing county commissioner districts under Ind. Code § 36-2-2-4(a);

h. A declaration that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county commissioners under Ind. Code § 36-2-2-5(d), i.e., the county-wide election of all three county commissioners;

i. A declaration that St. Joseph County is subject to the general rule applicable to other Indiana counties for the election of county council members under Ind. Code § 36-2-3-4(a);

j. A declaration that St. Joseph County is subject to the general rule applicable to other Indiana counties for the method of adoption of new county commissioner districts under Ind. Code § 36-2-2-4.7(a);

k. All expenses, including attorney's fees, related to this lawsuit; and

l. All other just and proper relief.

Respectfully submitted,

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