

F071584

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

GENEVA HAWKINS et al.,
Plaintiffs and Respondents,

v.

**ST. JOHN MISSIONARY BAPTIST CHURCH OF
BAKERSFIELD, CALIFORNIA et al.,**
Defendants and Appellants,

v.

JAMES BANKS et al.,
Defendants and Respondents.

APPEAL FROM KERN COUNTY SUPERIOR COURT
LINDA S. ETIENNE, COMMISSIONER • CASE NO. S-1500-CV-279571

**APPLICATION TO FILE AMICUS CURIAE BRIEF
AMICUS CURIAE BRIEF OF THE CALIFORNIA
MISSIONARY BAPTIST STATE CONVENTION AND
THE BAPTIST MINISTERS CONFERENCE OF LOS
ANGELES AND SOUTHERN CALIFORNIA IN
SUPPORT OF APPELLANTS**

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**Certificate of Interested Entities or Persons
(Cal. Rules of Court, Rule 8.208)**

The California Missionary Baptist State Convention is a tax-exempt, nonprofit religious organization headquartered in Los Angeles. It has no parent corporation and no stock.

The Baptist Ministers Conference of Los Angeles and Southern California is a tax-exempt, nonprofit religious organization headquartered in Los Angeles. It has no parent corporation and no stock.

There are no other interested entities or persons that must be listed in this certificate.

July 22, 2016

**STANFORD LAW SCHOOL
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By: _____

JAMES A. SONNE

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**THE CALIFORNIA MISSIONARY
BAPTIST STATE CONVENTION**

**THE BAPTIST MINISTERS
CONFERENCE OF LOS ANGELES
AND SOUTHERN CALIFORNIA**

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APPLICATION TO FILE AMICUS CURIAE BRIEF

The California Missionary Baptist State Convention and the Baptist Ministers Conference of Los Angeles and Southern California ask permission under California Rules of Court, rule 8.200(c), to file the accompanying brief in support of Appellants St. John Missionary Baptist Church of Bakersfield, California et al.¹

The California Missionary Baptist State Convention (the “Convention”) is the largest Black Baptist Convention west of Texas, with about 250 member churches. The 90-year-old, non-profit Convention is dedicated to strengthening Baptist churches and pastors in Biblical principles, through ministerial training and related forms of support at the service of their faithful.

The Baptist Ministers Conference of Los Angeles and Southern California (the “Conference”) is the area’s oldest Baptist organization. It is a non-profit umbrella entity that represents the collective interests of more than 300 churches. The Conference is similarly dedicated to strengthening Baptist ministerial leaders as they seek to shepherd their particular churches in the faith.

Specifically, both groups are also committed to the central Baptist belief in the independence of the local church under local

¹ Amici and their counsel certify that they and no other person or entity authored this brief (in whole or in part) or made any monetary contributions intended to fund its preparation or submission. (See Cal. Rules of Court, rule 8.200(c)(3).)

leadership. They are therefore concerned about the trial court's approach, which redefines in secular terms the criteria for choosing religious leaders—in violation of Baptist tradition and the law. Absent their input, they fear this dispute might be misunderstood as an isolated intra-church fight rather than a threat to the balance of church and state that has been the hallmark of Baptist survival since Roger Williams fled to Rhode Island three centuries ago.

For these reasons, Amici ask to file the following brief.

July 22, 2016

**STANFORD LAW SCHOOL
RELIGIOUS LIBERTY CLINIC**



By: _____

JAMES A. SONNE

Counsel for Amicus Curiae

**THE CALIFORNIA MISSIONARY
BAPTIST STATE CONVENTION**

**THE BAPTIST MINISTERS
CONFERENCE OF LOS ANGELES
AND SOUTHERN CALIFORNIA**

AMICUS CURIAE BRIEF

INTRODUCTION

In 2012, the United States Supreme Court unanimously reaffirmed the longstanding principle that the First Amendment affords religious groups the “power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” (*Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC* (2012) 132 S.Ct. 694, 704 [citation and quotation marks omitted].) For churches, this power extends beyond worship, sermons, and hymns, and into their very structure and composition—including how they choose leaders for their members and what it means to be a member in the first place. (See *ibid.* [“[I]t is impermissible for the government to contradict a church’s determination of who can act as its ministers.”]; *Bouldin v. Alexander* (1872) 82 U.S. 131, 139-40 [“[W]e cannot decide who ought to be members of the church[.]”].)

By substituting its judgment on such matters for St. John’s, however, the trial court defied this core principle of church-state relations. And because the court’s ruling poses a particular threat to Baptist churches, which are decentralized as a matter of faith but no less deserving of their rights under law, Amici urge reversal.

The trial court’s approach threatens Baptist churches in two ways. First, the court cherry picked church bylaws in ignorance of the unique significance of good-standing membership to Baptists

everywhere. By replacing St. John’s faith-based understanding of the concept with a secular definition of its own making, the court subverted the right of Baptists to choose their leaders. To belong to a local Baptist church in good standing—and thus have a voice in selecting its pastor—is not just about avoiding formal discipline, as the trial court would have it. Rather, it is an abiding commitment to Jesus Christ as understood by that particular community.

Civil courts cannot create and apply their own criteria to determine who qualifies as a member of a church. (*Bouldin, supra*, 82 U.S. at pp. 139-40; see also *Singh v. Singh* (2004) 114 Cal.App.4th 1264, 1289 [agreeing “it is well settled that a church has the right to determine its own membership and that courts should not resolve disputes over who is or can be a member”].) And even where churches have bylaws, courts cannot read them in a vacuum, applying only those involving supposed secular questions and ignoring those of ecclesiastical dimension. Rather, when bylaws implicate religious doctrine—either on their face or in their silence—courts must defer. Completely. (See *Jones v. Wolf* (1979) 443 U.S. 595, 604 [If “the interpretation of the instruments of [property] ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.”].)

The second way the trial court’s approach harms Baptists is in its discriminatory refusal to defer to congregational churches on membership and attendant leadership questions. Indeed, it started its analysis in this context with the understanding that “[i]ssues pertaining to hierarchical churches are afforded greater deference

by the courts than issues pertaining to congregational churches.” (2 AA 362.) But if the Establishment Clause means anything, it is that government cannot “prefer one religion over another.” (*Everson v. Bd. of Educ.* (1947) 330 U.S. 1, 15; see also Cal. Const., art. I, § 4 [guaranteeing “[f]ree exercise and enjoyment of religion without discrimination or preference”].) And granting less deference over membership and leadership to Baptist congregations than, say, Catholic churches, saddles the former with intrusive judicial oversight not foisted on the latter.

It is no solution to apply “neutral principles of law” to such questions, because even in more decentralized faiths like the Baptists, church governance remains an ecclesiastical matter. As the Supreme Court affirmed four years ago, “[r]equiring a church to accept or retain an unwanted minister . . . interferes with the internal governance of the church” in violation of the First Amendment. (*Hosanna-Tabor, supra*, 132 S.Ct. at p. 706.)

This Court should reverse.

ARGUMENT

I. BAPTIST CHURCHES ARE DECENTRALIZED AND SELF-DEFINED AS A MATTER OF FAITH.

A. Baptist theology rejects hierarchy and urges local congregations to follow God’s spirit as they discern it.

Baptists believe each congregation of believers is capable of discerning God’s will without the aid of hierarchy. (See Holmes, *Baptist Theology* (2012) p. 6.) And while Baptist churches typically

rely on the leadership of pastors and deacons to shepherd and guide the faithful, the ultimate authority resides with each local congregation. (See Wellum & Wellum, *The Biblical and Theological Case for Congregationalism*, in *Baptist Foundations: Church Government for an Anti-Institutional Age* (Dever & Leeman eds. 2015) pp. 47-48.)

For Baptists, decentralization is not merely a product of history and tradition. Rather, the choice to organize as autonomous congregations under local leaders goes to the heart of the faith, and of believers' understanding of their relationship with Jesus Christ. (See *id.* at pp. 47-49.) And while most Baptist congregations associate with affiliated organizations for solidarity, they do so voluntarily and remain firmly committed to both the independence and primacy of the local church. (See Holmes, *supra*, at p. 96.)

B. To ensure communities of faith, however, Baptist churches insist on good-standing membership rules.

Because a local Baptist congregation relies on its members to help discern the will of God, active membership in that community is therefore central to its religious identity and critical to its spiritual mission. (Moser, *Baptist Handbook for Church Members* (1971) <<http://goo.gl/Q4af27>>, p. 3.) It cannot be taken lightly.

The importance of church membership to Baptists is rooted in their biblical understanding that congregations form the body of Christ. (See California Missionary Baptist State Convention, *By Laws*, Art. III (Jan. 20, 1995) <<http://goo.gl/Oa8UXF>>; see also 1 Corinthians 12:12, 27.) For Baptists, moreover, Christ's vision for

believers necessarily contemplates active involvement in a community of the faithful. (See Holmes, *supra*, at p. 4; Hammett, *The Why and Who of Church Membership*, in *Baptist Foundations: Church Government for an Anti-Institutional Age*, (Dever & Leeman edits. 2015) pp. 177-78.)

When members devote themselves to God's community, they are able to walk together in the ways of Christ and fulfill His vision for their local congregation. (Holmes, *supra*, at p. 151.) And while Baptists believe no earthly group can judge another's soul, they also hold that each congregation can and must make judgments about who can or cannot be one of its members. (See Norman, *The Baptist Way: Distinctives of a Baptist Church* (2005) p. 55.) Maintaining a membership of locally active believers—who carry out their responsibilities to God and each other—is therefore essential to a particular Baptist church's ability to achieve its biblical function as a community that guides, supports, and strengthens each other.

Without the power to assess good-standing membership, a Baptist congregation loses its ability to grow and build up the body of Christ as it understands it. (See Hammett, *supra*, at pp. 182-83.)

C. Like St. John, Baptist churches often use religious criteria to determine membership in good standing.

In assessing good-standing membership, St. John considers the following terms in its bylaws: (a) fidelity to the Baptist Covenant; (b) loyalty to local church programs and activities; (c) obedience to local church regulations and rules; (d) financial support of the local church; (e) regular attendance at the local church; and

(f) support for the local church's missions, evangelism, and education. (See 1 AA 328-29; 5 AA 1251; AOB 46-47.) And these criteria are as central to St. John's faith as they are unremarkable in Baptist circles.

For example, Baptist churches across the country define "member in good standing" to reflect the idea that its members are committed to faithful Christian living as the church understands it. (See, e.g., First Baptist Church of Woodstock (Ga.), *Bylaws*, art. I, §§ 3, 4 (Sept. 12, 2013) <<http://goo.gl/PkZ5pw>> [a good-standing member is faithful to the Christian life]; Stuart Heights Baptist Church (Tenn.), *Constitution and Bylaws*, art. V, §§ 4, 5 (Feb. 1, 2011) <<http://goo.gl/plXRJo>> [good-standing members live a Christian life]; Clarks Chapel Baptist Church (N.C.), *By-laws*, art. VII, §§ 3, 4 (Nov. 28, 2010) <<http://bit.ly/29VbNsr>> [good-standing members abide by the Church Covenant].)

Likewise, Baptists churches commonly require members in good standing to regularly attend church services. (See, e.g., East Pointe Baptist Church (Fla.), *Bylaws*, art. I, §§ F, I (June 14, 2015) <<http://goo.gl/BESKVu>> [members must attend regular worship services]; Pleasant Hope Baptist Church (Md.), *Bylaws*, art. III, § 4 (June 16, 2014) <<http://goo.gl/MzWES7>> [good-standing members must attend services regularly]; Zion Baptist Church (Tex.), *Bylaws*, art. III, §§ 3, 4 (Jan. 30, 2012) <<http://goo.gl/Nn59Pb>> [good-standing members required to regularly attend church services].)

Moreover, financial support of the church and its ministries is an important requirement for a member in good standing. (See, e.g., Hebron Baptist Church (Ga.), *Bylaws*, art. V, §§ 3, 4 (2012)

<<http://goo.gl/VWcerI>> [members in good standing are expected to tithe]; First Baptist Church of Griffin (Ga.), *Bylaws*, art. I, § D (Oct. 27, 2009) <<http://bit.ly/29U3ul6>> [voting members must regularly contribute to church]; Christ Fellowship Baptist Church (Fla.), *Bylaws*, art. I, §§ 3, 7 (Dec. 12, 2007) <<http://bit.ly/1UHnKW8>> [voting members must give financially to the church].)

Finally, Baptist churches require members in good standing to participate actively in their faith-based ministries. (See, e.g., Good News Baptist Church (Ohio), *Constitution*, art. 4, § 2 (July 2014) <<http://goo.gl/ur73mk>> [good-standing member must be active in church's ministry]; Zion Baptist Church (Mass.), *Constitution and By-Laws*, art. 1, §§ II, III (April 1, 2014) <<http://bit.ly/29QJ6O1>> [members in good standing must pursue opportunities to participate in church ministries]; Richland Southern Baptist Church (Ill.), *Constitution*, art. VI, § 3 (June 14, 2009) <<http://bit.ly/29Kl86S>> [voting member must support church ministries].)

In sum, Baptist churches understand membership in good standing to involve a dynamic, subjective, and interlocking mosaic of factors that flow necessarily from their religious identity. Absent that identity, those criteria would be meaningless. Correspondingly, the omission of one or another of them—or, for that matter, lack of a specific definition at all (as Respondents argue is the case here, see RB 40)—nowhere diminishes that identity. If nothing else, good-standing membership is hardly limited to escaping formal discipline (as the trial court supposed, see 10 AA 2839).

II. THE TRIAL COURT'S APPROACH TO GOOD-STANDING MEMBERSHIP HURTS BAPTISTS.

A. The trial court's selective use of bylaws requires unconstitutional meddling in Baptist religious affairs.

By interfering with St. John's right to define its members, and not only in the abstract but in connection with its selection of a pastor, the trial court tread upon a matter central to Baptist-church identity in violation of the First Amendment. Specifically, courts "should not resolve disputes over who is or can be a member [of a church]." (*Singh, supra*, 114 Cal.App.4th at p. 1289; accord *Bouldin, supra*, 82 U.S. at pp. 139-140.) Furthermore, "it is impermissible for the government to contradict a church's determination of who can act as its ministers." (*Hosanna-Tabor, supra*, 132 S.Ct. at p. 704.) Indeed, the First Amendment "gives special solicitude" to churches in these matters. (*Id.* at p. 706.)

Membership authority is especially important for Baptist churches, whose members discern the will of Jesus Christ for their community—including the identity of those who should lead them. (*Ante* 5-7.) Forcing a church to accept (or retain) members thus impairs its ability "to express those views, and only those views, it intends to express." (*Hosanna-Tabor, supra*, 132 S.Ct. at p. 712 (Alito, J., concurring) [citation and quotation marks omitted].) This is of particular concern to decentralized faith traditions like the Baptists, which are "dedicated to the collective expression and propagation of shared religious ideals." (*Ibid.*)

Like other Baptist churches, St. John determines good-standing membership using religious criteria—e.g., fidelity to the

“Baptist Covenant,” with its attendant spiritual calling; “loyal[ty]” to church activities; support for the “total Church program.” (1 AA 328-29.) And it does so because its members have authority over religious matters—here, choosing a pastor. (See *Hosanna-Tabor*, *supra*, 132 S.Ct. at p. 706 [observing that the First Amendment protects “a religious group’s right to shape its own faith and mission through its appointments”].) The trial court should have deferred to St. John, and not just for its protection but for decentralized faiths everywhere. (See *Wolf*, *supra*, 443 U.S. at p. 604 [requiring church deference where the matter “incorporates religious concepts”].)

While the Court of Appeal in *Singh v. Singh* suggested some judicial role in membership issues, that role was limited there to secular criteria unmistakably set forth in an organization’s bylaws. (*Singh*, *supra*, 114 Cal.App.4th at p. 1289.) Here rather, the court created its *own* criteria to determine who qualified as a member. Not only did the court refuse to defer to St. John on the religious requirements for good standing, it created a new dispositive criterion: no formal discipline. (See 10 AA 2839.) Moreover, even if one were to accept discipline as a factor, that would itself be an ecclesiastical matter outside the court’s authority in any event. (See *Singh*, *supra*, 114 Cal.App.4th at p. 1275 [insisting that “courts cannot intrude into a religious organization’s determination of religious or ecclesiastical matters such as . . . church discipline”].)

Finally, the fact that St. John—or any other Baptist church, for that matter—is incorporated does not mean it forfeits its right to be free from government intrusion in religious matters. The Corporations Code might allow courts to order and oversee church-

membership votes “in such a manner as the court finds fair and equitable under the circumstances.” (Cal. Corp. Code, § 9414, subd. (a).) But ordering a vote—and ensuring its equity—is *all* the Code would allow. At most, the trial court’s job was to ensure the vote was administered fairly. It was not to second-guess a church’s very identity as a religious organization.

To hold otherwise would fundamentally alter the church-congregant relationship for all Baptist churches in our state, to the detriment not only of their legal rights but to the choice of that polity which has been central to the Baptist tradition for centuries.

B. The trial court’s refusal to defer to St. John on good-standing membership discriminates against Baptists.

The Supreme Court in *Hosanna-Tabor* made clear that the “authority to select and control who will minister to the faithful—a matter strictly ecclesiastical—is the church’s alone.” (*Hosanna-Tabor*, *supra*, 132 S.Ct. at p. 709 [citation and internal quotation marks omitted].) Moreover, and as the Court held decades earlier in *Serbian Orthodox Diocese v. Milivojevich*, courts must defer to the appropriate church authority where internal church conflicts “turn on the resolution . . . of controversies over religious doctrine and practice.” ((1976) 426 U.S. 696, 710; see also Young & Tiggles, *Into the Religious Thicket—Constitutional Limits on Civil Court Jurisdiction Over Ecclesiastical Disputes* (1986) 47 OHIO ST. L.J. 475, 499 [“If such a doctrinal question is present, the court must then determine the nature of the church’s polity and identify the church authority appointed by church law to resolve the matter

internally. If that authority has acted, and there is no claim of fraud or collusion for a secular purpose, then the court must defer.”].)

And in applying these deference principles, courts make no distinction between hierarchical and congregational churches. (See, e.g., *Burgess v. Rock Creek Baptist Church* (D.D.C. 1990) 734 F.Supp. 30, 31-32 [insisting on applying *Milivojevich* deference in non-hierarchical context]; *Nunn v. Black* (W.D. Va. 1981) 506 F.Supp. 444, 448 [same]; see also Durham & Smith, *Religious Organizations and the Law* § 5:39 (2013) [noting that even in congregational setting, “courts will rarely intervene to order an election” of church leaders].) To hold otherwise risks preferring one religious-organizational form to another, and placing undue pressure on the disfavored to change their structures or practices to conform. (See *Everson, supra*, 330 U.S. at p. 15.)

One federal court observed in this context: “because the ‘hands off’ policy espoused by [*Milivojevich*] is of constitutional dimension, we find it difficult to justify the application of a different standard where a congregational church is involved.” (*First Baptist Church of Glen Este v. Ohio* (S.D. Ohio 1983) 591 F. Supp. 676, 682.) California courts agree. (See *Singh, supra*, 114 Cal. App. 4th at p. 1280 [“whether the religious organization is hierarchical or congregational, it is clear that the decisions of the highest religious tribunal on questions of discipline, faith, or ecclesiastical rule, custom, or law must be accepted”].) Importantly, Respondents even do too. (See RB 35 [“in reality . . . congregational churches are afforded as much deference as hierarchical churches”].)

In certain circumstances, courts have used the presence of church bylaws as an opportunity to resolve internal disputes according to “neutral principles of law.” (See *Wolf, supra*, 443 U.S. at p. 602-03 [approving neutral-principles approach for resolving internal property disputes using church documents]); *Episcopal Church Cases* (2009) 45 Cal.4th 467, 485 [applying neutral principles in church-property context].) In any event, however, deference—not neutral principles—applies where the document “incorporates religious questions.” (*Wolf, supra*, 443 U.S. at p. 604.) Such deference is the rule even if—indeed, especially if—the religious language at issue is “ambiguous.” (*Milivojevich, supra*, 426 U.S. at 708 [quotation marks omitted].)

Here, the trial court took a supposed neutral-principles approach when it should have deferred. Specifically, the court purported to rely only on “objective” criteria in the bylaws while ignoring “subjective” ones, as if St. John were “simply a corporate entity.” (10 AA 2838.) But it is a church. And just like a hierarchical church, the trial court should have afforded St. John deference rather than subjecting it to invasive second-guessing.

As detailed above, the Baptist rejection of hierarchical organization in favor of a more autonomous one under local leadership is a theological decision worthy of respect. It is not, as the trial court would have it, an invitation to greater governmental scrutiny. (See *Rentz v. Werner* (2010) 156 Wash.App. 423, 437 [“Whether the church is congregational or hierarchical is not determinative of the manner in which the [membership] claims herein brought implicate the First Amendment’s protection against

state interference in religious belief and practice.”].) Any difference in deference would discriminate against congregational churches in general and Baptist churches in particular.

CONCLUSION

By selectively enforcing St. John’s bylaws and refusing to defer to its judgment on religious questions, the trial court violated the autonomy of churches cherished by the First Amendment and Baptist congregations throughout our state and across the country. Absent reversal, Baptists face an uncertain and second-class future in practicing their faith.

July 22, 2016

**STANFORD LAW SCHOOL
RELIGIOUS LIBERTY CLINIC**



By: _____

JAMES A. SONNE

Counsel for Amicus Curiae

**THE CALIFORNIA MISSIONARY
BAPTIST STATE CONVENTION**

**THE BAPTIST MINISTERS
CONFERENCE OF LOS ANGELES
AND SOUTHERN CALIFORNIA**

**CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.204(c)(1))**

The text of this brief consists of 3068 words as counted by the Microsoft Word version 2011 word processing program used to generate the brief.

July 22, 2016



ZEBA A. HUQ

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Santa Clara, State of California. My business address is 559 Nathan Abbott Way, Stanford, California 94305-8610.

On July 22, 2016, I served true copies of the following document(s) described as **APPLICATION TO FILE AMICUS CURIAE BRIEF; AMICUS CURIAE BRIEF OF THE CALIFORNIA MISSIONARY BAPTIST STATE CONVENTION AND THE BAPTIST MINISTERS CONFERENCE OF LOS ANGELES AND SOUTHERN CALIFORNIA** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Stanford Religious Liberty Clinic's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 22, 2016 at Stanford, California.



ZEBA A. HUQ

SERVICE LIST

Hawkins v. St. John Missionary Baptist Church
California Court of Appeal, Fifth Appellate District
Case No. F071584

| Individual / Counsel Served | Party Represented |
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| <p>Hon. Linda S. Etienne Commissioner Kern County Superior Court 1415 Truxtun Avenue, Department 12 Bakersfield, California 93301-4172</p> | <p>Trial Judge Case No. S-1500-CV-279571</p> <p>Hard Copy via U.S. Mail</p> |

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