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<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	<p>FILED IN THE SUPREME COURT.</p>
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2013) Appeal from the Ballot Title Board</p>	<p>APR 29 2014 OF THE STATE OF COLORADO Christopher T. Ryan, Clerk</p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013- 2014, #94</p> <p>Petitioner:</p> <p>Stacy Carpenter</p> <p>v.</p> <p>Respondents:</p> <p>Chris Forsyth and Laurie Forsyth</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Respondents are proceeding pro se</p>	<p>Case Number: 2014SA102</p>
<p>OPENING BRIEF OF RESPONDENTS/PROPONENTS</p>	

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COMES NOW the Proponents/Respondents, Chris Forsyth and Laurie Forsyth, who respectfully submit the following Opening Brief.

I. ISSUES PRESENTED FOR REVIEW

The following issues are identified in the Objector's Petition for Review:

1. Whether the proposed initiative violates the single subject requirement because it applies to judicial discipline and judicial disability.
2. Whether the title set by the Title Board fails to disclose major provisions of the measure.

II. STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition Below.

Pursuant to C.R.S. § 1-40-106, the Title Board conducted a public meeting and set a title, ballot title, and submission clause for Proposed Initiative 2013-2014 #94 on March 19, 2014. Petitioner timely filed a Motion for Rehearing pursuant to C.R.S. § 1-40-107(1), on March 26, 2014. The rehearing was conducted on April 2, 2014. At the rehearing, the Board denied Petitioner's motion except to the extent that it revised the language of the title. Petitioner timely filed a Petition for Review with this Court pursuant to C.R.S. § 1-40-107(2) on April 9, 2014

B. Statement of the Facts.

Proposed Initiative 2013-2014 #94 would transfer jurisdiction over judicial discipline and disability to the Independent Ethics Commission. The text of the measure is as follows:

SECTION 1. In the constitution of the state of Colorado, section 5 of article XXIX, **amend** (3)(a) as follows:

(3)(a) Any person may file a written complaint with the independent ethics commission asking whether a public officer, member of the general assembly, local government official, or government employee has failed to comply with this article or any other standards of conduct or reporting requirements as provided by law within the preceding twelve months. PURSUANT TO SECTION 23 OF ARTICLE VI OF THE COLORADO CONSTITUTION, ANY PERSON MAY FILE A WRITTEN COMPLAINT WITH THE INDEPENDENT ETHICS COMMISSION ASKING WHETHER A JUSTICE OR JUDGE HAS FAILED TO COMPLY WITH THE CODE OF JUDICIAL CONDUCT OR WHETHER A JUSTICE OR JUDGE SHOULD BE RETIRED FOR DISABILITY. THE TWELVE MONTH STATUTE OF LIMITATIONS DOES NOT APPLY TO COMPLAINTS AGAINST A JUSTICE OR JUDGE.

SECTION 2. In the constitution of the state of Colorado, section 23 of article VI, **amend** (3) (a), (3) (b), (3) (c), (3) (d), (3) (e), (3) (f), (3) (g) and (3) (h) as follows:

(3)(a) ~~There shall be a commission on judicial discipline. It shall consist of: Two judges of district courts and two judges of county courts, each selected by the supreme court; two citizens admitted to practice law in the courts of this state, neither of whom shall be a justice or judge, who shall have practiced in this state for at least ten years and who shall be appointed by the governor, with the consent of the senate; and four citizens, none of whom shall be a justice or judge, active or retired, nor admitted to practice law in the courts of this state, who shall be appointed by the governor, with the consent of the senate.~~ THE INDEPENDENT ETHICS COMMISSION IS RESPONSIBLE FOR PROSECUTING JUDICIAL MISCONDUCT AND RECOMMENDING JUDICIAL DISCIPLINE.

(b) ~~Each member shall be appointed to a four-year term; except that one-half of the initial membership in each category shall be appointed to two-year terms, for the purpose of staggering terms. Whenever a commission membership prematurely terminates or a member no longer possesses the specific qualifications for the category from which he was selected, his position shall be deemed vacant, and his successor shall be appointed in the same manner as the original appointment for the remainder of his term. A member shall be deemed to have resigned if that member is absent from three consecutive commission meetings without the commission having entered an approval for additional absences upon its minutes. If any member of the commission is disqualified to act in any matter pending before the commission, the commission may appoint a special member to sit on the commission solely for the purpose of deciding that matter.~~ THE INDEPENDENT ETHICS COMMISSION SHALL PROMULGATE PROCEDURAL RULES REGARDING JUDICIAL DISCIPLINE.

(c) No member of the INDEPENDENT ETHICS commission shall receive any compensation for his services but shall be allowed his necessary expenses for travel, board, and lodging and any other expenses incurred in the performance of his duties REGARDING THE PROSECUTION OF JUDICIAL MISCONDUCT AND THE RECOMMENDATION OF JUDICIAL DISCIPLINE, to be paid by the supreme court from its budget to be appropriated by the general assembly.

(d) A justice or judge of any court of record of this state, in accordance with the procedure set forth in this subsection (3), may be removed or disciplined for ~~willful misconduct in office, willful or persistent failure to perform his duties, intemperance,~~ or violation of any canon OR RULE of the Colorado code of judicial conduct, or he may be retired for disability interfering with the performance of his duties which is, or is likely to become, of a permanent character. AS SET FORTH IN THIS SECTION, THE INDEPENDENT ETHICS COMMISSION HAS SOLE JURISDICTION OVER WHETHER A JUSTICE OR JUDGE HAS VIOLATED A CANON OR RULE OF THE COLORADO CODE OF JUDICIAL CONDUCT OR WHETHER A JUSTICE OR JUDGE MAY BE RETIRED FOR DISABILITY. A JUSTICE OR JUDGE MAY BE DISCIPLINED FOR CONDUCT THAT MAY BE OTHERWISE SUBJECT TO APPELLATE REVIEW BECAUSE THE PURPOSES OF DISCIPLINE ARE

SEPARATE AND DISTINCT FROM THE PURPOSES OF AN APPEAL. THE PURPOSES OF DISCIPLINE ARE THE PREVENTION OF FUTURE MISCONDUCT AND THE PROTECTION OF THE PUBLIC. A JUSTICE OR JUDGE MUST POSSESS THE CONFIDENCE OF THE COMMUNITY AND THEREFORE BE INDEPENDENT AND HONEST. JUSTICE MUST NOT ONLY BE DONE, IT MUST BE SEEN TO BE DONE. THERE MUST BE THE APPEARANCE OF JUSTICE AS WELL AS THE FACT OF JUSTICE, OR RESPECT FOR THE JUDICIARY WILL VANISH. THEREFORE, IF THE CODE OF JUDICIAL CONDUCT IS VIOLATED IN AN ORDER OR BY ACTIONS THAT ARE OTHERWISE SUBJECT TO APPELLATE REVIEW, A JUSTICE OR JUDGE MAY BE DISCIPLINED. IN REACHING ITS RECOMMENDATION, THE INDEPENDENT ETHICS COMMISSION IS NOT BOUND BY THE FINDINGS OF AN APPELLATE COURT REGARDING SUCH CONDUCT AND OWES NO DEFERENCE TO THE FINDINGS OF AN APPELLATE COURT. FURTHERMORE, A JUSTICE OR JUDGE MAY BE DISCIPLINED FOR CONDUCT OR ACTIONS THAT WERE NOT APPEALED OR FOR CONDUCT OR ACTIONS THAT WERE NOT OTHERWISE SUBJECT TO APPELLATE REVIEW.

(e) ~~The commission may, after such investigation as it deems necessary, order informal remedial action; order a formal hearing to be held before it concerning the removal, retirement, suspension, censure, reprimand, or other discipline of a justice or a judge; or request the supreme court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any such matter and to report thereon to the commission.~~

WHENEVER THE INDEPENDENT ETHICS COMMISSION RECEIVES A COMPLAINT AGAINST A JUSTICE OR JUDGE, OR OTHERWISE HAS REASON TO BELIEVE THAT A JUSTICE OR JUDGE SHOULD BE ADMONISHED, REPRIMANDED, CENSURED, SUSPENDED, REMOVED, OR RETIRED, THE COMMISSION SHALL FIRST INVESTIGATE THE COMPLAINT OR BELIEF AND THEN CONDUCT INITIAL PROCEEDINGS FOR THE PURPOSE OF DETERMINING WHETHER PROBABLE CAUSE EXISTS FOR CONDUCTING A PUBLIC HEARING OR HEARINGS TO DEAL WITH THE COMPLAINT OR BELIEF. WHENEVER THE COMMISSION CONCLUDES, BASED ON AN INITIAL PROCEEDING, THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A JUSTICE OR JUDGE HAS VIOLATED A CANON OR RULE OF JUDICIAL CONDUCT OR THAT THE JUSTICE OR JUDGE SUFFERS FROM A DISABILITY WHICH IS

PERMANENT OR LIKELY TO BECOME PERMANENT AND WHICH SERIOUSLY INTERFERES WITH THE PERFORMANCE OF JUDICIAL DUTIES, THE COMMISSION SHALL CONDUCT A PUBLIC HEARING OR HEARINGS. After a formal SUCH hearing OR HEARINGS ~~or after considering the record and report of the masters~~, if the commission finds good cause therefor FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT A JUSTICE OR JUDGE HAS VIOLATED THE CODE OF JUDICIAL CONDUCT OR THAT THE JUSTICE OR JUDGE SUFFERS FROM A DISABILITY WHICH IS PERMANENT OR LIKELY TO BECOME PERMANENT AND WHICH SERIOUSLY INTERFERES WITH THE PERFORMANCE OF JUDICIAL DUTIES, it may take informal remedial action, or it may recommend to the supreme court the removal, retirement, suspension, censure, reprimand, or discipline, as the case may be, of the justice or judge. The commission may also recommend that the costs of its investigation and hearing be assessed against such justice or judge.

(f) Following receipt of a recommendation from the INDEPENDENT ETHICS commission, the supreme court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal, retirement, suspension, censure, reprimand, or discipline, as it finds just and proper, or wholly reject the recommendation. IF THE RECOMMENDATION OF THE COMMISSION IS SUPPORTED BY SUBSTANTIAL EVIDENCE, THE SUPREME COURT SHALL ACCEPT THE RECOMMENDATION OF THE COMMISSION. Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order. On the entry of an order for retirement or for removal of a judge, his office shall be deemed vacant.

(g) ~~Prior to the filing of a recommendation to the supreme court by the commission against any justice or judge, all papers filed with and proceedings before the commission on judicial discipline or masters appointed by the supreme court, pursuant to this subsection (3), shall be confidential, and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation; except that the record filed by the commission in the supreme court continues privileged and a writing which was~~

~~privileged prior to its filing with the commission or the masters does not lose such privilege by such filing.~~ WHENEVER THE COMMISSION CONCLUDES, BASED ON AN INITIAL PROCEEDING, THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A JUSTICE OR JUDGE HAS VIOLATED THE CODE OF JUDICIAL CONDUCT OR THAT THE JUSTICE OR JUDGE SUFFERS FROM A DISABILITY WHICH IS PERMANENT OR LIKELY TO BECOME PERMANENT AND WHICH SERIOUSLY INTERFERES WITH THE PERFORMANCE OF JUDICIAL DUTIES, THE COMMISSION SHALL MAKE PUBLIC ALL THOSE RECORDS OF ITS INVESTIGATION THAT PROVIDE THE BASIS FOR ITS ACTION. SUBSEQUENT ACTIONS BY THE COMMISSION OR SUBSEQUENT HEARINGS IN THE DISCIPLINARY PROCESS SHALL BE PUBLIC.

(h) ~~The supreme court shall by rule provide for procedures before the commission on judicial discipline, the masters, and the supreme court. The rules shall also provide the standards and degree of proof to be applied by the commission in its proceedings.~~ A justice or judge who is a member of the INDEPENDENT ETHICS commission or supreme court shall not participate in any proceedings involving his own removal or retirement.

SECTION 3. In the constitution of the state of Colorado, section 23 of article VI, **add** (4) as follows:

(4) TO PROMOTE AN EQUAL AMOUNT OF PUBLIC CONFIDENCE IN THE JUDICIAL BRANCH AS CURRENTLY EXISTS IN OTHER BRANCHES OF GOVERNMENT, THE JURISDICTION OVER JUDICIAL DISCIPLINE BY THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE SHALL CEASE ON DECEMBER 31, 2014, AND BE ASSUMED BY THE INDEPENDENT ETHICS COMMISSION ON JANUARY 1, 2015. THE INDEPENDENT ETHICS COMMISSION SHALL TAKE OVER ANY ONGOING INVESTIGATION AND ALL COMPLAINTS REGARDING JUDICIAL DISCIPLINE AS OF JANUARY 1, 2015. THE INDEPENDENT ETHICS COMMISSION HAS JURISDICTION OVER CONDUCT THAT OCCURRED PRIOR TO JANUARY 1, 2015, AS WELL AS CONDUCT THAT OCCURS AFTER JANUARY 1, 2015. THE INDEPENDENT ETHICS COMMISSION IS NOT BOUND BY ANY PRIOR DISMISSALS OF COMPLAINTS ISSUED BY THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE. THE INDEPENDENT ETHICS COMMISSION MAY

INVESTIGATE AND PURSUE DISCIPLINE BASED ON COMPLAINTS THAT WERE PREVIOUSLY DISMISSED BY THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE.

SECTION 4. Effective date - applicability. These voter-enacted provisions shall take effect on January 1, 2015.

After the Title Board set a title, Petitioner moved for a rehearing. The motion was denied except to the extent that the Board revised the language of the title it had set after the initial hearing. The title for the measure, as revised, reads:

An amendment to the Colorado constitution concerning regulation of judicial conduct and, in connection therewith, transferring jurisdiction over judicial discipline and disability to the independent ethics commission from the commission on judicial discipline and specifying that such jurisdiction includes review of claims of violations of the Colorado code of judicial conduct and claims of disability, as well as complaints that were previously dismissed by the commission on judicial discipline.

III. SUMMARY OF THE ARGUMENT

1. The proposed initiative complies with the single subject requirement.
2. The title set by the Title Board fairly expresses the true meaning and intent of the proposed measure.

IV. ARGUMENT

A. Standard of Review.

"When reviewing a challenge to the Title Board's setting of an initiative's title and ballot title and submission clause, we employ all legitimate presumptions

in favor of the propriety of the Board's actions." *In re Title, Ballot Title and Submission Clause for 2009-2010 #91*, 235 P.3d 1071, 1076 (Colo. 2010).

The Supreme Court "will only overturn the Title Board's finding that an initiative contains a single subject in a clear case." *In re Title, Ballot Title and Submission Clause, and Summary Pertaining to the Casino Gaming Initiative Adopted on April 21, 1982*, 649 P.2d 303, 306 (Colo.1982).

The Supreme Court's limited role in this process prohibits the Court from addressing the merits of a proposed initiative, and from suggesting how an initiative might be applied if enacted. *In re Title, Ballot Title and Submission Clause for Proposed Initiative 2001-02 No. 43*, 46 P.3d 438, 443 (Colo.2002). The Supreme Court does not determine an initiative's efficacy, construction, or future application, which is properly determined if and after the voters approve the proposal. *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 # 258(A) (English Language Educ. in Pub. Schs.)*, 4 P.3d 1094, 1097-98 (Colo.2000). Only if the Board's title contains "a material and significant omission, misstatement, or misrepresentation" will the Supreme Court reverse the Board. *In re Title, Ballot Title & Submission Clause & Summary for 1997-98 No. 62*, 961 P.2d 1077, 1082 (Colo.1998).

"[T]he Title Board has considerable discretion in setting the titles for a ballot measure." *In re Proposed Initiative on Parental Choice in Educ.*, 917 P.2d 292, 294 (Colo.1996). In reviewing the actions of the Board, the Supreme Court generally defers to the Title Board's broad discretion in the exercise of its drafting authority. *See In re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127, 1131 (Colo.1996). The Supreme Court employs "all legitimate presumptions in favor of the propriety of the Board's actions." *In re Title, Ballot Title Submission Clause for 2009-2010 No. 45*, 234 P.3d 642, 645 (Colo.2010).

B. The proposed measure contains a single subject.

Colo. Const. art. V, § 1(5.5) and C.R.S. § 1-40-106.5, require initiated measures to contain only a single subject. "A proposed initiative violates this rule if its text 'relate[s] to more than one subject, and [has] at least two distinct and separate purposes not dependent upon or connected with each other.'" *In re Title, Ballot Title and Submission Clause for 2011-2012 #3*, 274 P.3d 562, 565 (Colo. 2012)(quoting *People ex rel. Elder v. Sours*, 74 P. 167, 177 (1903)). "We have previously explained that that the single subject rule prevents two 'dangers' associated with omnibus initiatives. . . . First, combining subjects with no necessary or proper connection for the purpose of garnering support for the initiative from various factions -- that may have different or even conflicting

interests -- could lead to the enactment of measures that would fail on their own merits. . . . Second, the single subject rule helps avoid 'voter surprise and fraud occasioned by the inadvertent passage of a surreptitious provision 'coiled up in the folds' of a complex initiative.'" *Id.* at 566(citations omitted)(quoting *In re Title, Ballot Title and Submission Clause for 2001-2002 #43*, 46 P.3d 438, 442 (Colo. 2002).

The single subject requirement is not violated if the "matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous." *In re Amend Tabor 25*, 900 P.2d 121, 125 (Colo.1995); *see In re "Public Rights in Waters II"*, 898 P.2d 1076, 1078-79 (Colo.1995). Said another way, the single subject requirement is not violated unless the text of the measure "relates to more than one subject and has at least two distinct and separate purposes which are not dependent upon or connected with each other." *In re Petition Procedures*, 900 P.2d 104, 109 (Colo.1995); *see People v. Sours*, 31 Colo. 369, 405, 74 P. 167, 178 (1903).

Petitioner alleges in her petition to review that judicial discipline and judicial disability are unrelated and therefore initiative #94 violates the single subject requirement. This allegation is absurd. Judicial discipline and disability are so related that they are analogous to conjoined twins that share the same organs.

Judicial discipline and disability are properly connected to each other and are not disconnected or incongruous. This fact is evidenced by the following: The Colorado Rules of Judicial Discipline address both discipline and disability. Colo. R. Jud. Disc., Rules 5 and 33.5; discipline and disability each constitute a basis for the removal of a judge because the judge is not fit to appropriately do his or her job; discipline and disability are already handled in the same constitutional section that proponents are amending with initiative #94; discipline and disability are currently handled by the same commission – the Colorado Commission on Judicial Discipline; and the Code of Judicial Conduct addresses both disciplinary grounds and disability. CJC Rule 2.14 (if a judge is impaired or disabled for whatever reason another judge must take appropriate action); CJC Rule 2.5 (if a judge is disabled he or she is not performing judicial duties competently); CJC Rule 2.14, comment [2] (the appropriate action to take regarding a disabled judge may be reporting the judge to the appropriate authority). Both discipline and disability are addressed in the Code of Judicial Conduct because both regard whether a justice or judge is acting in a competent manner.

Any argument that judicial discipline and judicial disability are not congruous or connected, and therefore violate the single subject requirement, is frivolous and groundless. Indeed, there would most likely be an uproar if

proponents attempted to separate discipline from disability because the two are so intertwined. There is no basis in fact or law for opponent's argument that initiative #94 violates the single subject requirement. Judicial discipline and disability both regard whether a judge is fit to be on the bench. They are properly connected to each other, are not incongruous, and therefore the inclusion of them in initiative #94 does not violate the single subject requirement. *In re Amend Tabor 25*, 900 P.2d 121, 125 (Colo.1995).

C. The title set by the Title Board fairly expresses the true meaning and intent of the proposed measures.

The Board is not required to restate the entire measure in the title. "While titles must be fair, clear, accurate and complete, the Title Board is not required to set out every detail of an initiative. . . . In addition, the Title Board may not speculate as to the measure's efficacy, or its practical or legal effects." *In re Title, Ballot Title and Submission Clause for 2007-2008 #62*, 184 P.3d 52, 60 (Colo. 2008). "[T]he Title Board is neither obligated nor authorized to construe the future legal effects of an initiative as part of the ballot title. . . . The interplay of a ballot initiative with various provisions of existing law is an issue for post-election litigation, not the basis for a ballot title challenge." *Id.* (citations omitted). The Supreme Court is "not permitted in our review to determine the legal meaning or

application of the initiative when reviewing its title for defects." *In re Title, Ballot Title and Submission Clause for 2009-2010 #45*, 234 P.3d at 648.

Petitioner alleges that the title is misleading because it does not relate a procedural element in the measure which states that the Independent Ethics Commission owes no deference to the findings of appellate courts regarding the conduct of a judge if there are any such findings. The procedural element is the standard of review for the conduct in question. Petitioner's argument that this procedural element must be included in the title is contrary to case law. *Matter of Title, Ballot Title for 1997-98 No. 62*, 961 P.2d 1077, 1083 (Colo. 1998)(To require an item-by-item paraphrase of an initiative undermines the intended and required relatively short and plain title that the board is to set regarding the central features of the initiative.) A title must be fair, clear, accurate and complete, but need not set out every detail of the initiative. *In re Ballot Title 2005-2006 No. 73*, 135 P.3d 736 (Colo. 2006). The title board is not required to include every aspect of a proposal in the title and submission clause, to discuss every possible effect, or provide specific explanations of the measure. *In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e)*, 1 P.3d 720, 724 (Colo. 2000).

A title must be brief. *In re Second Initiated Constitutional Amendment*, 613 P.2d 867, 869 (1980). A title must be proper and fair and must correctly and fairly

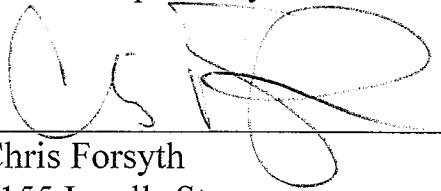
express the true intent and meaning of the proposed measure. *Id.* The Title Board committed no error by not including the standard of review the Independent Ethics Commission is to apply in reviewing judicial conduct.

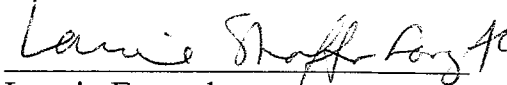
The ballot title and submission clause must "correctly and fairly express the true intent and meaning" of the proposal and must "unambiguously state the principle of the provision sought to be added, amended, or repealed." C.R.S. § 1-40-106(3)(b); see *In re Title, Ballot Title, and Submission Clause regarding Limited Gaming in Manitou Springs, Fairplay, and in Airports*, 826 P.2d 1241, 1245 (Colo.1992). The title set by the Title Board for Initiative #94 correctly and fairly expresses the true intent and meaning of the measure.

V. CONCLUSION

For the reasons set forth above, Respondents respectfully request the Court affirm the actions of the Title Board.

Respectfully submitted this 29th day of April, 2014, by:


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing, was delivered to the following on the 29th day of April, 2014:

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