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The next issue of
Capitol Journal will be
available on October 9th.

Top Story

State Supreme Court elections have traditionally been free of the expensive partisan campaigning we have come to freely associate with most legislative races. Based on this year's judicial races and ballot measure, things have changed.

SNCJ Spotlight

Special interests playing politics with the judiciary

As the debate over hot-button political issues like gay marriage and eminent domain has increasingly ended up in the courts, the judiciary, particularly at its highest levels, has drawn more attention from lawmakers and interest groups of every stripe. That trend appears only to be mounting

this year, with special interests pouring more money than ever into state Supreme court races and, with the assistance of some state legislators, ratcheting up their efforts to reign in the third branch.

Last Tuesday, WASHINGTON wrapped up the costliest judicial election in its history, a contest for the state Supreme Court between Chief Justice Gerry Alexander and challenger John Groen which ran up a bill that topped \$2 million. Just as significant as the amount spent on the race, however, was the fact that most of the money came not from the two candidates' campaigns, but from three interest groups: "It's Time for a Change," a PAC affiliated with WASHINGTON's Building Industry Association, and "Americans Tired of Lawsuit Abuse, a national group based in VIRGINIA, both of which backed Groen, and Citizens to Uphold the Constitution," a coalition of environmental, labor, tribal and trial lawyer groups, which supported Alexander.

The flood of special interest dollars didn't make for the most positive campaign. As James Sample, Associate Counsel at the Brennan Center for Justice at NYU School of Law, put it, "Given that three special interest groups, rather than the candidates, served as the chief messengers of the campaign on television, it is little surprise that the tone and tenor of Washington's Supreme court races reached a new low."

One television ad sponsored by "It's Time for a Change" suggested that Alexander placed friendship ahead of justice when he expressed support for a fellow justice after she was arrested for drunk driving in 2003. Another TV ad, run by "Americans Tired of Lawsuit Abuse," attacked Anderson for a 2002 ruling (*Andress v. State of WASHINGTON*) which the ad implied allows murderers to go free. "Citizens to Uphold the Constitution," meanwhile, ran an ad stating that "John Groen and far right extremists are trying to buy our Supreme Court. So extreme they gut protections for our clean air and water. They oppose stem cell research and a woman's right to choose."

The week in session

States in Regular Session: DC, NJ, PA, US

States in Informal Session: MA

States in Skeleton Session: OH

States in Special Session: PA "a", VA "a" a

States in Recess: MI, NY

States in Special Session in Recess: DE "a"

States in Prefiling or Drafting for 2007 Sessions: FL, KY, MT, ND, NV, VA

States Adjourned in 2006: AK, AL, AZ, CA, CT, CO, DE, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MN, MO, MS, NC, NE, NH, NM, OK, RI, SC, SD, TN, UT, VA, VT, WA, WI, WV, WY

States in Special Session Adjourned in 2006: AK "b", AK "c", AR "a", AZ "a", CA "a", CA "b", CO "a", IA "a", ID "a", KY "a", LA "a", MD "a", MS "a", OK "a", OK "b", OR "a", OK "b", TN "a", TX "c", UT "a", UT "b", WV "a", WI "b", WI "c"

Letters indicate special/extraordinary sessions
Source: State Net, 09/28/06

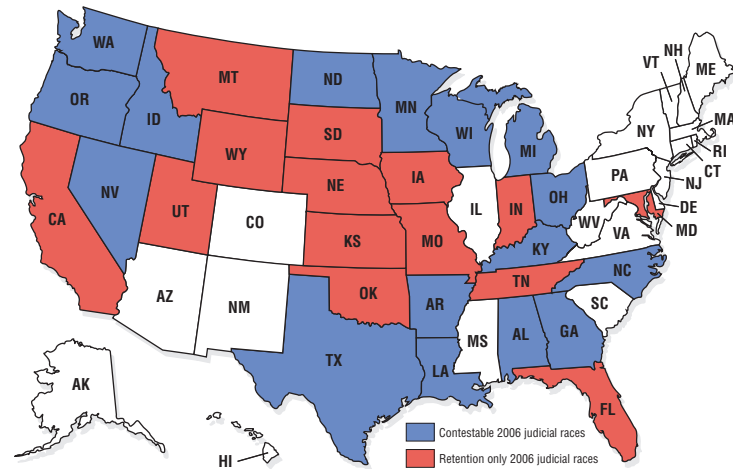
Seeking to determine who sits on the bench is only one way special interests are exerting their influence on the judiciary this year. At the same time, they are trying to curb the courts' power. Voters in at least four states will consider ballot measures this fall that would significantly alter the composition or operation of their courts.

In COLORADO, for instance, there is a push to impose term limits on appellate judges. The measure would effectively sweep a dozen judges off the bench in the near future and clear out most of the Supreme Court within a couple of years. A constitutional amendment in MONTANA — Initiative 98 — would provide for recall elections to remove judges “for any reason.” And OREGON’s Ballot Measure 40 would create voting districts for the election of state Supreme Court justices, resulting in the ouster of justices from Portland.

But the most radical proposal by far is SOUTH DAKOTA’s Amendment E. Known as the “Jail 4 Judges” initiative, the measure would create a thirteen member grand jury — drawn from citizen volunteers and registered voters — with the power to fine, jail or take away retirement benefits from judges who make improper decisions. What’s more, the amendment would be retroactive, allowing the jury to penalize any living former judge for decisions he or she made in the past.

As in WASHINGTON’s high-dollar Supreme Court race, out-of-state interests are involved in the judicial reform efforts. For example,

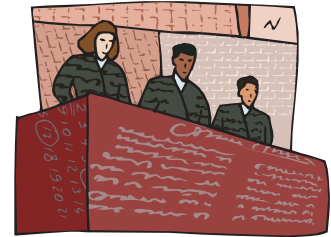
Bird’s eye view



Source: Justice at Stake

Judging the judges

This November (Sept. 30 in LOUISIANA), voters in 30 states will be asked to fill a total of 86 state Supreme Court seats. In at least five of the 16 states where judgeships are contestable — KENTUCKY, ALABAMA, TEXAS, NORTH CAROLINA and GEORGIA — voters will elect a new majority to their high court. Voters in the other 14 states will decide whether to retain specific justices. While these races were once considered bottom of the ticket items, recent high-profile state Supreme Court decisions on topics like eminent domain in CONNECTICUT and gay marriage in MASSACHUSETTS have significantly raised interest in who sits on each state’s high court. In WASHINGTON, for example, judicial candidates and their supporters spent \$2.7 million on this fall’s election, more than double the total amount of the Evergreen State’s last high court race. The accompanying map shows states with Supreme Court elections in 2006.





MONTANA’s judicial recall measure is being pushed by the ILLINOIS-based group Americans for Limited Government. And the campaign to create Supreme Court election districts in OREGON is being financed by a NEVADA resident, who is also the second largest donor to SOUTH DAKOTA’s Jail 4 Judges campaign.

But special interests aren’t the only ones taking aim at the judiciary; state legislators are also getting in on the act. According to Justice at Stake, a nonpartisan national partnership that seeks to keep the courts fair and impartial, documented threats of impeachment of state judges have been on the rise in recent years, mushrooming in 2005 with the Terri Schiavo end-of-life case, “when state judge George Greer was threatened with impeachment and even death for his rulings.” Justice at Stake goes on to say that “2006 has seen more serious impeachment efforts than ever,” including an attempt in OHIO that the group implies was prompted by remarks from Fox News commentator Bill O’Reilly, and another in VERMONT which the partnership links with comments made by CNN’s Nancy Grace. (SEATTLE TIMES, JUSTICEATSTAKE.ORG, SLATE.COM)

— *Compiled by KOREY CLARK*

Budget & Taxes

MASSACHUSETTS CHASING OUT-OF-STATE TAX CHEATS: The MASSACHUSETTS Department of Revenue isn’t content with catching tax dodgers who live and work exclusively in the Bay State. The agency is now tracking down scofflaws who reside or earn wages in other states as well.

The tax commissioners of seven states — CONNECTICUT, DELAWARE, MARYLAND, NEW JERSEY, NEW YORK, RHODE ISLAND and VERMONT — have signed on to an agreement to provide their 2004 personal income tax returns to MASSACHUSETTS. The state’s Revenue Department will, in turn, crunch that data and identify individuals who may be trying to take advantage of their dual-state status, turning over the leads to the participating states for follow-up.

MASSACHUSETTS has shouldered the startup costs for the operation — dubbed “Clearinghouse” — which have totaled about \$500,000, mostly



for software development. But the project is expected to generate \$75-100 million in additional revenue for the participating states, with \$10 million of that figure going to MASSACHUSETTS. And future costs will be split among all of the states.

“We’ve never done anything like this before,” said MASSACHUSETTS tax commissioner Alan LeBovidge. “If you think about it logically, everybody should do it.” Tax officials in seven other states already agree. And officials in at least two others, CALIFORNIA and PENNSYLVANIA, are also interested. (BOSTON GLOBE)

BUDGETS IN BRIEF: OREGON Gov. Ted Kulongoski (D) has proposed increasing the state’s tax on cigarettes by roughly 85 cents to fund health coverage for uninsured children. The tax would raise the price of a pack of cigarettes from \$1.18 to \$2.03, generating between \$150 million and \$170 million in additional revenue (OREGONIAN [PORTLAND]).

— *Compiled by KOREY CLARK*

Politics & leadership

PAY RAISE SCANDAL REARS AGAIN: The PENNSYLVANIA state Supreme Court issued a decision last month that is not likely to soothe the tempers of court critics. On Sept. 14, the high court ruled that lawmakers violated the state constitution when they passed the midterm pay raises last year that caused such a stir. The justices found that the legislature had made inappropriate use of “unvouchered expense” accounts to sidestep a constitutional ban on midterm raises.

But the court went on to say that lawmakers didn’t have to return the money they received before repealing the entire legislative and judicial pay-raise law in the face of overwhelming public pressure because they had “acted in good faith” that their action was constitutional. (Only about 40 of the 158 members who took at least part of the pay raise have not voluntarily returned the money.)

It wasn’t too difficult for the justices to be so magnanimous. Because they simultaneously reinstated the raises for the state judiciary — including their own — siding with a group of judges who had challenged the repeal on the ground that the state constitution bars cuts to judicial salaries which are not part of an across-the-board salary reduction for all state officers.



At least one local legal expert was less than thrilled with the court’s split decision. “The way to stand up to this legislature was to rule unvouchered expenses unconstitutional and then strike down the whole [act],” said Bruce Ledewitz, a law professor at Duquesne University.

“The way to stand up to this legislature was to rule unvouchered expenses unconstitutional and then strike down the whole [act]”

“Instead they struck down the unvouchered expense, then they took their own money.”

In the latest twist to the story that just won’t end, state lawmakers proposed measures last week aimed not only at reducing judicial salaries but also at providing for the recall of elected officials, including judges. But House Majority Leader Sam Smith (R) said the Legislature was not likely to pass such measures any time soon. “At this point, we have to just let the dust settle rather than jump into something that looks retaliatory” he said. (PHILADELPHIA INQUIRER, PITTSBURGH POST-GAZETTE)

ELECTION DAY MAY NOT BE AS DISASTROUS AS EXPECTED: With all of the headlines the past few weeks focusing on the problems anticipated on Election Day as a result of the rollout of new voting machine technology across the country, it isn’t hard to imagine doomsday scenarios involving recounts and legal wrangling that drag on into the new year. But some election experts suggest things aren’t as bad as they seem.

A study conducted earlier this year at MIT, for instance, found that the “residual vote rate” — the number of blank votes and over-votes — declined significantly between the 2000 and 2004 elections as a result of upgrades in voting machine technology. Florida’s rate dropped from 2.9 percent to 0.4 percent.

More importantly, says Doug Chapin, director of electionline.org, a nonpartisan group that tracks election reform in the states, most races aren’t likely to be close enough to lead to major problems. Chapin says although Election Day is never perfect, “lots of elections aren’t going to crash” this year. “Let’s be honest, some won’t crash because they aren’t close” and in places where they are, “the system won’t fail.” Of course, Chapin adds that in “places where both come together, it will be quite a show.” (CHRISTIAN SCIENCE MONITOR)



POLITICS IN BRIEF: Last week, for only the second time in **NEW HAMPSHIRE** state history, the Legislature convened for a special session called by petition, a process basically consisting of a request by 50 representatives and eight senators and the assent of a majority of the total membership. The rare procedure was invoked in order to consider a change to the state’s ballot-order laws in time for the November election. The effort turned out to be all for naught, however, as the House and Senate failed to agree on ballot changes (CONCORD MONITOR, UNION LEADER [MANCHESTER]). • A **COLORADO** judge has refused to bar the state from using electronic voting machines in November, as a group of Centennial State voters had urged in a lawsuit. The judge said that although the state had failed to establish standards to ensure the security of the machines, it was too late to switch back to paper ballots now. In light of the ruling, some state officials are urging residents to vote by absentee ballot (WASHINGTON POST, ROCKY MOUNTAIN NEWS [DENVER]). • **ALASKA** settled a tie between two candidates in the Aug. 22 Democratic primary for its 37th House District with an unusual method: the toss of a coin — onto a sea otter pelt. The coin came up tails, giving the nomination to Bryce Edgmon and ending the 22-year legislative career of Rep. Carl Moses (D) (KTUU.COM [ANCHORAGE]). • Former federal prosecutor Stuart Rabner was sworn in as attorney general of **NEW JERSEY** last week. Rabner was selected by Gov. Jon Corzine (D) to replace Zulima Farber, who stepped down after an investigation revealed she had committed ethics violations (NORTH NEW JERSEY MEDIA GROUP [HACKENSACK]).

— *Compiled by KOREY CLARK*

Governors

ARNOLD’S BIG EMISSIONS PUSH: Saying “We simply must do everything we can in our power to slow down global warming before it is too late,” CALIFORNIA Gov. Arnold Schwarzenegger (R) signed several bills last week designed to cut greenhouse gas emissions by 25 percent in the Golden State by 2020. Surrounded by several prominent state Democratic leaders as well as NEW YORK Gov. George Pataki (R), Schwarzenegger said the legislation would usher in “a bold new era of environmental protection in CALIFORNIA that will change the course of history.” British Prime Minister Tony Blair, who joined the signing ceremony



via satellite, also suggested that CALIFORNIA's actions will spur other states and nations to follow suit, saying "This will echo right round the rest of the world."

But while hailing the planned effort, observers like Sierra Club lobbyist Bill Magavern also pointed out that actually achieving the reduction will be an epic challenge. "In many ways, what was done this year was the easy part," said Magavern. "The implementation will be the hard part."

Indeed. According to the new statute, CALIFORNIA will be required to cut its annual greenhouse gas production by 174 million tons. Analysts say that under current conditions, parking every single one of the state's 26 million gas-powered cars and replacing all coal-fired and natural gas power plants with hydroelectric and nuclear facilities could not achieve that level of reduction.

Business interests are also more than a little skeptical, saying the new rules will likely drive industry out of CALIFORNIA and into states and countries with less rigid regulation. Dorothy Rothrock, vice president of government relations for the CALIFORNIA Manufacturers and Technology Association, said that scenario will not only hurt the state's economy, but also stall emissions reductions. "If we do continue to discourage CALIFORNIA manufacturing, emissions will happen elsewhere without regulation, and we will not have achieved our goal of reducing emissions," Rothrock said.

A huge part of the total reduction goal — 30 million tons a year — is also expected to come from state laws enacted in 2004 that mandate cars sold in CALIFORNIA have dramatically higher fuel mileage and lower tailpipe emissions. But that requirement has met fierce resistance from the auto industry, which says those requirements will be too costly. They also argue that only the federal government has the right to set those standards. A lawsuit brought on by carmakers is set to go to trial in January. A verdict in carmakers' favor could place a major crimp in the state's long-term emission reduction plans.

Not everyone, however, is as convinced that cutting emissions will hurt the economy. At least one major study has indicated that reaching the 174 million ton reduction goal will actually add \$60 billion a year into the state's annual gross product and grow the state's workforce by 17,000 jobs, primarily from the advent of new technologies utilized to help meet the emissions goal. That is certainly the view Schwarzenegger has of what the new legislation will ultimately mean to CALIFORNIA, saying the effort "will

“We simply must do everything we can in our power to slow down global warming before it is too late.”



GOVERNORS IN BRIEF: WEST VIRGINIA Gov. Joe Manchin (D) ordered his administration to investigate why a \$35,000 federal grant to pay for counseling for survivors of last spring’s Sago Mine disaster and their families has not been released. Manchin called for the investigation after two miners who worked at Sago committed suicide within the last month (HERALD-DISPATCH [CHARLESTON]). • A recent SurveyUSA poll showed Republican Gov. Linda Lingle of **HAWAII** with a 69 percent approval rating, one of the highest gubernatorial marks in the nation. Lingle recently won the GOP primary with 96 percent of the vote, setting her up as the prohibitive favorite to win re-election this fall (CONGRESSIONAL QUARTERLY). • A Cronkite-Eight poll in **ARIZONA** shows Gov. Janet Napolitano (D) with a 36 percentage-point lead over Republican challenger Len Munsil (ARIZONA REPUBLIC [PHOENIX]). • A **CALIFORNIA** Field Poll shows Gov. Arnold Schwarzenegger (R) with a 10-point lead over Democratic state Treasurer Phil Angelides. A Public Policy Institute of California survey shows Schwarzenegger with a 17-point cushion (SACRAMENTO BEE). • Former **NEW JERSEY** Gov. Jim McGreevey’s (D) book, *The Confession*, has reached the top three of the New York Times bestseller’s list. The tome details McGreevey’s experience as a closeted “gay American” before coming out in 2004 (STAR-LEDGER [NEWARK]).

– *Compiled by RICH EHISEN*

Upcoming stories

Here are some of the topics you will see covered in upcoming issues of the State Net Capitol Journal:

- **Funding transportation**
- **Preventing “pretexting”**
- **Animal rescues in disasters**

Hot issues

BUSINESS: MICHIGAN Gov. Jennifer Granholm (D) signs legislation that will raise the Wolverine State’s minimum wage from \$5.15 an hour to \$6.95 starting Oct. 1. For those workers under 18, however, the new standard will only be \$5.91 an hour. Both rates are set to rise again in 2007 and 2008 (LANSING STATE JOURNAL). • **CALIFORNIA** Gov. Arnold Schwarzenegger (R) vetoes SB 815, legislation that would have restored recently cut benefits for permanently disabled workers hurt on the job. Schwarzenegger said the measure would have harmed the Golden State economy (LOS ANGELES TIMES). • Still in **CALIFORNIA**, Gov. Arnold Schwarzenegger (R) signs AB 2941,

second largest in the nation. The system's current governing board says it will sue to block the takeover (LOS ANGELES TIMES). • Saying it does not have jurisdiction, a federal court dismisses three of four counts in a **CONNECTICUT** lawsuit challenging the federal No Child Left Behind law. The court said it will review the fourth complaint — an allegation that federal education authorities violated administrative procedures and acted arbitrarily in rejecting the state's requested amendments (HARTFORD COURANT).

ENVIRONMENT: A federal judge allows a lawsuit brought forth by a coalition of automakers seeking to block **CALIFORNIA's** strict new vehicle emissions standards to go to trial. Those standards are intended to reduce greenhouse gas emissions from cars, light trucks and sport utility vehicles by as much as 25 percent starting in 2009. Automakers say the Golden State is barred by federal law from setting its own emissions standards. The case is now set to proceed in January 2007. Ten states have adopted the **CALIFORNIA** standards since they were first implemented in 2004 (DETROIT FREE PRESS). • Still in **CALIFORNIA** Gov. Arnold Schwarzenegger (R) signs AB 32, legislation that places caps on the amount of greenhouse emissions Golden State utilities, refineries and manufacturing plants may legally produce. The law seeks to cut those emissions by 25 percent by 2020. The governor also signs SB 107, which requires investor-owned utilities to acquire at least 20 percent of their power from renewable sources by 2010, and SB 1368, which prohibits the state's large utilities and corporations from entering long-term power contracts with suppliers whose electricity sources that do not meet the **CALIFORNIA** greenhouse gas emission standards (SAN JOSE MERCURY NEWS, SAN DIEGO UNION TRIBUNE).

HEALTH & SCIENCE: CALIFORNIA Gov. Arnold Schwarzenegger (R) signs AB 2651, which requires that every newborn child in the state receive a hearing test within days of birth (SACRAMENTO BEE). • Still in **CALIFORNIA**, Gov. Arnold Schwarzenegger (R) signs legislation that requires women wishing to be human egg donors to provide oral and written consent before they start taking drugs to encourage their ovaries to produce eggs. The measure also prohibits those donors from receiving any monetary compensation beyond being reimbursed for their expenses (LOS ANGELES TIMES).

SOCIAL POLICY: The **ILLINOIS** Supreme Court announces it will issue rules for obtaining a waiver to get around a state law that

requires minors seeking an abortion to first get parental approval. Prairie State lawmakers passed the parental notification law in 1995, but it never went into effect because the high court refused to clarify how minors could seek exemptions. The court did not say when the new parameters would be available (CHICAGO TRIBUNE). • A federal judge overturns an **OHIO** law that makes it illegal for doctors to prescribe RU-486, which induces abortion, after the seventh week of pregnancy. The court said the law is unconstitutional because it is vague and could jeopardize women's health (AKRON BEACON JOURNAL).

POTPOURRI: The U.S. Supreme Court announces it will determine whether states may require labor unions to get permission from individual workers to spend their union fees on political activities they may not support. The case is a challenge to a recent **WASHINGTON** state Supreme Court ruling that struck down a state law that barred the use of those fees without the employees' consent (WASHINGTON POST). • **CALIFORNIA** Gov. Arnold Schwarzenegger (R) signs SB 1578, which bars dog owners from tethering their animal for more than three hours at a time. Violators could face fines and jail time (LOS ANGELES TIMES). • Also in **CALIFORNIA**, Gov. Arnold Schwarzenegger (R) signs a quartet of bills that will, among other things, require the state to test and license conservators appointed to oversee the financial affairs of elderly and disabled adults. Professional conservators in the Golden State oversee about \$1.5 billion in assets for approximately 4,000 clients (LOS ANGELES TIMES).

In the hopper

State Net's database tracks tens of thousands of bills in all 50 states at any given time. Here's a snapshot of what's in the legislative works:

Number of 2006 prefiles last week:
96

Number of 2007 prefiles last week:
28

Number of 2006 Intros last week:
453

Number of bills enacted/adopted last week: 274

Number of 2006 prefiles to date:
20,989

Number of 2007 prefiles to date:
20,989

Number of 2006 Intros to date:
1,414

Number of enacted/adopted overall in 2006: 30,652

— Compiled By JAMES ROSS
(Measures current as of 09/27/06)
Source: State Net

— *Compiled by RICH EHISEN*

Once Around the Statehouse Lightly

LEWIS CARROLL SPECIAL of the Month comes from IOWA, where the Republican Party put out a hit piece on incumbent Democratic state Rep. Kurt Swain. The brochure, reports KCCI.com, accuses Swain of being soft on criminals. One of the claims: Swain voted for a bill that went easy on sex offenders. Swain, in fact, did vote for the bill. Oddly, however, it was a Republican bill — one that also drew support from, among others, the Republican speaker of the House. The ploy cost the GOP. Swain’s Republican opponent — outraged by the brochure — quit the party and will run instead as an independent.

WOLVERINE WHOPPER: These are heady days at the University of MICHIGAN in Ann Arbor. According to the Detroit Free Press, the campus chapter of the Young Americans for Freedom has come up with a version of hide-and-seek called “Catch an Illegal Immigrant.” One player poses as an illegal, and the others try to find that player. The group has been widely criticized for proceeding with the game, including an admonition from Republicans who often maintain close ties with the conservative YAF. A spokesman for the group defended it, saying it was “just a way to educate people about border security” and that outrage that has flared up on campus and elsewhere is “misplaced.” A Democratic spokesman called it “hurtful, mean-spirited and dangerous.” “Just plain dumb” might be another way to characterize it.

IT’S A JUSTICE THINGIE: A judge is the emperor of his courtroom (or empress, as the case might be). He or she can get away with most anything while dispensing justice. Well, almost anything — as the FLORIDA Supreme Court noted last week. A judge, for instance, cannot get away with ordering someone on probation to attend church. It also would be unwise, the Court indicated, for a judge to tell a woman in court that she “needed to close her legs and stop having babies.” It perhaps is a bit beyond acceptable for a judge to order a woman jailed because she cannot remember her address, or to demean a state worker because of her young age. And a judge ought not to ask parents whether they use drugs, order them tested if they say “no,” then jail them for contempt if they test positive. These are pages from a booklet on judicial behavior, right? No,



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