

In the
Supreme Court of the United States

STUDENTS ENGAGED IN ADVANCING TEXAS, ET AL.,
Applicants,

v.

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS,
Respondent.

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION,
Applicant,

v.

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS,
Respondent.

**On Applications to Vacate the Stay Pending Appeal from the United States Court
of Appeals for the Fifth Circuit**

**BRIEF OF PATRIOT VOICES AS *AMICUS CURIAE* IN SUPPORT OF THE
APPLICATIONS TO VACATE STAY PENDING APPEAL**

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INTEREST OF *AMICUS CURIAE*¹

Patriot Voices, Inc. (“Patriot Voices”) is a non-profit organization with over 100,000 grassroots members from every walk of life. The organization is dedicated to providing a voice for working families across America, seeking to advocate for a government that is smaller, less intrusive, and that gives the American worker a fighting chance. To that end, Patriot Voices provides families with educational resources, advocates to federal, state, and local governments, and engages with the media, all in service of the rights and interests of its membership. *Amicus curiae* briefs, like this one, are part of Patriot Voices’ advocacy efforts.

The issue of parental rights is of core concern to working families across our Nation. Now more than ever, parents and their children must confront new challenges and new opportunities arising from rapid innovation in telecommunications and information technology. In assessing how their children are to be empowered, rather than ensnared, by these emerging technologies, parents must exercise their judgment in determining the best interests of their children. Parents are justifiably concerned when governmental entities, of any stripe, seek to step in and to substitute the judgment of politicians for those of parents when it comes to raising their children. Patriot Voices therefore files this brief to explain how SB 2420 not only infringes upon the First Amendment, but undermines the fundamental rights of parents across the State of Texas to direct the upbringing of their children.

¹ No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

The State’s effort to substitute its top-down judgment for the individual determinations of millions of parents across Texas unconstitutionally burdens both the fundamental rights of parents and the freedom of speech.

INTRODUCTION AND SUMMARY OF ARGUMENT

The right to have and to raise one’s children is “one of the basic civil rights of man.” *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942). That right is deeply embedded in “[t]he history and culture of Western civilization,” and it is “established beyond debate as an enduring American tradition.” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). This Court thus has held “on numerous occasions that the relationship between parent and child is constitutionally protected.” *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

That “fundamental theory of liberty” recognizes that “[t]he child is not the mere creature of the state.” *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925). And so no State may “unreasonably interfere[] with the liberty of parents and guardians to direct the upbringing and education of [their] children.” *Id.* at 534. Instead, “those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Id.* at 535.

The Texas law here cannot be squared with these principles. While purporting to “restore[] parental empowerment,” App.162a, SB 2420 requires parents to manually approve each and every download of, and download within, almost any application from an app store. *See* Tex. Bus. & Com. Code §§ 121.022(e), 121.026(a)(3). Parents can and do differ about the responsibilities with which they

entrust each of their children as they grow from early years through adulthood. But no matter what each parent believes about the degree of autonomy that is best for each child, the State of Texas requires that the parents constantly look over their children's shoulders. Parents who prefer to use the app stores' existing granular controls must follow the State's blunt regime, and so must parents who prefer to give their children broad discretion. That subverts the "primary role of the parents in the upbringing of their children." *Yoder*, 406 U.S. at 232. And it unconstitutionally intrudes into "the relationship between parent and child." *Quilloin*, 434 U.S. at 255.

The Texas legislature may have been well-intentioned in seeking to encourage parents to play a role in their children's use of smartphone apps, but this overbroad law goes well beyond good intentions. Rather than vindicate parental authority, SB 2420 hampers it. Texas's effort to control the parent-child relationship thus cannot justify its content-based regulation of protected speech. By placing burdens on some categories of child development applications but not others, Texas substitutes its judgment for that of parents and regulates speech in accordance with "what the state thinks parents *ought* to want." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 804 (2011). This sort of substitution of the State's judgment for that of parents is not "a *proper* governmental means of aiding parental authority" at all. *Id.* at 802 (emphasis added). And it provides no basis for satisfying any form of heightened scrutiny.

The District Court's preliminary injunction was entirely correct, and at a minimum, the status quo should be preserved. Accordingly, this Court should vacate the Fifth Circuit's stay pending appeal.

ARGUMENT

I. **The Right of Parents to Direct Their Children’s Upbringing Is Deeply Rooted in Western Society.**

The Fifth Circuit’s decision misread the First Amendment and should be vacated for that reason. But the First Amendment issues are made all the more plain by the degree to which SB 2420 infringes upon the rights of parents. A parent’s right to direct the upbringing of his or her children stretches back thousands of years and has become deeply rooted in this Nation’s history and tradition. And this right necessarily gives parents the prerogative to make individualized assessments about the moral and practical needs of their children. But SB 2420 replaces the judgment of individual parents with the top-down, overbearing judgment of state politicians. It thus defies this Court’s “long-established precedent,” which has consistently upheld “parents’ rights to direct the upbringing and education of their children.” *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam).

A. **For Millennia, Parents Have Had an Inalienable Right to Direct Their Children’s Upbringing.**

The right of parents “in the care, custody, and control of their children” is “perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.). And that is no surprise. “The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children.” *Yoder*, 406 U.S. at 233.

Indeed, that tradition was embedded in the Bible itself. Deuteronomy 11:19 directs parents to teach God’s commandments to their children, “speaking of them when thou sittest in thine house, and when thou walkest by the way, when thou liest

down, and when thou risest up.” Deuteronomy 11:19 (King James Version, 1769).² John Locke too rooted those biblical teachings in his political philosophy, writing that parents’ rights and “obligation[s] to preserve, nourish, and educate the children they had begotten” began with “Adam and Eve, and after them all parents.” John Locke, *Second Treatise of Government* § 56 (C.B. Macpherson ed., Hackett Publ’g Co. 1980) (1690). As Locke further explained:

The power . . . that parents have over their children, arises from that duty which is incumbent on them, to take care of their off-spring, during the imperfect state of childhood. To inform the mind, and govern the actions of their yet ignorant nonage, till reason shall take its place, and ease them of that trouble, is what the children want, and the parents are bound to: for God having given man an understanding to direct his actions, has allowed him a freedom of will, and liberty of acting, as properly belonging thereunto, within the bounds of that law he is under.

Id. at § 58.

That Enlightenment understanding was equally well rooted in the English common law. Blackstone regarded the relationship between parent and child as “the most universal relation in nature.” 1 William Blackstone, *Commentaries on the Laws of England* 446 (Callaghan & Cockcroft ed., 1871). And he recognized that “[t]he power of parents over their children is derived from” their “duty” to provide

² The foundational nature of the parent-child relationship is endemic in both Judaism and Christianity. Deuteronomy 11:19 is part of the second paragraph of the Shema, which is widely regarded as the most sacred prayer in Judaism. Other verses in the Old and New Testament that describe parental obligations to direct their children’s moral upbringing include Psalms 78:1-6, Proverbs 22:6, and Ephesians 6:4. As another example, the Catholic Church teaches that parents must provide for the “moral education” and “spiritual formation” of their children. Catechism of the Catholic Church ¶ 2221. And the Church emphasizes that “[t]he role of parents in education is of such importance that it is almost impossible to provide an adequate substitute.” *Id.* (emphasis omitted). “The right and the duty of parents to educate their children are primordial and inalienable.” *Id.*

maintenance, protection, and education for their children. *Id.* at 446, 451. This “authority,” Blackstone noted, “is given them partly to enable the parent more effectually to perform his duty, and partly as a recompense for his care and trouble in the faithful discharge of it.” *Id.* at 451.

The Framers shared that understanding too. “The historical evidence shows that the founding generation believed parents had absolute authority over their minor children and expected parents to use that authority to direct the proper development of their children.” *Brown*, 564 U.S. at 822 (Thomas, J., dissenting). In other words, parents “ha[d] both the right and duty” to “govern their children’s growth.” *Id.* at 824, 828. They were “responsible for instilling ‘moral prohibitions, behavioral standards, and a capacity for self-government that would prepare a child for the outside world.’” *Id.* at 828 (quoting S. Mintz & S. Kellogg, *Domestic Revolutions* 58 (1988)). “In short, ‘home and family bore the major responsibility for the moral training of children and thus, by implication, for the moral health of the nation.’” *Id.* (alteration adopted) (quoting A. MacLeod, *A Moral Tale* 29 (1975)). And laws across the States respected that arrangement. *See id.* at 832–34.

B. This Court’s Precedents Have Recognized this Fundamental Right.

Consistent with that history, this Court has long recognized that “it is the natural duty of the parent,” with its “[c]orresponding . . . right of control,” to direct “his children[s] education suitable to their station in life.” *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). That primacy of the parent inheres in “our constitutional system” and historical understandings, which “long ago rejected any notion that a

child is ‘the mere creature of the State.’” *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (citation omitted). Parents instead “have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations.” *Pierce*, 268 U.S. at 535.

As part of that right, this Court has come to articulate “a presumption that fit parents act in the best interests of their children.” *Troxel*, 530 U.S. at 68 (plurality op.). “Accordingly, so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.” *Id.* at 68–69.

This Court has applied that principle time and again to reject state overreach into the parent-child relationship. In *Meyer*, this Court struck down a state statute that criminalized the schooling of children in any language but English. 262 U.S. at 397. The Court reasoned that “liberty,” “[w]ithout doubt,” includes “the right of the individual to . . . establish a home and bring up children.” *Id.* at 399. The statute violated the Constitution because it intruded upon “the power of parents to control the education of their own.” *Id.* at 401.

Two years later, in *Pierce*, this Court struck down an Oregon law that required all children to attend public school. 268 U.S. at 530. Through this law, Oregon had “sought ideological conformity among its citizens,” seeking to railroad unpopular religious minorities and immigrant communities in the process. *Mahmoud v. Taylor*, 606 U.S. 522, 587 (2025) (Thomas, J., concurring) (discussing *Pierce*). That effort,

however, “unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control.” *Pierce*, 268 U.S. at 534–35. And it violated “[t]he fundamental theory of liberty upon which all governments in this Union repose,” which “excludes any general power of the state to standardize its children.” *Id.* at 535.

Since then, this Court has consistently upheld the rights of fit parents to make decisions regarding both the spiritual and worldly education of their children. Most notably, in *Yoder*, this Court held that “a State’s interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children.” 406 U.S. at 214. Nor was it any answer to assert that “the child must be protected by the State.” *Id.* at 222. “Under long-established precedent, parents—not the State—have primary authority with respect to ‘the upbringing and education of children.’” *Mirabelli*, 607 U.S. at 497 (citation omitted).³

The parental rights safeguarded by the Constitution extend well beyond education. This Court “has frequently emphasized the importance of the family” and

³ The question before this Court is of course a federal question, but it is noteworthy that the people of Texas have gone even further in the Texas Constitution “[t]o enshrine truths that are deeply rooted in this nation’s history and traditions” by specifically affirming each parent’s “fundamental right to exercise care, custody, and control of the parent’s child, including the right to make decisions concerning the child’s upbringing.” Tex. Const. art. I, § 37.

parental rights against state interference of all sorts. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). After all, “[i]t is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.” *Moore v. City of East Cleveland*, 431 U.S. 494, 503–04 (1977). It is therefore “cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). These broader rights of parents to direct the upbringing of their children are “far more precious to [parents] than property rights” or perhaps any other. *May v. Anderson*, 345 U.S. 528, 533 (1953).⁴ The Court thus has squarely, and consistently, recognized “that the relationship between parent and child is constitutionally protected.” *Quilloin*, 434 U.S. at 255.

Just last year, this Court vindicated the rights of parents who sought to protect their children from a public-school curriculum that was “designed to ‘disrupt’ children’s thinking about sexuality and gender.” *Mahmoud*, 606 U.S. at 529. There, in recognition of a century of this Court’s precedent and centuries more of Western legal tradition, this Court acknowledged the right of parents “to direct the religious upbringing of their children.” *Id.* at 543 (quotation marks omitted). The Court again

⁴ Many courts have described the termination of parental rights as the civil death penalty. See, e.g., *In re D.T.*, 625 S.W.3d 62, 69 (Tex. 2021); *Martinez-Cedillo v. Sessions*, 896 F.3d 979, 989 (9th Cir. 2018), *vacated sub nom.* 923 F.3d 1162 (9th Cir. 2019); *Marcus Steven H. v. State Dep’t of Family Servs. (In re T.M.R.)*, 487 P.3d 783, 788 (Nev. 2021); *In re K.A.W.*, 133 S.W.3d 1, 12 (Mo. 2004).

applied that principle just a few months ago to vacate a lower court’s stay of an injunction. *See Mirabelli*, 607 U.S. at 497–98. It should do the same thing here.

Parents and government officials may often have fundamental disagreements about what content and what degree of online freedom is appropriate for children. But where those views clash, this Court has made clear that absent extraordinary circumstances, the moral outlook of children should reflect the desires of their parents, not the preferences of state legislators. The Constitution places the parents in “primary” control. *Id.* at 497.

C. SB 2420 Burdens the Rights of Parents to Direct Their Children’s Upbringing.

SB 2420 impermissibly burdens the rights of parents. Indeed, it stands this Court’s traditional “presumption” of non-interference in parents’ upbringing of their children on its head. *Parham*, 442 U.S. at 602. Instead of assuming that fit parents may decide what materials are and are not appropriate for their children—or allowing them to use available tools to monitor and tailor their children’s app store activity—the statute imposes a one-size-fits-all nanny state regime across the entire State of Texas. Under SB 2420, every Texan under 18 must link his or her account to a verified parent’s account and obtain express parental consent for any app download or any in-app purchase, without even the possibility of blanket parental consent. *See* Tex. Bus. & Com. Code § 121.022(e)(1). Hence, SB 2420 requires parents to exercise their authority through a government-mandated process, at government-mandated intervals, and only after those parents and children are compelled to provide personal information to third parties.

That is antithetical to this Court’s precedent, which protects parents’ authority to decide how much supervision or independence their children may have. That is one of the “fundamental” liberty interests protected by the Fourteenth Amendment. *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). And the Fourteenth Amendment “forbids the government to infringe ‘fundamental’ liberty interests *at all* . . . unless the infringement is narrowly tailored to serve a compelling state interest.” *Id.* at 721 (alteration adopted; citation omitted).

The State comes nowhere close to meeting that burden. There is no “historical warrant or compelling justification” for a law that “prevent[s] children from hearing or saying anything without their parents’ prior consent” at the State’s prescribed times. *Brown*, 564 U.S. at 795 n.3 (emphasis omitted). While some parents may want to approve every download, others may decide that a mature teenager who is already capable of driving a motor vehicle, supervising their younger siblings, and working a summer job, can, and should, have broad discretion over how he or she spends time online. Other parents may choose to use the existing parental controls and family settings that are available to them. *See* SEAT App. at 5; CCIA App. at 8–9, 34. But SB 2420 eliminates all such discretion and instead imposes a single state-prescribed model that supersedes individual parents’ judgment.

The law is not narrowly tailored either. Again, “[w]hile some of [SB 2420’s] effect may indeed be in support of what some parents of the restricted children actually want, its entire effect is only in support of what the State thinks parents *ought* to want.” *Brown*, 564 U.S. at 804. And SB 2420 amounts to more than a mere

inconvenience for families: it is an unqualified and unprecedented intervention in their day-to-day lives. There is simply no need to require a mom to approve every download of an audiobook for her seventeen-year-old daughter or a dad to sign off every time his fourteen-year-old son wants to listen to the latest episode of his favorite podcast. This is not the “narrow tailoring” that the Constitution demands. *Id.* Nor is it in the public interest to allow such an unconstitutional law to take effect.

II. The Fifth Circuit’s Stay Order Should Be Vacated Because SB 2420 Impermissibly Burdens Speech.

SB 2420’s burden on the fundamental rights of parents supports the District Court’s conclusion that the statute’s burden on speech cannot be justified under the First Amendment. The Fifth Circuit too assumed that SB 2420 burdens speech, yet the court granted Texas a stay pending appeal because it believed that the law passed constitutional muster under intermediate scrutiny. App.4a–6a. That was wrong twice over.

First, strict scrutiny, not intermediate scrutiny, applies. The law is an impermissible content-based regulation that favors some messages over others, and it is thus subject to strict scrutiny. *Second*, SB 2420 fails both strict and intermediate scrutiny alike. Texas’s purported state interest of “restor[ing] parental empowerment,” App.162a, does not constitute an important or compelling state interest where, as here, it is really a means to substitute the judgment of the State for the judgment of parents.

A. Strict Scrutiny Applies.

In First Amendment cases, the level of scrutiny that courts must apply depends on whether the speech regulation is “content-based” or “content-neutral.” *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 471 (2025).

“Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if they satisfy strict scrutiny.” *Id.* (citation omitted). A law is content-based if it “singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter.” *Reed v. Town of Gilbert*, 576 U.S. 155, 169 (2015). In that case, the State must demonstrate that a speech regulation is “the least restrictive means of achieving a compelling state interest.” *Free Speech Coal.*, 606 U.S. at 471 (citation omitted).

Content-neutral laws, by contrast, receive “intermediate” scrutiny. *Id.* (citation omitted). This requires a showing that the regulation “advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests.” *Turner Broadcasting Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997).

Here, strict scrutiny applies. SB 2420 requires consent from a child’s parent or guardian for “each individual download or purchase sought by the minor” of a software application. Tex. Bus. & Com. Code § 121.022(e)(1). But this requirement does not apply to all applications in the app store. Instead, SB 2420 exempts a few categories of applications, including, most notably, applications “operated by or in

partnership with a nonprofit organization,” which provide for standardized test preparation for postsecondary education applications. *Id.* § 121.022(h).

This exception for postsecondary education test preparation manifests a clear content preference by the State. The State, in its professed wisdom, reduces the burdens on parents to allow students to prepare for forms of postsecondary education that require standardized testing, but keeps those burdens in place for all other forms of personal and professional development. Parents who direct their child to undertake a study of trade skills through a software application must sit over their child’s shoulder and manually consent to every download within that application. Parents who direct their child to study for the SAT do not. This is a straightforward case of a speech regulation “subject[ing] each of these categories to different restrictions.” *Reed*, 576 U.S. at 164.

B. Regardless, SB 2420 Fails Any Form of Heightened Constitutional Scrutiny.

In any event, the State’s governmental interest in SB 2420 is not sufficiently compelling nor important enough to satisfy *either* strict or intermediate scrutiny. The State’s claimed interest in “restor[ing] parental empowerment,” App.162a, actually substitutes the State’s judgment for that of parents. Such an intrusion into parents’ rights to direct their children’s upbringings is not a compelling or important state interest.

Justice Scalia’s opinion for the Court in *Brown* is instructive. There, California prohibited the sale of violent video games to minors, allowing minors to obtain these video games only if an adult purchased the games for them. *Brown*, 564 U.S. at 789.

California’s claimed interest in support of the speech regulation was, like here, the “aid[ing] of parental authority.” *Id.* at 802. Yet this Court did not accept the State’s intrusion into the parent-child relationship as a legitimate government interest. Instead, the Court made clear its “doubts that punishing third parties for conveying protected speech to children *just in case* their parents disapprove of that speech is a proper governmental means of aiding parental authority.” *Id.* These types of aids to parental authority, the Court reasoned, are really just “what the State thinks parents *ought* to want.” *Id.* at 804. That interest is neither compelling nor important. It only “deprives parents of choice.” CCA App. at 35.

III. SB 2420 Treats Mundane Online Activity as If It Were Obscenity and Worse than Equivalent Offline Activity.

Finally, for many of the reasons laid out in the Applications, SB 2420 is nothing like the age-verification law for pornography websites upheld by the Court in *Free Speech Coalition*. Unlike the statute there, which was a rational, loophole-closing solution to a legitimate problem, the statute here is a solution in search of a problem.

First, unlike the obscene materials targeted by the statute in *Free Speech Coalition*, the statute in this case casts a much wider net and targets virtually all materials that may be downloaded by minors online. That is far beyond the ambit of Texas’s power. “History, tradition, and precedent recognize that States have two distinct powers to address *obscenity*: They may proscribe outright speech that is obscene to the public at large, and they may prevent children from accessing speech that is obscene to children.” *Free Speech Coal.*, 606 U.S. at 472 (emphasis added). In that way, “States can impose greater limits on children’s access to sexually explicit

speech than they can on adults' access." *Id.* at 473. Such restrictions on access to obscene materials are consistent with age restrictions for access to other historically disfavored and heavily regulated goods and services, including alcohol, tobacco, gambling, tattoos, body piercings, and fireworks. *See id.* at 479.

But SB 2420 implicates precisely none of these concerns. It does not target goods and services that have long been understood to be disfavored and subject to age verification, much less those that are undisputedly obscene for minors—and therefore constitutionally unprotected. *See id.* at 482. Rather, the law targets virtually all apps and all in-app downloads. That only confirms that the law is wildly overinclusive to any possibly legitimate state interest.

Second, the age-verification statute in *Free Speech Coalition* merely brought a regulatory regime that already existed offline into the digital world. It created a uniform regulatory framework to govern minors' ability to access obscene materials. *See id.* at 465–66 (noting that Texas's prohibition on "the distribution of sexually explicit content to children may be effective against brick-and-mortar stores," but it "proved challenging to enforce against online content," and the statute in *Free Speech Coalition* was designed "to address this problem"); *see also* Tex. Penal Code § 43.24(b) (pre-*Free Speech Coalition* statute prohibiting the distribution of obscene materials to minors offline).

Instead of standardizing the legal regime across the online and offline worlds, SB 2420 does the exact opposite. Indeed, it uniquely penalizes minors and their parents from mundane online content. Under SB 2420's two-tiered regime, while a

12-year-old may spend her allowance to purchase *To Kill a Mockingbird* at a bookstore with no questions asked, she would be subject to age verification before downloading the exact same book through the app store. Nothing in *Free Speech Coalition* permits, much less mandates, that result.

CONCLUSION

For the foregoing reasons, the Court should vacate the Fifth Circuit's stay pending appeal.

Respectfully submitted,

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