

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

David McCormick;
Republican National Committee; and
Republican Party of Pennsylvania
VS. Montgomery County Board of Elections
NO. 2024-26306

COVER SHEET OF MOVING PARTY

Date of Filing Nov. 19, 2024 Moving Party DSCC and Casey for Senate, Inc.

Counsel for Moving Party Adam C. Bonin I.D. No. 80929

Counsel's email address: adam@boninlaw.com

Document Filed (Specify) Application to Intervene + Proposed Answer

If a motion to compel discovery, state the Court-ordered Discovery Deadline: n/a

CERTIFICATIONS - Check ONLY if appropriate:

Counsel certify that they have conferred in a good faith effort to resolve the subject discovery dispute. (Required by Local Rule 208.2(e) on motions relating to discovery.)

Counsel for moving party certifies that the subject civil motion is uncontested by all parties involved in the case. (If checked, skip Rule to Show Cause section below.)

RULE TO SHOW CAUSE - Check ONE of the Choices Listed Below:

Respondent is directed to show cause why the moving party is not entitled to the relief requested by filing an answer in the form of a written response at the Office of the Prothonotary on or before the day of 20

Respondent is directed to show cause, in the form of a written response, why the attached Family Court Discovery Motion is not entitled to the relief requested. Rule Returnable and Argument the day of , 20 at 1:00 p.m. at 321 Swede Street, Norristown, PA.

Respondent is directed to file a written response in conformity with the Pennsylvania Rules of Civil Procedure.

Rule Returnable at time of trial.

By: Court Administrator

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** Pro hac vice application
forthcoming*

**IN THE COURT OF COMMON PLEAS OF
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David McCormick; Republican
National Committee; and Republican
Party of Pennsylvania,

Petitioners,

v.

Montgomery County Board of
Elections,

Respondent.

Civil Division

No. 2024-26306

Election Appeal

**APPLICATION TO INTERVENE OF
DSCC AND BOB CASEY FOR SENATE, INC.**

INTRODUCTION

1. On November 14, 2024, Respondent Montgomery County Board of Elections (the “Board”) determined that it would count at least 251 provisional ballots that were missing the signature of the elector in either Section 2 or Section 4 of the ballot envelope. The Board further determined that it would count at least 163 provisional ballots that were missing signatures of the Judge of Elections, the Minority Inspector, or both, in the November 5, 2024 General Election.

2. The Board’s decisions were correct. The provisional ballots at issue were undisputedly cast by qualified Pennsylvania voters. To refuse to count ballots on the sole basis of the minor technicalities highlighted by Petitioners would have been unlawful several times over, violating the Election Code, *see* 25 P.S. § 3050(a.4)(5)(ii) (expressly limiting the circumstances in which a voter’s provisional ballot shall not be counted), the Pennsylvania Constitution, *see* Pa. Const. art. I, § 5, the Help America Vote Act, *see* 52 U.S.C. § 21082, and the United States Constitution, *see Ne. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 597 (6th Cir. 2012); *Hoblock v. Albany Cnty. Bd. of Elections*, 487 F. Supp. 2d 90, 97 (N.D.N.Y. 2006).

3. Petitioners David McCormick, the Republican National Committee, and the Republican Party of Pennsylvania see it differently. They ask this Court to turn a blind eye to the plain text of the Election Code, federal voting rights

protections, and the serious constitutional concerns that would be created by refusing to count these provisional ballots.

4. With apparent indifference to these consequences and the fundamental voting rights of Pennsylvanians, Petitioners have brought this appeal under 25 P.S. § 3157, asking this Court to reverse the Board’s decision and disenfranchise over one hundred Pennsylvanians who no one disputes are qualified to vote. *See* Pet. for Review in the Nature of a Statutory Appeal at 11–12.

5. Proposed Intervenors DSCC and Bob Casey for Senate, Inc. are, respectively, the Democratic Party’s national senatorial committee and the organized political campaign in support of Bob Casey Jr. for the office of U.S. Senator for Pennsylvania in the November 2024 General Election.

6. Petitioners ask this Court to discard numerous ballots in an election for which Senator Casey is a candidate and in which the vote count is still being determined. As explained more fully below, Proposed Intervenors thus have a legally enforceable interest in this suit that entitles them to intervene in this matter under Pennsylvania Rule of Civil Procedure 2327, and none of the factors that could prevent their intervention under Rule 2329 is present.

7. Accordingly, Proposed Intervenors respectfully request that the Court grant this application for leave to intervene and allow them to intervene as respondents in this action.

INTERESTS OF PROPOSED INTERVENORS

8. DSCC is the Democratic Party's national senatorial committee, as defined by 52 U.S.C. § 30101(14). Its mission is to elect candidates of the Democratic Party across the country to the U.S. Senate. In Pennsylvania, among other states, DSCC works to accomplish its mission by assisting state parties and mobilizing and supporting voters. DSCC has spent millions of dollars in contributions and expenditures to persuade and mobilize voters to support U.S. Senate candidates who affiliate with the Democratic Party, including Senator Casey. If Petitioners obtain the relief they seek, DSCC will suffer injury both because Democratic voters will be disenfranchised in current and future elections, and Senator Casey's reelection efforts will be harmed.

9. Bob Casey for Senate, Inc. ("the Casey Campaign") is the duly organized political campaign in support of the election of Bob Casey Jr. to the office of U.S. Senator for Pennsylvania in the November 2024 general election. Senator Casey is the Democratic Party candidate for U.S. Senate in Pennsylvania and a sitting U.S. Senator. The Casey Campaign has a core interest in ensuring that its supporters' votes are counted and that Senator Casey is re-elected to the U.S. Senate. If Petitioners are successful in their attempt to compel the Board to discount mail ballots solely because they lack a correct handwritten date on the voter declaration pre-printed on the outer envelope, they will unlawfully disenfranchise supporters of

Senator Casey, harming the Casey Campaign by impairing Senator Casey’s electoral prospects.

GROUND ON WHICH INTERVENTION SHOULD BE GRANTED

10. Proposed Intervenors should be granted intervention pursuant to Pennsylvania Rules of Civil Procedure 2327 and 2329.

I. Proposed Intervenors are entitled to intervene under Rule 2327.

11. Pursuant to Rule 2327 of the Pennsylvania Rules of Civil Procedure, “[a]t any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein” if “the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” Pa.R.C.P. 2327(4).

12. Courts routinely allow political candidates to intervene in appeals from county board decisions about whether to count ballots in races in which those candidates are competing. *See, e.g., In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1069 (Pa. 2020) (noting trial court’s grant of motion to intervene by candidate in appeal challenging county board’s decision to count mail ballots); *In re Six Ballots in the 2024 Gen. Primary Election*, No. 629 C.D. 2024, 2024 WL 3290384, at *1–2 (Pa. Commw. Ct. July 3, 2024) (same). Political party committees have also been allowed by courts to intervene in similar cases, including the DSCC in litigation over the precise date requirement at

issue in this matter. *See Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.*, No. 23-3166, Doc. 129 (3d Cir. Jan. 3, 2024) (granting DSCC intervention).

13. This Court should do the same. Proposed Intervenors plainly have a powerful and legally enforceable interest in this action. This suit is being brought by Senator Casey’s opponent in the 2024 general election and seeks to have ballots discarded in that very race. If Petitioners’ suit succeeds, supporters of Senator Casey who are unquestionably qualified to vote and who did in fact vote for him in the 2024 general election will be disenfranchised. That, in turn, directly harms Senator Casey’s electoral prospects. Proposed Intervenors are therefore entitled to intervene in this action to advance their interests and the interests of Senator Casey’s supporters under Rule 2327.

II. None of the exceptions to granting intervention applies here.

14. Where a proposed intervenor “com[es] within one of the classes described in Rule 2327,” the grant of intervention “is mandatory, unless one of the grounds for refusal of intervention enumerated in Rule 2329 is present.” *Shirley v. Pa. Legis. Reference Bureau*, 318 A.3d 832, 853 (Pa. 2024) (quoting *In re Pa. Crime Comm’n*, 309 A.2d 401, 408 n.11 (Pa. 1973)).

15. Rule 2329 provides three grounds upon which “an application for intervention may be refused.” Pa.R.C.P. 2329. First, if the proposed intervenor’s “claim or defense . . . is not in subordination to and in recognition of the propriety

of the action.” Pa.R.C.P. 2329(1). Second, if “the interest of the [proposed intervenor] is already adequately represented.” Pa.R.C.P. 2329(2). And third, if the proposed intervenor “has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” Pa.R.C.P. 2329(3).

16. Because none of these circumstances applies, this Court should grant this application to intervene.

17. *First*, Proposed Intervenors’ defense is “in subordination to and in recognition of the propriety of the action.” Pa.R.C.P. 2329(1). “The general rule is that an intervenor must take the suit ‘as he finds it.’” *Commonwealth ex rel. Chidsey v. Keystone Mut. Cas. Co.*, 76 A.2d 867, 870 (Pa. 1950) (cleaned up). Proposed Intervenors take this suit as they find it, and simply ask that this Court deny Petitioners any relief.

18. *Second*, Proposed Intervenors’ interests are not adequately represented in this action. As explained above, Proposed Intervenors have interests that will be directly affected by this action, including interests in the enfranchisement of Senator Casey’s supporters and the threat that this suit poses to his competitive prospects in the 2024 general election. *See supra* Section I. No other party provides “representation to a satisfactory or acceptable extent” of these interests, *Shirley*, 318 A.3d at 852 (citing dictionary definition). Petitioners, including Senator Casey’s

opponent, have asked this Court to throw out the very same ballots that Proposed Intervenors seek to ensure are counted, and thus it is plain that Petitioners do not represent Proposed Intervenors' interests.

19. The named Respondent, the Montgomery County Board of Elections, also does not adequately represent Proposed Intervenors' interests. The Board's stake in this lawsuit is defined solely by its statutory duties to conduct elections. *See, e.g.*, 25 P.S. § 2642 (powers and duties of boards of elections); *id.* § 3146.8(g)(3) (adjudication of absentee and mail-in ballots). In contrast, Proposed Intervenors' interest in this litigation is defined by their interest in supporting Senator Casey's electoral prospects—a goal the Board simply does not share—and advocating for the enfranchisement of his supporters—a goal the Board may share only insofar as consistent with its statutory duties. Permitting private entities, like Proposed Intervenors, to intervene is particularly warranted where, as here, the original respondent is a government entity (like the Board) with positions that “are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it[.]” *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (citing *Conservation L. Found. of New England v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992), and *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996)).

20. *Third*, this intervention is timely. Proposed Intervenors have promptly sought intervention, with this Application coming just two business days after the filing of the Petition for Review, and Proposed Intervenors will abide by any deadlines set by the Court in this matter.

21. Alternatively, even if one of the Rule 2329 circumstances were to apply, this Court should exercise its discretion to permit Proposed Intervenors to intervene. *Cf. Shirley*, 318 A.3d at 853 (noting that, where a proposed intervenor satisfies Rule 2327, a court has discretion to allow intervention even if one of the grounds present in Rule 2329 is present); *Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Commw. Ct. 1999) (similar). Proposed Intervenors' clear and direct interests in this urgent and time-sensitive matter amply justify intervention irrespective of any finding the Court may make as to the factors enumerated in Rule 2329.

STATEMENT OF THE DEFENSE ASSERTED

22. The Board's decision to count the provisional ballots at issue was correct and should be upheld, because to refuse to count those ballots would have violated state and federal law, along with the guarantees of the Pennsylvania Constitution and the U.S. Constitution.

* * *

WHEREFORE, Proposed Intervenors respectfully request that this Honorable Court enter an order granting this Application for Leave to Intervene and entering the attached Proposed Answer. Proposed Intervenors further respectfully request that they be provided with the opportunity to submit a memorandum of law in advance of any hearing or decision in this matter.

Dated: November 19, 2024

Respectfully submitted,

/s/ Adam C. Bonin

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** Pro hac vice application
forthcoming*

Counsel for Proposed Intervenors DSCC and Bob Casey for Senate, Inc.

**CERTIFICATE OF COMPLIANCE WITH CASE RECORDS PUBLIC
ACCESS POLICY**

I hereby certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Adam C. Bonin

Adam C. Bonin, PA 80929

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VERIFICATION

I verify that the fact averments made in the foregoing Application to Intervene are true and correct to the best of my knowledge, information, and belief. I understand that false statements made therein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification and authorities.

Christie Roberts

Dated: 11/19/2024

Christie Roberts
Executive Director, DSCC

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VERIFICATION

I verify that the fact averments made in the foregoing Application to Intervene are true and correct to the best of my knowledge, information, and belief. I understand that false statements made therein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification and authorities.

Tiernan Donohue

Dated: 11/19/2024

Tiernan Donohue
Campaign Manager, Bob Casey for Senate, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2024, the Application to Intervene in the above-captioned action was electronically filed with the Montgomery County Court of Common Pleas electronic filing system website and is available for review on the Montgomery County Court of Common Pleas electronic filing system's website, which filing constitutes proper service upon counsel of record.

Service was also completed by email to counsel as follows:

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PROPOSED ANSWER

Proposed Intervenor-Respondents DSCC and Bob Casey for Senate, Inc. (“Proposed Intervenor”), by and through their attorneys, submit the following Proposed Answer to Petitioners’ Petition for Review of the decision of the Montgomery County Board of Elections (the “Board”) on November 14, 2024, to count provisional ballots that were missing a voter signature or the signatures of the Judge of Elections, the Minority Inspector, or both, in the November 5, 2024 General Election. Proposed Intervenor responds to the allegations in the Petition as follows:

INTRODUCTION

1. Proposed Intervenor admits that this appeal concerns the decisions of the Board following the November 5, 2024 General Election to count provisional ballots missing a voter signature and provisional ballots missing one or both signatures of the Judge of Elections or Minority Inspector. The remainder of the allegations in Paragraph 1 are denied.
2. Paragraph 2 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.
3. Proposed Intervenor admits that the Board decided to count at least 251 provisional ballots that were missing a signature of the voter in either Section 2 or Section 4 of the provisional ballot envelope. Moreover, Proposed Intervenor admits that Exhibit A appears to be what Petitioners purport it to be. The remainder of

Paragraph 3 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

4. Paragraph 4 contains legal conclusions to which no response is required.

5. Proposed Intervenor admit that the Board decided to count 163 provisional ballots that were missing the signature of the Judge of Elections, the signature of the Minority Inspector, or both. The remainder of Paragraph 5 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

6. Paragraph 6 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

7. Proposed Intervenor deny the allegations in Paragraph 5.

JURISDICTION

8. Paragraph 8 contains legal conclusions to which no response is required.

PARTIES

9. Proposed Intervenors admit that David McCormick is the Republican candidate for Senate.
10. Proposed Intervenors admit the allegations in Paragraph 10.
11. Proposed Intervenors admit the allegations in Paragraph 11.
12. Proposed Intervenors deny the allegations in Paragraph 12. To the extent Petitioners intended to allege that the Board is responsible for overseeing the conduct of all elections in Montgomery County, Proposed Intervenors would have admitted that allegation.

DECISION OF THE BOARD AT ISSUE

13. Proposed Intervenors admit that the Board met in a public meeting on November 14, 2024, to adjudicate challenges to provisional ballots and that, in a 2-1 vote, the Board orally announced its decision to count 162 provisional ballots with a missing voter signature under Section 2 of the ballot.
14. Proposed Intervenors admit that, in a 2-1 vote, the Board orally announced its decision to count 89 provisional ballots with a missing voter signature under Section 4 of the ballot.
15. Proposed Intervenors admit that, in a 3-0 vote, the Board orally announced its decision to count provisional ballots that were missing signatures from either the Judge of Elections or the Minority Inspector. Proposed Intervenors further

admit that, in a 2-1 vote, the Board orally announced its decision to count provisional ballots that were missing signatures from both the Judge of Elections and the Minority Inspector.

16. Proposed Intervenors admit the allegations in Paragraph 16.

17. Proposed Intervenors admit the allegations in Paragraph 17.

FACTUAL BACKGROUND

Section A

18. Proposed Intervenors admit that the Election Code requires an elector voting a provisional ballot to sign an affidavit. The remaining allegations in Paragraph 18 consist of mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors admit only that Paragraph 18 quotes 25 P.S. § 3050. Proposed Intervenors deny all remaining allegations.

19. Paragraph 19 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors admit only that Paragraph 19 quotes 25 P.S. § 3050. Proposed Intervenors deny all remaining allegations.

20. Proposed Intervenors admit that in a 2-1 vote, the Board orally announced its decision to count provisional ballots with a missing voter signature under Section 2 of the ballot and, in a separate 2-1 vote, the Board orally announced

its decision to count provisional ballots with a missing voter signature under Section 4 of the ballot. The remainder of Paragraph 20 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

21. Proposed Intervenors admit the allegations in Paragraph 21.

Section B

22. Paragraph 22 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors admit only that Paragraph 22 quotes 25 P.S. § 3050. Proposed Intervenors deny all remaining allegations.

23. Paragraph 23 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

24. Paragraph 24 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

25. Proposed Intervenors admit that, in a 3-0 vote, the Board orally announced its decision to count provisional ballots that were missing signatures from either the Judge of Elections or the Minority Inspector. Proposed Intervenors further admit that, in a 2-1 vote, the Board orally announced its decision to count provisional

ballots that were missing signatures from both the Judge of Elections and the Minority Inspector. The remainder of Paragraph 25 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

26. Proposed Intervenors admit the allegations in Paragraph 26.

GROUNDS FOR APPEAL

27. Paragraph 27 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

28. Paragraph 28 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

29. Paragraph 29 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

30. Paragraph 30 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

31. Paragraph 31 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

32. Paragraph 32 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

33. Paragraph 33 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

34. Paragraph 34 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

35. Paragraph 35 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

36. Paragraph 36 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

37. Paragraph 37 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

38. Paragraph 38 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

39. Paragraph 39 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

40. Paragraph 40 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

41. Paragraph 41 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

42. Paragraph 42 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations.

PRAYER FOR RELIEF

Proposed Intervenor deny that Petitioners are entitled to any relief.

GENERAL DENIAL

Proposed Intervenor deny every allegation in the Compliant that is not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. Petitioners' claim is barred because they seek relief inconsistent with the plain text of the Pennsylvania Election Code.
2. Petitioners' claim is barred because they seek relief inconsistent with the Free and Equal Elections Clause of the Pennsylvania Constitution.
3. Petitioners' claim is barred because they seek relief inconsistent with the Help America Vote Act.
4. Petitioners' claim is barred because they seek relief inconsistent with the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.
5. Petitioners' claim is barred because, contrary to Petitioners' allegations, the decision of the Board to count the provisional ballots at issue is not inconsistent with the U.S. Constitution or the Pennsylvania Constitution.

Dated: November 19, 2024

Respectfully submitted,

/s/ Adam C. Bonin

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**CERTIFICATE OF COMPLIANCE WITH CASE RECORDS PUBLIC
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I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Adam C. Bonin
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