IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE OKLAHOMA REPUBLICAN PARTY, and RONDA VUILLEMONT-SMITH,	)	
Petitioners,	)	
vs.	)	Case No. _____
KENNETH RAY SETTER; YVONNE GALVAN; and ANTHONY STOBBE,	)	
Respondents.	)	

PETITIONERS' BRIEF IN SUPPORT OF THEIR APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND REVIEW INITIATIVE PETITION NO. 448/STATE QUESTION 836'S CONSTITUTIONALITY, SUGGESTED BALLOT TITLE, AND GIST

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APRIL 9, 2025

*Not admitted in this jurisdiction.

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The Petitioners submit this Brief in Support of their timely[1] Petition, brought pursuant to 34 O.S. § 8(B), challenging Initiative Petition no. 448, State Question no. 836 (hereinafter, "IP 448" or the "Initiative"), for violating the United States Constitution by forcing political parties to unwillingly associate with political candidates in violation of the First Amendment rights of political parties' and their members, and because its suggested ballot title and gist are misleading and insufficient.

I. INTRODUCTION

The Petitioner, the Oklahoma Republican Party, is an unincorporated nonprofit association and Political Party Committee, operating under Oklahoma law, as an association of Oklahoma citizens. Its primary purpose is to elect duly nominated Republican candidates, and to promote its principles by nominating, designating and advancing candidates of its own choosing. IP 448 strips from political parties the ability to associate with candidates of their choosing. This violates the U.S. Constitution, specifically, the associational rights protected by the First Amendment. *Tashjian v. Republican Party*, 479 U.S. 208, 224 (1986) ("The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution."). Petitioner, Ronda Vuillemont-Smith, resides in Tulsa County and is a registered member of the Oklahoma Republican Party.

A. The Substance of IP 448

IP 448 would add a new Article 3A to the Oklahoma Constitution, imposing upon the Petitioners a so-called "open primary" election for certain county, state, and federal elections. (App. A-2). As will be addressed below, IP 448 actually makes substantive changes beyond the

[1] As set forth on the Oklahoma Secretary of State's website, "Initiative petition 448 was filed as of January 3, 2025, but not published until January 9, 2025." IP 448 "is currently in the 1st 90-day protest period (as to the Constitutionality); 04/09/2025 will be the final day of the 90-day protest period." *See* 34 O.S. § 8(B) ("Any such protest must be filed within ninety (90) days after publication.").

primary, infringing upon a political party's associational rights on the general election ballot. IP 448's full frontal assault on the constitutionally protected rights of Oklahoma political parties – protected by the First Amendment – is blatant: in the so-called "open" primary it would create,

> "all candidates for a covered office would appear on the same primary ballot without regard to party affiliation, and any qualified voter could vote for any candidate without regard to party affiliation. . . . "The two candidates receiving the most votes in the open primary would advance to the general election, *without regard to party affiliation and without regard to whether the candidates have been nominated or endorsed by any political party*."

Initiative Petition no. 448, State Question no. 836, Sec. 4; (App. A-5) (emphasis added). But there is more. According to its text, "In both open primary elections and general elections," IP 448, Sec. 4; (App. A-4), "*[a] candidate does not need to seek or gain approval of the political party to have the candidate's registration with that party reflected on the ballot*." *Id.* at Sec. 4(B) (emphasis added).[2] Yet, the ballot would list "next to the candidate's name, each candidate's political party registration or independent status as of the date of candidate filing." *Id.* Parties have no say in this coerced association.

B. IP 448 Does Not Establish an Open Primary, but a Blanket Primary.

IP 448 is billed as creating an "open primary," but in reality creates a "blanket primary" variant. A "'blanket primary' refers to a system in which 'any person, regardless of party affiliation, may vote for a party's nominee.'" *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 445 n.1 (2008) (quoting *Cal. Democratic Party v. Jones*, 530 U.S. 567, 576 n.6 (2000)). To be clear, "[a] blanket primary is distinct from an 'open primary,' in which a person may vote for any party's nominees, but must choose among that party's nominees for

[2] This rather substantive provision lies buried in IP 448's text and does not appear in the ballot title or gist. In other words, as addressed in more detail *infra* IV, the ballot title and gist are misleading.

all offices." *Id.* (citation omitted). IP 448, which allows any person, regardless of party affiliation, to vote for a party's nominee, clearly creates a type of blanket primary. Worse, it allows any voter to vote for anyone claiming affiliation with any party, regardless of whether that candidate was nominated or endorsed by that party. The candidate need only have registered their affiliation with a party to have that party's name placed by theirs on the ballot. The party has no control over who may register their affiliation, and "[a] candidate does not need to seek or gain approval of the political party to have the candidate's registration with that party reflected on the ballot." IP 448, Sec. 4(B); (App. A-4).

In a true open primary, "all registered voters may choose in which party primary to vote," then that voter may only vote among that party's candidates in that election. *Tashjian v. Republican Party*, 479 U.S. 208, 222 n. 11 (1986). IP 448 is not that. Instead, IP 448 provides that a voter would receive a single ballot and that "all candidates for a covered office would *appear on the same primary ballot without regard to party affiliation*, and any qualified voter could vote for any candidate *without regard to party affiliation*." Suggested Ballot Title, IP 448; (App. A-3) (emphasis added). That does not meet the U.S. Supreme Court's definition of an open primary, especially not a permissible open primary. Regardless, blanket primaries regulating internal processes for candidate selection, *Jones*, 530 U.S. 567, and "open" primaries requiring delegates to vote contrary to the national party's rules, *Dem. Party of U.S. v. Wis. ex rel. La Follette*, 450 U.S. 107 (1981), violate the First Amendment.

II. LEGAL STANDARD

This Court reviews ballot petitions for their sufficiency and constitutionality. *Tate Chamber of Okla. v. Cobbs*, 2024 OK 13, ¶1, 545 P.3d 1216; *In re Initiative Petition No. 420, State Question No. 804*, 2020 OK 10, ¶1 458 P.3d 1088. The Court limits pre-election review

to "clear or manifest facial constitutional infirmities." *In re Initiative Petition No. 358, State Question No. 658*, 1994 OK 27, ¶7, 870 P.2d 782, 785. "[A] determination on a constitutional question as to the legality of a measure proposed . . . will be reached by this Court . . . if, in the Court's opinion, reaching the issue may prevent the holding of a costly and unnecessary election." *In re Initiative Petition No. 349, State Question No. 642*, 1992 OK 122, ¶18, 838 P.2d 1, 8. The Court has emphasized the importance of the exercise of this power: "it is this Court's responsibility to see the petitions for change . . . comply with the requirements set out in both the Constitution and the statutes." *In re Initiative Petition No. 344, State Question No. 630*, 1990 OK 75, ¶16, 797 P.2d 326, 330.

III. IP 448 VIOLATES STATE POLITICAL PARTIES' UNDENIABLE FIRST AMENDMENT RIGHTS.

The net result (and obvious intent) of IP 448 is to strip from Oklahoma political parties and their members, including Petitioners, the right to associate and disassociate, invoking the First Amendment and drawing strict scrutiny. *Washington State Grange v. Washington State Republican Party,* 552 U.S. 442, 452 (2008). This is a standard it cannot survive, as discussed below.

The United States Supreme Court has struck down laws imposing blanket open primaries on state political parties. *See Jones*, 530 U.S. at 569; *La Follete*, 450 U.S. at 109. Recognizing that "States have a major role to play in structuring and monitoring the election process," *Jones*, 530 U.S. at 572, the Supreme Court "stressed that when States regulate parties' internal processes they must act within limits imposed by the Constitution." *Id.* at 573. When states hold primaries, *they must not infringe on First Amendment rights by mandating that parties associate with candidates against their will*. "[T]he First Amendment protects 'the freedom to join together in furtherance of common political beliefs,'" *id.* (quoting *Tashjian*,

479 U.S. at 214-215); this "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only." *La Follette*, 450 U.S. at 122. "[A] corollary of the right to associate is the right not to associate. 'Freedom of association would prove an empty guarantee if associations could not limit control over their decisions.'" *Jones*, 530 U.S. at 574-75 (quoting *La Follette*, 450 U.S. at 122 n. 22).[3]

The First Amendment protects the right of citizens "to band together in promoting among the electorate candidates who espouse their political views." *Id*. at 574. "Regulations that impose severe burdens on associational rights must be narrowly tailored to serve a compelling state interest." *Clingman v. Beaver*, 544 U.S. 581, 586 (2005). IP 448 mandates involuntary association between candidates and parties and cannot meet strict scrutiny.

A. A Severe Burden on the Right to Associate Requires Strict Scrutiny.

A party's choice of its candidates is of paramount importance: "In no area is the political association's right to exclude more important than in the process of selecting its nominee . . . who becomes the party's ambassador to the general electorate." *Jones*, 530 U.S. at 575; *see id.* at 587 (Kennedy, J., concurring) ("The true purpose of this law, however, is to force a political party to accept a candidate it may not want and . . . to change the party's doctrinal position."). A State may not force political parties to associate: "[w]hen the State seeks to direct changes in a political party's philosophy by forcing upon it unwanted candidates . . . the State's incursion . . . is subject to careful scrutiny." *Id.* (Kennedy, J., concurring). "[T]he freedom to

[3] The *Jones* Court's analysis made clear that its cases rejecting political parties' attempts to limit association *on otherwise unconstitutional grounds* do not support a state's ability to restrict a state political party by imposing an open primary. *Id.* at 573 (citing *Smith v. Allwright*, 321 U.S. 649 (1944) ("invalidat[ing] the Texas Democratic Party's rule limiting participation in its primary to whites") and *Terry v. Adams*, 345 U.S. 461 (1953) ("invalidat[ing] the same rule promulgated by the Jaybird Democratic Association"). Those cases "do not stand for the proposition that party affairs are public affairs, free of First Amendment protections – and our later holdings make that entirely clear." *Id.*

associate for the 'common advancement of political beliefs,' necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only." *La Follette*, 450 U.S. at 122 (citations omitted); *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) ("Exercise of these basic freedoms . . . has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.").

"Unsurprisingly," the Supreme Court's "cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party 'selects a standard bearer.'" *Jones*, 530 U.S. at 575 (internal citations omitted). In striking down California's primary law, the Court emphasized the unremarkable yet fundamental proposition that the party, "and not someone else, has the right to select the [] Party's standard bearer," *id.* at 575-76 (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997) (internal quotation marks omitted)), and that "[t]he members of a recognized political party unquestionably have a constitutional right to select their nominees for public office," *id.* at 576 (quoting *Timmons*, 520 U.S. at 371 (Stevens, J., dissenting)).

The First Amendment protects the right of citizens "to band together in promoting among the electorate candidates who espouse their political views." *Jones*, 530 U.S. at 574. When an organization is compelled to associate with someone of differing views, the organization's message is undermined; the organization is understood to embrace views (and, here, candidates) it does not wish to embrace.

In *Jones,* the Supreme Court struck down California's primary law provision, Proposition 198, because it "forces political parties to associate with – to have their nominees, and hence their positions, determined by – those who, at best, have refused to affiliate with the

party, and, at worst, have expressly affiliated with a rival." 530 U.S. at 577. IP 448 has the same effect, irrespective of its label.[4] Curtailing these rights at the ballot box "limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action." *Tashjian*, 479 U.S. at 216.[5] Respondents undoubtedly labeled IP 448 as an "open primary" measure in an effort to evade *Jones*' reach, but its substance is the problem and the net result is the same: it mandates political parties' association with candidates against their will.

A political party's candidate is its "ambassador to the general electorate in winning it over to the party's views." *Jones*, 530 U.S. at 575. A political party's programs and policies for governance may only be implemented by electing candidates who adhere to its principles and programs. If it cannot select its own candidates, it cannot properly exist. But under IP 448, any candidate could identify with any party, regardless of that party's values or beliefs: a candidate need only have a "registration" for the ballot to "state, next to the candidate's name, each candidate's political party registration or independent status." IP 448, Sec. 4(B); (App. A-4). And, "[a] candidate does not need to seek or gain approval of the political party to have the candidate's registration with that party reflected on the ballot" – even in a general election. *Id.* In sum, any voter can vote for any candidate, and the candidate can indicate their affiliation with any party.

The inclusion of a disclaimer, that "[e]very ballot shall contain a statement informing

[4] Like California's law, IP 448 creates something "qualitatively different from a closed primary. Under that system, even when it is made quite easy for a voter to change his party affiliation the day of the primary, and thus, in some sense, to 'cross over,' at least he must formally become a member of the party; and once he does so, he is limited to voting for candidates of that party." *Jones*, 530 U.S. at 577.
[5] This is not like Colorado's Prop. 108, which imposed an open primary but allowed the State's major political parties to "opt out" of the mandate with a 3/4 intraparty vote. *See Colo. Republican Party v. Griswold*, 715 F. Supp. 3d 1339 (D. Colo. 2024) (denying Party's motion for preliminary injunction).

voters that a candidate's indicated party registration does not imply that the candidate is nominated or endorsed by the political party or that the party approves of or associates with that candidate," *id.*, fails to cure the petition's illness, and instead, diagnoses it. Such a disclaimer adds no clarity. It highlights, without remedying, the confusion of the system and the loss of all associational rights in meaningfully presenting its candidates to the voters. Thus, in addition to IP 448 forcing party association with a candidate invoking its name while not duly affiliated with or endorsed by the political party, its disclaimer also prevents the political party from expressing on the ballot that its bona fide, duly affiliated candidates are in fact, duly associated.

IP 448 raises material questions: What is a political party if it cannot choose candidates embodying its values and present them to the public? Why should a candidate, who merely registers as a member of a party by the filing deadlines, be able to capitalize on that party's name without its consent? And why may a candidate place a party's name next to their own on a ballot if a disclaimer is required stating that party's name may or may not indicate alignment with the party?[6]

B. The "Top Two" Feature Fails to Save IP 448.

The Court in *Jones* suggested a "*nonpartisan* blanket primary" system containing a "top two" feature which could be constitutional by furthering a compelling interest with the least restrictive means. *Jones*, 530 U.S. at 585. IP 448's "top two" system is distinguishable. Respondents will no doubt contend that IP 448's "top two" feature, directing that the two candidates receiving the most votes on the singular primary ballot will proceed to the general

[6] IP 448 intentionally disrupts the well-recognized purpose of a primary ballot. *See Ex parte Wilson*, 7 Okla. Crim. 610, 625 (Ok. Crim. App. 1912) ("[A]ll of the provisions of the primary election law were enacted by the Legislature to prevent electors from voting any ballot except that of their respective parties, and thereby prevent fraud and preserve the purity of the ballot.").

election ballot, saves it from its constitutional defect. It does not. While cloaked in the nomenclature of a nonpartisan system, the blanket primary in this Initiative *still* bears the same constitutional infirmities as the primary struck down in *Jones*.

First, like the law struck down in *Jones*, IP 448 advances no compelling state interests. The Court here need not even reach the least restrictive means stage of strict scrutiny analysis. The *Jones* Court only suggested the "nonpartisan blanket primary" with the top two feature as a lesser restrictive means after holding that *all seven* of California's asserted compelling interests purporting to justify its infringement were not compelling. *Jones*, 530 U.S. at 582-85. *Jones* explained that, even assuming a compelling interest, it failed the least restrictive means analysis step. *Id.* at 585 ("[E]ven if all these state interests were compelling ones, Proposition 198 is not a narrowly tailored means."). It was at *this* juncture of the analysis the *Jones* Court suggested the "top two" "*nonpartisan* blanket primary" as a lesser restrictive means.

Second, and more substantively, IP 448 does not create the *Jones* Court's approved "nonpartisan" alternative. That would be a system where "[e]ach voter, regardless of party affiliation, may then vote for any candidate, and the top two vote getters . . . then move on to the general election." *Id.* That system could survive because "[p]rimary voters are not choosing a party's nominee," achieving the stated goals "without severely burdening a political party's First Amendment right of association," *id.* at 586. Therefore, it would be less restrictive.

In the *nonpartisan* system described in *Jones*, candidates are not misidentified as affiliated with political parties when they are not so affiliated. This is IP 448's critical flaw. Under IP 448, not only can anyone vote for any candidate, anyone can *register* and *run* under

any party's banner – without that party's nomination or endorsement.[7] This is a serious deviation from the aforementioned *nonpartisan* blanket primary and is what violates the Petitioners' (and other political parties') First Amendment associational rights.

Respondents may also point to *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008), where the Supreme Court upheld an open "top two" primary system where candidates merely selected their political party "preference." The Supreme Court concluded that the "primary does not, by its terms, choose parties' nominees . . . . [it] never refers to the candidates as nominees of any party, *nor does it treat them as such*." 552 U.S. 442, 453 (2008) (emphasis added). Here, in contrast, candidates do not merely select their "preference," but instead, the candidate displays their ***actual registration and affiliation*** with the party. IP 448, Sec. 4(B); (App. A-4). Thus, candidates could run for an office against the party's own interest, will, or vetting—effectively becoming a *de facto* party nominee without the party's consent and without regard to its platform.

The line between *Jones* and *Grange* is clear. Candidates may express their preferences – but cannot mandate party association (or disassociation). The later is precisely what IP 448's ballot does. On the proposed ballot, candidates would have their registration and affiliation with a party listed next to their name, with a vague disclaimer, leaving the voter unsure of actual party endorsement. Even with the disclaimer, the ballot would confuse voters "at the

[7] Current laws governing State and County primary elections explicitly allow political parties to nominate their respective candidates for upcoming general elections. 26 O.S. § 1-102. Voters can only vote in the primary of the party they are registered with, 26 O.S. § 1-104(A), and political parties decide whether to allow Independents to vote in their primaries, 26 O.S. § 1-104(B). Independents can vote in one party's primary. 26 O.S. § 1-104(B). Importantly, individuals who feel disenfranchised can form a recognized political party. 26 O.S. §§ 1-104(B)(4) & 1-108. These rules protect parties' associational rights, ensure meaningful nominations, and preserve voters' ability to participate in party primaries—unlike the impermissible blanket primary system, which infringes on those rights.

most crucial stage in the electoral process—the instant before the vote is cast." *Anderson v. Martin*, 375 U.S. 399, 402 (1964). The ballot conveys to voters that candidates are affiliated with and registered with a political party, regardless of whether the party so wishes. That ballot imposes severe burdens on the protected First Amendment freedoms of a political party and its members, weakening the link between candidates and the party's platform.

C. IP 448 Cannot Survive Strict Scrutiny.

IP 448 cannot be justified under strict scrutiny, since it lacks a compelling interest. The Respondents may point to interests similar to those in *Jones*: producing elected officials who better represent the electorate; expanding candidate debate beyond the scope of partisan concerns; a view that a blanket primary is the only way to ensure that disenfranchised persons enjoy the right to an effective vote; promoting fairness; affording voters greater choice; increasing voter participation; and protecting privacy. *Jones*, 530 U.S. at 582. The Supreme Court analyzed each asserted interest in turn and concluded each one was *not* compelling. *Id.* at 585. The first two purported interests were "simply circumlocution for producing nominees and nominee positions other than those the parties would choose if left to their own devices." *Id.* at 582. They "reduce to nothing more than a stark repudiation of freedom of political association: Parties should not be free to select their own nominees because those nominees, and the positions taken by those nominees, will not be congenial to the majority." *Id.*

Then, the purported interest in ensuring that disenfranchised persons enjoy the right to an effective vote just meant allowing people in other parties to vote in a majority party's election. The Court rejected this: a "nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications." *Tashjian*, 479 U.S. at 215-16 n.6 (citing *Rosario v. Rockefeller*,

410 U.S. 752 (1973)). A "disenfranchised" voter "should simply join the party. That may put him to a hard choice, but it is not a state-imposed restriction upon *his* freedom of association, whereas compelling party members to accept his selection of their nominee *is* a state-imposed restriction upon theirs." *Jones*, 530 U.S. at 584. The other four asserted interests, addressing concerns such as fairness, greater choice, and the like, likewise failed to justify the law.

For example, "[a]s for affording voters greater choice, it is obvious that the net effect of this scheme -- indeed, its avowed purpose -- is to reduce the scope of choice, by assuring a range of candidates who are all more 'centrist.'" *Id.* Simply put, IP 448's requirement for a political party to associate with candidates not of their choice, while preventing it from identifying on the ballot its duly associated candidates, cannot meet the strict scrutiny standard, as it is neither narrowly tailored nor justified by a compelling interest. No interest justifies the coercion and confustion IPP 448 works. Unlike the system upheld in *Grange*, a reasonable voter must wonder, under this system, what a party's name next to the candidate's, followed by a disclaimer, actually implies.

Recent experience and logic bear out *why* the United States Supreme Court has so clearly and consistently applied the First Amendment's protections to political parties' associational rights that doom IP 448. The threat of politically motivated actors exploiting open primaries to intentionally and openly infringe political parties' associational rights (which again, include the right to associate and *to not* associate, *Jones*, 530 U.S. at 574-75) is far from hollow.[8]

[8] Organizations exist for precisely this purpose. *See* Juliann Ventura, *Anti-Trump Group Urging Democrats to Crossover for Haley in S.C., Michigan Primaries*, THE DETROIT NEWS (Feb. 13, 2024), https://tinyurl.com/mw8a882k.

IV. IP 448'S SUGGESTED BALLOT TITLE AND GIST ARE MISLEADING.

A petition's gist and the title must be "descriptive of the effect of the proposition, not deceiving but informative and revealing." *In re Initiative Petition No. 344*, 1990 OK 75, ¶14, 797 P.2d 327, 330. This is "necessary to prevent deception," and so that voters are "able to cast an informed vote." *Id.* The language "should be sufficient that the signatories are at least put on notice of the changes being made," and must explain the proposal's actual effect. *In re Initiative Petition No. 342*, 1990 OK 76, ¶14, 797 P.2d 331, 334.

In addition to the constitutional infirmity, there exists a separate, independent problem with IP 448; its suggested ballot title and gist mislead the reader about IP 448's nature. At the least, the ballot title and gist frame IP 448 as creating a so-called "open" primary system, for reasons addressed *supra* I(B) and incorporated herein by reference, it does not. Further, the title and gist fail to clearly state IP 448's changes to the *general* election ballot.

Following the topline assertions that it governs and makes changes *to primaries*, the title and gist mention no changes to general elections until well into the text. The use of "in elections for covered offices," (App. A-2), and "in all elections for covered offices," (App. A-5), in the suggested ballot title gist, respectively, is easily mistaken, due to placement and word usage, as meaning in all *primary* elections, as the clear impression is that IP 448 is all about primaries. The ballot title and gist are misleading.[9] IP 448 works a radical change to the nature of elections in Oklahoma, a change its suggested ballot title and gist do not sufficiently disclose.

[9] The risk of confusion is real and substantiated. Major local news outlets report that amendments made to IP 447/SQ 835, then refiled as IP 448/SQ 836, "ensure[] that the initiative only addresses the process for partisan *primary* elections." Barbara Hoberock, *Open Primary Supporters Refile State Question: What Has Changed?*, THE OKLAHOMAN (Jan. 7, 2025) https://tinyurl.com/2s2hyhv4 (emphasis added).

CONCLUSION

Petitioners respectfully urge this Court to strike IP 448 from the ballot, for its manifest unconstitutionality and for its insufficient suggested ballot title and gist.

Dated: April 9, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2025, a true and correct copy of the above and foregoing document was served electronically and by express mail or hand-delivery on the following:

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