

with  
① ~~separate state~~  
Brief

with  
By the <sup>adoption</sup> enactment of the United States Constitution a new nation was created, ~~and~~ The States as distinct sovereignties, in the international sense ceased to exist -  
(if they ever existed as such)

~~Under our constitution The~~  
By the ~~constitution~~ certain powers <sup>by the Constitution</sup>  
The sovereign powers of the United States were divided into 3 parts vested in three agencies

1° The Federal Govt - In this agency were vested generally the <sup>necessary to deal with all matters affecting</sup> those powers affecting the country as a whole. The powers so vested were specifically enumerated + the Federal Govt may exercise those <sup>functions</sup> powers expressly set forth in the Constitution and such other powers as may be necessary + proper to carry into effect the express powers - The Constitution however in the bill of rights contained in the first 10 Amendments sets forth <sup>additional</sup> limitations upon the <sup>exercise of the powers of the</sup> Fed Govt.

2° The powers affecting the several states are with certain ~~and~~ limitations reserved to the States - these limitations consist

3° The powers which <sup>neither</sup> the Federal nor State Governments may ~~not~~ exercise are reserved to the people of the United States - ~~This~~ + of the <sup>natural and</sup> normal states. This includes those <sup>unalienable</sup> rights with which under the Federal Constitution neither the Federal nor the State Governments may

and inviolable

into which  
(1) ~~separate state~~

Brief

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3 These powers which ~~both~~ the Federal nor State governments may ~~not~~ exercise are reserved to the people of the United States - ~~This~~ + of the natural a several states. This includes those inalienable and inviolable rights with which under the Federal Constitution neither the Federal nor the State Governments may

we are not concerned with those provisions

(2)

interfere ¶ There are further <sup>additional</sup> powers reserved to the people by the State Constitutions. But in ~~pass~~ determining whether a <sup>State</sup> statute violates the Federal Constitution

¶ These rights ~~and~~ no human laws were needed to ~~invest~~ invest these rights in the people. The fourteenth ~~amended~~ ~~and~~ ~~merely~~ ~~recognized~~ amendment by providing that no state shall deprive any person of life, liberty or property without due process of law ~~not~~ only recognized these rights but vested ~~in~~ <sup>the</sup> Federal Govt with the power to prevent any ~~state~~ in-fringement by the States upon those rights

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implied from the very nature of the constitution,  
 Apart from the general prohibition, against the States exercising any of the powers ~~expressly~~ conferred upon the Federal Government by the U.S. Constitution <sup>express</sup> two limitations upon state action are ~~contained~~ laid down in the Constitution.

¶ The most important is the Fourteenth Amendment which provides that no state shall deprive any persons of life, liberty or property without due process of law.

The other provision is contained in Article I Section 10 which prohibits a state from passing any "law impairing the obligation of a contract."

The Act of the Tennessee Legislature ~~prohibiting~~ making it a crime to teach any theory that denies the Story of Divine Creation of man as taught in the Bible, and to teach, instead, that man has descended from a lower order of animals, violates ~~the provisions~~ both these provisions of the Federal Constitution.

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# 4.

Caps.

The Act deprives <sup>the defendant</sup> plaintiff of his liberty without due process of law in violation of the 14<sup>th</sup> Amendment to the Federal Constitution in that it <sup>arbitrarily</sup> makes certain acts innocent in themselves criminal offenses.

By prohibiting (1) The act by prohibit making it criminal for Scopes to teach evolution is depriving him of his liberty. Unless, therefore, such ~~action~~ <sup>legislation</sup> can be justified as necessary to promote the health safety or morals of the Community, that is to say, that it is within the general police power of the State the legislation is in violation of the 14<sup>th</sup> Amend-

ment & void (Meyer v. Nebraska 232 U.S. Oregon School Law Case decided by the United States Supreme Court - June 1, 1925).

The legislation cannot be arbitrary & must be within the general & have a reasonable relation to the competency of the State & effect.

# IV 4.

I the Defendant

The Act deprives plaintiff of his liberty + is without due process of law in violation of the the 14<sup>th</sup> Amendment to Federal Constitution in

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5

(2) Whether we agree with the theory of evolution or not ~~the~~ it cannot be reasonably claimed that there is anything inherently vicious or immoral in such teaching. It is a well ~~to~~ recognized ~~the~~ scientific theory accepted by the great mass of scientists of all creeds and essentially a

The constitution of Tennessee <sup>(art. 11 Sec 12)</sup> makes it the express duty of the legislature to encourage foster & cherish science. To do an act which is in the strongest language Com-  
manded by the Constitution ~~shall~~ be made criminal by the action of the legislature.

Nor can this legislation be ~~regarded~~ <sup>be regarded</sup> deemed justified as in ~~the~~ <sup>an</sup> exercise of the general function of the State in regulating ~~the~~ education. What should be taught in the public schools. An examination of the Statute shows that this statute is not aimed at fixing the Curriculum but solely to make the schools the instrument of a particular religious sect. ~~It does not forbid the teaching of science~~ ~~Assuming that it could do so~~ in the light of the express command contained in the Tennessee Constitution, the act ~~is~~ <sup>is</sup> the teaching of science.

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6.

entirely

It merely requires that science to be taught in accordance with the religious beliefs of a dominant majority.

This case is analogous to the cases holding that while a state may prohibit foreign corporations from doing intra state business yet it cannot prohibit them from doing so on condition that they shall agree not to ~~invoke the~~ ~~1<sup>st</sup>~~ remove cases to the Federal courts which they where they are entitled to do so on the ground of diversity of citizenship (cite cases).

Smoleff-

The public schools, supported by public funds, may not lawfully be used for the purpose of limiting or influencing public instruction to harmonize with the doctrines of any religious creed or denomination.

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7.

II

Caps-

The act deprives dependant of his liberty without due process of law and is in violation of the 14<sup>th</sup> Amendment of the Federal Constitution & that it fails to prescribe with reasonable certainty the elements of the offense.

This is a penal statute. A penal statute must define the nature of the offense with reasonable certainty so as to apprise ~~them~~ ~~inform~~ apprise all persons of ~~it~~ what constitutes the offense. (Harvester Case 234 U.S. )

Smoleff

The Tennessee statute makes it criminal to teach any theory that denies the story of the Divine creation of man as taught in the Bible and to teach instead that man has descended from a lower order of animals."

There is no agreement as to the story of the divine creation of man as taught in the Bible.

(a) In the first place the Bible itself has two versions (1) That ~~he~~<sup>God</sup> created man & woman out of the dust at the same time & (2) That he first created ~~man~~<sup>Adam</sup> and thereafter created ~~Ev~~<sup>Adam</sup> and woman out of ~~man~~<sup>Adam</sup>'s rib.

(b) There are christians who like Galileo & Giordano Bruno ~~accept~~ state that the teachings of the Bible is divinely inspired

7.

II

Caps

The Act deprives defendant of his liberty without due process of law and in violation to of the 14<sup>th</sup> Amendment of the Federal Constitution in that it fails to prescribe with reasonable certainty the elements of the offense

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(b) There are christians who like Galileo & Giordano Bruno ~~accept~~ state that the teachings of the Bible is divinely inspired

in matters of religion & morals, but believe that just as God used history and parable to enunciate his teachings, so he used myth & cosmography to bring to the masses of mankind ~~religion~~ the lessons of religion & morality.

c. There are those christians who believe in the divine origin of the Bible but <sup>affirm</sup> ~~state~~ that the Bible in ~~stating~~ stating that God created man & woman out of dust, did not set forth the process of that creation. ~~For~~ On their interpretation evolution is not inconsistent with the theory of creation as <sup>set forth</sup> ~~taught~~ in the Bible.

(d) Great Religious thinkers and scientists, Roman Catholics Anglicans, Presbyterians, Baptists, Methodists and others have affirmed <sup>that</sup> the theory of evolution is not opposed to the Biblical teaching. ~~Some~~ Some have asserted that the ~~theory~~ story of creation <sup>set forth in the Bible</sup> applies only to the creation of the soul - <sup>as set forth in the Bible</sup>

~~What~~ What story of creation shall the teacher teach. Shall it be the theory that this applies only to the soul & not to the body. ~~the story~~ shall it be that set forth in the earlier or the later text of the Bible or shall it be the view held by the modernists or the

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the meaning of this act

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¶ Various creeds & denominations as well as religious scholars are at variance as to what constitutes the ~~teaching~~ <sup>story</sup> of the divine creation of man as taught in the Bible, and such differences of opinion would place doctrinal interpretation in the hands of the court.

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III

Cabe

The act is in violation of the 14<sup>th</sup> Amendment to the Federal Constitution ~~in that by interfering~~ <sup>since</sup> it deprives parents of children attending public schools of their liberty without due process of law in that it interferes with their right to bring up their children to worship God according to the dictates of their own conscience of the United States

1. While the <sup>Supreme</sup> Court has refrained from defining the term liberty yet ~~it~~ it has held that freedom of speech and of the press ~~and~~ the right of parents to bring up their children and to worship God according to the dictates of their own conscience are among the fundamental <sup>personal</sup> rights included under the term 'liberty' which are protected by the Constitution from impairment by the states. (Gilton case, Meyer v. Nebraska 232 U.S., Oregon School Law case decided June 1, 1925).

Smoleff

(p. 9)

2. This constitutional right of the parent may be asserted by Mr. Scopes in his defense. ~~upon~~ There is a duty upon all ~~not to~~ persons not to violate the constitutional rights of others, and no state statute may, ~~make~~ under our constitution, make it criminal for a teacher in the public schools not to violate a parent's constitutional rights. It is on this theory that,

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No one will accept from the civil courts an interpretation of the Bible that might conflict with his own beliefs. All men will assume that such interpretation is influenced by what the individual in authority considers to be orthodox doctrine in his own particular faith. *how*

*WOTP* ~~No one~~ will consent to permit interpretation of religious doctrine <sup>by the</sup> ~~in the hands of~~ civil authority; ~~of~~ <sup>by</sup> men of other faiths, ~~and of~~ <sup>by</sup> men untrained and unequipped to pass upon matters of doctrine.

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in every rate case, the attorney general and the district attorney are made parties defendant and are enjoined by the courts from performing the duties prosecuting the public service companies.

3. This legislation cannot be justified or considered a part of its performance of the function of the state in regulating ~~the~~ matter of education. The statute does not prohibit the teaching of any theory of creation but requires the theory of creation ~~to~~ set forth in the Bible to be taught. The

Smoleff (?)  
10

The same argument was made in where it was claimed that the state was exercising its right to prohibit foreign corporations from doing business within the state. ~~and~~ The Supreme Court held that while the states could prohibit absolutely all foreign corporations from doing business within the state they could not ~~do so on~~ <sup>prohibit</sup> ~~condition that~~ they give up ~~th~~ a constitutional right.

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12.

IV.

Cob. } The Act is unconstitutional ~~since it violates~~  
because it impairs the obligation of a contract  
between Scopes & the Board of Education in  
violation of Section 10 of Article 1 of the  
Federal Constitution

Mr. Scopes was employed by the Board of Education  
for the period of one year to teach science.  
Science has a well defined meaning and the  
legislature of Tennessee cannot change the  
terms of the contract by requiring him  
to teach something that is not science  
any more than it could change the  
terms with regard to the compensation  
to be paid him.

V

For the reasons ~~above~~ set forth above in  
Part I, II & III the act is unconsti-  
tutional because it is in violation of  
the Bill of Rights contained in the  
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11  
"Sec. 3 Right of worship free - That all men have a natural ~~right~~ and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right, be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatsoever, control or interfere with the rights of conscience; and that no preferences shall <sup>ever</sup> be given by law, to any religious establishment or mode of worship."

Article I Sec. 3.

"Sec. 3 Right of Worship free - That all men have a natural ~~right~~ and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right, be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatsoever, control or interfere with the rights of conscience; and that no preferences  
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In an appendix to this brief we set forth data collected ~~to~~ to show the nature of the ~~right to~~ <sup>distinctly</sup> growth of the ~~fundamental~~ ~~in~~ American doctrine of religious liberty which is in all its vigor incorporated in the above provision of the Tennessee Constitution.

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(16)

Introduction to the Church at the outset

The world, Europe harassed by religious conflicts, has progressed through various stages in the relations between church & state -

(a) The International Church - in the earliest stages, asserted the supremacy of the church in all matters over all earthly sovereigns and required the state to submit to the church in all matters of conflicts between church & the state.

b. The National Church.

With the growth of the national idea, however, regard to the principle of religion this condition became intolerable. The church, in its regard for the welfare of the ecclesiastical authority, often demanded the sacrifice of national interest. The national church, without in any way questioning this nature, led to the creation of a national church.

a conflict between the state and the international church, which was followed by

The national church was to cooperate with the civil authorities in the furtherance of the national interest. It assumed that the men of one nation were of the same faith & creed. Unbelievers were heretics and traitors.

c. The National Church on C. Tolerance  
Supremacy of the Civil Authority.

Neither under the international church nor under the case of the national church was the right of the individual to practice his freedom of conscience.

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C. The National Church ???  
?? toleration  
the -????  
Supremacy  
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+ the Separation of the Church from the State,  
(\*) 17

(which was in fact the State)

considered. In the international church The Supremacy church was supreme over the Civil authority. In the National Church for practical purposes the Civil authority became one with the Church. Gradually with the development of the notions of liberty, men began to demand the right to practice their faith without interference from the National Church. This led to the Toleration Acts by the Civil Authorities in which, while recognizing the established dominant church, nevertheless they permitted men of recognized non-conformists & dissenters men of different creeds as citizens & permitted them to practice their own creed without incurring any disabilities. Gradually the National Church ceased to be a national church but he and was only preferred in financial given preferences by the State over the other Churches.

The power of government to interfere in religious matters was affirmed and Toleration implies the right of the State to interfere;

D. The American doctrine of Religious Liberty. Under the Toleration Acts the right of the individual to worship as he God ~~was not recognized~~ was not recognized as a natural right but rather as a concession by the State. The very term Toleration implies the right of the State to interfere;

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The framers of the Constitution and our Early  
statesmen sought to ~~use~~ <sup>to</sup> the language  
of Mr. Justice Story (Commentaries p. 690 et. seq.) to  
cut off forever ~~any~~ every pretense of any  
alliance between church & state and  
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In the Virginia Convention of 1776 <sup>Mr.</sup> Madison  
objected to the use of the words "toleration"  
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of the proposed Declaration of Rights provided  
that "all men shall enjoy the fullest  
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es  
While at the same time expressing a preference  
for the established ~~form~~ church .

The framers of the Constitution and our Early  
statesmen sought to ~~cast in the language~~  
of Mr. Justice Story (Commentaries p. 690 et. Seq)

to

cut off forever ~~any~~ every pretense of any  
alliance between church & state and  
one of the inalienable  
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4 ~~3a~~ 19

assertion of a right and the promise to grant a privilege, only needed to be pointed out." (Gay, James Madison pp. 17, 18. A)

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The same <sup>distinction</sup> point was thus expressed by Lord Stanhope in the House of Lords, in 1827, on the B bill for the repeal of the test. "The time was when toleration was craved by dissenters as a boon; it is now demanded as a right; but a time will come when it will be spurned as an insult."

This provision of the Va Declaration of Rights for religious freedom in the Virginia declaration of Rights was incorporated in all its vigor into the Tennessee Constitution of 1796 and has remained unchanged to the present time.

Judge Cooley in the Constitution Limitation (5th Ed Ch 13 par. 1) declares that the American Constitution "has not established religious

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This doctrine of Religious liberty is regarded as the greatest spiritual contribution America has made to civilization

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<sup>fromcept</sup>  
The ~~basis~~ of religious liberty is clearly set forth in the Memorial drawn by James Madison in 1785 addressed to the Great Assembly of the Commonwealth of Virginia:

~~That~~ "Religion must be left to the conviction & conscience of every man."

x x x x This is in its nature an inalienable right. x x x

~~That religion is wholly exempt from~~ "In matters of religion no man's right is abridged by the institution of civil authority." x x x

"Still less can it (religion) be subject to ~~legislative~~ (the authority of) the legislative body."

The assumption that "the Civil magistrate is a competent judge of religious truths or that he may employ religion as an engine of Civil policy" x x x is "an arrogant pretension falsified throughout the world" and (in the second instance) an unhallowed perversion of the means of salvation."

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¶

22

5

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~~We are teaching~~ In his letter to  
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It was <sup>that</sup> one regulation of the opinions of men  
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25

~~SECRET~~

In establishing freedom of mind and conscience and religious liberty, the Founders believed they had ensured the safety and happiness of the Republic.

*no P* They believed that civic virtues could be found in Christian, Jew and infidel alike, irrespective of differences in creed!

They intended to strengthen the future of the country by separating church and state and denying to church and state the slightest encroachment ~~on each sphere.~~ *upon each other's domain recognizing that* ~~The fighters for human rights had~~ "What makes the world peaceful and happy is not agreement in opinions, but concordance in virtuous actions."

True religion then, in their opinion, persecuted no one; and they hoped to bring ~~about~~ <sup>to</sup> an end to the suffering that prying in men's consciences, and the assumption of the existence of a "purity of faith" to which all men must be brought.

All attempts to bring men to "purity of faith" have always been futile. The entire Roman Empire succumbed to the teachings of Christianity, weak and persecuted as it was. In its turn the Roman Church was unable to stem the growth of ~~the~~ <sup>of Science</sup> Protestantism, notwithstanding all the terrors of the Inquisition. ~~The Jewish people have survived the persecution of thousands of years.~~  
In matters spiritual there is no power greater than persuasion and no other power can prevail. Though force, whether by summoning the power of the State, or otherwise, we can incite only to rebellion or create a spiritual hypocrisy that must weaken the State and degrade its citizens.

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 freedoms of speech and of the press  
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Caps. | The act is unconstitutional since it is  
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Article II Sec. 12 provides as follows:

Smoleff (Ta?? in)

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This section of the Constitution makes it the  
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The term "science" has a well defined meaning and the legislature cannot change its meaning by giving a construction to the term "science" different from its generally accepted meaning, no more than by giving a definition to "due process of law" they can <sup>bind</sup> the Court. ~~to that definition~~ Meyer v. Nebraska 132 U.S. If the legislature could do this then our entire constitutional system must break down

All scientists ~~are agreed~~ whether they accept the theory of ~~evolution~~ or not regard that as an integral part of science & the prohibition of ~~its~~ <sup>its</sup> teaching is an interference <sup>with</sup> and a hinderance to Science in violation of the Tennessee Constitution. The theory of creation of man as taught in the Bible has no relation to Science but is purely a matter of religious worth which science can have no concern.

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 "Bills may originate in either house; but may be amended altered or rejected by the other. No bill shall become a law which embraces more than one subject that subject to be expressed in the title. All acts which repeal revive or amend former laws, shall recite in their caption or otherwise the title or substance of the law repealed revived or amended."  
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 By this provision it was evidently intended to do away with the evil practice of giving to acts titles which conveyed no real information as to their objects embraced in their provisions.  
 Cannon v. Mathes, 8 Heisk. 518  
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 This requirement that the subject of a legislative bill shall be expressed in the title is mandatory.  
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31

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 State v. Brewing Co. 20 " 726, 741  
 Saunders v. Savage 24 " 345, 346  
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2. This is not merely a technical ~~de~~ matter in this case but goes to the very purpose of the ~~statute~~ constitutional provision. The ~~act~~ title to the act conveys no real ~~me~~ information as to the objects embraced in ~~the~~ <sup>its</sup> provisions.

The act is entitled an act to prohibit the teaching of evolution in public schools, while the provisions do not deal with evolution but merely make it criminal for any one "to teach any theory ~~that~~ that denies the story of Divine Creation as taught in the Bible, and to teach, instead, that man has descended from a lower order of animals."

The title ~~does~~ gives some color to the claim that it is merely a regulation of curriculum, while the act ~~shows~~ distinctly seeks to impose upon the school a ~~distinct~~ religious doctrine held by certain ~~sects~~ <sup>but</sup> religious sects ~~but~~ denied by a great man. The act ~~itself~~ seeks "to interfere with the rights of conscience" while the title has nothing to do with the matter of conscience. Under color of the title the ~~great~~ <sup>many</sup> ~~public~~ were misled into supporting the bill who, ~~would~~ because of their political principles, would

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**many**

Under color of the title the **general public** were misled into supporting the bill who, ~~would~~ because of their political principles, would

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 The evils which this constitutional provision  
 was aimed to remove all exist in the  
 present law.

It is therefore submitted that the Act  
 of the legislature should be declared void  
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