

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>GLORIA MAZZA and DEAN MONTGOMERY,</p> <p align="center">PETITIONERS,</p> <p>VS.</p> <p>MATT SCHULTZ, DAVID VAUDT, AND THOMAS MILLER, in their official capacities as Secretary of State, Auditor of the State, and Attorney General, respectively,</p> <p align="center">RESPONDENTS.</p>	<p>CASE NO. CV-9348</p> <p>RULING AND ORDER</p>
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 CLERK DISTRICT COURT

On August 31, 2012, Petitioner's Emergency Petition for Judicial Review or, in the Alternative, for Writ of Certiorari and Motion for Expedited Relief came on for hearing. Mark Schultheis, Ryan Koopmans and Michael Morley appeared as counsel for the Petitioners and Intervenor Joan Scotter. Assistant Iowa Attorney General Jeffrey S. Thompson and Meghan Gavin appeared for the Respondents. Edward Wright appeared as an Intervenor. After reviewing the entire record and hearing the arguments of counsel, the Court enters the following Ruling:

A. Statement of the Case.

This is an action for judicial review on the decision of the panel in the Matter of Objection to the Libertarian Party Nomination of Gary Johnson and James B. Gray for President and Vice President of the United States entered on August 24, 2012. After an unsuccessful attempt to file a nomination petition for its candidates for President and Vice President, the Libertarian Party decided to proceed with the nomination process of caucus or convention under Iowa Code

Section 44.1 (2012). The Libertarian Party conducted its convention at the Iowa State Fair on August 15, 2012. On August 17, 2012, the Libertarian Party filed its Certificate of Nomination, Affidavits of Candidacy for Johnson and Gray, and attendance list with the Secretary of State as Commissioner of Elections. On August 24, 2012, the Petitioners filed objections with the Commissioner of Elections alleging Johnson and Gray were not nominated at a convention or caucus and the list of attendees was nothing more than an insufficient petition.

Pursuant to Iowa Code Section 44.6, a panel consisting of Secretary of State Matt Schultz, Chief Deputy Auditor Warren Jenkins as designee for the State Auditor, and Attorney General Thomas J. Miller (the "Panel") conducted a hearing to consider the objections after notice as provided by law. Following public deliberations on August 29, 2012, the Panel issued a written decision unanimously overruling the Petitioners' objections and ordering that the Certificate of Nomination is valid and Gary Johnson and James P. Gray shall appear on the ballot as Libertarian Party candidates for President and Vice President.

On August 30, 2012, Petitioners, Gloria Mazza and Dean Montgomery, filed an Emergency Petition For Judicial Review or, In the Alternative, For Writ of Certiorari seeking review of the Panel decision by the Polk County Iowa District Court. Also On August 30, 2012, Joan Scotter filed a Motion to Intervene as a Republican Party Elector to challenge the Panel decision. The Petitioners contend the decision of the Panel is based upon an erroneous interpretation of law; is unsupported by substantial evidence; and is otherwise arbitrary and capricious. The Respondents resist.

The Court scheduled an expedited hearing for August 31, 2012. Prior to the hearing Edward B. Wright filed a Motion to Intervene as a Libertarian Party Elector supporting the decision of the Panel. After the hearing, the Respondents filed a Transmission of Certified Record and Return of Record on Writ of Certiorari from Lower Tribunal. The parties agree that this is the record of the proceedings before the Panel. At the hearing, all of the parties agreed that this matter is submitted to the Court for final order subject to appellate review.

B. Judicial Review or Certiorari?

The threshold issue is whether the Court has jurisdiction over the subject matter of this action as a petition for judicial review under Iowa Code Section 17A.19 or whether the Petitioner's application is more properly considered a petition of writ of certiorari under Iowa Rule of Civil Procedure 1.1401 et. seq.

Under Iowa Code Section 47.1, the Secretary of State is designated as the State Commissioner of Elections. The duties of the State Commissioner of Elections are specified in Section 47.1. These duties include rulemaking pursuant to Chapter 17A. The State Commissioner of Elections is an agency of state government as defined in Iowa Code Section 17A.2(1). Certificates for nomination of candidates for statewide elective office are filed with the State Commissioner of Elections. Section 44.4. Objections to the legal sufficiency of a certificate of nomination are filed with the State Commissioner of Elections under Section 44.4(2). Section 44.15 provides, certificates filed with the Commissioner are presumed valid unless a written objection is filed. Objections to a certificate of nomination of a candidate for the office of President of the United States are filed with the State Commissioner are heard by a panel consisting of the Secretary of State, Auditor of State and the State Attorney General under Section 44.6. The panel conducts a hearing with notice to the affected candidate as required by Section 44.5. The hearing conducted by the panel is a proceeding in which the legal rights, duties or privileges of the candidate or the objectors are required by statute, Section 44.6, to be determined after an opportunity for an evidentiary hearing.

The panel hearing objections filed with the State Commission of Elections is an administrative unit of the state. The panel is comprised of elected state officials conducting the business of the state regarding objections filed with a state agency challenging a Certification of Nomination filed with the state agency. The Court concludes this panel of state elected officials

is an administrative agency as defined in Section 17A.2(1).¹ The hearing conducted by the panel is a contested case proceeding under Section 17A.2(5). The decision of the panel is a final agency action under Section 44.6 and Section 17A.2(2). The final agency action of the panel is subject to judicial review under Iowa Code Section 17A.19(10).

The Court concludes the August 29, 2012 decision of the Panel is final agency action subject to judicial review under Section 17A.19.

C. Standing.

Respondents concede that it makes little difference whether the Court reviews the Panel's decision under Section 17A.19 or under certiorari except with regard to standing. Respondents insist the Panel is not an agency but rather is an inferior tribunal subject to review by certiorari. State ex rel. Pratt v. Hayward, 141 Iowa 196, 119 N.W.2d 520, 622 (1909). Because this is a certiorari action in the view of the Respondents, they seek dismissal on procedural grounds because they contend none of the parties seeking review have standing to bring a certiorari action since none of them (1) have a specific personal interest in the litigation, and (2) are injuriously affected by the decision of the Panel. Citizens for Responsible Choices v. City of Shenandoah, 686 N.W.2d 470, 475 (Iowa 2004).

The Pratt Court considered the decision of a panel under the predecessor of Section 44.6 prior to the passage of the Iowa Administrative Procedure Act ("IAPA") which "is intended to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public." Iowa Code Section 17A.1(2) (2012). For the reasons stated above, the Court believes the Panel is an agency of state government under the modern IAPA. The petitioners have standing under Section 17A.19 as persons aggrieved by the action of the Panel. However, even if the Panel is considered an inferior tribunal and not an

¹ Objections to a certificate for nomination of a candidate for county or municipal office are filed with the county commissioner or city clerk and objections are heard by panels of county or city officials under Sections 44.7 and 44.8. The court assumes these panels are inferior tribunals but that issue is not before the court in this case.

agency, the Court finds at least one of the parties seeking review of the decision of the Panel has a specific personal interest and is injuriously affected by the decision.

Intervenor Joan Scotter is a nominee of the Iowa Republican Party for the office of Elector of President of the United States and will be running for that office in the November 2012 general election. If the Republican nominee for the office of President, Governor Mitt Romney, receives a majority of the votes cast in Iowa in the general election, Ms. Scotter will be a member of the electoral college who will cast an electoral vote for Governor Romney for President. Iowa Code Section 54.2 provides, "A vote for the candidates of any political party, or group of petitioners, for president and vice president of the United States, shall be conclusively deemed to be a vote for each candidate nominated in each district and in the state at large by said party, or group of petitioners, for presidential electors and shall be so counted and recorded for such election." Thus, a vote for Mitt Romney in the general election is a vote for Joan Scotter for presidential elector. Therefore, Ms. Scotter has competitive standing to challenge the decision of the panel because the decision to allow Libertarian Party candidate Gary Johnson to appear on the Iowa ballot could potentially divert votes away from the Republican candidate Mitt Romney and impair Ms. Scotter's ability to cast her ballot for Governor Romney in the electoral college. Just as Mitt Romney would have standing to challenge the Panel's decision, so does Joan Scotter because the inclusion of an allegedly ineligible rival candidate for President on the ballot hurts Ms. Scotter's chances of prevailing in the election and in casting her vote for Governor Romney in the electoral college. See Hollander v. McCain, 566 F.Supp. 63, 68 (D.N.H. 2008). In this presidential election, Ms. Scotter stands in the shoes of Governor Romney as a Republican Party Elector and has competitive standing where and individual voter may not. See Id.

Since Ms. Scotter has standing to bring a petition for writ of certiorari, it makes no practical difference whether the Court reviews the Panel decision under certiorari or judicial review of agency action. The standard of review of a final agency action under Section

17A.19(10) is essentially the same as the standard in certiorari actions brought under Iowa Rule of Civil Procedure 1.1401 et. seq. for review of the decision of an inferior tribunal. See Bowman v. City of Des Moines Mun. Housing Agency, 805 N.W.2d 790, 796 (Iowa 2011).

D. Standard of Review.

An issue arises as to whether and to what extent to Court must defer to the expertise of the Panel in its determination that the Libertarian candidates for President and Vice President were nominated by a caucus or convention under Section 44.1. On judicial review of agency action, the district court functions in an appellate capacity to apply the standards set forth in Iowa Code Section 17A.19. Iowa Planners Network v. Iowa State Commerce Comm'n, 373 N.W.2d 106, 108 (Iowa 1985). The district court's review is limited to corrections of errors of law and is not *de novo*. Harlan v. Iowa Dep't of Job Serv., 350 N.W.2d 192, 193 (Iowa 1984). The Court "shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced" for any of the grounds listed under Iowa Code § 17A.19(10). Id.

The Court must reverse, modify or grant other appropriate relief from the challenged action if it was "[b]ased upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f). Substantial evidence is defined as "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1).

Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. Conversely, evidence is not insubstantial merely because it would have supported contrary inferences. Nor is evidence insubstantial because of the possibility of drawing two inconsistent conclusions

from it. The ultimate question is not whether the evidence supports a different finding but whether the evidence supports the findings actually made.

Reed v. Iowa Dep't of Transp., 478 N.W.2d 844, 846 (Iowa 1991)(citations omitted).

Where factual determinations are by law clearly vested in the agency, it follows that the application of law to such facts is likewise vested in the discretion of the agency. Tremel v. Iowa Dept. of Revenue, 785 N.W.2d 690, 693 (Iowa 2010)(citing Iowa AG Constr. Co. v. Iowa State Bd. of Tax Review, 723 N.W.2d 167, 174 (Iowa 2006)). The Court shall reverse, modify, or grant appropriate relief to the petitioner if the agency's decision was based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has been clearly vested by a provision of law in the discretion of the agency. Iowa Code § 17A.19(10)(m). A decision is "irrational" when it is not governed by or according to reason. The Sherwin-Williams Co. v. Iowa Dept. of Revenue, 789 N.W.2d 417, 432 (Iowa 2010)(citations omitted). A decision is "illogical" when it is contrary to, or devoid of, logic. *Id.* A decision is "unjustifiable" when it has no foundation in fact or reason. *Id.* By applying the "substantial evidence" and "irrational, illogical, or wholly unjustifiable" tests to the findings of fact and applications of law to fact, courts give appropriate deference to the views of the agency with respect to matters vested by law in the discretion of the agency. Mycogen Seeds v. Sands, 686 N.W.2d 457, 465 (Iowa 2004).

Where the petitioner does not challenge the agency's findings of fact but rather claims the error lies with the agency's interpretation of the law, the question on review is whether the agency's interpretation was erroneous and whether the Court may substitute its interpretation for that of the agency. Meyer v. I.B.P., 710 N.W.2d 213, 219 (Iowa 2006)(citations omitted). The Court shall reverse, modify, or grant appropriate relief if the agency action is "based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." Iowa Code Section 17A.19(10)(c). If there is nothing in the Iowa Code showing the legislature delegated any special powers to the agency regarding the statutory interpretation of the area of law in question, the court need not give the

agency any deference regarding the interpretation of the statute in question. Iowa Code Section 17A.19(10)(c); See MycoGen Seeds, 668 N.W.2d at 464. The Court will give deference to the agency's interpretation of specialized statutory terms deemed to be within the expertise of the agency. Renda v. Iowa Civil Rights Comm'n, 784 N.W. 2d 8, 14 (Iowa 2010). However, when specialized terms extend beyond the context of agency expertise, they are more appropriately interpreted by the court. Id. "[T]he final interpretation and construction of pertinent statutes" is reserved for the reviewing court. Brown v. Star Seeds, Inc., 614 N.W.2d 577, 579 (Iowa 2000)(quoting Second Injury Fund v. Braden, 459 N.W.2d 467, 468 (Iowa 1990)).

Finally, the Court shall reverse, modify or grant appropriate relief to a petitioner, if the agency's decision was unreasonable, arbitrary, capricious or an abuse of discretion. Iowa Code Section 17A.19(10)(n). An agency's action is "arbitrary" or "capricious" when the agency acts "without regard to the law or facts of the case." Dico, Inc. v. Iowa Employment Appeal Bd., 576 N.W.2d 352, 355 (Iowa 1998)(citation omitted). "An agency action is 'unreasonable' when it is 'clearly against reason and evidence.'" Soo Line R.R. v. Iowa Dep't of Transp., 521 N.W.2d 685, 688-89 (Iowa 1994)(quoting Frank v. Iowa Dep't of Transp., 386 N.W.2d 86, 87 (Iowa 1986)). "An abuse of discretion occurs when the agency action 'rests on grounds or reasons clearly untenable or unreasonable.'" Dico, Inc., 576 N.W.2d at 355 (quoting Schoenfeld v. FDL Foods, Inc., 560 N.W.2d 595, 598 (Iowa 1997)).

The facts of this case and the applicable law are essentially undisputed. This action challenges the Panel's application of the law to the facts and the ultimate conclusion of the Panel that the Certificate of Nomination filed by the Libertarian Party with the Commissioner of Elections is valid. Resolution of the issue requires interpretation of the statutory terms "convention" and "caucus." The Court will apply the "substantial evidence" and "irrational, illogical, or wholly unjustifiable" tests to the Panel's findings of fact and applications of law to fact, to give appropriate deference to the views of the Panel with respect to matters vested by law in the discretion of the agency. MycoGen Seeds, 686 N.W.2d at 465. However, the Court

will not defer to the Panel's interpretation of the terms "convention" and "caucus" as used in Section 44.6 because the interpretation of Section 44.6 has not clearly been vested by a provision of law in the discretion of the agency and those statutory terms are more appropriately interpreted by the Court. Renda, 784 N.W. 2d at 14.

E. Analysis

The following facts are supported by substantial evidence in the record.

Under the Libertarian Party Constitution, a caucus of "all eligible electors" may be called to make nominations for office. Article VI, Sec. 5 of the Libertarian Party of Iowa Constitution. Pursuant to its Constitution and by-laws, the Libertarian Party called a nominating caucus to be held on August 15, 2012 at 10:00 A.M at the Iowa State Fair. The Libertarian Party provided notice of the caucus through email, telephone calls and posting on Facebook.

At the time and place of the announced caucus at the Iowa State Fair supporters of the Libertarian Party gathered in an area known for political discourse along the Grand Concourse of the Fairgrounds. Some of these supporters were wearing Gary Johnson for President t-shirts. Some carried clipboards. Individually or in small groups in the same general area of the Fairgrounds, supporters of the Libertarian Party approached eligible voters and communicated to them that they were part of a process to certify the nomination of Gary Johnson to appear on the ballot as the Libertarian Party candidate for President of the United States. During the course of this gathering, the Libertarian Party obtained 449 signatures of eligible electors including one from at least 25 Iowa counties. The signatures were obtained on forms provided by the Iowa Secretary of State. The top of each form states, "List of Delegates in Attendance at a Non-Party Political Organization Convention." The header over the signature line states, "Name of delegate." The form identified the Libertarian Party as the Non-Party Political Organization.

The Petitioners did not challenge the validity of the 449 signatures. However, they submitted the affidavits of eleven signatories who state they did not attend a convention or

caucus of the Libertarian Party on August 15, 2012 and were not elected or selected as a delegate or representative to any such caucus or convention. These affiants acknowledge that at the Iowa State Fair that day an individual approached with a clipboard and asked them to sign a petition so that a nominating convention could be held so that Gary Johnson would be added to the ballot as a candidate for President of the United States and each signed their name not intending to state or imply that they were attending a Libertarian convention or caucus. From these 11 affidavits, or 2% of the electors who signed the "List of Delegates" under the header "Name of delegate", the Petitioners asked the Panel to infer or extrapolate that most or all of the signatories were not delegates. The Panel rejected this argument. Even without these 11 signatures, the Panel found the Libertarian Party still had more than the 250 signatures of delegates with at least one from 25 counties to meet the statutory requirements for certification of nomination by convention or caucus. The Petitioners submitted the affidavits of four other witnesses, including Jay Kramer, who stated they were at the Fairgrounds that day and did not observe a political caucus. The Panel rejected these declarations as well.

Under Iowa Code Section 44.1, any convention or caucus of eligible electors representing a political organization which is not a political party may make one nomination of a candidate for each office to be filled at a general election. The statute continues, "However, in order to qualify for any nomination made for statewide elective office by such a political organization there shall be in attendance at the convention or caucus where the nomination is made a minimum of two hundred and fifty eligible electors including one eligible elector from each of twenty-five counties." The statute also provides, "The names of all delegates in attendance at such convention or caucus and such fact shall be certified to the state commissioner together with the other certification requirements of this chapter." Applying this law to the undisputed facts, the Panel concluded the Libertarian Party complied with the statute and the certificate of nomination was valid.

The legal question presented on judicial review is whether the actions of the Libertarian Party at the Iowa State Fair on August 15, 2012 was a "convention" or "caucus" within the meaning of Section 44.1. Those terms are not defined in the statute. Following panel precedent, the Panel applied a liberal construction to the statute "to the benefit of electors to in order to provide every lawful opportunity for the electors to express their preference at the ballot box." In the Matter of Objection to the Nominating Petition of Paul W. Johnson, (2004); In the Matter of the Nominating Petition of Ralph Nader and Peter Camejo, (2004). The Panel observed, "[a]t a minimum, a caucus or convention implies an affirmative gathering for a common purpose. However, the legislature has not provided any further guidance beyond the number of delegates that must be present." (Decision, p. 4).

Respondents note the statute requires that 250 delegates "...shall be in attendance at the convention or caucus where the nomination is made." Section 44.1. (Emphasis added). Relying on the *Oxford English Dictionary* definition of the terms convention and caucus, the Petitioners contend the delegates must engage in some sort of formal organized collective proceeding.² Petitioners assert that delegates did not gather in attendance of such a proceeding at any one time and place. The act of Gary Johnson supporters of approaching fairgoers individually or in small groups is simply a petition drive and is not attendance at a formal organized collective proceeding. Further, random fairgoers who signed the petition are not delegates attending a caucus or convention.

² "The *Oxford English Dictionary* ("OED") defines the term 'convention,' in relevant part, as '[a]n assembly or gathering of persons for some common object; esp. a formal assembly met for deliberation or legislation on important matters, ecclesiastical, political, or social.' The term also may refer to '[a]n assembly of delegates or representatives for some special or occasional purpose.'" The definition goes on to explain that, '[i]n party politics, a 'convention' is 'a meeting of delegates of a political party ... to nominate candidates for the presidency of the U.S., or for state or local offices.' The OED likewise defines the term 'caucus' as '[a] private meeting of the leaders or representatives of a political party, previous to an election or to a general meeting of the party, to select candidates for office, or to concert other measures for the furthering of party interests.'" (Petitioner's Brief, p. 6-7).

Respondents argue *Merriam-Webster's Dictionary* definitions of the terms caucus and convention support the Panel's conclusion that "convention or caucus implies an affirmative gathering for a common purpose."³ Noting that Chapter 44 governing nominations by non-party political organizations does not contain the detailed procedural rules set out in Chapter 43 for political party caucuses and conventions, the legislature intended to craft less formal requirements for caucuses or conventions by non-party political organizations. Thus, the Respondents argue that nothing in Chapters 43 or 44 suggests the Libertarian Party of Iowa did not hold a caucus or convention in the informal manner intended by the legislature.

The primary goal of statutory construction is to give effect to the intent of the legislature as evidenced by the words used in the statute. When a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond express terms used by the legislature. In the absence of legislative definition, the Court give words their ordinary meaning. Anderson v. State, 801 N.W.2d 1, 3 (Iowa 2011) and citations. The Court believes the Panel correctly found the ordinary meaning of the undefined statutory terms "convention" and "caucus." In the political context, *Black's Law Dictionary* defines "convention" as "...an assembly of delegates chosen by a political party, or by the party organization in a larger or smaller territory, to nominate candidates for an approaching election." Similarly, *Black's* defines "caucus" as, "[a] meeting of the legal voters of a political party assembled for the purpose of choosing delegates or for the nomination of candidates for office." Finally, *Black's* defines assembly as, "The concourse or meeting together of a considerable number of people at the same place. Also the persons so gathered."

Thus, as the Panel observed, "a caucus or convention implies an affirmative gathering for a common purpose." Absent an affirmative requirement in the statute, there is nothing in the

³ "*Merriam-Webster's Dictionary* defines caucus as 'a closed meeting of a group of persons belonging to the same political party or faction usually to select candidates or to decide on policy' or 'a group of people united to promote an agreed-upon cause.' The dictionary likewise defines convention as 'the summoning or convening of an assembly' or 'an assembly of persons met for a common purpose.'" (Respondent's Response, p. 12).

common meaning of these terms that requires that all of the delegates gather under one roof at the same time to do the nomination pursuant to an agenda and formal rules of procedure. A convention does not have to be in hall with speeches, demonstrations and rules of order like the Republican National Convention in Tampa or the Democratic National Convention in Charlotte to qualify as a legitimate nomination process.

In this case, the Libertarian Party of Iowa called a caucus at the State Fair on August 15, 2002 in accordance with its rules. A number of supporters of the Libertarian Party gathered together on the Grand Concourse of the Fairgrounds at the appointed time, some of whom were wearing Gary Johnson for President t-shirts and carrying clipboards. During the course of this assembly, these Libertarians individually and in small groups approached electors and asked them to be delegates to nominate Johnson for President. A sufficient number of these electors signed under the header "Name of delegate" on a form provided by the Secretary of State entitled, "List of Delegates in Attendance at a Non-Party Political Organization Convention." The form states the "Name of Non-Party Political Organization" as "Libertarian Party." Based on these signatures, the Panel was entitled to conclude that the signatories knew they were delegates in attendance at the Libertarian Party Convention. The statute requires nothing more.

By enacting Section 44.1, the legislature intended to provide electors who are not aligned with either the Democratic or Republican Party with a relatively informal process for the nomination of candidates for office in order to provide every lawful opportunity for electors to express their preference at the ballot box. This is the essence of democracy. The convention process followed by the Libertarian Party was more than a petition drive. It was a caucus or convention in compliance with Section 44.1. The Panel correctly concluded that the objectors failed to overcome the statutory presumption of validity of the Certificate of Nomination of the Libertarian Party of Iowa of Gary Johnson for President of the United States and James P. Gray for Vice President and their names shall appear on the ballot.

F. Ruling and Order.

The decision of the Panel is supported by substantial evidence. The decision is not affected by error of law. The Panel's application of the law to the facts is not irrational, illogical, or wholly unjustifiable. The decision is not unreasonable, arbitrary, capricious or an abuse of discretion. The decision is affirmed.

The Petitioner's Petition is dismissed. The Petitioners and Intervenor Joan Scotter shall pay the court costs.

So ordered this 4th day of September, 2012.


ARTHUR E. GAMBLE, CHIEF JUDGE
FIFTH JUDICIAL DISTRICT OF IOWA

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