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INSIDE:

Ministry probe 2
More myths3
Sharia Law4
RLC luncheon7

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Et Religious freedom trends in decades past and future

WASHINGTON — The challenges surrounding the intersection of church, state and the freedom of conscience, according to experts in the field, were as old as the hills and as new as morning in the last decade. And while the details might differ, they say, the story arc in future years will be similar to those of the past.

Legal scholars and church-state activists said that there were significant changes - for good and for ill in regard to both legal and cultural aspects of religious liberty in the United States in the last decade. For the future, they predicted continuing trends in five broad areas: the growth in religious diversity; the rising profile of non-believers; disputes over the role of Islam; emerging conflicts between religious freedom and gay rights; and perils posed by greater government support for religious institutions and fewer government protections for individuals' and institutions' free exercise of religion.

While America's broad religious diversity has frequently been one of the country's strengths and occasionally a source of conflict, ballooning diversity is presenting new challenges to the centuries-old paradigm created by the First Amendment's religion clauses.

"We are now in a place of just exploding diversity," said Charles Haynes, First Amendment scholar at the Freedom Forum and director of the Newseum's Religious Freedom Education Project. "Hindus have found a voice in this country; they're becoming very active and ... speaking up when they feel they've been left out or marginalized in schools and elsewhere. Sikhs are speaking up. Non-



believers, atheist groups are speaking up."

Old religious majorities can feel threatened by the rising power of religious minorities, who have the same protections under the First Amendment that Christians and Jews do, Haynes and others said. And legal protections are, in the long run, only as strong as the cultural values undergirding them.

"We must not only keep government neutral on matters of religion but also be willing culturally to tolerate our many differences," said J. Brent Walker, executive director of the Baptist Joint Committee for Religious Liberty. "Our pluralism is a plus."

Melissa Rogers, a Baptist who is director of the Wake Forest University Divinity School's Center for Religion and Public Affairs and a senior nonresident fellow at the Brookings Institution, said "aggressive campaigns" by high-profile atheists like Christopher Hitchens and Sam Harris were one of the biggest developments of the past decade in religious liberty.

But how the self-described Christian majority reacts is crucial. Some have appealed to their interpretation of American history to fight

Senator concludes probe of ministry finances

WASHINGTON — After a three-year investigation into lavish spending at six major broadcast ministries, a senator is raising questions about the Internal Revenue Service regulations on church electioneering and asking a prominent evangelical group to study ways to spur "selfreform" among religious groups.

Since 2007, Sen. Charles Grassley, R-Iowa, has pursued allegations that some of the nation's most prominent TV ministers improperly took advantage of tax laws to give themselves high salaries and the ability to use private jets and Rolls Royces.

On Jan. 6, Grassley and his staff released a final 61page review that said evangelists Benny Hinn and Joyce Meyer had made "significant reforms" to their operations, but four others, Kenneth Copeland Ministries, Creflo Dollar, Bishop Eddie Long, and Paula White, provided incomplete or no responses.

Grassley has now asked the Evangelical Council on Financial Accountability (ECFA) to conduct a formal study of issues raised by his staff, including whether the IRS electioneering regulations that prohibit churches from endorsing political candidates should be modified or repealed.

While stopping short of recommending outright that the electioneering regulations be repealed or modified, the senator's staff criticized the regulations and suggested that either change would withstand constitutional challenge.

Baptist Joint Committee Executive Director J. Brent Walker called modification or repeal of the IRS electioneering regulations a "serious and troubling threat to religious liberty."

"Pastors and other church leaders, as individuals, can and do participate in the electoral political process, but like all Section 501(c)(3) nonprofits, churches cannot participate in electioneering without jeopardizing their taxexempt status. The ban on electioneering is a small tradeoff for this most favored tax status." helps churches and other houses of worship by keeping divisive political issues out of the pulpit. Surveys show worshippers do not want religious leaders telling them how to vote or funneling tithes to the coffers of political parties, turning houses of worship into virtual political action committees."

Among the other issues the ECFA will consider are:

 whether churches, like other nonprofits, should be required to file detailed financial disclosure forms to the IRS

whether there should be limits on clergy housing allowances

 whether tax rules about "love offerings" received by clergy should be clarified

 whether the IRS should create an advisory committee of churches and other religious organizations.

Both Grassley and ECFA officials said they hope to resolve issues in ways that do not involve new legislation.

Although the association has worked primarily on certifying the financial integrity of evangelical groups, the commission's work will include a range of religious organizations and other nonprofits, according to Michael Batts, an ECFA board member and certified public accountant who will chair the ECFA's new Commission on Accountability and Policy for Religious Organizations.

"These issues are the types of issues that transcend theology and doctrine and actually relate to the freedoms and the practices of all religious organizations," he said.

There is no timetable set for how long the new commission will work before sending Grassley a report, but ECFA President Dan Busby said it would be "a robust process" of more than a few months.

"The challenge is to encourage good governance and best practices and so preserve confidence in the taxexempt sector without imposing regulations that inhibit religious freedom or are functionally ineffective," Grassley said in a statement.

-Religion News Service and Staff Reports

Walker continued, "The ban on electioneering actually

Essay contest deadline fast approaching!

High school juniors and seniors have until March 15 to send in their entries for the 2011 Religious Liberty Essay Scholarship Contest. Students have the opportunity to win a \$1,000 scholarship and trip for two to Washington, D.C. There are also prizes of \$500 and \$100 available. To enter, students must write an essay of 800-1,200 words on the following topic:

Using a single example or multiple examples, write an essay explaining how religious rights clash with other rights or laws in America and how you would determine an appropriate outcome.

For the complete topic, rules, information and downloadable entry forms, visit **www.BJConline.org/contest**.





REFLECTIONS Three more misguided myths

My recent article in this publication titled "Debunking the Top Five Myths of the Separation of Church and State" was well received. Many of you were kind enough to tell us how much it helped your thinking about the subject, and some of you have republished it in other venues. Actually, of course, there are more than five. Let's think about a few more.

Myth No. 6: Our nation's Founders were bornagain, Bible-believing evangelical Christians, or they were Enlightenment rationalists who were dismissive of religion.

Both are wrong as categorical statements. It is dangerous to generalize about our Founders. We cannot speak in monolithic terms. The Founders exhibited many views about religion. Some were orthodox Christians, many were rationalists, others were deists, and maybe an atheist or two thrown in. What's more, they were complicated, multi-faceted Renaissance men of the 18th century, making generalizations even more difficult. For example, George Washington is often held up as an orthodox Anglican. But he always spoke in terms of the deistic "Providence" instead of a personal God and never wrote a word about Jesus. Washington rarely, if ever, took communion. Thomas Jefferson, on the other hand, is often seen as a consummate skeptic who took a razor blade to edit the Gospels. But Jefferson could speak warmly of Jesus and admired his ethical teachings. Although most of our Founders came out of the Christian tradition, they were a mixed lot when it came to their religion. They do not fit neatly into our 21st century post-denominational religious categories. But we can say with confidence that they were more committed to ensuring religious liberty than enshrining their own religion.

Myth No. 7: The separation of church and state is a creation of 19th century anti-Catholic bigotry and 20th century secularism.

This is simply not the case. The concept of churchstate separation, familiar to Baptists for more than four centuries, preceded the 19th century by a long shot. Even though some may have used it to support reprehensible bigotry against Catholics, many champions of religious liberty — including our Baptist ancestors insisted on separation to protect religion, all religion, from coercive and corrosive influences of government. Separationists have opposed the Catholic Church when it has sought to tap into the public till to support its parochial schools. But that principled debate on the issues does not support the charge of bigotry.

Some have argued anti-Catholic animus coalesced with 20th century secularism resulting in hostility to religion. This is wrong too. Along with the 18th century Enlightenment rationalists, who wanted separation for political and philosophical reasons, were Baptists, like John Leland and Isaac Backus, who worked for separation for reasons having everything to do with religious liberty. As William Estep so ably told us in his book, "Revolution within the Revolution," the First Amendment's protections for religious liberty were adopted because of the support of the so-called "twice born" evangelical dissenters. Moreover, the word "secular" is a good word, not a bad one. Here I am not talking about that anti-religious, often atheistic, critique that would banish religion to the back waters of privatized faith. Rather, I mean the more friendly form of secularism embraced by many people of faith who simply believe that government should be non-religious. Government should not take sides in matters of religion but be neutral toward religion. We do not need or want a religious government.

Myth No. 8: The religion clauses in the First Amendment apply only to the federal government, not to the states.

It is true the Bill of Rights originally applied only to the federal government, not to states. It was simply a further limitation on the already limited powers delegated to the federal government. State establishments and preferences for religion continued even after 1791. In fact, Massachusetts did not abolish its Congregationalist establishment until 1832.

However, the 14th Amendment changed this. It prevents the *states* from depriving citizens of due process and equal protection under the law. The U.S. Supreme Court later interpreted these provisions to "incorporate" most of the Bill of Rights and apply them to the states. The Free Exercise Clause was incorporated in 1940 and the Establishment Clause in 1947. Thus, the religion clauses — and therefore the concept of church-state separation — apply to the states as a matter of federal constitutional law.

A related argument has been advanced, notably by Supreme Court Justice Clarence Thomas, that sees the Establishment Clause as a federalism provision. This wrong-headed notion argues that the clause provides little, if any, substantive protection against government advancement of religion; it simply prevents the federal government from interfering with state establishments. This understanding of the Establishment Clause, taken to its logical conclusion, would permit 50 different state establishments as far as the federal law is concerned. Thankfully, this argument continues to be an outlier, but, unfortunately, it is gaining some strength. My friend Ellis West, University of Richmond professor emeritus, has a new book that should be helpful on this issue titled "The Religion Clauses of the First Amendment: Guarantees of States' Rights?"

Got some more myths that need debunking? If you do, let me know. And stay tuned.



J. Brent Walker Executive Director



K. Hollyn Hollman General Counsel

"Religion will rarely unite Americans, but a commitment to religious freedom for all can. Our religious freedom depends on our willingness to protect the religious freedom of others."

HollmanREPORT

Fear fuels anti-Sharia initiatives

For years, defenders of religious liberty have noted the challenge of ensuring that Muslims in America have the same rights as others. While our religious diversity is often celebrated as a significant strength of our nation's character, it also tests our commitment to the ideal of religious freedom for all.

Recent controversies over the right to build houses of worship and community centers are demonstrative. Unfortunately, fear rather than fairness often motivates the majority's response to minority religious traditions.

The latest example is in preemptive initiatives seeking to avoid the influence of Islam. Last November, Oklahoma voters passed a ballot measure known as the "Save our State Amendment" that would amend the state constitution to protect against the perceived creeping threat of Islam into the judicial system, despite the fact that the U.S. Constitution protects against government establishments of religion. The Oklahoma measure provided

that courts "shall not look to the legal precepts of other nations or cultures. Specifically, the courts shall not consider international law or Sharia Law."

The amendment stated that Sharia Law is Islamic law, based on the Quran and the teachings of Mohammed.

Not surprisingly, the provision was immediately challenged. The record showed that Oklahoma courts had not been straying from application of Oklahoma law in favor of Islamic law. In fact, it was undisputed that the amendment was purely preventive. There were no known instances of Oklahoma courts applying Sharia Law and yet 70 percent of the voters approved the amendment.

A federal district court entered a preliminary injunction to stop the law from taking effect. In doing so, it cited one of the most famous U.S. Supreme Court passages about the relationship between the will of the majority and the constitutional rights of individuals. "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." (*W.Va. State Bd. of Educ. v. Barnette*, 1943)

The Oklahoma constitutional amendment, the court found, conveys official government disapproval toward particular religious beliefs in violation of the Establishment Clause. It also violates the Free Exercise Clause because it prohibits conduct *because* that conduct is undertaken for religious reasons without any compelling governmental interest at stake. As an example of the practical effect of the law, the court found that the plaintiff had made a strong showing that the amendment could prevent a court from fully probating the plaintiff's will because it incorporated specific elements of the Islamic tradition.

Despite the clear conflict with federal standards that protect against religious discrimination, Oklahoma is not alone. Several states are considering similar measures. In an attempt to avoid the constitutional problem, a Texas legislator has introduced a similar proposal but without the reference to Islam. It states that Texas courts "may not enforce, consider, or apply any religious or cultural law." This effort is also misguided. While its ostensible target is evident, its reach is extremely broad, threatening the well-established practice of courts enforcing voluntary agreements between private parties, including those based on shared religious beliefs.

Public policy has long encouraged the voluntary resolution of disputes between individuals, as well as between individuals and other entities. Courts will generally enforce such agreements, so long as they meet certain standards of fairness and do not result in a violation of the law. In fact, for some religious adherents in this country, it is a routine exercise of religious freedom to submit disputes to a religious tribunal and for civil courts to confirm their outcome.

Religion will rarely unite Americans, but a commitment to religious freedom for all can. Our religious freedom depends on our willingness to protect the religious freedom of others. As our diversity increases, we should redouble our commitment to religious freedom, which serves all of us, or fear will erode our freedom.



State updates

If you have a question about a religious liberty issue in your state, the Baptist Joint Committee is a resource for you.

Alabama: governor apologizes for comment

Gov. Robert Bentley apologized to those offended by his inaugural day comments that non-Christians were not his "brothers and sisters." He told reporters he meant no insult and was speaking in the language of his evangelical faith to other Baptists. He made the original comments at a church.

Hawaii: Senate prayer practice

The Hawaii Senate voted to end its practice of opening each day with a prayer after the attorney general advised the Senate that its method would not likely survive a court challenge. Instead of revising its policy, the Senate ended the official practice, making it the first state Senate to do so according to media reports. After the decision, a group of senators continued to have an informal prayer service in the Senate chamber before sessions.

Oklahoma: Religious Viewpoints Antidiscrimination Act

A bill would require each school district to adopt a policy that allows a student speaking publicly at a school event to express a religious viewpoint. This would include graduations and football games. The school would have to explain to the audience that the student's speech does not reflect the school district's position. The bill also has a provision protecting religious expression in class assignments.

Virginia: Ten Commandments in schools

The Giles County School Board voted to return framed copies of the Ten Commandments to each school in its district. The documents had been removed by the superintendent on the recommendation of legal counsel after receiving a complaint.

-Cherilyn Crowe

Speaker Boehner introduces school voucher legislation

BJC: D.C. school voucher plan bad for public schools, religious liberty

WASHINGTON — Legislation introduced Jan. 26 in Congress that would permit the use of school vouchers in the District of Columbia is bad policy that threatens religious liberty, says the Baptist Joint Committee.

House Speaker John Boehner, R-Ohio, and Sen. Joseph Lieberman, I-Conn., introduced the bill to reauthorize the DC voucher plan ahead of a White House push for education reform this year. The plan would provide taxpayer money in the form of vouchers to attend private schools, including religious ones.

K. Hollyn Hollman, general counsel for the Baptist Joint Committee for Religious Liberty, applauded the attention that education reform is receiving on Capitol Hill, but said sending public tax dollars to private religious schools is not the answer.

"Creative responses are needed to address the problems in our public schools, but subsidizing religious education with tax money is not one of them," Hollman said.

She said several studies of the program, including one by the nonpartisan General Accounting Office, found that school vouchers do not improve student achievement. Instead, they betray the majority of D.C. students in public schools.

"School vouchers are a lose-lose proposition," Hollman said. "Schools lose because much-needed funds are diverted from the public system. Students lose because some are left to languish in under-funded public schools, while voucher recipients attend schools lacking accountability to federal taxpayers.

"By funding religious schools with taxpayer money, school vouchers violate the consciences of citizens who disagree with the religious teachings of the schools," Hollman said. "Such funding also invites governmental regulation of religious institutions, which should frighten all Americans who cherish religious liberty."

In March 2010, the U.S. Senate voted against continued funding for a school voucher program in the District of Columbia, effectively bringing the program to an end. Funding continues for students who were already in the program, allowing them to stay in their current schools until they graduate high school. Under the Boehner/Lieberman proposal, the program would be opened back up to new students and have increased federal funding.

-Staff Reports

TRENDS continued from page 1

back against the rise of religious minorities. Haynes said that trend concerns him.

"I think there are now many religious, Christian Americans who actually take it as historical fact that the United States was founded as a Christian nation and is meant to be a nation where Christianity is privileged and the separation of church and state is a myth that is not found in the First Amendment," he said. "I think that these views are now widely held among many Christian groups, and I think in the past decade that's been a very significant, almost kind of stealth, success story for the folks that have been pushing that view of America and American history."

One particular minority group on the rise — American Muslims — has been the subject of intense debate in the past decade, and that's not likely to end anytime soon.

Haynes said a long-running, below-the-radar trend of simmering Islamophobia boiled over in 2010 - in large part due to the general discontent and political anger raging across the country and the explosion of the so-called "Ground Zero mosque" story into the national news in the late summer.

Another area of church-state law that may make more headlines in the next few years is conflicts between expanding civil rights for gays and the freedom of those who have theological beliefs condemning homosexuality.

Polls trending rapidly toward acceptance of gay rights among the broader society could mean increased support for legal same-sex marriage as well as non-discrimination laws that provide gays equal protection in employment and housing. But those rights, once protected, may come into conflict with the rights of those — such as landlords or public employees — who feel a compulsion to avoid complicity with something they view as sinful.

Ira Lupu, a professor and First Amendment expert at The George Washington University Law School, said such conflicts were likely because theological opposition to homosexuality "has been increasingly marginalized in the culture."

Haynes pointed to a recent example as a positive way forward: gay-rights activists and Mormon officials working together to pass a Salt Lake City ordinance that protected gays from employment and housing discrimination while carving out exemptions for religious organizations. The effort, he said, "was an example of how there can be ways where both sides can recognize the legitimate claims of both sides."

Recent decades have seen twin trends in the way courts interpret the religion clauses of the First Amendment. In regard to the Establishment Clause, which prevents government endorsement of religion, the courts have generally softened the barrier that previously prevented the state from funding religious entities. Meanwhile, the courts have also backed away from a robust interpretation of the Free Exercise Clause, which protects individuals' and groups' religious expression from undue government interference.

The results have frustrated religious leaders across the ideological spectrum.

"Unfortunately, the clauses have been watered down to suggest religion needs only to be treated the same as other interests. In fact, often religion should be treated differently — to ensure free exercise by lifting governmentally imposed burdens and prevent establishments by prohibiting government sponsorship of religion," wrote the BJC's Walker, in an analysis. "Religion is special and is treated specially by the First Amendment. We must recognize its uniqueness if religious liberty in this country is to be vital over the next decade."

Haynes said the most dramatic trend over the past decade has been on the funding side — from a nearabsolute ban on direct or indirect government funding for deeply religious institutions to interpretations that allow tax dollars to flow to churches.

"I think that now we've crossed into a whole new arena where a good bit of government funding reaches religious groups," he said. "And even though it may be well-motivated and intended to expand help for those in need ... in the long run it undermines religious freedom because it, I think, chips away at the autonomy of religious groups; it makes religious groups more dependent on government money and thus really undermines the commitment to voluntarism and religion."

A crucial Supreme Court decision in 1990 — *Employment Division v. Smith* — significantly lowered the legal bar that government entities must reach before interfering with free exercise rights. Attempts to remedy the decision through both legislative and judicial remedies since have met with mixed results.

Haynes lamented that few Americans seem to know or care about the perilous current legal status of their free exercise rights.

"The American people, I think, are unaware of the erosion of free exercise protection under the First Amendment and then the efforts to restore it through legislation and litigation," he said. "It does seem arcane. I mean, all this stuff — the compelling-interest test and all — that's lost on most people. Most people, I think, take for granted that they have freedom of religion and are not concerned about government interfering with the practice of faith."

Haynes said people may not wake up until it's too late. "So, my church needs to expand and suddenly the government says it can't because of historical preservation, or there's a law passed saying that nobody can distribute literature in certain areas....," he said, for example. "You know, it just doesn't hit people until it affects some practice that's important to them."

-Rob Marus, Associated Baptist Press

Dunn to deliver RLC luncheon address, receive Dawson Award

James M. Dunn will be the keynote speaker at the Baptist Joint Committee's 2011 Religious Liberty Council Luncheon on June 24 in Tampa, Fla.

Dunn will also receive the BJC's most prestigious award, the J.M. Dawson Religious Liberty Award, named after the organization's first executive director. The award recognizes its recipient's contribution in the area of the free exercise of religion and church-state separation



Dunn

Dunn is the Resident Professor of Christianity and Public Policy at the Wake Forest University

School of Divinity. He was the executive director of the Baptist Joint Committee from 1980-1999, and he currently serves as president of the BJC endowment. Dunn has served as the executive director of the Christian Life Commission in Texas, president of Bread for the World, and chair of the Ethics Commission of the Baptist World Alliance.

The luncheon meeting will celebrate the BJC's 75th anniversary and will be held during the Cooperative Baptist Fellowship General Assembly. The RLC is the individual membership organization of the BJC.

For the latest information on the event, visit **www.BJConline.org/luncheon**.

VFW sues Obama administration over disputed cross memorial

WASHINGTON — The Veterans of Foreign Wars has sued the Obama administration, saying it is dragging its feet on transferring ownership of land under a controversial California war memorial.

The U.S. Supreme Court ruled last April that a congressionally approved land swap involving a five-foot memorial cross in the Mojave Desert Preserve was constitutional, but legal wrangling over it has continued.

"Despite the reversal by the Supreme Court, the government has refused to give effect to the landtransfer statute and transfer the land upon which the memorial stands to the VFW," reads the complaint filed Jan. 11 in a California district court.

Officials from the Justice Department could not be reached for comment.

Shortly after the high court ruling, the cross was stolen from the site and has not been replaced. The VFW has unsuccessfully sought to have the memorial rebuilt with a new cross.

"This is our land, our memorial and we want it back," said James Rowoldt, an official of the VFW Department of California, in a statement.

The latest action in the Mojave cross case follows a Jan. 4 ruling by the 9th U.S. Circuit Court of Appeals that a veterans' memorial featuring a 43-foot cross on California's Mount Soledad is unconstitutional.

-Adelle M. Banks, Religion News Service

Walker receives First Freedom Award

On Jan. 13, BJC Executive Director Brent Walker received the Virginia First Freedom Award from the First Freedom Center. Pictured (left to right) are: First Freedom Center Board Chair Everett "Ben" Howerton, Walker, Sulema Jahangir on behalf of International First Freedom Award winner Asma Jahangir, Rena Berlin representing the Virginia Holocaust Museum's Alexander Lebenstein Teacher Education Institute (Distinguished Service Award), National First Freedom recipient John Graz, and First Freedom Center President Randolph M. Bell.



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J. Brent Walker Executive Director

Jeff Huett Editor

Cherilyn Crowe Associate Editor

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2011 Shurden Lectures at Georgetown College, April 4-5

hurchstate expert and former BJC General Counsel Melissa Rogers will deliver the 2011 Walter B.

and Kay W.

Shurden Lectures on Religious Liberty and Separation of Church and State April 4-5 on the campus of Georgetown College.

The lectures are scheduled for 4 p.m. on Mon., April 4; and at 11 a.m. and 4 p.m. on Tues., April 5. Campus locations for the presentations will be announced at a later time.

In 2004, the Shurdens of Macon, Ga., made a gift to the Baptist Joint Committee in Washington, D.C., to establish the annual lectureship. Designed to enhance the ministry and programs of the Baptist Joint Committee, the lectures will be held at Mercer University every three years and at another seminary, college or university the other years.

The lectures are free and open to the public. Georgetown College is in Georgetown, Ky., 12 miles north of Lexington, Ky., and about 70 miles from Louisville, Ky., and Cincinnati, Ohio.

For the latest information, visit www.BJConline.org/lectures.

- BIOGRAPHY



President Barack Obama and Joshua DuBois, director of the White House Office of Faith-Based and Neighborhood Partnerships (center), greet Melissa Rogers at the White House.

Melissa Rogers

- Former BJC General Counsel
- Director of Wake Forest University Divinity School's Center for Religion and Public Affairs
- Nonresident senior fellow at the Brookings Institution
- First chair of the President's Advisory Council for Faith-Based and Neighborhood Partnerships
- Previously executive director of the Pew Forum on Religion & Public Life
- In 2010, Rogers testified before Congress about the Council

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