

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NEW GEORGIA PROJECT, *et al.*,

Plaintiffs,

v.

No. 1:24-cv-03412-SDG

BRAD RAFFENSPERGER, *et al.*,

Defendants.

GEORGIA STATE CONFERENCE
OF THE NAACP, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

SECURE FAMILIES INITIATIVE
AND THEIR MEMBERS,

Plaintiff,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

**PLAINTIFFS GEORGIA STATE CONFERENCE OF THE NAACP AND
GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC.'S BRIEF IN
OPPOSITION TO ADDITIONAL COUNTY DEFENDANTS'
MOTIONS TO DISMISS**

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I. INTRODUCTION

Plaintiffs New Georgia Project, Sang Huynh, Georgia Muslim Voter Project, A. Philip Randolph Institute, Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, Inc., VoteRiders, and Secure Families Initiative's lawsuit challenges the enforcement of Georgia's voter challenge provisions, including provisions updated by: (1) Section 5 of Senate Bill 189 ("SB 189"), which target, remove, and disenfranchise eligible Georgia voters through unlawful, residency-based mass challenges; and (2) Section 4 of SB 189, which targets unhoused voters without a permanent address and mandates that, unlike all other Georgia voters, they use their county registrar's office as their mailing address for election mail instead of a mailing address of their choice. Plaintiffs' Consolidated Complaint (ECF 155) amply demonstrates how Plaintiffs have been and will be harmed by Defendants' enforcement of these provisions and how these provisions violate the National Voter Registration Act of 1993, 52 U.S.C. §§ 20501-20511 ("NVRA"), the Civil Rights Act of 1964 ("Civil Rights Act"), and the Constitution.

In the Consolidated Complaint, Plaintiffs Georgia State Conference of the NAACP and Georgia Coalition for The People's Agenda, Inc. (collectively, the "Georgia NAACP and GCPA Plaintiffs") brought NVRA claims (Counts I, II, and IV) against the boards and members of seventeen counties' boards of elections and registrations. Eight of those counties filed motions to dismiss on an earlier agreed

schedule. Plaintiffs responded to those motions in their Consolidated Brief in Opposition to the Defendants’ and Intervenors’ Motion to Dismiss (ECF 228) (“Consolidated Opposition”). Georgia NAACP and GCPA Plaintiffs now respond to the motions to dismiss filed by the remaining nine county defendants, namely Cherokee, Lee, Whitfield, Columbia, Dougherty, Worth, Lowndes, Hall, and DeKalb County Defendants (collectively, the “Additional County Defendants”).

The Additional County Defendants argue that the Georgia NAACP and GCPA Plaintiffs lack standing, fail to state an adequate claim, fail to provide the notice required under the NVRA, have no private right of action against the Additional County Defendants, and that the Consolidated Complaint is an impermissible “shotgun” pleading. ECF Nos. 249, 250, 252-1, 253, 254, 255, 256, 257, and 258-1.¹

None of these arguments survive scrutiny. The Georgia NAACP and GCPA Plaintiffs have standing to bring and have adequately pled each of their NVRA claims for the reasons set forth in their Consolidated Opposition, which they adopt

¹ All Additional County Defendants argue Georgia NAACP and GCPA Plaintiffs lack standing and/or fail to state an adequate claim. The Cherokee, Lee, Whitfield, Columbia, Worth, Lowndes, Hall, and DeKalb County Defendants argue Georgia NAACP and GCPA Plaintiffs fail to give the proper notice required under the NVRA. The Columbia, Worth, Lowndes, and DeKalb County Defendants argue Georgia NAACP and GCPA Plaintiffs lack a private right of action against the Additional County Defendants. The DeKalb County Defendants argue that the Consolidated Complaint is an impermissible “shotgun” pleading.

and incorporate by reference here, and for the additional reasons set forth below. Defendants' motions should be denied.

II. LEGAL STANDARD

When reviewing a motion under Rule 12(b)(6), a court “must accept as true all material allegations of the [pleading], and must construe [it] in favor of the [pleading] party.” *Corbett v. Trans/Sec. Admin.*, 930 F.3d 1225, 1228 (11th Cir. 2019). To overcome a Rule 12(b)(6) motion to dismiss, a complaint need only “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). The complaint “need not contain ‘detailed factual allegations’”; the allegations need only “raise a right to relief above the speculative level.” *Renfro v. Nationstar Mortg., LLC*, 822 F.3d 1241, 1244 (11th Cir. 2016) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Ultimately, the complaint is required to contain “only enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S., at 555–56.

Further, on a Rule 12(b)(6) motion to dismiss, the moving party bears the burden to show that the complaint should be dismissed and “must support its arguments for dismissal with citations to legal authority.” *Sprint Sols., Inc. v. Fils-Amie*, 44 F.Supp.3d 1224, 1228 (S.D. Fla. 2014). “Where a defendant seeking dismissal of a complaint under Rule 12(b)(6) does not provide legal authority in

support of its arguments, it has failed to satisfy its burden of establishing its entitlement to dismissal.” *Id.* (citing *Super. Energy Servs., LLC v. Boconco, Inc.*, 2010 WL 1267173, at *5-6 (S.D. Ala. Mar. 29, 2010)).

III. ARGUMENT

A. Georgia NAACP and GCPA Plaintiffs Have Properly Alleged Standing to Bring Their NVRA Claims and Have Adequately Stated Those Claims Against the Additional County Defendants.

As set forth in their Consolidated Opposition, the Georgia NAACP and GCPA Plaintiffs have sufficiently alleged standing to bring their NVRA claims and have adequately stated those claims in Counts I, II, and IV of their Consolidated Complaint. *See* Consol. Opp., ECF 228, at 5–13, 17–22, 24–31, 38–56.

The Additional County Defendants assert arguments challenging standing and the NVRA claims similar to those Plaintiffs have addressed in their Consolidated Opposition.² The Georgia NAACP and GCPA Plaintiffs therefore adopt and incorporate their showing in the Consolidated Opposition that they have sufficiently

² Hall County Defendants incorrectly state that Plaintiff Secure Families Initiative (“SFI”) has also sued them, among the additional counties named by the Georgia NAACP and GCPA Plaintiffs in the Consolidated Complaint. Hall Mot. to Dismiss, ECF 257 at 4. This is simply not true. While SFI, along with the Georgia NAACP and GCPA Plaintiffs, sent the July 10, 2024 NVRA notice letter, it has not brought suit against the Hall County Defendants directly for any of its claims, although the Hall County Board of Elections and Registrations is included in the proposed defendant class. *See* Am. Compl., ECF 155 ¶¶ 246, 249–260 (Count I), 261–270 (Count II), 298–310 (Count VII), 333–349 (Count X), 350–359 (Count XI), 360–369 (Count XII); ECF 155-1 (Claims Chart); Am. Compl., ECF 155 ¶ 107 (defining defendant class). Hall County’s arguments simply do not apply to SFI.

alleged an injury in fact and that their injuries are traceable to and redressable by the Additional County Defendants, *id.* at 5–13, 17–22, 24–31, 38–44, and adequately stated claims that Sections 4 and 5 of SB 189 both violate, and are preempted by, Sections 8(b) and 8(d) of the NVRA. *Id.* at 44–56.

The Worth County Defendants also rely for their standing arguments on *Coalition for Good Governance v. Kemp*, No. 1:21-CV-2070-JPB, 2025 WL 848462, at *6 (N.D. Ga. Mar. 18, 2025). *See* ECF 255 at 3–4. That reliance is misplaced. *Coalition for Good Governance* involved challenges to, among other provisions, a Georgia law allowing the State Election Board to suspend local boards of registrars for certain conduct. 2025 WL 848462, at *1. The court dismissed those claims without prejudice at the *summary judgement* stage after finding the evidence showed there had been no history of investigations or performance reviews by any of the defendants against any of the plaintiffs. *Id.* at *6-7, n.13. Here, by contrast, the Court is evaluating the sufficiency of Plaintiffs’ allegations at the motion to dismiss stage. That includes Plaintiffs’ showing that there have already been tens of thousands of voter challenges, including 31,500 challenges under O.C.G.A. §§ 21-2-229 and 21-2-230 submitted by a single challenger, to which only three percent were sustained, Am. Compl., ECF 155 ¶ 170, and 689 mass challenges filed against students in the 2024 election cycle alone. Consol. Opp., ECF 228 at 24–31.

These allegations directly support Georgia NAACP and GCPA Plaintiffs' claims that their members face an imminent threat of losing their ability to vote due to mass challenges and implementation of SB 189. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (finding an "allegation of future injury may suffice if the threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur."); *see also Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250 (11th Cir. 2012) (finding organizational standing when immigrants faced a "credible threat of detention" under a new immigration law and therefore the law "forc[ed]" the organizations to divert resources to protect immigrants from imminent harm); *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1162-63 (11th Cir. 2008) (finding that "[g]iven that [organizational plaintiffs] collectively claim around 20,000 members state-wide, it is highly unlikely—even with only a one percent chance of rejection for any given individual—that not a single member will have his or her application rejected due to a mismatch"). Thus, unlike in *Coalition for Good Governance*, Georgia NAACP and GCPA Plaintiffs have sufficiently alleged standing to proceed with their claims.

B. Georgia NAACP and GCPA Plaintiffs Provided Adequate Pre-Lawsuit Notice Under the NVRA.

As set forth in their Consolidated Opposition, the Georgia NAACP and GCPA Plaintiffs provided pre-suit notice pursuant to the NVRA to county defendants, including the Additional County Defendants, through a nine-page letter sent on July

10, 2024 (the “July 10 NVRA Notice Letter”). *See* Consol. Opp., ECF 228 at 63; Ex. A to Consol. Opp., ECF 228-1; Am. Compl., ECF 155-3 at ¶ 246 n.41. Contrary to the Additional County Defendants’ contentions, the July 10 NVRA Notice Letter fully satisfied the Georgia NAACP and GCPA Plaintiffs’ pre-suit notice obligations under 52 U.S.C. § 20510(b)(1).

Section 20510(b)(1) requires that a “person who is aggrieved by a violation” of the NVRA provide “written notice of the [NVRA] violation.” 52 U.S.C. § 20510(b)(1); *see also Ga. State Conf. of NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1334 (N.D. Ga. 2012) (finding that plaintiffs satisfied the NVRA’s notice requirement by “set[ting] out” the “general proposition” that the state was “not complying with the mandates of the NVRA”); *Green v. Bell*, No. 3:21-cv-00493-RJC-DCK, 2023 WL 2572210, at *3 (W.D.N.C. Mar. 20, 2023) (“[T]he Plaintiffs’ pre-suit notice announces a violation of the NVRA, so it satisfies the statute’s notice requirement.”).

Several of the Additional County Defendants argue Georgia NAACP and GCPA Plaintiffs’ July 10 NVRA Notice Letter “failed to allege that Section 5 violated NVRA Section 8(d),” Cherokee Mot. to Dismiss, ECF 249 at 4–5; *see also* Lee Mot. to Dismiss, ECF 250 at 4–5; Lowndes Mot. to Dismiss, ECF 256 at 8; Whitfield Mot. to Dismiss, 252-1 at 6–7. Several also argue that the letter “failed to allege Plaintiff was aggrieved by any violation of the NVRA caused by” the

Additional County Defendants. Columbia Mot. to Dismiss, ECF 253 at 5 (internal quotations omitted); *see also* DeKalb Mot. to Dismiss, ECF 258-1 at 5; Hall Mot. to Dismiss, ECF 257 at 4; Lowndes Mot. to Dismiss, ECF 256 at 8; Whitfield Mot. to Dismiss, 252-1 at 6–7; Worth Mot. to Dismiss, ECF 255 at 5–6. However, the very first page of Plaintiffs’ July 10 NVRA Notice Letter does both.

The July 10 NVRA Notice Letter is addressed to “Secretary Raffensperger, members of the State Election Board, and members of certain county boards of elections and registrars,” and it identifies each of the Additional County Defendants on the first page. July 10 NVRA Notice Letter, ECF 155-3. Additionally, the first paragraph of the July 10 NVRA Notice Letter states:

This letter serves as written notice pursuant to 52 U.S.C. § 20510 that enforcement of Sections 4 and 5 of S.B. 189, as detailed below, violates Section 8 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20507, which: (i) requires states, including Georgia, to ensure that any “program or activity to protect the integrity of the electoral process” is “uniform” and “nondiscriminatory,” 52 U.S.C. § 20507(b)(1), and, (ii) sets out the exclusive basis for removing registered voters for a purported change of address, 52 U.S.C. § 20507(d).

Id. The notice letter thus clearly sets out the Georgia NAACP and GCPA Plaintiffs’ claim, directed to the Additional County Defendants, that enforcement of Section 5 would violate the NVRA, including Section 8(d).

Cherokee, Lee, and Whitfield Counties also argue the July 10 NVRA Notice Letter was inadequate because “the portion of the July 10 Notice Letter regarding

Section 5 does not mention Section 8(d) of the NVRA at all.” Cherokee Mot. to Dismiss, ECF 249 at 4–5 (referencing ECF 155-3, Section II(a)); *see also* Lee Mot. to Dismiss, ECF 250 at 4–5; Whitfield Mot. to Dismiss, 252-1 at 6–7. However, the NVRA notice requirement does not require Georgia NAACP and GCPA Plaintiffs to outline how and why each section violates the NVRA. This argument is also refuted by Section II(a), which specifically refers to actions prohibited by Section 8(d), and the additional references to violations of that section in the letter.

Section 8(d) of the NVRA, 52 U.S.C. § 20507(d), prohibits a state from removing a voter’s name from the voter rolls due to a change in residence. 52 U.S.C. § 20507(d). Georgia NAACP and GCPA Plaintiffs expressly asserted in the July 10 NVRA Notice Letter that Section 5 of SB 189 violates this section by disenfranchising and applying unequal treatment to unhoused, uniformed, and overseas voters who, in addition to residing at non-traditional locations, often “**lack a fixed address**” and “may be unable to receive timely notice of a challenge against them and **unable to refute the finding of probable cause because they are temporarily out of state.**” ECF 155-3, Section II(a) (emphasis added). Additionally, Georgia NAACP and GCPA Plaintiffs cited NVRA Section 8(d) in the conclusion of the July 10 NVRA Notice Letter, stating that “[e]nforcement of Sections 4 and 5 of S.B. 189 constitute current and ongoing violations of Section 8 of the NVRA by . . . [s]etting out a standard for a voter’s purported written confirmation of a change

of address that runs contrary to plain language of **Section 8(d)** of the NVRA.” ECF 155-3 (emphasis added).

Georgia NAACP and GCPA Plaintiffs thus plainly met the NVRA requirement that they provide “written notice of the violation” 90 days before “the aggrieved person may bring a civil action.” 52 U.S.C. § 20510(b); *see also Ga. State Conf. of N.A.A.C.P.*, 841 F. Supp. 2d at 1334 (“The general proposition—that Georgia was not complying with the mandates of the NVRA, especially with respect to providing voter registration services at public assistance offices and having in place policies to limit any services actually provided to in-person transactions—is set out clearly in the notice letter.”).

Georgia NAACP and GCPA Plaintiffs also adopt and incorporate the arguments in Plaintiffs’ Consolidated Opposition regarding the NVRA pre-suit notice requirements issue. Consol. Opp., ECF 228 at 63–64.

The Court should deny the Additional County Defendants’ motions to dismiss for inadequate notice under the NVRA.

C. Georgia NAACP and GCPA Plaintiffs Have a Private Right of Action Against the Additional County Defendants Under the NVRA.

Four of the Additional County Defendants—Columbia, Lowndes, Worth, and DeKalb Counties—argue that “the NVRA did not give [Plaintiffs] standing to bring a suit directly against a county board or its public officials, as opposed to the Georgia

Secretary of State.” Columbia Mot. to Dismiss, ECF 253 at 17; *see also* Worth Mot. to Dismiss, ECF 255 at 5–7; Lowndes Mot. to Dismiss, ECF 256 at 7–8; DeKalb Mot. to Dismiss, ECF 258-1 at 5 n.3. None of these Defendants, however, provides supporting authority for their position, and they all ignore contrary authority permitting Plaintiffs to bring claims under Section 8 of the NVRA against local election officials. *See, e.g. Ass’n of Cmty. Organizations for Reform Now v. Scott*, 2008 WL 5272059, at *2 (W.D. Mo. Dec. 17, 2008) (finding private right of action where “Plaintiffs have sued local election authorities . . . for their *own* violations of the NVRA . . .”) (emphasis in original).

Columbia, Lowndes, and Worth Counties argue the Secretary of State is the responsible party under the NVRA, and they attempt to minimize and downplay their own responsibilities and obligations under the NVRA. *See* Columbia Mot. to Dismiss, ECF 253 at 17–19; Worth Mot. to Dismiss, ECF 255 at 5–7; Lowndes Mot. to Dismiss, ECF at 7–8. The Secretary of State does oversee elections generally for the State, but the Additional County Defendants are established by state law to oversee voter registration in their respective counties, Am. Compl., ECF 155 ¶¶ 88–106, and they are responsible for adjudicating voter challenges under Georgia law, including as amended by SB 189. *Id.* ¶¶ 107, 258. The counties can also be sanctioned by State Defendants for not applying S.B. 189 and the probable-cause criteria listed in O.C.G.A. § 21-2-230(b). *Id.* ¶ 258. Indeed, State Defendants agree

county officials are responsible for hearing voter challenges under Section 5. State’s Mot. to Dismiss, ECF 168-1 at 44.

As Worth County notes, “there have been examples of NVRA cases against local jurisdictions.” Worth Mot. to Dismiss, ECF 255 at 6. And courts that have considered whether local officials can be held liable for violations under the NVRA have routinely recognized a private right of action against local election officials and officials other than the Secretary of State. *Ass’n of Cmty. Organizations for Reform Now*, 2008 WL 5272059, at *2 (“The Secretary’s absence from this litigation does not affect this court’s ability to accord complete relief among existing parties. Plaintiffs have sued local election authorities . . . for their *own* violations of the NVRA and Missouri’s implementing statutes.”) (emphasis in original); *Am. Civil Rights Union v. Martinez–Rivera*, 166 F.Supp.3d 779, 793 (W.D. Tex. 2015) (acknowledging “the NVRA itself is . . . silent on the subject of necessary parties” and finding a private right of action against the local tax assessor–collector, who “has certain obligations under the NVRA as the designated voter registrar and state official”); *Scott v. Schedler*, 2013 WL 264603, at *3–4, 10 (E.D. La. Jan. 22, 2013) (enjoining two state agencies in addition to the Secretary of State).

Neither Columbia County nor Worth County identifies any cases supporting their argument that based on the history and statutory framework of the NVRA, Plaintiffs can only file suit against the State of Georgia or Georgia’s Secretary of

State. Columbia Mot. to Dismiss, ECF 253 at 17; Worth Mot. to Dismiss, ECF 255 at 5–7. Instead, the Counties rely on cases brought under the NVRA against state-level officials under different sections of NVRA or involving Section 8 activities by the state-level official, which they concede are readily distinguishable. Columbia Mot. to Dismiss, ECF 253 at 18 n.4; *see also* Worth Mot. to Dismiss, ECF 255 at 6–7. The DeKalb County Defendants incorporated Worth County Defendants’ arguments by reference also without providing any legal authority in support. DeKalb Mot. to Dismiss, ECF 258-1 at 5 n.3.

Columbia County Defendants cite *Harkless v. Brunner*, 545 F.3d 445, 452 (6th Cir. 2008), as support for their argument that “the proper party for a private right of action under the NVRA is the Georgia Secretary of State.” Columbia Mot. to Dismiss, ECF 253 at 18. The question before the court in *Harkless*, however, was whether the Secretary of State was a proper party at all in a case brought under Section 7 of the NVRA, and not whether the Secretary of State was the *only* permissible party.

As other courts have consistently recognized, a party that has responsibility and authority under the NVRA, including local defendants like the Additional County Defendants, is subject to a private right of action for alleged NVRA violations.

D. Plaintiffs’ Amended Complaint Is Not a “Shotgun” Pleading.

DeKalb County alone argues that Plaintiffs’ Amended Complaint should be dismissed as an improper shotgun pleading. DeKalb Mot. to Dismiss, ECF 258-1 at 6. Plaintiffs’ Amended Complaint is no such thing; it clearly identifies which claims are asserted against each Defendant and the facts supporting those claims.

A shotgun pleading is one that “confuse[s] the ‘enemy,’ and the court,” thwarting the defendant’s ability to prepare its defense. *Weiland v. Palm Beach Cty. Sheriff’s Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015) (quoting *T.D.S. Inc. v. Shelby Mut. Ins. Co.*, 760 F.2d 1520 (11th Cir.1985)). The “unifying characteristic” of shotgun pleadings is that they fail “to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” *Id.* at 1321–23. Dismissal under Rule 8(a)(2) is appropriate only where “it is *virtually impossible* to know which allegations of fact are intended to support which claim(s) for relief.” *Id.* at 1325 (quoting *Anderson v. Dist. Bd. of Trustees of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 366 (11th Cir. 1996)) (emphasis in original).

Here, each count in Plaintiffs’ Amended Complaint clearly identifies the claims and factual allegations against each of the Defendants. Where, as here, the same allegations are asserted against multiple defendants, collective pleading “does not render the complaint deficient” because it “can be fairly read to aver that all defendants are responsible for the alleged conduct.” *Kyle K. v. Chapman*, 208 F.3d

940, 944 (11th Cir. 2000). Moreover, incorporating the allegations of prior counts is permissible when the complaint “does so only for convenience, and the Court is able to ascertain which paragraphs are relevant to each of the claims.” *Watts v. City of Port St. Lucie, Fla.*, 2015 WL 7736532, at *5 (S.D. Fla. Nov. 30, 2015). Collective pleading is particularly appropriate and necessary in a case like this, where Plaintiffs have indicated their intent to move for certification of a defendant class.

This Court should reject Plaintiffs’ shotgun pleading argument in its entirety. To the extent the Court determines, however, that additional clarity is needed with respect to any claim, the court should permit Plaintiffs to amend. *See Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1296 (11th Cir. 2018).

CONCLUSION

For all of these reasons, Georgia NAACP and GCPA Plaintiffs respectfully request that this Court deny Additional County Defendants’ Motions to Dismiss.

Respectfully submitted this 7th day of April, 2025,

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing has been prepared in Times New Roman 14, a font and type selection approved by the Court in L.R. 5.1 (C).

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2025, I electronically filed the foregoing PLAINTIFFS GEORGIA STATE CONFERENCE OF THE NAACP AND GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC.'S BRIEF IN OPPOSITION TO ADDITIONAL COUNTY DEFENDANTS' MOTIONS TO DISMISS with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record in this matter.

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