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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM McCORMICK COUNTY
Court of Common Pleas

Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2026-000514
Circuit Court Case No. 2024-CP-35-00086

Diane L. Shaffer and Daniel A. Higgins, Plaintiffs,
of whom Diane L. Shaffer is the Appellant,

v.

McCormick County Council and
McCormick County Office of Voter Registration and Elections, Respondents.

INITIAL BRIEF OF RESPONDENTS

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April 28, 2026

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2. THE TRIAL COURT DID NOT ERR IN FINDING THAT THE PROPOSED INITIATIVE ORDINANCE 23-11 (REAPPORTIONMENT), CHANGING THE REAPPORTIONMENT PLAN FOR MCCORMICK COUNTY FROM MAP 2 TO MAP 3, IS IN DIRECT CONFLICT AND INCONSISTENT WITH S.C. CODE ANN. § 4-9-90 AND DISREGARDS BINDING CASE LAW PRECEDENT ESTABLISHED BY THE SOUTH CAROLINA SUPREME COURT.

3. THE TRIAL COURT DID NOT ERR IN GRANTING THE RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND HOLDING THAT RESPONDENTS HAVE NO DUTY TO HOLD A SPECIAL ELECTION REFERENDUM ON THE PROPOSED INITIATIVE ORDINANCES.

STATEMENT OF THE CASE

This appeal concerns the use of initiative and referendum to adopt local ordinances which are inconsistent with and/or in conflict with state law.

FACTS:

1. The United States Census for 2020 was adopted by the South Carolina General Assembly by 2021 S.C. Acts No. 117 effective December 10, 2021 (S.C. Code Ann. §1-1-715).

2. On February 15, 2022, McCormick County Council adopted Map 2 as the reapportionment plan for McCormick County Council based on the Federal Census of 2020. Upon adoption of this plan, McCormick County Council districts were adjusted in accordance with Map 2 and the related demographic statistics. (R. pp. ___; Ordinance 21-07 – Appellant's Exhibit 4)

3. Since February 15, 2022, the election procedures for McCormick County Council districts (including candidate filings, primaries, and the general elections of 2022 and 2024) have been based on Map 2. (R. pp. ___; Ordinance 21-07 – Appellant's Exhibit 4)

4. Map 2 is a valid reapportionment plan. (R. p. ___; January 6, 2026, Order p. 2); (R. p. ___; Appellant's Motion for Summary Judgment p. 7)

5. In mid-August 2023, the Defendants were presented with three proposed initiative petitions signed by at least 15% of the qualified electors of the County proposing the adoption of three ordinances. (R. pp. ___–___; Appellant's Exhibits 5-7) One of the proposed initiative ordinances was adopted by the McCormick County Council. The other two proposed initiative ordinances were not adopted. (R. pp. ___–___; January 10, 2024, Meeting Agenda – Appellant's Exhibit 10); (R. p. ___; January 6, 2026, Order p. 2)

6. On January 16, 2024, the McCormick County Council voted not to hold a referendum on the two proposed initiative ordinances which were not adopted. (R. p. ___; January 6, 2026, Order p. 2);

(R. p. ___; Respondents' Answer, Affirmative Defenses, and Counterclaim p. 4); (R. p. ___; Appellant's Motion for Summary Judgment p. 3)

7. The proposed initiative ordinances in question are:

> (1) **Proposed Ordinance 23-10** - An ordinance that allows any County Council member to place items on the Council's meeting agenda and that requires agendas for regular Council meetings to be posted at least seven days before each meeting.
>
> (2) **Proposed Ordinance 23-11** - An ordinance amending Ordinance 21-07 adopted by the McCormick County Council on February 15, 2022, which approved and adopted Map 2 prepared by the South Carolina Revenue and Fiscal Affairs Office as the reapportionment/redistricting plan for McCormick County based on the 2020 Census.

(R. p. ___; January 6, 2026, Order p. 2)

PROCEDURAL HISTORY:

Appellant's quest started in the South Carolina Supreme Court. On May 3, 2024, Appellant filed a Petition for Writ of Mandamus requesting that the Supreme Court issue a Writ of Mandamus requiring Respondents to place two proposed ordinances on the ballot for the November 2024 general election. (R. pp. ___; Appellant's Petition for Writ of Mandamus – Respondents' Exhibit 1) Respondents filed a Return to Petition for Writ of Mandamus. (R. pp. ___; Respondent's' Return to Petition for Writ of Mandamus – Respondents' Exhibit 2) By Order dated June 20, 2024, the Supreme Court denied Appellant's Petition for Writ of Mandamus. (R. p. ___) Appellant filed a Petition for Rehearing and Clarification. By Order issued August 13, 2024, the Court denied the Petition for Rehearing. (R. p. ___)

Having been denied by the Supreme Court, Appellant filed this action on September 11, 2024, asking for injunctive and declaratory relief requiring Respondents to place these proposed ordinances on the ballot for the November 2024 general election. (R. pp. ___; Complaint) On October 15, 2024, Respondents filed an Answer, Affirmative Defenses, and Counterclaim, denying Appellant's claims and asserting that the proposed initiative ordinances are inconsistent with and/or conflict with state law. (R. pp. ___; Respondents' Answer.) On November 14, 2024, Appellant filed an Answer to Respondents' Counterclaim. (R. pp. ___.) The November 2024 general election occurred without the proposed ordinances appearing on the ballot.

On August 28, 2025, Respondents filed a Motion for Summary Judgment requesting dismissal of the case on the grounds that the only relief requested by the Appellant was for the two proposed initiative ordinances be placed on the 2024 general election ballot and since the 2024 general election had passed the case was moot. (R. pp. ___; Respondents' Motion for Summary Judgment) Four days later, on September 2, 2025, Appellant moved to amend the Complaint to seek a special election on the proposed ordinances. The amendment was granted, and an Amended Complaint was filed on September 17, 2025. (R. pp. ___; Amended Complaint.) On October 2, 2025, Respondents filed their Answer, Affirmative Defenses, and Counterclaim denying Appellant's claims and asserting that the proposed initiative ordinances are inconsistent with and/or conflict with state law. (R. pp. ___; Respondents' Answer to Amended Complaint) On October 14, 2025, Appellant filed an Answer to Respondents' Counterclaim. (R. pp. ___; Appellant's Answer to Respondents' Amended Counterclaim.)

On October 24, 2025, both parties filed motions for summary judgment. (R. pp. ___; Appellant's Motion for Summary Judgment; R. pp. ___; Respondents' Motion for Summary Judgment.)

On October 30, 2025, Respondents filed a Memorandum of Law in support of their Motion for Summary Judgment. (R. pp. ___; Respondents' Memorandum of Law) On October 31, 2025, Appellant filed a Response to Respondents' Memorandum of Law. (R. pp. ___; Response to Respondents' Memorandum of Law) A hearing was held on the summary judgment motions on November 3, 2025.

On December 11, 2025, Appellant filed a Notice of Additional Authority alleging that the US Supreme Court case of *Abbott v. League of United Latin American Citizens, No. 25A608*, 607 U.S. ___, 2025 WL 3484863 (U.S. Dec. 4, 2025), was relevant to this case. (R. pp. ___; Notice of Additional Authority) On January 5, 2026, Respondents filed a Response to Notice of Additional Authority. (R. pp. ___; Response to Notice of Additional Authority) One day later, on January 6, 2026, the circuit court entered an order granting Respondents' motion for summary judgment, denying Appellant's motion summary judgment, and declaring that Respondents "have no duty to hold a special election referendum on the proposed initiative ordinances." (R. pp. ___; Order Granting Summary Judgment.) Appellant filed a Rule 59(e) Motion for Reconsideration on January 15, 2026. (R. p. ___; Appellant's Motion for Reconsideration.) On January 28, 2026, the circuit court entered an order denying the Motion for Reconsideration. (R. p. ___; Order Denying Motion to Reconsider.) Appellant filed a Notice of Appeal on February 27, 2026.

STANDARD OF REVIEW

This case involves questions of law. The material facts are not in dispute. Respondents agree with Appellant's statement of the standard of review. The interpretation of statutory law is a question of law which is reviewed de novo. *Powell v. Keel*, 433 S.C. 457, 860 S.E.2d 344 (2021); *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 662 S.E.2d 40 (2008).

ARGUMENTS

1. STATE LAW PREEMPTS LOCAL ORDINANCES.

This case involves the doctrine of state law preemption of local initiative ordinances. "To determine the validity of a local ordinance, this Court's inquiry is twofold: (1) did the local government have the power to enact the local ordinance, and if so (2) is the ordinance consistent with the constitution and general law of this State." *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 694 S.E.2d 213 (S.C. 2010)

Of particular importance as relates to this case is conflict preemption which focuses on the second inquiry stated in *Aakjer*: "… is the ordinance consistent with the constitution and general law of this State."[1] This was discussed in the case of *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 863 S.E.2d 456 (S.C. 2021). In *Wilson,* the South Carolina Supreme Court considered whether an ordinance adopted by the City of Columbia was preempted by a proviso enacted by the South Carolina Legislature. The City of Columbia premised its authority to adopt local ordinances on the Home Rule Act. The Supreme Court rejected this argument stating:

[1] *Aakjer* is cited by Appellant for the proposition that "the proposed ordinances here are" consistent with the constitution and general laws of this state". *Aakjer* does not hold this. *Aakjer* involved ordinances related to motorcycle helmets and eyewear. The Court found that the local ordinances were preempted by state law.

“This brings us to the real point of contention—may the City enact ordinances in direct conflict with state law … The answer is unsurprisingly and unequivocally "no." The Home Rule doctrine in no manner serves as a license for local governments to countermand a legislative enactment by the General Assembly, nor has this Court ever construed it in that manner. See, e.g. , *City of N. Charleston* , 306 S.C. at 156, 410 S.E.2d at 571 (noting a grant of police power to local governments is given with the caveat that the locality may not enact ordinances that conflict with state law); see also *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) (explaining Home Rule "bestow[s] upon municipalities the authority to enact regulations ... so long as such regulations are not inconsistent with the Constitution and general law of the state.”

The Court in *Wilson* then addressed conflict preemption: “The City's ordinances are in conflict with state law. Resolving a conflict between state law and a city (or county) ordinance invokes the principle of preemption. Conflict preemption occurs when the ordinance hinders the accomplishment of the statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible.”

The preemption of local ordinances by state statuary law applies to all local ordinances – including those proposed to be adopted by initiative and referendum. “When a municipality enacts an ordinance which conflicts with state law, the ordinance is invalid. An electorate has no greater power to legislate than the municipality itself.” *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801 (1992).

2. THE INITIATIVE AND REFERENDUM PROCESS IS NOT MANDATORY.

The initiative and referendum provisions related to counties and municipalities are essentially the same and the case law applicable to one is, by implication, applicable to the other. [compare S.C. Code Ann. § 4-9-1210, et seq (counties) and S.C. Code 5-17-10, et seq (municipalities)]. The initiative and referendum provisions for both counties and municipalities provide that the qualified electors of any county or municipality may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes and adopt or reject such ordinance at the polls. Any initiative ordinance may be submitted to the council by a petition signed by qualified electors equal in number to at least fifteen percent of the qualified electors. "If the council shall fail to pass an ordinance proposed by initiative petition or shall pass it in a form substantially different from that set forth in the petition therefor or if the council shall fail to repeal an ordinance for which a petition for repeal has been presented, the adoption or repeal of the ordinance concerned shall be submitted to the electors not less than thirty days nor more than one year from the date the council takes its final vote thereon."

Though the initiative and referendum process are quite broad, there are limits. As stated in an Opinion of the Attorney General dated June 24, 1993: "As broad as this statutory language appears to be, there are additional, implied limitations inherent therein. For instance, such ordinance would be required to be constitutionally permissible and consistent with the general laws of the State".[2] In *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801 (1992) the Supreme Court considered the power of the electorate to adopt an invalid initiative ordinance: "When a municipality enacts an ordinance which conflicts with state law, the ordinance is invalid. An electorate has no greater power to legislate than the municipality

[2] Op. Att'y Gen. (S.C.A.G. June 24, 1993)

itself. An initiative ordinance which is facially defective cannot be cured by adoption by the electorate." In the *Town of Hilton Head Island,* the Supreme Court held that if an initiative ordinance is facially defective in its entirety, there is "no obligation to place the initiative ordinance on the ballot" and there is "no right to obtain a vote to enact invalid legislation… Because the initiative ordinance is facially defective in its entirety, we find that the Town has no obligation to place the initiative ordinance on the ballot. Appellants possess no right to obtain a vote to enact invalid legislation."

Bottom line - the initiative and referendum process cannot be used to enact local ordinances which are inconsistent with or in conflict with state statutory law. Appellant agrees.[3]

3. BECAUSE THE INITIATED ORDINANCE CONCERNING ALLOWING COUNCIL MEMBERS TO PLACE ITEMS ON AGENDAS AND REQUIRING AGENDAS TO BE POSTED AT LEAST SEVEN DAYS IN ADVANCE OF COUNCIL MEETINGS IS INCONSISTENT WITH STATE LAW, THE RESPONDENTS HAVE NO DUTY OR OBLIGATION TO HOLD A REFERENDUM ON THE INITIATED ORDINANCE.

Proposed Initiative Ordinance 23-10 (Council Rules) – Plaintiffs seek to require Respondents to hold a referendum on a proposed initiative ordinance that allows any county council member to place items on the council's meeting agenda and requires agendas for regular council meetings to be posted at least seven days before each meeting. Proposed initiative Ordinance 23-10 (Council Rules) is governed by SC Code Ann. § 4-9-110:

[3] Appellant argues that the initiative and referendum process is mandatory but then admits that it is not mandatory. Appellant cites *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000) and *Town of Hilton Head v. Coalition of expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801 (1992) as examples of cases in which the South Carolina Supreme Court has rejected initiative ordinances which conflict with existing statutory law. Appellant's Brief p.3.

SECTION 4-9-110. Council shall select chairman and other officers; terms of office; appointment of clerk; frequency and conduct of meetings; minutes of proceedings.

The council shall select one of its members as chairman, except where the chairman is elected as a separate office, one as vice-chairman and such other officers as are deemed necessary for such terms as the council shall determine, unless otherwise provided for in the form of government adopted. The council shall appoint a clerk to record its proceedings and perform such additional duties as the council may prescribe. The council, after public notice shall meet at least once each month but may meet more frequently in accordance with a schedule prescribed by the council and made public. All meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies. Special meetings may be called by the chairman or a majority of the members after twenty-four hours' notice.

The council shall determine its own rules and order of business. It shall keep a journal in which shall be recorded the minutes of its proceedings which shall be open to public inspection. (emphasis added)

Pursuant to this statute, the "council" – not electors - has the authority to determine its own rules. The proposed initiative Ordinance 23-10 (Council Rules) attempts to change the rules of the McCormick County Council and take away the authority of County Council to "determine its own rules and order of business.". Through the initiative and referendum process, Appellant is attempting to amend S.C. Code Ann. § 4-9-110. Appellant's proposed initiative ordinance is inconsistent with, and preempted by, state statutory law.

Regarding the posting of the agenda, the McCormick County Council follows S.C. Code Ann. § 30-4-80 which requires the posting of an agenda "as early as is practicable but not later than twenty-four hours before the meeting". The proposed initiative Ordinance 23-10 (Council Rules) attempts to substitute posting of an agenda "as early as is practicable but not later than twenty-four hours before the meeting" with posting an agenda for regular council meetings at least seven days before each meeting. Not only is this inconsistent with state law, but it attempts to change it. This proposed initiative ordinance attempts to amend S.C. Code § 30-4-80 by eliminating the language "as early as is practicable but not later than twenty-four hours before the

meeting." Only the legislature can amend S.C. Code § 30-4-80. This state statutory law cannot be changed by initiative and referendum or judicial decision.

The trial court's Order of January 6, 2026, should be affirmed.

4. BECAUSE THE INITIATED ORDINANCE CONCERNING CHANGING MCCORMICK COUNTY'S REAPPORTIONMENT PLAN IS IN CONFLICT WITH AND INCONSISTENT WITH EXISTING STATUTORY LAW AND CASE PRECEDENT, THE RESPONDENTS HAVE NO DUTY OR OBLIGATION TO HOLD A REFERENDUM ON THE INITIATED ORDINANCE

Proposed Ordinance 23-11 (Reapportionment) – Appellant seeks to require Respondents to hold a referendum on a proposed initiative ordinance replacing Map 2 adopted as the reapportionment plan for McCormick County based on the 2020 Census with Map 3. There is no allegation or evidence that Map 2 adopted by McCormick County Council is invalid. (R. p. ___; Appellant's Motion for Summary Judgment p. 7) Appellant just "strongly" disagrees with the adoption of Map 2 and want to replace it with Map 3. (R. p. ___; Appellant's Amended Complaint p. 5)

State law governs proposed initiative Ordinance 23-11 (Reapportionment) and preempts local law. S.C. Code Ann. § 4-9-90 provides that "all County Council districts must be reapportioned as to population by the county council within a reasonable time prior to the next scheduled general election which follows the adoption by the State of each federal decennial census. The population variance between defined election districts shall not exceed ten percent." This statute applies to all counties in this state and establishes a uniform system of reapportionment.

Both Map 2 (adopted) and Map 3 (proposed initiative change) meet the population variance requirements. However, the proposed initiative ordinance substituting Map 3 for Map 2 does not – and cannot – comply with the timetable for the adoption of a reapportionment ordinance.

S.C. Code Ann. § 4-9-90 vests the authority to reapportion council districts in "the county council". The McCormick County Council followed the specific requirements of S.C. Code Ann. § 4-9-90 in adopting its reapportionment plan.

1. The United States Census for 2020 was adopted by the General Assembly by 2021 S.C. Acts No. 117 effective December 10, 2021 (See SC Code Ann. §1-1-715).

2. The reapportionment plan for McCormick County had to be adopted based on the 2020 Census within a reasonable time after December 10, 2021.

3. The McCormick County Council adopted Map 2 as the reapportionment plan on February 15, 2022, which is within a reasonable time after December 10, 2021.

4. The plan must be adopted prior to the "next scheduled general election" following the adoption of the Census.

5. McCormick County's plan was adopted prior to the 2022 general election - which was the "next scheduled general election".

6. The population variance of the plan (Map 2) adopted by the McCormick County Council does not exceed 10%.

The reapportionment plan (Map 2) adopted by the McCormick County Council is a valid reapportionment plan. The council district lines were redrawn based on the adopted plan and the 2022 – 2024 elections, and all procedures leading up to the 2022 and 2024 elections (and now the 2026 elections), were based on the adopted reapportionment plan and revised district lines.

The proposed initiative Ordinance 23-11 (Reapportionment) conflicts with, is inconsistent with, and is preempted by state statutory law. When a local ordinance is in direct conflict with state law, the local ordinance is void. *Wilson v. City of Columbia*, supra. This is a facially invalid ordinance and

the Respondents have no duty to hold a referendum on this initiative ordinance. *Town of Hilton Head Island v. Coalition of Expressway Opponents*, supra.

Case Precedent – In addition to being inconsistent with statutory law, the proposed initiative Ordinance 23-11 (Reapportionment) is contrary to binding case law precedent established by the South Carolina Supreme Court. In *Elliott v. Richland County*, 322 S.C. 423, 472 S.E.2d 256 (1996), the Supreme Court considered whether Richland County could adopt a new reapportionment plan almost two years after having adopted a valid plan. The facts in *Elliott* concerning reapportionment are similar to this case. In *Elliott*, Richland County adopted Plan 1 as its reapportionment plan in January 1992. It then discovered an error in the plan and in June 1992 adopted Plan 2, amending Plan 1. Both Plan 1 and Plan 2 were adopted before the November 1992 general election. Then, on February 9, 1994 (approximately 20 months later), Richland County Council passed another reapportionment ordinance (Plan 3).

Here is the South Carolina Supreme Court's analysis:

"DISCUSSION

S.C. Code Ann. § 4-9-90 (1986 & Supp.1994) provides that:

All districts must be reapportioned as to population by the county council within a reasonable time prior to the next scheduled general election which follows the adoption by the State of each federal decennial census.

Appellant argues that under § 4-9-90, once a county council has enacted a valid reapportionment ordinance, it may not subsequently enact another such ordinance until after the next regular apportionment period prescribed by § 4-9-90. We agree." (emphasis added)

The Supreme Court confirmed this in Elliott 2 stating: "In Elliott I this Court stated that Plan 3 was enacted in violation of state law because there was a valid reapportionment ordinance already in place, i.e., Plan 2. *Elliott v. Richland County*, 327 S.C. 175, 489 S.E.2d 195 (S.C. 1997).

This language is very direct. A county council has one shot to reapportion council districts. Once a valid plan has been adopted, it cannot be changed until the next decennial census.

Appellant concedes that "… *Elliott* may prevent McCormick County Council itself from reapportioning its single-member districts more than once every ten years."[4] See also, Appellants Brief pp. 10-11. Respondents agree that having previously adopted a valid reapportionment plan, McCormick County Council cannot adopt another plan until after the 2030 census. This is what *Elliott* held. And, as stated by the Supreme Court in *Town of Hilton Head Island v. Coalition of Expressway Opponents*, supra, "**An electorate has no greater power to legislate than the municipality itself.**" (emphasis added) Since McCormick County Council cannot adopt a new reapportionment plan until after the 2030 census – which Appellants concede - the electorate through the initiative and referendum process cannot do so.

S.C. Code Ann. § 4-9-10 - Appellant references S.C Code § 4-9-10 and alleges that this statutory provision provides support for the argument that a county's reapportionment plan can be changed by the electorate at any time. Appellant's reliance on S.C Code §4-9-10 is misplaced. S.C Code §4-9-10 concerns the form of government adopted by a county. It includes specific procedures for changing the form of government by referendum. S.C Code §4-9-10 has nothing to do with adopting an ordinance by initiative and referendum and has nothing to do with this case.

***Abbott v. League of United Latin American Citizens, No. 25A608* –** Appellant alleges that the *Abbott* case impacts the reapportionment of county council districts in South Carolina. As found by the trial court "In Abbott, the U.S. Supreme Court considered the constitutionality of a new redistricting electoral map created by the Texas legislature in 2025 for use in the 2026 general election. However, Abbott involves federal congressional redistricting, specific to the state of

[4] Plaintiffs' Motion for Summary Judgment, p. 9, lns. 8-9.

Texas, to rectify alleged unconstitutional "coalition districts." This does not apply to the reapportionment and redistricting of county council districts in South Carolina." R. pp. ___-___; Order Granting Summary Judgment.) *Abbott* has no impact on this case. (R. pp. ___-___; Response to Notice of Additional Authority)

The McCormick County Council adopted a valid reapportionment plan in February 2022. This plan cannot be changed until the next decennial census (2030). The McCormick County Council cannot change the adopted plan and the electors – who have no greater authority than Council – cannot change the plan by initiative and referendum.

The trial court's Order of January 6, 2026, should be affirmed.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the circuit court granting the Respondents' Motion for Summary and holding that Respondents have no duty to hold a special election referendum on the proposed initiative ordinances.

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PROOF OF SERVICE

I certify that on April 28, 2026, I served Appellant with a copy of the document specified below by emailing it to the primary e-mail address for Appellant's counsel as listed in the Attorney Information System (AIS) as specified below:

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