

Election Transparency, Accountability and Inclusion Act

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SECTION 1 – Statement of Purpose:

WHEREAS, election administration must be transparent, inclusive, and accountable to ensure fair elections and accurate results; and

WHEREAS, accountability requires that election management responsibilities be vested with persons and institutions accountable to the citizenry; and

WHEREAS, transparency requires that the public, political candidates, political parties, and the media be able to meaningfully observe the election process including any process involving the management of ballots; and

WHEREAS, government election offices must be managed in an objective manner that does not directly or indirectly benefit one candidate or political party over another; and

WHEREAS, [insert state] hereby seeks to treat all eligible voters and all legally cast ballots equally to ensure a fair election; and

WHEREAS, candidates and citizens must be respected in their ability to question government performance and in observing the election process; and

WHEREAS, occasions arise when election results are in doubt, thereby requiring a fair, transparent, and accountable method of resolving such doubt in a manner which reflects an accurate tally of the vote; and

WHEREAS, the use of machines to tally votes virtually eliminates transparency removing the public, candidates, and even election officials from the ability to view and assess in real time the accuracy of the tally; and

WHEREAS, it is the policy of [insert state] to ensure the equal treatment of all eligible voters and all ballots, by requiring state law to be equally applied and state resources to be, as much as practical, to be equally applied across the state for the management of elections; and

WHEREAS, the alterations in process and law and the infusion of private monies and expertise into government management of the 2020 election have significantly diminished faith in the election process; now, therefore,

BE IT ENACTED BY THE [INSERT state legislature] OF THE STATE OF [insert state]:

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SECTION 2: As used in this section:

- (1) "Election management" shall mean all efforts by government entities within the state of [insert state] to register voters, communicate with voters, educate voters, deliver, and receive ballots from voters, turn out voters, review the legitimacy of ballots, tally ballots, and resolve issues pertaining to the legitimacy of a ballot, as well as any activity traditionally viewed as election management.
- (2) "Core government function" shall mean "election management" and all activities designed to fulfill the government's responsibilities in election management and as considered by state open records laws.
- (3) "Ballot management" shall mean all efforts to receive and tally completed ballots, including all actions taken which are relevant to the determination of the validity of the completed ballot.
- (4) "Drop boxes" includes any receptacle from which completed ballots are deposited in and retrieved, except receptacles at the location of staffed government election offices.
- (5) "Election machines" means any machine requiring a non-mechanical operating system to cast or tally a vote.
- (6) "Voter participation information" shall mean information revealing whether a voter did or did not participate in an election, whether the voter voted in person or by absentee ballot, and the date on which the voter voted, or the absentee ballot was received.
- (7) "Ballot harvesting" shall mean the retrieval or delivery of a completed ballot by any person who is not the eligible voter whose ballot is delivered, or a person designated under the procedures outlined herein.
- (8) "Disability" means any disability which prevents a qualified voter from casting a ballot.

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- (9) “Cloud storage” means the storage of voter information and election tally information on servers maintained by third-party providers.
- (10) “Micro-targeting” means the use of data to predict selected voter behavior.
- (11) “Party observers” means individuals designated by the major political parties to engage in election observation.
- (12) “Observation” means the opportunity to meaningfully perceive activities, conduct, and speech for the purposes of ensuring the integrity of a ballot and the counting of the ballots. Observation shall also include the ability to compare voter signatures with known sources and such comparison shall not be considered an invasion of privacy by an observer.
- (13) “In-kind services” means any expertise, consulting, gifts, services, or data or tangible object provided to assist election offices in election management and ballot management.
- (14) “Public record” is a term indicating that a communication shall be subject to state open records laws.

SECTION 3. Prohibition of Ballot Harvesting. [insert state] Code Annotated, Section [insert state code] is amended by adding the following as a new subsection:

(a)

- (1) Ballot harvesting is prohibited, and all absentee ballots must be delivered by the eligible voter, a properly designated person, the United States mail, or a common carrier to a staffed election office or designated receptacle at such office.
- (2) Any ballot illegally harvested under this provision shall not be counted, unless authorized election officials are able to verify, in the presence of members of both major political parties.
 - (A) Sufficient verification shall be a properly notarized statement by the voter or verbal verification, if the members of both political

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parties agree that the verbal verification is sufficient, and such agreement is reduced to a written instrument signed by the party observers; however, such verification shall not be sufficient for ballots delivered by an authorized caregiver. Ballots delivered by designated caregivers must follow the procedures outlined in subsection (D) below for said ballots to be counted.

(b)

(1) An authorized voter may designate a person for the delivery of their ballot by complying with this section.

(A) For the purposes of this section:

(ii) An immediate family member is related to authorized voter by blood, marriage, adoption, or legal guardianship whether or not the immediate family member shares the same residence.

(ii) An authorized caregiver is a person who delivers medical or health care assistance to the voter in a residence, nursing home institution, assisted living or residential care facility, adult day health facility, or other such facility at which no immediate family member is available to assist the voter in the acceptance, completion, and delivery of the ballot.

(B) **Method of designation.** The voter must:

(i) Designate in writing the person to deliver the ballot and said designation shall be witnessed by someone other than the person designated to deliver the ballot; and

(ii) The witness's signature and address shall be present on the designation; and

(iii) The designated person shall be a member of the authorized voter's immediate family, a designated care giver, or a verifiable legal guardian.

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- (C) No more than three completed ballots may be delivered by designated persons who are authorized caregivers, except in compliance with a program developed by election officials applied consistent with this subsection.
 - (i) Election officials may develop a program providing for additional ballots to be delivered by an authorized caregiver if the completion of the ballots are completed by the voter in a way party observers from both major political parties, who are able to able to verify that the ballots were completed consistent with the voter's intent.
 - (ii) Party observers are prohibited from electioneering during such observations. Election officials must accept individuals nominated by the registered political parties as party observers. If a registered political party fails to designate an observer, election officials must designate observers from both major political parties for this program. Said observers must have been a registered member of the respective political party for more than 18 months.
- (2) Illegal ballot harvesting is a ____ class crime and shall be punishable by:
 - (A) Venue and jurisdiction to prosecute ballot harvesting may rest in the location of the ballot delivery, the location from which the ballot was harvested, the residence or business address of the person engaged in the illegal activity or any person in joint venture with said person, the location of the authorized voters temporary or permanent address, and the location of the state capitol.
 - (B) The existence of a claimed federal investigation shall not deter local and state election officials from fulfilling their responsibility in ensuring state elections are conducted lawfully.

SECTION 4. Voter Identification.

(a)

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- (1) All voters shall be required to present a valid photo identification (ID), as detailed in section (b), to an authorized election official.
- (2) The following shall constitute valid identification for this section:
 - (A) A driver's license properly issued by the appropriate state or county department or agency;
 - (B) A current U.S. passport;
 - (C) Tribal government identification if said identification includes a photo;
 - (D) IDs issued by colleges, universities, or post graduate technical or professional schools within the state if such identification includes a photo and identifies that the holder is a citizen of the United States;
 - (E) A state non-driver's ID card issued by the appropriate state or county department or agency;
 - (F) A United States military ID that contains a photograph of the holder;
 - (G) A valid [insert state] photo identification card or other valid identification card issued by a branch, department, agency, or entity of [state] or the United States authorized by law to issue such identification if the identification contains a photograph of the holder.

(b)

- (1) If a state agency has a photograph of a registered voter, said photograph shall be shared with local and state election officials, and the photograph shall be available with electronic pollbooks and available for review by election officials.

Section 5. **Citizen Observation, Transparency.**

(a)

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- (1) All election management and ballot management shall be transparent in accordance with this section.
 - (2) All election management and ballot management shall be considered a core government function and all third parties providing services shall be subject to state open records laws pertaining to their involvement with election management and core government functions.
 - (3) Election officials shall not outsource election management or core government functions in a manner that shields such activity from state open records laws or observation.
- (b)
- (1) All ballot management activities, as defined in § 2(a)(3) above, shall be open to observation by party observers.
 - (A) All contracts by election offices and officials retaining third parties to engage in core government functions, election management, or ballot handling shall be published to the public at least six months prior to election day. All such contracts must:
 - (i) Clearly identify the third-party entity, including ownership interests; and
 - (ii) Clearly identify the services provided; and
 - (iii) Provide that the third-party is subject to state open records laws and state law requiring the allowance of political party observation if such services involve the handling or tallying of ballots; and
 - (iv) Provide that the third-party must accept properly designate party observers of the handling and tallying of ballots in the same manner as election offices are required to accept such observers.
 - (B) All services by other government agencies which involve ballot handling shall also allow observation by observers designated by both major political parties.

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- (i) The [state] Secretary of State shall seek an agreement with the United States Postal Service to provide for the opportunity for designated election observers from both political parties to observe the postal facility management of absentee ballots at central processing facilities during the time absentee ballots are mailed and postmarked during an election cycle.
- (C) No person, including election officials, shall wrongfully impede the opportunity for a party observer to observe ballot management activities.
- (D) Election officials shall not reject political party nominations for the position of election observer, if such nominations are provided to the election office at least three weeks prior to election day.
 - (i) The refusal of an election official to accept a political party nomination for election observer shall vest standing in the political party to seek injunctive relief compelling the acceptance of said nomination.
 - (ii) An election official's refusal to allow a party observer the opportunity to observe election management or ballot management activities shall vest standing in the political party to seek injunctive relief to obtain such opportunity to observe.
 - (iii) Election officials who knowingly and wrongfully intend to obstruct the ability of party observers' ability to observe election management and ballot management activities shall be guilty of a class ____, and subject to ____.
 - (iv) If a court of competent jurisdiction finds an election official has knowingly and wrongfully impaired or

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prevented meaningful election observation the court may appoint a special master who shall have authority to ensure meaningful observation is provided. If the election official persists in wrongfully denying observation rights, the court may temporarily remove the official and designate another to manage the election. In such instances, the [state] Supreme Court shall have immediate jurisdiction to review the decision of the lower court.

(E) Election machines shall not be used in tallying the vote.

(In the alternative) (E) All election machines shall be available for forensic review by designated representatives of the political candidates and parties.

(In the alternative) (E) Election machines shall not be used in the casting or tallying of votes.

(In the alternative) (E) Election machines shall not be used in the casting of votes except to assist persons whose vision prevents them from being able to complete a paper ballot. Election machines shall not be used in the tallying of the vote.

- (i) Under no circumstances will official or unofficial election results be in cloud storage.
- (ii) It shall not be a crime for local and state election officials to gain access to election machines for the purposes of ensuring the proper functioning of such machines.
- (iii) All contracts with election machine vendors shall be subject to state open records laws and such vendors shall be considered to be involved in a core government function. The Secretary of State shall maintain a website

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identifying and providing access to all existing contracts with election machine vendors.

- (F) Local election offices shall allow voters who require assistance, by reason of blindness, other disability, or inability to read or write, to receive assistance by a person designated by the voter, so long as the designated person is not the voter's employer or an agent of that employer or agent of the voter's union. Such designation must be made in writing and signed by the voter and the person providing the assistance. The writing must also describe the reason assistance is required and the name and address of both the voter and the designated person.
- (G) Election officials shall provide meaningful observation to representatives of the media and the public.
- (H) Election officials shall not ban cameras or phones, nor prohibit their use, in an effort to prevent observation of election management or ballot management.
 - (i) The photograph of any ballot and registration information in a manner that reveals the nature of the vote of any person is prohibited, and election officials shall preserve the privacy of the actual vote cast by an individual voter.
- (I) Voter participation information shall be made available to the public within 10 days after election day.

Section 6. **Maintaining government objectivity.**

(a)

- (1) No local, state, or county office or agency shall accept monies or in-kind assistance from any non-government source for election management or ballot management, unless said monies are appropriated by the state legislature or assistance approved by the state legislature. The state legislature shall

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appropriate said funds in a manner designed to treat every voter and every ballot equally under the law and to afford equal access to the opportunity to vote.

(2) State and local government officials shall not use data or information from any source to predict voter behavior and shall not allocate resources to encourage voter turnout or voter registration to any targeted population.

(A) Nothing in this section shall prohibit providing voter information in a targeted fashion to overcome language barriers. Such targeted efforts, however, shall be in accordance with a plan to communicate such information to the entire voting population.

(b)

(1) Government offices shall not allow electronic access to voter registration records in a manner allowing access by non-government entities or agents for voter registration purposes. Voter registration must be managed by local election offices, the secretary of state and not by non-government entities.

(2) Government contracts for the design and maintenance of electronic voter records shall prohibit voter registration activities by the vendor and prohibit the assignment of such rights.

(3) Private parties engaged in voter registration efforts shall not receive any information, services, or assistance from any government agency not available to all other interested parties engaged in such efforts. It is the responsibility of the government agency to publish the services so provided with sufficient notice that all interested parties may receive similar information, services, and assistance.

(c)

(1) No government official shall knowingly engage in election management or ballot management for the purpose of benefiting any candidate or political party over any other candidate or political party.

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(d)

(1) Violation of this section shall be a _____ and punishable by _____.

(e)

(1) Venue and jurisdiction to prosecute ballot harvesting may rest in the location of the ballot delivery, the location from which the ballot was harvested, the residence or business address of the person engaged in the illegal activity or any person in joint venture with said person, the location of the authorized voters temporary or permanent address, and the location of the state capitol.

(2) The existence of a claimed federal investigation shall not deter local and state election officials from fulfilling their responsibility in ensuring state elections are conducted lawfully.

Section 7. **Absentee Balloting.** This section covers the provisions for the management of absentee ballots, including and not limited to the receipt and tallying of such ballots, in all elections.

(a)

(1) The preferred method of voting in [state] is in-person voting. Trained election officials are present during in person voting to ensure the voter is eligible and that the voter is not misled, intimidated, or coerced when voting. This important safeguard is generally not present during absentee voting.

(2) Nevertheless, any qualified elector may request an absentee ballot if the elector requests such ballot in writing not less than 14 days prior to Election Day and meets one or more of the following requirements:

(A) The elector expects to be out of the voting jurisdiction on Election Day and during all Early Voting Days; or

(B) The elector has a disability preventing the elector from the ability to vote in-person.

(b) **The request for and provision of absentee ballots.**

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- (1) No government entity or official may provide an absentee ballot to an elector without the elector making such a request. Said absentee ballot application may be prefilled by any government entity or official with the elector's required information.
- (2) The state may establish a method to request an absentee ballot online and/or in person.
- (3) Completed absentee ballots may only be returned by the elector, a person designated consistent with this act, a common carrier, an election official, the United States Postal Service, or a law enforcement officer in the official course of an investigation.
- (4) The absentee ballot request form shall be completed by the elector and require such information that an election official may identify that the request is being made by the qualified elector including the elector's name, residence address.
- (5) Each application shall be signed by the qualified elector, and, if the elector signs by mark, the application shall also contain the signature of a witness who was personally acquainted with the qualified elector prior to the request for the absentee ballot. The witness shall sign the application, indicate the period of time in which the witness was acquainted with the elector, and provide his or her name, address, and phone number.
 - (A) Witnesses may not sign more than one absentee ballot request form per election, unless doing so for a parent, stepparent, spouse, child, stepchild, or stepsibling; or grandparent.
 - (i) Violation of this subsection shall be ___ punishable by ___.
- (6) Electors requesting an absentee ballot shall provide a photocopy of the electors consistent with Section 4 of this Act.

(c) The receipt of absentee ballot request forms.

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- (1) Election officials shall compare the applicant's name and identifying information to the list of qualified voters and compare the applicant's signature to a signature on file to determine if the qualified elector is making the request. The information provided must enable a reasonable determination that the elector is making the request and officials may not assume such requests are valid nor assume the relevant signature matches.
- (2) Election officials shall maintain copies and/or the original of all absentee ballot request forms, including the photocopying of the identification provided by the requesting elector, and note the signature on file utilized to compare with the signature on the absentee ballot request form. Such materials shall be made available to candidates upon the request of the candidate or a designated representative of the candidate. The above information shall also be transmitted to the Secretary of State and shall be available to members of the media and designees of the political parties upon request. Election officials must make such information available to members of the public and may charge a reasonable fee for the provision of such information.
- (3) Election officials shall maintain a list of electors who have been provided absentee ballots, which shall include the date the application for the absentee ballot was received and the date the ballot was provided or mailed, and the date the absentee ballot was returned. This list shall be provided to the relevant local precinct for the tabulation of the absentee ballots in the precinct.
- (4) Local election officials shall endeavor to provide absentee mail ballots or early ballot information to state election authorities within 24 hours of request for, transmission of, and return of all absentee or mail ballots.

Section Eight. **The Procedure for Voting by Absentee Ballot.**

- (a)
 - (1) Return envelopes for absentee ballots must include or contain or have attached an affidavit signed by the voter and which contains the signature of a witness or notary public or other official authorized to acknowledge oaths. The oath must inform the elector that he or she is affirming under penalty of

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law that he or she is a United States citizen, is a qualified elector, and that the information provided is true and accurate. Absentee ballots that are returned but do not comply with this subsection shall not be counted.

- (2) If the elector has a witness acknowledge the signature and identification of the elector, the witness must provide his or her name, address, phone number, signature, and indicate the period of time the witness has been acquainted with the elector. Witnesses shall not sign more than one absentee ballot return form except that witnesses may sign for multiple immediate family members as described in subsection 5(a) above.
- (3) A copy of the elector's valid ID consistent with subsection Four above shall be provided with the completed absentee ballot return. Absentee ballot returns not complying with the ID requirement shall not be counted.
- (4) Absentee ballot envelopes not signed by the voter and properly witnessed or notarized shall not be opened or counted.
- (5) Election officials shall provide bipartisan teams to assist individuals who are seeking to cast absentee ballots from nursing homes, hospitals, or other such facilities, who, due to disability, require assistance in returning absentee ballots. Team members, however, cannot serve as a witness unless the team member has been acquainted with the elector. If election officials form such teams, the officials must accept the nominations for team members by the two major political parties. The candidates from the two major political parties, and/or the two major political parties, may request the formation of such teams and the election officials shall establish such teams consistent with this section. Absentee ballots completed in the presence of such teams must still comply with all other applicable provisions relating to absentee ballots.
- (6) If an absentee ballot or absentee ballot request form is returned as undeliverable by the United States Postal Service, the election official shall log such return, engage in a reasonable review to determine the relevant elector's eligibility, and report this information and the election official's conclusion to the Secretary of State. Such information shall also be available to law enforcement officials upon request.

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- (7) Permanent absentee ballot lists are prohibited and shall not be maintained. Election officials may not mail absentee ballot request forms or ballots to electors unless a valid request is made under this section.
- (8) Absentee ballots may be received pursuant to a drop box located at a staffed election office and such ballots must comply with all the requirements of this section. All election jurisdictions shall endeavor to distribute the presence of election offices and any office drop box in a manner affording all voters an equal opportunity to access such services.

(b) Receipt of absentee ballots.

- (1) Absentee ballots must be received by the time polls close on Election Day.
- (2) Absentee ballots properly received under this section shall be recorded as received and election officials shall securely store, without opening the absentee ballot envelope, the absentee ballot and envelope in a sealed container. The container shall remain sealed and in possession of the election office until such time the counting of the absentee ballots begins.
- (3) The counting of the absentee ballots shall only begin at the time the polls close in the election for which the ballot was cast and shall continue uninterrupted until such time all the ballots have been reviewed for proper submission and counted. Said determinations and counting shall be conducted in such a manner as to afford election observers meaningful observation opportunity and shall be conducted with section five herein.
- (4) Election officials shall examine each affidavit envelope to determine:
 - (A) Whether the elector's signature on the absentee ballot envelope matches the signature in the elector's voter registration file. If signature comparison software is used to conduct the comparison, the ballots shall not be accepted if the signatures match to less than 95% accuracy and all such ballot signatures matching with 95% accuracy or greater shall be accepted as valid signatures;

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- (B) Whether the signature has been properly notarized or witnessed and whether the witness has provided a signature, printed name, address, phone number, and an indication of how long the witness has been acquainted with the elector;
 - (C) Whether the elector identification requirement has been met; and
 - (D) Whether the envelope was timely received.
- (5) Envelopes not meeting the above requirements shall not be opened and the ballot contained in the envelope shall not be counted.
- (6) If all of the above requirements have been met, election officials shall open the ballot envelope and the elector's affidavit established that the elector may properly vote by absentee ballot, election officials shall certify their findings, open each affidavit envelope, and deposit the plain envelope containing the absentee ballot into a sealed ballot box.
- (7) If machines are to be used in the tally of absentee ballots all absentee ballots shall contain a watermark on the ballot as well as a unique barcode or microchip within each absentee ballot which allows the ballot to only be counted one time. The barcode shall not identify the elector.
- (8) All envelopes used in the provision or receipt of absentee ballots shall also contain a unique barcode or microchip that can be used to track the provision of the blank ballot and the progress of the completed ballot through the United States Postal Service.
- (9) Violation of this section shall be a ____ crime and punishable by ____.
- (A) Venue and jurisdiction to prosecute ballot harvesting may rest in the location of the ballot delivery, the location from which the ballot was harvested, the residence or business address of the person engaged in the illegal activity or any person in joint venture with said person, the location of the authorized voters temporary or permanent address, and the location of the state capitol.

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- (B) The existence of a claimed federal investigation shall not deter local and state election officials from fulfilling their responsibility in ensuring state elections are conducted lawfully.

Section Nine. **Counting the Vote.**

(a)

- (1) The deadline for the receipt of all absentee ballots shall be the closing of the polls on Election Day.
- (2) The counting of any ballot shall not commence until after the polls close on election day.
- (3) Upon commencing the counting of ballots the counting shall continue without interruption until completed. If unforeseen and extreme circumstances require the suspension of the count, election officials shall notify the public the exact time and date when the count was suspended and the exact date and time the counting will renew.

Section Ten. **Violations of this Act, Penalties, and Remedies.**

(a)

- (1) The knowing violation of any provision of this Act by a government official shall be a class A misdemeanor unless otherwise indicated.

(b)

- (1) Knowing violations of this Act in order to benefit a specific candidate, political party, or campaign shall be a class ___ felony.

(c)

- (1) The statute of limitations for violations of this Act shall be 3 years.
- (2) Intentional efforts to conceal any violation of this Act shall toll the statute of limitations, however, in no event shall the limitation exceed 6 years.

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Section Eleven. **Legislative Standing Committee – formation, powers, and responsibilities. (Provided upon request-provides express powers of investigation and standing in litigation).**

Section Twelve. Legislative Standing.

(a)

- (1) The legislature shall have standing to intervene as a party in any litigation wherein any other state agency is a party and the action relates to government management of elections.
- (2) No state agency may settle litigation in a manner which alters the application of any provisions of the election code or this Act without the approval of the legislature when the legislature intervenes or is a party to the litigation.

Section Thirteen. (a) Effective Date. All Sections of this Act Shall become effective on July 1, _____.

Section Fourteen. Repealed. (a) All other sections of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. (b) All laws and parts of laws in conflict with this Act are repealed.

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