

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

SHARON C. STEWART,

Plaintiff,

v.

Case No.

STATE OF MISSOURI,

SERVE: Missouri Attorney General's Office,
Supreme Court Building, 207 West High
Street, Jefferson City, Missouri 65102,

TREVOR FOLEY, in his official capacity as
the Director of the Missouri Department of
Corrections, Division of Probation and Parole,

SERVE: 2729 Plaza Drive, P.O. Box 236,
Jefferson City, Missouri 65102,

JONATHAN D. BARKER, in his official
capacity as Dallas County Prosecuting
Attorney,

SERVE: 108 South Maple Street, P.O. Box
19, Buffalo, Missouri 65622,

Defendants.

PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

COMES NOW, Plaintiff Sharon C. Stewart, by and through counsel, and for her petition
for injunctive and declaratory relief, states as follows:

INTRODUCTION

1. Nearly six years ago, in November 2018, Missouri voters approved Amendment 2,
which was incorporated into the Missouri Constitution as Article XIV § 1, now titled the "Right

to access medical marijuana.” This section is “intended to ... protect patients ... from civil and criminal penalties,” in addition to establishing the legal parameters for the production, sale, and use of medical marijuana. Mo. Const. Art. XIV § 1.1. Such protections are detailed in § 1.5, which provides, among other things, that the possession of marijuana by a qualifying patient “shall not subject the possessor to arrest, criminal or civil penalty, or sanctions under Missouri law[.]” Mo. Const. Art. XIV § 1.5(1) (emphasis added). The section further states that “[r]egistered qualifying patients on bond for pre-trial release, on probation, or other form of supervised release shall not be prohibited from legally using a lawful marijuana product as a term of condition or release, probation, or parole.” Mo. Const. Art. XIV § 1.5(13) (emphasis added). Nor shall “[l]awful marijuana related activities ... be the basis for a violation of parole, probation, or any type of supervised release.” Mo. Const. Art. XIV § 1.5(12).

2. On November 8, 2022, voters approved Amendment 3, a ballot initiative legalizing personal use of marijuana, which was incorporated into the Missouri Constitution as Article XIV § 2. This section also provides that “[l]awful marijuana related activities cannot be the basis for a violation of parole, probation, or any type of supervised release.” Mo. Const. art. XIV, § 2.7(6).

3. Despite these clear constitutional protections and her possession of a valid qualifying patient identification card (i.e., a medical marijuana card), on February 5, 2024, Plaintiff Sharon Stewart was found to have violated the terms of her probation after testing positive for marijuana use.

4. Specifically, the court found that even though Plaintiff possessed a medical marijuana card, she violated a condition of her probation because her use of marijuana was contrary to *federal law*.

5. The State requested that Plaintiff's probation be continued with an additional special condition of 10 days shock time in jail. The court continued Plaintiff on probation but imposed two days of shock time in jail.

6. Ms. Stewart served the two-day sentence in the Dallas County Jail from May 3 to May 5, 2024.¹

7. Plaintiff holds a valid qualifying patient identification card issued by a state-licensed physician and uses marijuana to treat diagnosed physical and mental health conditions.

8. Plaintiff has held her valid qualifying patient identification card since April 2022.

9. Plaintiff brings suit because a term of her probation as well as Defendants' actions penalized her for engaging in lawful, constitutionally-protected marijuana use and are in direct conflict with Article XIV of the Missouri Constitution. Plaintiff seeks a declaration that Defendants violated Plaintiff's constitutional rights and requests that Defendants be enjoined from doing so again while she is on probation—in line with various other states.²

¹ Plaintiff's criminal defense counsel argued that any penalty for the use of marijuana would violate the Missouri Constitution. While the court did find she violated her probation and ordered Plaintiff to serve jail time, the court also stayed her sentence until any appeal of it could be determined by Missouri's appellate courts. Thereafter, in an attempt to challenge the finding that she violated her probation, Plaintiff first filed a *pro se* notice of appeal and then, with the assistance of undersigned counsel, filed writs of prohibition in the Missouri Court of Appeals, Southern District and Missouri Supreme Court. *See* Case numbers SD38428, SD38453, and SC100516. The appeal was dismissed for lack of appellate jurisdiction and the writs were denied without explanation. As noted herein, Plaintiff served the two-day shock sentence.

² *See, e.g., People v. Thue*, 969 N.W.2d 346, 353 (Mich. Ct. App. 2021) (holding probationers could not be prohibited from approved medical marijuana use); *Gass v. 52nd Judicial Dist., Lebanon Cty.*, 232 A.3d 706, 715 (Pa. 2020) (holding the trial court's policy of prohibiting all probationers from using medical marijuana violates the state medical marijuana act); *State v. Miller*, 450 P.3d 578, 579–580 (Or. Ct. App. 2019) (holding probation conditions related to use of medical marijuana were invalid under the state medical marijuana act); *Reed-Kaliher v. Hoggatt*, 347 P.3d 136, 139 (Ariz. 2015) (holding probation conditions could not include prohibition of lawful marijuana use).

JURISDICTION AND VENUE

10. This Court maintains original subject-matter jurisdiction over this action under §§ 526.030 and 527.010 of the Missouri Revised Statutes and Rule 87.01 of the Missouri Rules of Civil Procedure.

11. Venue is proper in this Court because Defendant Trevor Foley, in his official capacity as Director of the Missouri Department of Corrections, Division of Probation and Parole, maintains offices in Cole County, Missouri.

PARTIES

Plaintiff

12. ***Sharon C. Stewart.*** Plaintiff Sharon C. Stewart is a resident of Springfield, Missouri. In December 2022, Ms. Stewart pleaded guilty to unlawful possession of a firearm in violation of § 571.070, RSMo., and was sentenced to seven years imprisonment in the Missouri Department of Corrections. The trial court suspended execution of the sentence and placed Ms. Stewart on a five-year term of probation which expires December 11, 2027.³

Defendants

13. ***State of Missouri.*** Defendant State of Missouri violated and continues to violate the Missouri Constitution, which requires that the state “shall not subject the possessor of marijuana to arrest, criminal or civil liability, or sanctions under Missouri law, provided that the possessor produces on demand to the appropriate authority a valid qualifying patient identification card” Mo. Const. Art. XIV § 1.5(1). The Missouri Constitution further provides that “[I]awful marijuana related activities cannot be the basis for a violation of parole, probation, or any type of supervised release.” Mo. Const. Art. XIV § 1.5(12).

³ Criminal case number 22DA-CR00157-01.

14. **Trevor Foley.** Defendant Trevor Foley is the Director of the Missouri Department of Corrections (or the “Department”). He is sued in his official capacity as the administrator of the Department, which includes the Division of Probation and Parole (or the “Division”). The Division is responsible for supervising individuals on probation (including Plaintiff), promulgating regulations related to probation and parole, and filing notices of violation for alleged probation violations.

15. **Jonathan D. Barker.** Defendant Jonathan D. Barker is the Dallas County Prosecuting Attorney. He is sued in his official capacity as the chief law enforcement official in Dallas County. His office is responsible for filing and prosecuting motions related to probation violations and motions to revoke probation.

GENERAL FACTUAL ALLEGATIONS

16. On December 12, 2022, Plaintiff pleaded guilty to felony unlawful possession of a firearm in violation of § 571.070, RSMo., and was sentenced to a term of seven years in the Missouri Department of Corrections. The trial court suspended execution of the sentence and placed Plaintiff on a five-year term of probation. *See Ex. 1 – Judgment and Sentence.*

17. Plaintiff’s probation is set to expire on December 11, 2027.

18. In the judgment, the court ordered Plaintiff to comply with six conditions (or terms)

of probation:

- i. First, she is required to “obey all laws and ordinances.”
- ii. Second, she must “obey all directives of Probation/Parole.”
- iii. Third, she must “pay all court costs and CVC Judgment within 24 months.”

iv. Fourth, she must “obtain a substance abuse evaluation within 90 days and follow any recommendations with regard to treatment.”

v. Fifth, she must “follow all directives of her current mental health provider.”

vi. Sixth, she must “not possess firearms or ammunition.”

Ex. 1 at pg. 2.

19. The second condition—that Plaintiff “obey all directives of Probation/Parole,”—encompasses ten “standard conditions” of probation. The Division promulgates these “standard conditions,” which are broadly indicated as: 1. Laws, 2. Travel, 3. Residency, 4. Employment, 5. Association, 6. Drugs, 7. Weapons, 8. Reporting/Directives, 9. Supervision Strategy, and 10. Intervention Fees. *See Ex. 2* – Department of Corrections, Division of Probation and Parole Rules and Regulations Governing the Conditions of Probation, Parole, and Conditional Release (the “Rules and Regulations”).

20. The first “standard condition,” titled “Laws,” states: “I will obey all federal and state laws, municipal and county ordinances. I will report all arrests to my Probation and Parole Officer within 48 hours.” *Ex. 2* at 2.

21. The sixth “standard condition,” titled “Drugs,” states: “I will not have in my possession or use any controlled substance except as prescribed for me by a licensed medical practitioner. Use of any controlled substance, unless prescribed for you by a physician, is illegal. Therefore, the use or possession of such drugs is not only a violation of your supervision conditions but is also a violation of the law. Your Probation and Parole Officer reserves the right to contact your physician regarding your use of prescribed drugs.” *Ex. 2* at 6.

22. On January 4, 2023, pursuant to the fourth condition, which required her to “obtain a substance abuse evaluation within 90 days and follow any recommendations with regard to treatment,” Plaintiff completed a substance abuse evaluation with Compass Health Network.

23. In her substance abuse evaluation, the provider noted that Plaintiff is under the care of a therapist and psychiatrist and recommended “no additional services.” *See Ex. 3* – Compass Health Open Access Recommendation Checklist.

24. Plaintiff’s evaluation did not include any specific or additional “recommendations with regard to treatment” as contemplated by the fourth probation condition.

25. In April 2022, a state-licensed physician issued Plaintiff a qualifying patient identification card (i.e., a medical marijuana card). *See Ex. 4* – Medical Marijuana Cards.

26. Plaintiff has been diagnosed with several physical and mental health conditions, including Post Traumatic Stress Disorder (PTSD), chronic bilateral hand pain, and chronic spinal pain (degenerative disc disease).

27. On June 1, 2023, Plaintiff provided images of her qualifying patient identification card (i.e., a medical marijuana card) to her probation officer.

28. On June 16, 2023, a Notice of Citation was filed in Plaintiff’s criminal case. *Ex. 5* – June 2023 Notice of Citation.

29. The June 2023 Notice of Citation alleges that Plaintiff violated “Condition #6 Drugs” on the grounds that she tested positive for THC. *Id.* The Notice also states that Plaintiff has a medical marijuana card and that she uses marijuana for medical reasons. *Id.* It also notes that Plaintiff’s medical marijuana card does not expire until May 3, 2026. The Notice indicates that

Plaintiff was “not to use or possess drugs of any kind unless it is prescribed for her use by a medical doctor who is licensed as such in the State of Missouri.” *Id.*⁴

30. On June 21, 2023, Defendant State of Missouri, by and through Defendant Jonathan Barker in his capacity as the Dallas County Prosecuting Attorney, moved to revoke Plaintiff’s probation asserting that Plaintiff violated “Condition #6 Drugs,” after she admitted to using marijuana and tested positive for THC on June 1, 2023. *See Ex. 6* – June 2023 Motion to Revoke Probation.

31. The June 2023 Motion states: “[t]he evidence of said violations is contained in the field violations reports and citations submitted by the Missouri Board of Probation and Parole which are on file with the Court in this matter and which are listed above and incorporated by reference.” *Ex. 6.*

32. The June 2023 Notice of Citation and associated Motion to Revoke only identified “Condition #6 Drugs” as the basis for the violation and proposed revocation. *See Ex. 5* and *Ex. 6.*

33. At the revocation hearing held on July 13, 2023, the court made no finding as to whether there had been a violation and continued Plaintiff’s probation. *See Ex. 7* – Docket Entry – July 13, 2023.

⁴ The sixth term or condition of probation in the court’s sentencing order indicates that she must “not possess firearms or ammunition.” *See Ex. 1.* The probation officer and prosecutor’s reference to “Condition #6 Drugs” appears to reference the second condition of Plaintiff’s probation, that she “obey all directives of Probation/Parole,” which encompasses ten “standard conditions” of probation: 1. Laws, 2. Travel, 3. Residency, 4. Employment, 5. Association, 6. Drugs, 7. Weapons, 8. Reporting/Directives, 9. Supervision Strategy, and 10. Intervention Fees. *See Ex. 2.*

34. On December 22, 2023, a second Notice of Citation was filed in Plaintiff's criminal case. **Ex. 8** – December 2023 Notice of Citation.

35. On December 26, 2023, Defendant State of Missouri, by and through Defendant Jonathan Barker in his capacity as the Dallas County Prosecuting Attorney, again moved to revoke Plaintiff's probation, again alleging violation of "Condition #6 Drugs" following a positive THC test result on December 7, 2023. *See* **Ex. 9** – December 2023 Motion to Revoke Probation.

36. The December 2023 Motion states: "[t]he evidence of said violations is contained in the field violations reports and citations submitted by the Missouri Board of Probation and Parole which are on file with the Court in this matter and which are listed above and incorporated by reference." **Ex. 9**.

37. Like the June 2023 Motion, "Condition #6 Drugs" was the only basis for probation revocation raised in the December 2023 Motion. *See* **Ex. 8** and **Ex. 9**.

38. Like the June 2023 Notice of Citation, the December 2023 Notice of Citation states that Plaintiff holds a medical marijuana card and uses marijuana for medical reasons. It also notes that her medical marijuana card does not expire until May 3, 2026. The December Notice indicates further that Plaintiff is "not to use or possess drugs of any kind unless it is prescribed for her use by a medical doctor who is licensed as such in the state of Missouri." **Ex. 8**.

39. On February 5, 2024, the court called up for hearing the December 2023 Motion to Revoke. **Ex. 7**.

40. As the docket reflects, Plaintiff's criminal defense counsel argued that finding a violation of probation based upon the use of marijuana would be contrary to the Missouri Constitution.

41. The court nevertheless found that Plaintiff violated the *first* condition of her probation—to “obey all laws and ordinances”—when she tested positive for marijuana because using marijuana violates *federal law*.

42. The court cited no provision of federal law in its findings.

43. After finding a violation of federal law, the court continued Plaintiff’s probation but ordered her to complete two days “shock incarceration” in the Dallas County jail.

44. Plaintiff complied and reported to the Dallas County jail to serve her two-day shock incarceration beginning at 5:00 p.m. on May 3, 2024.

45. Plaintiff understands that she will have to submit to a drug test on or about August 7, 2024, and that drug testing will be an ongoing part of her interactions with her probation officer.

46. Plaintiff continues to use medical marijuana at the direction of her medical and mental health providers to treat her physical and mental health diagnoses. Plaintiff finds that marijuana is one of the most effective treatments for her, especially for treating her PTSD.

47. Marijuana has proven to be a more effective treatment for Plaintiff’s PTSD than any other prescription medication, including Xanax and other antianxiety medications.

48. Plaintiff’s current mental health provider strongly agrees with her physician who prescribed marijuana because it is medically necessary for Plaintiff.

CLAIMS FOR RELIEF

COUNT I

***Violation of the Right to Access Marijuana
Article XIV, Sections 1 and 2 of the Missouri Constitution***

49. Plaintiff realleges and incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

50. Article XIV, § 1 of the Missouri Constitution guarantees “the right to use medical marijuana for treatment[.]” Mo. Const. Art. XIV § 1.1.

51. Article XIV, § 1 is intended to “protect patients, their primary caregivers, and their physicians and nurse practitioners from civil and criminal penalties[.]” *Id.*

52. Article XIV, § 1 provides that the “possession of marijuana ... shall not subject the possessor to arrest, criminal or civil liability, or sanctions under Missouri law.” Mo. Const. Art. XIV § 1.5(1).

53. Article XIV, § 1 requires that conduct “permitted by this section and in compliance with [Department of Health and Senior Services] regulations and other standards of legal conduct, shall not be subject to criminal or civil liability or sanctions under Missouri law, except as provided by this section.” Mo. Const. Art. XIV § 1.5(9).

54. Article XIV, § 1 provides that the lawful marijuana related activities cannot furnish a basis for a violation of parole, probation, or any type of supervised release. Mo. Const. Art. XIV § 1.5(12).

55. Under Article XIV, § 1, the right to use marijuana products by registered qualifying patients shall not be infringed upon by conditions of pre-trial release, probation, or parole. Mo. Const. Art. XIV § 1.5(13).

56. Article XIV § 2 of the Missouri Constitution further provides that “[l]awful marijuana related activities cannot be the basis for a violation of parole, probation, or any type of supervised release.” Mo. Const. art. XIV, § 2.7(6).

57. The Missouri Constitution broadly immunizes individuals, including Plaintiff, from arrest, prosecution, or penalty in any manner, or denial of any right or privilege, solely for the lawful use of medical marijuana.

58. It is a violation of the Missouri Constitution for the use or possession of marijuana to be the basis for a violation of probation.

59. It is a violation of the Missouri Constitution for the Defendants to take any action against Plaintiff, including, but not limited to, filing notices of violation or motions to revoke related to her use of medical marijuana.

60. Because the Missouri Constitution prohibits Defendants from imposing any sanction or penalty on individuals who use medical marijuana in accordance with the law, it is irrelevant whether a court finds that the use violates federal law. No action can be taken to allege such a violation, and therefore, there can be no finding of such a violation at all.

61. Defendants' actions violate the Missouri Constitution.

62. Plaintiff continues to use medical marijuana to treat her physical and mental health conditions and has a valid qualifying medical marijuana card issued by the State of Missouri.

63. Plaintiff will continue to receive urinalysis drug testing for the duration of her probation term.

64. Plaintiff has already had two notices of citation and motions to revoke filed against her related to her medical marijuana use.

65. Plaintiff has been informed by her probation officer that she will be required to take a urinalysis test for drug use in early August.

66. Plaintiff has been found by the court to have violated her probation terms for her lawful use of marijuana and previously sentenced to jail for that violation.

67. This is an issue of public significance and is likely to recur.

68. As other courts have found in similar circumstances: “[T]he relatively short timelines involved in probation cases compared with the often sluggish pace of the appellate process might

make this situation one that is capable of repetition, yet evading review.” *People v. Thue*, 969 N.W.2d 346, 349 (Mich. Ct. App. 2021) (quoting *People v. Vanderpool*, 952 N.W.2d 414, 397 n.1 (Mich. 2020)). “The issue whether a sentencing court can prohibit a defendant from using medical marijuana as a condition of probation when the defendant possesses a valid medical marijuana registration card is one of public significance that is likely to recur yet evade judicial review.” *Id.*

COUNT II

Violation of Due Process Under Article I, Section 10 of the Missouri Constitution

69. Plaintiff realleges and incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

70. Article I, Section 10 of the Missouri Constitution provides “[t]hat no person shall be deprived of life, liberty or property without due process of law.”

71. This due process guarantee requires that a person’s terms of probation, like any other state directive, “give ordinary people fair notice of the conduct it punishes” and not be “so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015); see, e.g., *State v. Young*, 695 S.W.2d 882, 884 (Mo. banc 1985).

72. The standard and special conditions of Plaintiff’s probation are unconstitutionally vague.

73. Plaintiff has a fundamental right to access adequate medical care.

74. The Missouri Constitution gives Missourians the constitutional right to use medical marijuana.

75. Plaintiff holds a valid medical marijuana card and uses marijuana to treat diagnosed physical and mental health conditions.

76. The use of medical marijuana is necessary to treat Plaintiff's diagnosed conditions.

77. The unconstitutional practice of penalizing and sanctioning Missourians who are on probation, including Plaintiff, for the exercise of their right to use marijuana, particularly as it applies to Plaintiff's use of medical marijuana, violates the Missouri Constitution.

COUNT III

Violation of the Right to be Free from Cruel and Unusual Punishment Article I, Section 21 of the Missouri Constitution

78. Plaintiff realleges and incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

79. Article I, Section 21 of the Missouri Constitution provides "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

80. Plaintiff holds a medical prescription for marijuana, as is her constitutional right under the Missouri Constitution.

81. This marijuana is necessary to treat Plaintiff's physical and mental conditions. Without medical marijuana, Plaintiff's quality of life will substantially deteriorate.

82. Because the medical marijuana is necessary to treat her physical and mental conditions, enforcing the terms of her probation in a way that deprives Plaintiff of her constitutionally protected right to use medical marijuana will cause her immense pain, both physical and mental.

83. Considering the totality of the circumstances — Plaintiff's need for her medical treatment (as prescribed by her medical provider) and the constitutional right to use medical marijuana — it would be cruel and unusual punishment to interpret Plaintiff's probation conditions to ban the use of medical marijuana.

84. Indeed, it is notable here that the at-issue term is an alleged violation of federal law. Federal law provides that although probation orders "may provide that the defendant 'refrain

from excessive use of alcohol, or any use of a narcotic drug or other controlled substance,” there is generally a caveat that such use should be permitted where authorized by “prescription [issued] by a licensed medical practitioner.” *See, e.g.*, 18 U.S.C. § 3563(b)(7).

85. Here, not only is Plaintiff’s use of medical marijuana authorized by prescription, but it is also protected by the Missouri Constitution.

86. The unconstitutional practice of penalizing and sanctioning Missourians who are on probation, like Plaintiff, including subjecting them to jail and prison time, for the legal use of marijuana, particularly as it applies to Plaintiff’s use of medical marijuana, violates the Missouri Constitution.

COUNT IV

Declaratory Judgment Pursuant to § 527.010, RSMo.

87. Plaintiff realleges and incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

88. An actual controversy has arisen now and exists between Plaintiff on the one hand and Defendants on the other hand concerning the respective rights and duties of the parties under the terms and conditions of Plaintiff’s probation.

89. The terms of Plaintiff’s probation as reflected in the trial court’s judgment require her to “follow all directives of her current mental health provider” and separately to “obey all federal and state laws, municipal and county ordinances.”

90. As interpreted and enforced, it is impossible to comply with both of these conditions.

91. Plaintiff’s mental health provider has directed that Plaintiff continue using medical marijuana to mitigate and control her physical and mental health conditions, including PTSD.

92. By interpreting the “obey all federal” laws requirement to mean that Plaintiff cannot use medical marijuana, Defendants have made it impossible for Plaintiff to comply with all of the terms and conditions of her probation.

93. The terms and conditions of Plaintiff’s probation should be interpreted and enforced in a manner consistent with one another.

94. Plaintiff, therefore, seeks a declaration of the parties’ respective rights and duties under the terms and conditions of Plaintiff’s probation and requests the Court declare the Defendants’ interpretation (rendering Plaintiff’s compliance impossible) as unlawful.

WHEREFORE, Plaintiff prays this Court:

A. Enter declaratory judgment that the Missouri Constitution expresses a clear, unequivocal, fundamental, and individual right to use and possess medical marijuana;

B. Enter declaratory judgment that because of this fundamental right to use and possess medical marijuana, it violates the Missouri Constitution for Defendants to take any action against Plaintiff related to revoking her probation because of her use of medical marijuana, including filing any notice or motion with a court;

C. Enter declaratory judgment that the Missouri Constitution does not allow for the use of marijuana, whether medical or personal, to be the basis for a probation violation;

D. Enter declaratory judgment that the Department of Corrections, Division of Probation and Parole may not promulgate standardless conditions of probation that conflict with the constitutional right to use and possess medical or personal use marijuana;

E. Enter declaratory judgment that Defendants may not enforce the terms and conditions of Plaintiff’s probation to prohibit the use of medical marijuana because such enforcement makes it impossible to comply with all terms and conditions of her probation;

F. Enjoin Defendants, and anyone acting in concert with them, from taking any action to enforce a term or condition of probation prohibiting the use of medical marijuana;

G. Enjoin Defendants, and anyone acting in concert with them, from including any probation term or condition that prohibits the use of medical or personal use marijuana;

H. Enjoin Defendants, and anyone acting in concert with them, from taking any action, including the filing of notices or motions, related to an alleged probation violation for the use of medical marijuana; and

I. Order any other such relief this Court deems justice requires.

Respectfully submitted,

/s/ Jonathan D. Schmid

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