



Time Is of the Essence

The United States and other nations are quickly facing the point of no return on climate change. Stronger measures are needed to turn the rising fossil fuel tide. We can start by reining in oil and gas exports and turning off the subsidy spigot feeding the fossil fuel industry



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A YOUNG WOMAN CARRIED a placard that caught our attention at a recent climate protest in New York City: “No Intelligent Species Would Destroy Their Environment, DUH.” In the face of 2023’s unprecedented Canadian wildfires, Pacific rain bombs, killer floods, hotter oceans, and deadly heat waves, Planet Earth is rapidly departing from the Goldilocks Era of relative climate stability for a wild Anthropocene, when human activities are a major climate driver.

Carbon pollution, largely from fossil fuels, is dramatically altering the climate and putting people in harm’s way. In Libya, more than 15,000 citizens ended up dead or missing after a single night of flooding. In the United States, last summer’s sweltering extreme heat across the country “would have been virtually impossible if humans had not warmed the planet by burning fossil fuels,” according to World Weather Attribution, a respected consortium of climate scientists.

Communities living in the shadow of major facilities have long known the difficulties that come with breathing toxic air pollution. The health implications of disproportionate toxic exposure—especially among Black, Hispanic, Indigenous, and low-income children—are now well documented. But for large swaths of the country, sheltering indoors to evade inhaling wildfire smoke has been a rude awakening to climate reality.

It appears that more Americans are waking up to the threat of the climate crisis. In an NPR/PBS NewsHour/Marist poll taken last summer at the end of the hottest month on record, nearly two-thirds of American adults say that climate change is noticeably affecting their local communities, and a majority also see it as causing serious effects right now. It is evident that life, as we have known, depends on a stable planet.

To find a way out of this mess, we need to tackle the root cause: the destabilizing pollution from fossil fuels, abetted by the toxic political influence of the fossil fuel lobby. More than a century ago, Boies Penrose, a powerful Republican senator from Pennsylvania, laid bare his views on the relationship between politicians and big business: “I believe in the division of labor. You send us to Congress; we pass laws under which you make money, and out of your profits, you further contribute to our campaign funds to send us back again to pass more laws to enable you to make more money.” More succinctly,

Penrose said that politics is “the art of taking money from the rich and votes from the poor, all under the pretext of protecting one from another.”

According to historian Ronnie Dugger, Penrose spread around large sums of money supplied by John Archbold of Standard Oil, which later changed its name to Exxon. Teddy Roosevelt called the relationship between Penrose and Archbold “that sinister alliance between crooked politics and crooked business, which has done more than anything else for the corruption of American life.” With the help of Standard Oil’s money, Penrose led a successful effort to create the “oil depletion allowance,” a tax loophole that persists to this day and has shielded oil companies from paying \$470 billion in taxes—a number that continues to rise.

For more than 110 years, members of Congress and the fossil-fuel industry have been relying on this mutual symbiotic relationship at the expense of innocent people and much of nature. Massive subsidies to the industry have proven hard to repeal. Even Ronald Reagan recognized the outrageous giveaway and in 1985 tried and failed to eliminate the allowance.

On top of many direct subsidies, the International Monetary Fund rightly considers subsidies to be any governmental action or inaction that enables unpriced externalities implicit in fossil fuel exploitation, such as allowing corporations to pollute for free. The IMF warned, “Globally, fossil fuel subsidies were \$7 trillion in 2022. Explicit subsidies (undercharging for supply costs) have more than doubled since 2020 but are still only 18 percent of the total subsidy, while nearly 60 percent is due to undercharging for global warming and local air pollution.” The IMF concluded that “full fossil fuel price reform would reduce global carbon dioxide emissions to an estimated 43 percent below baseline levels by 2030 (in line with keeping global warming to 1.5-2° C) while raising revenues worth 3.6 percent of global GDP and preventing 1.6 million local air pollution deaths per year.”

Taxpayer handouts are not the only grip on energy policy fueled by lobbying and campaign cash. In 2005, Congress exempted hydraulic fracturing from the Safe Drinking Water Act. The provision, championed by Vice President Dick Cheney, is known as the “Halliburton loophole” in deference to the company that invented fracking and that Cheney led before jumping back into politics. Fracking comes with a heavy environmental cost. Several scientific investigations have documented

serious health consequences, including low birth weights and elevated cancer cases in children within a mile of a fracked well.

In 2015, just days before world leaders clasped hands around the Paris climate agreement, fossil fuel lobbyists convinced Congress and President Obama to lift the ban on exporting crude oil. Gasoline averaged \$2 per gallon. Since then, U.S. crude oil exports have surged to 4 billion barrels per day, containing as much carbon pollution as 146 coal-fired power plants. Prices at the pump have doubled. Fossil fuel companies have simultaneously been boosting exports of natural gas overseas, doubling LNG exports in the past four years. The United States is now the largest exporter of LNG in the world. While part of this growth helped the EU replace Russian gas following the invasion of Ukraine, plans now in the works to quadruple fuel exports in the coming decade are driven by profit, not national security.

EVEN AS FOSSIL FUEL INTERESTS secured big policy wins, they have simultaneously choked off legislative and regulatory efforts to cut carbon pollution and tackle climate change. Their strategy: deny, stall, and litigate. Fossil fuel companies have funded climate denial misinformation campaigns. In September, California became the latest state to sue oil companies, citing “more than 50 years of deception, cover-up, and damage that have cost California taxpayers billions of dollars in health and environmental impacts.”

The successful deception operation catalogued in California’s 135-page brief rivals the espionage annals of the Cold War. As far back as the 1950s, the American Petroleum Institute—Big Oil’s lobbying and marketing arm—had commissioned private research alerting them to the threat fossil fuels posed to the climate. Frank Ikard, the president of API, warned oil executives in 1965 that “carbon dioxide is being added to the Earth’s atmosphere by the burning of coal, oil, and natural gas at such a rate that by the year 2000 the heat balance will be so modified as possibly to cause marked changes in climate beyond local or even national efforts.” Ikard grasped the threat to the oil industry. “The pollution from internal combustion engines is so serious, and is growing so fast,” he said, “that an alternative nonpolluting means of powering automobiles, buses, and trucks is likely to become a national necessity.”

According to California’s legal brief, API instituted a systematic deception campaign organized around front groups “formed to promote climate disinformation and advocacy from a purportedly objective source, when in fact these groups were financed and controlled by [oil companies that] benefited from the spread of this disinformation.”

Fossil fuel interests have successfully litigated to slow EPA from taking action. The agency is currently proposing limiting carbon emissions from power plants and methane emissions from the oil and gas industry. These important efforts are more than a decade late and face uncertain futures. Similar efforts under the Obama administration were held up in the courts and rolled back by the Trump administration.

Most recently, the conservative Supreme Court minted a new “major questions doctrine,” whereby neither EPA nor any other agency can adopt rules that are “transformational” to the economy unless Congress has expressly authorized such a rule to address specific problems like climate change.

After more than three decades of hard-fought campaigns, mandatory carbon pollution reductions have proven to be environmental advocates’ greatest legislative and regulatory challenge. The fossil fuel lobby has been adept at stalling any direct climate action in Congress, preserving the status quo under which they thrive. Several legislative attempts at finding appropriate solutions dating back to Democratic Senators Al Gore and Tim Wirth’s hearings in 1988 have failed. The fossil fuel lobby’s top congressional ally, Republican Senator Jim Inhofe of Oklahoma, infamously brought a snowball to the Senate floor to disprove global warming and chide members who were seeking legislation.

The Senate filibuster has been a gift to fossil fuel interests. It loomed over efforts to enact limits on carbon pollution, such as those led by Senators John McCain, Joe Lieberman, and John Warner, keeping such efforts on the back bench. In 2005, 54 senators made a bipartisan show of support for climate legislation that would include mandatory limits to reduce greenhouse gases. But even that majority coalition was insufficient in the face of the 60-vote threshold.

In 2010, Nancy Pelosi pushed the American Clean Energy and Security Act through the House—the first successful effort to pass a major climate bill through a chamber of Congress. The victory was short-lived. The filibuster empowered

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A Popular Solution: Modernizing Permitting

Climate debates are often based on false choices: renewables versus fossils, Republicans versus Democrats, economy versus environment, 100 percent global emissions reduction versus inaction at home. The truth is, no government or business will achieve climate goals and see economic success unless all energy resources are on the table. So, let's ask ourselves some key questions.

If solutions are only focused on reducing emissions to net-zero here in the United States while China continues emitting, what are we really accomplishing? If America's power sector transitioned entirely to clean energy at the cost of reliability or affordability, would the public support the change? If energy and production costs soar, will our industry move overseas to higher-emitting locations?

We all know the answers to these questions. Solutions to the challenges can transcend politics. Relying on time-tested, inherently American principles like free markets over mandates and encouraging more innovation rather than over-regulation paves the clearest path.

Take the U.S. power sector for example; virtually all paths to U.S. net-zero emissions include electrifying more of our economy. As a result, the power grid will need to at least double in size. Eliminating fossil fuels would only make doubling the grid that much harder.

First, you would need to take the 60 percent of our grid still emitting today and replace it with other low-carbon sources—such as building an abundance of new geothermal, nuclear, hydro, solar, and wind plants and connecting all of those to the grid with tens of thousands of miles of new power lines. Eliminating fossil fuels would take carbon capture off the table as one of the options to clean up this 60 percent. Then, you



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would need to build a whole new grid on top of the existing grid. All clean. And without relying at all on abundant U.S. fossil resources with carbon capture.

Time is also working against us—it took 125 years to build our existing grid. So for the folks targeting 2050 for net-zero, that means we need to do all of this in 26 years. For the folks who think we can do this by 2035, well, that's 11 years from today. That's 10,000 new clean energy projects in this decade alone. Every single one of those projects starts with a permit to build.

If those non-emitting power sources that I mentioned are superior—meaning they can prove to be reliable, affordable as well as clean—then consumers will want them and the marketplace will choose them. As far as the government should be concerned, the solution is clear: let them build.

The two highest impact reforms to get building are to streamline the litigation process for all types of energy projects and allow select clean projects on pre-cleared sites to be immediately green-lit. Between those held up in litigation or those in permitting purgatory, we are talking about more than 50,000 new clean energy projects we must have to run a reliable, cleaner system.

To improve the judicial review process, policymakers could centralize all permitting challenges at a new permitting appeals board led by subject matter experts to quickly resolve legal challenges instead of lengthy courthouse delays. This structure leverages best practices from other parts of the federal government and standardizes the process. Under this new structure, any further appeals must be directed to the circuit courts of appeals, consistent with long-standing provisions for energy infrastructure.

By designating certain locations, including brownfield sites and locations that have recently undergone an environmental review, for automatic approvals, we would see projects moving out of backlogs and into development. These are sites where our many environmental regulations are working the way they should, they have been litigated, wildlife is not in danger, no risk of water problems—you get the gist.

Modernizing permitting has attracted bipartisan support in Congress and the administration. With these policy changes, we can see accelerated clean energy deployment and lower emissions—and put America back in the lead over global competitors.

the fossil fuel lobby and their Senate allies, and the legislation buckled under the weight of the concessions needed to get the votes.

THIS HISTORY OF SETBACKS IN Congress makes it all the more remarkable that, in 2022, President Biden and Democrats in Congress enacted the Inflation Reduction Act, which uses incentives to encourage clean energy. They smartly bypassed the filibuster by using the budget reconciliation process—an approach that restricted the scope of the legislation and had not yet been tested for climate legislation.

The IRA is the most meaningful climate bill in U.S. history. In the year following enactment of the IRA, companies announced more than \$110 billion in new clean energy manufacturing investments, including more than \$70 billion in the electric vehicle supply chain and more than \$10 billion in solar manufacturing, according to the White House. The IRA's climate and energy investments will create more than 9 million good jobs over the next decade, according to the BlueGreen Alliance.

There is no question that getting the IRA across the finish line was a herculean legislative feat. It required Democratic unity, and it would not be law today without tenacious persistence by Biden and Democratic leaders in Congress.

Pollsters are warning the White House that there is broad—but still hypothetical—public support for the programs in the IRA. The problem, they say, is that few voters know that the programs are now law. President Biden's reelection game plan includes a persistent drumbeat on the IRA's accomplishments. That makes sense, but only to an extent.

The people we talk with throughout the nation, like the 75,000 who carried signs and marched outside the UN Climate Ambition Summit in 2023, know more than these polls suggest. They understand that the bill did a lot of good and that Biden did his best using the art of the possible, but they also know that the fossil fuel lobby continues to define just what is possible. In delivering the IRA, Biden appeased West Virginia Democrat Joe Manchin, the Senate Energy and Natural Resources Committee chair, with several problematic provisions, including approval of the Mountain Valley Pipeline as well as a toxic provision that prevents the federal government from issuing new offshore-wind leases without also issuing new offshore oil and gas leases.

“Despite this administration's best efforts to botch the law's implementation, fossil fuel projects are getting off the ground because of the act,” Manchin wrote for the *Wall Street Journal* more than a year after the IRA was enacted. “Because of the Inflation Reduction Act, we are producing fossil fuels at record levels.”

In this, Manchin sounds a lot like Biden as the president navigated the politics of artificially high gasoline prices impacting the entire economy. Fossil fuel interests shifted the blame from their own record profits to President Biden. Responding to this pressure, Biden used the bully pulpit to reassure the public that the wells were flowing: “My administration has not stopped or slowed U.S. oil production: quite the opposite; we're producing 12 million barrels of oil per day. And by the end of this year, we will be producing 1 million barrels a day more than the day I took office. We're on track for record oil production in 2023.” Both Manchin and Biden are right: U.S. fossil fuel production is at the highest levels ever.

It is odd to expect climate voters to hear the White House's messages on the IRA while ignoring the president's messages on fossil fuels. Voters concerned about climate change understand that we cannot solve the crisis while growing our production of fossil fuels. The IRA will help reduce demand for fossil fuels in the United States, but production is projected to increase, based on the government's latest (post-IRA) forecasts.

How is that possible? Fossil fuel companies are exporting much more oil and gas from the United States even as we are reducing pollution here at home. The net result is that America is basically treading water in terms of our global carbon footprint when you look at the whole picture, including consumption and production.

When exports are counted, U.S. greenhouse gas emissions are expected to remain above 2005 levels through 2050, undermining global efforts to achieve “net zero” emissions, which requires eliminating most carbon pollution. It is an emissions shell game with far-reaching consequences for the climate: as much as \$18.7 trillion in climate damages from greenhouse gas exports by 2050, based on the U.S. government's own “social cost of greenhouse gas emissions” estimates. (A report with more information on the impact of U.S. fossil fuel exports is available at symonspa.com).

Executive action is desperately needed to stem

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We Have the Right Tools. Let's Use Them

There is still time to prevent the worst ravages of climate disruption from greenhouse gas emissions. We have both the technology and the legal tools to reach net zero by 2050. Although there is no silver bullet solution to the problem of climate change, we have the means to load the shotgun to accomplish this administratively and through the actions of state and local governments, NGOs, and the majority of industrial companies.

To reach net zero requires that the administrative branches of state and federal governments employ those tools. It also requires that both governments and NGOs put aside prejudices against particular technologies. Objections have been raised not only to nuclear energy, carbon capture and sequestration, and biomass energy, but also to offshore wind, hydropower, solar arrays, and electric vehicles and their resource-intensive batteries.

But all are essential elements of the climate solutions toolbox. The objections are often based on good-faith misunderstanding of the technology and failure to understand that adverse impacts can be mitigated. In addition, the adverse impacts that cannot be reduced or off set, when taken together, will be far less than the potentially catastrophic impact of not acting or acting too late.

Professors John Dernbach of Widener Law School and Michael Gerrard of Columbia Law School have identified over 1,000 legal mechanisms that can be employed to achieve deep decarbonization. Congress briefly overcame its institutional gridlock to enact the Infrastructure, Investment, and Jobs Act and the Inflation Reduction Act and thereby provide an array of financial mechanisms to encourage im-



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plementation of many of the necessary technologies. These in turn will accomplish the electrification of the transportation and building sectors. The IRA also amended the Clean Air Act to eliminate any doubt that the dissenters in *Massachusetts v. EPA* and their followers might have had that GHGs are pollutants that Congress intends EPA and the states to control, using the tools provided by the CAA.

We need state and federal administrators to use existing legal tools now to craft regulations that will create appropriate incentives or mandates to employ the financial tools that Congress has provided. The Biden administration is already using its authority to reduce and phase out mobile source GHG emissions and eliminate hydrofluorocarbons, a potent GHG. It has proposed regulations that will require meaningful emissions reductions from power plants, creating a legally sound path to decarbonize that sector. It is also using clear existing authority to address GHG emissions from the oil and gas sector.

Still more is needed to require action or impose a price on GHG emissions throughout the economy. Many legal scholars have argued that Section 115 of the CAA, governing international air

pollution, could be used as a tool to require State Implementation Plans to achieve emissions neutrality by 2050. This would be consistent with decisions made under the Framework Convention on Climate Change—a treaty the United States has ratified with the advice and consent of the Senate and thus is the supreme law of the land.

In *EPA v. EME Homer City*, the Supreme Court affirmed an approach that EPA used to address interstate pollution. If the agency used a similar approach to GHGs, an economy-wide price could be put on GHG emissions without interstate and intersectoral leakage. This, as well as EPA's existing regulations, can also support states that are already responding.

International action is also necessary. The United States, the largest contributor of GHGs historically, must take aggressive steps without waiting to induce action by countries whose per capita emissions still lag ours.

The latest science is encouraging—it tells us that atmospheric levels and temperatures can be brought down before irreversible damage occurs. Legal and technological challenges are inevitable, but those cannot be resolved in time unless action is taken now.

the rising fossil fuel tide. The good news is that confronting fossil fuel production and exports provides an additional set of powerful tools for the Biden administration to lead on climate change. For example, the climate damages associated with U.S. fossil fuel exports could be reduced by up to \$6 trillion by shifting trajectories even modestly and keeping export levels at today's high levels. Steeper shifts in exports would achieve even greater reductions.

AFTER YEARS OF DELIBERATE delays and roadblocks by fossil fuel interests, it is now or never for the health of our planet. The sight of devastating losses worldwide, burned-out communities, and flooded cities—leaving thousands dead and millions suffering—should propel long-overdue climate pollution control and clean energy policies.

Republican leaders in Congress instead are attempting to gut climate funding and dismantle the IRA and other climate actions if they retake the White House and both houses of Congress. The greatest threat to global climate progress would be for Americans to re-elect politicians who have allied themselves with the fossil fuel lobby. If, on the other hand, Democrats hold or expand their power in Washington, they will have an opportunity to build on the clean energy agenda they have begun. With the climate clock ticking, they will have to elevate their ambition. Defending what is already underway will not be enough. While tax breaks for clean energy will help bend the long-term arc toward carbon reductions, even the most optimistic models show we are likely to fall short of Biden's goal of cutting domestic emissions in half by 2030 without further action.

By election day, the Inflation Reduction Act will be two years old. Climate voters want to know what is next. Talking about the past may not be enough to energize voters and campaign volunteers who see climate as an existential threat and want to know what the president is doing now and what he will do next.

A good place to start is acknowledging that neither the United States nor the world can achieve

net-zero emissions while locking in new fossil fuel supplies. That will take us in the wrong direction.

The most comprehensive scientific studies of our time have all concluded that achieving the Paris climate goals will require actions to guard against locking in new sources of carbon emissions that will compete with cleaner energy and slow the needed transition. The Intergovernmental Panel on Climate Change concludes in its authoritative 2022 update on climate science that “cancellation of plans for new fossil fuel infrastructure” is needed to avoid “significant carbon lock-ins, stranded assets, and other additional costs.” The International Energy Agency concluded in 2021 that meeting net-zero Paris goals requires reducing natural gas production up to 5 percent annually and that “there is no need for investment in new fossil fuel supply in our net zero pathway.”

Senate Majority Leader Chuck Schumer (D-NY) has promised a new climate bill if Democrats get elected, but has been light on specifics. He and Pelosi and Biden have proven Democrats can get climate legislation done if given a chance. Schumer's pledge begs the question: what should an ambitious climate plan look like if Democrats win the coming elections?

The good news is that Biden has laid a foundation for boosting clean energy using administrative action—not only implementing the IRA, but also finalizing and enforcing regulations from EPA and other agencies. The better news is that there are more tools still waiting in the presidential toolbox that he could reach for should he decide to challenge the oil and gas industry more directly and declare a climate emergency.

When running for president, Biden promised voters he would allow “no more drilling on federal lands, period, period, period, period.” After an initial attempt to pause oil and gas drilling on public lands failed in court, the Biden administration backed off his 2020 campaign pledge altogether, settling instead for reforming royalty rates. Biden needs a new strategy to phase out public leasing of fossil fuels from public lands and waters. These lands and waters, and the resources beneath them, belong to all of us, not private companies. Biden took a key step in 2023 when he opted to protect the Arctic National Wildlife Refuge, dismissing prior lease sales.

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Biden also has a responsibility under the Natural Gas Act to deny new applications to export liquefied natural gas if it fails to serve the “public interest.” Despite that responsibility, the Department of Energy has never denied an LNG application. If that trend continues, the amount of export LNG licenses could quadruple under Biden’s watch. Instead, the president needs to limit the amount of exports to levels needed to satisfy U.S. national security interests, rather than the free-for-all that exists right now—with Big Oil CEOs deciding our energy policy and the government rubber stamping their plans. Biden can start by denying a license for CP2 LNG, which would be the largest gas export project ever approved.

As some Senate Democrats have urged, the attorney general should join states in suing fossil fuel companies for the climate deception that has left the public and government footing the bill for the damage and destruction caused by emissions.

As for Congress, it can act on President Biden’s call to end fossil fuel subsidies. Instead of slashing subsidies, Congress has piled on even more, with billions dedicated to false solutions like carbon capture and storage that have routinely left taxpayers holding the bag when the projects failed. They should also reinstate the ban on crude oil exports that was lifted in 2015 and reverse the 2005 Halliburton loophole that exempts fracking from the Safe Drinking Water Act.

MOST IMPORTANT, CONGRESS should turn to the long overdue task of holding polluters accountable for their carbon emissions. The much-esteemed scientist Michael Mann of the University of Pennsylvania has called for “provisions that not only incentivize clean energy but disincentivize fossil fuel energy.” While offering carrots, the United States must also enact enforceable pollution benchmarks and end once and for all the era of corporations freely dumping pollution into the atmosphere.

In discussions with Tim Profeta, the founding director of Duke University’s Nicholas Institute for Environmental Policy Solutions, a carbon price—requiring fossil fuel companies and other big emit-

ters to pay a fee to the government based on their greenhouse gas emissions—could be a part of a carefully constructed reconciliation package that cannot be blocked by Senate filibuster.

Profeta has had a long time to consider the options. He previously served as counsel for the environment to Senator Lieberman, where he was a principal architect of the Lieberman-McCain Climate Stewardship Act of 2003, the first serious climate bill to be put to a Senate vote. He also helped lead Democratic efforts to protect the Arctic National Wildlife Refuge from drilling. From that experience, Profeta suggests using Section 313 of the Congressional Budget Act. Setting a price on carbon would produce substantial revenue, potentially satisfying the so-called Byrd Rule and avoiding prospects of a 60-vote threshold.

In crafting the package, Democrats will need to lean on their recent experience negotiating with the Senate parliamentarian, who has the final say on what can and cannot avoid a filibuster threat. Importantly, the budgetary impact of a carbon price cannot be “merely incidental” to policy goals. Which is appropriate in the case of a carbon price, because revenues are needed to finish what the Inflation Reduction Act started, by investing in new technologies and a just transition that creates economic opportunity and good jobs.

Concurrent with a domestic mechanism pricing carbon, Congress should authorize the president to work with other willing nations to establish “border adjustments” to level the trading playing field to address nations that fail to act. Several bipartisan proposals are currently under consideration, but the concept works best if the country imposing border fees on other nations has similar measures domestically.

This pathway for ambitious climate action in Washington will not be easy. Voters must keep climate deniers out of the White House. Biden for his part will have to push the comfort zone of his political advisors and confront the oil and gas industry more directly. The unfolding climate chaos around us is unforgiving, and time is of the essence. The challenge is steep, but as Nelson Mandela once observed, “It always seems impossible until it’s done!” ❧

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