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COLORADO COURT OF APPEALS Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203	
Colorado District Court, Arapahoe County Case No. 2019CV31980	
Plaintiff-Appellant: Barbara Morris, M.D. v. **Defendants-Appellees**: Centura Health Corporation, a Colorado non-profit corporation, and Catholic Health Initiatives Colorado d/b/a Centura Health-St. Anthony Hospital, a Colorado Non-Profit Corporation	▲ **COURT USE ONLY** ▲
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BRIEF *AMICI CURIAE* OF LITTLE SISTERS OF THE POOR—MULLEN HOME FOR THE AGED, AND CATHOLIC BENEFITS ASSOCIATION IN SUPPORT OF APPELLEES AND AFFIRMANCE	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28, C.A.R. 29, and C.A.R. 32, including all formatting requirements set forth in these rules. The undersigned certifies that the amicus brief complies with the applicable world limit set forth in C.A.R. 29(d). The Brief contains 4198 words (including the Interest of The *Amici Curiae* section) and thus does not exceed 4750 words. The amicus brief complies with the content and form requirements set forth in C.A.R. 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any applicable requirements.

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INTEREST OF THE *AMICI CURIAE*

Amicus curiae Little Sisters of the Poor—Mullen Home for the Aged is a religious nonprofit corporation located in Denver and operated by an order of Roman Catholic women founded in 1839 by Saint Jeanne Jugan. The Little Sisters' mission is to offer the neediest elderly of every race and religion a home where they will be welcomed as Christ, cared for as family, and accompanied with dignity until God calls them to Himself. Each Little Sister takes a vow of obedience to God and of hospitality to care for the aged as if they were Christ Himself. The Little Sisters treat each individual with the dignity they are due as a person loved and created by God, and they strive to convey a public witness of respect for life, in the hope that they can build a Culture of Life in our society.

Based on these sincere religious beliefs, the Little Sisters oppose all forms of assisted suicide and euthanasia. In particular, in the provision of healthcare the Little Sisters conform their actions to the Catholic Church's Ethical and Religious Directives for Catholic Health Care Services ("ERDs"), which explicitly state that suicide and euthanasia are never morally acceptable options.

The Catholic Benefits Association ("CBA") is a not-for-profit corporation headquartered in Castle Rock, Colorado, and committed to assisting its Catholic employer-members across the country in providing health coverage to their

employees consistent with Catholic values. The CBA provides such assistance through its website, training webinars, legal and practical advice for members, and litigation services protecting members' rights of conscience. The CBA has over 1200 Catholic member organizations, including dioceses, schools, universities, social-service agencies, cemeteries, hospitals, senior housing, and nursing facilities.

Among CBA's members are a number of healthcare providers that are required to comply with the Catholic Church's ERDs. These members include non-profit Catholic healthcare systems, each of which is overseen by a canonical sponsor who attests that the relevant system is in compliance with the ERDs. Also in this category are CBA members that are Catholic not-for-profit medical clinics. These clinics' governing documents typically require that the clinics follow the ERDs. Finally, a number of CBA members are elder care, hospice, and aged and dying facilities that are also required to follow the ERDs. Consistent with Catholic teaching and the ERDs, CBA members uniformly reject any form of euthanasia or assisted suicide.

Amici curiae submit this brief to vindicate and protect the right of religious Colorado healthcare providers to act on their sincere religious beliefs and comply with their duties under the ERDs as they pertain to assisted suicide and euthanasia.

INTRODUCTION

The Supreme Court of the United States recently reaffirmed a constitutional principle inherent since 1789: The First Amendment protects church autonomy—"the right of churches and other religious institutions to decide matters 'of faith and doctrine' without government intrusion." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020) (quoting *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 186 (2012)).[1] In *Our Lady*, the Court articulated this doctrine through a "ministerial exception" to federal employment laws, vindicating a religious group's right to shape its own faith through selection of its ministers. *Id.* at 2060–61. This case asks whether church autonomy also embraces a religious organization's right to exercise its faith and carry out its mission through its employees, regardless of whether they qualify as "ministers."

It does. From establishing orphanages to running homeless shelters to operating hospitals, religious organizations such as *amici* have a deep history of practicing their faith through lay people engaged in charitable social services. And when they do, the First Amendment protects them no less than when these religious organizations express their faith through their traditional ministers.

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[1] This brief, in accordance with the U.S. Supreme Court's language, uses the terms "church" and "minister" to refer broadly to leaders and houses of worship of all faiths.

Were it otherwise, the guarantees of the First Amendment's Religion Clauses, as incorporated against the States by the Fourteenth Amendment, would be rendered hollow. This case amply illustrates the point: According to Dr. Morris, a Colorado statute requires a religious hospital (Appellees Centura Health System and St. Anthony Hospital, together "St. Anthony") to employ doctors who *help perform euthanasia*, directly contravening Catholic teaching on the sacredness of human life. Forcing St. Anthony to employ euthanasia-performing doctors in turn compels it to apostatize from its commitment to the sanctity of human life, impeding its right to pursue its healing ministry and infringing on its autonomy.

Nor would this ruling be limited to St. Anthony's autonomy. It would have ripple effects on similar religious healthcare providers, including *amici* the Little Sisters of the Poor and members of the CBA. Indeed, the stated mission of the Little Sisters of the Poor is to "offer the neediest elderly of every race and religion a home where they will be welcomed as Christ, cared for as family[,] and accompanied with dignity until God calls them to Himself." Dr. Morris's proposed rule would put that mission in jeopardy. In addition, as Catholic healthcare organizations, the Little Sisters, CBA, and St. Anthony are all governed by the Catholic Church's Ethical and Religious Directives for Catholic Health Care Services ("ERDs"), which explicitly state that "[s]uicide and euthanasia are never morally acceptable options." *Ethical*

and Religious Directives for Catholic Health Care Services, United States Conference of Catholic Bishops 20 (6th ed. 2018).

In short, because the First Amendment's protections for religious institutions cannot be contained within the walls of a church or cabined to its ministers, this Court should hold that the doctrine of church autonomy bars Dr. Morris's claim.

ARGUMENT

The U.S. Supreme Court has repeatedly recognized the so-called "ministerial exception" as a manifestation of the longstanding, broader doctrine of church autonomy. *See Our Lady*, 140 S. Ct. at 2061. The present case is not a "ministerial exception" case, per se, because St. Anthony has not claimed that its doctors are ministers. (*Amici* take no position on whether the doctors could satisfy the test for ministers.) But this case still raises fundamental questions of church autonomy. The question whether the government can force a Catholic healthcare system to hire a physician who openly contravenes the Catholic Church's teachings expressed through its ERDs implicates the First Amendment just as much as "ministerial exception" questions the Supreme Court has previously resolved. This amicus brief thus addresses a simple question: Does the church autonomy doctrine protect a religious institution's pursuit of its ministry through the hands of its non-minister employees? As a matter of both precedent and principle, the answer is yes.

I. The church autonomy doctrine protects religious institutions' control over matters of faith, doctrine, and internal governance.

Anchored in both the Free Exercise Clause and Establishment Clause of the First Amendment, the doctrine of church autonomy protects religious organizations' "independence in matters of faith and doctrine and in closely linked matters of internal government." *Our Lady*, 140 S. Ct. at 2061. It guarantees religious institutions the power to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). That includes the power to express their faith in the form of charitable social services.

A. The Supreme Court of the United States and Colorado courts have repeatedly recognized the doctrine of church autonomy.

Multiple court decisions from 1871 to the present have interpreted the Religion Clauses to contain a church autonomy component. Arising first before the Supreme Court in a dispute over which Presbyterian faction owned church property, the Court held that civil legal tribunals are bound by the church's decisions on its internal matters because civil legal tribunals cannot intrude on these questions on their own. *See Watson v. Jones*, 80 U.S. 679, 727 (1871) ("whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the

legal tribunals must accept such decisions as final"). This led to the rule that "civil courts are bound to accept the decisions of the highest judicatories of a religious organization." *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976); *see also, e.g.*, *Kedroff*, 344 U.S. at 107–08 (legislatures cannot regulate "church administration, the operation of the churches, [or] the appointment of clergy"); *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 654–55 (10th Cir. 2002) (likening the church autonomy doctrine to a "government official's defense of qualified immunity" as it "prohibits civil court review of internal church disputes"); *Jones v. Crestview S. Baptist Church*, 192 P.3d 571 (Colo. App. 2008) (citing *Bryce*); *Wolf v. Rose Hill Cemetery Ass'n*, 914 P.2d 468 (Colo. App. 1995) ("constitutional mandate prohibits civil courts from intervening in religious disputes"). Simply put, church autonomy is a deeply entrenched First Amendment doctrine that protects a religious organization's internal governance from state and judicial interference.

Most recently, the U.S. Supreme Court in *Our Lady* reaffirmed that the Religion Clauses of the First Amendment protect religious institutions' "autonomy with respect to internal management decisions that are essential to the institution's central mission." 140 S. Ct. at 2060. It held that this doctrine bars governmental intrusion into the selection of "individuals who play certain key roles" in the

religious institution. *Id.* Using this reasoning, the Court then applied the "ministerial exception" subset of church autonomy to federal employment discrimination laws, operating to bar a teacher's suit against her former Catholic school employer. *Id.* The ministerial exception allowed the Catholic school to decide for itself "matters of church government as well as those of faith and doctrine." *Id.* at 2055. The Court explicitly grounded its holding in the broader principle of church autonomy, which guaranteed a religious institution's independence in "closely linked matters of internal government." *Id.* at 2061.

Both federal and Colorado courts have applied the doctrine of church autonomy to create a ministerial exception to generally applicable employment laws. This exception applies to faith-based employment decisions, "ensur[ing] that the authority to select and control who will minister to the faithful . . . is the church's alone." *Hosanna-Tabor*, 565 U.S. 171 at 181, 194–95 ("Both Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers."); *see also Seefried v. Hummel*, 148 P.3d 184 (Colo. App. 2005) (recognizing "autonomy of religious institutions to freely evaluate their choice and retention of religious leaders"); *Van Osdol v. Vogt*, 908 P.2d 1122 (Colo. 1996) (holding "a church's choice of who shall serve as its minister . . . invokes the protection of the First Amendment").

Without church autonomy, a religious organization would be forced to allow its personnel to carry out actions that are directly contrary to its fundamental beliefs, undermining the "independence of religious institutions in a way that the First Amendment does not tolerate." *Our Lady*, 140 S. Ct. at 2055.

B. All religious institutions are entitled to church autonomy.

Courts have recognized that entities that pursue religious missions, not just houses of worship as such, are entitled to First Amendment church autonomy protections. *See Our Lady*, 140 S. Ct. at 2064; *Hosanna-Tabor*, 565 U.S. at 205 (applying church autonomy through the ministerial exception to religious schools). Whenever an institution's "mission is marked by clear or obvious religious characteristics," courts must consider those institutions' autonomy. *Shaliehsabou v. Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299, 310 (4th Cir. 2004).

Courts have thus extended church autonomy protections to a variety of institutions that have religious missions but are not houses of worship. The Fourth Circuit, for example, upheld church autonomy for a Jewish nursing home that fired an employee whose job as kosher supervisor allowed the nursing home to provide care in compliance with the Jewish faith. *Id.* at 310–11. Similarly, the Sixth Circuit held that an interdenominational campus ministry—with a distinct Christian name, purpose, and mission—fit within the "religious group" language of *Hosanna-Tabor*,

and thus qualified for church autonomy. *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 834 (6th Cir. 2015). Likewise, the D.C. Circuit held that the Catholic University of America was a religious institution for purposes of applying church autonomy because it was an instrument of the Catholic Church used to teach its "doctrines and disciplines" in the United States. *EEOC v. Cath. Univ. of Am.*, 83 F.3d 455, 464 (D.C. Cir. 1996).

In the healthcare context, too, courts have applied church autonomy protections. The Eighth Circuit, for instance, held that a Presbyterian hospital qualified as a religious institution where its board of directors consisted of church representatives, and its articles of association could be amended only with the approval of local religious bodies. *Scharon v. St. Luke's Episcopal Presbyterian Hosps.*, 929 F.2d 360, 362 (8th Cir. 1991). The court held that the hospital's status as a religious institution insulated its personnel decisions as they are "*per se* religious matters and cannot be reviewed by civil courts." *Id.* at 363. Likewise, the Sixth Circuit reasoned that a Methodist Hospital was a religious organization because it operated "'in accordance with the Social Principles of The United Methodist Church' and is associated with the Conferences of the United Methodist Church." *Hollins v. Methodist Healthcare, Inc.*, 474 F.3d 223, 224 (6th Cir. 2007) (abrogated on other grounds by *Hosanna-Tabor*). "[I]n order to invoke the[se] exception[s],"

the court reasoned, the employer "need not be a traditional religious organization such as a church, diocese, or synagogue, or an entity operated by a traditional religious organization." *Id.* at 225. All that matters is that the "entity's mission is marked by clear or obvious religious characteristics." *Id.* at 225–26 (quoting *Shaliehsabou*); *see also Penn v. N.Y. Methodist Hosp.*, 884 F.3d 416 (2d Cir. 2018) (holding that a hospital that is "only historically connected to the United Methodist Church but still providing religious services through its pastoral care department" can invoke the ministerial exception).

As these cases recognize, church autonomy cannot be cabined by the walls of a church or restricted to ordained clergy, but instead follows where ministry flows.

II. The church autonomy doctrine protects Catholic healthcare providers' autonomy to operate within the Ethical and Religious Directives' prohibition on euthanasia and assisted suicide.

The church autonomy doctrine protects a religious institution from being forced to hire personnel antithetical to its mission or faith. *See Seattle's Union Gospel Mission v. Woods*, 142 S. Ct. 1094 (2022) (Alito, J., statement respecting the denial of certiorari) (citing cases). Catholic healthcare providers such as St. Anthony, the Little Sisters, and the CBA members are extensions of the Catholic Church and look to the ERDs—not the government—for a moral framework in practicing their healing ministry. The ERDs define euthanasia as "an action or

omission that of itself or by intention causes death in order to alleviate suffering." *Ethical and Religious Directives*, *supra*, at 21. Catholic healthcare institutions "may never condone or participate in euthanasia or assisted suicide in any way." *Id.* Adhering to the ERDs links the health services provided by Catholic healthcare providers to their greater religious mission of extending Christ's healing ministry. The ERDs ensure that services offered by Catholic healthcare providers conform to the theology of Catholicism and the dogma of scripture—and, under the First Amendment, the government has no authority to interfere with those teachings.

A. Catholic healthcare providers are religious institutions.

Modeled on Jesus himself, healing ministry is an integral part of the Catholic faith. *See, e.g.*, *Matthew* 9:1–38 (New Revised Standard Version) (narrating how Jesus healed a paralyzed man, raised a girl from the dead, healed a sick woman, gave sight to two blind men, and went through "all the cities and villages . . . curing every disease and every sickness"). Catholic healthcare providers like St. Anthony, the Little Sisters, and the CBA members carry out their mission as a direct extension of Christ's healing ministry. *See, e.g.*, *Centura Health Company Overview*, Centura Health 4 (Feb. 2020), https://bit.ly/37Ds3lH ("We extend the healing ministry of Christ by caring for those who are ill and by nurturing the health of the people in our communities."). There thus can be no question that St. Anthony's and *amici*'s

missions are "marked by clear or obvious religious characteristics." *Shaliehsabou*, 363 F.3d at 310; *see also Scharon*, 929 F.2d at 362 (stating that a church-affiliated hospital providing pastoral care, pastoral counseling, and liturgical services was an institution with "substantial religious character").

Reinforcing this conclusion is the reality that these Catholic healthcare providers must follow the Catholic Church's ERDs. The Tenth Circuit has found a Catholic health organization's compliance with the ERDs persuasive in finding that a Catholic healthcare provider is entitled to religious exemptions. *See Medina v. Cath. Health Initiatives*, 877 F.3d 1213 (10th Cir. 2017). The ERDs are a codified set of moral principles that outline "the Church's teaching on medical and moral matters," governing Catholic healthcare providers whose operating environments are inherently embedded with the ultimate issues of life, suffering, and death. *Ethical and Religious Directives*, *supra*, at 4. The United States Conference of Catholic Bishops—the assembly of all the bishops of the Catholic Church in the United States—develops, approves, and enforces the ERDs. *Id.* at 9 ("Catholic health care services must adopt these Directives as policy, require adherence to them within the institution as a condition for medical privileges and employment, and provide appropriate instruction regarding the Directives for administration, medical and nursing staff, and other personnel."). The ERDs ensure that a Catholic

healthcare provider maintains its "distinctive Catholic identity" through the dramatic changes that face the healthcare industry. *Id.* at 4.

Colorado is no stranger to the centrality of ERDs in transforming secular healthcare to Catholic healing ministry. In an employment dispute challenging a Catholic healthcare system's benefit pension plan, a Colorado federal district court found, and the Tenth Circuit affirmed, that the Catholic hospital was a religious institution for the purposes of tax exemptions. *Medina v. Cath. Health Initiatives*, 147 F. Supp. 3d 1190 (D. Colo. 2015), *aff'd*, 877 F.3d 1213. The district court reasoned that the Catholic hospital was, at least, "a constituent part of the Catholic Church," because it functioned as the civil identity of a canonical body and its purpose was to "embody the mission of the healing ministry of Jesus in the Church through ownership, management, or governance of health ministries[.]" *Id.* at 1197, 1199. What's more, the hospital followed the ERDs as monitored "by the bishops of the various dioceses in which [Catholic Health] operates." *Id.* at 1199.

In sum, Catholic healthcare providers practicing within the standards set forth by the ERDs are part of the larger mission and ministry of the Catholic Church. The ERDs explicitly impose upon Catholic healthcare providers "a duty to preserve our life and to use it for the glory of God," and they identify "suicide and euthanasia [as] never morally acceptable options." *Ethical and Religious Directives*, *supra*, at 20.

Compliance with the ERDs—and related strictures of Catholic canon law—is what distinguishes secular health services from the sacred practice of religious healing. With such piety of practice and consecrated mission, Catholic healthcare providers are a quintessential category of institution protected by the First Amendment.

B. Physicians employed by Catholic healthcare providers carry out a religious mission protected by the First Amendment.

By their nature, institutions must carry out their religious missions through their employees. The Court applied this reasoning in *Our Lady*, stating that "the school's mission was 'to develop and promote a Catholic School Faith Community'" and the plaintiff's duties and responsibilities as a teacher carried out this larger missional context. 140 S. Ct. at 2056. In fact, the Court noted that the teacher in *Our Lady* could have been fired for cause according to the employment agreement if she had failed to carry out the mission in her "duties or for 'conduct that brings discredit upon the School or the Roman Catholic Church.'" *Id.* at 2057. Employees in religious institutions do not simply carry out their duties in a vacuum—their jobs are inseparable from the larger missional context of their employers. The teachers in *Hosanna Tabor* and *Our Lady* acted in this larger missional context by "educating young people in their faith, inculcating its teachings, and training them to live their faith" which the Court recognized as "responsibilities that lie at the very core of the mission of a private religious school." *Id.* at 2064.

A physician employed by a Catholic healthcare provider, like a teacher employed by a religious school, carries out the Catholic Church's mission. A teacher educates students, training them for religious life, while the physician cares for the sick, healing the broken—both carry out the mission of their religious institutions. To this end, the Catholic Church's healing ministry, as carried out by physician-healers, is a constitutionally protected exercise of religion. The Free Exercise Clause ensures that religious institutions will not be forced to "disavow [their] religious character" in order to participate in public life. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022 (2017). Forcing a Catholic healthcare provider to retain a physician who openly defies the ERDs by participating in euthanasia is an abridgment of the free exercise of religion and untenable under the Constitution.[2]

The ERDs' view of medical practice is unequivocal: The "task of medicine is to care even when it cannot cure." *Ethical and Religious Directives*, *supra*, at 20. From caring to curing, physicians are at the heart of medical practice and their work cannot be separated from the greater missional context of their healthcare provider

[2] Indeed, even apart from principles of church autonomy, compelling a Catholic hospital to retain a physician who defies the ERDs may well directly violate the hospital's rights under the Free Exercise Clause. This amicus brief does not address that distinct argument.

employer. The work of physicians is inextricably linked to the Catholic healthcare provider's mission. Thus, the explicit prohibition of euthanasia under the ERDs does not simply bind the Catholic healthcare provider in an abstractly moral sense. Rather, it compels providers to conform every aspect of their healing mission in alignment with the Catholic Church's beliefs. The hands of physicians do not simply bind wounds and soothe pain. They bring about the very promise of Scripture:

> For I will restore health to you,
> and your wounds I will heal,
> says the Lord . . .

Jeremiah 30:17 (New Revised Standard Version).

Under the First Amendment, the state may not compel these same hands to violate the very tenets of the Catholic faith—turning the Catholic healthcare provider into an insurgent of an irreconcilable ideology. As the Court stated in *Our Lady*, "[w]hat matters, at bottom, is what an employee does," and in Catholic healthcare systems, physician-employees carry out the clear and obvious religious healing ministry of their religious institution employers. 140 S. Ct. at 2064.

C. Catholic healthcare providers' employment decisions regarding their physicians are exactly the matters of faith, doctrine, and internal governance protected by the church autonomy doctrine.

Church autonomy protects employment decisions that are directly related to internal governance of religious institutions. *See Our Lady*, 140 S. Ct. at 2060. ERD

No. 60 plainly states that "Catholic health care institutions may never condone or participate in euthanasia or assisted suicide in any way." *Ethical and Religious Directives*, *supra*, at 21. Thus, the only way for a Catholic healthcare provider to adhere to the tenets of its faith while carrying out its mission requires it to abstain from the practice of euthanasia. The upshot is that Catholic healthcare providers cannot practice their ministry if the government forces them to employ a physician who performs euthanasia. To compel a Catholic healthcare provider to employ a physician intent on violating the ERDs is to unconstitutionally force it to exercise its religion under peril of punishment. This choice constitutes a blatant violation of the Catholic healthcare provider's religious mission and compliance is nothing short of apostasy from its faith. The First Amendment does not tolerate such abrogation of religious institutions' independence. *Our Lady*, 140 S. Ct. at 2055.

Nor, even if it mattered, would respecting Catholic healthcare providers' First Amendment right to church autonomy preclude Coloradoans from euthanizing themselves if they so choose. St. Anthony's position is clear: "If a patient [diagnosed with life-limiting illness] declines the treatment options available at [St. Anthony] and requests a transfer to a facility outside of our system, the patient may be transferred in accordance with his or her wishes." *Centura Health's Position on Colorado EOLOA*, Centura Health, https://bit.ly/37BJqTY (last visited May 13,

2022). Ruling for St. Anthony thus strikes a balance between a patient's choice of care and the First Amendment's guarantee of church autonomy. It is not only consistent with the Supreme Court's precedent on church autonomy, but it also allows all patients—regardless of religion—to make healthcare and end-of-life decisions as they see fit.

III. Conclusion

The Court should apply the church autonomy doctrine and affirm the grant summary judgment for St. Anthony.

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Respectfully submitted,

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