> Representatives or by a citizen upon a resolution of endorsement by any Member thereof or by a verified complaint or resolution of impeachment filed by at least one-third (1/3) of all the Members of the House.[16] (emphasis supplied)

Under the 1988 Rules, the second impeachment complaint against Chief Justice Davide would not have prospered, because impeachment proceedings had been properly initiated by the filing of the first complaint.

However, the House has since adopted its 2001 Rules, currently in force, which provides:

> **Rule V**
> ***Bar Against Initiation of Impeachment Proceedings Against the Same Official***
>
> *Section 16. Impeachment Proceedings. Deemed initiated.* In cases where a Member of the House files a verified complaint of impeachment or a citizen files a verified complaint that is endorsed by a Member of the House through a resolution of endorsement against an impeachable office, impeachment proceedings... are deemed initiated on the day that Committee on Justice finds that the verified complaint and/or resolution against such official... is sufficient in substance or on the date the House votes to overturn or affirm the finding of the said Committee that the verified complaint and/or resolution... is not sufficient in substance.
>
> In cases where a verified complaint or a resolution of impeachment is filed or endorsed... by at least one-third (1/3) of the Members of the House, impeachment proceedings are deemed initiated at the time of the filing of such verified complaint or resolution of impeachment with the Secretary General.
>
> *Section 17. Bar against initiation of Impeachment Proceedings.* Within a period of one (1) year from the date impeachment proceedings are deemed initiated as provided [above], no impeachment, as such, can be initiated against the same official. (emphases supplied)

Under these 2001 Rules, the complaint filed by Joseph Estrada did not "initiate" an impeachment proceeding because the Committee on Justice found the complaint "insufficient in substance."

6. The complainants explain that, without the 2001 Rules, an impeachable officer can pre-empt the constitutional process of impeachment through collusive suits, by the simple token of causing a sham, flimsy or frivolous complaint to be filed,

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[16] 1988 RULES OF PROCEDURE IN IMPEACHMENT PROCEEDINGS, Rule 2, sec. 2.

thereby triggering off the one-year time-bar and immunizing that officer from a *bona fide* impeachment charge for a whole year.

7. There are several problems with this explanation:

(a) As applied to the present controversy, the first impeachment complaint filed by Joseph Estrada cannot by any measure be considered flimsy or frivolous. The complaint made serious charges. Neither can it be said that it commenced a "sham" impeachment process. That process begins in earnest, including the hearings held by the House Committee on Justice on 10 September, 14 and 22 October 2002, which eventually found it "sufficient in form" though not in "substance."

(b) The 2001 House Rules already guard against the mischief of collusive suits by ensuring that impeachment complaints filed by either a Member of the House or by a private citizen are vetted through several stages, and may prosper only after:

(1) A majority in the Committee on Justice makes a "preliminary determination" that the complaint is sufficient in form;[17]

(2) A majority in the Committee on justice makes a "preliminary determination" that the complaint is sufficient in substance;[18]

(3) The Committee hears the complaint and conducts a "formal investigation", receives evidence, and – by majority vote – recommends it to the House;[19]

(4) The House, by a vote of one-third of its Members, either approves the Articles of Impeachment, or dismisses the complaint.[20]

These rules "effectively carry out [the] purposes" of Article XI, Sections 3 (2) and 3 (3) of the Constitution, exactly as it had been intended by the Con-Com, which expressly left it to the House to adopt rules on impeachment to guard against "harassment or crack complaints."[21]

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[17] 2001 RULES OF PROCEDURE IN IMPEACHMENT PROCEEDINGS, Rule 3, sec. 4.

[18] 2001 RULES OF PROCEDURE IN IMPEACHMENT PROCEEDINGS, Rule 3, sec. 5.

[19] 2001 RULES OF PROCEDURE IN IMPEACHMENT PROCEEDINGS, Rule 3, sec 8-9.

[20] 2001 RULES OF PROCEDURE IN IMPEACHMENT PROCEEDINGS, Rule 3, sec 11.

[21] 1 JOURNAL OF THE CONSTITUTIONAL COMMISSION 473; and 2 RECORD OF THE CONSTITUTIONAL COMMISSION 372 (28 July 1986).

(c) It can still be argued that these procedural checks may insulate the Congress from collusive suits, but they also immunize the accused public officer from impeachment for one year. This rationale is of limited effect. The mischievous complaint immunizes for only a limited period of one year, and the constitutional bar is then lifted. The abuse of procedure, e.g., periodically reviewing this immunization (i.e., annually, for impeachable officers with terms ranging from the President's six years to the Justices' lifetime appointments), or triggering it off at suspect moments of vulnerability to real charges, are perils, however absurd, that must be addressed without violating the Constitution, as explained below.

(d) Finally, the House Rules, in Rule V *(Bar Against Initiation of Impeachment Proceedings Against the Same Official)*, while purporting to "effectively carry" Article XI §3.5 of the Constitution, actually broadens the scope of its power to impeach and frustrates a limitation on that power posed by the Constitution.

The intent of the framers --- in adopting the one-year time-bar --- was to limit the congressional power to impeach, in order to insulate public officers from harassment and the Congress from being distracted from its legislative work.

> MR. VILLACORTA. ... in other words, one year has to elapse before a second... charge or proceeding can be initiated. The intention may be to protect the public official from undue harassment. On the other hand, is this not undue limitation on the accountability of public officers?
>
> MR. ROMULO. Yes, the intention here really is to limit. This is not only to protect public officials... from harassment but also to allow the legislative body to do its work, which is lawmaking... [I]f we allow multiple impeachment charges on the same individuals take place, the legislature will do else but that. (emphases supplied)[22]

It is not for the Congress to override a constitutional limitation on its power to impeach, in the guise of Rules which purport to "carry out [the Constitution] effectively."

(e) The drafting history of the relevant clauses show that the intent of the framers was for impeachment to be "initiated" from the moment a complaint is filed. The provisions on impeachment were a joint proposal of Messrs. Regalado Maambong,

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[22] 2 RECORD OF THE CONSTITUTIONAL COMMISSION 372 (28 July 1986).

Hilario Davide and Florenz Regalado.[23] Article XI, sec. 3 (3), as adopted by the Con-Com, today reads as follows:

> A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution...

That provision began as Section 3.3, which stated:

> A vote of at least one-third of all the Members of the House shall be necessary to initiate impeachment proceedings, either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution...[24](emphasis supplied)

The clause "to initiate impeachment proceedings" was deleted by the Constitutional Commission (hereinafter, *Con-Com*) upon motion of Commissioner Regalado Maambong, who explained that the house "does not initiate but only approves or disapproved" and that it is the "filing of the complaint" that starts the impeachment proceedings.[25]

> REMARKS OF MR. MAAMBONG
>
> At this juncture, Mr. Maambong stated that... he wanted to put on record his view that the filing of the Articles of Impeachment is not initiated on the Floor but starts from the filing of the complaint and, therefore, the resolution by the Committee containing the Articles of Impeachment is the approved by the Body. He stressed that the Body does not initiate but only approves or disapproves the resolution...[26] (emphases supplied)
>
> MR. MAAMBONG. ... I would just make of record my thinking that we do not really initiate the filing of the Articles of Impeachment on the floor. The procedure, as I have pointed out earlier, was that the initiation starts with the filing of the complaint. And what is actually done on the floor is that the impeachment resolution containing the Articles of Impeachment is the one approved by the body.

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[23] 1 JOURNAL OF THE CONSTITUTIONAL COMMISSION 473 (28 JULY 1986).
[24] 1 JOURNAL OF THE CONSTITUTIONAL COMMISSION 474 (28 JULY 1986).
[25] 2 JOURNAL OF THE CONSTITUTIONAL COMMISSION 416 (28 July 1986).
[26] 1 JOURNAL OF THE CONSTITUTIONAL COMMISSION 474 (28 JULY 1986).

> As the phraseology now runs... it appears that the initiation starts on the floor [of the House]... It is not the body which initiates [the impeachment]. It only approves or disapproves the resolution. So, on that score, probably the Committee on Style could help in rearranging these words, because we have to be very technical about this. I have been bringing with me The Rules of the House of Representatives of the U.S. Congress. The Senate Rules are with me. The proceedings on the case of Richard Nixon are with me. ... (emphases supplied)[27]
>
> MR. MAAMBONG. I would just like to move for a reconsideration of the approval of Section 3.3. My reconsideration will not at all affect the substance, but it is only in keeping with the exact formulation of the Rules of the House of Representatives of the United States regarding impeachment.
>
> x x x
>
> I already mentioned earlier yesterday that the initiation... really starts from the filing of the verified complaint.... (emphasis supplied)
>
> THE PRESIDENT. May we hear from Commissioner Davide and Regalado because I understand they are co-authors of this section.
>
> x x x
>
> MR. MAAMBONG. Madame President, I have conferred with the principal proponent of the provision on impeachment, Commissioner Regalado, in collaboration with the Chairman of the Committee on Accountability of Public Officers, and they have no objection to the amendment...
>
> Commissioner Maambong's motion was approved.[28]

TWO

THE SUPREME COURT HAS THE JURISDICTION TO CHECK THE TWO HOUSES OF CONGRESS AND ENSURE THAT THEY PERFORM THEIR IMPEACHMENT POWERS WITHIN CONSTITUTIONAL LIMITS.

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[27] 2 RECORD OF THE CONSTITUTIONAL COMMISSION 375 (28 JULY 1986).
[28] 2 RECORD OF THE CONSTITUTIONAL COMMISSION 416 (29 JULY 1986).

1. The Respondents have objected to the jurisdiction of the Court on the ground that all matters relating to impeachment are committed by the Constitution to the Congress, not to the judiciary, and are therefore insulated from judicial review by the political question doctrine. Accordingly, once the constitutional threshold is met (i.e., one-third of the House), the Court must respect and may not review the decision made by that independent and co-equal branch of government.

The complainants in the House are not alone in that claim. Similar views have been documented in the American impeachment experience. The U.S. Congressional Record shows that when then Congressman Gerald R. Ford moved to impeach U.S. Supreme Court Justice William O. Douglas, he asserted that an "impeachable offense" is whatever... the House... considers [it] to be."

> What then, is an impeachable offense? The only honest answer is that an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history;...[29]

Below I will demonstrate that Philippine law rejects that position, in order to make impeachment effective in enforcing public accountability, and "not [for] the venting of private spleen or party hatreds."[30]

2. It is true that the Constitution assigns the impeachment power "solely" to the Congress. It is also true that Con-Com, when it was debating the impeachment clauses, categorically rejected proposals to transfer the power to the courts, and affirmed that impeachment is pre-eminently political in character. That, however, does not bring all impeachment decisions by the Congress beyond reach of judicial review.

THE SUPREME COURT HAS THE POWER OF JUDICIAL REVIEW OVER THE CONSTITUTIONALITY OF THE SECOND IMPEACHMENT COMPLAINT INITIATED BY THE HOUSE.

3. First, the exercise of a power remains justiciable for as long as the Constitution sets ascertainable limits. The classic test which has now been adopted in Philippine law[31] is that a matter becomes political when there is a "textually demonstrable constitutional commitment on the issue to a coordinate political department or a lack of judicially discoverable and manageable standards for resolving it."[32]

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[29] 116 Cong. Rec. H. 3113-3114 (15 April 1970).
[30] R. BERGER, IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS 2, 57 (1973).
[31] *e.g. Estrada v. Desierto*, G.R. Nos. 146710-15, March 2, 2001, 353 SCRA 452 [2001].
[32] *Baker v. Carr*, 369 U.S. 186, 217 (1962).

4. True, the Constitution has "textually [and] demonstrabl[y] committed" impeachment "solely" to the Congress, and the power to impeach, specifically to the House [33]. In addition, the Constitution also assigns to the Congress the power to "promulgate its [own impeachment] rules."[34]

THE EXERCISE OF A POWER IS JUSTICEABLE THE MOMENT ASCERTAINABLE LIMITS ARE FIXED BY THE CONSTITUTION.

5. However, the Constitution itself provides "judicially discoverable and manageable standards" for resolving these cases. The operative question is: Do the Petitions call upon the Court to apply standards that "defy judicial application", such that "full discretionary authority"[35] is reposed in Congress? Conversely, does the constitutionally-imposed "judicially manageable" limits or criteria on the House's power to impeach?

The answer is clear: The Constitution does not give the House unbounded discretion in impeachment. That power is "fenced about in limits" imposed by the Constitution, namely, the threshold of one-third of the Members of the House[36] and the one-year time-bar.[37] The House therefore is not "left to rampage at will" when it impeaches a public officer.

WHEN THE COURT STRIKES DOWN AN ACT OF CONGRESS FOR VIOLATING THE LIMITS CONTAINED IN THE CONSTITUTION, THE COURT DOES NOT PASS UPON THE WISDOM BUT THE VALIDITY OF THE QUESTIONED ACT.

6. The Petitions do not call upon the Court to review the wisdom of the decision of one-third of the House to sign the second impeachment charge. The Petitions do not call upon the Court to second-guess a discretion exercised by the Congress. Rather, the Petitions ask whether the House, in exercising that discretion, acted in conformity with the Constitution. The distinction between the test of wisdom and the test of validity is well established in Philippine law, all the way back to *Tanada v. Cuenco,*[38] and *Lansang v. Garcia.*[39] The Petitioners ask the Court to strike down the Second Impeachment Complaint and nullify Rule V of the House Rules on Impeachment for violating the Constitution by restricting the scope of the time-bar and expanding the scope of its impeachment power.

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[33] CONST. Art. XI , sec. 3 (1)
[34] CONST. Art. XI, sec. 3 (8)
[35] *Tanada v. Cuenco*, 103 Phil. 1051
[36] CONST. Art. XI, sec. 3 (3)
[37] CONST. Art. XI, sec. 3 (5)
[38] G.R. No. L- 10520, February 28, 1957
[39] G.R. No. L-33964, December 11, 1971

7. When the Court reviews the constitutionality of the acts of Congress, the Court does not hereby assert the superiority over a co-equal branch, but merely affirms "constitutional supremacy." It is the Court, and not the Congress, that is the final arbiter of the validity of the acts of Congress.

> When the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments... but only asserts the solemn and sacred obligation assigned to it by the Constitution... This is in truth all that is involved in what is termed as "judicial supremacy" which property is the power of judicial review under the Constitution."[40]

> [T]his Court checks the exercise of power of the other branches of government through judicial review. It is the final arbiter of disputes involving the proper allocation and exercise of the different powers under the Constitution."[41]

8. On the other, what the Court possesses is both a power and a duty to ensure that the Constitution is respected.

> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government.[42]

> It is emphatically the province and duty of the judicial department to say what the law is...

> So if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case... the court must determine which of these conflicting rules governs the case... That is the very essence of judicial duty.

> If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they apply...[43]

> It is the province and duty of the judicial department to determine... whether the powers of any branch of the government... have been exercised in

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[40] *Angara v. Electoral Commission*, 63 Phil. 139 [1936]
[41] *Macalintal v COMELEC*, G.R. No. 157013, July 10, 2003
[42] CONST. Art. VIII sec. 1, par. 2
[43] *Marbury v. Madison*, 1 Cranch 137, 2 L. ED 60 (1803)

> conformity to the Constitution; and if they have not, to treat their acts as null and void.[44]

The Court's judicial power is not any less when it checks the power of Congress to impeach than when it checks the power of Congress to Legislate.

9. The Constitution vests the Legislative Power in Congress[45], and expressly vests the Supreme Court with the power to review the constitutionally of laws[46] Are the acts of Congress any more immune to judicial review when the Congress performs its sole power to impeach, than when it performs its exclusive power to make law? The commentary below explains why it should not make any difference in which capacity the Congress acts, for as long as the power is circumscribed by constitutional limits.

> Impeachment was a carefully limited exception to the separation of powers, tolerable only if exercised strictly within bounds. "Limits" on Congress determined by Congress itself would be no limits at all.
>
> x x x
>
> Constitutional limits... are subject to judicial enforcement; and I would urge that judicial review of impeachments is required to protect the other branches from Congress' arbitrary will. It is hardly likely that the Framers, so devoted to "checks and balances", who so painstakingly piled one check of Congress on another, would reject a crucial check at the nerve center of the separation of powers. They scarcely contemplated that their wise precautions must crumble when Congress dons its judicial hat, that then Congress would be free to shake the other branches to their foundations. ... The Constitution said the Supreme Court, condemns "all arbitrary exercise of power"; "there is no place in our Constitutional system for the exercise of arbitrary power." The Sole Power to try affords nop more exemption from that doctrine than does the sole power to legislate...[47](emphasis supplied)

Finally, the Court's jurisdiction is inescapable, especially in light of the expanded scope of judicial power to review every "grave abuse of discretion [by] any branch or instrumentality of government."

10. Indeed, the Constitutional Commissions, though admittedly not at the same level as the three branches possessing the great powers of government, equally

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[44] *Powell v. McCormack*, 395 U.S. 486 (1969)
[45] CONST. Art. VI, sec. 1
[46] CONST. Art. VIII, sec. 5 (2)
[47] BERGER, *op. cit supra* note 30 at 124-125

enjoy constitutional protection for the "independence."[48] The House Electoral Tribunal is the "sole judge of all [election] contests"[49]; the COMELEC, an "independent" commission[50] to "enforce and administer all laws [relating to] election[s]"[51]; the Civil Service Commission, an "independent" commission[52] mandated to protect a non-political civil service[53]. Yet, no eyebrow is raised when the Court rules on these bodies' jurisdiction or lack of it.[54]

THE PHILIPPINE CONSTITUTION CONTAINS GENERAL RESTRAINTS ON THE EXERCISE OF GOVERNMENTAL POWER, AND SUBORDINATES THE ACTS OF "ANY AGENCY OF GOVERNMENT" TO THE JUDICIAL POWER.

11. The acts of Congress pertaining to impeachment remain subject to the Due Process Clause[55]. A public officer charged before an impeachment Court – even a Chief Justice – does not cease to be a person within the contemplation of the due process clause.

12. In conclusion, it is respectfully submitted that the Second Impeachment Proceeding violates the one-year time-bar under the Constitution, and that the Supreme Court has the power to declare as unconstitutional the House 2001 Rules which expand the power of Congress to impeach and, as well, the Second Impeachment Complaint against Chief Justice Hilario G. Davide, Jr.

> The doctrine of which we treat is one of "political questions", not one of "political cases". The courts cannot reject as "no law suit" a bona fide controversy as to whether some action denominated "political" exceeds constitutional authority.[56]

Clearly, squarely and categorically, the Petitions raise justiciable questions, the Court may validly exercise its jurisdiction, and the *Status Quo Order* has been properly issued.

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[48] CONST. Art. IX, A sec. 1

[49] CONST. Art. VI, sec. 17

[50] CONST. Art. IX, sec. 1

[51] CONST. Art. IX, C sec. 2 (1)

[52] CONST. Art. IX, sec. 1

[53] CONST. Art. IX, sec. 2-4

[54] *Macalintal v. COMELEC*, G.R. No. 157013, July 10, 2003 *citing Bondoc v. Pineda*, G.R. No. 97710, September 26, 1991, 201 SCRA 792 [1991]; *Romualdez-Marcos v. COMELEC*, G.R. No. 119976, September 18, 1995, 248 SCRA 300, 323 [1995]; *Lerias v. HRET*, G.R. No. 97105, October 15, 1991, 202 SCRA 808 [1991]; *Mogueis, Jr. v. COMELEC*, G.R. No. L-53376, May 26, 1981, 104 SCRA 576 [1981]: *Dario v. Mison*, G.R. No. 81954, August 8, 1989, 176 SCRA 84 [1989]

[55] CONST. Art. III sec. 1

[56] *Baker v. Carr*, 369 U.S. 186 (1962)

THE PETITIONERS HAVE STANDING. THE CASE FALLS WELL-SETTLED EXCEPTIONS TO THE REQUIREMENT OF INJURY-IN-FACT.

13. The Petitioners' standing has been challenged on the ground that they have failed to demonstrate that they have suffered some actual or threatened injury as a result of the putatively illegal conduct of the Respondents. The rationale for this requirement is that only a party who has a direct personal stake in the outcome of the controversy can assure the "concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."[57]

14. The petitioners, it is pointed out, have at best asserted nothing more than a generalized grievance shared in substantially equally measure by all citizens, such that the courts are in effect called upon to decide abstract questions of wide public significance, which are better left to the political departments to address.

15. On the other hand, there is an actual, specific injured party, namely, the real party in interest in the impeachment case, the Chief justice, who has not come before the Court and, not being a party, is not bound by any decision that the Court will render.

16. It is respectfully submitted that the petitioners have standing. The case falls under the well-settled exception that, when the real party in interest is unable to vindicate his rights by seeking the same remedies, the courts will grant standing. The facts easily show that the injured party is unable to present the claim himself. In effect, those who object to the standing of third parties now are calling upon the Chief Justice to file the Petition himself. As things stand—with Petitions filed by third parties—the Court is already criticized for passing judgment on a case involving one of its own, its Chief no less, the propriety of its exercise of jurisdiction brought into question. How much more if the Petition is filed by Chief Justice Davide himself? For all intents and purposes, the injured party is unable to invoke the Court's jurisdiction himself, and the constitutional issues raised in the Petitions are therefore amenable to being raised by non-Hohfeldian plaintiffs.

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[57] *Id.*

17. Finally, the Court has liberalized the rule on standing whenever it is presented with constitutional issues of transcendental importance or overarching significance, as in this case.[58]

18. Having concluded that the Petitions are justiceable and that the Court's jurisdiction is clear and categorical, I join the call for restraint, to avoid a rush to judgment and to enable existing constitutional processes to correct the unconstitutional Second Impeachment. Justice Holmes said that "to declare an Act of Congress unconstitutional...is the gravest and most delicate duty that this Court is called upon to perform"[59].

19. In the present case, the controversy may still be resolved, and the petitions rendered moot, internally by the Congress itself. First, the Court can take judicial notice of attempts to encourage the signatories of the impeachment complaint to withdraw their signatures. Second, the House Rules on Impeachment provide for an opportunity for Members of the House to raise the constitutional questions themselves, when the Articles of Impeachment are presented on a motion, as required by §15, para. 2, to transmit to the Senate. Third, finally, assuming that the Articles are transmitted to the Senate, the respondent Chief Justice can raise the constitutional issue by way of a Motion to Dismiss.

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[58] *Integrated Bar of the Philippines v. Zamora*, 338 SCRA 81 (2000); *BAYAN vs. Executive Secretary*, 342 SCRA 449 (2000); *Del Mar v. Philippine Amusement and Gaming Corporation*, 346 SCRA 485 (2000); *Lim v. Executive Secretary*, G.R. No. 151445 (11 April 2002)

[59] *Blodgett v. Holden*, 275 U.S. 142 (1927)

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