

A TIME TO

STAND

2016



WHY SAVING RELIGIOUS
FREEDOM DEPENDS ON WHAT
PEOPLE OF FAITH DO NEXT



Kelly Shackelford, Esq.

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by Kelly Shackelford

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A TIME TO STAND IN 2016

Americans have entered a tipping point. We have entered a time when religious liberty will either be saved or lost. At the end of this period of time, which could be a year or more—but likely not longer than five years—America will be traveling one of two paths.

We either will be on the road to:

Restored religious liberty, having repelled the most severe assault on religious freedom in the history of our republic, or

Lost religious liberty; a nation *devoid* of religious liberty and its vital benefits.

And who will determine the outcome?

People of faith, the very targets of growing discrimination.

Even after decades of judicial activism and liberty-hostile legislation—even after a cultural war on religious belief from the worldly fortresses of secularist education, media, government and much of corporate culture—the *law* is still decisively on the side of religious freedom.

If people of faith stand up courageously and make use of these laws, their religious freedom can be saved. Major federal and state statutes and court decisions are waiting to be used to reaffirm religious liberty. Skilled attorneys stand ready at the defense.

People of faith need to *know* they have it within their power to win the battle. And with that knowledge, they must then make the courageous decision to *stand*.

If they stand, I believe events will tip in their favor.

These pages summarize the situation as we face this critical tipping point, and outline a practical game plan for victory at this very perilous time in American history.

WE'RE AT THE TIPPING POINT

Anyone living through the past two years realizes that the battle for religious liberty has risen to intensity never experienced before in our country. Just a sample of what Americans have seen includes:

Government authorities in more than one state **demanding to examine pastors' sermons.**¹

A city **threatening ministers with jail** if they don't marry same-sex couples.²

People **losing their jobs** because of religious views expressed outside the workplace.³

Schools unlawfully **banning** Bible clubs⁴, religious language in graduation speeches⁵, Bible reading in free time⁶, and prayer over lunch⁷.

Radical legal groups seeking to **tear down veterans memorials** due to the memorials' use of religious imagery.⁸

Business owners with sincerely-held religious beliefs being threatened with **exorbitant fines for exercising their faith**, in one case more than \$150,000.⁹

Faith-based ministries continued to be **ordered to provide and facilitate abortion-inducing drugs.**¹⁰

We're seeing things we have *never* seen before. Clearly, we have entered a period of trial for the future of religious freedom.

WARNING FROM OVERSEAS

Not long ago, my good friend Paul Diamond, one of the foremost barristers litigating cases for religious freedom in the United Kingdom, issued a stark warning to America.

He said that several years ago in England, the government and many businesses began to attack religious liberty for Christians who held to traditional views of sexuality. Careers were threatened.

How did people of faith respond? Most chose job security—and capitulation to the secular culture. **That was the point, said Paul, when a great darkness crept over the nation as it tipped decisively away from religious liberty.** The light of open Christian influence was all but extinguished and the social benefits of faith were forfeited.

But we are not England. We are the United States of America.

We have a written Constitution with the First Amendment.

We have a unique tradition of religious liberty and protection of diverse religious expression going back to before the American Revolution.

We have a history of multiple religious revivals and the strength of a robust movement of people of faith in the political and judicial arenas.

People of faith in America are fighters. So far. But now that resolve is being put to a historic test.

WAR OF THE WORLDVIEWS

The attack on religious liberty doesn't come from nowhere, and it doesn't come by accident. It emerges from a secular worldview that dominates the mountaintops of power in much of our culture: government, media, education, many corporations, even much of the military.

The secular worldview looks at religion with suspicion at best, hostility at worst. It sees the supernatural as something far removed from relevance to everyday life, and perhaps even nonexistent. Religion, it says, is fine if it keeps to itself and stays quiet.

But according to the secular worldview, outside of tightly restricted boundaries, a reliance on things you can't see and "stories" from a long time ago exhibits an outdated and therefore a *negative* influence on people's minds and behavior. This especially includes areas involving morality and anything that might influence someone to join a religious movement. **The secular worldview tends to encourage the attitude that government should have nothing to do with religion**, and that religious expression in any way connected with government is somehow "proselytizing" and is a theocratic establishment of that religion as "the" official faith, and that government is coercing belief.

This worldview picked up speed in Western culture in the Enlightenment and accelerated during the 1900s. It became politically superheated with the advent of the sexual revolution of the 1960s and the ascendancy of the 1960's generation to governmental and economic power in the early 21st century.

Still, the secular worldview was countered. It ran into a tenacious faith tradition of American society, which also surged in the late 20th century and into the 21st century.

That conflict has created a time of testing.

The forces of secularist power are testing religious freedom. They want to see if they can break it, if they can fundamentally transform America's long, deep tradition of religious liberty and social influence.

It is a win-or-lose proposition to them. They aren't content to "live and let live."

That is hard for some people of faith to believe. In America, we have been used to acknowledging our political and cultural opponents' right to exist. But today there are some very powerful people with a secular worldview who think their agendas are much more important than the freedom of people of faith to disagree with them. So they are trying to see if they can get rid of that freedom.

Consider what that means. We are either going to see that concept of civil coexistence erode and see free religious expression crumble, or else we are going to stand up to these attacks and preserve our tradition of free exercise of religion.

RELIGIOUS FREEDOM: PUBLIC ENEMY

In 2015, powerful secular institutions, activists, and opinion-shapers intensified their campaign to downgrade religion and religious freedom.

Influential *New York Times* writer Frank Bruni labeled “religion” as a **“final holdout”** and **“stubborn refuge”** of unlawful discrimination. Bruni said biblical views must be constrained and **restricted to “pews, homes, and hearts.”**¹¹

CNN anchor Chris Cuomo (son of a former New York governor and brother to the current one) asserted, **“Our laws do not come from God . . . They come from man. Our rights do not come from God.”**¹²

Donald Verrelli, The U.S. Solicitor General, speaking before the U.S. Supreme Court, said that the tax-exempt status of ministries who refuse to violate their conscience regarding same-sex marriage will be an issue.¹³

A former U.S. Secretary of State, speaking about traditional views of sexuality, said, **“Deep-seated cultural codes, religious beliefs, and structural biases have to be changed”** through the exertion of **“political will.”**¹⁴

Then came the attack on the federal Religious Freedom Restoration Act (RFRA) and state RFRAs. Such laws merely specify protections of religion against hostility, and flow from the First Amendment’s words that government shall not prohibit “free exercise” of religion. **“Free exercise” means open practice and expression, not something that must be done hidden behind closed doors.**

The federal RFRA has stood since 1993. It was introduced by then-House member Charles Schumer, a liberal Democrat, passed the House of Representatives unanimously, and the Senate with only three votes against its passage. It was then signed by President Bill Clinton. This was not controversial legislation if you think religious freedom is a good thing.¹⁵

But a law accepted as non-controversial in 1993 is now the object of a war. Not only have forces of intolerance

blocked state RFRA laws, but there are cries from the secular Left to repeal the *federal* RFRA law.

The desire to eliminate RFRA, not long ago considered by *liberals* as solidly within the mainstream of American protection of religion, is a weathervane indicating that the wind is suddenly blowing against the tolerance of traditional religion. Powerful storms are here. **The lords of secularist political power want religious liberty redefined into non-existence.**

We have never seen this before.

We have never had *the very concept* of religious freedom be under assault. We've never seen the legitimacy of religious freedom *as an idea* so severely questioned in our country. Yes, we've seen certain isolated examples of attack on religious freedom before, but this is new. Now the opposition is going right after the very idea of free exercise of religion.

Will religious freedom—and open religious exercise—become extinct in America? Or will enough people stand up and repel these attacks?

Now the opposition is going right after the whole idea of free exercise of religion.

In instance after instance, secularists are causing Americans to ask whether religious freedom is necessary or needed any more—whether it is archaic and gets in the way. The typical narrative is, “We can't let these religious people be bigots. We are not going to allow them to have, or at least express, those beliefs.” Is that now our new national mantra? Is religious freedom becoming extinct—or instead, are we going to stand up and repel these attacks?

WHAT IF WE LOSE?

What if we don't stand?

For people of faith, especially Christians and Jews, *there will be almost no protection for the open expression of your faith anywhere*. We could slide into the beginning of totalitarianism.

People in other countries can testify that **if you lose your religious freedom, you will lose all your freedoms**. Why? Because of the powerful truth stated in the Declaration of Independence: *all* rights are endowed by a Creator, which is a higher power.

Governments are a lower power. They are instituted to secure the rights given by the Creator, and governments are thus accountable to that Creator. That's why religious liberty is the "First Freedom" listed in the Constitution. But if the Creator is downgraded by the diminishing of religious rights, then government has set itself up as the "higher power"—government has replaced God as the origin of rights—and can redefine or remove your rights as it pleases.

Religious freedom is like a circuit board, which wires our entire system of legal rights. And the secularists in power are trying to short out that circuit board—usually for gains driven by whatever interest group holds the spotlight. With ObamaCare, it's the issue of forcing pro-life religious citizens to provide for abortion through insurance coverage for life-terminating drugs. In other cases it's LGBT rights. But these interest groups are so intensely focused on "their issue" that they don't understand the peril to the entire country if they were to destroy religious freedom. Eventually, all rights, including theirs, would be at risk.

Yet that is what is being tested now: Will we stand, or will we allow secularists, manipulating government and special interest groups, to overturn our foundation of religious liberty and crown government as god, thus hanging a capricious sword over everyone's rights?

If that does happen, your church and home will provide little refuge. The “box of religious freedom” within your “pews, homes, and hearts”—as mentioned earlier by the *New York Times*’ Frank Bruni—will be crushed or invaded.

STAND #1: FOR CHURCHES AND MINISTRIES

Retreating into your church or synagogue is no escape route—it is a death trap, a box canyon for your liberty. The secularists intend to march in after you.

How can we know? They've said so, and their actions are consistent with their words. Some examples:

In 2015, the U.S. Solicitor General—the top litigator for the U.S. government conceded that the tax-exemption status of **religious institutions will be an issue** if they did not alter their doctrine or practice regarding sexuality. (*Obergefell v. Hodges* oral arguments, April 28, 2015.)

The same high official **stated that your church's freedom to hire is not protected by religion clauses in the U.S. Constitution.** Government can often decide. His argument was rejected by the U.S. Supreme Court 9 to 0—but the fact that he offered it betrays the true agenda of the Executive Branch of the federal government. (*EEOC v. Hosanna Tabor Evangelical Lutheran Church and School* oral arguments, January 12, 2012.)

The City of Houston, Texas **issued a subpoena to several pastors** ordering them to turn over all communications regarding church doctrine on sexuality, including *sermons*, in a legal dispute after Houston's city council passed a controversial law expanding rights based on sexual orientation and gender identity.

The subpoena was a serious, heavy-handed move against these pastors and their congregations.

Refusal of a subpoena is punishable by law. The power to subpoena is the power to intimidate and harass. Ultimately it is the power to suppress, the power to silence, and the power to control. The late Supreme Court Justice Abe Fortas once said that silencing speech was, in his word, “totalitarianism,” and fundamentally un-American.¹⁶

But it was not the first time I had seen this.

First Liberty Institute is representing Dr. Eric Walsh, one of the top healthcare administrators in the United States, in a legal action against the state of Georgia, who had fired him because of what he preached *in his church* as an ordained lay minister.

Don't miss that: **Dr. Walsh was fired because his employer, the state of Georgia Department of Health, didn't like his sermons.** When the State hired Dr. Walsh, internal memos were jubilant to have someone with his impressive track record. But after the political Left complained, the state officials assigned bureaucrats to examine his sermons. We have copies of the internal emails from government officials, divvying up his sermons for government review! **These sermons became the grounds for his termination.**¹⁷

Other examples of government persecution of churches and ministries abound:

The Obama Administration's **insistence that faith-based ministries participate in providing insurance coverage for abortion-inducing drugs** even when that violates their sincerely held religious beliefs. We are representing several such ministries, including *Insight for Living Ministries International*, the Bible-teaching outreach of Dr. Chuck Swindoll.

A major U.S. city threatened to **seize the land of two urban churches and give the property to businesses.** The churches were literally transforming a crime-ridden ghetto, but the city was ready to destroy the ministry. Thankfully, First Liberty Institute's legal intervention stopped the tragedy.

First Liberty has defended **synagogues threatened with closure** due to unreasonable regulations, **churches unlawfully shut out** of needy areas by government officials, and other life-changing **houses of worship and outreach ministries increasingly targeted** with hostile government action.

The good news: we can win. The law is on the side of religious liberty.

But brave people of faith like the Houston pastors, Dr. Eric Walsh, Dr. Chuck Swindoll, and others must be willing to stand. We're at a crossroads for churches and ministries, and what people of faith do in 2016 will be crucial to the outcome.

STAND #2: FOR PUBLIC EXPRESSIONS OF FAITH

When a regime hostile to religious freedom wants to discredit and silence a faith, one of the first important steps is to eradicate public symbols of that faith.

Secularists are pushing hard for that goal today, and the next months or years will be a tipping point to determine if they will succeed.

First Liberty has defended several veterans memorials on public property that are under attack because they contain traditional religious imagery, something that goes back through the history of America.

Memorials at risk have included the historic **Mount Soledad Veterans Memorial** in San Diego, California. The ACLU represented groups who wanted to tear down a 29-foot cross that is an essential element to the memorial and has stood since 1954. The memorial contains more than 3,500 plaques dedicated to veterans of all our wars dating back to the American Revolution.¹⁸

In 2015, Congress intervened, transferring the land upon which the cross sits to our client, the Mt. Soledad Memorial Association. This land transfer should end the long court battle to save the Mount Soledad Veterans Memorial Cross. *The cross will stand.*

But the battle didn't end there. The American Humanist Association has sued to remove a historic **Maryland WWI Veterans Memorial** in Bladensburg, Maryland, near Washington, D.C., due to religious imagery associated with the memorial. Mothers of soldiers who died in that war erected it over 90 years ago.¹⁹ In 2015 we won at federal district court, but an appeal has elevated the case to federal appeals court.

Should even one such monument fall, more will be targets. A terrible precedent will expose the cross memorials at Arlington National Cemetery. And what of the inscription on the Tomb of the Unknown Soldier, saying "Known But to God"? Will it fall victim to editing by a sandblaster?

And it doesn't end with attacks on memorials and monuments. Secularists are mounting similar crusades against prayer to open government meetings and attacking police chiefs and sheriffs who simply want to display the national motto "In God We Trust" on their vehicles. Driven by their worldview, overt religion is something to be concealed—a hazard to the public that must be hidden away and practiced only behind closed doors.

The conflict has reached a tipping point. If we are to save public expressions of faith, then people of faith must take a stand.

STAND #3: FOR OUR PUBLIC SCHOOLS

Over 50 million students are also living at a tipping point. They are caught in a struggle for religious freedom in the public schools where they spend so much of their time. **Ironically, most students of faith and most educators simply aren't aware of lawfully protected religious rights in the schools.** As a result, they haven't been exercising these rights.

But that can change rapidly. U.S. Supreme Court decisions and other federal and state laws expressly grant broad religious rights to students in public schools.

At First Liberty Institute we have recently seen the seeds of a bright future as our attorneys won case after case for students in the public schools. **The intensity of the attacks on the students' rights picked up—but so did the victories for faith.** For example:

A second grader was told she could not read her Bible during free reading time. We stepped in, and the school apologized and commendably stood with us to announce all staff would be briefed on students' religious rights.²⁰

A school employee told a five-year-old girl it was “not good” to pray over her meal at school. The school was forced to retract that position.²¹

A fifth-grade teacher ordered a boy to stop reading his Bible during an advanced reading time and left a harsh phone message on his father's voicemail. After a national outcry and some education on the law, the school district conceded the boy was within his rights to read the Bible.²²

That was just a small sample of our **education victory parade**. We won the right of *multiple* religious clubs to exist, toppling the uninformed challenges of educators. We have prevailed against educators attempting to suppress the right of students to share Christmas greetings, cards, and gifts with religious messages.

And in two pivotal court battles, we are defending the right of high school cheerleaders from Kountze, Texas

to put Bible verses on football run-through banners, and a high school football coach in Washington State who was terminated for offering a private prayer at midfield after games.

These cases made national news—awakening teachers and students of faith who, we believe, will abandon timidity and insist on faith without fear. **If they do, a new era of religious freedom could be just around the corner.**

Imagine an America where public school students routinely pray, read Scripture, and openly express their faith in schools without fear of opposition by school authorities. Imagine an America where public schools protect faith as a daily, positive aspect of student life. Imagine public schools where vibrant religious influence cuts the rates of drug abuse, crime, out-of-wedlock births, suicide, and falling academic scores.

If we stand in 2016, that America could become a reality in the near future.

STAND #4: FOR OUR MILITARY

Beginning in 2006 the assault on religious liberty in the military escalated with the activity of the Military Religious Freedom Foundation (MRFF), a self-described “militant organization” with the intention of using legal tactics to “lay down a withering field of fire” and metaphorically “leave sucking chest wounds” in an effort to end what it viewed as “proselytizing” by Christian officers.²³ **Indeed, the MRFF called for 400 officers to be court martialed for expressing their faith.**²⁴

The rise of the MRFF coincided with the ascendancy of Barack Obama to the White House and a “politically-correct” tilt in military policy during the last few years. Instances of hostility to religion and religious freedom of service members burst like fireworks in the headlines.

But in 2014 and 2015, the momentum began to reverse. A coalition of pro-religious freedom organizations (led by First Liberty Institute)—using a tone of sobriety, firmness and respect, in distinction to the MRFF’s inflammatory rhetoric—began to remind leaders in Congress, the Pentagon, the branches of service, and elsewhere that *law, military codes, and court decisions* guaranteed service members religious liberty and access to spiritual support.

Members of the military who challenged attempts to suppress their religious liberty were protected by First Liberty.

In 2014, **U.S. Army Chaplain Joe Lawhorn** was protected after being unlawfully punished for a suicide prevention presentation that probably saved lives—but included his faith testimony, which got him in trouble. Today, he is free to give his presentation.

In 2014, **U.S. Army Lt. Commander Charles Pudil** was reprimanded for expressing his faith-based reservations about soldiers being indoctrinated with unbiblical views of sexuality. As a result of actions he took according to First Liberty’s legal advice, his reprimand was torn up. He was even assigned to educate other officers on how to resolve religious conscience conflicts!

In 2015, **U.S. Air Force Senior Master Sergeant Phillip Monk** retired at his 20-year mark after legal intervention saved his career after he was relieved of duty and threatened with further adverse action due to his expression of his faith regarding same-sex marriage.

In 2015, **U.S. Navy Chaplain Wes Modder** won a huge victory after being threatened with discharge for counseling from the Bible. Modder was exonerated, and his case became an example for taking a wise, principled, effective stand for religious rights.

Yet much work remains. We are currently defending a **U.S. Marine court-martialed for posting a Bible verse** on a piece of paper at her workstation. The case is at the nation's highest military court, and could go to the U.S. Supreme Court.

Religious liberty in the military is still in peril, and far too many people of faith live in unnecessary fear. We are at a tipping point, and 2016 is a critical year to take a stand.

STAND #5: FOR EMPLOYERS AND EMPLOYEES

I've already mentioned how a British lawyer said religious freedom was lost in the UK when people of faith chose incomes over their religious beliefs. That's what we're facing in America in 2016—we're at a tipping point.

I've also mentioned the case of Dr. Eric Walsh v. the Georgia Department of Health. The attack against Dr. Walsh is not only an attack on church and ministry (since the state used his sermon content and discriminated on the basis of his religious beliefs), but it is a workplace attack as well.

If First Liberty Institute wins this very public case, it will send a message to other employers that such hiring and firing discrimination is against the law and unacceptable.

But it will not be the first victory for people of faith in the workplace.

In 2015, First Liberty settled a lawsuit for an award-winning journalist in a religious discrimination case involving a major news corporation; a settlement with which our client was very pleased.

In 2016, more such cases are due to be similarly settled—confidentially, but involving major corporations.

These are “tipping point” cases.

But it doesn't end there. The U.S. Supreme Court's recent decisions in favor of private, faith-based companies such as Hobby Lobby and Conestoga Wood in their challenges to the ObamaCare Abortion Pill Mandate set up a cascade of challenges to government infringement upon religious liberty exercised by businesses with sincerely-held religious beliefs.

The battle for the faith in the marketplace is erupting. America is deciding whether we are going to go the way of the United Kingdom, or whether our roots of faith are deeper and our spiritual backbone stiffer. Is religion in the workplace going to be allowed? Are people going to be permitted to live out their faith in the marketplace as employer and employee?

That is now up for grabs and we intend to create momentum shifts based on cases that are on the verge of breaking.

IF WE STAND, WE WIN

In one case after another—one area of American society after another—we are at a point of decision. Will we stand, or will we retreat?

For **churches and ministries**: Either we will stand and protect the pulpit and the sanctity of ministry—or we will enter an era of the decline of religion in America.

For our public **schools**: Either we will stand for religious freedom for students and educators—or schools will continue to become more and more secularized with no religious voice to balance the anti-religious bias.

For **public expressions of faith**: Either we will stand for veterans memorials with religious imagery, or watch them be covered, altered, or removed. Either we will allow citizens to ask God's blessing on our public meetings, and display religious messages in public, or allow people of faith to be bullied into silence.

For our **military**: Either we will continue to see the tide turning back toward religious liberty and influence for our service men and women—or people of faith will flee the service and it will spirituality wither.

For **employers and employees**: Either politically correct intolerance will force people of faith to go silent to save their businesses and jobs—and our nation will be the worse for it—or the Constitution and laws will be enforced.

The future of our country is in the balance, and nobody really knows which way it is going to go.

But I do know we can win in every area if people of faith are willing to stand up. We have the lawyers willing to stand, because many of the best in the nation are hard at work as members of First Liberty's national volunteer attorney network. So the key ingredients are clients—brave Americans choosing to insist on their rights—and other Americans willing to donate resources to make sure people of faith get the best legal representation.

First Liberty wins over 90 percent of our cases. If Americans make the choice to stand, the odds are with them.



ABOUT KELLY SHACKELFORD



Kelly Shackelford, Esq., has been president and CEO of First Liberty since 1997. Mr. Shackelford is a constitutional scholar who has argued before the United States Supreme Court, testified before the U.S. House and Senate on constitutional issues, and has won three state landmark First Amendment and religious liberty cases. He was recently named one of the 25 greatest Texas lawyers of the past quarter-century by *Texas Lawyer*, and is the recipient of the prestigious William Bentley Ball Award for Life and Religious Freedom Defense for his pioneering work protecting religious freedom. He graduated with a B.A. cum laude from Baylor University, and a J.D. degree from Baylor Law School, where he had the highest unadjusted GPA in his graduating class. He has also served as an adjunct professor at the University of Texas School of Law from 1994-2000. Mr. Shackelford is on the Board of Trustees of the U.S. Supreme Court Historical Society.

ABOUT FIRST LIBERTY: WHY WE WIN

First Liberty Institute is our nation's largest legal organization dedicated solely to protecting religious liberty for all Americans.

First Liberty Institute is a non-profit offering *pro bono* legal assistance to defend Americans' religious freedom in four vital areas:

In our schools

For our churches

In our military

Throughout the public arena (including government and the marketplace)

First Liberty has won cases at all court levels, including the United States Supreme Court, and is active across the nation.

Our over 90 percent win rate comes from our unique strategy:

Elite Attorneys – Our national network features attorneys from America's top law firms. Litigators from this network would normally charge up to \$1500 per hour, but they defend religious liberty *pro bono*.

Multiplied Impact – Our volunteer attorney strategy means for every dollar spent on a case, we receive six times as much in donated attorney time, creating a powerful impact against wealthy foes like the ACLU and government agencies.

Home Field Advantage – These high-powered local and national elite attorneys “know the territory” and how to win, wherever a case is litigated in America, and however high the court.

Victories are won through top staff attorneys who coordinate a national network of top litigators from firms that include 25 of the largest 50 in the world.

To learn more about First Liberty, to donate, or to learn how to report a potential violation of religious liberty, visit **FirstLiberty.org**

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23. "Mikey's Mission," Carla DeGette, Colorado Springs Independent, March 6, 2006; <http://www.csindy.com/coloradosprings/mikeys-mission/Content?oid=1132893>
24. Comment near end of discussion: <https://www.youtube.com/watch?v=Y9G7H4nOQUA>

Religious freedom in America is being put on trial. The “courtroom” will be the legal realm itself. The verdict will come soon. Who will exert the most power over the outcome? The answer may surprise you.



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