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FILED
SID J. WHITE
APR 21 1993
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

BERNARD J. PENN,

Intervenor-Appellant

CASE NO. 81,201.

VS.

FLORIDA DEFENSE FINANCE AND ACCOUNTING SERVICE CENTER AUTHORITY, Instrumentality of City of Pensacola and Escambia County, Florida.

Plaintiff-Appellee

Vs. STATE OF FLORIDA, and All Taxpayers and Property in Escambia County privately owned...

Defendants.

REPLY BRIEF OF APPELLANT.

* *

On Appeal from the Circuit Court in and for Escambia County, Florida

Case No. 92-5672-CA-01

Attorney for Plaintiff
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Karen O. Emmanuel of
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Richard Lott
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(County Bond-Attorney)

Appellant:
Bernard J. Penn
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ARGUMENT OF REPLY BRIEF:

ISSUE NO. 1

1. Yes, the Plaintiff was authorized by Chapter 75.02 Florida Statutes to file proceedings in Escambia County Circuit Court rather than in Leon County. The Appellant adopted the ANSWER filed by State Attorney before realizing that the Answer was prepared, typed, and shown to be the product of the Bond Counsel of County and typed December 9, 1992 with code letter LKL (Livermore, Kent, and Lott, Attorneys). That this ANSWER was the Answer and handiwork of plaintiff's co-counsel Lott; and filed by State Attorney on December 31, 1992 on behalf of State and the Taxpayers, and property(s) in Escambia County which are, or could become subject to Taxation to pay Bond principal and interest through the conduit of Interlocal Agreement, City and County Authorizing resolutions, City and County leases, City Tax Increment and County Tax Increment Ordinances, The Indenture, the Mortgage and Bonds, and Emergency Resolutions required because of Competition between cities to be judged in a first-step on January 4, 1993, said time limits supposedly set by the Department of Defense without considering the legalities of 20 state-laws having to be met. Florida was only State, per December 12,1992 "newspaper" that adopted the name "Revenue Bonds" to avoid time-consuming and political question of Whether to Trust a present or future President to leave Payroll Center at Pensacola when a Free building had been furnished at local property owners expense, which taxes would remain at high level even though the civil-service workers To-Be-Milked had been transferred away, contrary to interests of new-car dealers, Sin-industries, newspapers, and most business interests.

2. The preparation of Answer by Plaintiff was to avoid State Attorney ever thinking about any issue or fact involved; the State Attorney got paid the same amount to do nothing, and did not antagonize any of the moneyed-interests who could and would have destroyed his long held office tenure.

Issue No. 1 (Cont'd):
3. Chapter 163 of Florida Statutes was contained in Chapter 69 of 1969 laws and covers 66 packed pages of Florida Statutes of 1987, after being amended each year and added toyearly. Taxpayers got along since 1620 without local governments and officials benefiting at expense of quality and freedom of life; statutes have increased 50% in 25 years, and each man's right has become the next man's fear and liability.

ISSUE NO. 2

2. The Plaintiff-Appellee admits that there was not 20 legal days elapsing between between December 14, 1992 publication date and 8:00 A.M. Monday, January 4, 1993. Even though January 4 was "20th day", C.P.R. 1.090 says, "The period shall run until the end of the next day which is neither Saturday, Sunday, or legal holiday."

2. Since the end of Monday, January 4, 1993 had not arrived at 8:00 A.M. January 4, 1993, That day cannot be counted under Rule 1.090. That the lack of one full day After the holidays prevented Intervenor Penn, and others who only talked not testify to Judge, from combining forces and talents and expense defrayal for an assault at trial-level.

3. The Final Judgment had already been typed at January 4, 1993 final hearing therefore Judge did not have motivation or desire to question Time requirements and announced contrary to pleadings in court-file, "There are no Intervenors", per Exhibit A and B attached in Appendix. The Judge called fifteen (15) minute recess while he made changes in the proposed judgment.

4. The legal argument of Appellant's Initial Brief remains unscatched.

ISSUE NO. 3

1. The Final Judgment was already typed prior to beginning of final hearing, Therefore, the Trial Court's "Findings" are not based on testimony or exhibits. The Appellant was present during all of the final hearing, and the only "emergency" described was the supposedly January 4th deadline that Plaintiff's counsel verbally described, purportedly set by Department of Defense who was getting a $85,000,000 facility free through the forced bond-issue at cost of Escambia County taxpayers. There was no reason for an "Emergency" to have arisen since the Plan of Defense Department was known in March 1992. The Emergency was created by Plaintiff and Bond Counsel in order to advertise on December 14,1992 and conduct hearing the first minute possible after Two holiday periods prefaced by children being let out of school for Xmas, Christmas and News Years when no-one would have room in mind for Fighting to prevent Elite bond-holders, politicans, bureaucracts, insured bankers, lawyers etc. drawing-down large sums of money to do"nothing" while remainder of society violently objects to Taxation, Or is forced to receive subsidy for bread, rent and auto liability insurance. The President of plaintiff is also President of First Union Bank, successor of Florida National, who "loaned" plaintiff 85 Million Dollars of U.S. insured deposits, or participated therein, and on March 17th demanded that Appellant dismiss this appeal as "moot" and two hours later publically announced he and plaintiff was not quiting even though Secretary of Defense had Shot down idea of 20 cities competeing for opportunity to bankrupt them and their taxpayers by ad valorem tax,etc. in process of paying for capital facilities to house U.S. DOD payroll center(s). That Bush-appointees on Base Closure Commission have called Secretary on carpet (because He killed regressive property tax designed by Bush and Wall Street to Foster "hard-times" notwithstanding pump-primeing by Clinton administration.)

(Issue No.3 cont'd):

12. Appellee's brief, page 12 refers to App. 4 pg.11:

> "The Court finds that the deadline imposed by the United States Department of Defense for submission of final offers, including elimination of the contingencies of bond-validation created an emergency..."

Where is the documentation? The Offer from Department of Defense?

Why was the deadline January 4, 1993, not Tuesday January 5th?

Why should local Citizens "Jump the Rope" when Washington says Jump?

Why did not Plaintiff go to federal District Court and show D.O.D. was demanding that Plaintiff would be forced to create Bonds that would be illegal under State Law, but for an additional day? The Emergency was a fraud or sham because based on rule of a higher government's agency ignoring constitutional rights of contesting property-owners.

3. The President of plaintiff wrote on Jan. 10,1993; and published 11th:

> "...Much of what has been done by so many (officials and Committee of 100) has had to be pursued without publicity or even disclosure."

This and the balance of his four-foot column shows the entire Scheme was for personal gain by proponents and the detriment of 95% of county residents.

4. The architect and engineering firm was paid about $507,000 for drawing plans for the facility;"and will collect about $400,000 balance because contract provided that if drawings 35% completed prior to another city being awarded the Site, the entire balance would be paid."

5. The D.O.D. should have hired the Architect and Approved what was to be built, prior to plans being drawn; otherwise, U. S. in the future may or will walk away from the facility as improperly designed, constructed to not withstand earthquakes, etc.

Issue No. 4

1. Article VII, Section 12 of Florida Constitution provides:

> "Section 12. Local Bonds.--Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:
> (a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation, or
> (b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate."

2. The Constitution does give Plaintiff authority to levy ad valorem taxes, in as much as it says, special districts May be given the authority (by statute). While the present statutes may not give Plaintiff-appellee the power to levy taxes, or to compel the City and County to levy sufficient ad valorem taxes to cover the bond liquidation costs, there is nothing in Constitution that says this cannot be done, due to "changed circumstances".

(b) It is implied that governments will do whatever necessary to pay bondholders for principal advanced, plus whatever interest agreed upon.

(c) That since the object of the Bonds was to build a free building on U. S. Government land, the building itself would not provide money to repay the bondholders, Ad Valorem Tax revenues would have to be used to finance the repayment of bonds into a 30 year future.

3. The principal and interest on these bonds would run about $10,000,000 average for 30 years. The County has a $10,000,000 short-fall in 1992-93 budget without consideration of this bond repayment. Fourteen (14) months ago, the County closed a $20,000,000 University Hospital and 225 employees "to save $1,000,000 deficit on hospital operation".

4. The City has obligated $1,000,000 sales tax revenue to pay for 500 room concrete and steel Hotel San Carlos which was condemned in 1981 to keep it from competing with Hilton and 3 other downtown hotels. The City is many million dollars in debt and derives most of its income from natural gas re-

resale to metro area customers. The Escambia County Utility Authority is also many million dollars in debt, and presently under investigation by Grand Jury that meets one-day-a-week for Fraud in purchase of about $12,000,000 garbage cans, mandatory garbage collection, and "cutting water off when customers do not pay mandatory garbage collection charges.".

5. The Appellee's brief, i.e. last paragraph page 15 states:

> "Article VII Sec. 12 of the Constitution of the State of Florida apply only to bonds which pledge the full faith, credit and taxing power of governmental entities."

There is no such statement in the constitution at this point. The City and County covenanted to use ordinary ad valorem taxes to pay into trust fund for principal and interest of bonds in eventthe Tax-Increment financing was not sufficient.

6. Appellant believes a reading of Article VII, Sections 9, 10, 11, and 16 show a constitutional-intent to avoid a money-slavery of citizens by use of referendums, and limitations of bonding present to be repaid in future.

7. Failure to provide an independent sourse of revenue to liquidate the Bonds shows they not "revenue bonds".

ISSUE NO. 5

1. The Rightfulness of the Bond-issue as between the Taxpayers and the recipients of the expenditure originally are a major issue which this Court should examine to make sure that State and Federal constitutional rights are not trampled. All property owners of County will be required to pay for a facility where 4,000 federal employees will work, being about 4% of employed persons, averageing over $35,000 per year "wages" besides about 25% fringe benefits. These government "employees" will be transferred into this County to compete with current residents and incomes; being about 50% of persons already employed as

payroll workers elsewhere, entitled to preferences at new centers.

2. Chapter 163.01 (7) (c) says such as plaintiff shall not have power to levy any tax, or to issue any type bond, BUT there is nothing stating the Legislature will not change this law next session.

ISSUE NO. 6

1. Appellant showed under Issue No. 2 that only 17 legal-days had elapsed between December 14 and 8:00 A.M. January 4, 1993.

2. Appellant in Issue No. 6 though reciting 20 calendar days, is claiming that Penn recognizes that the statute calls for twenty days to elapse between advertising and final hearing. Appellant must again point out that "twenty days" is not the issue, but issue is: Are twenty legal and statutory allowable days been allowed to elapse, as measured by Fla. Rule of Civil Procedure 1.090.

3. Society has changed since 1936 case: In 1992 the people are loners and back-biters, refusing to realize and sacrifice in order to Work together in Defense postures. Whereas, the Crooks, bureaucrats, bond-dealers, politicans, and domineering Work together to steal and Gain by Offense postures.

Yes, the interest of bond validation statute is that validation be expedited--rush to get involved and repent at leisure for next 30 years.

4. The news-media is fourth branch of government and supports every authoritarian venture and keeps it going, printing guest-columns while ignoring other viewpoints, submitted by opposition. Appellant's Exh. C attached. "Secrecy" was admitted in specific letters published by same person previously, secrecy being badge of fraud and deceit.

5. Penn has never claimed Circuit Court judge misled Penn, as Appellee claimed in last paragraph page 19 of Answer brief.

ISSUE NO. 8

1. The Judge's conduct at trial was inappropriate because He should have asked Penn, "Did you file an Answer in this proceeding?"

"Am I suppose to have your Answer in this court-file?"

"What is that paper you are waving at me?" (Second Answer).

"When did you mail or deliver your pleading to The Clerk?"

2. The Judge should not have asked; or stated:

"Did you file petition to intervene?"(Validation statutes do not refer to such pleading)

"There are no Intervenors" (Why would Penn have been there?)

"There is no court reporter" (Judge should have had notice that Penn wanted to make appealable argument)

3. The Plaintiff and County Bond Counsel should not have insisted continously that Intervenor-Appellant was at fault for not speaking-up when the Judge told him To Sit Down, and did not speak to Gun-Toteing guard that the 150 lb. 5 ft. 7 inch Talker did not need to be removed or requested to leave courtroom.

4. The Court found and decided everything in favor of Plaintiff, even Ordered Penn to post $750,000 Surety Company Supersedas Bond in a Bond Validation proceeding which he had appealed herein.

5. Previously in Penn vs. Escambia Government Center, 311 So.2d 97, Penn was also under 3rd attack from Bar Assn. for soliciting funds to "pay $1 per page for the record on appeal". Penn was seeking temporary restraining Order from Tally District Court to prevent suspension for failure to pay costs on this 3rd case; when Penn had won two previous Bar cases and had not been reimbursed for his costs. Penn was in effect disbarred in June 1979 for failure to pay costs So 4th case could be filed w/o approval of Justice(s) for sole purpose of being harrassed out of competition.

6. The raising any or all points of Defense against Bond Validation by State Attorney in his ANSWER without presenting testimony and exhibits did not amount to anything in defense of Taxpayers and Penn. If The State Attorney had been apparently going to represent Taxpayers and legitimate interests of average citizen, Penn would not have attempted to Intervene or File this Appeal with all the responsibility, work, danger and finances involved. There was great danger that Proponents of the Bonds would have Penn assassinated; That builders depending on Banks for financing would waste his time; That Judge(s) having control over criminals would Deal; That those thinking Government would hire them at Fat Salary If Penn would not contest validation, ignoring facts that all jobs are already taken and occupied elsewhere.

ISSUE NO. 8 (VIII)
Designated by Appellee as XIII.

1. The correct citation is Article I (Congressional) Section 8, Clause 12, United States Constitution. Since Penn was not allowed to Intervene at Trial Level, He did not have opportunity to raise this issue. The Motion for Continuance and Answer filed December 31,1992 with Clerk by personal delivery was anticipated on January 4th for trial at a Later date when discovery had been accomplished by quick Interrogatories to Plaintiff's and County's attorneys, and principals.

2. That this Issue should be decided by U. S. District Court, probably D.C. Division, and no effort has been made to search for Precedent; nor has the cases cited by Plaintiff covering other Issues been sheppardized due to circumstances beyond control of Appellant.

CONCLUSIONS

Issue No. One (1) is abandoned because selected from State Attorney's ANSWER which later discovered was prepared by County Bond Counsel Richard LOTT with knowledge of Plaintiff's Attorney, Mr. Emmanuel.

It was also discovered that the Final Judgment was Typed prior to the Final Hearing; Therefore, the Finding of fact and its Rulings on the issues are misstatements. The evidence and testimony might have followed what already in the judgment-form on January 4, 1993--The Day that Department of Defense purportedly ruled The Last Day to prove financial committment.

The final judgment entered by the trial court should be Quashed as Twenty Legal Days had not elapsed since first publication and prior to Final Hearing at 8:00 A.M. January 4, 1993, a Monday.

The final judgment should be Quashed because there was no referendum election of freeholders when the Bonds were to be repaid from Ad Valorem Tax Revenues, notwithstanding conduits of leases, trust funds, and so--called revenue.

The Fihal Judgment should be Quashed because of other defects shown by actions of Trial Judge toward the Appellant, Defendant Penn, in refusing to let him contest trial, striking his Petition and Affidavits for New Trial Jan. 15,1993 on Motion by Plaintiff, Requiring Supersedas Bond by Surety Company, and making Findings contrary to Facts under the circumstances.

Respectfully submitted,

Bernard J. Penn

BERNARD J. PENN, Appellant.
P. O. BOX 4182,
Pensacola, Fl.32507
(904) 456-3812
(Inactive No.062360)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of foregoing was served on Robert A. Emmanuel, 30 S. Spring St.,Pensacola, Fl.32501, by U.S.Mail this 20 April 1993.

B. J. Penn

JAN 11 1993

We need you to join DFAS team

DENNIS McKINNON
Guest column

As Northwest Florida reviews its position in the quest for a DFAS center, we are figuratively in "the fourth quarter," with points on the scoreboard and good field position. We can win the game, but the game is not over. There are still opportunities for us to fumble, or to let other cities intercept our efforts. Throughout the long process of getting to this point, much of what has been done by so many has had to be pursued without publicity or even disclosure. After all, this has been a competition with multi-million-dollar community rewards to the winners. To give away our game plan might have been like flashing our signals to the opposing defensive coordinator.

But now the critical points have been presented to the judges, the courts have approved the methods of financing and the region's position will be evaluated on its merits. We are almost as far as we can go on our own. Almost . . . but not quite all the way. At this point every citizen, every elected official representing us, becomes part of our team in the huddle, determining how well we will play this final period. What's involved? Let's look.

First, some quick points of fact and probability.

Should Northwest Florida be approved for one of the DFAS centers it will enjoy approximately 4,000 new jobs, jobs which pay very well indeed, considerably beyond the community average. More than three-quarters of these positions will probably be filled by current citizens; well-qualified newcomers would be involved too. The net result would be an annual payroll plus operating expenditures of over $300 million, a huge sum equivalent to a great new manufacturer. This presence would also generate hundreds of ancillary jobs in businesses which would serve the center and the additional citizens who would work there. This would realize the success of the community's business development efforts for many years.

Next, there is interest in how we would fund the giant building to house this center and for the infrastructure needs. That's a key point. Development and building costs will be covered using growth revenues generated by new salaries and salary increases from higher-paying jobs. Revenues in excess will be used to offset the additional growth and infrastructure needs. The tax base for these state and county revenues is already in place. The existing revenue sources will generate the dollars to pay those costs. The presiding judge who reviewed the plan for issuing bonds to underwrite construction has agreed that the method is legal and sound.

Third, we must recognize the benefit of such a center to future generations of our children. These jobs are the kind of which a community dreams! They require upper-level education, offer career growth and satisfaction and take advantage of course offerings present at our university and community college. For years there have concerns about our graduates having to leave the area to seek job satisfaction. The DFAS center would help solve much of that problem for years to come.

What does our "team" have to do now to assure that Northwest Florida emerges as a winner?

I believe the answer is "commitment and continued hard work . . . together." Few citizens can appreciate the thousands of hours already contributed to this project by volunteers from many walks of life — architecture, engineering, planning, financing and more. Without their interest and concern this region's plan would not have excited the interest of those national leaders making the preliminary judgments.

There has been superb effort on our behalf, too, by Rep. Earl Hutto and U.S. Senators Bob Graham and Connie Mack. There were many potential sites in Florida for such a center; this area emerged as the only finalist. The effects of the input and interest of our officials in Washington cannot be overstated. They have been wonderful!

The same must be said of officials in Tallahassee. The full backing of Gov. Lawton Chiles has been unflinching, and our delegation members have been involved 100 percent of the way. Their work resulted in a first level of state funding which now permits us to begin formal work in architecture and engineering, a must if we are to meet the deadlines for facilities readiness. Other state support will be needed, and for this we can be grateful for the presence and understanding of State Sen. W.D. Childers and House Speaker Bo Johnson and the members of our delegation. They continue to play key roles as we enter this fourth quarter, and we can all be pleased that they are on our team.

From the very start the superb support and leadership obtained from the men and women who sit on the Escambia County Commission (especially past Chairman Buck Lee and current Chairman Steve Del Gallo), the Pensacola City Council (led by Mayor Jerry Maygarden), and to those who serve in similar positions in Santa Rosa County, in Gulf Breeze and in Milton, whose constituents also stand to gain much through this effort.

I do not mean to overstate the team effort requirements of this venture, but it is just that. A DFAS center will benefit all; but at this stage the effort must illustrate a unified community. For this we thank all of these leaders for efforts past, and urge them on in these final weeks.

I know that many questions may remain in the minds of citizens, questions of how, why, where and when this center may come to pass. Speaking for the members of the newly formed authority I can only state that we believe this to be the item of most significant economic potential since the arrival here of Chemstrand 40 years ago.

Standing together, we can enjoy a new business activity which will bring benefit to thousands over an indefinite period. Harmony within the community is essential as decisions are made.

Few such opportunities face a region in any generation. We will continue our team efforts and complete the final tasks that will assure our success.

Denis McKinnon is chairman of the Florida Defense Finance and Accounting Service Center Authority.

Pensacola News-Journal, January 11, 1993. Appellant's Exhibit C.

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

CASE 92-5672 CA 01

FLORIDA DEFENSE FINANCE AND ACCOUNTING SERVICE CENTER, INC. a public instrumentality,

plaintiff

vs.

THE STATE OF FLORIDA, and the Taxpayers, Property Owners, and Citizens of the City of Pensacola, and Escambia County, including non-residents, etc.

FILED
SID J. WHITE
APR 26 1993
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

AFFIDAVIT RE: COURT & PENN STATEMENTS ON JAN. 4, 1993 8:00 A.M. AT FINAL HEARING.

STATE OF FLORIDA, COUNTY OF ESCAMBIA:

C. L. STALLWORTH, being first duly sworn, says he was present in the court room 501 in Judicial Bldg. at 8:00 A.M. on January 4, 1993, and heard the following conversations:

1. JUDGE MICHAEL JONES: Mr. Lott, proceed with your case.
2. BERNARD PENN, Intervenor: Judge...
3. JUDGE: Who are you?
4. PENN: I am Bernard Penn, Intervenor
5. JUDGE: There are no intervenors. You cannot contest the bond validation because you did not file a "Petition to Intervene".
6. PENN: Judge, Where is the court reporter?
7. JUDGE: There is none.
8. PENN: I don't need a Petition to Intervene.
9. JUDGE: You are out of order. Sit down.
10. Judge Jones' bailiff prepared to enforce Sit Down order.
11. Penn had to sit down and be quiet.

C. L. STALLWORTH, 7900 Stallworth Ln., Pensacola, Fl 32506
FDL S346-112-21-042
Exp. 95

Subscribed and sworn to before me this 11 day of January 1993.

Cynthia R. Mason
Notary Public,
My commission expires 4-16-95.
Attach seal.

APPELLANT'S EXHIBIT B.

CYNTHIA R. MASON
"Notary Public—State of Florida"
My Commission Expires 4-16-95
Commission # CC 99762
Bonded Thru Notary Public Underwriters

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

CASE 92-5672 CA 01

FLORIDA DEFENSE FINANCE AND ACCOUNTING SERVICE CENTER, INC.
a public instrumentality,

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AFFIDAVIT RE: COURT & PENN STATEMENTS ON JAN. 4, 1993 8:00 A.M. AT FINAL HEARING.

STATE OF FLORIDA, COUNTY OF ESCAMBIA:

BILL DAVISON, being first duly sworn, says he was present in the court room 501 in Judicial Bldg. at 8:00 A.M. on January 4, 1993, and heard the following conversations:

1. JUDGE MICHAEL JONES: Mr. Lott, proceed with your case.
2. BERNARD PENN, Intervenor: Judge...
3. JUDGE: Who are you?
4. PENN: I am Bernard Penn, Intervenor
5. JUDGE: There are no intervenors. You cannot contest the bond validation because you did not file a "Petition to Intervene".
6. PENN: Judge, Where is the court reporter?
7. JUDGE: There is none.
8. PENN: I don't need a Petition to Intervene.
9. JUDGE: You are out of order. Sit down.
10. Judge Jones' bailiff prepared to enforce Sit Down order.
11. Penn had to sit down and be quiet.

Bill Davison

BILL DAVISON (904) 944-3982
5642 Esperanto Dr., Carriage Hills, Pensa.32506
Florida Drivers License identification.

Subscribed and sworn to before me this 12th day of January 1993.

Patricia Shumate

Notary Public,
My commission expires 4/28/93.
Attach seal.

APPELLANT'S EXHIBIT A

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