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The Shapeshifting Threat of Election Interference

How State Legislatures Are Refining Their Efforts to Manipulate Elections

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A Letter from our Executive Director

Dear friends,

Like many of you working every day to strengthen our elections, I'm often asked to describe what it is like to do this kind of work in the midst of a major election year.

The truth is, this is the best time to be in this work, because this is when – in communities large and small all across the country – we see hardworking, otherwise ordinary Americans do something extraordinary: impartially administer our elections so that the American people have the freedom to choose their leaders and representatives. This is the bedrock principle of our democracy – and why recent legislative efforts by some elected officials to change the rules for political gain are so divisive.

In the following pages, we detail how election manipulation legislation, first emergent in 2021, has evolved. We also forecast what to watch for this fall when new laws of this type will be road-tested in a presidential election for the very first time.

Though we are vigilant about election manipulation efforts, they have not undermined the strength of our elections systems or our democracy. Indeed, in this extremely prolific time for new state-level elections-related legislation, significantly more laws improving our elections have been enacted than those that are concerning. And our system continues to have multiple checks and balances at every level.

From local ballot verification to the counting and canvassing of votes, from local and state certification to clear processes for recounts and evidence-based election contests – we the people, across all party lines, have built something powerful.

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Megan Lewis Executive Director and Co-founder, Voting Rights Lab

Methodology

This report is based on data from Voting Rights Lab's <u>State Voting Rights Tracker</u>. The Tracker contains a database of state legislation across 19 issue areas relating to voter access and election administration. After using software (LexisNexis State Net) that identifies potentially relevant bills in all 50 states and D.C., a team of attorneys at Voting Rights Lab individually analyzes, summarizes, and labels each bill before uploading it into a public database. This database, the Tracker, allows our team, and members of the public, to filter the bill database according to state, policy area, impact, and specific types of provisions. Bill summaries and labels are updated as legislation is amended so that the Tracker reflects the most recent versions of bills as they move through the legislative process.

The dataset used in the original analysis in this report compares Tracker records for over 6,300 pieces of legislation active in 2021, 2022, 2023, and 2024 in all 50 state legislatures and the Washington, D.C. Council.

Bills were deemed to have been "considered" in a given year if they were introduced or otherwise acted upon by the legislature or governor. Qualifying actions include, but are not limited to, introduction, committee referral, passage out of a committee or chamber, enactment, or veto. The number of "considered" bills may differ from the number of bills publicly displayed on the Tracker as having been active in that year. While the Tracker displays all bills carried over from the previous legislative session, the dataset of "considered" bills used in this report excludes bills carried over from a previous year if they had no reported progress in the second year of the legislative session.

Finally, Sabato's Crystal Ball at the <u>University of Virginia's Center for Politics</u> was used as a guide to identify states likely to determine the results of the 2024 presidential election. Of the eight states identified by Sabato as either "toss-up," "leans Republican," or "leans Democrat," Georgia and North Carolina are the two where the most significant election manipulation laws have been enacted.

Executive Summary

Since the 2020 election, Voting Rights Lab has tracked <u>over 6,300</u> pieces of election legislation, including <u>over 600 laws and resolutions</u> that have been enacted or adopted across all 50 states and D.C. We watched the country go in <u>opposite directions</u> on some issues such as vote by mail, nearly uniformly expand ballot access on other issues including in-person early voting, and move forward full throttle in some states on a concerning new area of legislation: election manipulation.

Our research shows the story around election legislation is both brighter and darker than it may at first appear. On the one hand, significantly more legislation has been enacted that makes our elections stronger than legislation that restricts access or impedes election administration. For millions of voters across the country, this will be the most accessible election they have ever experienced. Furthermore, following tremendous bipartisan opposition, the volume of election interference legislation under consideration declined steeply in 2023 after peaking in 2022.

However, despite election manipulation legislation appearing to be on the decline, it remains a very real threat to the 2024 election. Election manipulation legislation – or election interference legislation, as it is often called – can disrupt the administration of elections in a number of ways, including legislative power grabs, politically-motivated sham reviews of election results, threatening election officials and voters with criminal penalties for good faith behavior, and banning critical election technology.

As of April 10, 2024, Voting Rights Lab has tracked <u>79 new laws</u> containing election interference provisions that have been enacted in 29 states since 2021 – and 2024 will be the first test of those laws in a presidential election.

Moreover, though election interference legislation appears to be declining in response to far-reaching, bipartisan opposition, the threat is far from extinguished. Election manipulation legislation is, or was, active in <u>31 states so far in 2024</u>. As a very new area of state legislation, election interference is constantly evolving. And we are currently watching the threat shift in real time in a way that may have real consequences for the 2024 election.

In this report, we will examine how election interference legislation has changed over the course of the past three years and what that means for 2024, particularly in two states – Georgia and North Carolina – that experts consider among those most likely to determine the results of this year's presidential election.

Three Key Takeaways

1.

New election interference laws are going to be put to the test for the first time in a presidential election this November. For example, since 2021:

- <u>Eight states</u> have enacted laws giving partisan state legislatures more power in the direct supervision of election administration and certification.
- <u>Twelve states</u> have enacted laws penalizing election officials.
- <u>Seven states</u> have enacted new laws that increase the chances of a problematic review of election results following the 2024 election.
- <u>Nine states</u> have enacted laws that increase the prosecution or investigation of purported election crimes.

As a new area of election law, election manipulation legislation is constantly shifting. Some new threats include:

- <u>Nine states</u> this year considered or are considering legislation to ban electronic tabulators, forcing under-resourced election offices to count every ballot by hand.
- Eighteen states this year considered or are considering bills this year that would make scanned ballot images and/or cast vote records public, a mandate that, without adequate safeguards, can erode voter privacy.¹
- <u>Sixteen states</u> this year considered or are considering legislation that targets purported noncitizens on the voter rolls. Many of these bills lack adequate safeguards to protect against the purging of U.S. citizens.

Georgia and North Carolina – two of the states likely to determine the results of the presidential election this November – have been at the forefront of new election manipulation laws.

- The two most significant legislative power grabs, creating more partisan legislative control over local election offices, occurred in these two states.
- In both states, under-resourced election officials are likely to face frivolous mass challenges to voter registrations in Georgia and to mail and early voters in North Carolina.
- The situation could get worse for election officials, depending on the results of ongoing litigation in North Carolina and pending legislation in Georgia.

¹ AZ, CO, GA, HI, IL, KS, ME, MN, MO, NC, NH, NY, RI, SC, SD, VT, WA, WV

Election Manipulation: By the Numbers

Since the 2020 election, <u>29 states have enacted 79 new laws</u> that have the potential to interfere with the nonpartisan administration of elections. And, as of April 10, 2024, this type of legislation is active and has passed at least one chamber in <u>eight states</u>.²



NEW ELECTION MANIPULATION LAWS SINCE 2021

The good news is that election manipulation legislation is on the decline after peaking in 2022. It can be challenging to compare nationally aggregated state legislation year over year because a number of states only meet in odd years. To overcome this challenge, this report looks at how the number of election manipulation bills changed as a percentage of total election bills introduced each year.

In 2021, 10% of election bills considered, and 12% of new election laws enacted, included provisions that could interfere with the nonpartisan administration of elections. These

² This link shows the number of states where a piece of legislation is currently active, i.e. where the bill has not died, or been enacted or vetoed. Therefore, the number will decrease throughout session as bills are enacted and legislatures adjourned.

ELECTION MANIPULATION LEGISLATION DECLINING, FOLLOWING PEAK IN 2022



figures peaked in 2022, with 15% of the election legislation considered and 18% of new laws enacted including an election interference provision. In 2023, these figures fell below 2021 numbers.

The sheer numbers, though, tell only part of the story, because the impact of these bills and laws is highly variable and can evolve over time based upon implementation. In the following section, we describe the consequences of this type of legislation in greater detail.

Some types of election manipulation legislation are declining even more steeply. In 2021, when the deluge of election interference legislation began, two of the most popular new trends were penalizing election officials and requiring problematic, evidently partisan-motivated reviews of election results. In fact, 27% of the election interference laws enacted that year penalized election officials, and 23% included problematic election reviews. But in 2023, each of these formerly prolific policies was only enacted in one state.

STATES ARE PASSING FAR FEWER LAWS PENALIZING ELECTION OFFICIALS AND REQUIRING THAT THEY CONDUCT PROBLEMATIC REVIEWS OF ELECTION RESULTS



Election manipulation legislation is changing shape, with new threats – such as forcing hand counts and making cast vote records public – on the rise. In addition to the potential impact that the scores of new election interference laws that were enacted since 2021 may have on the presidential election this year, new threats are continuing to emerge.

As a very new area of state legislation, election interference is a threat that is a moving target, with the potential for real consequences in the 2024 election.



Number of States That Considered Bills Forcing Hand Counts

How It Started

Early Election Interference Policies and Their Consequences

Some areas of election interference legislation that dominated the space in 2021 and 2022 are in sharp decline now, which is a welcome development. The fact remains, however, that many of these early problematic bills became law – and this November will be the first test of their impact in a presidential election.

Power Grabs by State Legislatures

Concerning for the future of nonpartisan, or bipartisan, election administration – <u>eight state</u> <u>legislatures</u> have enacted laws giving themselves more power in the direct supervision of election administration and certification. Perhaps the most high-profile example was <u>Georgia S.B. 202</u> in 2021. In enacting this new law, Georgia legislators seized authority to appoint the chair of the State Election Board from the secretary of state, awarding it to themselves instead. The bill then gave the State Election Board, whose chair was now beholden to the legislature, new authority to investigate, remove, and appoint members of county election boards. Fortunately, the most egregious legislative power grabs – including bills in <u>Arizona</u>, <u>New Hampshire</u>, and <u>Missouri</u> that would have given the state legislature authority to choose the presidential electors – have not become law.

Penalizing Election Officials

Since 2021, <u>12 states</u> have enacted laws penalizing election officials. And notably, <u>114</u> <u>separate bills</u> that would penalize election officials have been introduced in 26 states in that span. So even if a new law hasn't been enacted in their state, election officials know that they are the target of political suspicion, which likely contributed to the well-documented mass exodus of election officials in some states. These bills often create felony-level penalties for election officials for making mistakes, protecting voters from overzealous partisan poll workers, engaging in pro-voter practices that were permissible under previous law, and other good faith job performance.

Fortunately, this type of legislation is sharply declining. More than one in four of the election manipulation laws enacted in 2021 penalized election officials in some way. But by 2023, only a single state enacted a law attacking election officials in this way.

Problematic Reviews of Election Results

Reviews of the 2020 election results driven by conspiracy theories instead of by best practices were one of the most high-profile and immediate responses by those seeking to sow distrust in, and manipulate the results of, that election. The most publicized of these efforts was the sham audit in Maricopa County conducted by the Cyber Ninjas, a group hired by the Arizona Senate that had no elections expertise and was not certified to handle elections equipment. The review took six months, cost nearly six million dollars, and compromised the integrity of Maricopa County's election equipment – and like two previous legitimate audits, confirmed the results of the 2020 election.

A deluge of bills creating problematic reviews of election results followed. Some of these bills required the reviews be conducted by people with no elections expertise, while others targeted specific jurisdictions, lacked clarity of process, or required unfounded investigations into alleged irregularities. While this policy has declined precipitously in popularity over the past few years, <u>seven states</u> have enacted new laws that increase the chances of a problematic review of election results following the 2024 election.

How It's Evolving

The Changing Threat of Election Interference Legislation

As a new policy that really emerged following the 2020 election, election manipulation legislation is constantly evolving. Many of the trends that emerged in 2021 are now shape-shifting into new threats that were unheard of a couple years ago.

From Legislative Power Grabs to State Takeovers of Local Boards: Disempowering Local Election Officials.

Though legislative power grabs are sharply declining overall, lawmakers continue to pass new laws <u>disempowering local election administrators</u>. These laws are just taking a different form. For example, in 2023, Texas enacted <u>two new laws</u> asserting state control over local election administration in Harris County, home to Houston and the most populous and diverse county in the state. <u>S.B. 1750</u> eliminated the county elections administrator position in any county with a population of more than 3.5 million – a criterion that only Harris County meets. While <u>S.B. 1933</u> gave the secretary of state administrative oversight over Harris County, and only Harris County.

From Penalizing Election Officials to Creating Election Crime Units: Criminalizing Elections

While there has been a sharp decline in the number of bills penalizing election officials, there has been no drop-off in legislation designed to <u>increase the investigation or</u> <u>prosecution</u> of purported election crimes. <u>Nine states</u> have enacted this type of legislation, including <u>four states</u> just last year. In fact, the policy's success rate – the percentage of bills introduced that actually become law – has actually increased year over year, with states enacting 21% of bills they considered on the topic in 2023. This is a success rate near twice that of a typical election bill. According to our research, 11% of the election bills considered in state legislatures across the country in 2023 ended up becoming law.

From Partisan Election Reviews to Making Ballot Images and Cast Vote Records Public: Questioning the Legitimacy of Election Results

As discussed above, nearly one in four of the election manipulation laws enacted in 2021 involved ill-defined, legislatively-run election reviews. In 2023 and 2024, we've seen this trend shift into legislation requiring that election officials <u>make ballot images or cast vote</u> <u>records public</u>. Offering more public access to records related to ballot counting, when set up with appropriate safeguards, can increase confidence in elections and reduce the risk of unfounded conspiracy theories. When lacking safeguards, however, these policies threaten ballot secrecy and enable voter harassment – and can even violate federal law. For example, a bill recently passed its first chamber in <u>Arizona</u> that would require public disclosure of active voters' names, addresses, birth years, and precinct numbers, as well as ballot images and related information.

From Restricting Private Funding to Banning the Use of Critical Election Technology: Burdens on Elections Officials

Over half of the election manipulation bills in legislatures so far in 2024 place <u>unjustified</u> <u>burdens</u> on election officials. This category of election interference legislation has been, and remains, a focus for legislators – but the type of bills that comprise it have changed. In 2021 and 2022, <u>bills</u> that restricted the type of grant money election offices could receive were a major component of this category.

But starting in 2022, we've seen a growing number of states introduce <u>bills</u> that would ban the use of electronic tabulators, forcing hand counts of all ballots. Despite the fact that hand counting ballots is tremendously <u>less accurate</u> than using electronic tabulators, nearly certain to result in delayed reporting of results, and associated with increased voter concern regarding corruption, <u>one</u> of these bills passed the legislature in Arizona in 2023 – and would be law right now if the governor had not vetoed it. <u>Nine states</u> are considering or have considered this extreme legislation in 2024, and localities in several states – including Nevada, Georgia, New Hampshire, and Texas – are exploring it as well. See page 17 for more detail on the counties and towns that have implemented or are considering mandating hand counts of all ballots.



Spotlight on 2024

How New Election Interference Laws In Two Key Swing States Could Impact the Results of the Election

Significant election interference legislation has passed in two significant determinative states – Georgia and North Carolina – since the 2020 election.



Understaffed Georgia elections offices must deal with frivolous mass challenges to voter registrations, potential interference from the state board, and unfounded investigations into alleged misconduct.

In the 2020 election, the margin of victory in Georgia was 0.26%, making it the closest contest in the nation, determined by just 11,779 votes. Since that election, the state has seen high-profile legislative attacks on election administration. As a consequence, election officials will need to adapt to new challenges this November.

A 2021 law (<u>S.B. 202</u>) opened the door to frivolous mass challenges to voter registrations. Unfounded challenges inundated understaffed election offices in 2022, totalling about 100,000 – and <u>89% of those challenges</u> were submitted by just six individuals. This November will be the first test of this new policy in a presidential election year, where the number of voters – and potential challenges – will be much greater. Given how close the margins in Georgia are, wrongful removals, or moves to inactive status, could have an outcome-altering effect. In the 2022 midterms, 1.4% of active voter registrations were challenged – and the last presidential election was determined by just 0.26%.

As mentioned earlier, S.B. 202 was also a legislative power grab that gave the legislature authority to appoint the chair of the State Election Board – and then gave the State Election Board much more authority over county boards. County election officials in places like Fulton County may have to deal with politically-motivated interference from the state.

Election officials may also be faced with political investigations, as a <u>2022 law</u> increased the likelihood that election offices will need to divert resources to responding to subpoenas and undergoing investigations for alleged election law violations.



In North Carolina, partisan legislative oversight, frivolous challenges to mail ballots, and voter intimidation from newly-empowered partisan poll watchers threaten election offices already impacted by unusually high turnover.

A flip in ideological control at the North Carolina State Supreme Court and the mid-session creation of a supermajority caucus in the State House of Representatives led to the implementation of a strict voter ID law and the passage of <u>two omnibus election bills</u> in 2023, including one of the most aggressive legislative takeovers since the 2020 election.

Perhaps most notably, <u>S.B. 749</u> – enacted over the governor's veto – changed the composition of county and state boards in a manner that threatens deadlock on certification of election results and early voting plans. In addition to being responsible for certification of results, county and state boards interact to decide the number of locations and days of early voting offered. Deadlocks could result in counties offering only the statutory minimum of one early voting site – compared to the well over a dozen sites that have been traditionally offered in several counties. This law is currently <u>blocked</u> by a court order, but the decision has been appealed.

Meanwhile, <u>S.B. 747</u>, another new law enacted over the governor's veto, threatens to overrun North Carolina's elections offices – <u>roughly a third</u> of which have new directors – with frivolous mass challenges to mail and early ballots. As another state where the margins are expected to be very tight, wrongful rejections of mail and early ballots could impact the results. The law also empowers partisan poll watchers in a manner that threatens voter privacy and risks voter intimidation at the polls.

Also worth noting is <u>S.B. 105</u>, a 2021 law that decreased the authority of the State Election Board to settle litigation, which could become an issue if lawsuits follow a close race this November.

This November will be the first test in a presidential election for all of these new policies, as well as of a strict photo voter ID law for both in-person and mail voting, and a new requirement that election officials reject valid mail ballots that are postmarked by Election Day but received after.

Threats on the Horizon

How Pending Legislation Could Impact the November Election

Several states are currently considering election manipulation legislation that, if enacted, would make it considerably harder for election officials to run a free and fair election this November.

North Carolina

North Carolina legislative leadership has indicated an intent to make its ID law stricter and restrict early voting, while the impact of two 2023 laws depends on the results of litigation. The North Carolina Legislature may be poised to both tighten the state's voter ID law and shorten the state's early voting period, <u>according to House Speaker Tim Moore</u>. The state's 2024 legislative session is scheduled to convene from April 24 - July 31.

Meanwhile, the fate of law that would disenfranchise eligible citizens is yet to be determined. A federal court has temporarily blocked enforcement of a provision of <u>S.B.</u> 747 that requires election officials to reject ballots cast by voters who registered and voted on the same day, if a single confirmation mailing to the voter is returned as undeliverable. The lawsuit argues that most undeliverable mail is due to post office error rather than a faulty address, that the provision disproportionately disenfranchises demographics that are more likely to experience housing insecurity, and that the cancellation of a voter's ballot without notice violates due process.

Finally, as detailed in the previous section, a state court has <u>blocked</u> implementation of <u>S.B. 749</u>, the 2023 law that seized appointment power out of the hands of the governor and his appointees and gave it to legislative leadership. The court also blocked the

provisions that reconfigure election boards in a way that creates a risk of deadlocks that could block certification of election results and the designation of early voting locations. The decision has been appealed to the <u>newly restructured</u> state supreme court.

Arizona

The Arizona legislature is considering a slew of conspiracy-driven bills – indicating the state is likely to be a hotbed of disinformation this November. The Arizona legislature is <u>currently advancing</u> a number of conspiracy-motivated bills, including legislation that would eliminate early voting, require voter purges, significantly restrict electronic tabulators, require the posting of ballot images, and empower partisan poll watchers.

Although it is likely that the governor will veto any problematic legislation that passes, the governor cannot veto ballot referrals that have been approved by the full legislature. <u>An initiative</u> that would ban no-excuse mail voting and restrict early voting in elections after 2024 is currently making its way through the legislature – and will be on the ballot this November if it passes both chambers. These measures indicate that disinformation is still strong in Arizona, and conversations around these bills are likely to continue to fan the flames of election denialism and distrust in the state, setting up the potential for an explosion of challenges and disinformation this November.

Banning Electronic Tabulators/Forcing Hand Counts of All Ballots

States and counties continue to consider legislation to ban electronic tabulators, which would effectively force election officials to hand count every ballot. Hand counting all ballots is <u>considerably less accurate</u> than using tabulators, certain to lead to delays in reporting results, and heightens voter concerns about corruption. Nonetheless, the idea is gaining steam in state legislatures.

Last year, <u>Arizona</u> passed legislation that would have effectively banned electronic tabulators and mandated hand counts if it hadn't been vetoed by the governor.³ <u>Nine states</u> – including determinative states like Florida, Arizona, and New Hampshire – all considered this extreme proposal this year. As of April 10, 2024, it remains active in <u>five states</u>.⁴

^{3 &}lt;u>Nine states</u> – including determinative states like Florida, Arizona, and New Hampshire – all considered this extreme proposal this year. As of April 10, 2024, it remains active in <u>five states</u>.

⁴ This link shows the number of states where a piece of legislation is currently active, i.e. where the bill has not died, or been enacted or vetoed. Therefore, the number will decrease throughout session as bills are enacted and legislatures adjourned.

The matter is not just a state legislative one. Some localities are taking matters into their own hands and mandating hand counts of all ballots. In 2022, Nye County, Nevada election officials engaged in a costly and time-intensive hand count of all ballots, resulting in an error rate as high as 25%. And just this year, in <u>Gillespie County</u>, Texas, the Republican party insisted on a full hand count of the ballots in their primary. It took over 200 volunteers 21 hours to count all the ballots, and 12 of the 13 county precincts reported incorrect vote totals on their official reconciliation forms. A hand count of mail ballots in Travis County, Texas also yielded significant inaccuracies. At least one locality in <u>New Hampshire</u> has approved hand counts for future presidential elections, while another in <u>California</u> is pursuing hand counts this November in clear violation of state law.

Making Scanned Ballots Images or Cast Vote Records Public

Pending legislation that would make scanned ballot images or cast vote records public invites amateur sleuthing and voter harassment.⁵ Eighteen states considered this type of legislation in 2024, and, as of April 10, 2024, it remains pending in 14 of those states.⁶ Offering more public access to records related to ballot counting, when set up with appropriate safeguards, can increase confidence in elections and reduce the risk of unfounded conspiracy theories. When lacking safeguards, however, these policies threaten ballot secrecy and voter harassment – and even violate federal law.

Purging Naturalized Citizens From the Voter Rolls

Many states are considering bills that risk purging naturalized U.S. citizens from the voter rolls. Despite a lack of evidence demonstrating that noncitizen voting is a problem, <u>10 states</u> have enacted legislation that targets purported noncitizens on the voter rolls since 2021, and <u>16 states</u> considered such legislation this year. As of April 10, 2024, it remains active in <u>13 states</u>.⁷ Some of these proposed laws, including one that was just enacted in Indiana, lack adequate safeguards to protect against the purging of U.S. citizens, risking a repeat of Texas' near-disenfranchisement of <u>tens of thousands of naturalized citizens</u> in 2019.

⁵ AZ, CO, GA, HI, IL, KS, ME, MN, MO, NC, NH, NY, RI, SC, SD, VT, WA, WV

⁶ AZ, CO, GA, HI, IL, KS, MN, MO, NC, NH, NY, RI, SC, VT

⁷ This link shows the number of states where a piece of legislation is currently active, i.e. where the bill has not died, or been enacted or vetoed. Therefore, the number will decrease throughout session as bills are enacted and legislatures adjourned.

Conclusion

While the efforts to fuel election interference outlined in this report have been widespread, so has the response by election officials and advocacy organizations seeking to guarantee a free, fair, and secure election in 2024. In-state legislative advocates have been hard at work marshaling resources to prevent the most harmful policies from passing into law and educating lawmakers and administrators of the unintended negative consequences of these proposals.

Today, state and local election officials are busy engaging in robust public education campaigns to inform voters and other observers about all of the safeguards and checks and balances in place to make sure that the results accurately reflect the will of voters. They are also working to add transparency to the vote verification and counting process by inviting the public to observe and learn about pre-election testing and security protocols.

Importantly, all across the country, local election workers are being trained on the new laws so they will be able to provide needed assistance and access to voters without running afoul of any new restrictions. Local grassroots organizations are working hand-in-hand with election officials to observe the voting process and make sure that voters are able to cast their ballots using the method of their preference.

While these new laws may present additional challenges and require greater clarity for all participants in the election process, the good news is that many hardworking people committed to strong elections are making sure that voters remain the most important players in our elections.

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