

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 08-0307

CATHERINE E. SATTERLEE,
Appellant/Petitioner,

v.

LUMBERMAN'S MUTUAL CASUALTY COMPANY,
Appellee/Insurer for

BUTTREY FOOD & DRUG,
Respondent/Employer/Appellant

JAMES ZENAHLIK,
Appellant/Petitioner,

v.

MONTANA STATE FUND,
Respondent/Insurer for

EAGLE ELECTRIC,
Respondent/Employer/Appellant

JOSEPH FOSTER,
Appellant/Petitioner,

v.

MONTANA STATE FUND,
Respondent/Insurer for

ALLEN ELECTRIC,
Respondent/Employer/Appellant

**BRIEF OF AMICI CURIAE MONTANA CHAMBER OF COMMERCE,
MONTANA CONTRACTORS' ASSOCIATION, INC., AND THE
NATIONAL FEDERATION OF INDEPENDENT BUSINESS
SMALL BUSINESS LEGAL CENTER**

On Appeal from a Judgment of the
Workers' Compensation Court for the State of Montana, WCC No. 2003-0840
Honorable James Jeremiah Shea

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TABLE OF CONTENTS

	<u>PAGES</u>
TABLE OF AUTHORITIES.....	ii, iii
STATEMENT OF ISSUES.....	1
STATEMENT OF CASE.....	1
STATEMENT OF INTEREST OF AMICI.....	2
STATEMENT OF THE FACTS.....	3
STANDARD OF REVIEW.....	4
SUMMARY OF THE ARGUMENT.....	5
ARGUMENT.....	6
I. <u>SATTERLEE HAS NOT MET THE HIGH BURDEN IN PROVING § 39-71-710, MCA, UNCONSTITUTIONAL BEYOND A REASONABLE DOUBT</u>	6
II. <u>THE RATIONAL BASIS TEST, AS THE COURT HAS ROUTINELY USED IN WORKERS’ COMPENSATION BENEFIT CASES, IS THE CORRECT ANALYSIS FOR THIS CASE</u>	7
III. <u>MONTANA CODE ANN. § 39-71-710 PASSES THE RATIONAL BASIS TEST WITH REGARD TO PTD BENEFITS</u>	8
A. <u>CLOSING OUT PTD BENEFITS UPON RETIREMENT IS RATIONALLY RELATED TO THE LEGITIMATE GOVERNMENT OBJECTIVE OF PROVIDING WORKERS’ COMPENSATION BENEFITS AT A REASONABLE COST TO EMPLOYERS AND COST CONTROL</u>	8
B. <u>CLOSING OUT PTD BENEFITS UPON RETIREMENT IS RATIONALLY RELATED TO MAINTAINING THE ECONOMIC VITALITY AND COMPETITIVENESS OF MONTANA BUSINESSES</u>	13

**C. CLOSING OUT PTD BENEFITS UPON RETIREMENT IS
RATIONALLY RELATED TO ENSURING THAT PTD
BENEFITS DO NOT BECOME A PENSION PROGRAM
THE LEGISLATURE DID NOT INTEND TO CREATE.....15**

CONCLUSION.....17

CERTIFICATE OF COMPLIANCE.....19

CERTIFICATE OF MAILING.....20

APPENDIX

TABLE OF AUTHORITIES

CASES

Buckman v. Deaconess Hospital
224 Mont. 318, 730 P.2d 380.....14

Columbia Falls Elementary v. State of Montana
2005 MT 69, 326 Mont. 304, 109 P.3d 257.....12

Helena Elementary v. State of Montana (1989)
236 Mont. 44, 769 P.2d 684.....12

Heisler v. Hines Motor Co. (1997)
282 Mont. 270, 937 P.2d 45.....9

Henry v. SCIF (1999)
294 Mont. 449, 982 P.2d 456.....7-8

Johnson v. Sullivan (1977)
174 Mont. 491, 571 P.2d 798.....7

Meech v. Hillhaven West, Inc. (1989)
238 Mont. 21, 776 P.2d 488.....13-14

<i>Otteson v. Montana State Fund</i> 2005 MT 198, 328 Mont. 174, 119 P.3d 1188.....	4-5
<i>Powell v. SCIF</i> 2000 MT 321, 302 Mont. 518, 15 P.3d 877.....	6
<i>Reesor v. Montana State Fund</i> 2004 MT 370, 325 Mont. 1, 103 P.3d 1019.....	6-7
<i>State v. Price</i> 2002 MT 229, 311 Mont. 429, 57 P.3d 42.....	6-7
<i>Stratemeyer v. Lincoln County (1993)</i> 259 Mont. 147, 855 P.2d 506.....	9

STATUTES

§ 39-71-710, MCA.....	1, 3, 5, 6, 8, 10-15, 17
§ 39-71-710, MCA (1981).....	16
§ 39-71-105(1), MCA (1987).....	9

STATEMENT OF ISSUES

Whether the Workers' Compensation Court (hereinafter "WCC") properly determined that the Legislature's decision to terminate permanent total disability (hereinafter "PTD") benefits for claimants eligible for retirement benefits as set in § 39-71-710, MCA, is rationally related to multiple legitimate governmental purposes.

STATEMENT OF THE CASE

Plaintiffs and Appellants (collectively "Satterlee") seek a declaration that the age limitations on PTD benefits and rehabilitation benefits under Mont. Code Ann §39-71-710 violate the Equal Protection and Substantive Due Process Clauses of the Montana Constitution.

The WCC correctly concluded in its *Order Denying Motion for Partial Summary Judgment*, WCC #277, Exhibit "1", that the Legislature's decision to terminate PTD benefits for claimants eligible for retirement benefits is rationally related to multiple legitimate governmental objectives, including cost control, avoiding the use of the workers' compensation system as a pension program, and fundamental public policy principles underlying the workers' compensation system.

STATEMENT OF INTEREST OF AMICI

The Montana Chamber of Commerce is a private, not-for-profit 501(c)(6) organization. It represents and promotes the interests of business at the state and national levels. It is dedicated to building Montana's economy, creating a business-friendly environment, and growing the number of good-paying careers in Montana. It has nearly 1,500 members throughout the state ranging from small main street businesses to larger natural resource-based industries, from multi-generational ranches to high-tech manufacturers. These member companies employ tens of thousands of Montana workers around the state. Affordability of workers' compensation premiums, solvency of the workers' compensation system, competitiveness and vitality of Montana's economy, and fundamental public policies relating to the historic purposes of workers' compensation are all very important issues for Montana Chamber members and their employees.

The Montana Contractors' Association is a voluntary trade association representing approximately 250 commercial construction companies and ready mix concrete producers throughout Montana that build highways, commercial and public buildings, municipal utility systems, and other public infrastructure projects. Member companies employ approximately 6,000 people in the state of Montana.

The National Federation of Independent Business Small Business Legal Center (“NFIB Legal Center”), is a nonprofit, public interest law firm established to protect the rights of America’s small-business owners. It is the legal arm of the National Federation of Independent Business (NFIB), the nation’s oldest and largest organization dedicated to representing the interests of small-business owners throughout all 50 states. The over 300,000 nationwide members of NFIB, including over 6,000 in Montana, own a wide variety of America’s independent businesses from restaurants to manufacturing firms to bowling alleys. NFIB represents small business employers who typically have about 5 employees and net \$40,000 - \$60,000 annually.

STATEMENT OF FACTS

Amici adopt those facts set forth by Respondents, Montana State Fund and Lumberman’s Mutual Casualty Company.

Additionally, Amici cite figures on the financial impacts of this case that were presented to the WCC. According to Daniel Gengler, the benefit costs associated with retroactively applying a decision to overturn § 39-71-710, MCA, is estimated at \$228 million to \$302 million. Aff. Daniel Gengler ¶¶ 1-3 (Aug. 8, 2005), Exhibit “2”. Additionally, if the statute is overturned,

the prospective application of such a decision will result in an increase in benefit costs, which would require rate increases ranging from 11% to 21% beyond any other increases for State Fund policy holders. Aff. Daniel Gengler ¶ 4.

Estimates show the State Fund would need to require a 60% additional rate increase during a one-year period in order to regain this financial stability. Aff. Daniel Gengler ¶ 15(g). A recovery over three years would require an additional rate increase of about 16%. *Id.* Actuaries estimate that the Old Fund, for which the State of Montana is responsible, would incur a \$93 million to \$116 million deficit. Aff. Daniel Gengler ¶ 15(d). These estimates are not a “best/worst case” scenario, but are “highly likely” from an actuarial standpoint. Aff. Daniel Gengler ¶¶ 1-3.

STANDARD OF REVIEW

This Court’s standard of review of a grant or denial of a motion for summary judgment by the WCC is identical to the standard used for ruling on a motion for summary judgment. This Court determines “whether there is an absence of genuine issues of material fact and whether the moving party is entitled to judgment as a matter of law.” *Otteson v. Montana State Fund*,

2005 MT 198, ¶ 8, 328 Mont. 174, ¶ 8, 119 P.3d 1188, ¶ 8. This Court, pursuant to its plenary review of the conclusions of law of the WCC, determines whether the WCC's legal conclusions are correct. *Otteson*, ¶ 8.

SUMMARY OF ARGUMENT

Satterlee has not met the high burden in proving § 39-71-710, MCA, unconstitutional beyond a reasonable doubt. As with all other workers' compensation benefit cases, the rational basis test is the correct analysis for this case.

Closing out PTD benefits upon retirement is rationally related to three legitimate government objectives, including: (1) providing workers' compensation benefits at a reasonable cost to employers and cost control; (2) maintaining the economic vitality and competitiveness of Montana businesses; and (3) ensuring that PTD benefits do not become a pension program the Legislature did not intend to create. Therefore, the Court should affirm the decision of the WCC and uphold Montana law as passed by the Montana Legislature.

ARGUMENT

I. SATTERLEE HAS NOT MET THE HIGH BURDEN IN PROVING § 39-71-710, MCA, UNCONSTITUTIONAL BEYOND A REASONABLE DOUBT.

Satterlee is asking the Court to declare §39-71-710, MCA, unconstitutional as passed by the Montana Legislature. The constitutionality of all legislative enactments is presumed, and Satterlee must overcome the heavy burden of proving § 39-71-710, MCA unconstitutional beyond a reasonable doubt.

“The constitutionality of a legislative enactment is prima facie presumed, and every intendment in its favor will be presumed, unless its unconstitutionality appears beyond a reasonable doubt. The question of constitutionality is not whether it is possible to condemn, but whether it is possible to uphold the legislative action which will not be declared invalid unless it conflicts with the constitution, in the judgment of the court, beyond a reasonable doubt.

Every possible presumption must be indulged in favor of the constitutionality of a legislative act.”

Powell v. SCIF, 2000 MT 321, ¶ 13, 302 Mont. 518, ¶ 13, 15 P.3d 877, 13.

This Court has also stated in cases involving equal protection that “the invidious quality of a law claimed to be discriminatory must ultimately be traced to an impermissibly discriminatory purpose.” *Reesor v. Montana State Fund*, 2004 MT 370, ¶ 28, 325 Mont. 1, ¶ 28, 103 P.3d 1019, ¶ 28, quoting *State v. Price*, 2002 MT 229, ¶ 41, 311 Mont. 429, ¶ 41, 57 P.3d 42,

¶ 41. When using the rational basis test, “a discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.” *Reesor*, ¶ 29, quoting *Johnson v. Sullivan*, 174 Mont. 491, 498, 571 P.2d 798, 802 (1977.) For the reasons set forth below, Satterlee has failed to prove the statute unconstitutional beyond a reasonable doubt.

II. THE RATIONAL BASIS TEST, AS THE COURT HAS ROUTINELY USED IN WORKERS’ COMPENSATION BENEFIT CASES, IS THE CORRECT ANALYSIS FOR THIS CASE.

Satterlee suggests the Court should totally alter its traditional level of scrutiny for equal protection cases. Although Satterlee states *Reesor* is completely analogous to the present case, she suggests a mid-level scrutiny analysis in this case rather than the rational basis test used in *Reesor*, the WCC, and all other cases involving workers’ compensation benefits. *Satterlee’s Opening Brief*, p. 6, 8-9.

The Court has consistently held in cases involving equal protection challenges to workers’ compensation statutes, including *Reesor*, that the rational basis test applies. In *Henry v. SCIF*, the Court stated:

...worker’s compensation statutes neither infringe upon the rights of a suspect class nor involve fundamental rights[,...][t]his Court has held that the test to be applied when analyzing workers’ compensation statutes is the rational basis test.

(1999), 294 Mont. 449, 457, 982 P.2d 456, 462.

In *Reesor*, this Court held there was “no need to depart from our analysis set forth in *Henry* wherein we stated that equal protection claims brought by an injured worker are generally reviewed pursuant to the rational basis test.” *Reesor*, ¶ 14. Therefore, Amici argue there is absolutely no reason to deviate from the Court’s historical use of the rational basis test in cases involving workers’ compensation benefits.

III. MONTANA CODE ANN. § 39-71-710 PASSES THE RATIONAL BASIS TEST WITH REGARD TO PTD BENEFITS.

The Montana Legislature’s decision to end PTD benefits upon retirement is rationally related to three legitimate government objectives, including: (1) providing workers’ compensation benefits at a reasonable cost to employers and cost control; (2) maintaining the economic vitality and competitiveness of Montana businesses; and (3) ensuring that PTD benefits do not become a pension program the Legislature did not intend to create.

A. CLOSING OUT PTD BENEFITS UPON RETIREMENT IS RATIONALLY RELATED TO THE LEGITIMATE GOVERNMENT OBJECTIVE OF PROVIDING WORKERS’ COMPENSATION BENEFITS AT A REASONABLE COST TO EMPLOYERS AND COST CONTROL.

While it may not be the sole purpose and basis for upholding the statute, providing workers’ compensation benefits at a reasonable cost to

employers is a rational basis for closing out PTD benefits once a worker reaches retirement age. In *Stratemeyer v. Lincoln County*, this Court cited cost control of the worker's compensation system as a legitimate government objective. (1993), 259 Mont. 147, 155, 855 P.2d 506, 511. In *Heisler v. Hines Motor Co.*, this Court again noted that while it may not be the sole justification for disparate treatment, cost control remains a legitimate government objective. (1997) 282 Mont. 270, 279, 937 P.2d 45, 50.

The Montana Legislature expressly outlined this objective in a declaration regarding workers' compensation costs:

It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage loss benefits are not intended to make an injured worker whole; *they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.*

Mont. Code Ann. § 39-71-105(1)(1987) (Empasis added). The Legislature made it clear that one of its primary goals was cost control in the worker's compensation system.

The WCC cited cost control as just one part of its reasoning for upholding the statute:

The Legislature's decision to terminate an insurer's liability for PTD benefits when a claimant receives or is eligible to receive retirement benefits is rationally related to the government's valid interest in ensuring that *employers are able to provide worker's compensation coverage at reasonable rates*, thus maintaining the financial viability of the workers' compensation system.

In an earlier brief, Satterlee pleaded the Court "should not consider the cost of a favorable decision to her." See *Satterlee's Reply Brief*, p. 7. A thorough look at the actual impacts of the case show why she would prefer the Court ignore these costly estimates.

Actuary experts in the field of workers' compensation insurance have clearly outlined the financial impacts of overturning § 39-71-710, MCA. These estimates are not a "best/worst case" scenario, but are "highly likely" from an actuarial standpoint. *Aff. Daniel Gengler ¶¶ 1-3* (Aug. 8, 2005), Exhibit "2". According to Daniel Gengler, the benefit costs associated with retroactively applying a decision to overturn § 39-71-710, MCA, is estimated at \$228 million to \$302 million. *Id.* Additionally, if the statute is overturned, the prospective application of such a decision will result in an increase in benefit costs, which would require rate increases ranging from 11% to 21% beyond any other increases for State Fund policy holders. *Aff. Daniel Gengler ¶ 4.*

Workers' compensation insurance carriers would also need to add additional margins to restore reasonable levels of financial equity in their reserves. Estimates show the State Fund would need to require a 60% additional rate increase during a one-year period in order to regain this financial stability. *Aff. Daniel Gengler ¶ 15(g)*. A recovery over three years would require an additional rate increase of about 16%. *Id.* In short, these additional costs would be passed on to Montana employers of all sizes and make it very difficult for them to purchase workers' compensation insurance at a reasonable cost for their business.

Not only will Montana's employers, both large and small, be subject to higher premium costs if § 39-71-710, MCA is declared unconstitutional, but the state government and taxpayers of Montana will also be on the hook. Actuaries estimate that the Old Fund, for which the State is responsible, would incur a \$93 million to \$116 million deficit. *Aff. Daniel Gengler 15(d)*. This extra amount, coupled with the added costs associated with higher workers' compensation premiums for state employees, will be borne by the taxpayers of Montana.

Satterlee contends that cost projections resulting in a decision in her favor have been exaggerated. Satterlee dismissively argues so without any facts of her own. However, insurance experts, state fiscal analysts and

Montana business all seem to come to the same conclusion – workers’ compensation premiums will see painfully noticeable and costly increases that will have a negative impact on Montana businesses and the taxpayers of Montana.

In addition, Satterlee has in previous briefs erroneously cited school funding Court decisions as an argument against cost control as a legitimate government interest. See *Satterlee’s Reply Brief*, p. 8-9. The portions of the cases she cites were contained in the Court’s discussions on the inequitable *distribution* of school funding, and not overall funding. See *Helena Elementary v. State of Montana* (1989), 236 Mont. 44, 54, 769 P.2d 684, 690, and *Columbia Falls Elementary v. State of Montana*, 2005 MT 69, ¶ 63, 326 Mont. 304, ¶ 63, 109 P.3d 257, ¶ 63. The Court did not reject cost control as a rational basis in equal protection cases involving benefits, but it did refuse to recognize it as a reason for distributing school funding inequitably. That is quite different from the current case where hundreds of millions of dollars would be required to retroactively and prospectively apply a ruling in favor of Satterlee.

For these reasons, the Court should recognize that § 39-71-710, MCA accomplishes the legitimate government objective of providing workers’ compensation benefits at a reasonable cost to employers and cost control.

B. CLOSING OUT PTD BENEFITS UPON RETIREMENT IS RATIONALLY RELATED TO MAINTAINING THE ECONOMIC VITALITY AND COMPETITIVENESS OF MONTANA BUSINESSES.

Amici cite cost control as only one of three legitimate government interests for upholding § 39-71-710, MCA, and not as the sole reason to uphold the statute. The WCC recognized that while cost control was a factor in its decision, it was not the only reason to uphold the Legislature's judgment:

In analyzing the constitutionality of § 39-71-710, MCA, this Court neither considered nor referenced the specific numbers set forth by Respondents. In fact, the Court specifically noted that the economic impact was not the sole justification in the Court's decision. Rather, this Court noted that it was a justification that was considered in light of other independent distinctions which justified the disparate treatment of the classes at issue in the present case.

(WCC # 351, ¶ 5).

In addition to cost control, Amici assert that maintaining the economic vitality of the state and the competitiveness of Montana businesses in the national and world marketplace are legitimate government objectives for upholding § 39-71-710, MCA.

In previous cases, the Court has found the promotion of Montana's business interests and the improvement of economic conditions as legitimate state goals. See *Meech v. Hillhaven West, Inc.*, 238 Mont. 21, 776 P.2d 488

(1989); and *Buckman v. Deaconess Hospital*, 224 Mont. 318, 730 P.2d 380.

In those two cases, the Court upheld the statutes limiting damage awards in cases involving the Wrongful Discharge Act.

If § 39-71-710, MCA, is declared unconstitutional, Montana's economic conditions and competitiveness in attracting new businesses would be hampered by even higher workers' compensation costs. The impact to businesses in Montana would be significant. Over the past eight years, Montana business owners have seen their workers' compensation premium rates rise to the 2nd highest in the nation.¹ *2008 Oregon Workers' Compensation Premium Rate Ranking Summary*, p. 2, Exhibit "3". In contrast, our neighboring states, such as Idaho, Wyoming, North Dakota and South Dakota, pay some of the lowest workers' compensation premiums in the country. *Id.* This alone puts Montana businesses at a competitive disadvantage with other states when it comes to attracting new businesses and retaining existing businesses. In short, Montana businesses all over the state are already stretched to the breaking point with workers' compensation

¹ Pursuant to the Montana Rules of Evidence 201(b)(2), Amici ask the Court to take judicial notice of the State of Oregon's national study on workers' compensation rates. This biennial study placing Montana with the second highest workers' compensation premium rates only became available in October of 2008, after the decision in the WCC. See Exhibit "D" for a copy of the government report from the Oregon Department of Consumer & Business Services.

costs, which threatens the vitality and competitiveness of Montana businesses.

Satterlee concedes her case would have a “significant” financial impact on the workers’ compensation system if the statute is thrown out. *Satterlee’s Motion and Brief for an Order Allowing Discovery*, p. 3. These “significant” financial impacts will be borne by those Montana businesses struggling to make payroll, provide health care benefits, and keep Montanans employed, especially during this time of national economic uncertainty. The financial impacts of such a case would only further escalate the high costs of Montana’s workers’ compensation premiums, and thereby make our state even less competitive in attracting new businesses and maintaining existing businesses.

For these reasons, the Court should recognize that § 39-71-710, MCA accomplishes the legitimate government objective of maintaining the economic vitality of the state and the competitiveness of Montana businesses.

C. CLOSING OUT PTD BENEFITS UPON RETIREMENT IS RATIONALLY RELATED TO ENSURING THAT PTD BENEFITS DO NOT BECOME A PENSION PROGRAM THE LEGISLATURE DID NOT INTEND TO CREATE.

In 1981, the Montana Legislature made it clear through its debate and final statutory language that workers' compensation benefits were not intended to be a pension system:

If a claimant is receiving total disability compensation benefits and the claimant receives retirement social security benefits or disability social security benefits paid to the claimant are converted by law to retirement benefits, the claimant is considered to be retired and no longer in the open labor market... § 39-71-710, MCA (1981) (Emphasis added).

While some changes have been made to the law over the years, the Montana Legislature never strayed from its original intent of ending total disability benefits when a claimant is eligible for retirement benefits.

The WCC recognized this legitimate government objective of making certain the worker's compensation system does not turn into a pension program:

[T]he termination of benefits achieves the rational result of ensuring that PTD benefits do not become the pension program the Legislature never intended to create.

(WCC #351, ¶ 5). This is further proof the WCC found another legitimate government objective beyond cost control to uphold the statute in its rational basis analysis.

Satterlee contends this Court should overturn the WCC's decision and find the statute unconstitutional in order to avoid an "absurd" and

“irrational” result regarding PTD claimants and PPD claimants. Amici respectfully disagree with her argument, and alternately assert that overturning the WCC and the Montana Legislature would result in the absurd and irrational result of allowing claimants who are well beyond their work life years to collect workers’ compensation benefits. Such a result is completely contrary to the purpose of the workers’ compensation system, which was set up to provide assistance to injured workers for their *work life*, not for their entire life. Allowing wage payments to workers beyond their work life would result in the absurd and irrational result of creating a pension system out of a wage indemnity system for the entire life of the claimant.

For these reasons, the Court should recognize that § 39-71-710, MCA accomplishes the legitimate government objective of ensuring that workers’ compensation benefits do not become a pension program the Montana Legislature did not intend to create.

CONCLUSION

The Montana Legislature’s decision to end PTD benefits upon retirement is rationally related to three legitimate government objectives, including: (1) providing workers’ compensation benefits at a reasonable cost

to employers and cost control; (2) maintaining the economic vitality and competitiveness of Montana businesses; and (3) ensuring that PTD benefits do not become a pension program the Legislature did not intend to create.

For each of the foregoing reasons, Amici respectfully requests this Court to affirm the decision of the WCC and uphold Montana law as passed by the Montana Legislature.

CERTIFICATE OF COMPLIANCE

This is to certify that the foregoing brief was prepared in compliance with this Court's amendments to Rule 11 of the Montana Rules of Appellate Procedure. The brief is proportionally spaced using 14 point Times New Roman font and contains 4,121 words per Microsoft Word 2003, excluding the Certificate of Service and Certificate of Compliance.

DATED this 9th day of December, 2008.

BY: _____
Jon W. Bennion, Esq.

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of December, 2008, I mailed a true and accurate copy of the foregoing, postage pre-paid, to the following:

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