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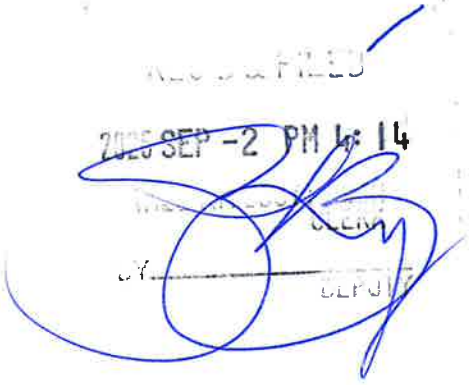

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE CARSON CITY

NATIONAL TAXPAYERS UNION, a non-profit organization, and ROBIN TITUS, MD, Plaintiffs, vs. THE STATE OF NEVADA, ex rel., JOSEPH LOMBARDO, in his official capacity as Governor of the State of Nevada; ZACH CONINE, in his official capacity as Nevada State Treasurer; RICHARD WHITLEY, in his official capacity as Director of the Nevada Department of Human Services; STACIE WEEKS, in her official capacity as Director of the Nevada Health Authority; NED GAINES, in his official capacity as the Acting Nevada Commissioner of Insurance; and JANEL DAVIS, in her official capacity as Acting Executive Director of the Silver State Health Insurance Exchange, Defendants.	Case No. 25 OC 00109 1B Dept. No. 1

DEFENDANTS' OPPOSITION TO PLAINTIFFS' AMENDED MOTION FOR PRELIMINARY INJUNCTION

Defendants Joseph Lombardo, in his official capacity as Governor of the State of Nevada; Zach Conine, in his official capacity as Treasurer of the State of Nevada; Richard Whitley, in his official capacity as Nevada Department of Human Services ("DHS"); Stacie

Weeks, in her official capacity as Director of the Nevada Health Authority ("NVHA"); Ned Gaines, in his official capacity as Acting Commissioner of the Division of Insurance; and Janel Davis, in her official capacity as Acting Executive Director of Silver State Health Insurance Exchange ("Exchange"), by and through counsel, oppose the amended motion for preliminary injunction filed by Plaintiffs National Taxpayers Union ("NTU") and Robin L. Titus, MD.[1]

* * *

[1] Defendants recognize that Dr. Titus carries the honorable title of Nevada State Senator, but for purposes of clarity and consistency Defendants refer to her as Dr. Titus throughout this opposition consistent with Plaintiffs' caption identifying her as Robin L. Titus, MD, without reference to her position in the State Senate.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Plaintiffs return for a second bite at SB 420, also known as the "Public Option." *See* 2021 Nev. Stat., ch. 537, §§ 2–15, at 3616–22 (codified as the "Public Option" in NRS Chapter 695K).[2] But they fail to show that a preliminary injunction should issue. The First Amended Complaint ("FAC") suffers from the same standing issues that previously required dismissal. None of their constitutional theories are likely to succeed. They fail to show irreparable harm. And the equities and the public interest favor Defendants.

II. Factual Background

In 2021, the Legislature adopted SB 420—a provision designed to create a publicly supported option for health insurance plans intended to achieve premium reductions that make health insurance more affordable and accessible. The Public Option plans must meet minimum standards that make them Qualified Health Plans under state and federal law. Amended Motion at 1–2. As a result, all payments on premiums for the Public Option plans made available on the Exchange will be subject to (1) an existing fee for all Qualified Health Plans listed on the Exchange, and (2) an existing state tax imposed on all health insurance premiums. Amended Motion at 3–4. The terms of SB 420 are set to take effect January 1, 2026, except that a limited number of provisions took effect on passage in 2021 "for the purposes of procurement and any other preparatory administrative tasks necessary to

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[2] SB 420 addressed other matters "relating to insurance" that Plaintiffs do not challenge. But Plaintiffs seek an injunction preventing implementation and enforcement of SB 420 without limitation. This Court should limit its review to the expressly challenged provisions of SB 420. *See, e.g.*, *Brockett v. Spokane Arcades*, 472 U.S. 491, 502 (1985). And this Court should similarly limit any injunction it might issue.

Also, despite amending the complaint to address creation of the NVHA, Plaintiffs continue to improperly name Director Whitley as a defendant. Through SB 494, the Legislature recently split the Division of Health and Human Services into two parts. The text of SB 494 is available at https://www.leg.state.nv.us/App/NELIS/REL/83rd2025/Bill/12936/Text (last viewed August 17, 2025). Under Section 32, Director Whitley is now the Director of DHS. Section 18 created the NVHA—a new division of the State distinct from DHS. The NVHA has three parts: (1) Nevada Medicaid, (2) the Health Care and Purchasing Compliance Division, and (3) the Consumer Health Division. Sections 18(2)(e) and 355 establish that the NVHA has oversight of the Public Option. And Stacie Weeks is the Director of NVHA. FAC at ¶12. So, contrary to Plaintiff's allegations, *see* FAC at ¶11, Director Whitley has no oversight of the Public Option, and the NVHA subsumed the former Nevada Division of Health Care Financing and Policy. *See* https://www.medicaid.nv.gov/Downloads/provider/web_announcement_3661_20250701.pdf (last viewed Aug. 17, 2025). For that reason, any injunction this Court might issue should not apply to Director Whitley.

carry out the provisions of those sections." *See* 2021 Nev. Stat., ch. 537, § 20, at 3631–32 (amending the Nevada Administrative Procedure Act in NRS 233B.039), and § 41(2), at 3648 (setting forth the effective dates for the specific provisions of SB 420).

Plaintiffs previously challenged SB 420 in 2024. But this Court dismissed that case for lack of standing and ripeness. Exhibit N. Plaintiffs return with the same four claims and seek a preliminary injunction. In the interim, the federal government approved the States waiver application. FAC at ¶50. The procurement period passed with the State finalizing contracts with carriers to provide plans that meet the premium reduction targets. FAC at ¶¶56–61. And the Public Option plans will be listed for Nevadans to purchase on the Exchange in the coming open enrollment beginning in October 2025. FAC at ¶63.

III. Argument

A. Preliminary Injunction Standard

Preliminary injunctions are appropriate only when the moving party has shown they are likely to succeed on the merits and will suffer irreparable harm in the absence of an injunction. *Excellence Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. 347, 351, 351 P.3d 720, 722 (2015) (citing, inter alia, NRS 33.010). This court "may also weigh the public interest and the relative hardships of the parties in deciding whether to grant a preliminary injunction." *Clark Cty. Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150 924 P.2d 716, 719 (1996). And to obtain a preliminary injunction, "[t]he moving party bears the burden of providing testimony, exhibits, or documentary evidence to support its request for an injunction." *See Hosp. Int'l Grp. v. Gratitude Grp., LLC*, 132 Nev. 980, 387 P.3d 208 (2016). That burden includes showing standing. *Do No Harm v. Pfizer, Inc.*, 126 F.4th 109, 119 (2d Cir. 2025).

B. Plaintiffs' constitutional claims have no likelihood of success.[3]

Plaintiffs' arguments fail at the first step. In addition to a lack of standing, Plaintiffs' claims are legally flawed, undermining their ability to rebut the presumption that statutes are constitutional. *Allen v. State*, 100 Nev. 130, 133–34, 676 P.2d 792, 794 (1984).

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[3] Because Plaintiffs only address their likelihood of success on the first three causes of action, Defendants also only address the likelihood of success on those causes of action. Amended Motion at 5–8.

1. Plaintiffs still lack standing.

In Nevada, with limited statutory or rule-based exceptions, only "one who possesses the right to enforce the claim and has a significant interest in the litigation" may bring an action. *High Noon at Arlington Ranch Homeowners Assoc. v. Eighth Jud. Dist. Ct.*, 133 Nev. 500, 507, 402 P.3d 639, 646 (2017) ("Thus, a party needs statutory authorization before it can assert a third party's claim."); *see also* NRCP 17(a). Absent an exception, Plaintiffs can only sue for their own alleged injuries. *Id.*; *see also Nat'l Ass'n of Mut. Ins. Companies v. Dep't of Bus. & Indus., Div. of Ins.*, 139 Nev. 18, 27, 524 P.3d 470, 480 (2023) ("NAMIC").

Nevada plaintiffs must establish an "injury-in-fact" except in "the rare case involving a constitutional expenditure challenge or separation-of-powers dispute that will evade review if strict standing requirements are imposed." *Id.* But speculative injuries are insufficient. *Doe v. Bryan*, 102 Nev. 523, 525–36, 728 P.2d 443, 444–45 (1986). So too is taxpayer status. *Blanding v. City of Las Vegas*, 52 Nev. 52, 74, 280 P. 644, 650 (1929). Neither plaintiff has standing.

a. NTU still lacks individual and representational standing.

NTU purports to sue on behalf of itself and its Nevada members and supporters. Complaint at 3, ¶6. But it fails to make the showing necessary to establish that it has standing to sue individually or on behalf of any third party not before the Court.

This Court already determined that NTU failed to show that SB 420 will cause NTU any harm. Exhibit N at 8 (Bates #1191). And that point remains true—NTU does not identify any change in circumstances that would explain how it is now harmed by SB 420.

The same is true for any effort by NTU to establish representational standing. An association asserting representational standing must provide the Court with information that identifies the organization's members. *NAMIC*, 139 Nev. at 24–26, 524 P.3d at 478–79. This Court previously held that NTU could not establish representational standing because NTU failed to provide the Court with the means to identify its "purported Nevada members." Exhibit N at 8 (Bates #1191). And NTU has elected to maintain anonymity yet again, defeating its ability to establish representational standing. FAC at ¶¶ 6, 19–21.

b. Dr. Titus lacks individual standing.

Plaintiffs' allegations that Dr. Titus will be injured by reduced reimbursement rates do not establish standing. First, although Plaintiffs acknowledge that the contracts for 2026 are finalized, FAC at ¶ 61, Dr. Titus does not allege that those contracts result in any reimbursement reductions for providers. Second, this Court previously explained that any reductions in provider reimbursements cannot drop below a floor that is consistent with existing reimbursement rates under existing federal programs. Exhibit N at 9 (Bates #1193). And even assuming reductions in reimbursement rates occur—a point Defendants do not concede—it is likely that there will be a net benefit to Dr. Titus because, as Plaintiffs seem to admit, SB 420 is likely to reduce the number of uninsured or underinsured patients she serves by increasing the number of Nevadans able to afford a Qualified Health Plan. *See infra* Part III(B)(2)(a). As a result, Dr. Titus's theory of harm is too speculative to establish standing. *Doe*, 102 Nev. at 525–26, 728 P.2d at 444–45. Finally, she has presented no evidence of reductions in reimbursement rates that have occurred, or are likely to occur, undercutting her standing to seek a preliminary injunction. *Do No Harm*, 126 F.4th at 119.

c. Neither party satisfies the public-importance exception.

Plaintiffs also argue for application of the public-importance exception. Amended Motion at 4, 9–10. But this Court already rejected that argument, Exhibit N at 9–10 (Bates #1193–94), and Plaintiffs fail to provide any valid justification for this Court to change course here. The exception applies to issues of "significant public importance" in cases involving state constitutional challenges to legislative expenditures or appropriations or claims of violations of separation of powers. *Nev. Pol'y Rsch. Inst., Inc. v. Cannizzaro*, 138 Nev. 259. 262, 507 P.3d 1203, 1207 (2022). And the Plaintiffs must also show they are "an 'appropriate' party to bring the action." *Id.*

This Court gave two reasons for rejecting Plaintiffs' reliance on the public-importance exception when dismissing Plaintiffs' prior lawsuit challenging SB 420. First, this Court explained that Plaintiffs' claims were insufficient to trigger the public-importance exception. Exhibit N at 9–10 (Bates #1193–94). Nothing has changed that

would support the opposite conclusion. The same parties are raising the same claims. And Plaintiffs present no viable reason for this Court to depart from its prior determination.

Second, this Court also concluded that Plaintiffs were not "appropriate" parties to bring a challenge to SB 420. Exhibit N at 10 (Bates #1194). This Court said, "If and when the law is fully implemented and facts are known as to the impact of the legislation, perhaps a more appropriate plaintiff or plaintiffs will bring the claims." Exhibit N at 10 (Bates #1194). This Court was not inviting Plaintiffs to return if no one else challenged SB 420. And the absence of any other challenge to SB 420 suggests that interested parties either want to see SB 420 move forward or see no viable legal challenge to the bill, reinforcing this Court's prior determination that Plaintiffs lack standing.

2. Plaintiffs fail to show a likelihood of success under Article IV, Section 18(2).

Plaintiffs misunderstand Article IV, Section 18(2) and overextend the Nevada Supreme Court's opinion from *Legislature v. Settelmeyer*, 137 Nev. 231, 486 P.3d 1276 (2021). Article IV, Section 18(2) requires a two-thirds majority for approval of any legislation that "creates, generates, or increases any revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates." That provision does not apply here.

a. Article IV, Section 18(2) does not control legislation that incidentally increases public revenue.

In *Settelmeyer*, the Nevada Supreme Court held that any bill that extends a tax by eliminating a sunset for the tax or increases the amount of an existing fee by any amount—even a single dollar—is subject to Article IV, Section 18(2). 137 Nev. at 234–37, 486 P.3d at 1280–82. This is not that case. Plaintiffs *do not* assert that any fee or tax is constitutionally infirm. The relevant fee and tax existed prior to passage of SB 420. So if SB 420 were struck down, the same tax and the same fee will continue to exist.

Instead, Plaintiffs' theory is that SB 420 will incidentally increase public revenue through an existing fee and an existing tax. Amended Motion at 6. But that theory is really

an admission that SB 420 will succeed in achieving the goal of increasing affordability and access to health insurance. Plaintiffs admit it is "undisputed" that SB 420 will create, generate, or increase public revenue. Amended Motion at 6. But under these circumstances, when the aim of the bill is *reducing* the premiums that are otherwise subject to an *existing fee* and an *existing tax*, any increase in revenue must be the direct result of an increase *in transactions* subject to the existing fee and tax. And because the fees and taxes are based on a percentage of the premium, premium reductions will *reduce* the fees and taxes an individual must pay in comparison to the fees and taxes for a more expensive private plan. So the increase in revenue Plaintiffs expect to occur will come from people purchasing plans who would have been unable to purchase a plan without availability of the Public Option.

Thus, any increase in revenue is a product of more people purchasing health care plans on the Exchange, not an increase in taxes or fees that would trigger Article IV, Section 18(2). Plaintiffs' admission that it is undisputed that SB 420 will ultimately increase public revenue is an admission that Plaintiffs agree that the Public Option is going to achieve its goal of making health insurance more affordable and accessible for Nevadans.

Given the foregoing, Plaintiffs are wrong on the law. What Plaintiffs really challenge here is how the State is choosing to spend public revenue the State receives from the existing, unchallenged fee and the existing, unchallenged tax. But decisions about how to spend public revenue that comes from an existing fee or an existing tax are appropriations that require only a simple-majority vote under Article IV, Section 18(1). *See Morency v. Dep't of Ed.*, 137 Nev. 622, 630, 496 P.3d 584, 591 (2021)

Moreover, accepting Plaintiffs' position leads to an improbable outcome not intended by the enumeration of Article IV, Section 18(2). For Plaintiffs' position to be right, most (if not all) legislation would require a two-thirds majority to pass. The Legislature presumably enacts legislation to make Nevada a better place to live. And if legislation continues to improve the quality of life for Nevadans, that will presumably continue to attract new residents to the State. An increase in residents will likely increase the number of transactions that require payment of existing fees and taxes thereby increasing public

revenue. But even if some bills would not result in such an incidental increase in public revenue, Plaintiffs' position would require a fiscal analysis of every single bill to determine whether there is some possible way that the bill could incidentally increase public revenue before the Legislature could know whether it needs to comply with Article IV, Section 18(2).

That is not what Article IV, Section 18(2) means. Plaintiffs' position would turn the State's established tradition of majority-rule—embodied in Article IV, Section 18(1)—into an exception, if not a relic of the past. And it would give a minority of legislators control of the Legislature under continuous threat of impasse. True, Nevada has seen such an impasse once before. *See, e.g., Guinn v. Legislature*, 119 Nev. 460, 76 P.3d 22 (2003). But Plaintiffs' overbroad reading of Article IV, Section 18(2) would lead to such impasses becoming the norm.

Plaintiffs seek to extend Article IV, Section 18(2) beyond its reach. SB 420 did not impose, increase, or extend any taxes or fees; the subject tax and fee predated SB 420 and will remain in place if SB 420 is struck down. Any increase in revenue under SB 420 is merely incidental to the SB 420's effectiveness in making health insurance more affordable and accessible for Nevada residents. And the Legislature's choice on how to spend public revenue derived from an existing, unchallenged tax and an existing, unchallenged fee is an appropriation subject to Article IV, Section 18(1).

b. The State's reliance on federal passthrough dollars does not trigger Article IV, Section 18(2).

The State's reliance on passthrough dollars from the federal government is also not subject to Article IV, Section 18(2). The federal government "creates, generates, or increases" the revenue in question, not the State. And under the Supremacy Clause, the Nevada Constitution cannot be used to dictate how the federal government (1) "creates, generates, or increases" revenue, or (2) chooses to spend that revenue. U.S. Const. art VI, cl. 2. Also, Plaintiffs' reading of Article IV, Section 18(2), if correct, would unduly strain Nevada's ability to accept federal funding to support all kinds of state programs.

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Even so, SB 420's reliance on federal passthrough dollars still does not "create[], generate[], or increase[] any public revenue" within the meaning of Article IV, Section 18(2). Instead, the federal government's decision to grant Nevada's waiver merely moves federal dollars from one place to another. As Plaintiffs explain, the dollars in question would have been tax credits that now pass through to the State when someone buys a Public Option plan. FAC at ¶32. That is just resource reallocation, which is not subject to Article IV, Section 18(2). *See, e.g.*, *Morency*, 137 Nev. at 630, 496 P.3d at 591 (concluding that a "reduction of the total amount of available tax credits is simply a reallocation of a portion of the total MBT revenue available, rather than something that increases the MBT tax that produces new or additional public revenue").

3. Plaintiffs fail to show a likelihood of success under Article IV, Section 19 because SB 420 is a constitutional appropriation.

Plaintiffs' theory that SB 420 violates the Appropriations Clause of Article IV, Section 19, is flawed. It imposes requirements not demanded by the Appropriations Clause. Plaintiffs base their argument on two points: (1) that any "appropriation was not enacted by separate bill," and (2) SB 420 does not "offer any 'specif[icity]' as to its purpose," characterizing "increasing the affordability of the Public Option" as "nebulous and vague." Amended Motion at 7 (brackets in original).

Both theories fail on the law. "General legislation may contain an appropriation to fund its operation." *Schwartz v Lopez*, 132 Nev. 732, 753, 382 P.3d 886, 900 (2016). So, Plaintiffs' point that the "appropriation was not enacted by separate bill" does not prove a violation of Article IV, Section 19. And "[n]o technical words are necessary to constitute an appropriation if there is a clear legislative intent authorizing the expenditure." *Id.* Plaintiffs' efforts to modify the word "specific" into "specificity" imposes a requirement not demanded by the Appropriations Clause. The Nevada Supreme Court has never "required any particular wording to find an appropriation." *Id.* at 753, 382 P.3d at 901. All that the Appropriations Clause demands is "language manifesting a clear intent to appropriate." *Id.* And Plaintiffs fail to show that SB 420 lacks such language. Instead, they claim that

the language manifesting an intent to appropriate is "nebulous and vague" because the bill grants discretion to spend money the Treasurer determines is available from "the Trust Fund to increase affordability of the Public Option" but "without providing any limitation on how that affordability might be ensured." Amended Motion at 7. The language of SB 420 establishes the necessary intent to appropriate. The Appropriations Clause is satisfied.

4. Plaintiffs fail to show a likelihood of success under Article III, Section 1 because the Legislature provided sufficient guidance in SB 420.

Finally, Plaintiffs fail to show they are likely to succeed on the claim that SB 420 violates separation of powers under the non-delegation doctrine. Amended Motion at 7–8. Plaintiffs concede that SB 420 imposes limits on revisions to the premium reduction targets. Amended Motion at 8. But Plaintiffs fail to explain how that guidance is insufficient to guide the exercise of discretion when making factual determinations about whether and how to revise the premium reduction targets within the limits the Legislature imposed, particularly when considering more recent Nevada Supreme Court cases that apply *Sheriff v. Luqman*, 101 Nev. 149, 697 P.2d 107 (1985). This case does not present a situation materially different from the Director of the Department of Corrections having the discretion to select the drugs for an execution, *Floyd v. Dep't of Corr.*, 139 Nev. 335, 536 P.3d 445 (2023), or the Board of Wildlife Commissioners deciding how regularly animal traps need to be checked, *Smith v. Bd. of Wildlife Commissioners,* 136 Nev. 878, 461 P.3d 164 (2020) (unpublished table decision). *See also F.C.C. v. Consumers' Rsch.*, 145 S. Ct. 2482 (2025). Additionally, just as the Eighth Amendment served as a counterbalance in *Floyd*, 139 Nev. at 339–40, 536 P.3d at 449, Plaintiffs admit that the Special Terms and Conditions of the Section 1332 Waiver also impose limits on the exercise of discretion under SB 420. Amended Motion at 2–3. There is no separation-of-powers violation.

C. Plaintiffs fail to establish irreparable harm.

Plaintiffs fail to show any harm, let alone irreparable harm. Plaintiffs' theory of irreparable harm is intertwined with success on their constitutional claims—they rely on the public importance exception to claim collective harm. Amended Motion at 8–9. But

Plaintiffs fail to show a likelihood of success on each theory. *Supra* Part III(B). There is no collective injury to consider because Plaintiffs prove no injury at all.

D. Plaintiffs fail to show that the factors on balancing hardships and the public interest tip in their favor.

Plaintiffs' attempt to show that the equities and public interest tip in their favor is also intertwined with their claim that SB 420 violates the Nevada Constitution. But each claim is legally flawed for the reasons explained above. *Supra* Part III(B). Indeed, Plaintiffs' theory that SB 420 will increase public revenue is an admission that they envision SB 420 successfully making health insurance available to more Nevadans than would be available without the Public Option. *See supra* Part III(B)(2)(a). So an injunction will do harm to Nevadans that will benefit from availability of the Public Option plans on the Exchange.

Also, as Chief Justice Roberts has explained, when "a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (internal quotation marks and citation omitted). That point is especially salient here, because an injunction against the State would threaten non-compliance with the Special Terms and Conditions ("STC") for the Section 1332 Waiver.[4]

For those reasons, the equities and the public interest tip in Defendants' favor.

IV. Conclusion

This Court should deny Plaintiffs' amended motion for a preliminary injunction.

RESPECTFULLY SUBMITTED this 2nd day of September, 2025.

AARON D. FORD
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By: _____
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Chief Deputy Solicitor General

[4] Under STC #2, the State must notify the federal government of "any change in state law that could impact the waiver," which ostensibly would include a preliminary injunction preventing implementation of SB 420. Exhibit H (Bates #867-68).

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 2nd day of September, 2025, I served an electronic copy via email of, **DEFENDANTS' OPPOSITION TO PLAINTIFFS' AMENDED MOTION FOR PRELIMINARY INJUNCTION** to the following:

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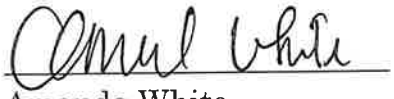

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