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NO. 95319-8

**THE SUPREME COURT
OF THE STATE OF WASHINGTON**

IN THE MATTER OF THE WRONGFUL CONVICTION OF
TED LOUIS BRADFORD,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

RESPONDENT'S OPENING BRIEF

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I. INTRODUCTION

Bradford is entitled to payment under the Wrongly Convicted Persons Act (WCPA) if he chooses to comply with the statute's express conditions, but instead he tries to get two bites at the apple. Bradford tries to evade the Legislature's intent that if a wrongfully convicted person elects recovery under the WCPA, that must be the exclusive remedy. Bradford focuses on a single sentence in RCW 4.100.080(1), ignoring the fundamental principle of statutory construction: courts glean legislative intent by considering the legislation as a whole and interpreting the words in context.

By its express terms, the WCPA provides an exclusive remedy for those who can show they were wrongly convicted, served prison time, and are innocent. People eligible for compensation are not required to file a claim under the Act, and those who do not are free to pursue other remedies. RCW 4.100.080(1). If a person chooses to pursue compensation under the Act, however, the filing of the claim serves to waive "all other remedies, causes of action, and other forms of relief or compensation against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction." RCW 4.100.080(1). A claimant who prevails under the Act must tender a legal release acknowledging and documenting his acceptance of this waiver

prior to receiving payment. Bradford has to date refused to do so, and thus, he is not yet entitled to payment.

II. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Did the trial court properly read the Wrongly Convicted Persons Act as a whole, including plain and unambiguous language that requires a claimant to tender a release acknowledging waiver of all other claims against the State, any political subdivision, and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction and imprisonment, as specified in RCW 4.100.080(1)?

III. STATEMENT OF THE CASE

In 1996, a Yakima County jury found Appellant Ted Bradford guilty of Rape in the First Degree and Burglary in the First Degree. *In re the Personal Restraint of Bradford*, 140 Wn. App. 124, 126, 165 P.3d 31 (2007). He was sentenced to serve 122 months in prison. *State v. Bradford*, 95 Wn. App. 935, 943, 978 P.2d 534 (1999). In 2008, his convictions and sentence were vacated based on new DNA evidence. CP 171-72. Bradford was subsequently re-charged and found not guilty after a second jury trial in 2010. CP 157, 163.

In 2013, Bradford filed suit in United States District Court, Eastern District of Washington, against the City of Yakima and Detective Joseph Scherschligt alleging violation of his civil rights under

42 U.S.C. § 1983. CP 164, 170-183. The federal court found that Bradford's claims were time-barred and granted summary judgment against him. CP 164, 170-183.

The Ninth Circuit reversed the District Court's dismissal on the time-bar issue, remanded the case, and directed the District Court to determine whether Scherschligt was entitled to qualified immunity. CP 164, 184-192.

In 2015, the District Court found that Scherschligt was entitled to qualified immunity and granted summary judgment. CP 164, 193-207. That decision is pending appeal in the Ninth Circuit. CP 164.

In 2016, Bradford filed a complaint in state court for compensation under the Wrongly Convicted Persons Act. CP 4-7. Bradford presented the State with newly discovered DNA evidence in his case.¹ The Attorney General's Office conceded Bradford's claim, and offered to stipulate to entry of judgment once Bradford tendered the legal release required by RCW 4.100.080(1). CP 372-73. Bradford refused to tender a release that complied with the statute's requirements. CP 436.

¹ There are two different pieces of DNA evidence relevant to this case. The DNA evidence presented to the Yakima County Prosecutor's Office showed that tape adhered to a mask the rapist made the victim wear did not contain Bradford's DNA. CP 171-72. After Bradford filed his WCPA claim, he obtained new evidence that showed the rape victim's brother-in-law's DNA was present on the tape adhered to the mask. CP 157-58.

Bradford then filed a motion for summary judgment, arguing he was entitled to payment under the WCPA even though he was not willing to waive his claims against officers, employees, agents and volunteers of the State and its political subdivisions, as that would include Detective Scherschligt. CP 155-162. Bradford offered his own release, which only waived claims against the State and its political subdivisions. CP 367. The State opposed entry of summary judgment, arguing that Bradford is not entitled to entry of judgment as a matter of law because he has not tendered the legal release required in RCW 4.100.080(1). CP 223-25.

Thurston County Superior Court Judge James Dixon agreed with the State, and ruled that Bradford can obtain judgment and receive compensation only when he executes a legal release that includes the State and its political subdivisions, as well as officers, employees, agents, and volunteers of the State and its political subdivisions as specified in RCW 4.100.080(1). CP 436-37.

Bradford seeks direct review of the Superior Court's ruling.

IV. ARGUMENT

A. **The Plain and Unambiguous Language of the Wrongly Convicted Persons Act Requires a Claimant to Tender a Legal Release That Comports With the Requirements of RCW 4.100.080(1) Prior to Receiving Compensation Under the Act.**

On July 28, 2013, the Wrongly Convicted Persons Act, Chapter 4.100 RCW, became law. It establishes a mechanism “to provide an avenue for those who have been wrongly convicted in Washington state to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration.” RCW 4.100.010.

Not all overturned convictions result in actionable WCPA claims. A claimant seeking compensation under the Act must establish that he meets certain requirements set forth in RCW 4.100.040(1), and that he can present significant new exculpatory information that establishes by clear and convincing evidence that he is actually innocent. RCW 4.100.020(2)(a); RCW 4.100.040(1); RCW 4.100.060(1)(c)(ii). If the Attorney General’s Office concedes the claim as permitted by RCW 4.100.040(5), the amount of compensation is based on a mathematical formula set forth in the Act. RCW 4.100.040(5); RCW 4.100.060. The Attorney General’s Office conceded Bradford’s claim, and offered to compensate him in accordance with the procedures set forth in RCW 4.100.080(1) of the Act. When

Bradford refused to adhere to the clear and unambiguous requirements of the statute, the trial court properly declined to enter judgement.

1. RCW 4.100.080(1) Requires That Prior to Receiving Payment a Claimant Must Tender a Release That Waives All Other Claims Against the State, Any Political Subdivisions, and Their Officers, Employees, Agents, and Volunteers.

Under the WCPA's plain language, Bradford cannot simultaneously proceed with a federal claim related to his wrongful conviction and recover under the WCPA. He must execute a release waiving all claims related to his wrongful conviction in order to obtain final judgement and receive payment if he chooses WCPA recovery.

In cases involving statutory interpretation, "[t]he court's fundamental objective is to ascertain and carry out the legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to the plain meaning as an expression of legislative intent." *State v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002); *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). When a statute is unambiguous, the meaning of the statute is derived from looking at the language in the statute itself. *Bernstein v. State*, 53 Wn. App. 456, 460, 767 P.2d 958 (1989).

RCW 4.100.080(1) begins with a clear and unambiguous statement of legislative intent: "It is the intent of the legislature that the remedies and

compensation provided under this chapter *shall be exclusive to all other remedies at law and in equity* against the state or any political subdivision of the state.” Emphasis added. RCW 4.100.080(1) then expressly provides for an exclusive remedy that prohibits double recovery.

As a requirement to making a request for relief under this chapter, the claimant waives any and all other remedies, causes of action, and other forms of relief or compensation against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant’s wrongful conviction and imprisonment. This waiver shall also include all state, common law, and federal claims for relief, **including claims pursuant to 42 U.S.C. Sec. 1983.**

RCW 4.100.080(1) (emphasis added).

The legislature then makes it clear that the WCPA does not require anyone to forgo their federal claims: “A wrongfully convicted person who elects not to pursue a claim for compensation pursuant to this chapter shall not be precluded from seeking relief through any other existing remedy.”

RCW 4.100.080(1).

In order to recover under the WCPA, the legislature has required (in the same subsection) a release that is *not* limited solely to claims against the State and its subdivisions, while also providing a backstop should the release be held invalid for any reason:

The claimant must execute a legal release prior to the payment of any compensation under this chapter. If the release is held invalid for any reason and the claimant is

awarded compensation under this chapter and receives a tort award related to his wrongful conviction and incarceration, the claimant must reimburse the state for the lesser of:

(a) The amount of the compensation award, excluding the portion awarded pursuant to RCW 4.100.060(5)(c) through (e); or

(b) The amount received by the claimant under the tort award.

RCW 4.100.080(1).

Despite the legislature's plain language, Bradford seeks to receive compensation under the WCPA while continuing to litigate his 42 U.S.C. § 1983 action. Bradford contends that RCW 4.100.080(1) only requires him to tender a release that waives causes of actions against "the state and any political subdivisions of the state," not one that waives causes of action against "the state, any political subdivisions of the state, and their officers, employees, agents, and volunteers[.]" App's Opening Brief at 8.

Bradford makes two arguments to support his claim that he is entitled to receive immediate compensation under the WCPA while continuing to pursue his federal claim. First, he argues that this Court should read only one sentence of RCW 4.100.080(1), and ignore the rest of that same provision. Second, he argues that even if this Court proceeds to read the rest of RCW 4.100.080(1), the statute's requirement that "the claimant waives any and all other remedies, causes of actions, and other forms of

relief or compensation against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction and imprisonment" does not apply to the required release that must be tendered prior to receiving compensation. Both arguments fail, because they are contrary to the plain and unambiguous language of the statute.

Bradford's focus on only one sentence of RCW 4.100.080(1) in isolation is contrary to well-settled law regarding the rules of statutory construction that require statutes be read as a whole. "[I]t is settled that the plain meaning of a statute is determined by looking not only 'to the text of the statutory provision in question,' but also to 'the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.'" *State v. Hurst*, 173 Wn.2d 597, 604, 269 P.3d 1023 (2012).

When considering the statute as a whole, it is clear that the legislature intended to prevent recovery under the WCPA and simultaneous or subsequent pursuit of a 42 U.S.C. § 1983 claim based on the same wrongful conviction. Consistent with the initial statement of intent, the statute provides procedures and mechanisms to ensure that the legislature's intent to bar double recovery is enforced:

As a requirement to making a request for relief under this chapter, the claimant waives any and all other remedies, causes of action, and other forms of relief or compensation

against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction and imprisonment.

RCW 4.100.080(1).

Consistent with its goal of making the WCPA an exclusive remedy, the legislature made this sentence as broad as possible, requiring a claimant to waive all other causes of action and forms of relief against all conceivable actors of the State and its subdivisions.

RCW 4.100.080(1) then expressly describes the specific claims covered, including "all state, common law, and federal claims for relief, including claims pursuant to 42 U.S.C. § 1983." Once again, consistent with its goal of making the WCPA an exclusive remedy, the legislature also made this sentence as broad as possible specifying all conceivable types of actions the claimant must waive in order to receive the Act's exclusive remedy. This provision expressly requires a claimant to waive "claims pursuant to 42 U.S.C. § 1983" the very action Bradford seeks to continue pursuing while receiving compensation under the WCPA.

The plain language of RCW 4.100.080(1), read in context, is determinative in interpreting the WCPA's exclusive remedy provision, but if this Court finds any ambiguity in the statute's language it can turn to legislative history. This Court has looked to House and Senate bills as sources through which to ascertain legislative intent. *See State v. Medina*,

180 Wn.2d 282, 291, 324 P.3d 682 (2014) (quoting from a 2009 bill report to show the legislature’s intent behind an amendment); *Kadoranian v. Bellingham Police Dep’t*, 119 Wn.2d 178, 185, 829 P.2d 1061 (1992) (quoting from a Final Legislative Report to ascertain legislative intent). Pertaining to the WCPA, Final Bill Report, ESHB 1341, explains that “[P]rior to receiving a compensation award, the claimant must execute a legal release waiving any other existing remedies, causes of action, and relief related to the wrongful conviction.” Similarly, Senate Bill Report, ESHB 1341 (2013), contains the recommended amendment that “[T]he legislation provides an exclusive remedy and the claimant must waive any other compensation under state or federal law or common law.” This “exclusive remedy” language is contained in RCW 4.100.080(1) of the WCPA. Contrary to Bradford’s argument that the waiver and the release are separate unrelated provisions, this language connects the release to the required waiver and indicates a broad waiver of any other existing remedies.

Finally, RCW 4.100.080(1) requires an executed legal release prior to compensation, and contains a backstop provision requiring reimbursement to the State in case the release is held invalid for any reason.

The claimant must execute a legal release prior to the payment of any compensation under this chapter. If the release is held invalid for any reason and the claimant is awarded compensation under this chapter and receives a tort award related to his wrongful conviction and incarceration,

the claimant must reimburse the state for the lesser of: (a) The amount of the compensation award, excluding the portion awarded pursuant to RCW 4.100.060(5)(c) through (e);² or (b) The amount received by the claimant under the tort award.

RCW 4.100.080(1).

Reading the entire text of RCW 4.100.080(1) in context as required, the legislature's statement that WCPA compensation "shall be exclusive to all other remedies," along with its release requirements, is clear, explicit, and unambiguous. The legislature took care to ensure exclusivity by ensuring waiver, a comprehensive written release *before* payment can occur, and a backstop to prevent double-recovery even if the other safeguards were somehow defeated. In this context, Bradford cannot receive compensation under the WCPA and simultaneously proceed with his § 1983 suit in federal court without first signing the WCPA's required release.

2. The Waiver and Release Provisions of RCW 4.100.080(1) Cannot be Divorced From Each Other.

Bradford contends that the only part of RCW 4.100.080(1) that applies to him is "a single sentence, which provides that '[t]he claimant

² RCW 4.100.060(5)(c) through (e) refer to compensation for child support payments owed by the claimant that became due while the claimant was in custody on the felony that is the ground for the WCPA claim, reimbursement for restitution and other court-ordered financial obligations resulting from the felony conviction, and attorney's fees for pursuing the WCPA claim.

must execute a legal release prior to the payment of any compensation under this chapter.” App’s Opening Brief at 9. Following this reasoning, Bradford argues, “the only requirement of RCW 4.100.080(1) is that claimants must execute a legal release prior to the payment of compensation under the act.” App’s Opening Brief at 10.

Bradford cites to *Wright v. Lyft, Inc.*, for its language that “[o]missions are deemed to be exclusions.” 189 Wn.2d 718, 727, 406 P.3d 1149 (2017). He contends this language supports his claim that the required release need not include officers, employees, agents, and volunteers of the State and its political subdivisions because these people are not identified in the same sentence as the requirement that there be a release prior to payment. Notably, no entities are identified in the same sentence as the requirement that there be a release. This is why *Wright v. Lyft*, the very case Bradford relies on, explains that “[s]tatutory provisions must be read in their entirety and construed together, not piecemeal.” *Id.* at 723-24, citing *Donovik v. Seattle-First Nat’l Bank*, 111 Wn.2d 413, 415, 757 P.2d 1378 (1988).

Wright v. Lyft, Inc. does not support Bradford’s argument. There, the question was whether a 2005 amendment to Chapter 19.190 RCW, the Consumer Electronic Mail Act (“CEMA”), included a private cause of action for receiving unwanted text messages. *Wright v. Lyft*, 189 Wn.2d

at 721-22. This Court noted that while the amendment established a private cause of action for “phishing,” the amendment did not mention “texting.” *Id.* at 726. It was within this context that this Court stated, “[o]missions are deemed to be exclusions.” *Id.* at 727 (citing *In re Det. of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597(2002)). Contrary to Bradford’s claim, the State is not suggesting that any language be added to RCW 4.100.080(1), but simply that this Court follow the rules of statutory construction that require statutes to be read as a whole, not piecemeal. *Donovik v. Seattle-First Nat’l Bank*, 111 Wn.2d 413, 415, 757 P.2d 1378 (1988). RCW 4.100.080(1) provides that upon a request for compensation under the WCPA, the claimant waives all other remedies. The statute further provides that before the successful claimant can receive compensation the claimant must execute a legal release, thereby memorializing the automatic waiver provision.

Bradford’s sole focus on the one sentence “[t]he claimant must execute a legal release prior to the payment of any compensation under this chapter,” is absurd, because this one sentence fails to provide any information whatsoever as to what the release needs to cover. Bradford tacitly acknowledges this flaw when he attempts to fill in the missing parts by arguing that the release need only include the State and its political subdivisions. Bradford’s argument fails. He cannot insert what entities he

wishes the release to cover by picking and choosing from parts of RCW 4.100.080(1), and asking this Court to simply ignore other entities expressly listed in the same statutory section.

Bradford argues that since the state of Washington is the only entity responsible for payment of compensation under the WCPA, it is the only entity that should be covered in the release. This argument runs contrary to his argument that the release should cover not only the State but also its political subdivisions, as political subdivisions include, for example, county and municipal governments that do not pay for the compensation provided by the WCPA. *See e.g., Housing Authority of Sunnyside, Washington v. Sunnyside Valley Irrigation Dist.*, 112 Wn.2d 262, 277, 772 P.2d 473 (1989) (explaining that school districts and community college districts are “merely subdivisions of the State[.]”); *Plummer v. Gaines*, 70 Wn.2d 53, 55, 422 P.2d 17 (1966) (defining entities including cities, towns and school districts as types of political subdivisions);

Bradford’s argument that the State is the only entity the release should cover because it is the paying party under the WCPA also fails because it contradicts the legislature’s express requirement that all causes of action against any potentially responsible individuals be waived upon filing of a request for compensation. RCW 4.100.080(1). It would make no sense to include an express provision that all other causes of action are

waived at the time of filing, but that the release required before payment of compensation need not include all the entities and individuals identified in the waiver portion of the statute. Bradford's attempt to divorce the waiver provisions from the release itself fails because doing so ignores well-settled rules of statutory construction, and requires a distorted reading of the statute that when viewed as a whole makes no sense.

B. The WCPA Does Not Present Any Federalism Issues Because the Act Specifically Allows Claimants to Opt Out of the Compensatory Scheme Offered by the Act and to Pursue Other Avenues of Recovery Including Federal Lawsuits.

Bradford contends that the exclusive remedy provision of the WCPA raises federalism issues. App's Opening Brief at 12-20. This argument is without merit because the WCPA does not require him to file a claim under the Act. RCW 4.100.080(1) emphasizes that electing not to seek compensation under the WCPA has no impact on other claims and no one who believes they were wrongly convicted is required to file a claim under the WCPA. The Act specifically states "[a] wrongfully convicted person who elects not to pursue a claim for compensation pursuant to this chapter shall not be precluded from seeking relief through any other existing remedy." RCW 4.100.080(1).

Contrary to Bradford's assertion, the WCPA does not deprive him of his right to pursue his federal claim. People who believe they can show

they were wrongly convicted have a choice. A claimant can choose to take advantage of the WCPA with its no fault provisions, predictable statutory compensation, and streamlined procedures. In exchange, the claimant must accept the statutory limits on recovery and the exclusivity of the remedy. RCW 4.100.080(1). Alternatively, a claimant can choose to file an action in federal court under 42 U.S.C. § 1983, in which case he accepts the burden of proving fault and damages. In return, he receives the benefit of a potential recovery that is not subject to statutory limitations. The WCPA does not preclude claimants with meritorious 42 U.S.C. § 1983 claims from pursuing them. Claimants simply cannot pursue § 1983 claims and WCPA payment simultaneously, and receive payment under the WCPA without first signing the statute's required release. Bradford was aware of the exclusive remedy provisions when he filed his claim under the WCPA. Any purported federalism issues Bradford raises are of his own making, and these so-called issues exist only because he seeks to pursue multiple avenues of compensation.

Bradford cites to *Martinez v. State of Cal.*, 444 U.S. 277, 284, n.8, 100 S. Ct. 553, 62 L. Ed. 2d 481 (1980), for his claim that the WCPA "immunizes" Detective Scherschligt from a federal lawsuit. App's Opening Brief at 18. Bradford's reliance on *Martinez* is misplaced. In *Martinez*, the family of a teenage girl murdered by a parolee challenged the

constitutionality of a California statute that provided immunity to parole officers for parole decisions. *Id.* at 283-84. The Supreme Court held that the California statute was not unconstitutional when applied to defeat a tort claim arising under state law, and that Martinez's § 1983 claim was not viable. *Id.* at 283-84.

Bradford ignores the Court's analysis in *Martinez* and instead relies on an out of context sentence in a footnote to claim that the WCPA somehow "immunizes" Detective Scherschligt. The WCPA does not "immunize" Detective Scherschligt from a federal lawsuit, it simply prohibits Bradford from obtaining WCPA payment and then proceeding with his § 1983 claim. Nothing in the WCPA prevents Bradford from delaying the entry of judgment in his State claim, and then returning to State court to collect compensation after the federal suit is completed should he not prevail there.

In passing the WCPA, the Washington State Legislature understood that it does not dictate federal judicial policy or federal court rulings. This is why the WCPA includes a mandatory reimbursement provision. When Bradford signs a release in conformity with RCW 4.100.080(1), the State will compensate him. If he continues to pursue his § 1983 claim in violation of the release, then the federal court can decide whether to honor the release and dismiss the federal case or set the release aside. If the release is

invalidated, then the legislature's backstop, the reimbursement provision, would apply. The WCPA allows Bradford to exercise his free choice, and it does not dictate any particular ruling in a federal case. RCW 4.100.080(1) provides an additional protection against double-recovery should a federal court allow a § 1983 claim to proceed despite the release.

Contrary to Bradford's assertion, the inclusion of a reimbursement provision in the WCPA does not suggest that the State legislature was condoning multiple litigations. As explained above, the reimbursement provision is simply a backstop to ensure that there can be no double-recovery. Bradford's reading of the reimbursement provision contradicts the rest of RCW 4.100.080(1), including the first sentence, which states that it was "the intent of the legislature that the remedies and compensation provided under this chapter **be exclusive to all other remedies[.]**" (emphasis added). When properly read as a whole, the WCPA establishes that the State legislature was doing everything in its power to make the WCPA an exclusive remedy if that is the remedy a person elects. The reimbursement provision simply recognizes that the State does not have authority to dictate federal litigation, and it serves as a backstop for cases in which a release is set aside.

V. CONCLUSION

This case involves a straightforward application of an unambiguous statute where the plain language establishes the clear legislative intent to provide an exclusive remedy for claimants seeking compensation under the WCPA. For the forgoing reasons, this Court should affirm the ruling of the Thurston County Superior Court that requires Bradford to tender a legal release consistent with the plain meaning of RCW 4.100.080(1) before receiving compensation under the WCPA.

RESPECTFULLY SUBMITTED this 23 day of April, 2018.

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NO. 95319-8

THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE
WRONGFUL CONVICTION OF TED
LOUIS BRADFORD,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

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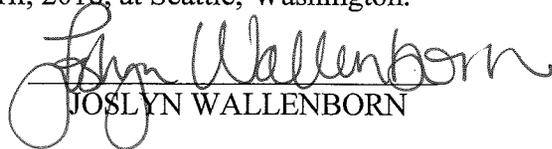
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this ^{23rd} day of April, 2018, at Seattle, Washington.


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WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION

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