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Supreme Court Case No. 88115-4
Court of Appeals No. 67515-0-1 (Consolidated with 67704-7-1)

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**SUPREME COURT
OF THE STATE OF WASHINGTON**

**WILLIAM RALPH,
Plaintiff-Petitioner,**

vs.

**STATE OF WASHINGTON DEPARTMENT OF NATURAL
RESOURCES,
Defendant-Respondent.**

**WILLIAM FORTH, et al.,
Plaintiffs-Petitioners,**

vs.

**STATE OF WASHINGTON DEPARTMENT OF NATURAL
RESOURCES, et al.
Defendants-Respondents.**

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Since 1854, when Washington became a territory of the United States, a Washington statute has vested exclusive jurisdiction over actions for injuries to real property in the county where the property is located. This rule, commonly referred to as the local action rule, has existed at common law for hundreds of years. It was already codified, and accepted as law, when the state constitution was drafted.

For more than a century and a half, this Court has enforced this jurisdictional statute. Recognizing that it had been at times inconsistent in its language, the Court unambiguously declared 56 years ago: “[T]his court is now committed to the doctrine that this is a jurisdictional statute, rather than one of venue.”

The intent of the framers of the constitution is clear. The drafters of Article IV of the state constitution included Supreme Court justices who themselves interpreted the statute, both before and after statehood, as limiting real property jurisdiction to the local superior court. There can be no more persuasive authority regarding the constitutionality of the local action rule than the enforcement of the rule by the framers themselves.

In these cases, Plaintiffs have alleged injuries to their real property in Lewis County caused by floods when the Chehalis River overflowed its banks during a record-breaking storm in December 2007. Plaintiffs blame

Defendants' forest practices for these injuries. But they filed their lawsuits in the wrong superior court. Only Lewis County Superior Court has jurisdiction over injuries to Lewis County real estate. Plaintiffs chose to file their suits in King County, and these cases were properly dismissed for lack of jurisdiction. Plaintiffs appealed, and the Court of Appeals affirmed.

Plaintiffs now ask this Court for review, arguing that RCW 4.12.010 is unconstitutional under Article IV, Section 6 of the state constitution. The Court of Appeals followed this Court's well-established precedent, and this case provides no reason to revisit that precedent. The Court should deny review.

II. STATEMENT OF ISSUES

A. Should the Court deny review under RAP 13.4(b)(1) because the Court of Appeals decision followed this Court's well-established precedent?

B. Should the Court deny review under RAP 13.4(b)(3) because Plaintiffs' appeal does not raise a significant question under the state constitution?

C. Should the Court deny review under RAP 13.4(b)(1) and RAP 13.4(b)(2) because this Court's precedent establishes that RCW 4.12.010(1) applies to all actions for injury to real property?

III. STATEMENT OF THE CASE

Plaintiffs own real property and reside in Lewis County.

Ralph, CP 1-11; Forth, CP 1-15. During the course of a historic storm in December 2007, the Chehalis River overflowed its banks and flooded Plaintiffs' property. *Id.* Plaintiffs filed suits¹ against Defendants in King County Superior Court, alleging that Defendants' forest practices on real property in Lewis County caused the flooding. *Id.* Plaintiffs asserted claims of negligence, trespass, tortious interference, inverse condemnation, unlawful agency action, and violation of Washington's Shoreline Management Act of 1971. Ralph, CP 8-10; Forth, CP 9-11. Plaintiffs seek both damages and injunctive relief. Ralph, CP 10-11; Forth, CP 12.

Defendants moved to dismiss both actions without prejudice for lack of jurisdiction over the subject real property, based on this Court's precedent holding RCW 4.12.010 to be a statute relating to superior court jurisdiction. Ralph, CP 19-25; Forth, CP 38-45. Plaintiffs opposed, arguing that the statute relied upon by Defendants was unconstitutional.

¹ Plaintiffs identify five lawsuits, including the two lawsuits at issue in this appeal, which were filed in King County by various plaintiffs alleging liability against Defendants for the December 2007 flood. Petition at n.1. The plaintiffs in all of these lawsuits are represented by the same counsel. Three of these lawsuits were dismissed for lack of jurisdiction. The first lawsuit dismissed, *Davis v. State Dep't of Nat. Res.*, King County Superior Court Case No. 10-2-42010-0 KNT (Cayce, J.), was appealed to the Court of Appeals in case number 67418-8-I. The Court of Appeals dismissed that appeal, and this Court denied review. 173 Wn.2d 1029, 273 P.2d 982 (2012).

Ralph, CP 33-44; Forth, CP 49-61. The trial courts granted Defendants' motions (Ralph, CP 171-72; Forth, CP 166-68) and Plaintiffs appealed (Ralph, CP 173-178; Forth CP 169-74). The Court of Appeals consolidated the appeals and affirmed in a decision filed October 15, 2012. *See* Petition for Review, Exhibit A.

IV. ARGUMENT

A. The Court Should Deny Review Under RAP 13.4(b)(1) Because the Court of Appeals Followed Well-Established Precedent.

Plaintiffs seek review under RAP 13.4(b)(1), arguing that the Court of Appeals decision affirming the trial courts' dismissal conflicts with this Court's precedent. Petition at 9. They are mistaken. The Court of Appeals followed this Court's clear and binding precedent holding RCW 4.12.010 to be a jurisdictional statute.

In *Snyder v. Ingram*, 48 Wn.2d 637, 296 P.2d 305 (1956), the Court upheld the constitutionality of RCW 4.12.010 under Article II, Section 19 of the state constitution. *Snyder*, 48 Wn.2d at 640-41. The Court also held that RCW 4.12.010 related to superior court jurisdiction, not venue, citing these four decisions: *Alaska Airlines v. Molitor*, 43 Wn.2d 657, 263 P.2d 276 (1953), *State ex rel. Grove v. Card*, 35 Wn.2d 215, 211 P.2d 1005 (1949), *Cugini v. Apex Mercury Mining Co.*, 24 Wn.2d 401, 165 P.2d 82 (1946), and *Miles v. Chinto Mining Co.*,

21 Wn.2d 902, 153 P.2d 856, 156 P.2d 235 (1944). *Snyder*, 48 Wn.2d at 638-40. In *Snyder*, the court “committed to the doctrine that [RCW 4.12.010] is a jurisdictional statute, rather than one of venue.” *Id.* at 638.

Plaintiffs argue that the Court of Appeals decision below conflicts with several other Supreme Court decisions. Petition at 9-13. However, each of the cases cited by Plaintiffs addresses a different statute, none of which is at issue here. *State v. Posey*, 174 Wn.2d 131, 140, 272 P.3d 840 (2012) (discussing RCW 13.04.030); *ZDI Gaming, Inc. v. State ex rel. Washington State Gambling Comm’n*, 173 Wn.2d 608, 619, 268 P.3d 929 (2012) (discussing RCW 9.46.095); *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d 726, 733, 254 P.3d 818 (2011) (discussing Title 51 RCW); *Dougherty v. Dep’t of Labor & Indus.*, 150 Wn.2d 310, 314-15, 76 P.3d 1183 (2003) (discussing RCW 51.52.110); *Young v. Clark*, 149 Wn.2d 130, 132-33, 65 P.3d 1192 (2003) (discussing RCW 4.12.020(3)); *Shoop v. Kittitas County*, 149 Wn.2d 29, 35, 65 P.3d 1194 (2003) (discussing RCW 36.01.050); *Marley v. Dep’t of Labor & Indus.*, 125 Wn.2d 533, 542-43, 886 P.2d 189 (1994) (discussing Title 51 RCW). These cases are therefore inapposite, and the Court of Appeals did not err by disregarding them.

Here, the Court of Appeals followed the Court’s clear command in *Snyder* and related cases, which remain the law of Washington.

See, e.g., Five Corners Family Farmers v. State, 173 Wn.2d 296, n.5, 268 P.3d 892 (2011). The Court of Appeals decision therefore does not conflict with this Court's precedent, and the Court should deny Plaintiffs' request for review under RAP 13.4(b)(1).

B. The Court Should Deny Review Under RAP 13.4(b)(3) Because RCW 4.12.010 Is Plainly Constitutional.

Plaintiffs seek review under RAP 13.4(b)(3), arguing that the Court of Appeals decision following this Court's precedent raises an important question under the state constitution. Petition at 14. However, RCW 4.12.010 is plainly constitutional because it codifies the local action rule, a jurisdictional rule recognized as valid under Washington law by those who drafted the state constitution.

1. Drafters of the Constitution Knew that RCW 4.12.010 Did Not Conflict with Article IV, Section 6.

The statute codified at RCW 4.12.010 was first enacted in 1854 by the Legislative Assembly of the Territory of Washington. Laws of 1854, p. 133, § 13. The Legislative Assembly re-enacted the same statute three times before the state constitutional convention in 1889. Laws of 1860, p. 7, § 15; Laws of 1869, p. 12, § 48; Laws of 1877, p. 11, § 48. The statute was codified at § 47 of the Code of 1881 before statehood, and remained the law in Washington after statehood.

See Rem. Rev. Code § 204; RCW 4.12.010.

The constitutional convention's Committee on Judiciary drafted Article IV of the state constitution. Quentin Shipley Smith, *Analytical Index to The Journal of the Washington State Constitutional Convention 1889*, at 593 (Beverly Paulik Rosnow ed., 1999). The chairman of the committee, George Turner, was previously a justice of the Supreme Court of the Territory of Washington. *Id.* at 488. Two other members of the committee, Ralph O. Dunbar and Theodore L. Stiles, were elected judges of the Supreme Court of the State of Washington immediately after statehood. *See id.* at 470, 485. The constitutional convention's president, John P. Hoyt, was both a justice of the Supreme Court of the Territory of Washington before statehood and a judge of the Supreme Court of the State of Washington immediately after statehood. *See id.* at 465.

The Supreme Court of the Territory of Washington interpreted the statute codified at RCW 4.12.010 as relating to jurisdiction even before the constitutional convention. In both *Wood v. Mastick*, 2 Wash. Terr. 64, 3 P. 612 (1881) and *Styles v. James*, 2 Wash. Terr. 194, 2 P. 188 (1883), the court (which included Associate Justice Hoyt at the time) interpreted the statute now codified at RCW 4.12.010 to be jurisdictional.

The newly formed Supreme Court of the State of Washington interpreted that same statute as jurisdictional immediately after enactment of the state constitution. In *McLeod v. Ellis*, 2 Wash. 117, 26 P. 76 (1891),

the Court published its first post-statehood opinion affirming its understanding that Section 47 of the Code of 1881 codified the local action rule and limited superior court jurisdiction. 2 Wash. at 121-22. Judge Stiles authored the opinion, in which Judge Dunbar joined and Judge Hoyt concurred.

It is inconceivable that the same men who participated in drafting the state constitution considered Section 47 of the Code of 1881 (now RCW 4.12.010) as contrary to the scope of superior court jurisdiction described in Article IV, Section 6. The only rational conclusion is that the constitution's authors knew that the two provisions did not conflict.

This conclusion is supported not only by this Court's numerous decisions published since 1889 holding the statute codified at RCW 4.12.010 to be one limiting superior court jurisdiction, but also by the text of the provisions of Article IV. The state constitution uses "the superior court" to refer to the superior court for an individual county. *See* Const. art. IV, § 5 (election of judges to the superior court for each county). In contrast, the constitution uses "superior courts" when referring to all of Washington's superior courts. *See* Const. art. IV, § 1 ("The judicial power of the state shall be vested in a supreme court, *superior courts*, justices of the peace, and such inferior courts at the legislature may provide."); §11 ("The supreme court and *the superior courts* shall be

courts of record, and the legislature shall have power to provide that any of the courts of this state, excepting justices of the peace, shall be courts of record.”); § 13 (“The judges of the supreme court and judges of *the superior courts* shall severally at stated times, during the continuance in office, receive for their services the salaries prescribed by law therefor, which shall not be increased after their election, nor during the term for which they shall have been elected.”); § 24 (“The judges of the *superior courts*, shall from time to time, establish uniform rules for the governance of *the superior courts*.”) (emphasis added). Because Article IV, Section 6 uses the singular “superior court” to describe jurisdictional limits, Section 6 describes the jurisdiction of each county’s superior court. Under RCW 4.12.010, each superior court has exclusive jurisdiction over the enumerated actions relating to property within the court’s respective county.

2. RCW 4.12.010 Does Not Conflict with the Constitution Because It Was a Territorial Statute.

Territorial statutes that remain the law of Washington by virtue of Article XXVII, Section 2 have specific constitutional sanction. *Gerberding v. Munro*, 134 Wn.2d 188, 208-9, 949 P.2d 1366 (1998); *State v. Estill*, 55 Wn.2d 576, 582, 349 P.2d 210 (1960). In *Estill*, concurring Justice Mallery discussed Article XXVII, Section 2, stating: “Territorial

laws have a specific constitutional sanction and approval which subsequent state statutes do not have.” 55 Wn.2d at 582.

In *Gerberding v. Munro*, 134 Wn.2d 188, 949 P.2d 1366 (1998), the Court considered whether Initiative 573 (adding term limits) imposed unconstitutional qualifications on state legislators (Article II, Section 27) and state executives (Article III, Section 25). 134 Wn.2d at 202. In response to arguments that statutes may not add qualifications to those state offices, several parties noted that RCW 43.10.010 added qualifications for the office of state attorney general beyond those set forth in Article III, Section 25. *Id.* at 208-9. The Court rejected that notion because the statute had been enacted by the Legislative Assembly for the Territory of Washington at Laws of 1887-88, page 7, section 3. *Id.* at 208. The Court held: “This then existing qualification was recognized by the Washington Constitution upon its adoption in 1889 via art. XXVII, § 2, which recognized and retained all territorial laws then in effect. *See* WASH. CONST. art. XXVII, §2.” *Id.* at 208-9 (other citations omitted).

Here, the jurisdictional statute codified at RCW 4.12.010 was last enacted by the Legislature Assembly for the Territory of Washington in 1877. Law of 1877, p. 11, § 48. Therefore, the statute is constitutional by the sanction afforded by Article XXVII, Section 2. Accordingly, the jurisdictional statute does not conflict with Article IV, Section 6.

3. The Language of Article IV, Section 6 Has Not Been Amended to Render RCW 4.12.010 Unconstitutional.

Confronted with incontrovertible evidence that the statute now codified at RCW 4.12.010 did not conflict with Article IV, Section 6 when the state constitution was written, Plaintiffs are now placed in the difficult position of explaining how Section 6 has since been amended to render the statute unconstitutional. Unfortunately for Plaintiffs, none of the amendments to Section 6 support Plaintiffs' position. Constitutional Amendment 28 increased the jurisdictional minimum from \$100 to \$1,000, Amendment 65 further increased the minimum to \$3,000, and Amendment 87 granted superior and district courts concurrent jurisdiction in cases in equity. None of the amendments change the language of Section 6 relied upon by Plaintiffs.

An examination of the history of RCW 4.12.010 and Article IV, Section 6 makes clear that at the time the state constitution was written, there was no conflict between the two provisions. In fact, RCW 4.12.010 was sanctioned by Article XXVII, Section 2. Section 6 has not been amended to create a conflict. RCW 4.12.010 is therefore plainly constitutional, and Plaintiffs cannot meet their burden to prove the statute unconstitutional beyond a reasonable doubt. *See School Districts' Alliance for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599,

608, 244 P.3d 1 (2010) (reaffirming “beyond a reasonable doubt” as the standard for challenges to state statutes under the state constitution). The Court should deny Plaintiffs’ request for review under RAP 13.4(b)(3).

C. The Court Should Deny Review Under RAP 13.4(b)(1) and RAP 13.4(b)(2) Because This Court’s Precedent Establishes That RCW 4.12.010(1) Applies to Plaintiffs’ Actions.

Plaintiffs seek review under RAP 13.4(b)(1) and RAP 13.4(b)(2), arguing that RCW 4.12.010(1) does not apply to their actions. Petition at 16. However, the Court of Appeals and the trial courts all followed this Court’s precedent in determining otherwise.

By its plain language, RCW 4.12.010(1) applies to all actions for any injury to real property. The statute identifies six categories of cases as falling within its scope: (1) cases for the recovery of real property; (2) cases for possession of real property; (3) cases for partition of real property; (4) cases for foreclosure of a mortgage on real property; (5) cases for the determination of all questions affecting title to real property; and (6) cases for any injury to real property. Plaintiffs argue “injury to real property” means disputes over title to real property. Petition at 18. However, Plaintiffs’ proposed definition ignores the fact that the statute lists disputes over title as a separate category, rendering the injury to real property category meaningless. This Court will not adopt an

interpretation of a statute which renders a portion of the statute's language meaningless. *See Davis v. State ex rel. Dep't of Licensing*, 137 Wn.2d 957, 969, 977 P.2d 554 (1999). Because Plaintiffs seek to recover damages for injury to their real property, RCW 4.12.010(1) applies to their actions.

Even actions where the plaintiffs seek only money damages caused by the flooding of real property fall within the scope of RCW 4.12.010(1). *State ex rel. King County v. Superior Court of Pierce County*, 104 Wash. 268, 276, 176 P. 352 (1918). In *King County*, the plaintiff receiver of the Tacoma Meat Company sought money damages from defendants King County and Pierce County, alleging that negligent diversion of the Puyallup River flooded the Tacoma Meat Company's real property in Pierce County. 104 Wash. at 269. The plaintiff properly commenced the action in Pierce County Superior Court, and defendant King County sought a change of venue, which the trial court denied. *Id.* King County sought a writ of mandamus compelling the Pierce County Superior Court to change venue. *Id.* This Court denied the writ, holding that an action for negligent injury to real property in which the plaintiff seeks money damages is local in character, and may be properly commenced only in the county in which the property is located, as required by RCW 4.12.010(1). 104 Wash. at 276. As in *King County*,

Plaintiffs here seek to recover damages for injury to real property caused by flooding. Their actions are therefore local in character and subject to RCW 4.12.010(1).

Plaintiffs' actions are also local in character because they seek damages and injunctive relief for inverse condemnation. In *State v. Superior Court of Walla Walla County*, 167 Wash. 334, 9 P.2d 70 (1932), the state undertook a project to raise the grade of a highway abutting plaintiffs real property. 167 Wash. at 335. The plaintiffs filed an inverse condemnation action in Walla Walla County, where the highway and their properties were located, seeking damages and injunctive relief against the state. *Id.* After the trial court entered a preliminary injunction against the project, the state petitioned for a writ of prohibition against the Walla Walla Superior Court for lack of jurisdiction. *Id.* at 335-36. The Court denied the writ, stating: "The state, like any other appropriator of private property, must go to the courts having local jurisdiction of the property. Condemnation actions are strictly local in their character." *Id.* at 339. Here, Plaintiffs seek damages and injunctive relief for inverse condemnation. Their actions are therefore local in character and subject to RCW 4.12.010(1).

Plaintiffs cite several cases to support their incorrect assertion that all actions for damages are transitory. Petition at 16-18. However, none

of the cases cited by Plaintiffs involved injury to real property. The underlying action in *State ex rel. U.S. Trust Co. v. Phillips*, 12 Wn.2d 308, 121 P.2d 360 (1942), was one for breach of a contract for the sale of timber. 12 Wn.2d at 309-10. *McLeod v. Ellis*, 2 Wash. 117, 26 P. 76 (1891), was an action for conversion of timber. 2 Wash. at 119. *Washington State Bank v. Medalia Healthcare L.L.C.*, 96 Wn. App. 547, 984 P.2d 1041 (1999), was an action for conversion of personal property securing a loan. 96 Wn. App. at 552. *Shelton v. Farkas*, 30 Wn. App. 549, 635 P.2d 1109 (1981), was an action to recover money for the sale of a violin. 30 Wn. App. 551-52. *Silver Surprise, Inc. v. Sunshine Mining Co.*, 74 Wn.2d 519, 445 P.2d 334 (1968), was an action for breach of contract for failure to perform mining exploration work. 74 Wn.2d at 520-21. *State ex rel. Owen v. Superior Court for Spokane County*, 110 Wash. 49, 187 P. 708 (1920), was an action for breach of a promissory note. 110 Wash. at 50.

The Court of Appeals properly disregarded Plaintiffs' inapposite authorities in affirming the trial courts' determination that RCW 4.12.010(1) applied to Plaintiffs' actions. Its decision does not conflict with either this Court's precedent or the decision of another Court of Appeals. The Court should therefore deny Plaintiffs' request for review under RAP 13.4(b)(1) and RAP 13.4(b)(2).

D. Preserving the Jurisdictional Character of RCW 4.12.010 Is Necessary to Promote Stability of Title to Real Property.

Reversing the jurisdictional character of RCW 4.12.010 would have a destabilizing effect on title to real property in Washington. Among the categories of cases within the scope of RCW 4.12.010(1) are “all questions affecting the title” to real property. Plaintiffs’ arguments that RCW 4.12.010 should be construed as relating to venue, rather than jurisdiction, would necessarily – and detrimentally – apply also to all cases involving title.

In *Seymour v. La Furgey*, 47 Wash. 450, 92 P. 267 (1907), the Court held that an action for possession of real property leased to the defendant for the purpose of cutting and removing timber was local in nature. 47 Wash. at 452. In justifying its decision, the Court stated:

It is the policy of our law that all transactions affecting title to real estate shall be matters of record in the county where such real estate is situated, so that any one concerned therewith may be informed as to the condition of its title by an examination of the public records in such county.

47 Wash. at 451-52.

The Court cited this statement of policy to explain the jurisdictional character of RCW 4.12.010 in *Miles v. Chinto Min. Co.*, 21 Wn.2d 902, 905, 153 P.2d 856 (1944). In *Miles*, the Court voided a decree entered by the Spokane County Superior Court quieting title to real

and personal property situated in Stevens County. 21 Wn.2d at 907. The parties had stipulated to venue in Spokane County. *Id.* at 902-3. The Court noted that if the filing requirement in RCW 4.12.010 related to venue instead of jurisdiction, the requirement would be subject to waiver by stipulation of the parties. *See id.* at 904. However, the Court confirmed that the statute affected the superior court's jurisdiction, rendering the parties' venue stipulation and the resulting decree invalid. *Id.* at 907.

Reversing the jurisdictional character of RCW 4.12.010 would require a person trying to ascertain the condition of title for a parcel of real property to search the judicial records of all 39 counties in Washington, not just the county in which the property is situated. This is an untenable outcome. The Court should leave the jurisdictional requirement in RCW 4.12.010 as it is and deny review.

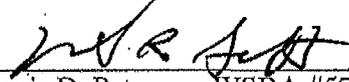
V. CONCLUSION

Plaintiffs filed actions for negligent injury to real property resulting from flooding. However, Plaintiffs filed their actions in the wrong county. The plain language of RCW 4.12.010(1), and this Court's precedent applying that statute, required Plaintiffs to file their actions where their flooded properties are located: Lewis County. Instead, Plaintiffs chose to file their actions three counties away, in King County.

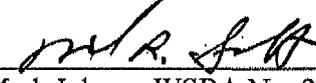
Plaintiffs ask the Court to accept review to correct their mistake. However, Plaintiffs' central argument is flawed. The authors of the state constitution knew that the statute codified at RCW 4.12.010 did not conflict with Article IV, Section 6. The Court's decisions have reflected this understanding from its first post-statehood decision discussing the local action rule in 1891 to as recently as one year ago, when the Court recognized that RCW 4.12.010 continued to limit superior court jurisdiction. The Court should leave well-settled law as is, and deny Plaintiffs' request for review.

RESPECTFULLY SUBMITTED this 14th day of December, 2012.

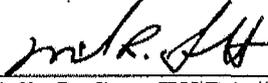
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Subject: 88115-4 - William Ralph, et al. v. State of WA., Dept. of Natural Resources - Answer to Petition for Review

Supreme Court No. 88115-4, *William Ralph, et al. v. State of WA, Dept. of Natural Resources*
Court of Appeals No. 67515-0-1 (Consolidated with 67704-7-1)

Attached are copies of the Answer to Petition for Review and Certificate of Service in the above-referenced matter.

The person submitting this Answer is Michael R. Scott, Telephone: (206) 623-1745, WSBA No. 12822, e-mail address: mrs@hcmp.com.

This brief is being served on all counsel of record by email and legal messenger.

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