

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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THE WEST VIRGINIA BOARD OF
EDUCATION and MICHELE BLATT, in her
capacity as State Superintendent of Schools,

Petitioners,

Appeal No.: 25-642

v.

KRIS WARNER, in his capacity as West
Virginia Secretary of State,

Respondent.

**LEAGUE OF WOMEN VOTERS OF WEST VIRGINIA, INC.'S
MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF
PETITIONERS THE WEST VIRGINIA BOARD OF EDUCATION
AND MICHELE BLATT**

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Pursuant to Rule 30(a) of the West Virginia Rules of Appellate Procedure, the League of Women Voters of West Virginia, Inc. (“League”) respectfully requests leave of this Court to file a brief as amicus curiae in support of Petitioners The West Virginia Board of Education and Michele Blatt. The Petition has an immediate and significant impact on the rights of voters, respect for election outcomes and the power of the Legislature to usurp the rights of voters in West Virginia, and the League thus seeks leave to submit a brief that will aid the Court in its consideration of this case. This motion is being filed within a reasonable amount of time since the filing of the brief under this Court’s original jurisdiction and is filed with sufficient time prior to the Respondent’s brief to allow Respondent ample opportunity to address the points made in the brief. *See* W.Va.R.App.Pr. 30(d).

This Court is asked to determine whether the Legislature may usurp the will of the voters through passing legislation that has been explicitly rejected, multiple times, through ballot measures. As explained in the League’s brief, Courts throughout the Country traditionally defer to the will of the voters and otherwise do not permit the Legislature to enact legislation that has been specifically rejected by the voters. Moreover, empirical studies indicate that ignoring the express will of the voters will chill voter participation. As voting is a fundamental right, any potential chilling effect should be looked upon in disfavor. Because of this dramatic impact on the voters, the League respectfully requests the opportunity to brief the Court on this important issue.

For these reasons and those more fully-detailed in its brief, the League respectfully urges this Court to grant its Motion to file its brief as amicus curiae to assist the Court in its analysis of the matter before the Court.

**LEAGUE OF WOMEN VOTERS OF
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EXHIBIT A

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I. INTRODUCTION¹

As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived, it seems strictly consonant to the republican theory to recur to the same original authority whenever any one of the departments may commit encroachments on the chartered authorities of the others.

*The Federalist No. 49.*²

*The fabric of American empire ought to rest on the solid basis of **THE CONSENT OF THE PEOPLE**. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority.*

*The Federalist No. 22 (emphasis in original).*³

[L]et us never forget that government is ourselves and not an alien power over us. The ultimate rulers of our democracy are not a President and Senators and Congressmen and Government officials but the voters of this country.

“Address at Marietta,” President Franklin D. Roosevelt, July 8, 1938.⁴

Voting, and respecting the outcome of the vote, is a fundamental principle in our system of government. Since 1946, the voters have directly expressed, through its votes, a *mandate* that the West Virginia State Board of Education maintain its independence. Despite expressing this will, as recently as 2022, the Legislature ignored it and passed a law that was directly rejected by the voters. This case is another opportunity for this Court to reaffirm the will of the voters. Otherwise, the citizens of West Virginia will be left to wonder if their votes matter. For the reasons that follow, the League of Women Voters of West Virginia request this Court grant the relief sought by the Petitioners in this matter.

¹ Pursuant to Rule 30(e)(5) of the *West Virginia Rules of Appellate Procedure*, the undersigned attorneys authored this brief in its entirety. Neither party nor their respective counsel contributed to or made a monetary contribution specifically intended to fund the preparation or submission of this brief. The League of Women Voters of West Virginia provided notice of its intent to file a brief as amicus curiae on October 23, 2025, pursuant to Rule 30(b).

² Available at: https://avalon.law.yale.edu/18th_century/fed49.asp.

³ Available at: https://avalon.law.yale.edu/18th_century/fed22.asp.

⁴ Available at: <https://www.presidency.ucsb.edu/documents/address-marietta-ohio>.

II. STATEMENT OF INTEREST

The League of Women Voters (“League”) is a nonpartisan volunteer organization working to promote political responsibility through informed and active participation of citizens in government. The League does not support or oppose any political party or candidate. It does, however, support or oppose legislation after serious study and substantial agreement among its members. With more than 100 years of experience, the League is one of America’s oldest and most trusted civic nonprofit organizations.

The League files this brief pursuant to Rule 30 of the *West Virginia Rules of Appellate Procedure* in support of Petitioner because the will of the voters on this issue must be respected in this State.

III. FACTUAL BACKGROUND

The people of West Virginia have consistently exercised their constitutional authority to determine the governance of the State’s public education system, repeatedly rejecting legislative attempts to curtail the Board of Education’s independence. In 1946, the Legislature placed before the voters a proposed constitutional amendment to make the State Superintendent an appointed position and to shift supervisory authority to a newly created State Board of Education. *See* 1946 Extraordinary Session House Bill 6, A.R.0560–65. The voters rejected this amendment, thereby preserving the existing structure in which the Superintendent remained an elected officer with powers defined by statute. *See* Myers, J. Howard, Senate Clerk, *West Virginia Blue Book* 327 (1947), A.R.0566–67.

Since an elected Superintendent was independent of and not accountable to the Board of Education, the result was a lack of clear responsibility for carrying out school programs. The League took the position that the chief school officer should be removed from the political arena,

that the administrator of the school system should be a qualified educator, and that the Board of Education should be responsible for the efficient and effective administration of educational policies and programs.⁵

Twelve years later, in 1958, the Legislature again proposed a constitutional amendment to restructure education governance. The proposed amendment created the West Virginia Board of Education as a gubernatorially appointed body with staggered nine-year terms and vested the Board with “general supervision” over the State’s public schools. *See* 1957 Senate Bill 252, A.R.0720–26; Stanley E. Dadisman, *Four Proposed Amendments to the West Virginia Constitution*, 60 W. Va. L. Rev. 303, 305–06 (1958), A.R.0730–31. The League supported ratification of this constitutional amendment, and it supported reassigning duties of the State Board of School Finance to the State Board of Education.⁶ On November 4, 1958, the voters ratified the amendment, establishing the Board as an independent constitutional body. *See West Virginia Blue Book* 327 (1947), A.R.0737–38.

Following this Court’s decision in *West Virginia Board of Education v. Hechler*, 180 W. Va. 451, 376 S.E.2d 839 (1988), the Legislature *again* sought to eliminate the Board’s independence through constitutional amendment. In March 1989, the Legislature passed House Joint Resolution 21, which would have repealed Article XII, § 2 and vested control of the public schools in a legislatively created executive department. *See* 1989 House Joint Resolution 21, A.R.0850–52. The League supported ratification of this constitutional amendment for its potential value in reorganization of educational governance.⁷ On September 19, 1989, the voters overwhelmingly rejected, again, the amendment, with 220,286 voting against and only 29,776

⁵ *League Issues in West Virginia*, League of Women Voters of West Virginia, 2021, pp. 56-57.

⁶ *Id.*

⁷ *LWV Bulletin*, September 1989, http://mds.marshall.edu/lowv_newsletter1980_1989.

voting in favor. *See* Holmes, Darrell E., Senate Clerk, *West Virginia Blue Book* 531 (1989), A.R.0855.

Most recently, in 2022, the Legislature passed House Joint Resolution 102, which sought to amend Article XII, § 2 to require all Board rules to be submitted to the Legislature for “review and approval, amendment, or rejection.” *See* 2022 House Joint Resolution 102, A.R.0856-57. This measure was designed to strip away the independent nature of the State Board of Education. The League opposed this constitutional amendment, citing the need for the Board to retain members with expertise in education and remain insulated from politics, priorities which provide stability for the educational system. In the general election held on November 8, 2022, the voters *again* rejected this attempt to subordinate the Board to legislative control, by a margin of 275,683 to 200,791. *See* A.R.0860.

Thus, over the course of more than seventy-five years, West Virginia voters have made their position clear. They rejected efforts to place education governance under legislative control in 1946, 1989, and 2022, and they affirmatively approved the 1958 amendment creating an independent constitutional Board of Education with general supervisory authority. These repeated acts of direct democracy demonstrate the people’s enduring commitment to insulating the governance of public education from legislative interference.

Despite this, during the 2025 Legislative session, the Legislature passed House Bill 2755, which enacts language that was precisely rejected by the voters in 2022. *See e.g.* W.Va. Code § 29A-3B-9. In other words, the express will of the voters was usurped by the Legislature. The League opposed HB 2755 because it would override the will of the voters.

IV. ARGUMENT

1. Courts throughout the U.S. have routinely protected the voters' decision against a legislature's efforts to undermine their direct vote, and this Court should do the same.

West Virginians voted against a Constitutional Amendment curtailing the West Virginia Board of Education's power of general supervision in 2022. *See* A.R. 0860. In passing House Bill 2755, the Legislature chose to defy the voter's recent rejection of its proposal to rob the Board of its independent rulemaking authority. If allowed to stand House Bill 2755 will nullify the direct vote of the State's citizens and undermine our democratic process.

In essence, the voters have engaged in direct democracy by directly voting on the issue through a proposed Constitutional Amendment. In other States, Courts routinely protect the results of direct democratic participation from subsequent Legislative actions. "Since its inception, the right of the people to express their collective will through [direct democracy participation] has been vigilantly protected by the courts. Thus, it has been held that legislative bodies cannot nullify this power by voting to enact a law identical to a recently rejected referendum measure." *Assembly v. Deukmejian*, 30 Cal. 3d 638, 678, 639 P.2d 939, 964 (Cal. 1982).

Recently in Utah, its voters utilized direct democracy participation through its votes to alter or reform their government in passing "Proposition 4", prohibiting partisan gerrymandering. *League of Women Voters of Utah v. Utah State Legis.*, 2024 UT 21, P4-P5, 554 P.3d 872, 878 (2024). Approximately two years later, the Utah Legislature enacted Senate Bill 200 which repealed Proposition 4 and replaced it with a new law. *Id.*, 2024 UT at P33-34, 554 P.3d at 883. The plaintiff filed suit alleging, amongst other issues, that the Legislature's repeal of Proposition 4 violated the voters' constitutional rights to directly initiate legislation under the Initiative

Provision⁸ of their constitution and their right to alter or reform their government contained within the alter or reform clause of Utah’s constitution. *Id.*, 2024 UT at P49, 554 P.3d at 887. The Legislature moved to dismiss this claim, arguing that it had the authority to repeal or amend any statute; the motion was granted by the lower court. *Id.*, 2024 UT at P51, 554 P.3d at 887.

The plaintiff appealed this ruling to the Supreme Court of Utah, which found that the lower court had erred in dismissing the plaintiff’s claim. *Id.*, 2024 UT at P62, 554 P.3d at 889. One of the arguments presented by the Legislature was that its action in passing Senate Bill 200 was also an exercise of the voters’ power to reform their government through the power delegated to the Legislature under Utah’s constitution as the voters’ representatives. *Id.*, 2024 UT at P191, 554 P.3d at 915. This argument was rejected by the Utah’s Supreme Court which stated:

While the people could choose to exercise their reform right through their representatives, the Initiative Provision gives the people the power to enact statutory reform directly. . . It would negate the people’s retained right to reform their government directly, and would misunderstand the scope of the Alter or Reform Clause, if we were to hold that by repealing a citizen reform initiative, the Legislature was simply exercising the same right to reform the government that the people had retained for themselves.

Id., 2024 UT at P193, 554 P.3d at 916. The Court further stated that “[b]ut through their initiative power, the people can bring about statutory government reform directly. If government-reform initiatives are subject to legislative veto, then the Alter or Reform Clause is severely diminished because the people will have no way to reform their government without the government’s agreement and participation. The constitution requires that this avenue remain open.” *Id.*, 2024 UT at P209, 554 P.3d at 919. The dismissal of the claim was reversed, and the matter was

⁸ While there are differences to how the matter was placed on the ballot, that is a difference without a distinction. Irrespective of how a matter is placed on a ballot for vote, the fact remains that it was up to the voters to decide the issue. The voters spoke and the Court deferred to the voters, as opposed to the Legislature.

remanded to the lower court. *Id.*, 2024 UT at P227, 554 P.3d at 922-923. In other words, the Utah Supreme Court upheld the voters' position at the expense of subsequent legislative action.

Last year the Supreme Court of Michigan struck down the Michigan Legislature's action in amending voter initiative petitions that it previously adopted into law during the same legislative session. *See Mothering Just. v. AG*, 2024 Mich. LEXIS 1454 (Mich. 2024). In 2018, the Michigan Legislature received initiative petitions that proposed raising Michigan's minimum wage, allowing for compensatory time in lieu of overtime, and providing paid sick leave to employees. *Id.*, *1. Under Michigan's Constitution, the Legislature had three options when presented with valid initiative petitions: the Legislature could vote to adopt the initiatives as presented, reject the initiatives but place them on the general election ballot, or propose alternatives to the initiatives' proposed language and place both the alternative and original proposals on the general election ballot. *Id.* (citing Const 1963, art 2, § 9). After receiving the petitions, the Legislature voted in September 2018 to adopt the initiative petitions into law rather than rejecting them or amending them, which would have the effect of placing the initiatives on the ballot for the voters to decide on during the 2018 election. *Id.*, at *8. Following the November 2018 general election, the lame duck Legislature voted, by a simple majority vote, to amend the laws to dramatically alter them and strip away the key features voters sought through the initiative process. *Id.* Per Michigan's Constitution, the Legislature would not have been able to make these amendments by a simple majority vote if the initiatives had appeared on the ballot and had been approved by a majority of Michigan voters in the 2018 election. *Id.* (citing Const 1963, art 2, § 9). Had that happened, then the laws could only have been amended by a vote of 3/4 of the Legislature. *Id.*

The plaintiffs initiated their civil action in the Court of Claims asserting that the Legislature's actions in adopting but later amending the laws that came from the initiative petitions

were unconstitutional and infringed on the people’s initiative power. *Id.*, at *10. In sum, the Court of Claims agreed. *Id.*, at *11-12. The State appealed the ruling to the Court of Appeals which found in favor of the State. *Id.*, at *12.

The plaintiffs then appealed to the Supreme Court of Michigan which found in favor of the plaintiffs and found that the Legislature had acted unconstitutionally. Under Michigan’s constitution “[t]he people reserve to themselves,’ rather than to the Legislature, ‘the power to propose laws and to enact and reject laws’ through the initiative process.” *Id.*, at *14 (*citing* Const 1963, art 2, § 9).⁹ As such, the Legislature’s approach in adopting subsequent amendments thwarted the voters’ ability to decide on the initiatives directly, as those issues would have been subject to a vote had the legislature initially rejected or amended them, thereby undermining the voters’ constitutional rights to participate interactively in a direct democracy. *Id.*, at * 15, 17. “[A]llowing the Legislature to bypass the voters and repeal the very same law it just passed in the same legislative session thwarts the voters’ ability to participate in the lawmaking process.” *Id.*, at *33-34. Yet again, this is another example of the Courts protecting the outcome of a vote to the detriment of opposite legislative action.

In West Virginia, the Legislature passed House Joint Resolution 102, placing a Constitutional amendment on the ballot in 2022, to amend Article XII, § 2, to require the Legislature’s review and approval of any rules or policies promulgated by the Board of Education. 2022 House Joint Resolution 102, at A.R. 0856. This was rejected by the voters. Now, the Legislature is undermining the voters’ decision on this issue. Legislative bodies, which represent the voters, should not be able to nullify the voters’ decision on an identical issue that the voters

⁹ Again, while there are distinctions regarding how a matter is placed on the ballot, it is irrelevant to determining whether to defer to the voters on the issue or allow the Legislature to overturn the express will of the voters on an issue. The manner in which the matter was placed on the ballot was not the determinative factor in this case.

have directly decided. This is the finding by other Courts across the Country when addressing usurpation by the Legislature of the will of the voters. The League urges this Court to follow these other Courts here.

2. This Court should uphold the voters' 2022 decision on the issue pending as it would reenforce the rights of voters to directly participate in our democracy and encourage continuing participation in the democratic process.

“[I]n the making of and in the amendment of Constitutions, the people are sovereign and supreme.” *State ex rel. Smith v. Kelly*, 149 W. Va. 381, 394, 141 S.E.2d 142, 150 (1965). The voters of West Virginia rejected the constitutional amendment which would strip the Board of its independent rule making authority in voting against House Joint Resolution 102. If this Court were to allow the Legislature to nullify that vote it would send a message that their vote does not matter, thus resulting in a chilling effect on future electoral participation.

The potential chilling effect of permitting the Legislature to usurp the direct will of the voters is not theoretical. It has long been recognized that electoral processes serve not only to select policies but also to legitimize government. *See e.g. Crawford v. Marion County Election Bd.*, 553 U.S. 181, 197 (2008) (plurality opinion of Stevens, J.) (“[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.”). This proposition has routinely been confirmed through empirical studies. For example, research shows that U.S. states employing direct democracy instruments, such as ballot initiatives, consistently experience higher voter turnout. *See e.g. “The Effects of Ballot Initiatives on Voter Turnout in the American States,”* by Tolbert, Grummel and Smith, *American Politics Research*, Vol. 29, No. 6, November 2001.¹⁰ Thus, the act of placing

¹⁰ This document is available at:
[https://iandrinstitute.org/New%20IRI%20Website%20Info/I%26R%20Research%20and%20History/I%26R%20Studies/Tolbert%20Grummel%20and%20Smith%20\(Dan\)%20-%20Effects%20of%20Initiatives%20on%20Voter%20Turnout%20IRI.pdf](https://iandrinstitute.org/New%20IRI%20Website%20Info/I%26R%20Research%20and%20History/I%26R%20Studies/Tolbert%20Grummel%20and%20Smith%20(Dan)%20-%20Effects%20of%20Initiatives%20on%20Voter%20Turnout%20IRI.pdf).

issues directly before the people demonstrably fosters participation, heightens legitimacy, and strengthens democratic engagement.

With respect to voter turnout, political efficacy—the belief that one’s participation makes a difference—is one of the strongest predictors of whether citizens’ vote. *See* “Political Efficacy and participation: An empirical analysis in European Countries,” Mariana Prats & Axel Meunier, OECD Working Papers on Public Governance No. 46, at pg. 4 ¶ 8.¹¹ Studies find that “people’s feeling of having a say in what the government does (external efficacy) has a positive impact on traditional forms of participation[,]” such as voting. *Id.* These same studies confirm that when institutions appear unresponsive, both political trust and political efficacy decline. *Id.* (“[L]ow responsiveness of political institutions to citizens’ demands reorient people away from traditional [forms of participation]”). This decline reliably predicts lower rates of civic participation. *Id.* By overriding a direct vote of the people, a government body communicates that participation does not matter. There is no doubt that this would directly undermine the very efficacy and trust that would drive future turnout.

In summarizing this point further, one study states:

The feeling of being able to make decisions on particular issues themselves and being listened to can strengthen citizens’ perception of influence on the political decision-making process, which is argued to increase their satisfaction with the functioning of democracy and political trust more generally. The increase in self-expressive values in the past decades is likely to have even increased this effect as the importance contemporary citizens attach to influence in the political decision-making process has heightened (Dalton and Welzel 2014). In sum, the reasoning is that being able to exert influence in the decision-making process enhances democratic satisfaction and political trust, regardless of the favorability of the outcome.

¹¹ This document is available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/06/political-eficacy-and-participation_af53e904/4548cad8-en.pdf.

"Winner Takes it All: The Effect of Direct Democracy on Democratic Satisfaction and Political Trust Revisited," Marien & Kern, *Political Trust in Contemporary Representative Democracies*’, Nov. 24-25, 2016, at pg. 4.¹² If this sentiment is true, then the inverse would also be true. That is, when government is allowed to disregard voter-approved measures, legitimacy erodes. By undermining trust and efficacy, such disregard would create a chilling effect on future participation.

Here, the voters have, on at least four occasions, directly spoke on this issue. On each occasion, the voters strongly signaled its desire for an independent State Board of Education. This is a trend that has been around since 1946. The Supreme Court affirmed the will of the voters in *West Virginia Board of Education v. Hechler*, 180 W. Va. 451, 376 S.E.2d 839 (1988). It was reaffirmed in 2022. Based upon the above referenced empirical studies on this issue, allowing the Legislature to usurp this direct democratic participation *will* result in future lower voter turnout. As voting is a fundamental right anything that chills the exercise of a fundamental right is to be guarded against. *Fausler v. Parsons*, 6 W. Va. 486, 493 (1873). Based upon the empirical studies that establish ignoring the will of the voters chills their exercise of a fundamental right, the act of the Legislature here is clearly unconstitutional. Therefore, the League urges this Court to strike down House Bill 2755.

Finally, as quoted in the beginning, this Country was founded on the power of the people to express their will through its vote. It is the people who hold the power in this Country, not the government. *See e.g. The Federalist No. 49* (“[T]he people are the only legitimate fountain of power . . .”_). This Court recognized, as early as 1873, the importance of the right to vote:

[Voting] is an invaluable right. As was said by Lord Holt in a celebrated case, "a right that a man has to give his vote at the election of a person to represent him in Parliament, there to concur in the making of laws which are to bind his liberty and

¹² This document is available at: <https://www.oidp.net/docs/repo/doc35.pdf>.

property, is a most transcendent thing." *Ashley vs. White*, 2 Raym. 950. Here, it is the fundamental right; all other rights, civil and political, depend on the free exercise of this one, and any material impairment of it is, to that extent, a subversion of our political system. Hence the care with which any invasion of this right, from every possible source, has been guarded against."

Fausler, 6 W. Va. at 493. To otherwise permit the Legislature to usurp the direct will of the people when they have spoken is counter to this Court's view of the importance of the vote. It also is directly counter to the foundational principles of our government, as expressed in *The Federalist Papers* and throughout history.

Despite the fundamental importance of the right to vote, West Virginia is already near the bottom among the states in voter turnout. *See e.g.* "State Voter Turnout Percentages from 1996 to 2020¹³;" *see also* "2024 Voter Turnout Rankings¹⁴. The trend does not appear to be swinging in a positive direction. Rejecting the express will of the people has been shown empirically to further chill voter turnout. This is not the time for the State government, through its Legislature or the Courts, to chill the voters by ignoring their direct statement on this issue. Otherwise, every other right is at jeopardy should this Court ignore the will of the voters through their vote. *Fausler*, 6 W.Va. at 493 ("[A]ll other rights, civil and political, depend on the free exercise of [the right to vote]."). Because of such, the League urges this Court stand up for the voters, protect the rights of the voters, and strike down House Bill 2755.

Based upon the foregoing, allowing the Legislature to overturn the will of the people will no doubt result in a chilling effect on the voters of this State. It is incumbent upon this Court to *not* judicially approve such a direct usurpation of the will of the voters. Otherwise, the voters will receive the message from *each* branch of government that their voice does not matter. If their vote

¹³ Available at: <https://www.sos.nh.gov/sites/g/files/ehbemt561/files/documents/2022-04/voter-turnout-charts-4-19-21.pdf>.

¹⁴ Available at: <https://worldpopulationreview.com/state-rankings/voter-turnout-by-state>.

does not matter, then why vote. This is not the message this Court should send to the citizens of West Virginia.

V. CONCLUSION

For the foregoing reasons, the League of Women Voters of West Virginia respectfully asks this Court to affirm the relief requested by the Petitioners in this matter.

**LEAGUE OF WOMEN VOTERS OF
WEST VIRGINIA, INC.**

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Respondent.

CERTIFICATE OF SERVICE

I, Michael W. Taylor, do hereby certify that I have served the forgoing *League of Women Voters of West Virginia, Inc.'s Motion for Leave to File Brief as Amicus Curiae in Support of Petitioners The West Virginia Board of Education and Michele Blatt* via File and ServeXpress upon all parties and counsel of record on this 31st day of October 2025.

/s/ Michael W. Taylor

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