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Texas House of Representatives  
COMMITTEE ON GENERAL INVESTIGATING

GOVERNMENTAL INQUIRY

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November 13, 1997

FILE # ML-39922-97  
I.D. # 39922

Members:  
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The Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711

**RQ-1033**

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Opinion Committee

RE: Request for Conflict of Interest Opinion

Dear General Morales:

I request that you issue an opinion concerning the interpretation of the conflict of interest statute for local government officers. V.T.C.A., Local Government Code, ch. 171. The central issue is the extent to which a City Council member whose spouse is employed by American Airlines may participate in matters before the Dallas City Council involving the use of Dallas' Love Field.

BACKGROUND

The City of Fort Worth ("Fort Worth") has filed a lawsuit (copy attached as Exhibit A) against the City of Dallas ("Dallas") seeking to force Dallas to restrict certain flights from Love Field Airport, which is owned and operated by Dallas. American Airlines has recently sought to intervene in this lawsuit on the side of Fort Worth against Dallas (Exhibit B). This lawsuit was filed as a result of amendments to the federal statute commonly referred to as the "Wright Amendment." International Air Transportation Competition Act of 1979, Pub. L. 96-192, 94 Stat. 35 (1980). The Wright Amendment originally limited passenger aircraft service from and to Love Field to places in Texas and the four contiguous states. The Wright Amendment has always included a "commuter airline" exception which allows those airlines using aircraft with a passenger capacity of 56 or less to operate without restrictions.

The "commuter airline" exception in the Wright Amendment is at the center of the legal dispute between Astraea Aviation Services, Inc. (which also controls Legend Airlines), d/b/a Dalfort

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Aviation, and the United States Department of Transportation ("DOT"). On September 19, 1996, DOT informed Astraea of its determination that the commuter airline exemption would not allow the use of large aircraft reconfigured to hold 56 seats or less. (For purposes of this issue, "reconfigured" means having only 56 passenger seats or less, no matter how many seats could actually be installed in the aircraft.) Both Astraea and DOT have filed briefs in support of their respective positions with the United States Court of Appeals, 5th Circuit. American Airlines has filed an amicus brief (copy attached) strongly supporting DOT's position. American Airlines operates solely from D/FW International Airport, which is approximately ten miles from Love Field.

An amendment ("Shelby Amendment") to the Wright Amendment has recently been enacted by Congress which will moot this litigation. The Shelby Amendment permits Love Field passenger operation by airlines with a capacity of more than 56 passengers to three more states (Alabama, Kansas, and Mississippi) in addition to those states contiguous to Texas (herein referred to as "Expanded Service"). The Shelby Amendment, furthermore, permits those operating aircraft reconfigured to hold no more than 56 passengers, to qualify for the "commuter airline" exemption.

#### WRIGHT AMENDMENT ISSUES

Under Section 171.002 of the Texas Local Government Code, a public official who has a "substantial interest in a business entity" must not cast a vote or deliberate concerning action which will have a "special economic effect on the business entity that is distinguishable from the effect on the public." The spouse of a Dallas City Council member is employed by, and more than 10 percent of his gross income last year was received from, American Airlines, which sought to intervene in the Fort Worth lawsuit. American Airlines was denied the right to intervene in the DOT lawsuit; however, it did file an amicus brief in that litigation. American Airlines' right to intervene in the Fort Worth lawsuit has not yet been decided.

American Airlines' basic position is that Love Field was intended to be a "short-haul" passenger airport. American Airlines has vigorously stated in public and judicial proceedings that it will suffer economically if reconfigured jets are allowed to operate from Love Field under the Wright Amendment's commuter exception. In American Airlines' view, passenger service from Love Field should be confined only to and from Texas and the four contiguous states, or consist of small turbo-prop commuter aircraft which could not fly much further than the four contiguous states. American Airlines has vigorously argued that the "commuter airlines" exception in the Wright Amendment was never intended to include jet aircraft service which could operate from Love Field to either coast. It has also vigorously argued that no Expanded Service should be permitted.

The Fort Worth lawsuit seeks to prevent or restrict commuter jet service and Expanded Service from Love Field, notwithstanding the Shelby Amendment to the Wright Amendment. Fort Worth, furthermore, has indicated that it filed its lawsuit in order to prohibit "direct competition" with D/FW Airport and the signatories (including American Airlines) of Use of Agreements at D/FW Airport.

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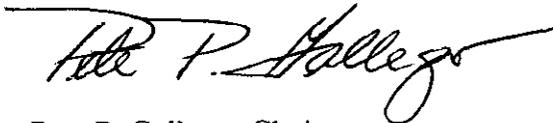
Fort Worth lawsuit, p. 17.

American Airlines has also paid for advertisements by a neighborhood organization, the Love Field Citizens Action Committee. These advertisements generally warn of increased noise in the neighborhoods surrounding Love Field. This could be interpreted as further evidence that American Airlines believes that increased operation at Love Field will have a "special economic effect" on American Airlines.

#### QUESTIONS

1. May the Dallas City Councilmember act in her official capacity and participate in, and vote on, any Love Field matter which focuses on commuter jet service or Expanded Service?
2. If American Airlines is not directly involved in a "matter" before the Dallas City Council, but the issue relates to American Airlines' concerns, must the Council member recuse herself from considering the matter? For example, if proposed regulations are submitted to the Dallas City Council which would restrict all operations at Love Field (not only commuter jet and Expanded Service) and American Airlines does not take a position concerning these regulations, must the Councilmember recuse herself?
3. May the Dallas City Councilmember act in her official capacity and participate in, and vote on, any Love Field matter which generally focuses on commuter jet service or Expanded Services?
4. May the Councilmember participate in the consideration of other Love Filed matters which do not focus mainly on commuter jet service or Expanded Service at Love Field?

Respectfully submitted,



Pete P. Gallego, Chairman  
House Committee on General Investigating



3. Plaintiff City of Fort Worth, Texas ("Fort Worth") is a municipal corporation organized under the laws of the State of Texas, with its principal offices in Tarrant County, Texas. American supports the claims and causes of action set forth by Fort Worth in its First Amended Petition in this action.

4. Defendant Dallas-Fort Worth International Airport Board, formerly known as the "Dallas-Fort Worth Regional Airport Board" ("Airport Board"), is a Joint Board created and existing pursuant to Texas Transportation Code §22.074 by a certain Contract and Agreement effective April 15, 1968, (the "Agreement") between Dallas and Fort Worth. The Airport Board operates the Dallas-Fort Worth International Airport ("DFW Airport"), a substantial part of which lies in Tarrant County, Texas. The DFW Airport Board has appeared and answered herein.

5. Defendant Mr. Jeffrey P. Fegan ("Fegan") is the executive director of DFW Airport and a resident of Tarrant County, Texas. Fegan is the chief administrator and executive officer of the Airport Board and has the power and authority granted to him by the Agreement. Mr. Fegan has appeared and answered herein.

6. Defendants Legend Airlines, Inc. ("Legend") and Astraea Aviation Services, Inc. d/b/a Dalfort Aviation ("Dalfort"), both Texas corporations, have announced publicly that they intend to fly planes on scheduled passenger routes between Love Field and destinations outside of Texas and beyond the four States contiguous to Texas. Both Legend and Dalfort have appeared and answered herein.

#### AMERICAN'S INTEREST IN THIS SUIT

7. American has a justiciable interest in the matters in controversy in this litigation for each of the following reasons:

A. As described in Fort Worth's Amended Petition, the Cities of Dallas and Fort Worth entered into the Agreement, dated April 15, 1968, to build, construct, and operate DFW Airport. To implement that Contract and Agreement, the City Councils of Dallas and Fort Worth passed the 1968 Regional Airport Concurrent Bond Ordinance, which states, in pertinent part:

[Dallas and Fort Worth] from and after the effective date of this Ordinance, shall take such steps as may be necessary, appropriate, and legally permissible \* \* \* to provide for the orderly, efficient and effective phase-out at Love Field, Redbird, GSIA and Meacham Field, of any and all Certificated Air Carrier Services, and to transfer such activities to the Regional Airport [DFW Airport] effective upon the beginning of operations at the Regional Airport. . . .

\* \* \* \*

[Dallas and Fort Worth] further agree that they will through every legal and reasonable means promote the optimum development of the lands and Facilities comprising the Regional Airport, . . . neither the Cities nor the Board will undertake with regard to the Regional Airport, Love Field, GSIA, Meacham Field or Redbird, any action, implement any policy, or enter into any agreement or contract which by its or their nature would be competitive with or in opposition to the optimum development of the Regional Airport and the use of its lands and Facilities at the earliest practicable date; and none of the airports of the Cities shall be put to or developed for any use which by the nature thereof the optimum use and development of the Regional Airport, including its air and land space, at the earliest practicable date will be impaired, diminished, reduced or destroyed.

As defined in the Concurrent Bond Ordinance, "Certificated Air Carrier Services" includes "interstate services conducted by commercial air carriers according to published flight schedules and holding certificates of public convenience and necessity or similar evidences of authority issued by the [Federal Aviation Administration]."

B. In reliance on the Agreement, the Concurrent Bond Ordinance, and actions and statements of the two Cities and the Airport Board in support of the Cities'

joint venture at DFW Airport, American did exactly what the Cities and the Airport Board wanted it to do. It moved all of its Certificated Air Carrier Services from Love Field to DFW Airport and closed its operations at Love Field. Over the following nearly thirty years, American has devoted its efforts and hundreds of millions of dollars in cash and bonded indebtedness to establishing and expanding its DFW operations. Recently, American has announced plans for even more improvements and investments for the future at DFW Airport. DFW Airport is now one of American's hub airports for service within the United States. American has continued to bring additional routes to DFW Airport, including a growing schedule of non-stop international flights. American pays substantial rents and landing fees to DFW Airport. In addition, American moved its headquarters, along with thousands of jobs, from New York City to DFW Airport. For nearly thirty years, American has relied on the Cities' Agreement and the covenants of the Cities in the Concurrent Bond Ordinance, which the Cities have reaffirmed time and again.

C. Furthermore, American is a party to at least two contracts that incorporate the terms of the Concurrent Bond Ordinance. Thus, American has a direct interest in whether the Concurrent Bond Ordinance remains valid and enforceable, as well as in the proper construction and application of the Concurrent Bond Ordinance.

(1) First, since 1970, American has been a party to successive Use Agreements with the Airport Board, by which American has agreed, inter alia, to conduct its Certificated Air Carrier Services in the Dallas and Fort Worth area to, from, and at DFW Airport "to the extent required under the terms of the 1968 Concurrent Regional Airport Concurrent Bond Ordinance." When American originally entered into its Use Agreement in 1970, it conditioned its execution of the agreement upon the execution of similar

agreements by all other scheduled airlines serving Dallas/Fort Worth. Because of its Use Agreement, American has a direct interest in knowing whether and to what extent the Concurrent Bond Ordinance will be interpreted and applied to require other air carriers to conduct their Certificated Air Carrier Services at DFW Airport, rather than to, from, or at Love Field.

(2) Second, American owns revenue bonds jointly issued by the Cities of Dallas and Fort Worth to finance improvements at DFW Airport. Those bonds incorporate the Concurrent Bond Ordinance into their terms and expressly make the Concurrent Bond Ordinance a contract between the bond owner and the two Cities. As a bond owner, American has a direct interest in knowing whether and to what extent the Cities and the Airport Board must comply with, and must enforce, the Concurrent Bond Ordinance, and whether a breach of the Concurrent Bond Ordinance would impair the obligations of the bonds in violation of Art. I, § 16 of the Constitution of the State of Texas.

D. American is a taxpayer and corporate citizen of Dallas and Fort Worth, with the direct and special interests identified above.

#### VENUE

8. Venue is proper in Tarrant County, Texas, because defendants Airport Board and Fegan, Plaintiff Fort Worth, and Intervenor American all are residents of Tarrant County, Texas, and also because a substantial part of the events and omissions giving rise to American's causes of action occurred in Tarrant County, Texas. In addition, this Plea in Intervention meets all of the requirements of section 15.003(a)(1)-(4) of the Texas Civil Practices and Remedies Code.

### FACTS JUSTIFYING RELIEF

9. American incorporates by reference into this Plea in Intervention the "Background Facts" set forth in paragraphs 12 through 27 of Fort Worth's First Amended Petition on file in this action.

10. There are disputes and controversies among the parties to this Plea in Intervention regarding the validity, enforcement, and proper interpretation of the Concurrent Bond Ordinance. Defendants Legend and Dalfort have announced their intent to commence scheduled passenger operations from Love Field to destinations beyond Texas and the four states contiguous to Texas. Dallas should have, but has not, advised Legend and Dalfort that such operations must be conducted from DFW Airport, not Love Field. Furthermore, the United States Congress recently expanded section (c) of the International Air Transportation Competition Act of 1979 to include three States--Alabama, Mississippi, and Kansas--that are beyond the limits of the four contiguous States to which Dallas, Fort Worth, and the Airport Board agreed in 1980.

11. The proposed operations by Legend and Dalfort are "Certificated Air Carrier Services" within the meaning of the Concurrent Bond Ordinance. Thus, the Concurrent Bond Ordinance requires Legend and Dalfort to conduct their proposed operations to, from, and at DFW Airport, not to, from, or at Love Field. Dallas, as the owner and proprietor of Love Field, is bound by its own municipal ordinances, is obligated to enforce and comply with the Concurrent Bond Ordinance, and must require Legend and Dalfort to conduct their proposed interstate passenger operations from DFW Airport, not from Love Field. Dallas may not take action at Love Field that violates its obligations under the Concurrent Bond Ordinance.

12. Dallas, Fort Worth, and the Airport Board have not consented to scheduled interstate air passenger service from Love Field to States beyond the four States contiguous to Texas; and there is no basis for any exception to the Concurrent Bond Ordinance for scheduled passenger service to States beyond the contiguous States. Dallas, as the owner and proprietor of Love Field, is bound by its own municipal ordinances, is obligated to enforce and comply with the Concurrent Bond Ordinance, and must require scheduled passenger service to States beyond the four contiguous States to be conducted from DFW Airport, not from Love Field. Dallas may not take action at Love Field that violates its obligations under the Concurrent Bond Ordinance.

13. If Dallas and the Airport Board permit interstate passenger services from Love Field, to States beyond those contiguous to Texas, that would result in a breach of Dallas's covenants in the Concurrent Bond Ordinance, which are also incorporated by reference in all DFW Airport revenue bonds. Such service would be a breach of Dallas's contract with the owners of DFW Airport revenue bonds and would impair the Cities' obligations under those bonds.

14. The Cities and the Airport Board have induced American to rely on the Concurrent Bond Ordinance and to move and establish operations at DFW Airport. American has relied on the Concurrent Bond Ordinance and the Cities' repeated reaffirmations of that ordinance.

15. Because of American's reliance on the Concurrent Bond Ordinance, injustice can be avoided only by strict enforcement of that ordinance. Dallas and the Airport Board should be estopped to deny the enforceability of the Concurrent Bond Ordinance in the circumstances presented.

PRAYER FOR DECLARATORY RELIEF

16. Pursuant to the Texas Uniform Declaratory Judgments Act, American places all of the disputes and controversies arising from the subject matter of this litigation before this Honorable Court and prays for the Court to declare the parties' rights, status, and other legal relations under the Agreement and the Concurrent Bond Ordinance, as reaffirmed in Supplemental Bond Ordinances and resolutions, as follows:

(A) the Concurrent Bond Ordinance requires Legend and Dalfort to conduct their proposed scheduled interstate passenger operations to, from, and at DFW Airport, and precludes them from conducting such operations to, from, or at Love Field;

(B) absent agreement by Dallas, Fort Worth, and the Airport Board as provided in the Concurrent Bond Ordinance, the Concurrent Bond Ordinance requires scheduled interstate passenger service to and from States beyond the four States contiguous to Texas to be conducted from DFW Airport, not from Love Field;

(C) Dallas, the Airport Board, and Fegan are required to enforce the Concurrent Bond Ordinance and are estopped to deny the enforceability of the Concurrent Bond Ordinance in the circumstances presented here;

(D) Dallas may not permit or allow, or take action that would encourage, facilitate, or support, operation of Certificated Air Carrier Services to, from, or at Love Field, except for the limited turn-around service to the four states contiguous to Texas to which the Cities and the Airport Board agreed in 1980.

(E) permitting Certificated Air Carrier Services to operate to, from, or at Love Field, except for the limited turn-around service to which the Cities and the Airport Board jointly agreed in 1980, would be a breach of the Cities' agreement with the owners

of DFW Airport revenue bonds and would thus be prohibited by Art. I, § 16 of the Constitution of the State of Texas.

(F) other declarations as may be necessary or appropriate to resolve the disputes and controversies between the parties.

17. American reserves the right to seek Supplemental Relief from the Court whenever necessary and proper, as provided by section 37.011 of the Texas Civil Practice and Remedies Code.

18. Pursuant to section 38.001 of the Texas Civil Practice and Remedies Code, American prays for an award of its reasonable attorneys' fees incurred in bringing this action.

WHEREFORE, PREMISES CONSIDERED, Intervenor American Airlines, Inc. prays that the Court will summon the defendants to appear and answer herein, and upon final hearing hereof render the declaratory judgment as requested above, and grant American such other Supplemental Relief to which it may be entitled, costs and reasonable attorneys' fees, and all other relief to which American is entitled, special and general, at law and in equity.

Respectfully submitted,

**HARRIS, FINLEY & BOGLE**  
(A Professional Corporation)  
1300 Bank One Tower  
500 Throckmorton Street  
Fort Worth, Texas 76102



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Bill F. Bogle  
State Bar No. 02561000

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**ATTORNEYS FOR INTERVENOR,  
AMERICAN AIRLINES, INC.**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Plea in Intervention was mailed by certified mail, return receipt requested to the following counsel of record on this the 7 day of November, 1997:

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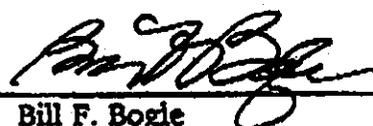
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7701 Lemmon Ave.  
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Bill F. Bogle

**EXHIBIT B**



I.  
*Parties To This Action.*

1. Fort Worth is a home rule city and municipal corporation organized under Texas law. The city is located (primarily) in Tarrant County.

2. Dallas is a home rule city and municipal corporation organized under Texas law. It is located (primarily) in Dallas County. Dallas may be served with process by service on its Mayor, the Honorable Ron Kirk, 1500 Marilla, Dallas, Texas 75201.

3. DFW Board is a joint board created pursuant to *Texas Transportation Code*, §22.074 and by a *Contract and Agreement* effective April 15, 1968 between Dallas and Fort Worth. DFW Board operates the Dallas-Fort Worth International Airport ("DFW Airport"). The DFW Airport is located, in part, in Tarrant County. DFW Board may be served by serving its executive director, Jeffrey P. Fegan ("Mr. Fegan"), at the DFW Airport. Mr. Fegan is the executive director of DFW Airport. He is a resident of Tarrant County and may be served at his residence in Bedford, Texas.

4. Legend is a Texas corporation and its registered agent for service of process is William A. Thau, 1440 Ross Avenue, Suite 3200, Dallas, Texas 75202. Dalfort is also a Texas corporation with its registered agent being Frank Majorie and its President, Bruce Ledbetter, at 8140 Walnut Hill Lane, Suite 510, Dallas, Texas 75231. Both Legend and Dalfort are necessary parties to this action per TEX. CIV. PRAC. & REM. CODE § 37.006(a) in that both corporations have publicly maintained that they are entitled to and intend to conduct operations from Love Field in open violation of the covenants

and ordinances jointly adopted by Fort Worth and Dallas in connection with the establishment and operation of DFW Airport.

II.  
*Preliminary Statement*

5. For years, Fort Worth and Dallas (jointly, the "Cities") vied to have the "premier" airport in the Metroplex. This rivalry led to public inconvenience, industry inefficiencies and excessive costs. In 1968, the Cities — at the behest of a federal regulatory agency -- resolved this wasteful struggle by forming a joint venture which pooled the Cities' resources and created a *single regional* airport — DFW Airport. To further the creation of this premier regional airport, and assure that the parties met their fiduciary obligations to one another, the Cities executed the 1968 Regional Airport Concurrent Bond Ordinance (the "Joint Bond Ordinance") and a Contract and Agreement dated April 15, 1968 ("Contract"), which together required the Cities to phase out interstate commercial passenger air service from their respective local airports and, just as important, to refrain from any acts or policies competitive with the new regional airport. Over the years, the Cities have passed Supplemental Joint Bond Ordinances (the "Supplemental Ordinances"), which confirm the original commitment and further the goal of creating (and now keeping) a strong regional and international airport.

6. The vision that the Cities demonstrated in executing the Contract and passing the Joint Bond Ordinance has resulted in the dynamic growth and strength of the region. The Contract and Joint Bond Ordinance are still in place and continue to be obligations of both Cities. There is now a serious and imminent threat that Dallas will

breach the Contract and violate its own bond covenants by permitting or condoning unrestricted interstate flights to and from Love Field. Fort Worth requests that the Court declare that Dallas must abide by and enforce the Contract and the Joint Bond Ordinance and prohibit any expansion of interstate passenger services beyond what is currently operating at Love Field. Fort Worth further requests that DFW Board be joined in this action, through DFW Airport's executive director, Fegan, and bound by this judgment, to assure that any failure by DFW Board to demand strict enforcement of the Joint Bond Ordinance by one of its joint venturers is not misconstrued as a waiver of any such obligations. The court should declare that any such waiver can only be effected after required findings and an appropriate vote by the DFW Board and agreement by the Cities as parties to the Contract and Joint Bond Ordinance. Finally, the court should bind the remaining defendants, Legend and Dalfort, by its declaratory judgment.

### III. *Jurisdiction and Venue*

7. This Court has subject matter jurisdiction under Article 5, Section 8 of the Texas Constitution and under Section 24.007 of the Texas Government Code.

8. This Court has venue of this action under TEX. CIV. PRAC. & REM. CODE §15.002, 15.005 and 15.035. A substantial part of the events giving rise to Fort Worth's claims occurred in Tarrant County. For example, Fort Worth entered into the Contract with Dallas and enacted the Joint Bond Ordinance and the Supplemental Ordinances in Tarrant County. Furthermore, Dallas' obligations under the Joint Bond Ordinance, the Supplemental Ordinances and the Contract are performable in part at DFW Airport, a

substantial part of which lies in Tarrant County. Dallas threatens to breach its fiduciary duty to Fort Worth with respect to the Cities' joint venture at DFW Airport, which lies in major part within Tarrant County. Dallas' breach of the Joint Bond Ordinance, the Supplemental Ordinances and the Contract will change the status quo agreed to by the Cities, and will divert air travel services and revenues from DFW Airport to create a powerful and adverse impact on Fort Worth and its citizens in Tarrant County.

9. DFW Board must be made a party to this action under TEX. CIV. PRAC. & REM. CODE § 37.006 because it has interests which will be affected by the declaratory relief requested herein. In the Contract, Dallas and Fort Worth delegated to DFW certain of their powers with respect to DFW Airport, and DFW Board is responsible for operating DFW Airport for the joint benefit of both Cities, who are the owners. Under the Joint Bond Ordinance, DFW Board purportedly has certain exclusive powers with respect to the Cities' covenants to phase out Certificated Air Carrier Services from their other airports, and not to use or develop their other airports in a way that will impair, diminish, reduce, or destroy the optimum use and development of DFW Airport for scheduled interstate and international passenger service.

10. Finally, DFW Board has contractual agreements with the major airlines serving DFW Airport that require those airlines to provide Certificated Air Carrier Services to the Dallas-Fort Worth metropolitan area (the "DFW Metroplex") only through DFW Airport to the extent required under the terms of the Joint Bond Ordinance. Those contracts continue until December 31, 2009, unless sooner terminated in accordance with their terms. This Court's construction of the Joint Bond Ordinance will affect the DFW

Board's carrying out of those duties properly delegated to it by the Cities, control the DFW Board's interpretation of the Cities' covenants in the Joint Bond Ordinance, and define the scope and enforceability of DFW Board's contractual agreements with the airlines serving DFW Airport, which incorporated the covenants in the Joint Bond Ordinance.

#### IV.

#### *Background Facts*

##### *The Battle for Airport Supremacy*

11. Fort Worth and Dallas operated competing airports for many years. Fort Worth's commercial passenger air traffic operated out of Greater Southwest International Airport ("GSLA") and what was then known as "Meacham Field". Dallas' commercial passenger air traffic operated largely out of Love Field. The Civil Aeronautics Board ("CAB"), predecessor to the Department of Transportation ("DOT"), conducted an investigation and concluded that the Cities would be best served by a single regional airport. The Cities could not agree on which airport should be the primary airport for the DFW Metroplex. As a result, the CAB (in the late 1960's) forced a resolution by directing the Cities to develop a single airport to serve the interstate passenger market of the DFW Metroplex. The CAB told the Cities that if they did not, it would designate a single airport to serve the region.

##### *The Resolution: DFW Airport.*

12. The Cities finally decided to pool their resources and build a new airport, to be known as DFW Airport. They decided that to be successful they had to consolidate

all of the area's commercial airline passenger services at that single airport. To that end, they signed the Contract. In the Contract, the Cities entered into a joint venture for the development of DFW Airport. Contract, § 16. This, of course, created a fiduciary obligation between the venturers to exercise the utmost good faith, fairness and loyalty in their dealings with one another.

***The Contract and the Joint Bond Ordinance.***

13. The Contract, moreover, required that the Cities each enact laws to enforce their joint venture contract. The Cities also executed the Joint Bond Ordinance to fund the DFW Airport project. In the 1968 Joint Bond Ordinance, the Cities agreed:

"that the present commercial aviation and airport facilities of the Cities, specifically Love Field Airport (hereinafter called and defined as "Love Field") of the City of Dallas and Greater Southwest International Airport (hereinafter called and defined as "GSLA") of the City of Fort Worth are wholly inadequate to meet the foreseeable commercial aviation needs of the citizens of the Cities and the residents and citizens of the entire North Central Texas Region; and

Whereas, the Cities have further found and determined that the most effective, economic and efficient means of providing needed airport facilities is the construction and equipment of a centrally located airport for the Cities . . .".

Joint Bond Ordinance, p. 2

Additionally, Sections 9.5(A) and 9.5(B) of the Joint Bond Ordinance (emphasis added) provide in part as follows:

A. [Fort Worth and Dallas,] from and after the effective date of this Ordinance, shall take such steps as may be necessary, appropriate, and legally permissible \* \* \* to provide for the orderly, efficient and effective *phase-out* at

Love Field, Redbird, GSIA and Meacham Field, of any and all Certificated Air Carrier Services, and to transfer such activities to the Regional Airport [DFW Airport] effective upon the beginning of operations at the Regional Airport. . .

\* \* \* \*

B. [Fort Worth and Dallas] further agree that they will through every legal and reasonable means promote the optimum development of the lands and Facilities comprising the Regional Airport. . . . neither the Cities nor the Board will undertake with regard to the Regional Airport, Love Field, GSIA, Meacham Field or Redbird, any action, implement any policy, or enter into any agreement or contract, which by its or their nature would be competitive with or in opposition to the optimum development of the Regional Airport and the use of its lands and Facilities at the earliest practicable date; and none of the airports of the Cities shall be put to or developed for any use which by the nature thereof the optimum use and development of the Regional Airport, including its air and land space, at the earliest practicable date will be impaired, diminished, reduced or destroyed.

14. DFW Airport was built and paid for and Fort Worth abandoned and dismantled GSIA operations based upon these commitments. The construction money was raised by selling bonds. Over \$2 billion of these bonds have been issued and sold under the Joint Bond Ordinance and the many Supplemental Bond Ordinances which have been adopted over the years. The covenants contained in the Joint Bond Ordinance, as supplemented by the Supplemental Ordinances, (the "Bond Ordinance Covenants") are in force today and a substantial portion of the bonds which were sold to raise the money to develop DFW Airport remain outstanding.

### *The Use Agreements.*

15. After the Contract was signed and the Joint Bond Ordinance passed, the Cities sought to assure that commercial airlines would move their operations to DFW Airport. When DFW Airport opened in early 1974, there were eight carriers serving Dallas-Fort Worth that were "certificated" by the CAB (i.e., the CAB authorized them to operate interstate air services). These eight airlines were required to, agreed to, and did move their Love Field operations to DFW Airport.

16. At the time the Joint Bond Ordinance was adopted, Southwest Airlines was not a CAB certificated carrier but was licensed under the authority of the Texas Aeronautical Commission as an *intrastate* carrier. Southwest Airlines refused to move these *intrastate* operations to DFW Airport. In 1973, in anticipation of the opening of DFW Airport and pursuant to the provisions of the Ordinance, the Cities and DFW Airport's operator, the DFW Board, filed a federal lawsuit to prevent Southwest Airlines from providing services to Love Field. However, the courts held that Southwest Airlines could not lawfully be excluded from using Love Field for *intrastate* services if Love Field remained open as an airport. *City of Dallas v. Southwest Airlines Co.*, 371 F. Supp. 1015 (N.D. Tex. 1973), *aff'd*, 494 F.2d 773 (5th Cir. 1974), and *cert. denied*, 419 U.S. (1974). As affirmed by the Fifth Circuit, the case held that the Joint Bond Ordinance improperly usurped the authority of the now-defunct Texas Aeronautical Commission to the extent it applied to *intrastate* air service if Love Field remained in operation, leaving the binding commitment of the Cities as one which banned *interstate* service from Love Field.

### *The Wright Amendment.*

17. Following deregulation of the airline industry in 1978, the CAB authorized Southwest Airlines to implement *interstate* service from Love Field to New Orleans. *Southwest Airlines Automatic Entry Investigation*, CAB Order 79-9-12 (Sept. 28, 1979). This decision threatened to once again ignite the disputes that had waged between the Cities and to lead to yet more litigation regarding the Cities' Agreement and Southwest's operations at Love Field. To avoid such a result, the Cities agreed to the expansion of the use of Love Field to limited interstate flights. This compromise (to which Southwest and community groups agreed) allowed Love Field's use to be expanded from solely intrastate service to include turn-around service (no through service or ticketing) to the four states contiguous to Texas. Congress, in order to insure that the CAB would take no actions inconsistent with this compromise, enacted what has become known as the "Wright Amendment" (Pub.L. No. 96-192, 94 Stat. 35, 48-49).

### *The 1992 Litigation and Dallas' Recommitment.*

18. Fort Worth found it necessary to sue Dallas once before to compel Dallas to comply with its contractual and fiduciary obligations. On April 8, 1992, the Dallas City Council voted to reexamine its previously-announced strong opposition to any repeal of the Wright Amendment. Believing that Dallas' call for repeal of the Wright Amendment, or even the through-ticketing restrictions of that Amendment, would clearly violate Dallas' obligations under the Contract and the Joint Bond Ordinance, Fort Worth reluctantly sued Dallas in Tarrant County. Shortly thereafter, however, the Dallas City Council voted not to reconsider its opposition to repeal of the Wright Amendment and

also passed a very positive resolution reaffirming Dallas' commitment to the Contract and the Joint Bond Ordinance relating to DFW Airport and to DFW Board's then-existing plans to expand DFW Airport.

19. Specifically, on June 24, 1992, the Dallas City Council formally resolved, in pertinent part, as follows:

**BE IT RESOLVED BY THE CITY COUNCILS OF THE CITIES OF DALLAS AND FORT WORTH, ACTING CONCURRENTLY:**

**SECTION 1.** That the Cities of Dallas and Fort Worth hereby affirm their commitment to their 1968 Contract and Agreement, to their 1968 Concurrent Bond Ordinance, and to the optimum development of the Dallas-Fort Worth International Airport in accordance with the federally-approved Dallas-Fort Worth International Airport Development Plan, with the costs thereof to be financed with the proceeds of Dallas-Fort Worth Airport Revenue Bonds and with federal funds.

**SECTION 2.** That the Cities of Dallas and Fort Worth recognize and reaffirm the covenants and provisions of Section 9.5 of the 1968 Concurrent Bond Ordinance, including the authority of the Dallas-Fort Worth International Airport Board contained in such provisions.<sup>1</sup>

20. After the Dallas City Council passed the resolution quoted above, the Fort Worth City Council approved the same resolution on June 30, 1992. With Dallas having unequivocally reaffirmed its commitment to the Contract and the Joint Bond Ordinance and rejected the proposed resolution calling for repeal of the through-ticketing restrictions

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<sup>1</sup> Section 9.5 of the Joint Bond Ordinance contains Dallas' covenant to close Love Field to all Certificated Air Carrier Services and not to put Love Field to any use, or to develop Love Field, in such a manner as to impair, diminish, reduce, or destroy the optimum use and development DFW Airport. Section 9.5 is quoted, in part, in paragraph VI.C.(1) of this Petition, above.

of the Wright Amendment, Fort Worth believed that the two Cities were once again in complete agreement about DFW Airport and the Contract and the Joint Bond Ordinance. Fort Worth dismissed its 1992 lawsuit against Dallas.

*Dallas' Promises to the Owners of DFW Airport Bonds.*

21. Both before and after 1992, Dallas has joined as co-issuer with Fort Worth to issue hundreds of millions of dollars worth of additional DFW Airport Revenue Bonds (the "Bonds"). On July 3, 1997, the Cities delivered \$142,070,000 Dallas-Fort Worth Regional Airport Joint Revenue Construction and Refunding Bonds, Series 1997, and on September 30, 1997, the Cities delivered their Dallas-Fort Worth Regional Airport Joint Revenue Refunding Bonds, Series 1997A and Taxable Series 1997B, in the principal amounts of \$26,460,000 and \$1,585,000, respectively. In the Official Statements issued by Dallas, Fort Worth and the DFW Board to accompany the issuance of those Bonds, Dallas represented that it has

. . . covenanted to take such steps as may be necessary, appropriate, and legally permissible (without violating presently outstanding legal commitments or covenants prohibiting such action), to provide for the orderly, efficient, and effective phase-out of Love Field . . . of any and all Certificated Air Carrier Services as defined in the 1968 Ordinance . . . . [Official Statement p. 34, p. 32 in 1997A and 1997B Official Statements].

22. In the same Official Statement, Dallas also affirmed to the public that it will not

. . . undertake with regard to the [DFW] Airport [or] Love Field . . . any action, implement any policy, or enter into any agreement or contract which by its or their nature would be competitive with or in opposition to the optimum development

of the Airport at the earliest practicable date . . . . [Official Statement p. 35, p. 34 in 1997A and B Official Statements].

Dallas also represented that none of its airports "shall be put to or developed for any use which by the nature thereof the optimum use and development of the airport, including its air and land space, will be impaired, diminished, reduced or destroyed." [Official Statement p. 35, p. 34 in 1997A and B Official Statements].

23. Each series of the Bonds co-issued by Dallas and Fort Worth expressly states that it is "issued under and pursuant to" the Joint Bond Ordinance and that the terms and provision of the Joint Bond Ordinance "constitute a contract" between the registered owners of the Bonds and the two Cities. Thus, Dallas has contracted with thousands of owners of the Bonds that it will comply with its covenants in the Joint Bond Ordinance, that it will close Love Field to Certificated Air Carrier services and not use or develop Love Field in any manner that will impair, diminish, reduce or destroy the optimum use and development of DFW Airport.

*The Success of the DFW "Hub" Airport.*

24. DFW Airport's success is attributable to the Contract and the Joint Bond Ordinance which memorialize the Cities' commitments to have DFW Airport be the primary passenger airport in this region, to move interstate traffic to that airport, and to assure that neither City will do anything to undermine the optimal development of or compete with DFW Airport. DFW Airport is now, of course, the primary airport in the Metroplex. It is located approximately 17.5 miles from the central business districts of Dallas and Fort Worth. It is a "hub" airport or transfer point, with airline services to

points throughout the country and internationally. Currently, DFW Airport provides direct service to nearly 200 destinations world wide with more than 2,500 daily flights. Because DFW Airport is a hub airport, citizens of the Dallas-Fort Worth area are assured an unparalleled diversity of air service. In fact, DFW Airport has been so successful in serving as a hub for passengers that connecting travelers occupy approximately two out of every three seats into or out of DFW Airport. That means that many more flights are offered in and out of DFW Airport than could be justified if the flights were scheduled based only upon the demand from local citizens. Consequently, connecting passengers "subsidize" a level and diversity of air service which the Metroplex, by itself, could not sustain.

25. The frequency and breadth of service from DFW Airport has fueled the dynamic growth of the entire region. DFW Airport has been a significant factor in the relocation and expansion of more than 400 businesses to the Metroplex, so that the Metroplex is now home to more Fortune 500 companies than any city in the country other than New York and Chicago. As of 1995, DFW Airport generated \$8.4 billion annually for the local economy and generated more than 167,000 jobs, including over 37,000 jobs for airline and support employees. More than half of all Texas domestic passengers and nearly two-thirds of all cargo in Texas is flown into and out of DFW Airport.

26. The Cities' Contract and the Joint Bond Ordinance provided the crucial foundation for DFW Airport to become a premier airport and to bring to the Metroplex area all the jobs, revenue and competitive advantage that an airport of its size provides.

As the Cities anticipated in their Contract and the Joint Bond Ordinance, concentrating the Metroplex's scheduled interstate passenger flights at DFW Airport has equipped that airport to effectively compete with other large Texas metropolitan areas, other U. S. cities, and even foreign capitals for air traffic.

***There Is A Threat That Dallas Will Violate The Joint Bond Ordinance And Breach Its Contractual And Fiduciary Duties to Fort Worth.***

27. In reliance on the Contract, the Joint Bond Ordinance, and Dallas' commitments under them, Fort Worth demolished GSIA and has diligently promoted development of DFW Airport. Dallas, however, by its continued operations of Love Field, persistently maintains the very real threat of direct competition with DFW Airport and the capability to significantly undermine the optimum development of that joint venture operation.

28. Six members of the Dallas City Council have been recently quoted as saying that additional flights out of Love Field would be "good for Dallas" and generate economic activity. One Dallas Council member is quoted as saying:

"This is long overdue . . . The Wright amendment long ago served its purpose. I don't believe Love Field represents any kind of threat to D/FW's life or growth."

29. Congress has enacted the so-called "Shelby Amendment." The amendment, which was attached to an appropriations bill, was originated by Senator Shelby, (R) Alabama. S. B. 1048, Rep. No. 105-55, and provides substantially as follows:

**SEC. 338(a) IN GENERAL --** For purposes of the exception set forth in section 29(a)(2) of the International Air Transportation Competition Act of 1979 (Public Law 96-192; 94 Stat. 48), the term "passenger capacity of 56 passengers or less" includes any aircraft, except aircraft exceeding gross aircraft weight of 300,000 pounds, reconfigured to

accommodate 56 or fewer passengers if the total number of passenger seats installed on the aircraft does not exceed 56.

**(b) INCLUSION OF CERTAIN STATES IN EXEMPTION.**

— The first sentence of section 29(c) of the International Air Transportation Competition Act of 1979 (Public Law 96-192; 94 Stat. 48 et seq.) is amended by inserting "Kansas, Alabama, Mississippi," before "and Texas".

30. The Shelby Amendment would remove the Wright Amendment's federal prohibition against the use of reconfigured jet aircraft to serve interstate markets beyond the four contiguous states. The Amendment would also permit interstate service to the states of Alabama, Mississippi and Kansas from Love Field in addition to the four states contiguous to Texas. With this modification to the Wright Amendment, it is incumbent upon Dallas to enforce and honor its covenants and obligations, which include the Joint Bond Ordinance.

31. As joint venture partners, Dallas and Fort Worth owe to each other, and to the joint venture, a fiduciary duty of utmost good faith and fair dealing. As a joint venture partner in DFW Airport, Dallas cannot obtain any profit or advantage related to the joint venture for itself. Moreover, Dallas cannot, without the consent of Fort Worth, engage in any operations harmful to the business of DFW Airport or acquire any interest in property which is employed in any venture antagonistic to the interest which Dallas and Fort Worth have as partners in DFW Airport. If Dallas were to permit long haul interstate passenger service at Love Field, it would, by its actions, be engaging for its own benefit in competition against the joint venture in a manner adverse to Fort Worth and DFW Airport and in breach of its fiduciary duties.

32. Legend and Astraea have publicly announced their plans to operate long-haul, interstate passenger jet service from Love Field to destinations beyond Texas and its four contiguous states. Despite the fact that allowing such operations from Love Field would breach Dallas' obligations to Fort Worth and the DFW Airport bondholders, Dallas has not stated or assured the public, Fort Worth, or the bondholders that it will not allow such operations from Love Field. In fact, there is a danger that Dallas intends to allow such operations. Certain Dallas City Council members have publicly stated that they will not oppose the proposed long-haul operations from Love Field to destinations beyond Texas and the four adjoining states.

33. Dallas' actions (or, failure to act consistently with its contractual and fiduciary obligations) will not only constitute a breach of its Contract with and commitments to Fort Worth and the bondholders who paid for the development of the DFW Airport, it will also constitute a breach of faith with the citizens of the region and create enormous harm to DFW Airport.

*Irreparable Harm Is Imminent.*

34. If unrestricted scheduled interstate passenger service out of Love Field is allowed, the result will be immediately to take air traffic from DFW Airport and redirect it to Love Field. By its actions, Dallas will not only be permitting, but it will actually be encouraging direct competition with DFW Airport and voiding various Use Agreements between various carriers and the DFW Board, all in violation of the Contract and the Joint Bond Ordinance. As flights and flight services shift from DFW Airport to Love Field, DFW Airport will lose a substantial portion of the feeder traffic which is

essential to the current superior level of service at DFW Airport. In fact, international flights and flights to smaller communities, both of which are particularly dependent on connecting passengers, would be especially injured and would be reduced. This will have the effect of decreasing the overall level of service of DFW Airport hub operations and will result in a much lower total level of air service to the entire Metroplex area. This effect would especially harm Fort Worth, Dallas' joint venturer in the DFW Airport, which is dependent upon the level of service provided from DFW Airport.

35. Another immediate harm to the area resulting from the shift of air services from DFW Airport to Love Field would be the increase in air traffic control delays at both DFW Airport and Love Field. The additional Love Field operations would have to compete for the same take off and landing flight paths used by aircraft serving DFW Airport. In fact, even adding to the flights would impair the air space limitations as prohibited under Section 9.5 of the Joint Bond Ordinance, which requires that the Cities not make any use of any other airport which would impair, diminish, reduce or destroy optimum use and development of the DFW Airport air and land space. Because this will likely create delays and inconvenience to passengers using DFW Airport, it may lead to a further decline in the use of DFW Airport, as prospective passengers seek to avoid the delays at that hub airport by flying through other hub airports. It will also dramatically increase the noise level from flights at Love Field.

36. Like the rest of North Texas, Fort Worth will suffer because the entire area would be less attractive to businesses, old and new, as the overall quality of air service declines. Also Fort Worth would lose millions of dollars it has invested in moving to,

building and improving DFW Airport. In reliance upon Dallas' promises and agreements, Fort Worth has irreversibly committed its resources to the successful development of DFW Airport as the single commercial airport for the entire Dallas-Fort Worth Metroplex. Moreover, Dallas' actions will result in a reversion to the same decentralization of air traffic in the Metroplex area that initially caused the CAB to demand that Dallas and Fort Worth work together to create a single large airport for this area.

37. If Dallas breaches the Joint Bond Ordinance by allowing unrestricted long haul jet service at Love Field, it will allow the holders of only two percent (2%) in aggregate principal amount of the Bonds outstanding to declare all outstanding bonds in default. [Concurrent Bond Ordinance §§ 10.1 & 10.2] Thus, Dallas' breach of the Joint Bond Ordinance could cause approximately \$1 billion dollars in revenue bonds, jointly issued by Dallas and Fort Worth, to be in default. Revenues from DFW Airport could not pay off this \$1 billion dollars in defaulted bonds, and the results would be catastrophic. Such a massive default on municipal bonds would reverberate through the national financial community; would destroy any ability to sell newly-issued DFW Airport Bonds; would put the financial base for continued development of DFW Airport in jeopardy; and would result in great, immediate, and irreparable harm to DFW Airport, Fort Worth and its citizens. Damage to Dallas' credit rating and reputation in the marketplace would far outweigh the fees and profits Dallas could reasonably expect to earn by violating its Joint Bond Ordinance and opening Love Field to scheduled interstate passenger service.

38. For Dallas to make contracts or allow interstate passenger service at Love Field not in keeping with the Contract with Fort Worth or the covenants in the Joint Bond Ordinance, will constitute a breach of the Contract with Fort Worth, will constitute a breach of the duties owed by Dallas to Fort Worth resulting from their joint venture, including fiduciary duties, and will impair obligations of contract, in violation of Art. I, § 16 of the Constitution of the State of Texas. Dallas is obligated to fulfill its obligations under the Contract and the Joint Bond Ordinance and to take necessary and lawful action to prevent breaches or defaults of the Contract and of those duties.

39. The status quo will be changed if Dallas permits a single airline to commence scheduled interstate passenger flights between Love Field and any point beyond Texas or the four contiguous states. Dallas could be compelled by anti-discrimination laws to permit other airlines immediately to commence providing similar scheduled interstate services. Almost overnight, other airlines providing scheduled interstate service at DFW Airport will commence scheduled interstate operations at Love Field. In doing so, Dallas would be immediately and irreparably breaching the Joint Bond Ordinance, the Contract with Fort Worth, and the duties that it owes the citizens of Fort Worth as a joint venturer, and the citizens of Fort Worth will suffer irreparable loss as a result. A fundamental underpinning of the strength and security of DFW bonds -- the concentration of scheduled interstate service at DFW Airport -- will be irreparably weakened, to the great harm of Fort Worth and DFW Airport.

40. Substantial public interests in the integrity of government and public officials are at stake in this action. A substantial threat exists that a major city will breach its own

Joint Bond Ordinance, which it has reaffirmed time and again, its contracts with thousands of DFW Airport bond owners, and the fiduciary duties to its joint venturer at DFW Airport.

V.  
*Relief Requested*

41. Fort Worth prays for a declaration that:

(a) Dallas is prohibited, under the Contract and the Joint Bond Ordinance, from permitting any scheduled interstate passenger service from Love Field *unless* such service is restricted to turn-around service to the immediately contiguous states adjoining the State of Texas (*i.e.*, Louisiana, Arkansas, Oklahoma and New Mexico);

(b) Dallas has the contractual and fiduciary obligation to take all necessary and lawful action -- including, if necessary, phasing out of all Love Field operations -- to insure compliance with the Contract and the Joint Bond Ordinance; and,

(c) The DFW Board cannot "waive" any such obligations except as expressly provided by the Contract and the Joint Bond Ordinance and only with the consent and agreement of the Cities.

42. Fort Worth further prays for a declaration that, if Dallas permits Legend, Dalfort or any scheduled interstate passenger service from Love Field *unless* such service is restricted to turn-around service to cities in the four contiguous states adjoining the State of Texas, it will have placed Love Field in direct competition with DFW Airport, and thus will be in breach of its fiduciary and contractual duties relating to the purchase, construction, improvement, use, and development of DFW Airport.

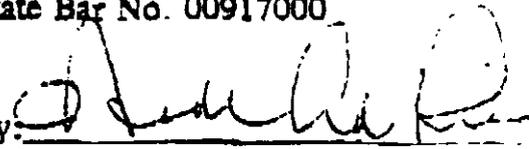
43. Pursuant to Section 37.009 of the TEX. CIV. PRAC. & REM. CODE, the City of Fort Worth, Texas also prays for an award of its reasonable attorneys' fees incurred in bringing this action.

44. Fort Worth further prays for such other and further relief to which it may be entitled including the right to amend its pleadings to assert claims for further injunctive relief or damages.

WHEREFORE, PREMISES CONSIDERED, the City of Fort Worth prays that the Court enter the declaratory judgment as requested; that Fort Worth recover its costs and reasonable attorneys' fees; and that Fort Worth have all other relief to which it is entitled, special and general, at law and in equity.

Respectfully submitted,

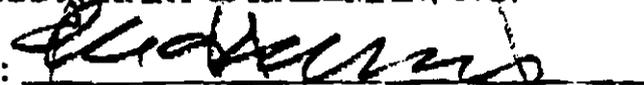
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