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March 30, 2018

Effie Ameen, Secretary of the Senate
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RE: Fact-Finding Investigation

Dear Ms. Ameen:

Thank you for retaining me to perform an investigation with respect to the complaints brought against Senator Baumgardner (referred to herein as "Baumgardner"). You engaged me on Feb. 15, 2018 pursuant to the Workplace Harassment Policy of the General Assembly and Joint Rule 38. I began the investigation on Feb. 27. During this investigation, I reviewed the written complaints submitted to you as Secretary of the Senate, and have interviewed the two Complainants and six other individuals. The witnesses who agreed to speak to me were cooperative, although reluctant to be participants in the investigation. As such, I determined it is important to keep the identity of certain witnesses confidential. They will be referred to as Witness A, B, and so forth. In my opinion, the request for confidentiality comes from the public nature of this particular workplace and genuine concerns of retaliation, and does not impact the credibility of the witnesses.

I have not yet spoken to Baumgardner. Beginning March 7, I have been trying to schedule an interview with him. Through ten email/voice mail communications with him and his attorneys, I have provided many dates on which I would be available for the interview. I agreed to meet at his convenience as early as 7 a.m. He ultimately advised he will not meet without his attorney who happens to have been out of the country since we began the effort to set the interview. Although his preferred attorney has an associate with whom I have been conferring, Baumgardner refuses to meet until his preferred attorney returns to the U.S. No date for the interview has been provided. The Workplace Harassment Policy of the General Assembly provides that "Nothing ... requires any person accused of workplace harassment to involuntarily provide, either orally or in writing, any facts, information, or evidence in response to an

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investigation of a complaint...” (Sec. F(3)).¹ Thus, it is entirely up to Baumgardner whether to meet. If he does agree to do so in the future, I will supplement or amend this report.

It is important to keep in mind that as an independent investigator, I do not make conclusions of law. Rather, my role in this case is to learn the facts from perspectives of the various individuals with whom I speak, and make specific findings as to whether the complaints are credible, and if so, whether the behavior is inappropriate or unacceptable workplace harassment as defined in the Workplace Harassment Policy of the General Assembly.²

I. The Complaints

There are two written complaints against Baumgardner which I was asked to investigate.³

A. Megan Creeden

The first complaint was submitted by Megan Creeden (“Creeden”) on Feb. 12, 2018. In her complaint (“the Creeden Complaint”), Creeden alleges that during the 2016 legislative session, she was subjected by Baumgardner to two situations which made her uncomfortable. At that time, Creeden was 25 years old and was volunteering with [REDACTED] office as an unpaid intern [REDACTED].⁴ Creeden worked a couple days per week, as her schedule allowed.

Creeden recalls the first encounter with Baumgardner occurred during a committee hearing on the “rain barrel” bill. She could not recall the date. She describes the committee meeting was in a small conference room, and it was crowded. She states this was the first time she had ever been in this small room. She was seated next to [REDACTED]. The senators were seated at the table, and staff was seated around the perimeter of the room. Baumgardner was in front of them at the table. Space was limited and people were crowded close together.

Creeden alleges she was doing something on her iPad. Baumgardner turned in his seat and began speaking to [REDACTED]. Creeden heard Baumgardner say to [REDACTED], “I saw your intern at the U Club,” referring to an event a few days earlier at the University Club where Baumgardner had met Creeden. Baumgardner went on to tell [REDACTED] while looking directly at Creeden that he thought she was “very nice and very friendly”. Creeden reports that

¹ This policy makes it very difficult to complete an investigation. It gives the Accused control over the entire situation. While generally denying allegations, which Baumgardner did through his attorney on March 28 by email, he can denigrate the credibility of the investigation claiming he wasn’t even interviewed.

² I am aware of the political overlay on allegations made against a public official. Clearly, one could be motivated to make the complaint to further a political agenda. However, the motive is not at issue here. The question is whether the complaints are credible.

³ During my various interviews, I became aware that other complaints may have been made against Baumgardner. I did not pursue information regarding these allegations and express no opinion as to the allegations in other complaints.

⁴ [REDACTED]

Baumgardner then described his dismay that he had “left the event alone, walked home by himself, and lay in his bed alone.” He trailed off and proceeded to make a loud audible suggestive sigh still looking at Creeden. Creeden reports the event at the University Club was the first time she had met Baumgardner. She had no relationship with him of any kind. She had no idea where his office was located.

Creeden describes she looked at [REDACTED], whom she believed heard what Baumgardner had said, but neither of them said anything. Creeden reports it was clear to her Baumgardner was intentionally directing a sexual innuendo toward her that she found highly offensive. She states it was “creepy and horrible”.

The second inappropriate incident alleged by Creeden occurred a couple weeks later on the Senate floor. [REDACTED] was present. Baumgardner asked Creeden openly to come to his office for a whiskey. This request made her extremely uncomfortable. They were in a public space with lots of people around them, including [REDACTED]. She declined to have drinks with him. He continued to push his request that she join him in his office, at which point she told him she was allergic to whiskey which is true. Baumgardner persisted by offering other drink options searching for information about her allergies. She explained that the fermentation process negatively affects her. Ultimately she just ended the conversation by saying “No.” Creeden contends the whole conversation felt uncomfortable and creepy to her, stating it felt like she “needed to take a shower”.

Creeden reports she successfully avoided Baumgardner for the remainder of the session. She had no other interactions with him. The following session she volunteered again but spent even less time than in 2016 and had no problems with Baumgardner. She asserts she is reporting these interactions now because she wants to support others who have complained about Baumgardner. When a reporter called her, she related her experience. She describes her belief that Baumgardner uses his power against vulnerable women. She describes the Senate culture as demeaning to women. She describes it is a “boy’s club” with very few females. Baumgardner’s conduct made Creeden feel less valued. She complains women are subjected to creepy behavior with no recourse.

1. Witness support for Creeden’s allegations

The only witness who observed Baumgardner’s behavior towards Creeden is [REDACTED]. He corroborates Creeden’s description of the comments made by Baumgardner. [REDACTED]

Looking at the schedule of debate on the rain barrel bill in 2016, [REDACTED] was able to specify the date of the first inappropriate interaction with Baumgardner. He believes the debate in the small committee room was on March 30, 2016. He corroborates Creeden’s description of how the room was set up. He and Creeden were sitting against the wall and happened to be behind Baumgardner. Baumgardner turned in his chair and said something to [REDACTED] about

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meeting Creeden a few days earlier. [REDACTED] recalls Baumgardner then described that he walked home from that event alone and dreamed that night about Creeden. [REDACTED] reports Baumgardner made it sound like a “naughty dream.” [REDACTED] wonders if Baumgardner was trying to make a joke, but it was certainly offensive. Baumgardner was clearly looking for Creeden’s reaction to the comment.

According to [REDACTED], the incident was strange and inappropriate not only in what Baumgardner said, but where he said it. They were listening to the debate about the rain barrel bill in a committee room full of people. [REDACTED] recalls Baumgardner stood up immediately after making the comment and walked away. [REDACTED] describes he and Creeden looked at each other and rolled their eyes. He reports it was a “weird moment”. That same evening, they attended a happy hour at Prohibition. Creeden talked about Baumgardner’s comment. [REDACTED] recalls other female staff commented that Baumgardner makes weird inappropriate comments all the time. [REDACTED] does not recall with specificity who the staff members were or what they described.

[REDACTED] described the only other situation between Creeden and Baumgardner that he witnessed was on the Senate floor. [REDACTED] recalls Baumgardner approached [REDACTED] and Creeden and invited them both to have a whiskey with him in his office. [REDACTED] recalls the invitation quickly morphed into an invite only to Creeden. She told Baumgardner she was allergic to whiskey. He kept pushing her, wanting to know more about her allergy, asked if she could drink rye which is gluten-free. According to [REDACTED], Baumgardner would not let it go. Eventually Creeden just said no and that ended the discussion. [REDACTED] did not think about the incident again until about a year later when Creeden mentioned it to him.⁵ She told him that it bothered her that Baumgardner was pressing her to have a drink with him in his office. [REDACTED] states it is not that strange for a Senator to ask someone out to grab a drink but asking a young intern to come to his office is inappropriate.

[REDACTED] states Baumgardner is a socially awkward flirt, who focuses his attention on young women. [REDACTED] believes based on what he has observed other female aides and lobbyists are likely to have had problems with Baumgardner.

[REDACTED]

[REDACTED]

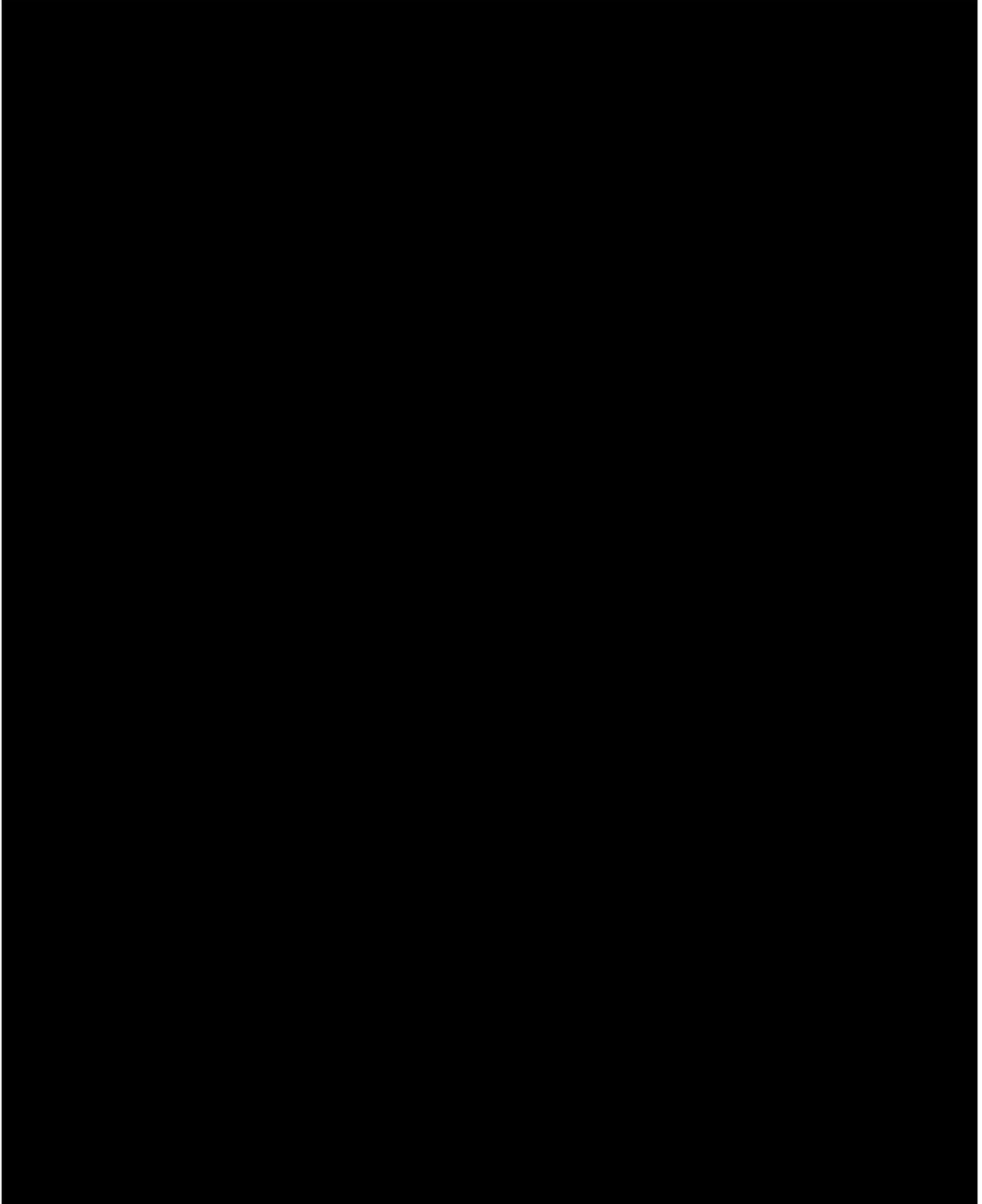
⁵ [REDACTED] states Creeden brought it up following the 2017 legislative session, before the #MeToo movement began. They were just talking about Baumgardner’s weird behavior and she brought it up.

[REDACTED]

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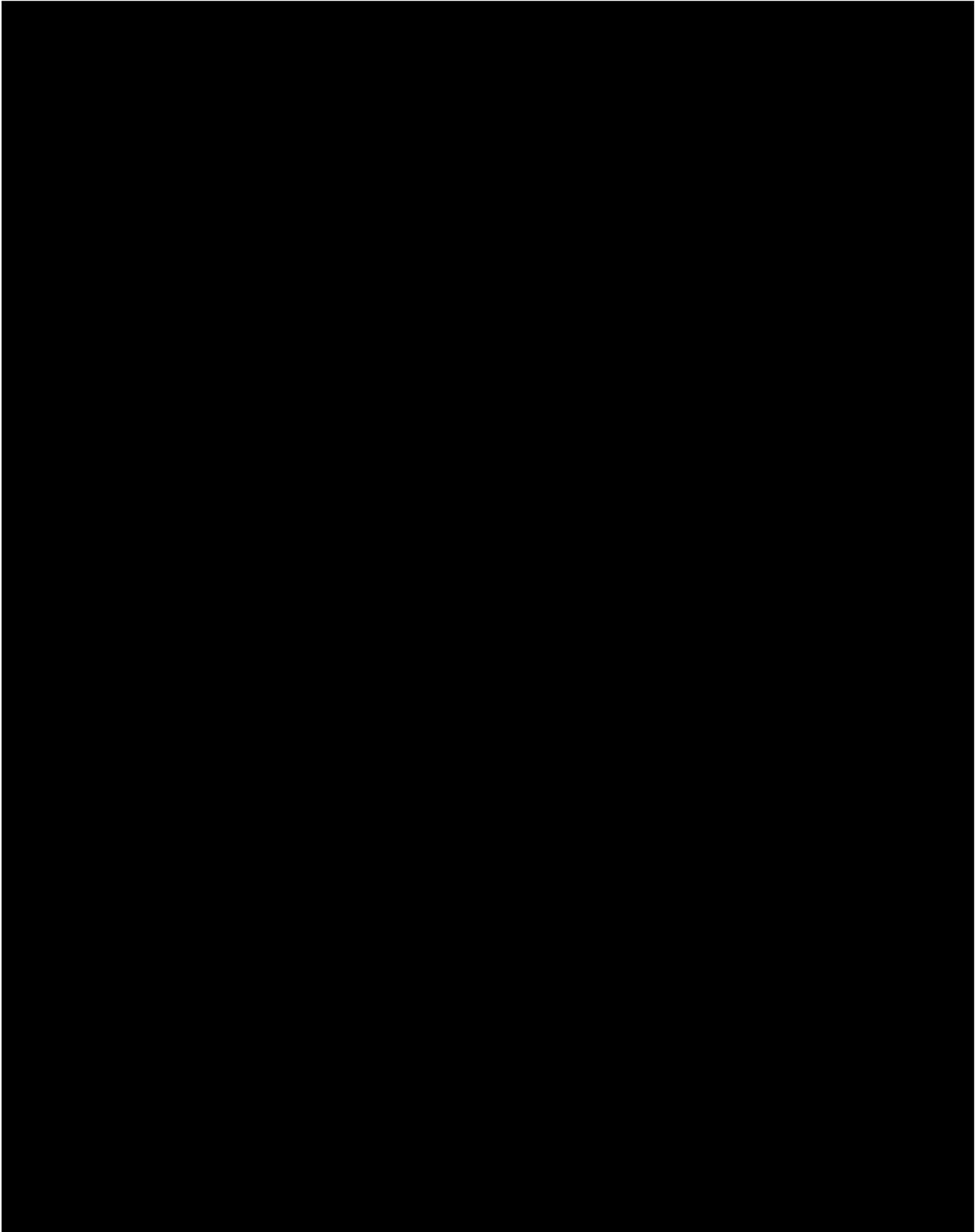
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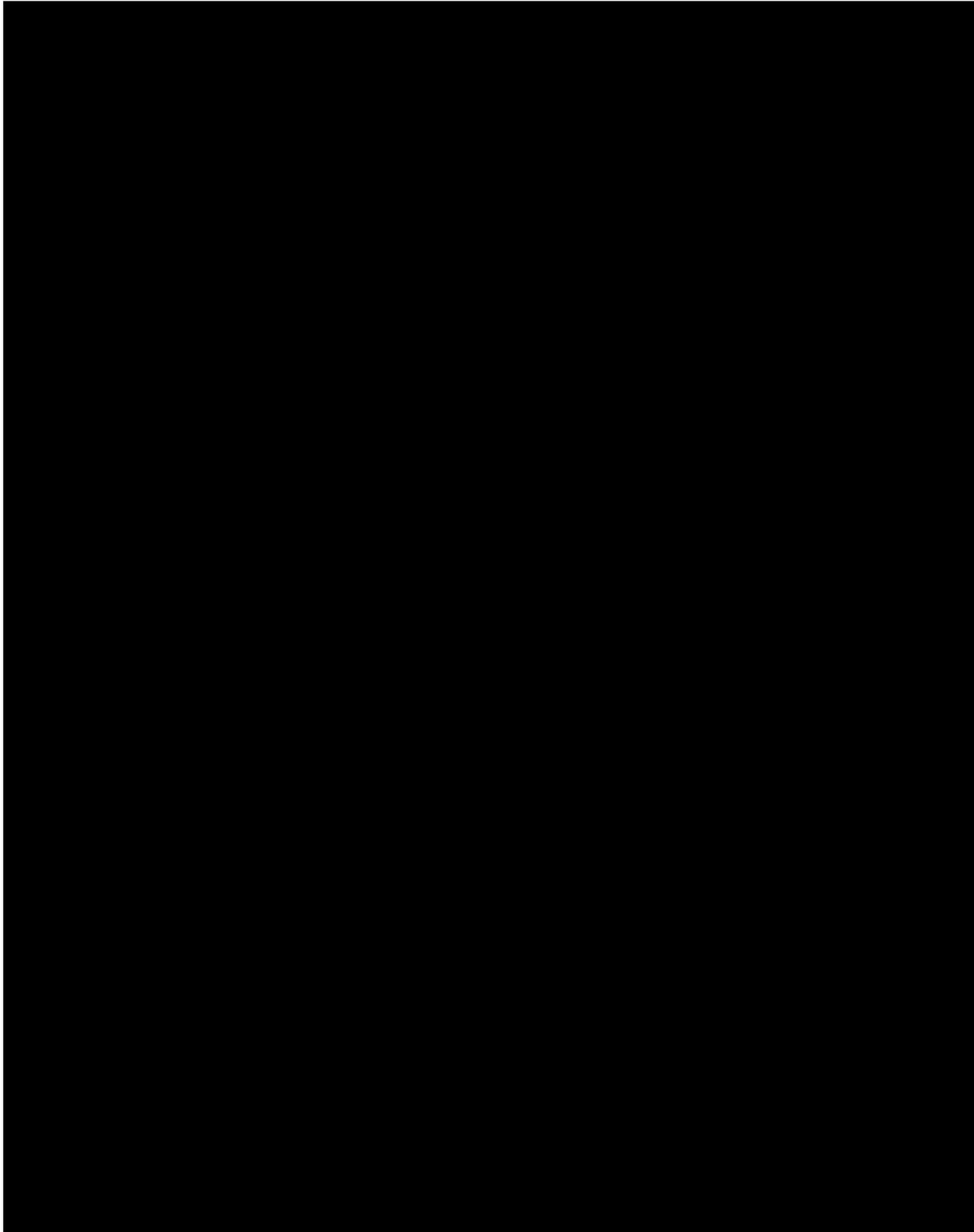
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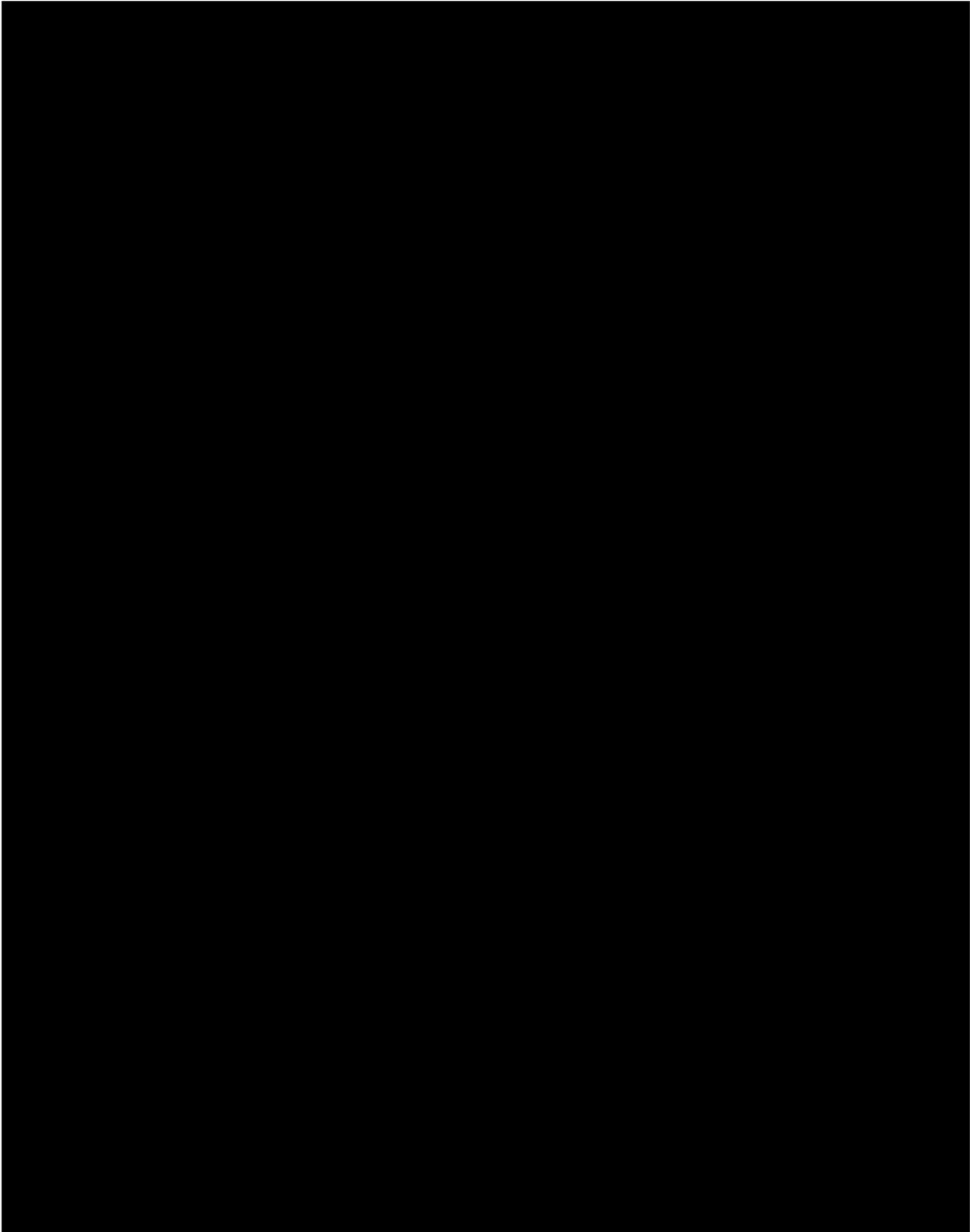
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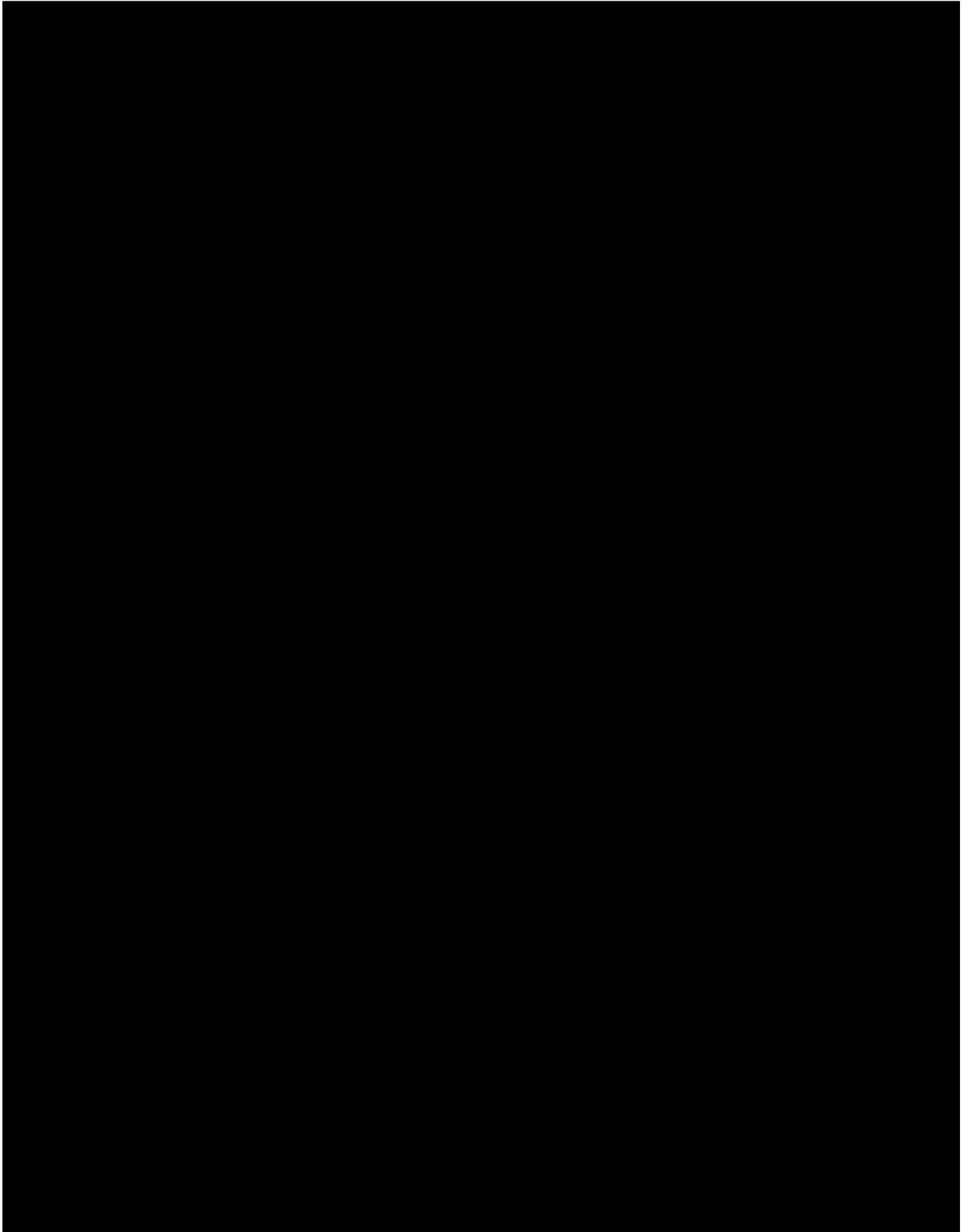
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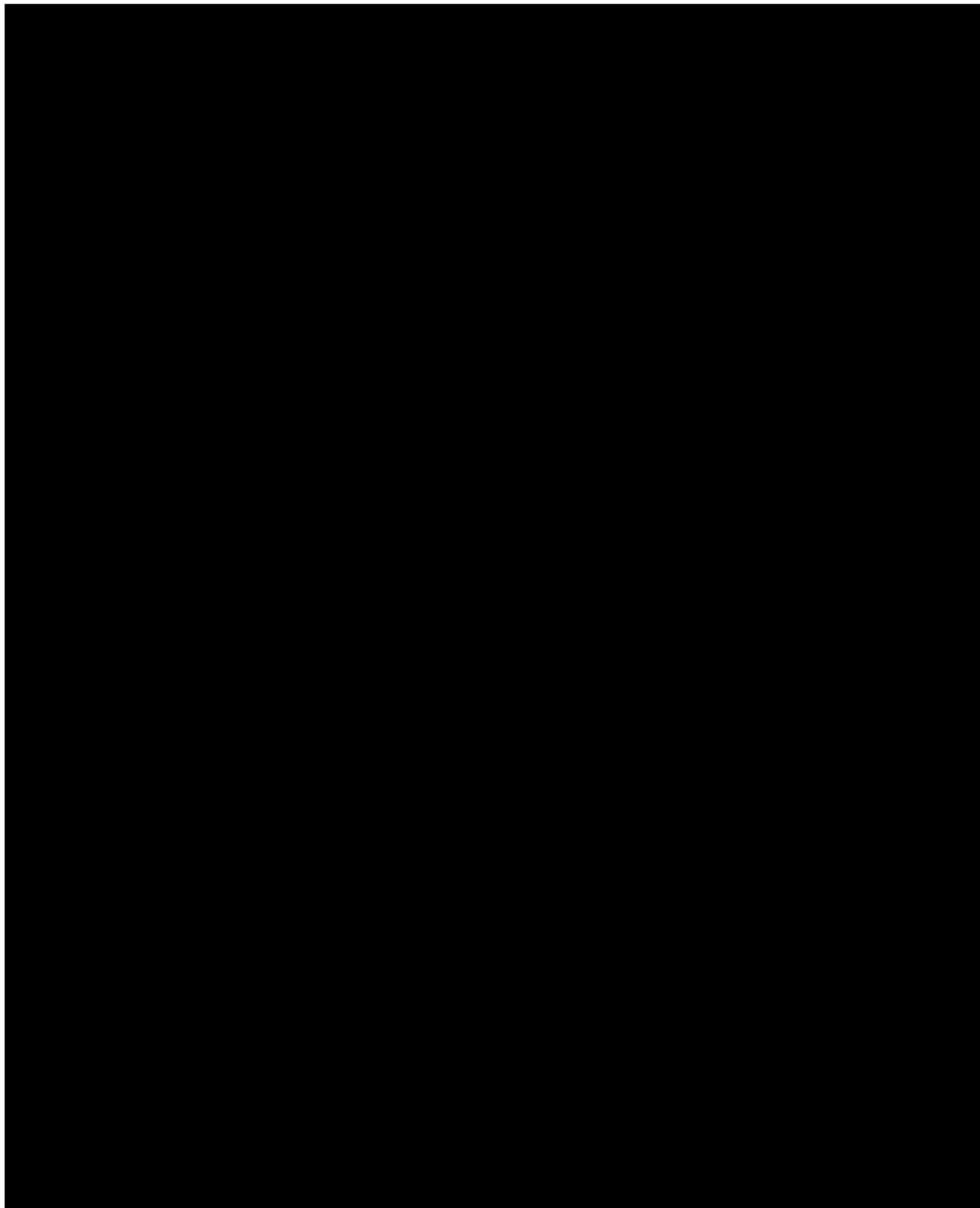
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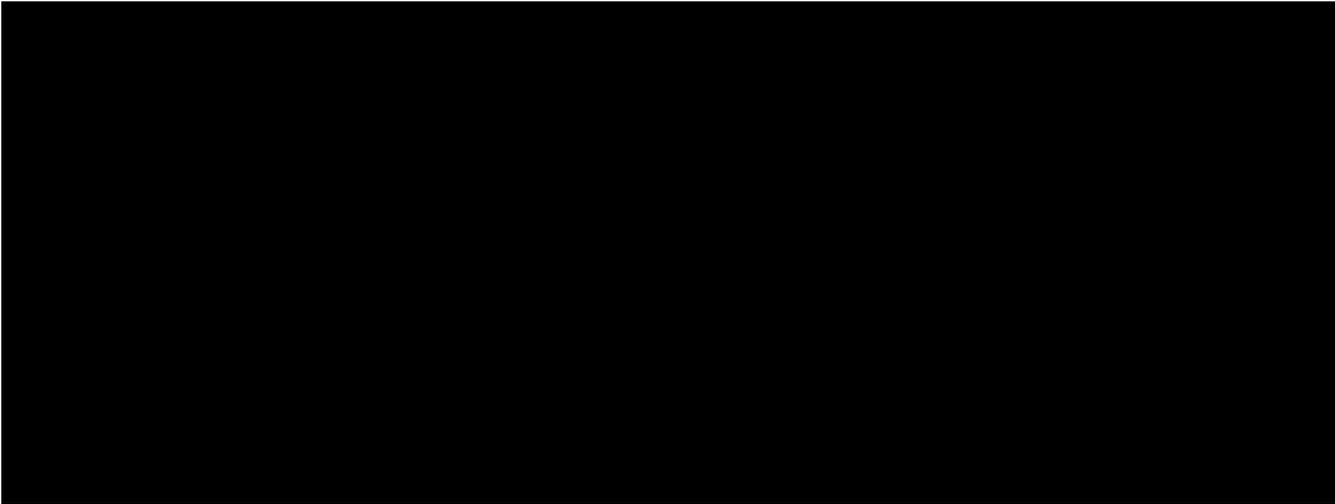


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II. Findings of Fact

It is clear these complaints are submitted now, two years after the alleged offending behavior occurred, because of the cultural shift nationally and at the local level empowering employees to complain about offensive gender-based behavior in the workplace. The Complainants are not defensive about this and acknowledge it. In addition, the political environment in which this investigation is being done must be recognized. Certainly individuals who work at the state Capitol are driven by and colored by politics. It is hard for anyone not to be affected by politics in 2018. Yet here, I did not detect in any witness a political motive for supporting these complaints. Indeed most witnesses were quite reluctant to be involved. Regardless, I limit my Findings to whether the complaints regarding Baumgardner's behavior are credible, and if so, whether his behavior was inappropriate or unacceptable workplace harassment as defined in the Workplace Harassment Policy.

Further, it is not normal to conclude a workplace investigation without interviewing the Accused. Baumgardner was given every opportunity to participate in the investigation and chose not to do so. I have tried not to make negative inferences from his refusal to participate. I understand an Accused may feel the need to have legal representation in an investigation of alleged workplace misconduct. However, in this context an attorney has a limited role. As I explained to the associate attorney with whom I spoke, this is not a deposition. Baumgardner's attorney would not be allowed to make objections or comments or interfere in any way in the interview. Thus, delaying the interview until his preferred attorney returns from a long absence out of the country when Baumgardner has access to another attorney from the same office is unnecessary and unreasonable.

Finally, I must address the overall concern witnesses communicated during this investigation. All of them report there is no adequate process in the legislature that provides protection to employees (including volunteers) from gender-based inappropriate behavior. Even when other legislators see or are even impacted by the behavior themselves, witnesses perceive nothing is done to stop it. Certainly, the issue is complicated by the fact that an elected official is

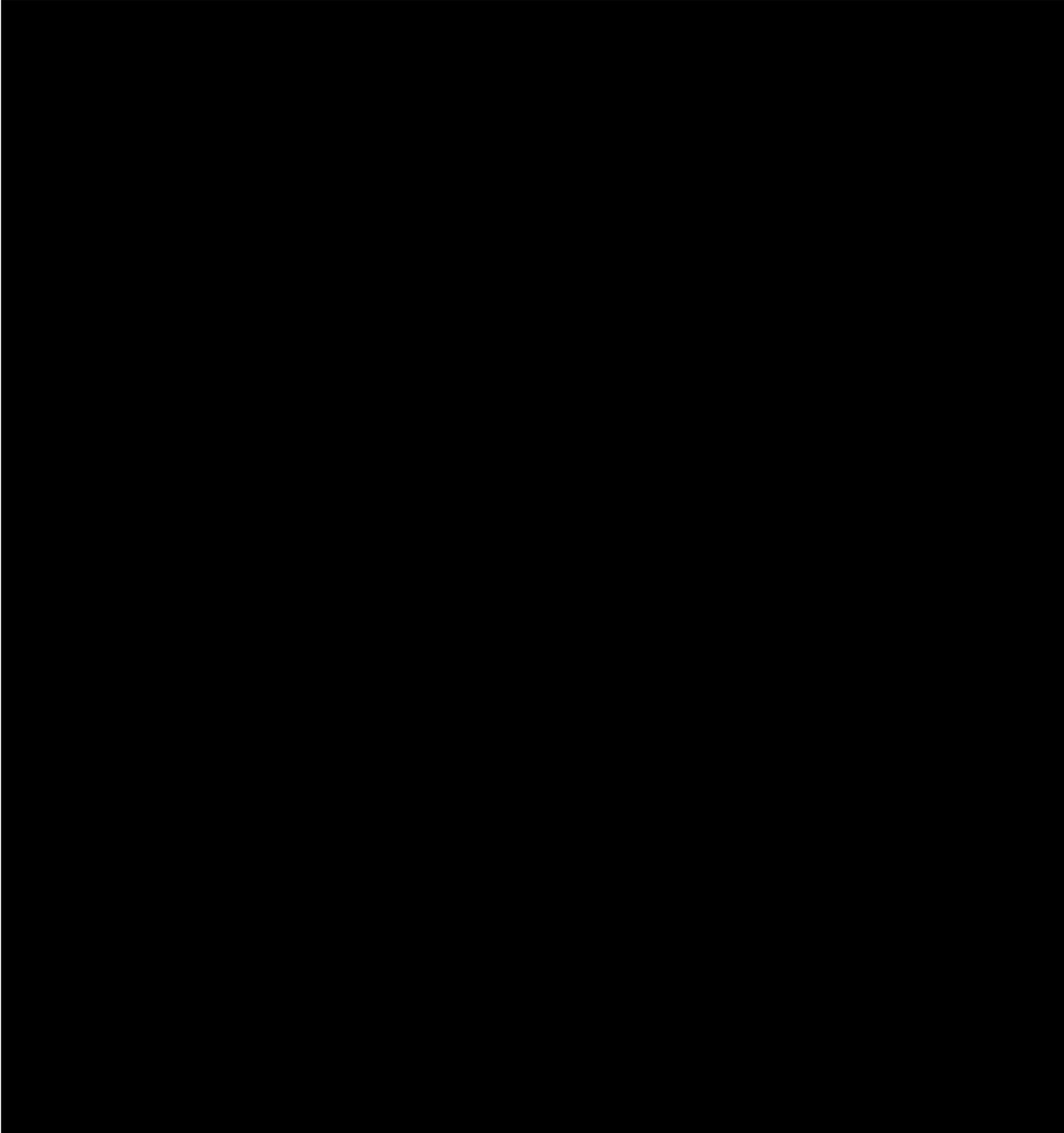
not an employee, and is not subject to supervision in the typical sense of private industry. As we have seen, the Senator is not even compelled to participate in the investigation. Witnesses express genuine concern of retaliation and feel as the “lowest on the totem pole”, their options for making complaints are limited. They worry nothing will change even if the complaints are found to be credible because imposing disciplinary action against an elected official is so very difficult. Changes to the policy should be considered to strengthen the integrity of the investigation process and the resulting remedies.

My Findings as to the two Complaints are as follows:

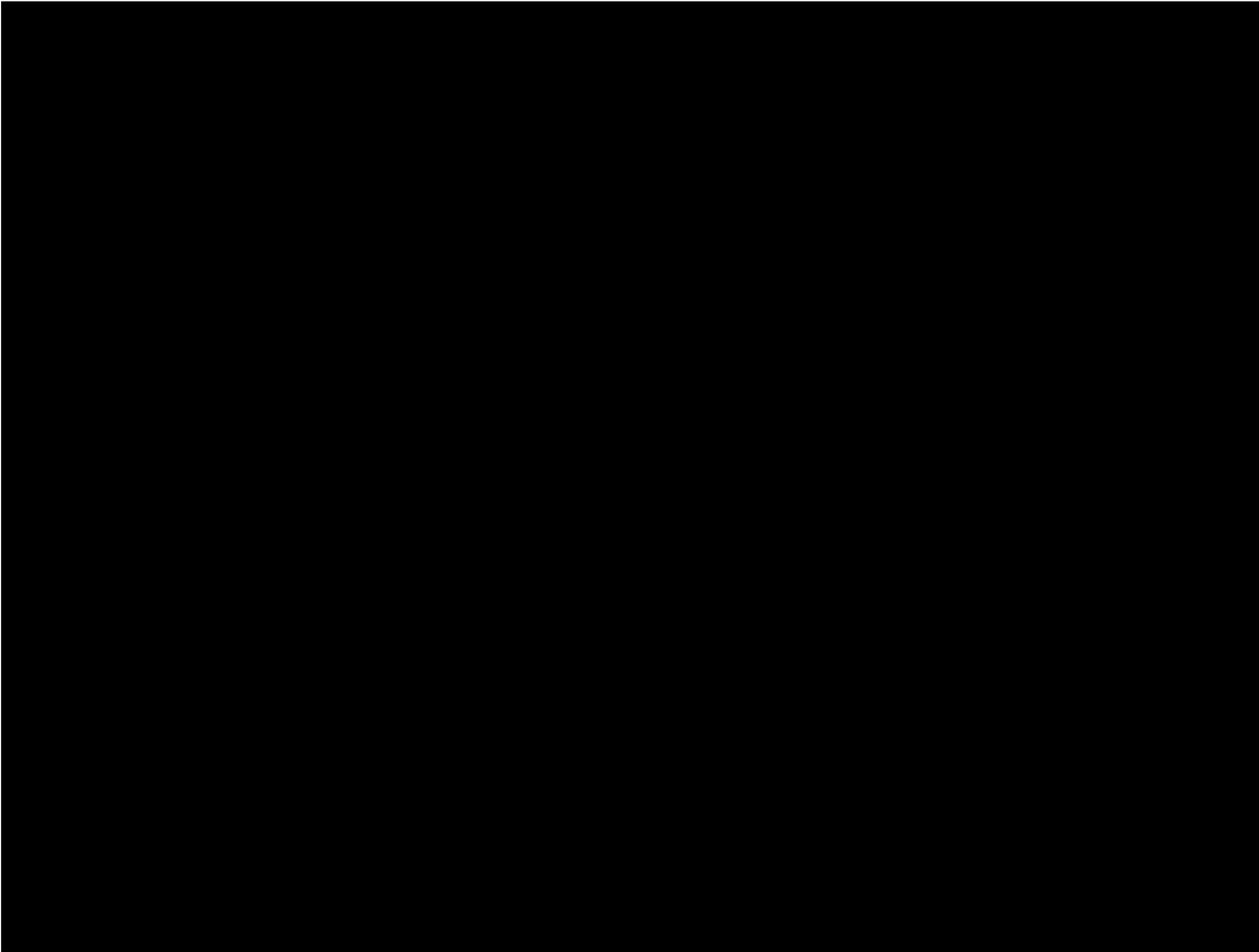
1. I find the allegations in both Complaints to be credible.
2. Regarding the Creeden Complaint, I find the complaints were not exaggerated or fabricated. Neither Creeden nor ██████ used inflammatory words or exaggerated Baumgardner’s behavior. Creeden readily denied Baumgardner touched her inappropriately and did not embellish her allegations. ██████ considers Baumgardner an awkward flirt.
3. Creeden describes Baumgardner’s behavior as creepy, offensive, and generally uncomfortable. Other witnesses used the word “creepy” to describe Baumgardner’s behavior. I find his crude “naughty dream” comment and his invitation to this young unpaid intern to be inappropriate. At the very least, once she declined his invitation to come to his office, he should have let it go. His persistence reflects his use of power to attempt to persuade her. Creeden believes Baumgardner uses his status and power as a Colorado Senator against vulnerable women to create an intimidating and hostile work environment. I find it credible that is the case.
4. The fact that Baumgardner made his comments in a public place does not diminish the inappropriate nature of his conduct. In fact, both Creeden and ██████ found it extremely strange and uncomfortable Baumgardner would make his comments in public space. I find it particularly inappropriate and distasteful that Baumgardner, an elected official, would use his public status and access to young women to make them uncomfortable and uneasy, by in this case making a sexual “naughty dream” innuendo to a woman half his age whom he had met once. With respect to the drink invitation, problems could certainly have escalated if Creeden had accepted the invite. While I have been told “let’s grab a drink” invitations are often made in this work environment, I find that for Baumgardner to invite this young woman to his office for a drink is inappropriate, particularly in light of the fact that he continued to push her even when she declined.
5. Baumgardner likely had no present ability to impact Creeden’s current status as a volunteer at the time, but he had actual or perceived power to affect or to influence her ability to continue to work at the Capitol. I find it likely she considered this in her efforts to avoid further contact with him.
6. Notwithstanding my findings that Baumgardner’s behavior towards Creeden was inappropriate and offensive, based on my experience and in reviewing the definition of

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“Workplace harassment” in the Policy, his behavior is limited to two incidents which could be considered isolated events, not establishing a pervasive offensive work environment for her. I find Baumgardner did not substantially interfere with Creeden’s work environment.



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Thank you for the opportunity to work with you on this matter. If there are any questions about this report, feel free to contact me.

Very Truly Yours,

Littleton Alternative Dispute Resolution


Kathryn E. Miller, Esq.