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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

DYLAN BRANDT, et al.,
Plaintiffs,

v.

No. 4:21CV00450 JM
October 21, 2022
Little Rock, Arkansas
9:01 AM

LESLIE RUTLEDGE, et al.,
Defendants

TRANSCRIPT OF BENCH TRIAL - VOLUME 4
BEFORE THE HONORABLE JAMES M. MOODY, JR.,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Plaintiffs:

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MS. LESLIE COOPER, Attorney at Law
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1 APPEARANCES CONTINUED:

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3 MS. LAUREN M. GOLDSMITH, Attorney at Law
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1 (Proceedings commencing in open court at 9:01 AM)

2 THE COURT: Good morning. We're back on the
3 record. Is the -- I guess the order of proof now is the
4 defendants are going to put on some witnesses. Is that
5 correct?

6 MR. JACOBS: Yes, Your Honor.

7 THE COURT: I guess before we get started. Y

1

THE COURT: In the way of exhibits or witnesses.

2

MR. STRANGIO: In the wa

1 I spoke with counsel who was providing the documents,
2 and they said they would try to get that further level of
3 CCs, blind CCs, attachments, or whatever. And that is --
4 I guess what I'm saying is, I was 95 percent there when I
5 made my initial ruling and was curious about this last
6 five percent. So I will still get you that ruling, but
7 I'm not sure what it's going to yield.

8 MR. STRANGIO: U

1 stretch from morning into the afternoon and so --

2 THE COURT: Half day is plenty. Do what you
3 want with the other three days.

4 MR. JACOBS: I didn't know if the Court was
5 interested in whether it could get a schedule for the
6 30th. I can represent that that's feasible. So I wanted
7 to give that information.

8 THE COURT: We'll probably use that half day on
9 the 30th, but I won't book an

1 don' t have a preference.

2 MR. JACOBS: 0

- 1 in gender transition for girls. Different clinical
- 2 indications, d

1 It hasn't been done with regard to individuals with
2 developmental disabilities. It hasn't been done with
3 regard to homosexuals. And we don't think that the Court
4 should do it with this classification either.

5 As far as historical discrimination as a class, which
6 is an element of what the Supreme Court has said is
7 required to recogni

1 transition back into the first one or into a different
2 one. A

1 So we don't think that the Court ought to recognize
2 this entirely novel substantive due process right in it's
3 final ruling. Again, that's an area where the Court is
4 not bound by either its prior ruling or the panel ruling
5 because the panel ruling didn't address that issue.

6 The last issue, t

- 1 there's no need to refer until and unless the SAFE Act --
- 2 I mean, I guess there's a potential that

1 So I think there are maybe sort of three levels to
2 the standing issue. I think Your Honor was on one of
3 them. So I think the first one is whether referrals are
4 happening today that would or would not happen with the
5 SAFE Act in place. I think the point that I was making is
6 that -- so I think the testimony was that nobod

1 sort of the lack of testimony about the injury.

2 And then I think the third step of that, which is
3 what Your Honor was getting to, of whether, if the Act
4 went into effect, would the current patients have to be
5 referred out and then perhaps there would be an injury on
6 the physician then. I'm not sure that there was actually
7 testimony to that effect. So I think --I don't know that
8 t

1 THE COURT: Even in that case, they can talk to
2 the client. They just can't do it without their attorney
3 present.

4 MR. JACOBS: But assuming the attorney isn't
5 present, then you have that --

6 THE COURT: Right. B

1 conduct because, when in the course of a representation an
2 attorney is communicating with opposing party, it's --
3 they're doing something as a lawyer. And that's really
4 what we're regulating.

5 The comparison that I'm trying to draw is that it's
6 really the same when you're talking about practicing
7 medicine, that all sorts of medical regulations as to what
8 a provider can or can't do. If you squint, they might be
9 speech regulation because a lot of practicing medicine
10 might be, for example, sitting in the room with a patient
11 and talking to them.

12 THE COURT: What time, place, or manner would
13 this referral be allowed under this particular act?

14 MR. JACOBS: I don't think -- so --

15 THE COURT: W

1 But I think my point with the law

1 THE COURT: Verbal advice to a patient to go
2 elsewhere is a referral or not?

3 MR. JACOBS: I think that -- I think if a doctor
4 is counseling a patient and --

5 THE COURT: I'm talking about a different
6 situation. I'm talking about, he's talking to patient's
7 uncle, and patient's uncle tells the patient, here's what
8 I would do if I were you. Is that barred by the Act under
9 your understanding because it's not a referral, it's not
10 me signing something like the torturous process I went
11 through last week on getting an MRI because I didn't go to
12 my primary care physician to make a referral to get this
13 done.

14 So I'm trying to mesh what you

1 referred by Dyl a

1 someone at the grocery s

1 Strangio.

2 Plaintiffs oppose defendants motion for judgment as a
3 matter of law. I want to first address that various
4 reasons why heightened or strict scrutiny are triggered,
5 which would then place the burden on the defendants in
6 this case.

7 So as we've briefed extensivel

1 from the way in which the Eighth Circuit interpreted it.

2 THE COURT: I guess my point is, for this point
3 in the proceeding, I'm bound to accept your argument.

4 MR. STRANGIO: Fair enough.

5 THE COURT: So I'm not sure you need to make it.
6 I guess.

1 As we've shown in our briefing, we believe that it is.

2 The one point I want to respond to from the
3 defendants' presentation is the question about the
4 immutability. And under the Supreme Court's doctrine in
5 this area, imm

1 There was actually quite specific testimony from
2 Dr. Stambough yesterday that, in light of the current
3 restrictions on the clinic's ability to prescribe
4 treatment to new patients, that they have been having
5 verbal conversations with patients, which constitute
6 speech and are, therefore, a

- 1 treatment for gender dysphoria. That is a content and a
- 2 viewpoint-based restriction on speech t

1 on a single class of people without a legitimate basis.
2 And the Supreme Court had repeatedly made clear that that
3 that is impermissible.

4 The harms of this law have been shown to be severe.
5 This Court has heard testimony all week of how this
6 treatment has greatly improved the lives of the individual
7 plaintiffs here in Arkansas and that this is typical of
8 this care. As their parents testified for Dylan, f

1 two witnesses at least will involve confidential
2 testimony.

3 THE COURT: Is there any portion of that
4 testimony that we can get out of the way before we dismiss
5 the remainder of the crowd, or not? I don't have a
6 preference. I'm just saying, t

1 statement. Aviv Halpern on behalf of the plaintiffs.

2 THE COURT: Come forward to the mic.

3 MR. HALPERN: This witness in particular is also
4 especially sensitive so we'd ask, to the extent possible,
5 to actually further restrict the courtroom as much as
6 possible to just people who are directly -- that on both
7 sides are -- have directly been involved with these
8 records. They're therapist records for a particular
9 plaintiff. So we're going to clear our side in terms of
10 everyone except for that minor plaintiff. B

1 MR. CANTRELL: I was hoping to avoid doing that,
2 Your Honor, because --

3 THE COURT: I'm not going to hold you to it. I
4 just want an estimate because we have an hour until lunch
5 roughly.

6 MR. CANTRELL: Your Honor, I will -- so the
7 issue will be that the first part of Ms. Ho's testimony
8 would not -- would not be confidential testimony.

9 THE COURT: How long do you think that will
10 take, the nonconfidential portion of her testimony, on
11 direct?

12 Because here's -- here's the problem. We bring them
13 in and then you're going to have to allow cross in the
14 middle of your examination of this witness on
15 nonconfidential issues unless she goes last. So I've got
16 to bring them in, let them hear your direct, let them hear
17 their cross, and then take them back out and you finish
18 your direct under the sealed portion. That's awkward.

19 MR. CANTRELL: Yes, Your Honor. I will say I
20 believe that we can get through -- I don't know how long
21 counsel's cross would be, but I believe we could get
22 through the nonconfidential portion before lunch.

23 THE COURT: You don't have a problem with them
24 crossing the nonconfidential portion in the middle of your
25 direct, b

1 MR. CANTRELL: However Your Honor believes would
2 be the appropriate way to proceed.

3 THE COURT: I'm asking you how

1 unseal .

2 MR. CANTRELL: Yes, Your Honor.

3 THE COURT: Let's bring -- is it Dr. Ho?

4 Mrs. Ho?

5 MR. CANT

H0 - DIRECT

1 MR. CANTRELL: Good morning.

2 THE COURT: You swear to tell the truth?

3 THE WITNESS: I swear to tell the truth.

4 STEPHANIE HO, DEFENDANTS' W

1 Q. You've not obtained specialized training in
2 psychology.

3 A. I'm not a psychologist.

4 Q. You've not obtained specialized training in
5 endocrinology, correct?

6 A. I'm not an endocrinologist.

7 Q. You provide cross-sex hormones to patients with
8 gender dysphoria, correct?

9 A. That's correct.

10 Q. By the term gender dysphoria, you mean a discomfort a
11 person has with a certain feature of their body. Is that
12 right?

13 A. That's right.

14 Q. And you do not make use of the Diagnostic and
15 Statistical Manual in your practice, correct?

16 A. The DSM c

H0 - DIRECT

1 Q. So Dr. Ho, you testified in a deposition in this
2 case. Is that right?

3 A. Yes, sir.

4 Q. And you were under oath during that deposition?

5 A. Yes, sir.

6 Q. And you swore to tell the truth in that deposition,
7 correct?

8 A. That's correct.

9 Q. And did you tell the truth during your deposition?

10 A. I did, but I may have misspoke.

11 Q. And y

H0 - DIRECT

- 1 Q. I read that correctly?
- 2 A. Correct.
- 3 Q. Dr. Ho, by gender nonconformity, y

1 Arkansas Children's Hospital Gender Spectrum Clinic,
2 correct?

3 A. I don't know what guidelines they have.

4 Q. Are you familiar with the Arkansas Children's
5 Hospital Gender Spectrum Clinic?

6 A. I'm aware of it, yes.

7 Q. What is your understanding of the difference between
8 your informed consent-based treatment and what the Gender
9 Spectrum Clinic does?

10 A. So it's my understanding that the Gender Spectrum
11 Clinic requires a psychological evaluation prior to
12 initiation of hormone therapy. My clinic is informed
13 consent-based, which means that the patient and the parent
14 are provided all information that is appropriate and
15 important for them to make an informed decision.

16 Q. So you don't typically require patients seeking
17 cross-sex hormones to meet with a psychologist before
18 getting a prescription, correct?

19 A. I don't technically make them meet with a mental
20 health provider, correct.

21 Q. And there's no standard period of time that a patient
22 has to wait to receive cross-sex hormones, correct?

23 A. Correct.

24 Q. You're aware that even experts in trans care provide
25 different answers to q

H0 - DIRECT

1 trans care.

2 A. I don't know what other providers would say. I can't
3 speak to that.

4 Q. Are you aware that -- that different clinics have
5 different protocols for providing cross-sex hormones?

6 A. I understand that that is the -- y

1 testimony about her practices.

2 THE COURT: I think he's asking does she think
3 care providers can disagree is how I heard the question.
4 But I'm not sure that takes an expert to answer that
5 question.

6 But what was your question, Mr. Cantrell, so I don't
7 misstate or mischaracterizes your question?

8 R. CANTRELL: So the question goes to the fact
9 that Dr. Ho --

10 THE COURT: I just want you to restate your
11 question so I can know what to deal with.

12 MR. CANTRELL: Yes, Your Honor.

13 BY MR. CANTRELL:

14 Q. The question was, you're aware that those guidelines
15 state that even experts in trans care provide different
16 answers to questions about best practices.

17 THE COURT: If she can answer that question, I'm
18 going to allow it.

19 THE WITNESS: I'm aware that different practices
20 provide individualized care based on their assessments of
21 their patients.

22 BY MR. CANTRELL:

23 Q. Are you aware that the TransLine guidelines -- let me
24 back up.

25 You've testified that the TransLine g

H0 - DIRECT

1 reliable, correct?

2 A. The TransLine guidelines are the guidelines I use

3 because I find them evidence b

H0 - DIRECT

1 clarification, my objection on vagueness was to the
2 language "hard evidence."

3 THE COURT: Was to?

4 MS. COOPER: "H

1 Q. Although I will a

1 and satisfaction as opposed to objective lab results,
2 correct?

3 A. Correct.

4 Q. Cross-sex hormones are sometimes referred to as
5 hormone replacement therapy.

6 A. That's correct.

7 Q. But hormone replacement therapy was traditionally
8 something used to treat post-menopausal women, correct?

9 A. Correct.

10 Q. When used in adolescents with gender dysphoria, a
11 cross-sex hormone is not replacing any hormone, correct?

12 A. That's correct.

13 Q. You agree that cross-sex hormones could cause your
14 patients long-term effects that are unknown at the present
15 time.

16 A. I agree.

17 Q. And you tell your patients that cross-sex hormones
18 c

H0 - DIRECT

- 1 gender dysphoria since February of this year?
- 2 A. Yes.
- 3 Q. Have you -- have you received any referrals from an

HO - CROSS

1 many -- how many patients under age 18 do you currently
2 treat with cross-sex hormones?

3 A. Maybe between 30 to 40.

4 MR. CANTRELL: Pass the witness.

5 THE COURT: Mr. Cantrell, unless you need that
6 at your desk, you can leave that up there until we're
7 done, unless you need it to take notes.

8 MR. CANTRELL: I will -- I will take some of
9 them.

10 THE COURT: Okay.

11 CROSS-EXAMINATION

12 BY MS. COOPER:

13 Q. Good morning, Dr. Ho. I'm Leslie Cooper for the
14 plaintiffs.

15 THE COURT: Ms. Cooper, hang on a second. Let
16 him get a seat and then we'll continue.

17 MS. COOPER: Sure.

18 THE COURT: Go ahead.

19 MS. COOPER: Thank you.

20 BY MS. COOPER:

21 Q. Dr. Ho, just want to clarify something you were just
22 asked. You were asked how many patients who were under 18
23 have you treated with hormone therapy. And I believe you
24 said you estimated around 20. Is that correct?

25 Well, I

1 because then you asked, how man

H0 - CROSS

1 A. Correct.

2 Q. You testified that you would provide gender-affirming
3 hormone therapy to patients with gender dysphoria. You
4 also used the term, g

1 Q. Is that done by using screening tools for depression
2 and anxiety?

3 A. That's correct.

4 Q. Does that include talking to the patient?

5 A. Absolutely.

6 Q. Does that include talking to their parent?

7 A. Yes.

8 Q. And is it correct that you inform minor parents and
9 their patients [sic] of the potential risks of treatment
10 before initiating hormone therapy?

11 A. Correct.

12 Q. And that includes, I believe you testified, telling
13 them about potential risks of infertility?

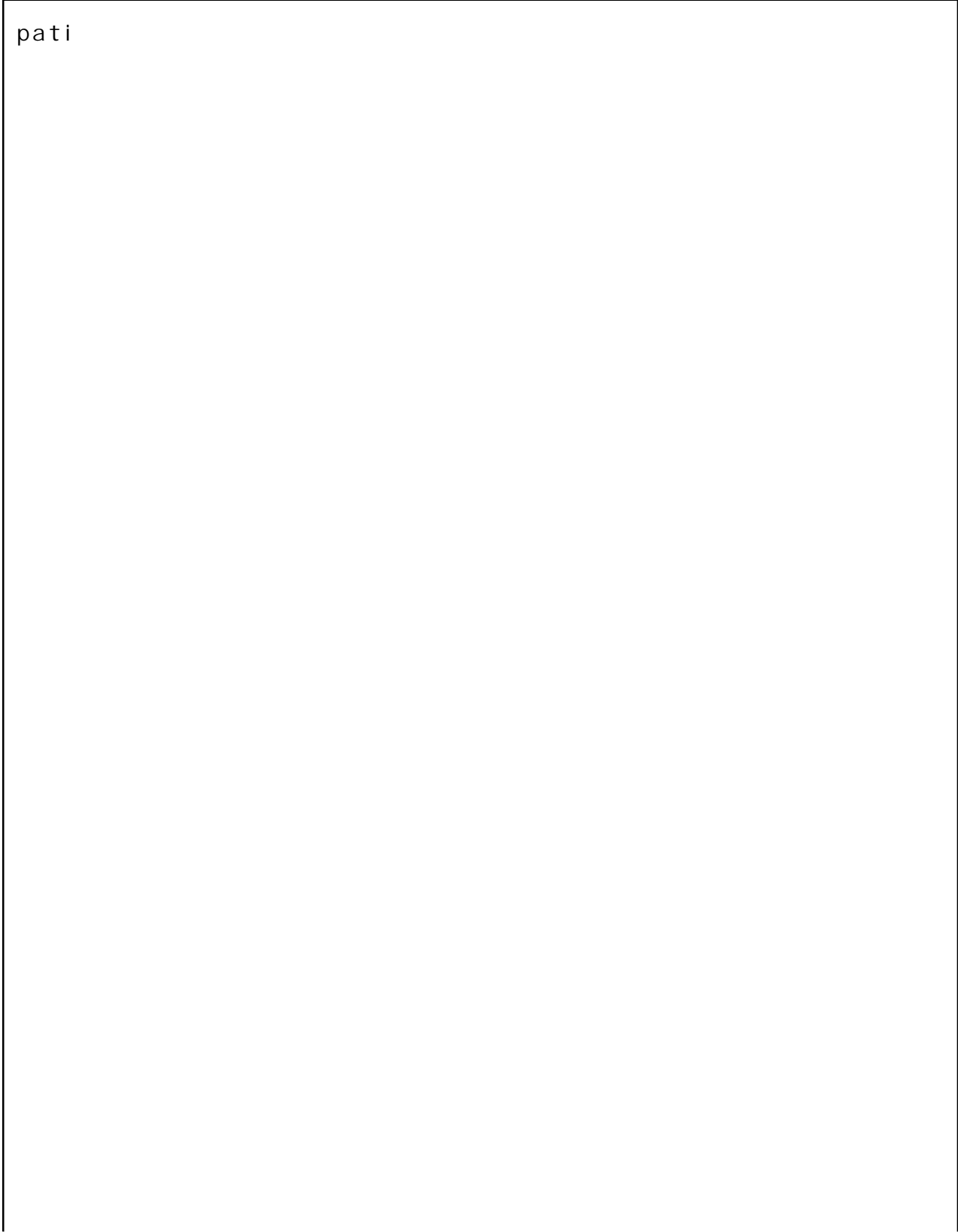
14 A. Correct.

15 Q. Is that all part of the informed consent process to
16 make them aware of the potential risks and benefits of
17 care?

18 A. Correct.

19 Q. You p

1 pati



1

p

1 THE COURT: You can move to the closed portion
2 then.

3 [Sealed proceedings under separate cover.]

4 THE COURT: You're off your subpoena. Free to
5 go.

6 THE WITNESS: Thank you. What do I do with --

7 THE COURT: Just leave it there. Thank you,
8 Dr. Ho.

9 Have a good day, B

1 MS. TEMPLIN: Nothing like those, Your Honor. I
2 may end up referring as -- to use as impeachment material
3 some exhibit --

4 THE COURT: My p

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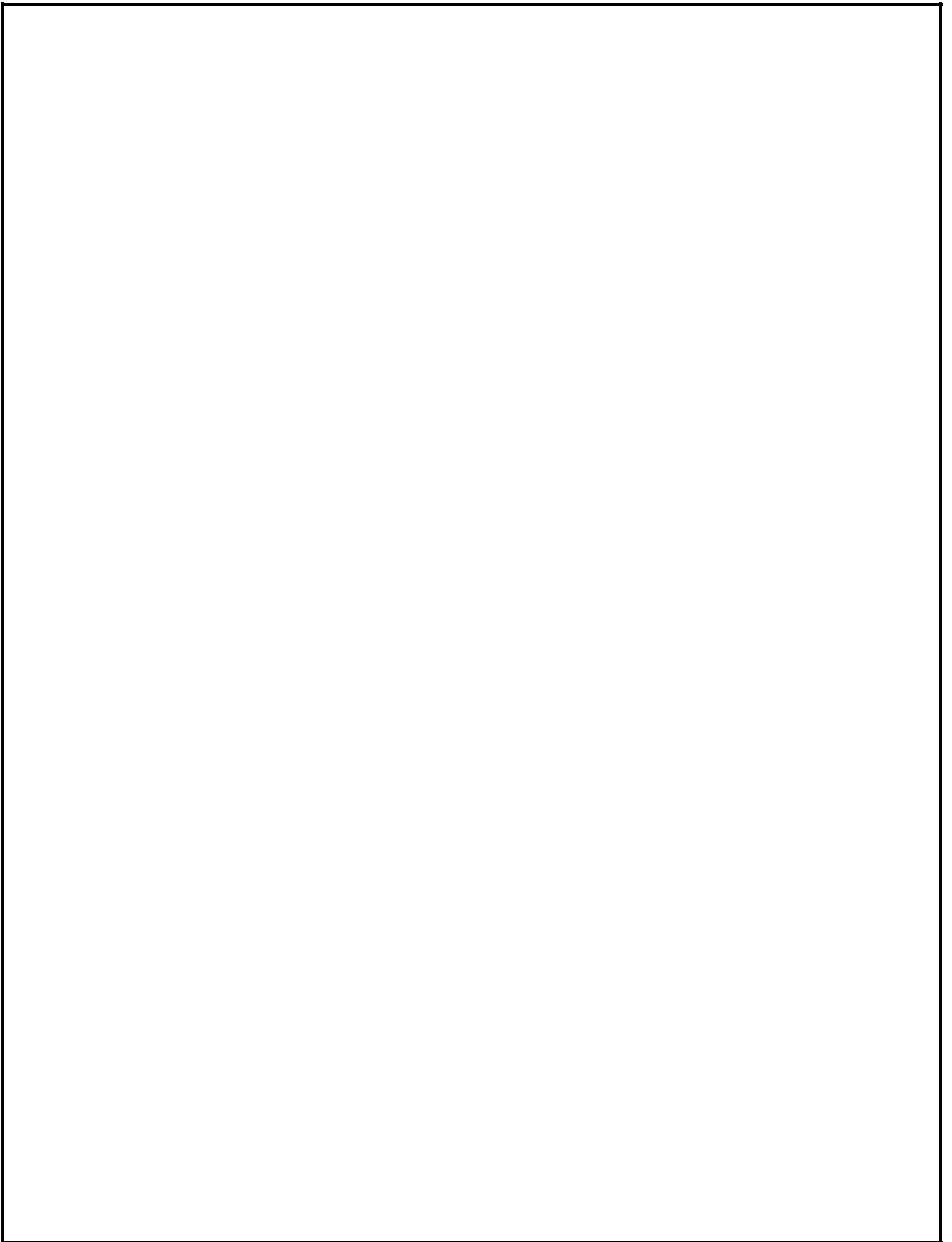
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