

OBSERVING THE  
1999 CHEROKEE NATION ELECTIONS

FINAL REPORT



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OBSERVING THE 1999 CHEROKEE NATION ELECTIONS

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## CHEROKEE NATION ELECTION DELEGATIONS

**May 22, 1999 Primary Elections**

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**July 24, 1999 Run-Off Elections**

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**John T. Juricek**, Associate Professor of History, Emory University

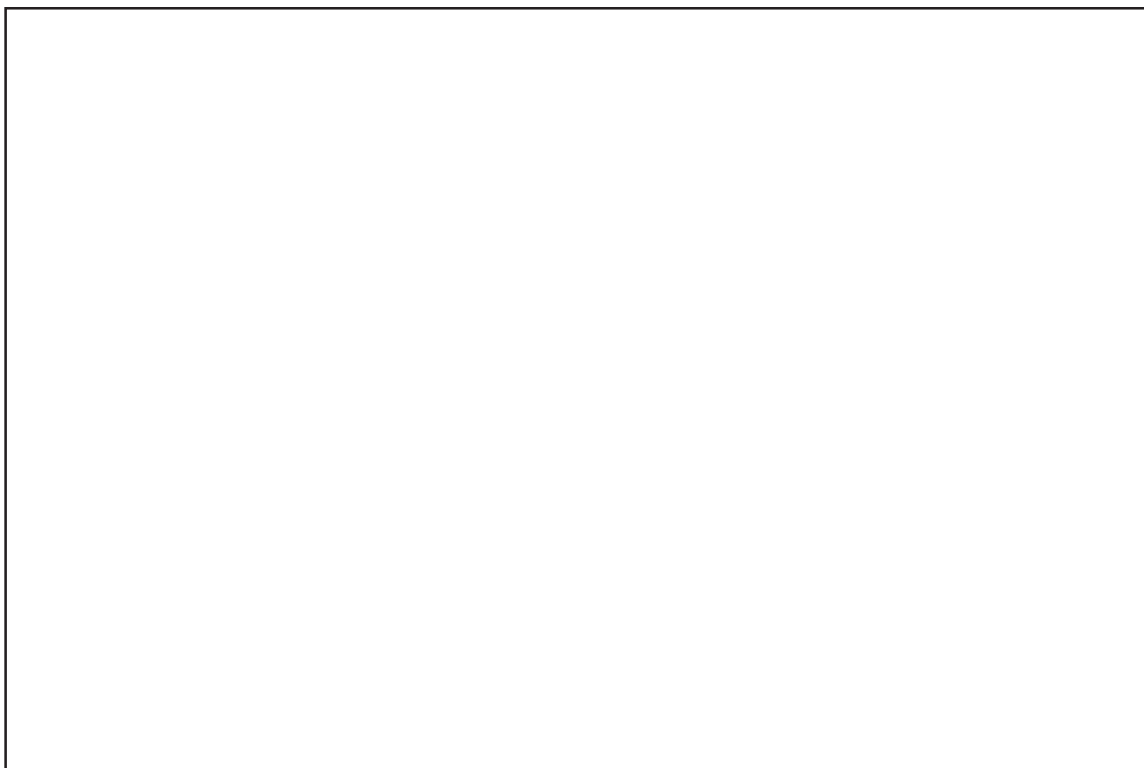
**Curtis Kohlhaas**, Events Department, The Carter Center

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**Mike O'Callaghan**, Executive Editor and Chairman of the Board of the *Las Vegas SUN* newspaper

**Ambassador Gordon Streeb**, Associate Executive Director of Peace Programs, The Carter Center

OBSERVING THE 1999 CHEROKEE NATION ELECTIONS



STEPHEN JONES

*Shown here is the Cherokee Nation observation team: (back row from left) Desiree Weicher, Debbie Palmer, Sara Tindall, Ginny Wilson, Bud Fletcher, Paul Center, Shelley McConnell, Ann Carney, and Tom Mishou; (front row from left) Michael Bird, Gordon Streeb, John Adair, Joe Thornton, Karin Ryan, and Margaret Riney.*

## KEY ELECTION TERMS AND ABBREVIATIONS

AERO	Automated Electronic Returns Option.
CDIB Card	Certificate of Degree of Indian Blood.
CNEC	Cherokee Nation Election Commission.
Challenged Ballot	If the voter's name is not in the <i>Precinct Voters Signature Book</i> , or if a precinct official challenges the voter's right to vote for other reasons, the voter is allowed to vote only if the voter: <ul style="list-style-type: none"> <li>3 Completes a voter registration application for residence address within the district.</li> <li>3 Signs an affidavit swearing that the voter is currently registered and eligible to vote in said precinct.</li> <li>3 Has not already cast a regular or absentee ballot.</li> </ul>
Electoral Precinct	Describes both a subdivision of an electoral district and the physical site where polling will occur.
Mutilated Ballot	A ballot that has been damaged or marked in a manner that does not permit the ballot tabulator to read it, and the voter is not present to mark another ballot. The inspector and clerk are authorized to mark a substitute ballot in identical fashion. If the ballot is mutilated to such an extent that the two precinct officials cannot agree upon how it was marked, they shall invalidate the ballot.
Optech Ballot Tabulator	Tabulator that optically scans votes cast on paper ballots and then tabulates the results electronically.
Optech System	System based upon optical scanning technology that combines the ease of use and voter familiarity of paper ballot elections with the latest in electronic technology for rapid vote total accumulations and results reporting.

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## Precinct Board

Up to 10 people who serve each precinct. The board includes an inspector who is the administrative officer of the precinct board, a judge, clerk, and sergeant-at-arms. The electoral commissioner in charge of the precinct selects these officials and the CNEC ratifies them. The precinct board also may include any other position that the CNEC deems necessary.

## Spoiled Ballot

A ballot that a voter improperly marks or defaces. The spoiled ballot is placed in a separate envelope labeled "spoiled ballot." After the voter signs the spoiled ballot affidavit, the clerk issues the voter another ballot.

## Watchers

Observers of the ballot box and all printouts from the counting device before precincts open, during voting, and after precincts close. Legislative Act 7-97 Section 53 of the Cherokee Nation Constitution details the watchers' role. The inspector receives the watchers' names and no substitution of watchers is allowed. Watchers may talk to other watchers at the same precinct but may not visit voters, precinct officials, candidates, or others present in the precinct.

## PREFACE AND ACKNOWLEDGMENTS

The Carter Center undertook its first comprehensive election observation mission in the United States in May 1999, when monitors observed voting within the Cherokee Nation of Oklahoma for the positions of principal chief, deputy chief, and all 15 Tribal Council seats. The Cherokee Nation is an independent sovereign within the United States and consequently has its own elections, and election rules and commission. Carter Center monitors returned to Oklahoma to witness a run-off election on July 24.

Joe Byrd, former chief, was elected in 1995 after the Tribal Judicial Appeals Tribunal disqualified his rival. A request for a run-off by the third-place candidate had been denied. For much of the period that followed, Cherokee politics was reduced to factional conflicts between groups, amid an atmosphere riven with charges of corruption, scandal, and mistrust. Many saw the 1999 election as a chance to overcome the impasse, improve confidence in tribal government, and restore its legitimacy.

The Center's activities in the Cherokee Nation are based on our long-standing experience in supporting democratic processes throughout the world. Over the past decade, we have observed elections in some 20 countries, including well-established democracies such as Jamaica and Venezuela, and twice organized international delegations from Mexico and China to observe elections in the U.S.

Broad-ranged criteria explain the Center's justification for sending an election observer mission to monitor an electoral process. These include that all parties invite us, a belief that our presence can make a difference, the elections represent a critical transition for the country, or fundamental questions are being raised about the integrity of long-standing democratic processes.

More recently, The Carter Center has increasingly developed expertise in engaging backsliding political processes. For example, in Venezuela, a strong model of democracy in Latin America, the changed political dynamic raised anxiety among Venezuelans regarding the electoral process. This prompted them to ask international observers to ensure a clean election.

In Jamaica, we accepted the invitation of that country's election commission because Jamaica's long democratic tradition was in danger of electoral malpractice, escalating violence, and a "garrison mentality" where the community pre-determined votes rather than an individual's free choice.

To the same extent, although the Cherokee Nation endured a long legacy of democratic political processes, recent political developments presented uncertainties concerning the possibility of an open and honest election. With the tribe in tremendous political turmoil, the challenge for the election commission was to convince the Cherokee people that the election would be fair.

The Carter Center accepted the invitation of the Cherokee Nation Election Commission (NEC) in Oklahoma, all the major candidates, and key civic leaders within the nation to observe the elections. A high level of suspicion and lack of trust that the elections would be transparent marked the period leading up to the elections.

Although the Center entered the process late in the game, we believed that the presence of our nonpartisan offices would help bolster confidence in the electoral process. The election commission hoped that an observation delegation from The Carter Center could facilitate credible monitoring of the process, calm the atmosphere surrounding the elections, and encourage all sides to accept the results – if the process was fair and legitimate. Many tribes, including the Cherokee Nation, have



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a high proportion of eligible voters residing outside the tribal area. This unique characteristic posed a unparalleled challenge beyond our past experiences.

We are especially grateful to the Hunter-White Foundation, whose generous funding made this initiative possible. Personally, I wish to extend sincere gratitude to former Chief Joe Byrd, former Chief Wilma Mankiller, Chief Chad Smith, Margaret Riney, and all CNEC members for their warm welcome and acknowledge their effort to uphold democratic principles. Most of all, we would like to recognize the Cherokee people for their strength and determination to prevail during a challenging time. We greatly benefited from this experience and hope that we contributed to a process of reconciliation for the Cherokee Nation.

I would like to thank all the delegates who participated in our mission for their contributions, including Mike O'Callaghan, former governor of Nevada; Tom Mishou, director, Intergovernmental Affairs, Georgia's Secretary of State's office; Bud Fletcher, supervisor for Board of Elections, Bibb County, Georgia; Linda Beazley, director of Elections Division, Georgia; Michael Bird, a long-time Colorado legislator; John Juricek, professor, History Department, Emory University; Ann Carney, associate director for Public Information; Thomas Crick, senior program associate, Peace Programs; Laura Neuman, senior program associate, Latin American and Caribbean Program; Curtis Kehlhas, logistics coordinator; Kay Harner, director of Administrative Services; and Karin Ryan, assistant director for Human Rights in Conflict Resolution.

I also wish to acknowledge Shelley McConnell, associate director for the Latin America and Caribbean Program, who managed the project's initial phase which included the primary elections. Thanks also to Ozong Agboorsangaya, program coordinator, Democracy Program, who managed

the project's final phase which included the run-off elections and drafting the report. Also, Carter Center interns Erin Biehler, Amanda Bronson, and Debbie Palmer contributed greatly to the project. Pamela Smith edited and laid out the report to prepare it for publication.

We were pleased with the opportunity to observe an electoral process within this country. We hope the ensuing stage of democracy in the Cherokee Nation reflects the people's desire for change in their political and economic life and for enhancement of democratic principles. n



Ambassador Gordon Streeb  
Associate Executive Director for Peace Programs  
The Carter Center  
Atlanta, Ga.

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## EXECUTIVE SUMMARY

The Cherokee, America's second-largest tribe after the Navajo Nation, have a long history of electing tribal leaders through popular vote. For the past several years, the tribe suffered profound political turmoil that threatened to damage its own institutions. The 1999 elections were perceived as an opportunity to restore the legitimacy of tribal government and resume the process of nation building.

After extensive discussions with key leaders within the Cherokee Nation of Oklahoma, The Carter Center accepted the invitation of the Cherokee Nation Elec-

tion Commission (CNEC) to observe the 1999 elections for principal chief, deputy chief, and the 15-member Tribal Council. Many tribal members, including Wilma Mankiller

and major candidates such as Joe Byrd and Chad Smith, emphasized their strong desire for The Carter Center to be involved, citing the critical need for the Cherokee Nation to hold an election accepted as fair and credible.

The purpose of The Carter Center observer mission was to:

3 Assess the election process by analyzing registration and voting procedures, including the review of absentee ballots.

3 Bolster confidence in the electoral process by providing an independent assessment of the electoral process.

3 Demonstrate support for the Cherokee Nation's efforts to foster good governance.

3 Recommend how to improve future elections.

The May 22 primary election was for the tribal chief, deputy chief, and 15-member Tribal Council. Council members were elected from nine districts with one to three representatives from each, encompassing a total of 32 precincts/polling stations. For the chief and deputy chief races, a run-off was scheduled July 24 if none of the candidates received 50 percent of the vote May 22. Since there were nine candidates for chief, including incumbent Chief Byrd, a run-off was a real possibility.

After studying Cherokee electoral law and making logistical preparations, Gordon Streeb, associate executive director for Peace Programs, led a 10-person team deployed to all nine districts to assess the electoral

process in May 1999. This team's reports included its observations from all precincts, a review of Cherokee laws, rules, and procedures, and suggestions as Cherokees considered possible electoral reform. The team's assessment concluded that the Cherokee Nation election was well run and clearly met professional standards for an acceptable process.

The Center agreed to return to observe the July 24 run-off elections for principal chief, deputy chief, and two of the 15 seats of the Tribal Council. Similar to the preceding primary elections, an 11-person team concluded that the elections were well managed with a few technical problems that did not impact the outcome.

The most important issues of concern for The Carter Center were the confusing registration

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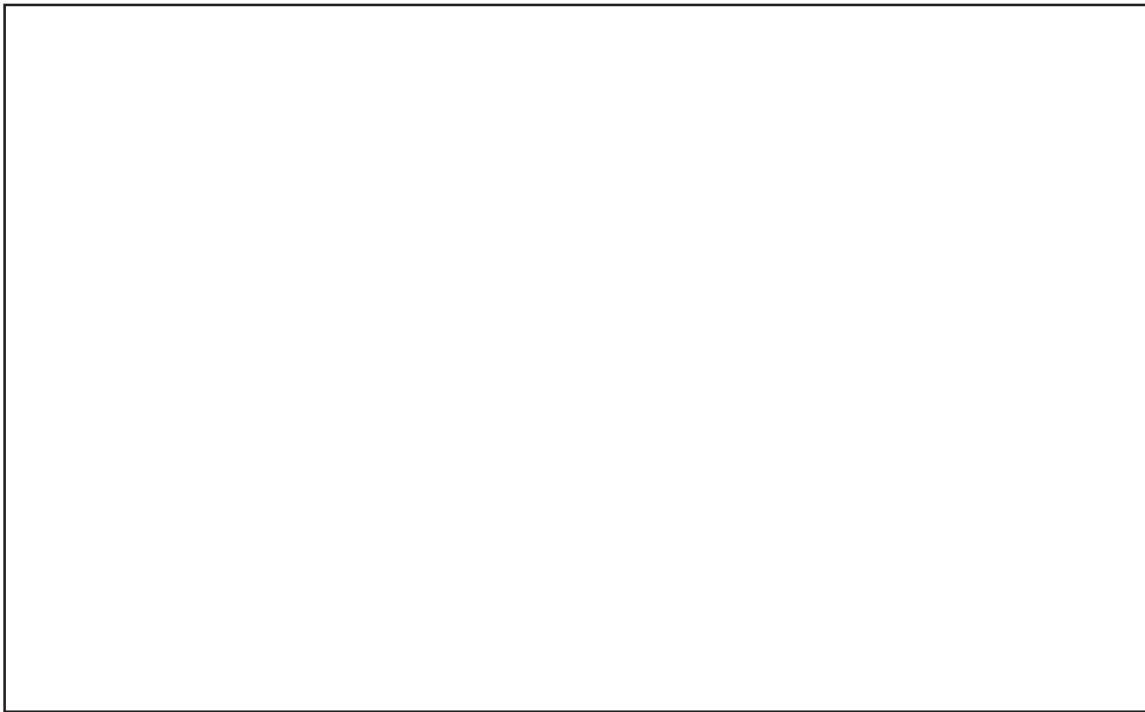
*The most important issues of concern for The Carter Center were the confusing registration process and low voter turnout, which if addressed, will go a long way toward increased confidence in the electoral system.*

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## OBSERVING THE 1999 CHEROKEE NATION ELECTIONS

process and low voter turnout, which if addressed, will go a long way toward increased confidence in the electoral system.

Most importantly, the Center determined the CNEC had inspired confidence in the process by the electorate and had upheld the integrity of a secret ballot. As a result, the recent elections gave Cherokees the opportunity to reaffirm their sovereignty and further their economic stability and prosperity. n



STEPHEN JONES

*The campaign posters shown here during the May 22 Cherokee Nation election are representative of the candidates' abilities to spread their messages in what ultimately became a very close race.*

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## HISTORICAL OVERVIEW

Cherokees migrated from Georgia and Tennessee to the Arkansas River in what is now northeastern Oklahoma in the late 18th century.

Most came involuntarily along the Trail of Tears in 1838-1839. The Cherokees were one of the "five civilized tribes" forced to relocate to "Indian territory." As in the east, the Cherokees were located north of the other southeastern people who had been "removed": the Creek, Choctaw, Chickasaw, and Seminole.

The Cherokees held their first major assembly at their new capital, Tahlequah, Okla., in September 1839. At this meeting, they reunited under their eastern leader, Chief John Ross, with western leader David Vann as deputy chief. The Cherokees also, among other things, adopted a new, written constitution patterned after the famous constitution of 1827.

Tahlequah would remain the Cherokee capital. Within a decade, it was a flourishing town of some 400 people, boasting major public buildings including a brick courthouse, schools, stores, shops, several hotels, and a bilingual newspaper, *The Cherokee Advocate*. Most Cherokees lived in the surrounding countryside, making new lives for themselves as farmers and ranchers.

In 1889, the Creeks and Seminoles sold part of their land in Indian territory to the United States, and Congress promptly authorized resettlement by U.S. citizens. This led to a series of land rushes by "Sooners," and the new Territory of Oklahoma was carved out of the Indian territory. In 1893, the Cherokee Nation sold an even larger slice of Indian territory, the "Cherokee Outlet," to the U.S. Six years later, the Cherokees reluctantly agreed to disband their tribal government, accept "allotment in severalty" (individual ownership of

land), and become U.S. citizens. In 1907, Oklahoma became a state. Later, when it became necessary for the federal government to negotiate with "detrribalized" Indians like the Cherokees, the president of the United States appointed a chief for them.

In 1934, Congress enacted the (Wheeler-Howard) Indian Reorganization Act. This law federally recognized tribal governments to establish and have additional advantages as corporations. Traditional Cherokees, especially the Keetowah society, favored reorganization under the act. More assimilated Cherokees, especially mixed bloods, were less enthusiastic. Cherokee chiefs continued to be appointed until 1971, when Chief William Keeler became the first elected chief since statehood.

In 1975, the Cherokee Nation finally chose to reorganize under federal law. The result was a new constitution providing for leadership by an elected chief, a deputy chief, 15-member legislature, and a chief-appointed judiciary.

The first chief elected under the constitution was Ross Swimmer. Wilma Mankiller, who became nationally known as the first woman chief, succeeded him, building a strong coalition of tribal members, adequately addressing the tribe's social questions, and effectively managing the tribe's assets. n

## FROM 1995 TO 1999: THE BYRD YEARS

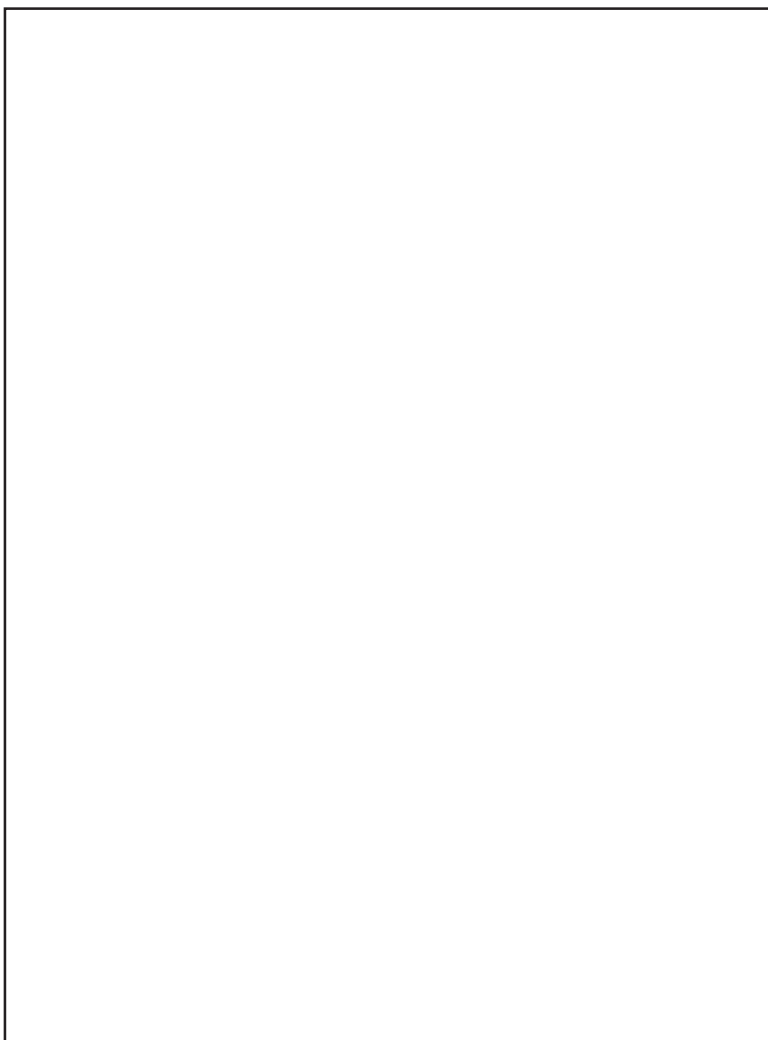
Chief Byrd was elected chief in a controversial election in 1995. Since then, the Cherokee Nation of Oklahoma has been embroiled in a deep constitutional crisis that threatened to damage its institutions.

Multiple lawsuits, federal investigations concerning financial misconduct, and political tensions between former Chief Byrd supporters and opponents eventually led to a chasm between the executive and judicial branches. The 15-member Tribal Council was inactive for several years because the anti-Byrd faction on the council refused to attend meetings to prevent a quorum.

The Cherokee Nation's problems attracted the attention of President Clinton, as well as Interior Secretary Bruce Babbitt and Attorney General Janet Reno, whose departments have varying degrees of oversight for Indian territory. Indeed, some tribal members took their concerns to Washington to meet with the administration and congressional leaders to seek resolutions. The 1999 elections provided a genuine opportunity to overcome the political turmoil, return the constitutionality of tribal government, and restore peace.

During a preceding, hard-fought tribal election in 1995, the Judicial Appeals Tribunal designated Byrd as chief after the Judicial Appeals Court disqualified his only rival for a prior felony conviction. Chief Byrd, a former high school counselor and political outsider, took the reins of a tribe whose finances had grown tremendously during the previous two decades.

His administration later gained a reputation in some circles for strong-arm tactics, and two federal departments accused the administration of misappropriating funds. Chief Byrd consistently claimed that these allegations were a conspiracy and vendetta by his political enemies, many of whom



*Gordon Streeb, associate director of Peace Programs at The Carter Center, addresses the media on election day, May 22, 1999, outside the Cherokee Nation Election Services office.*

STEPHEN JONES

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ultimately ran against him and accused his administration of tarnishing the tribe's name.

At the onset of Chief Byrd's tenure, the tribe controlled a consortium of manufacturing plants, bingo halls, convenience and tobacco stores, and restaurants with total revenues of about \$25 million a year, much of it in cash. In addition, Wilma Markiller successfully secured federal aid, enabling the Cherokee Nation to receive about \$125 million a year from the federal government for health programs, housing, job training, and other social concerns.

During those years, the federal government reduced its oversight by granting the Cherokees

"self-governance status," meaning those government agencies could write checks to the Cherokee Nation directly, rather than paying through intermediaries.

Manipulation of this extra independence led to the majority of troubles that engulfed Chief Byrd's administration. Investigations into the tribe's accounting systems by the Department of Interior and the Department of Labor were unable to confirm that a significant amount of funds was spent for the purpose intended.

Tribal Council members filed a lawsuit in Tribal Court because Chief Byrd's officials paid a large bill for lobbying efforts and legal fees. When the court issued a warrant to search the tribal headquarters in response to allegations that some relevant documents had been destroyed, Chief Byrd fired the tribal marshals, including Pat Pagsdale, who was to present the warrant.

When both the justices and the fire marshals defied Chief Byrd's order to leave the courthouse in Tahlequah, the chief's hand-picked guards made a pre-dawn raid to evict them. The chief's subsequent taping of phone conversations to substantiate an alleged conspiracy against him prompted another lawsuit; the tapes had been obtained without the subject's permission. Eventually, the justices were restored and the marshals, who later sued the tribe, were rehired once again.

The Byrd Administration sought to impeach the Judicial Appeals Tribunal, but it was unclear whether judicial impeachment powers existed in the Cherokee Constitution. An independent, fact-finding body, the Massad Commission, found Chief Byrd had unconstitutionally dismantled the judiciary.

Furthermore, the chief shut down the courthouse, arrested then-prosecutor Chad Smith, and established a District Court in the tribal complex. Courthouse files were confiscated and relocated to tribal headquarters in

SHELLEY MCCONNELL

*City Hall in South Coffeyville, Okla., was an election polling station for the Cherokee Nation elections.*

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southwest Tahlequah. The tribe's Supreme Court ruled that the headquarters' District Court was illegal and removed judges holding court there from the payroll. Chief Byrd continued to authorize court hearings and pay the suspended judges.

In protest, six Tribal Council members refused to attend tribal meetings and alleged that Chief Byrd's actions were unconstitutional. Tribal member Ed Crittenden filed a lawsuit against the six members, claiming that the boycotts threatened tribal programs and aimed to force their attendance. The judge ruled in Crittenden's favor and council members appealed. They charged that Chief Byrd had tried to destroy the tribal court system through proposed council legislation and get approval for unconstitutional spending of money.

Chief Byrd was never directly accused of seeking personal enrichment. However, several people within his administration were convicted or pled guilty to various felonies and misdemeanors. For instance, Joel Thompson, former Housing Authority director, was convicted on 21 counts of embezzlement.

These problems greatly distressed the Cherokee people, who became politically and socially fragmented as well as intensely mistrustful, invoking memories of the Trail of Tears. Many believed that a successful electoral process in 1999 would provide a framework for healing and restored peace. n

## THE PRE-ELECTION PERIOD

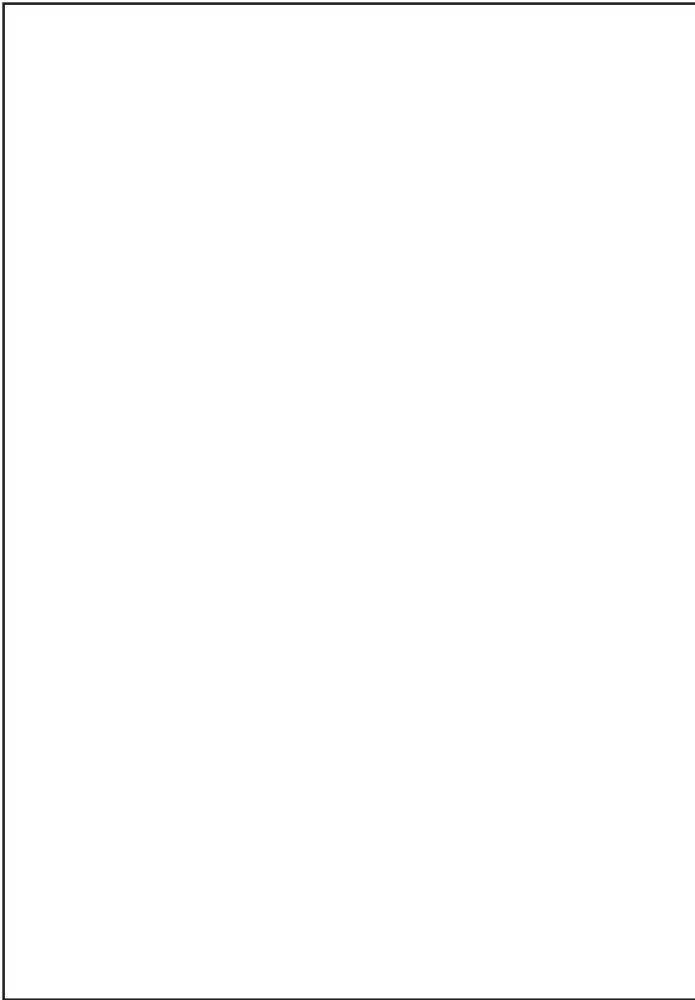
Tribal Council members, various Cherokee Nation leaders, and other concerned groups, including Human Rights Watch, directly contacted The Carter Center in early May. Paula Holder, a Tribal Council member, stressed that the observers' presence was necessary to deter fraud. Commission Chairman John Adair persisted

that outside monitors could help achieve an honest and fair election.

Subsequently, the entire elections commission, including some staunchly pro-Byrd members who initially vehemently opposed having outside observers, voted in favor of a letter from the commission's lawyer, Christine Folsom-Smith, to invite the Center to observe the elections. Former Chief Byrd also encouraged The Carter Center's involvement, stressing the importance of an election conducted at the highest level of integrity.

The election commission and tribal members also had extended observer invitations to many congressional members, including: Tom Coburn, U.S. representative; Jim Inhofe, U.S. senator; Steve Largent, U.S. representative; Don Nickles, U.S. senator; Kevin Gover, Department of Interior; James Fields, Bureau of Indian Affairs; Thomas LeClaire, Office of Tribal Justice; Daniel Inouye, U.S. senator; Lance Ward, Oklahoma secretary of the State Election Board; Richard Smolka, Election Administration Reports; David W. Ogden, counsel to the attorney general; John D. Leashy, Department of the Interior solicitor; John Raley, former U.S. attorney; Bruce Green, U.S. attorney; and Lynn Cutler, deputy assistant to President Bill Clinton.

The commission and staff's most pressing issue was to restore the Cherokee voters' confidence in the electoral process and assure them that their votes would be handled fairly. Few Cherokees whom we interviewed believed that the elections could be fair without independent observers being there. Many civic leaders, including former Chief Wilma Mankiller, agreed that without outside observers, many would not vote for fear that the election would be unfair. n



Here are some Carter Center election observers (left to right): Tom Mishou, Mike Bird, Ginny Wilson, John Adair, Shelley McConnell, Paul Center, and Gordon Stueb.



## THE CARTER CENTER METHODOLOGY

In all elections where The Carter Center becomes engaged, the observation team's principal purpose is to support and reinforce the electoral process, deter fraud, prevent violence, and encourage acceptance of clean results or peaceful challenges of disputed elections through legal means.

The main objectives of the mission to observe the Cherokee Nation election were to:

- 3 Assess the election process by analyzing registration and voting procedures, including the review of absentee ballots and voting results.
- 3 Bolster confidence in the electoral process by providing an independent assessment of the electoral process.
- 3 Demonstrate support for the Cherokee people's efforts to foster transparent and accountable governance.
- 3 Recommend how to improve future elections.

Before the elections, The Carter Center reviewed the history of Cherokee Nation elections, beginning with 1971, and the published electoral law and procedures.

In the days immediately before the voting, the team met with numerous officials in the Cherokee territory and visited various polling sites to assess electoral preparations. It focused on the distribution of election materials, the status of campaigns, and expectations for voting day.

As in every election observed, the Center's team worked together to develop a detailed deployment strategy to coordinate different polling site visits to observe voting activities, poll closings, and ballot counting. In addition, the team assigned one observer to monitor the tracking and counting of absentee ballots.

The observer team also clarified the specific procedure that each observer would use during these visits and determined how to respond when confronted with possible problems. Determined to



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*Election workers staff  
a polling site at the  
Salira precinct.*

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cover as many polling sites as possible on election day, the Center's observers visited all 32 precincts — half more than once without notice to ensure no one knew in advance of their arrival.

With regard to assessing the electoral process, Carter Center observers applied international standards of popular participation and free and genuine elections to Cherokee electoral laws and procedures.

The observers systematically surveyed each precinct, summarizing adherence to opening and closing procedures as well as the general vote (see Appendix A). The information provided a comprehensive overview of election day, including voting activities around the polling sites and closing and counting procedures. This method enabled the delegation to guarantee that isolated incidents did not inadvertently become generalizations that could falsely characterize the election, and conversely, that patterns could be readily recognized.

The delegation assessed the election process using criteria that reflected minimal conditions for a free and fair election. These conditions included whether:

3 There were no reasonable limitations on citizens' ability to participate in the political process, including the right to a secret vote and the right to elected office.

3 Respect for the rights of freedom of expression, association, and assembly for a period adequately allowed political organizing and campaigning to inform citizens about the candidates and issues.

3 There was integrity of the balloting process, including whether the candidate or party that receives the proportion of the vote prescribed by law is allowed to resume office and power.

3 All candidates could depend on open and fair elections conducted on a level playing field.

3 The elections were as inclusive as possible.

Any population in which less than 20 percent is registered to vote is a *prima facie* system. This method is exclusive unless it is a society in which a select group of people has been designated by tradition or other means, and is acceptable to the citizens to represent them.

3 Independence and effectiveness of the election commission contribute significantly to the perception of impartiality in the conduct of elections. n

## OBSERVING THE 1999 CHEROKEE NATION ELECTIONS

## ELECTORAL ADMINISTRATION

The Cherokee Nation Election Commission (CNEC) administers the Cherokee Nation elections which occur every four years.

The commission consists of five members appointed by the principal chief and council. Each CNEC member serves a term commencing within a year of the previous election and ending Oct. 1 of the general election year. These five commissioners serve only part time and several live far away.

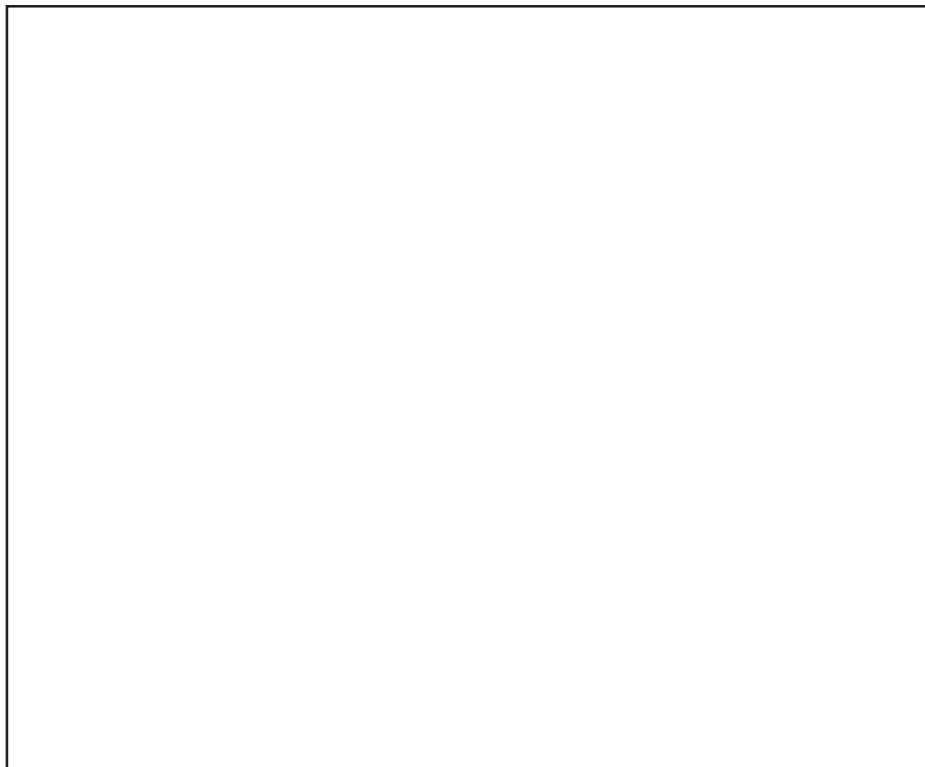
A separate elections services office maintained on a permanent basis with a full-time staff therefore complements the CNEC. The CNEC hires the administrator of that office who exercises exclusive authority over the office's daily operations.

The May 1999 election was for the tribal chief, a deputy chief, and 15 Tribal Council members. The council members were elected from nine districts with one to three representatives from each, encompassing a total of only 32 precincts/polling stations. For the chief and deputy chief races, a run-off was scheduled July 24 if none of the candidates received 50 percent of the vote on May 22.

Although the population of the Cherokee Nation is approximately 197,000, the voter registration list had only 35,000 names, of which only 26,000 were "qualified" voters. The registration list included many deceased persons and was a source of much suspicion. Therefore, the commission only certified

as "qualified" those persons who voted in 1995 or registered with the commission since then.

Of the qualified voters, 11,000 live outside the 14 counties in northeastern Oklahoma, while many reside in other states. Roughly 4,800 of these requested and received absentee ballots, which were to arrive by election day for counting. Critics feared that the absentee ballots were being given to many people who were not legitimate tribal members.



*Volunteers work to "get the vote out" for the Cherokee Nation elections held in Talequah, Okla.*

To address some concerns about possible fraud, the commission contracted with an external vendor, Automated Elections Services of Albuquerque, N.M., to supply and operate automatic ballot tabulating machines. These machines count votes as

## OBSERVING THE 1999 CHEROKEE NATION ELECTIONS

they are deposited. The system in place for processing absentee ballots required an electronic scanning of bar codes on the outer envelopes of the absentee ballots. This process retrieved a file of information about the person who requested that absentee ballot, including, in most instances, an image of that person's signature. n

## THE PRIMARY ELECTIONS : MAY 22, 1999

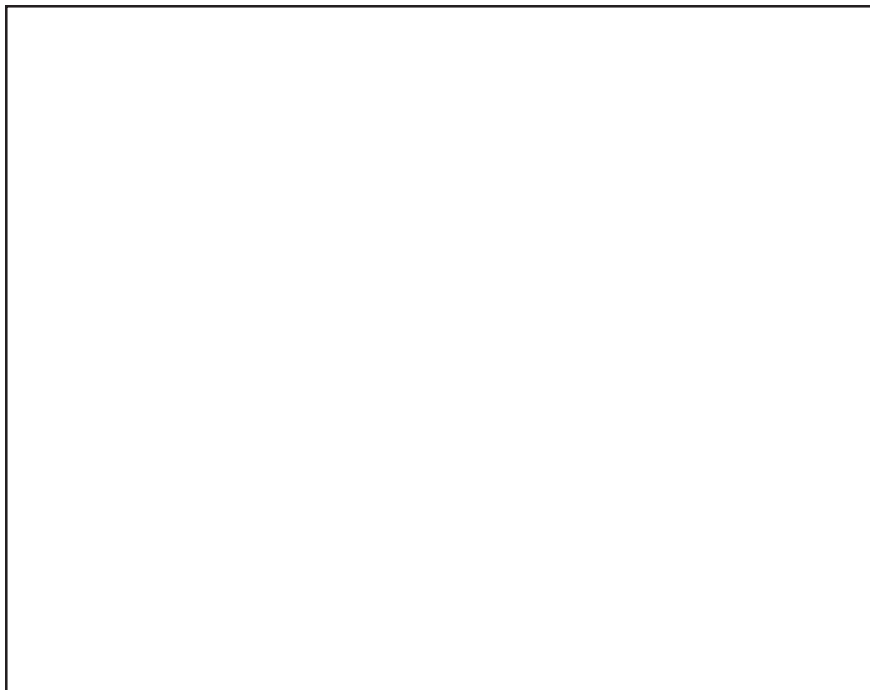
**M**any perceived that Chief Joe Byrd enjoyed some key electoral advantages in the primary elections. They believed any incumbent Cherokee chief had a powerful lever over tribal members who live in Oklahoma, especially since many of them receive salaries from either the tribal government or Cherokee-owned businesses.

Moreover, because up to 40 percent of Cherokee voters live in such far-flung places as California, Missouri, and Texas, any candidate faced an expensive campaign. Unless some of the opposition candidates withdrew before election day, it appeared that the anti-Byrd vote might be so fragmented that the chief would be re-elected.

Here are the primary elections results:

- 3 Chief Byrd received 31.58 percent of the vote.
- 3 Chad Smith, 19.33 percent.
- 3 Pat Ragsdale, 16.49 percent.
- 3 Dwight Birdwell, 14.56 percent.
- 3 The remaining four candidates received between 3 percent and 0 percent of the vote.

As affirmed in both The Carter Center's preliminary and final statements, the May 22, 1999, primary elections were mostly very well conducted and met the highest professional standards for an elections process. n



SHELLEY MCCONNELL

*A Cherokee Nation election official (right) distributes election materials to a poll worker. The delegation found the distribution of election materials occurred in an organized manner and no problems were reported.*

## OBSERVING THE 1999 CHEROKEE NATION ELECTIONS

## RECOMMENDATIONS

The Carter Center's assessment raised concerns about the registration process, absentee voting, election day, the electoral justice system, and the electoral administration.

## REGISTRATION SYSTEM

It is understandable why the current voter registration system is problematic, but steps should be taken to have a system that is uniform and simple. A system that causes general public confusion about requirements and is unproductive in maintaining a high percentage of those eligible to vote certainly needs attention. The hard and efficient work to build an accurate database of eligible voters is a productive beginning.

The Carter Center suggested that the Cherokee Nation eliminate voter registration entirely to decrease voter confusion. To do this, either:

- 3 Vote on the basis of tribal registration with no permanent voter registration list maintained, or
- 3 Allow day-of-election registration.

The multiplicity of cards frustrated most tribal members. There was a white card or "Certificate of Degree of Indian Blood," a blue card of tribal registration, and a red card for voter registration. If registration continues to be the basis for voting, certain improvements appear warranted.

For instance, the Cherokee Nation Election Commission (CNEC) should explore ways to encourage tribal members to:

- 3 Notify the tribal registrar of address and/or name changes.
- 3 Establish shorter deadlines before elections.
- 3 Allow anyone whose 18<sup>th</sup> birthday falls within the period up to election day to register to vote.

Candidates for public office endeavoring to conduct an effective and efficient campaign must know not only how many voters are in their districts, but also the demographics. Further, all candidates have prompt access to registration lists to avoid unfair advantages. This information also would be useful to determine the number of ballots to print for each district. Without it, ballot costs are expensive and inefficient.

*Michael Bird (left), a long-time Colorado legislator, and Tom Mishou participate in a debriefing session.*

## OBSERVING THE 1999 CHEROKEE NATION ELECTIONS

## ABSENTEE VOTING

The absentee voting process also can be easier while protecting its secrecy and integrity. The team proposed replacing notarized absentee ballots with "absentee walk-ins" and reconsidering the basic idea of "no excuse" absentee voting.

States have diverse regulations governing notaries and charges for notarial services, with California having a mandatory minimum of \$25 to notarize a signature. Many nonresident Cherokees cannot afford such fees and most consider it a form of poll tax. Given the technology available to verify signatures, this requirement should be dropped.

The Carter Center team believes that absentee voters should only cast ballots for chief and deputy chief in a system where absenteeism is a matter of permanent residence rather than temporary absence.

According to current rules, absentee voters may select the district in which they will vote at each general election and the candidates. This allows for considerable pre-election manipulation by candidates who have contacts in various states and campaign funds.

Consequently, Center delegates suggest that the election commission create an at-large seat(s) on the Tribal Council for nonresidents to express their views.

## ELECTION DAY

On election day, The Carter Center team primarily encountered confusion about the closing procedures, the handling of exceptions such as challenged ballots, and the watchers' role. Specifically:

- 3 The closing instructions were too complex

and precinct workers' responsibilities were unclear.

- 3 The manual must more precisely explain how to handle exceptions, and commission members and staff, and precinct workers must work from the same instructions.

- 3 Rules concerning press and photographers access must be established well in advance.

- 3 At some sites, voters had difficulty finding the polling station; barrier-free and easy access should be the rule.

- 3 Sometimes there was political activity within 300 feet of the polling station. Precincts should have a stake and plastic sign for the inspector to position at the 300-foot mark.

- 3 Every polling site should have access to regular telephone service.

- 3 Watchers' rules were too restrictive. Although watchers should not interrupt the flow of voters, they should be able to raise questions and receive a form to complete at the end of the day, so the commission can benefit from their observations.

## ELECTORAL JUSTICE SYSTEM

Within the electoral justice system, the Cherokee Nation should code procedures for appeals by noncandidates. Voters currently may appeal to a tribunal member to appeal the CNEC's decisions. However, this system is too informal because voters with rulings about registration, where to vote, or challenged ballots should know precisely what their recourse might be.

The Cherokees also should review and ultimately lower the costs of certain actions. For example, the provision requiring a \$5,000 cash bond for a contested election is unusual. Avoiding frivolous petitions is understandable, but posting bond to guarantee payment for potential liabilities or judgments is atypical.

## OBSERVING THE 1999 CHEROKEE NATION ELECTIONS

## STRUCTURAL ISSUES

The Carter Center delegation pointed out several structural issues stemming less from direct observation rather than its reading of various documents, including:

3 Candidates' accessibility to the Cherokee Nation's list of registered members was a foremost concern. Current rules state that only the incumbent chief can access this list. This allows the chief to develop lists of potential registration targets, supposedly a common practice among several other tribes. Such preferential practice can tilt the playing field in the incumbent's favor.

3 The Carter Center also advocated revising how the election commission is selected. Currently, the chief can choose most of the commission if his or her supporters constitute the majority of the council.

One possibility is to select the commission through popular election. Also, a permanent election commission staff throughout the period between elections would improve the procedure. However, the Center recommended that the administrator have express authority to hire temporary employees for the six months before the election.

3 The Cherokee Nation also might review rules for electing council members to avoid having two-member districts represented on the council by individuals who received less than 20 percent of the vote. <sup>11</sup>



## THE RUN-OFF ELECTIONS :JULY 24, 1999

**O**n July 24, the Cherokee Nation voted out incumbent Chief Joe Byrd. Challenger Chad Smith received 7,204 votes, or 56.48 percent, to incumbent Byrd's 5,552 votes, or 43.52 percent, with all precincts reporting.

The Smith campaign received a boost from the absentee balloting, where he led Chief Byrd by a margin of 4,140 to 2,536. Smith had trailed Chief Byrd by 13 percentage points in the May 22 primary election.

In the race for deputy chief, Hastings Shade, Smith's running mate, received 7,735 votes compared to 4,951 for Bill John Baker, Chief Byrd's running mate.

In the race for Tribal Council, incumbent

Harold Dees Moss defeated James Hammett, 383 votes to 349 votes, respectively, in District 4. Don Garvin defeated Teasie McCrary Jr., 690 votes to 539 votes, respectively, in District 7.

As expressed in our July 25, 1999, preliminary statement, the election was very well managed, similar to the primary elections. Although problems

were marginal, the election commission continued to make improvements along the way.

We believe that the single most important issue is the

registration process. It must be simpler.

Similar to the primary elections, voter turnout remained a problem. Although voter participation increased by nearly 2,000 voters, only 6.5 percent of the Cherokee population chose the new chief. n

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*The single most important issue is the registration process. It must be simpler.*

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*Automated Election Services employees process absentee and regular ballots at the Cherokee Nation Election Services office.*

## OBSERVING THE 1999 CHEROKEE NATION ELECTIONS

## OTHER OBSERVATIONS

In all elections in which The Carter Center has monitored, the organization has stressed the need to strengthen outreach and civic education that better inform the public about the elections. Such activities can increase the public's awareness about electoral procedures, while involving more women, youth, and other disadvantaged groups.

The Center also was concerned that although watchers were present at the primary elections, none attended the run-off, as no candidates submitted any individuals' names to the election commission. Watchers are important because they allay fears and uncertainties about the process and increase voters' and candidates' confidence in the process. The Center recommended in its July 25, 1999, preliminary statement that the commission amend the current statute to guarantee the watchers' presence.

The decision to contract with Automated Elections Services of Albuquerque, N.M., had a major impact on the efficiency and success of the primary and run-off elections. The election system provided needed confidence and trust, which are essential for any election, but certainly were

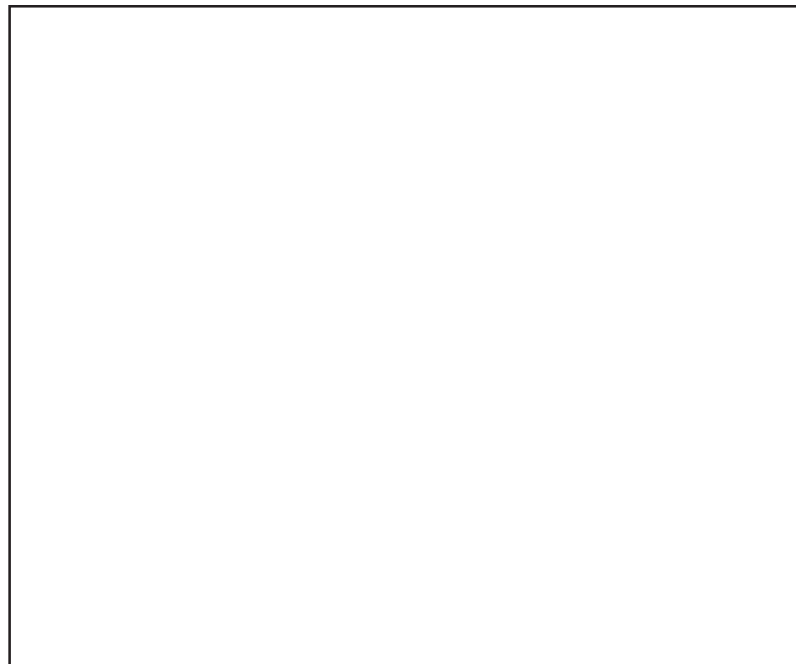
required for these elections due to problems voters faced.

At the precinct level, voters could place their own ballots into the counting unit after marking them in private. The system even would reject the ballot if marked incorrectly, giving an opportunity for on-the-spot corrections. There were no complaints about the new system, which is most unusual when voting methods are changed.

A current, state-of-the-art voting system is expensive, but the reliability and assurance the system provides were essential to guarantee honest elections for the Cherokee Nation. Because of the consistent, high percentage of absentee ballots, candidates and voters needed to be confident that all ballots were counted correctly. This voting system provided such confidence. The Center commends the Cherokee Nation Election Commission (CNEC) for

deciding to use a voting system that served it and the voters so effectively.

The concept of a challenged ballot is one area where there is vulnerability. The CNEC's decision to count or not count all challenged ballots, instead of making it the inspectors' responsibility at the precincts, was a definite improvement.



*Voters emerge from a polling station on election day. Only 6.5 percent of the Cherokee population elected the new chief.*

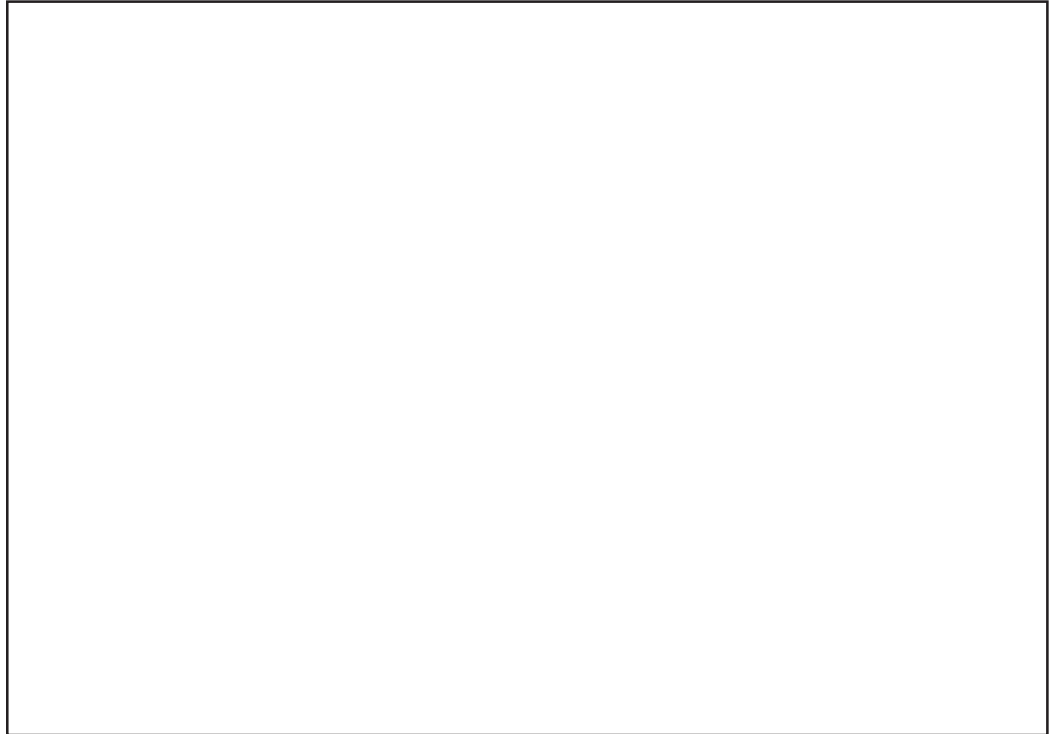
STEPHEN JONES

## OBSERVING THE 1999 CHEROKEE NATION ELECTIONS

During the primary election, there was great irregularity. At some precincts, no challenged ballots were counted. At others, all challenged ballots were counted. Still at other precincts, various percentages were sometimes counted. In close elections, candidates could challenge why some challenged ballots were or were not counted. The number of challenged ballots could determine the difference between the two top candidates.

Having the commission decide about counting the challenged ballots at least puts the decision in the hands of those using the same rules or guidelines.

However, The Carter Center recommends omitting challenged ballots completely. A person's eligibility to vote should be concise and simple. Allowing voters to leave a voting precinct questioning whether their ballots will be counted generates questions about the procedures. This also leaves election officials open for investigation of their actions. n



*Election monitors Michael Bird (left), Gordon Streeb, and Shelley McConnell review data as they confer about election procedures.*

STEPHEN JONES

## CONCLUSION

Under the overall guidance of the Cherokee Nation Election Commission (CNEC), the elections were well conducted and clearly met professional standards. The CNEC staff and all staff at the polling stations worked well and reported accurately.

The commission staff's resolve, the professional

contribution of Automated Election Services of Albuquerque, and the Cherokees' determination were clearly reflected in the conduct of the elections.

Again, The Carter Center congratulates all Cherokees for their courage and will to achieve the peace and order they have desired for so long. n

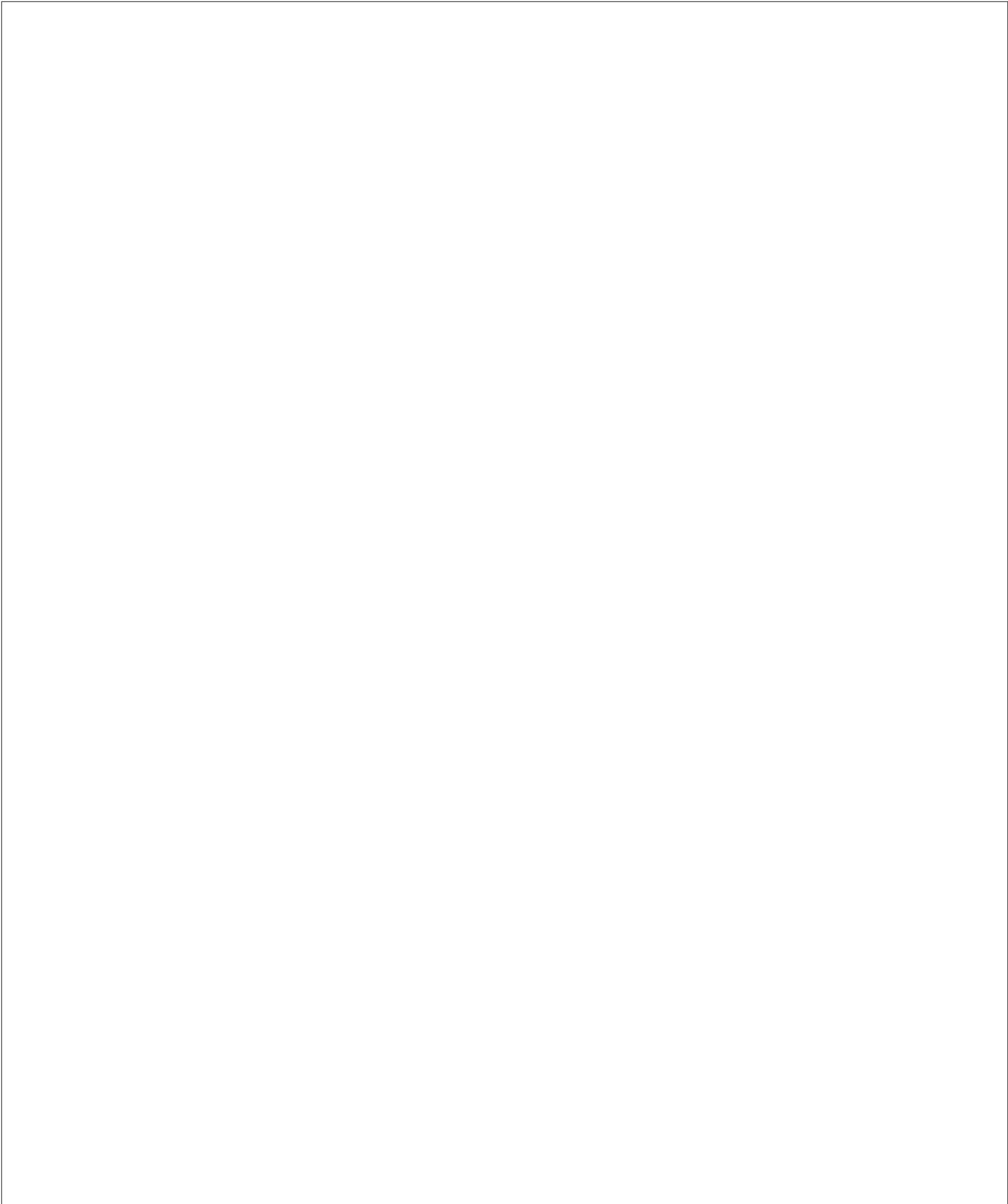
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- A. Carter Center Summary Checklists
- B. Letter from Paula Holder, Cherokee Nation Tribal Council
- C. Letter of Invitation from Wilma Markiller, Former Principal Chief
- D. Letter from Christine Folsom-Smith, Attorney-at-Law
- E. Letter from Human Rights Watch
- F. Memorandum from Margaret Riney
- G. Press Release, April 1, 1999
- H. Press Release, April 7, 1999
- I. Election Calendar
- J. 1999 Precincts
- K. Deployment Lists
- L. Sample Ballots
- M. Voter Registration Form
- N. Carter Center Watchers Form
- O. Candidate List
- P. Changes to Procedures
- Q. Preliminary Statements: May 22, 1999
- R. Memorandum to the Cherokee Nation Election Commission: June 1, 1999
- S. Preliminary Statement: July 24, 1999 Run-Off Election
- T. Official Election Results: May 22, 1999; July 24, 1999
- U. Newspaper Clippings

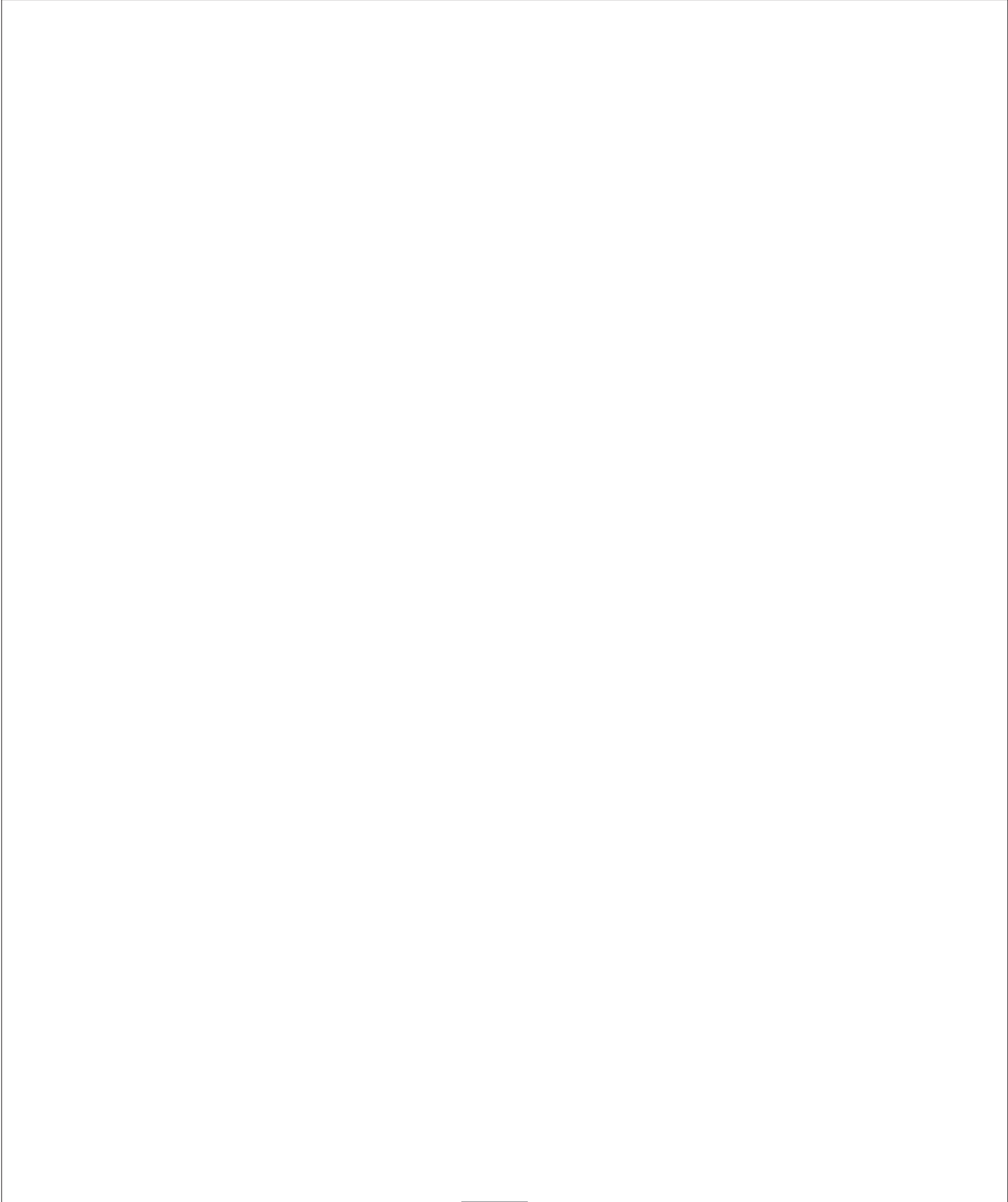
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APPENDIX A

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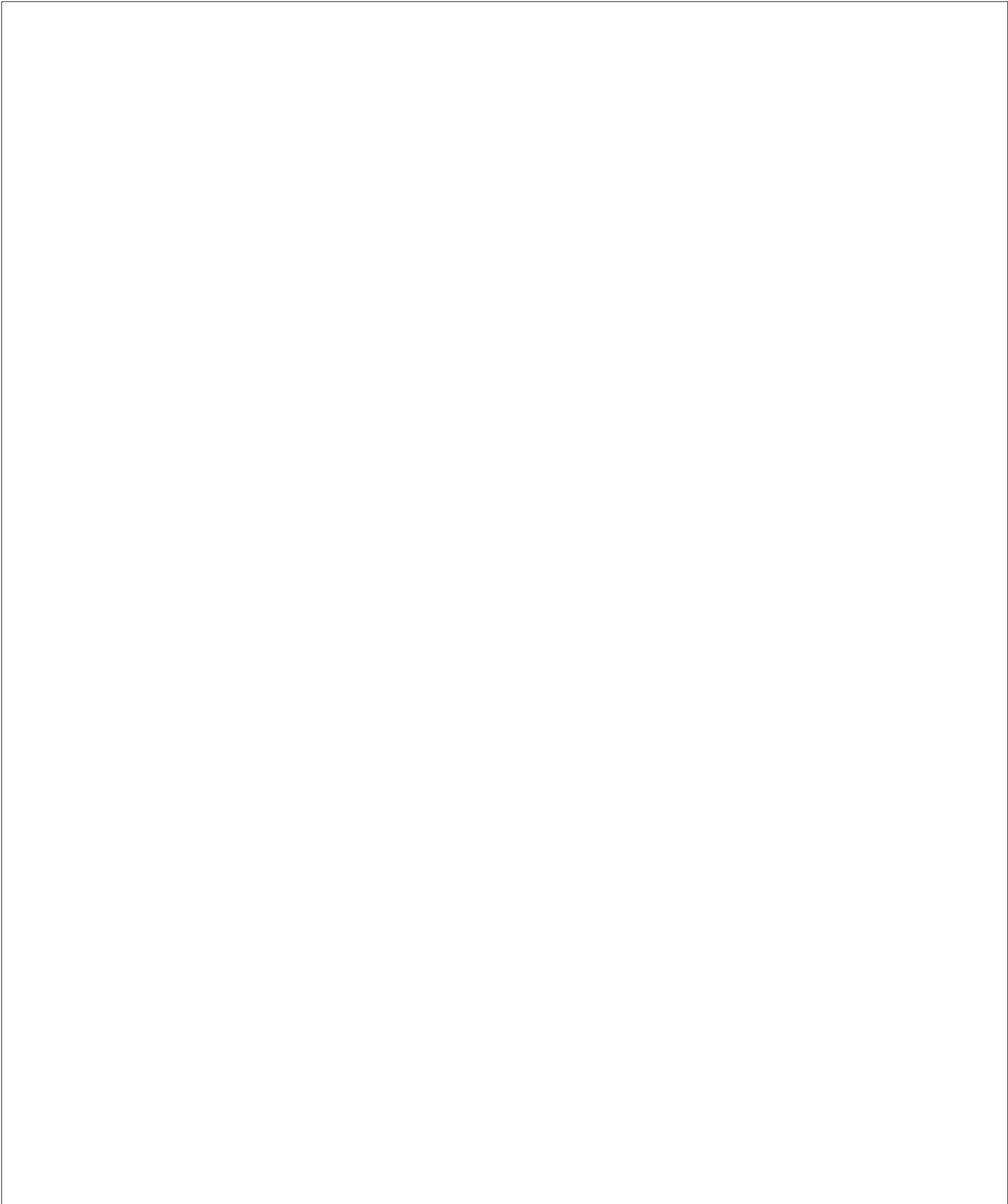


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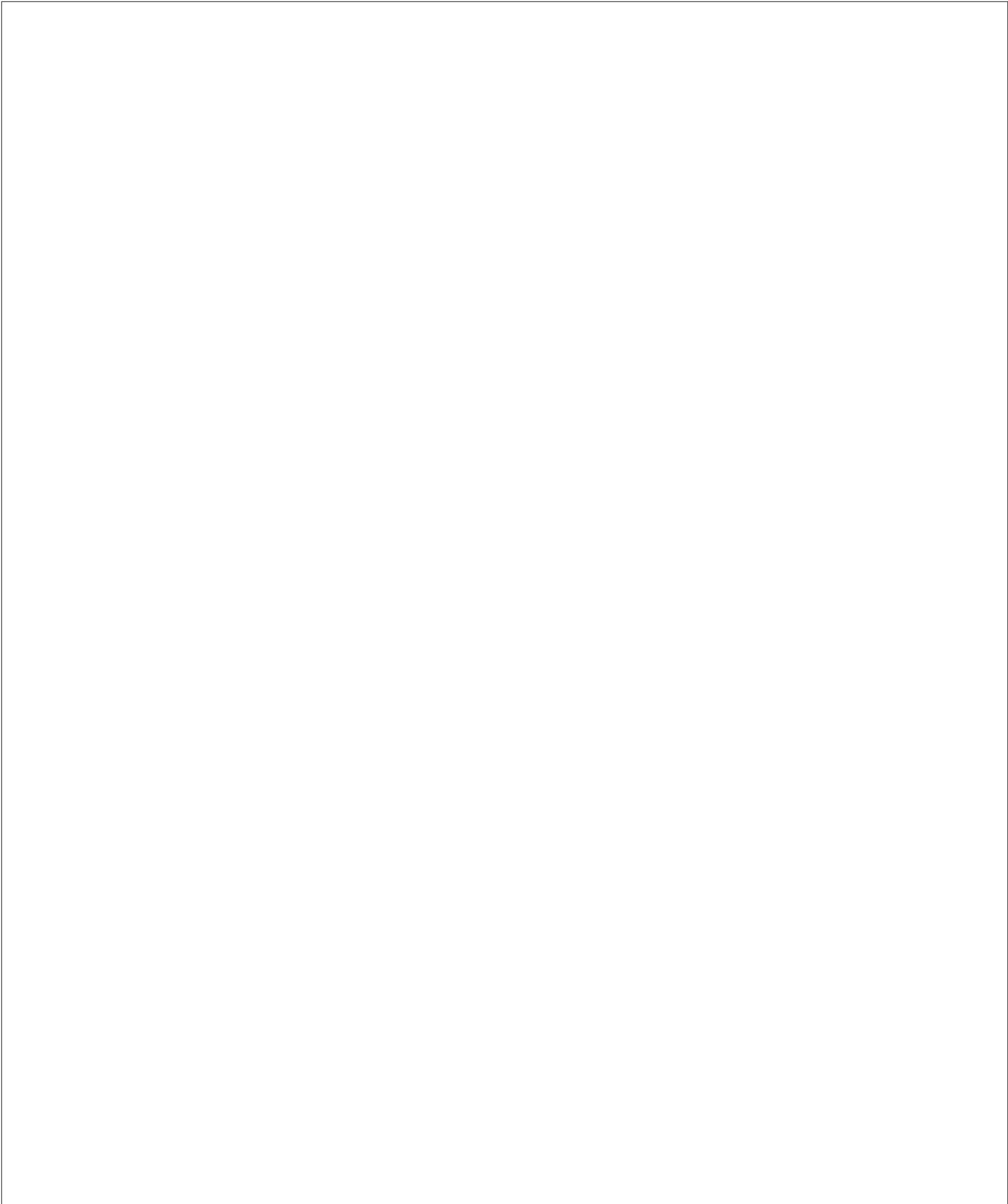
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APPENDIX N



## OBSERVING THE 1999 CHEROKEE NATION ELECTIONS

## APPENDIX O

## CANDIDATE LIST

**Candidates for Principal Chief**

Bridwell, Dwight W.  
 Byrd, Joe  
 Eagle, James "Garland"  
 Fraily, Meredith A.  
 Murphy, Haskell  
 Ragsdale, Pat  
 Smith, Chad "Comtassel"  
 Stroud, Virginia A.  
 Thompson, Maxie

**Candidates for Council (by district)****Cherokee**

Bryant, Jessup J.  
 Bussey, Kyle Downing  
 Crittenden, Don "Chief"  
 Ketcher, John  
 Nofire, Sherman R.  
 Smith, Boyd  
 Terrell, Harley L.  
 Vann, Raymond

**Trail of Tears**

Claphan, Jack "Sam"  
 Hale-Frogg, Betty  
 Martin, Jackie Bob  
 Phillips, Harold "Jiggs"  
 Pinkerton, Paul  
 Watie, Dora Mae

**Sequoyah**

Cato, Debbie A.  
 Flute-Cooksey, Mary  
 Locust, James "Booter"  
 Quinton, Donald J.  
 Thornton, David W., Sr.

**Three Rivers**

Brickey, Patsy Dykes  
 Garvin, Don  
 McCrary, Teasie, Jr.  
 Rock, Calvin

**Craig**

Joskin, Charles "Chuck"

**Candidates for Deputy Principal Chief**

Baker, Bill John  
 Holder, Paula  
 Leach, Bob G.  
 Shade, Hastings  
 Stopp, Gary

**Delaware**

Conness, Barbaba  
 Glass, Jesse W.  
 Holland, Patti  
 Parman, Kale G.  
 Shotpouch, Melvina  
 Starr-Scott, Barbara  
 Wickliffe, George

**Mayes**

Bradshaw, Jim  
 Chuckluck, Junior "Bridge"  
 Keener, Johnny  
 Littledave, Jim "Moon"  
 Robinson, Kathy  
 Smoke, Williams S.  
 Standingwater, Cynthia  
 Thomas, Paul B.  
 Tranel, Jimmy  
 Wickliffe-Buffalomeat, Stephanie

**Will Rogers**

Barkley, Carol Ann  
 DeMoss, Harold  
 Glass, Bob  
 Hammett, James B.  
 Hunter, Keith

**Oologah**

Anglen, Buel  
 Lay, Nick  
 McIntosh, Dorothy Jean  
 Peacock, Roger

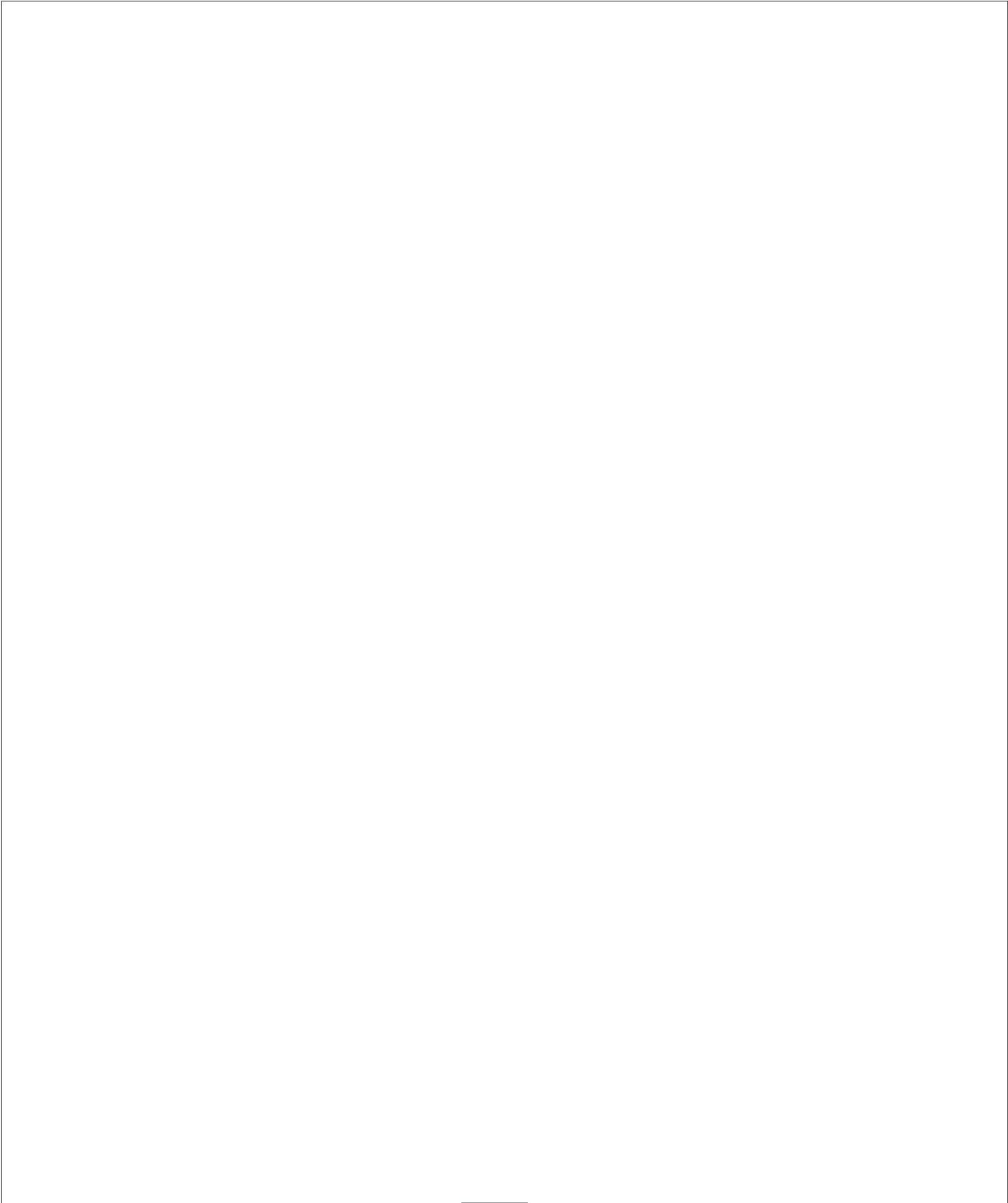
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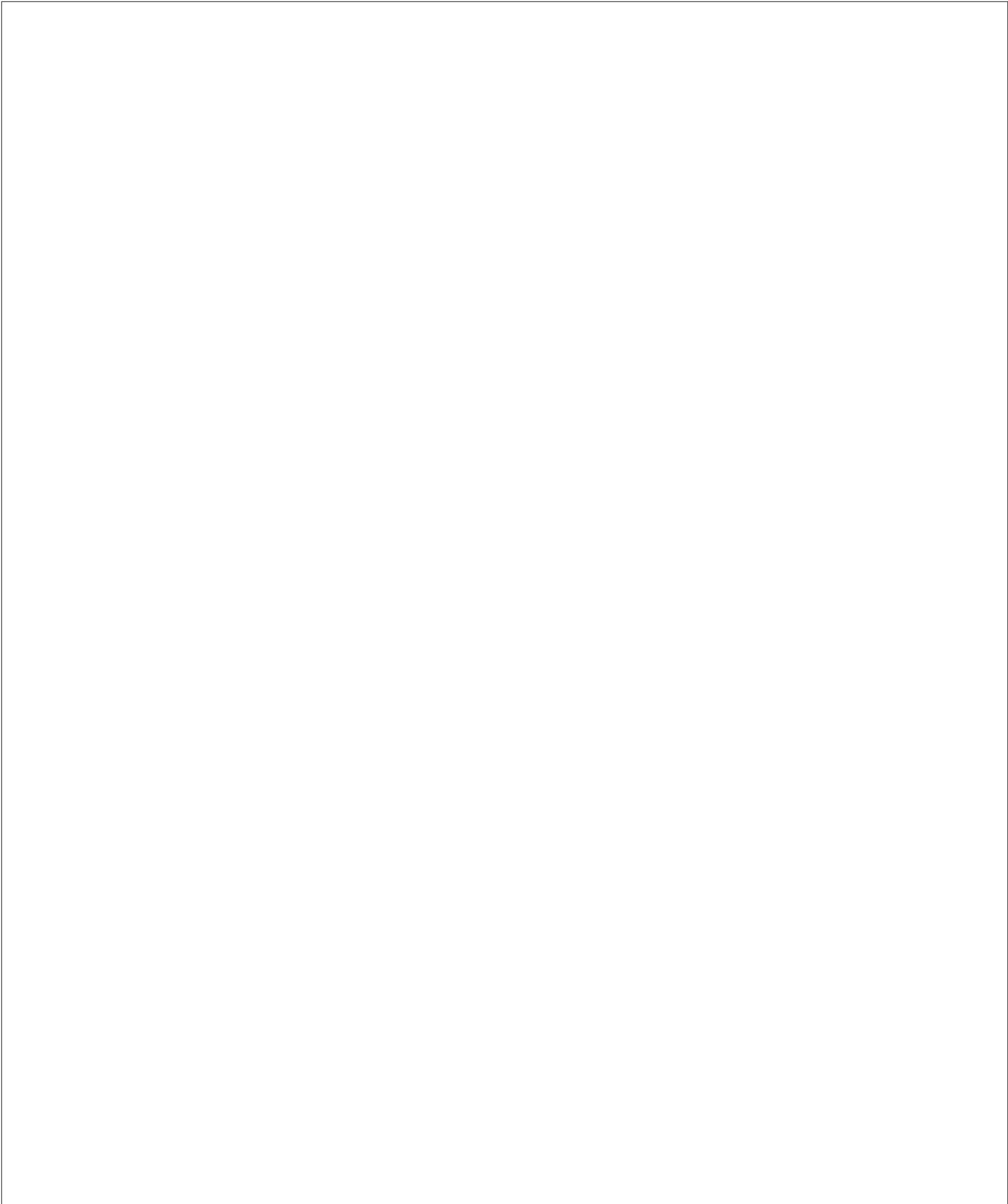
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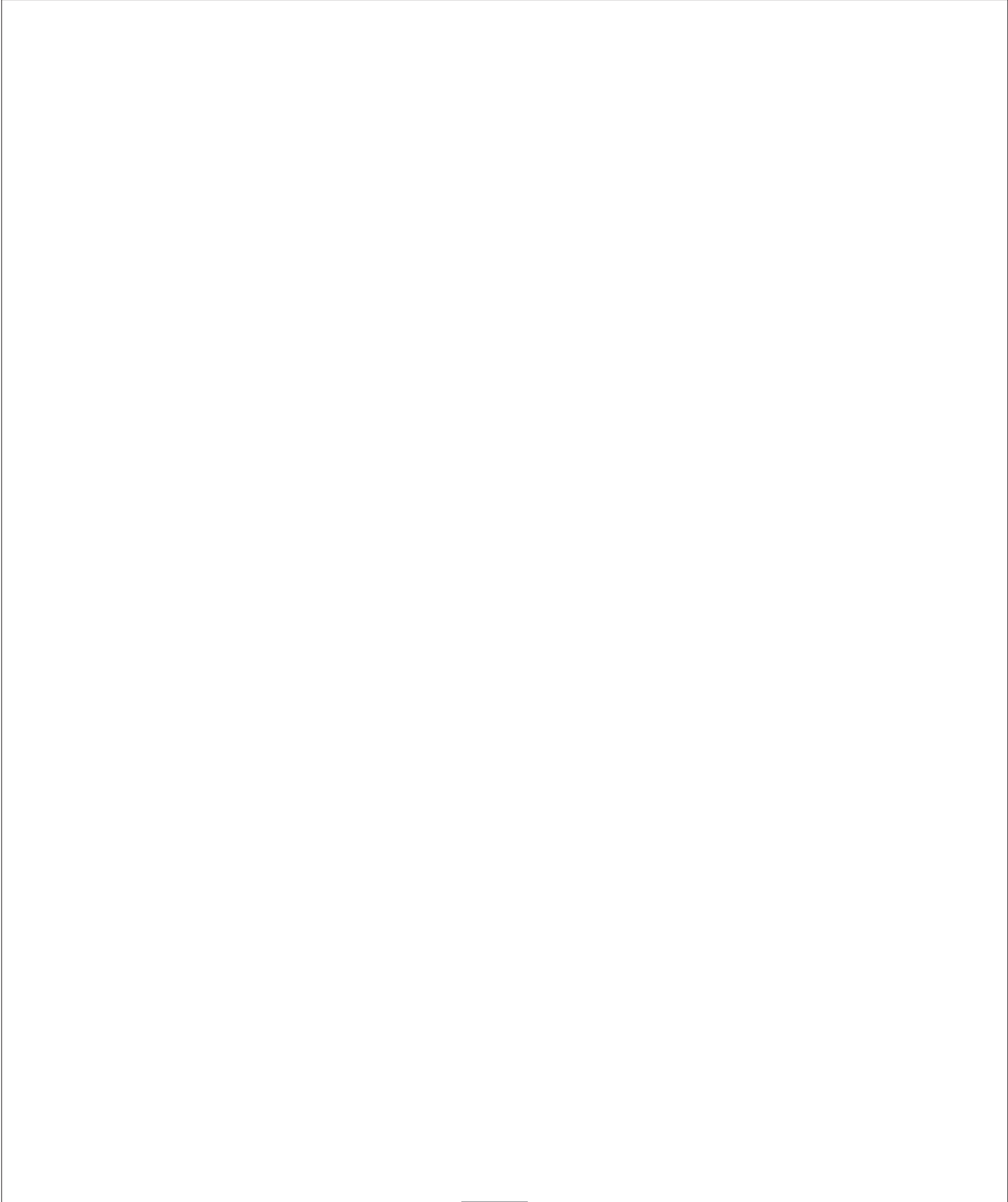
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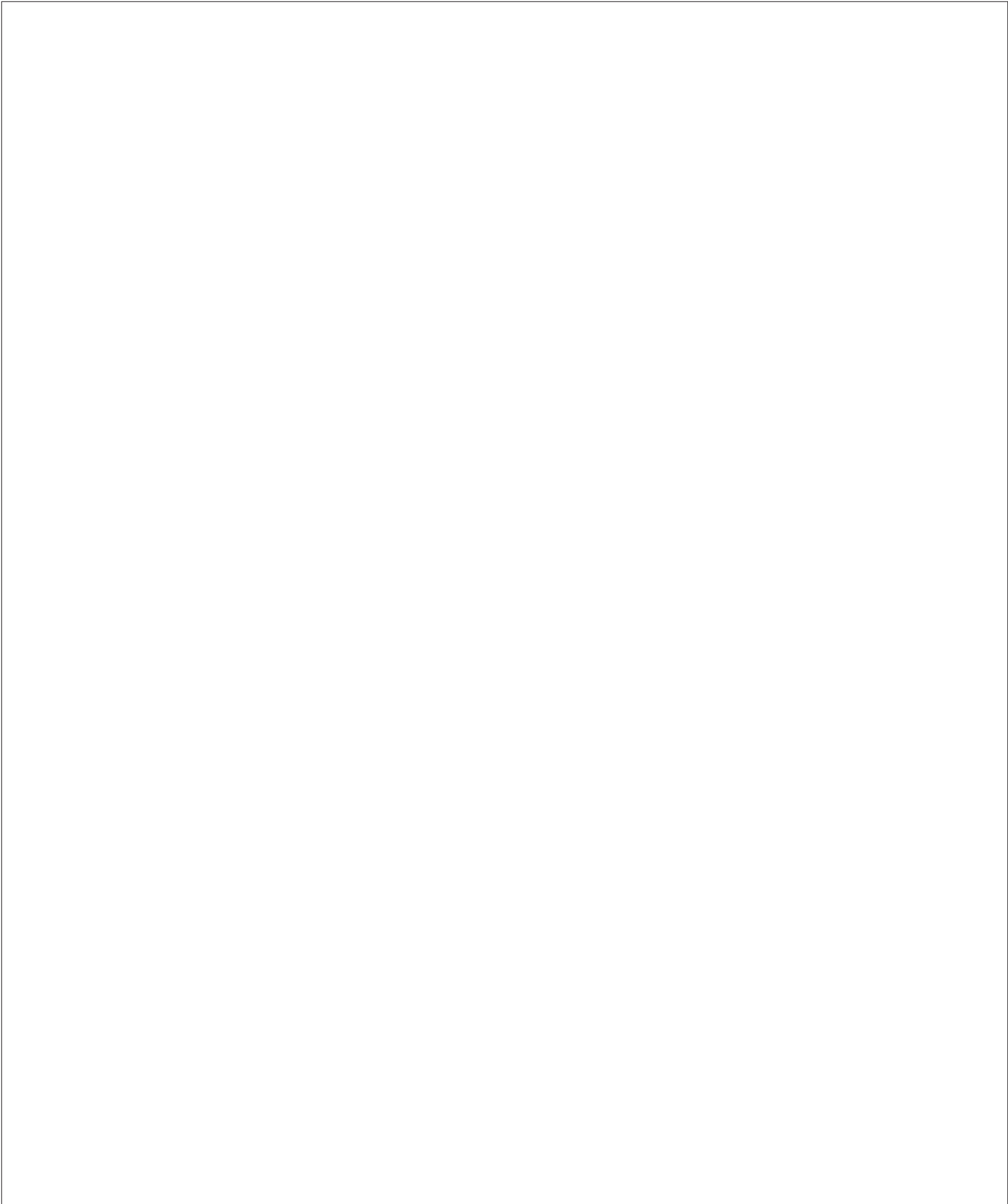


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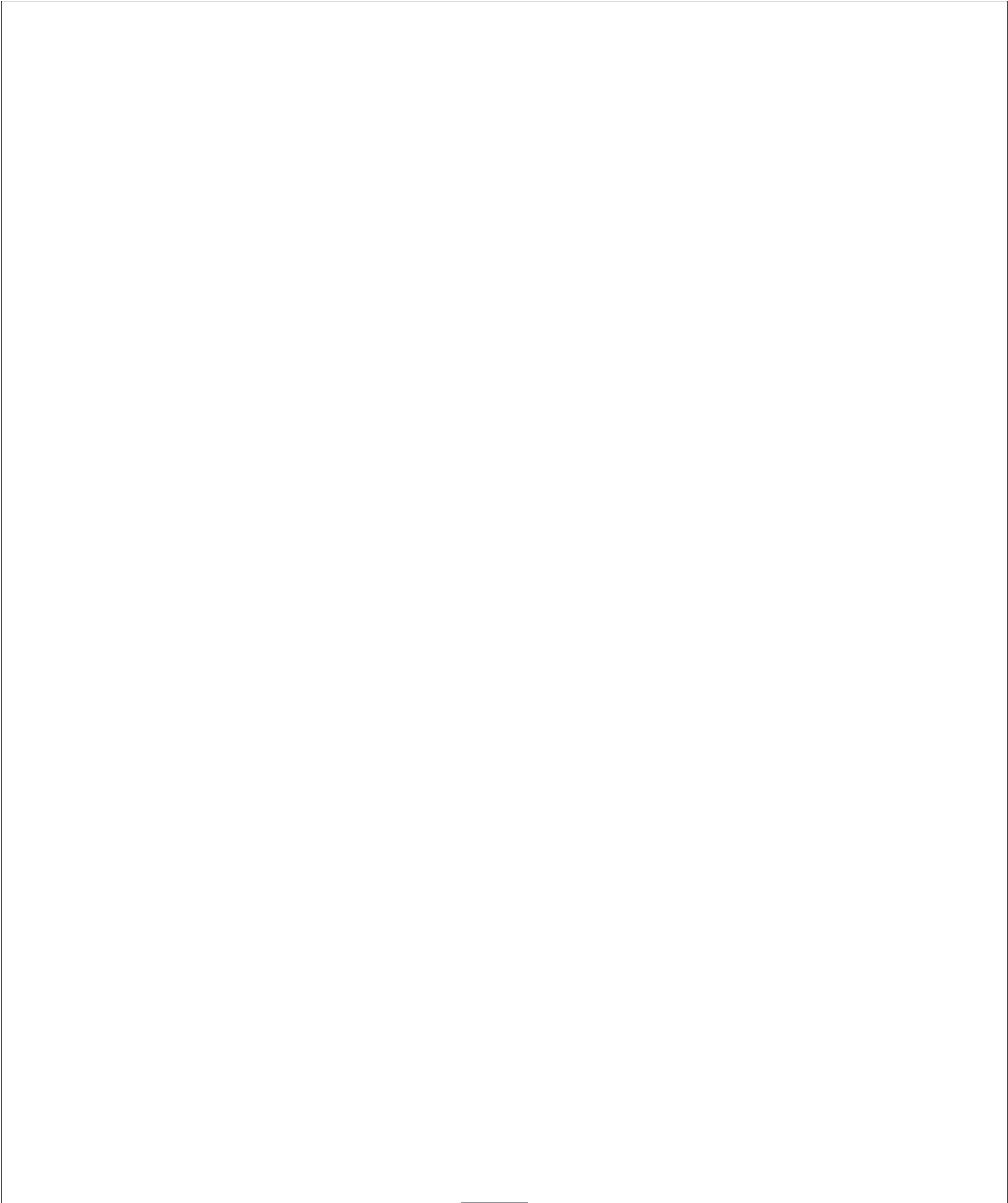




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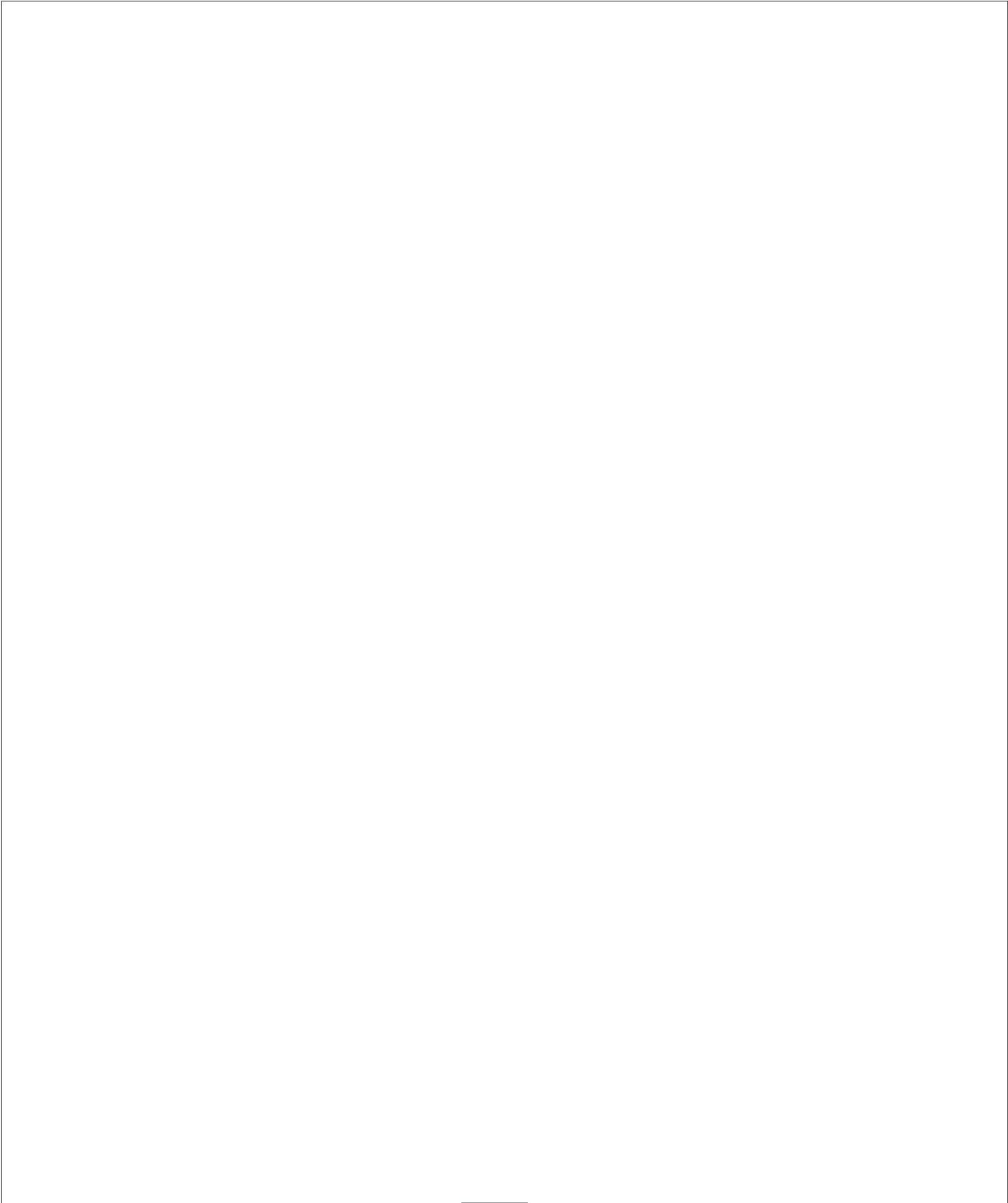


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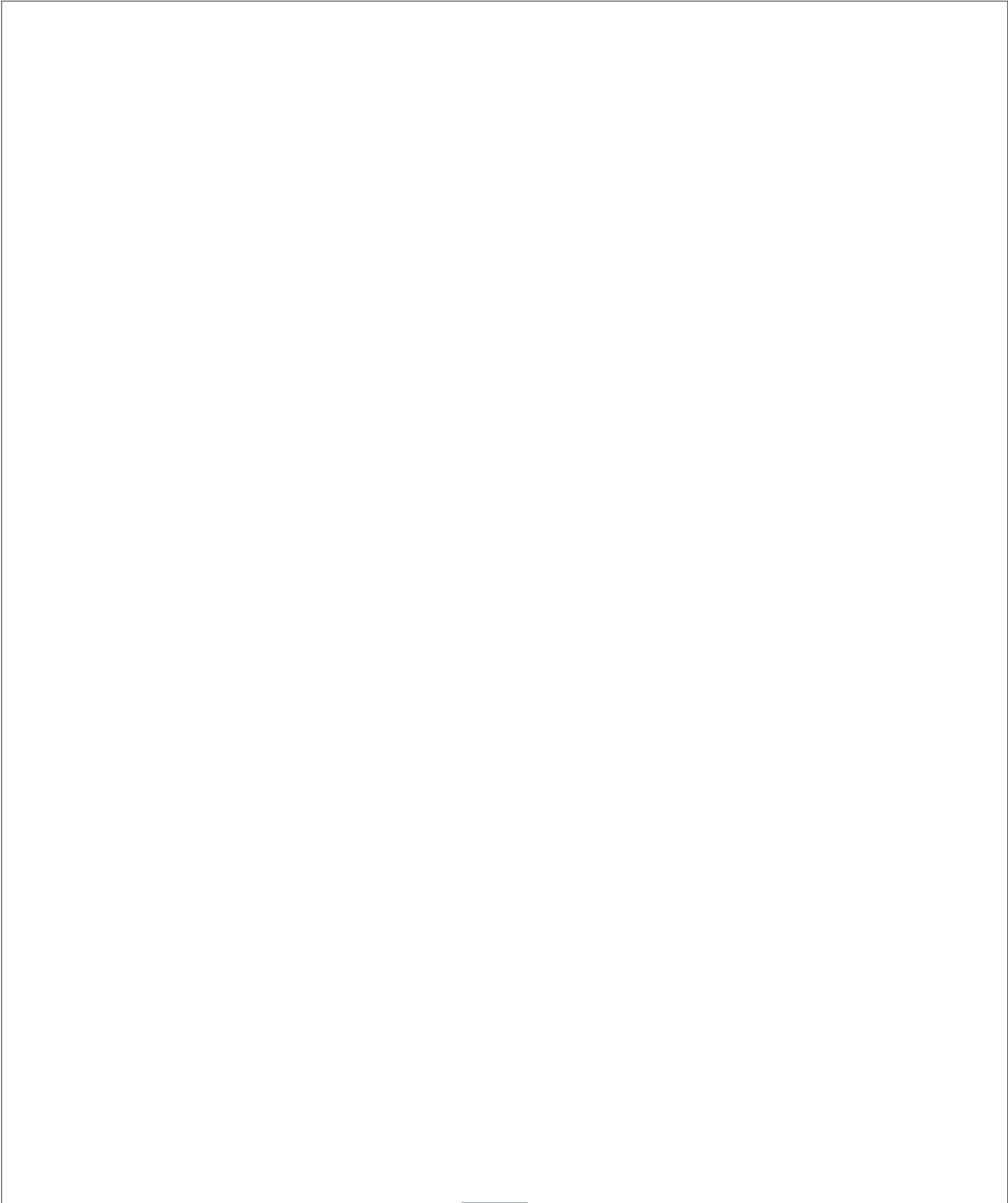
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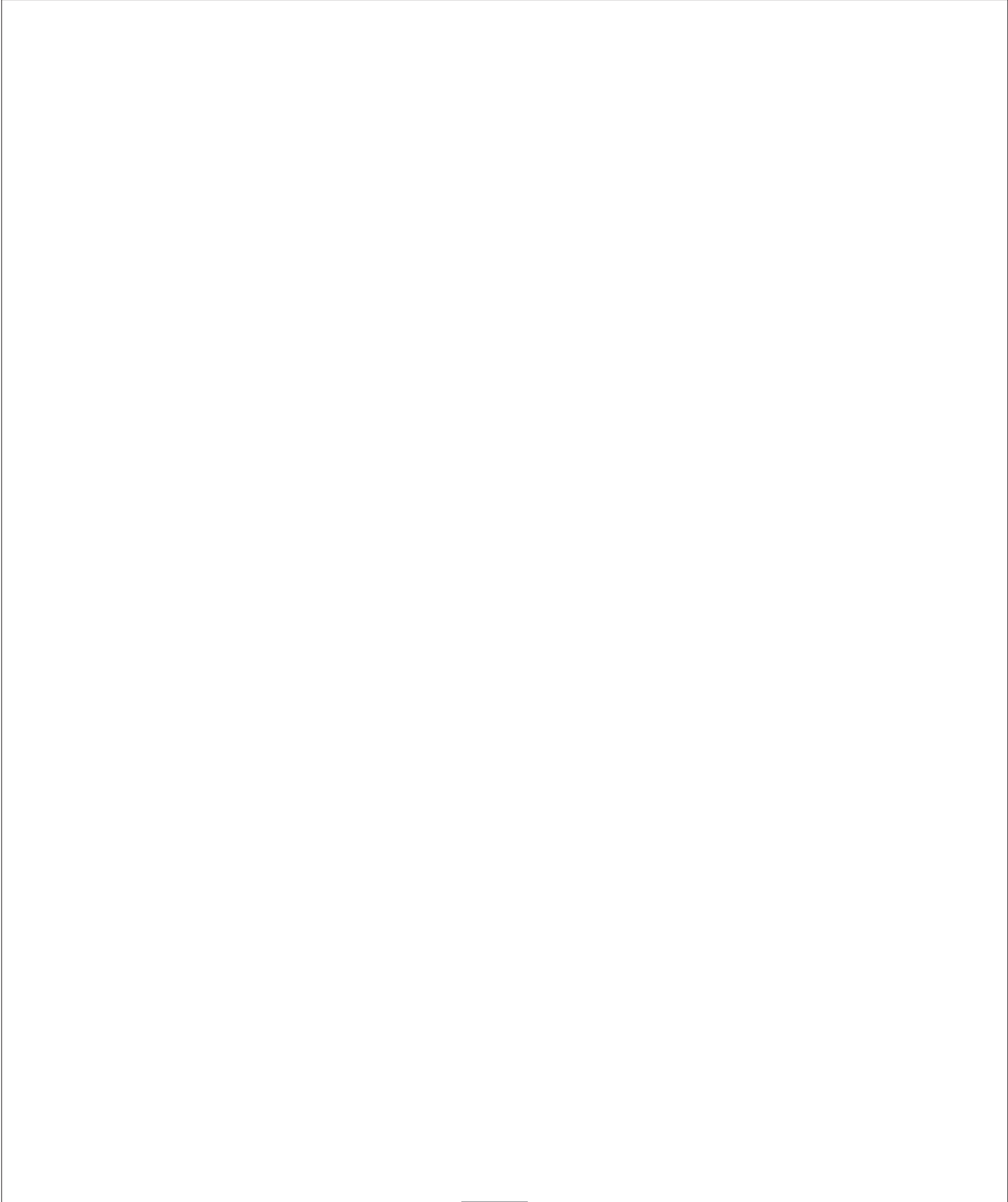
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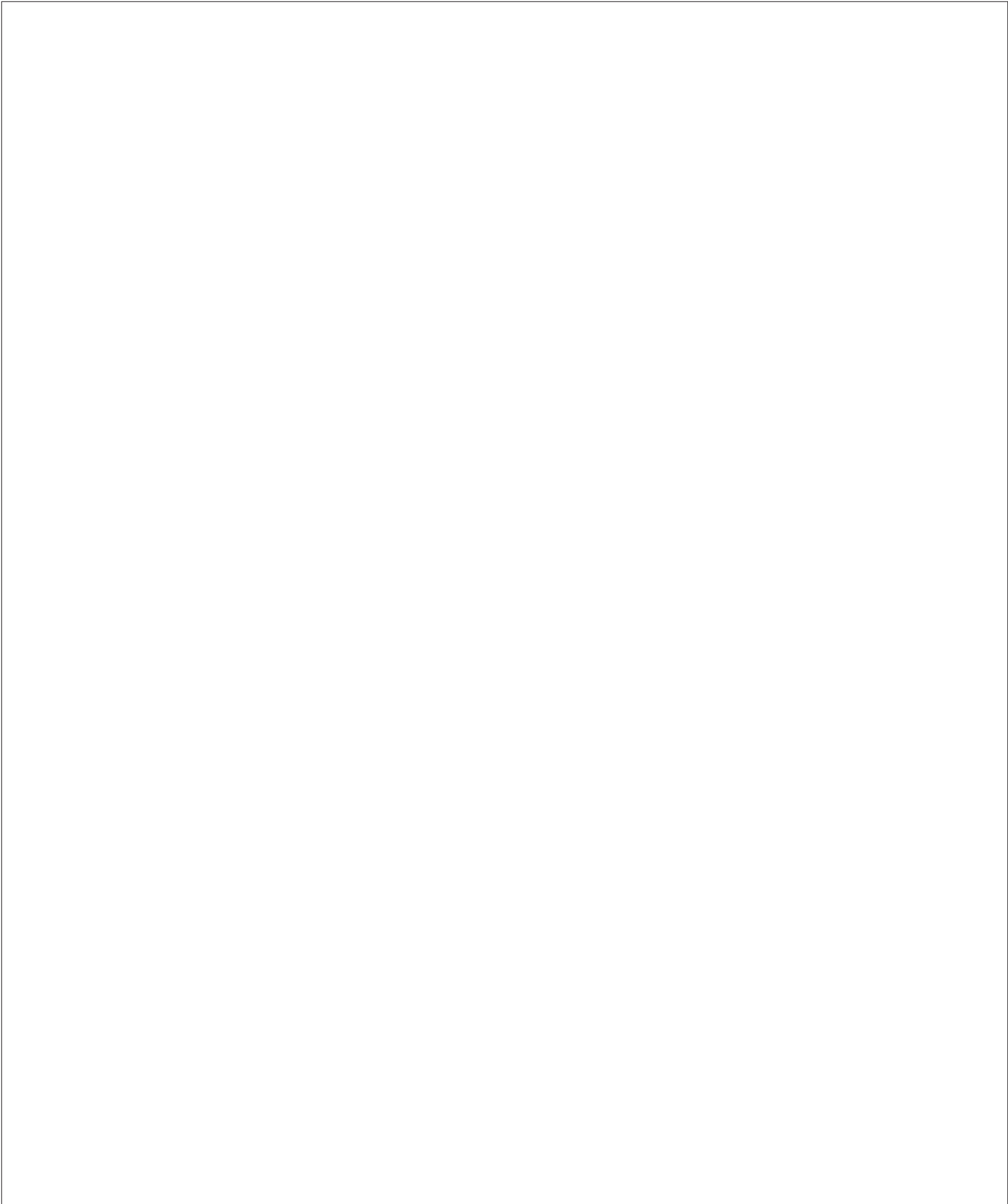
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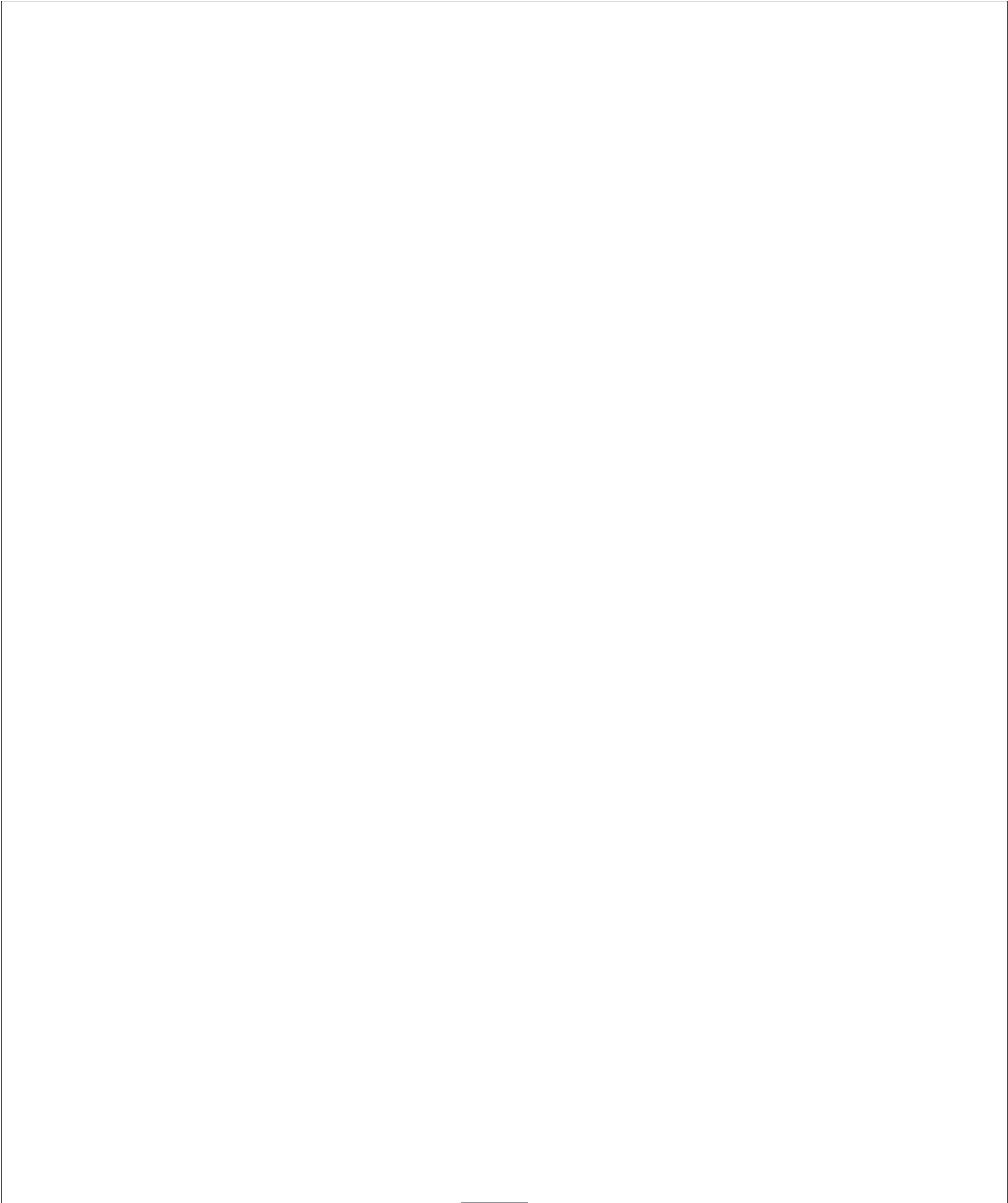




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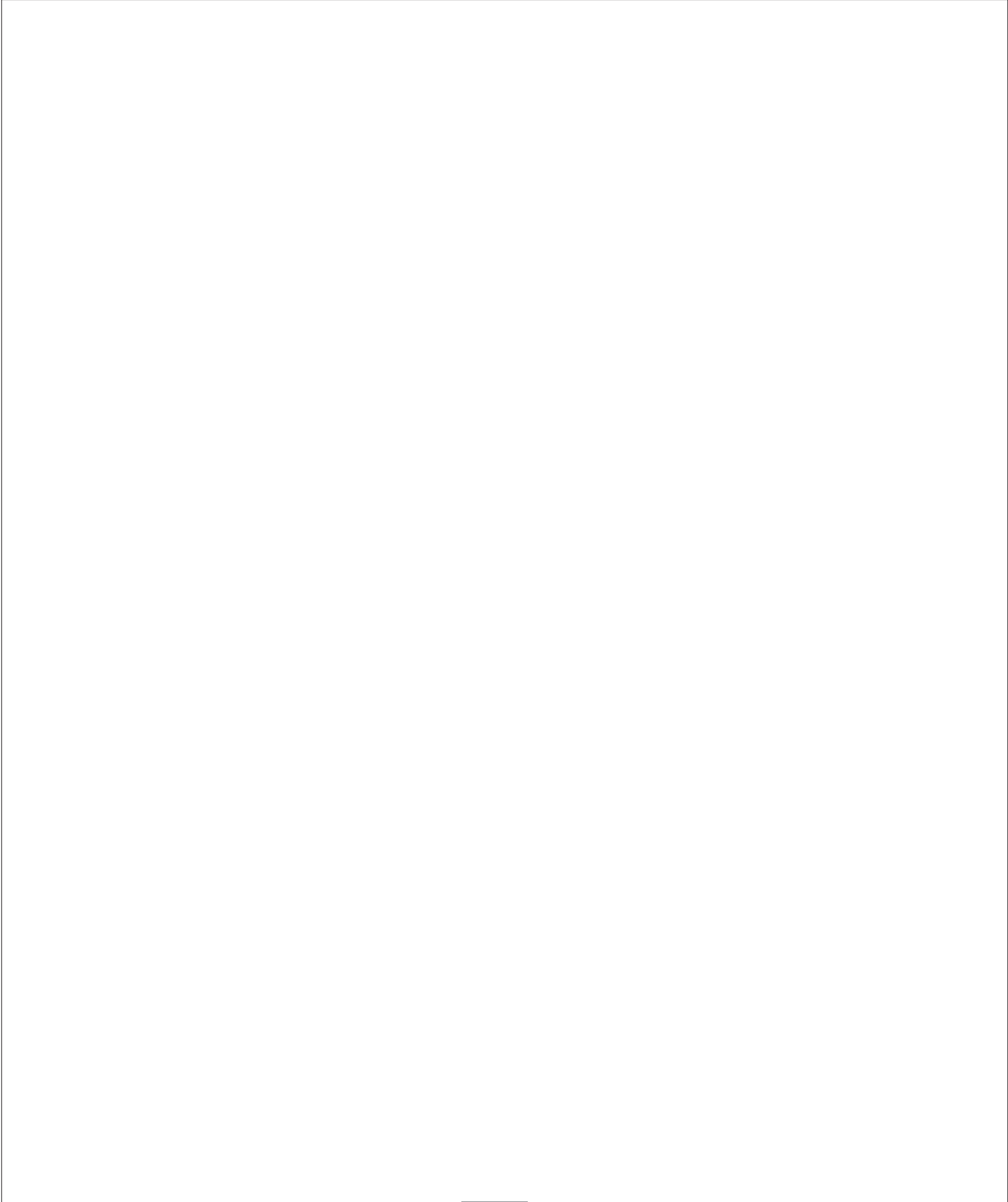
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*The Daily Oklahoman* - May 24, 1999

## OBSERVING THE 1999 CHEROKEE NATION ELECTIONS

## ABOUT THE CARTER CENTER

The Carter Center strives to relieve suffering by advancing peace and health worldwide. With a fundamental commitment to human rights, the Center is guided by the principle that people, with the necessary skills, knowledge, and access to resources, can improve their own lives and the lives of others.

Founded in 1982 by Jimmy and Rosalynn Carter in partnership with Emory University, the nonprofit Center works to prevent and resolve conflicts, enhance freedom and democracy, and improve health. The Center collaborates with other organizations, public or private, in carrying out its mission. In this way, the Center has touched the lives of people in more than 65 countries.

Charitable contributions from individuals, foundations, corporations, and other donors support the Center's activities. Programs are directed by resident experts or fellows. They design

pavilions house offices for the former president and first lady and most of the Center's program staff. The complex includes the Ivan Allen III Pavilion and the nondenominational Cecil B. Day Chapel, other conference facilities, and administrative offices. Adjoining the Center is The Jimmy Carter Library and Museum, a repository for the records of the Carter administration. It is operated by the National Archives and Records Administration of the federal government and open to the public. The Center and the Library

and Museum are known collectively as The Carter Presidential Center.

More information about The Carter Center is available on the World Wide Web at [www.cartercenter.org](http://www.cartercenter.org). n



PAUL DINGMAN

*The Carter Center is located in a 35-acre park, two miles east of downtown Atlanta.*

and implement activities in cooperation with President and Mrs. Carter, networks of world leaders, and partners in the United States and abroad.

The Center is located in a 35-acre park, two miles east of downtown Atlanta. Four circular