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Arizona Executive Orders on Coronavirus: Enforcement and Penalties UPDATED March 31, 2020

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By Craig A. Logsdon and Kristine L. Gallardo

Arizona Governor Doug Ducey has provided guidance on the enforcement of his numerous Executive Orders that regulate Arizona businesses and individuals. Under the governor's plan, violators could face criminal penalties, but he has instructed law first to give offenders a chance to comply with the order before issuing citations. The orders show a balance between protecting the public during the health emergency and protecting the individual liberties of Arizonans.

As background on the governor's law enforcement powers during the coronavirus outbreak, on March 11, 2020, Governor Ducey declared a State of Emergency. This declaration gives the governor broad including law enforcement powers. Under A.R.S. § 26-303(E)(1), which is part of the "Emergency Management" chapter, the governor has "complete authority over all agencies of the state government and the right to exercise, within the area designated, all police power vested in the state by the constitution and the laws of this state in order to effectuate the purposes of his chapter."

Here, to address the State of Emergency, the governor has issued several Executive Orders with more expected. As a reminder of the orders that are most likely to affect your daily life, Executive Order 2020-18 limits activities outside of the house. Executive Order 2020-09 prohibits onsite dining at restaurants and closes bars, movie theaters, and indoor gyms. (This order originally only applied to counties with confirmed COVID-19 cases, but now all counties have confirmed cases.) Executive Order, 2020-10, prohibits "non-essential or elective surgeries" across the state that require "protective equipment or ventilators." The collection of orders contain other mandates, restrictions and prohibitions.

People or businesses who violate these orders could get in criminal trouble. A.R.S. § 26-317 provides that a violation of an order, rule, or regulation issued pursuant to the State of Emergency is a Class 1 misdemeanor. This crime carries up to six months in jail and fines that, for a business, go as high as \$20,000. A different statute, A.R.S. § 26-316, specifically authorizes prosecutors and police.

With these restrictions on our freedom, Governor Ducey's orders include provisions meant to protect the public from overly-aggressive law enforcement. Paragraph 4 of Executive Order 2020-18 instructs law enforcement to first notify a suspected violator of the requirements and to give them an "opportunity to comply." The same order contains additional limits on police powers. Paragraph 2(e) says that "No person shall be required to provide documentation or proof of their activities to justify their activities under this order." These provisions make it unlikely that someone could be arrested for mistakenly violating an order.

If law enforcement did seek criminal charges, the most likely method would be to issue a written citation and told to appear in court. Most misdemeanor violators do not see jail time.

Beyond the “Emergency Management” statutes, there are other ways to enforce the Executive Orders and the policies behind them. For example, the Governor has directed the Department of Health Services to develop certain regulations in connection with the coronavirus outbreak and the agency may develop other regulations on its own. There can be criminal penalties for violating these regulations pursuant to A.R.S. § 36-140, which provides that a violation of certain DHS regulations is a Class 3 misdemeanor. This level of offense could also include jail time and fines, though incarceration would be rare. The Governor may work with DHS or other agencies to create regulations that carry similar penalties.

For certain violations of the orders, there are other criminal statutes that could come into play and people can get charged with more than one offense. For example, the criminal code has a section for “Offenses Against Public Order.” Criminal nuisance under A.R.S. § 13-2908 includes conduct that is “unreasonable under the circumstances” and “recklessly creates or maintains a condition which endangers the safety or health of others.” A violation is a Class 3 misdemeanor. It would be strong evidence against a defendant that the Governor had issued an Executive Order prohibiting the activity and that the Order was issued to protect the safety and health of people in Arizona.

Similarly, it is a “public nuisance,” and a Class 2 misdemeanor, for someone “[t]o be injurious to health.” A.R.S. § 13-2917. A violation of some of the Executive Orders could be seen as a “public nuisance.” This statute specifically gives prosecutorial agencies the ability to enjoin (or seek a court order to stop) this type of activity.

In short, law enforcement has tools to stop the violation of the Executive Orders and prosecute the violators. Arizona’s approach is to first try to reason with suspected violators to get them to change their behavior instead of hauling them off to jail. The orders show that the State of Arizona expects cooperation from all parties during this crisis.

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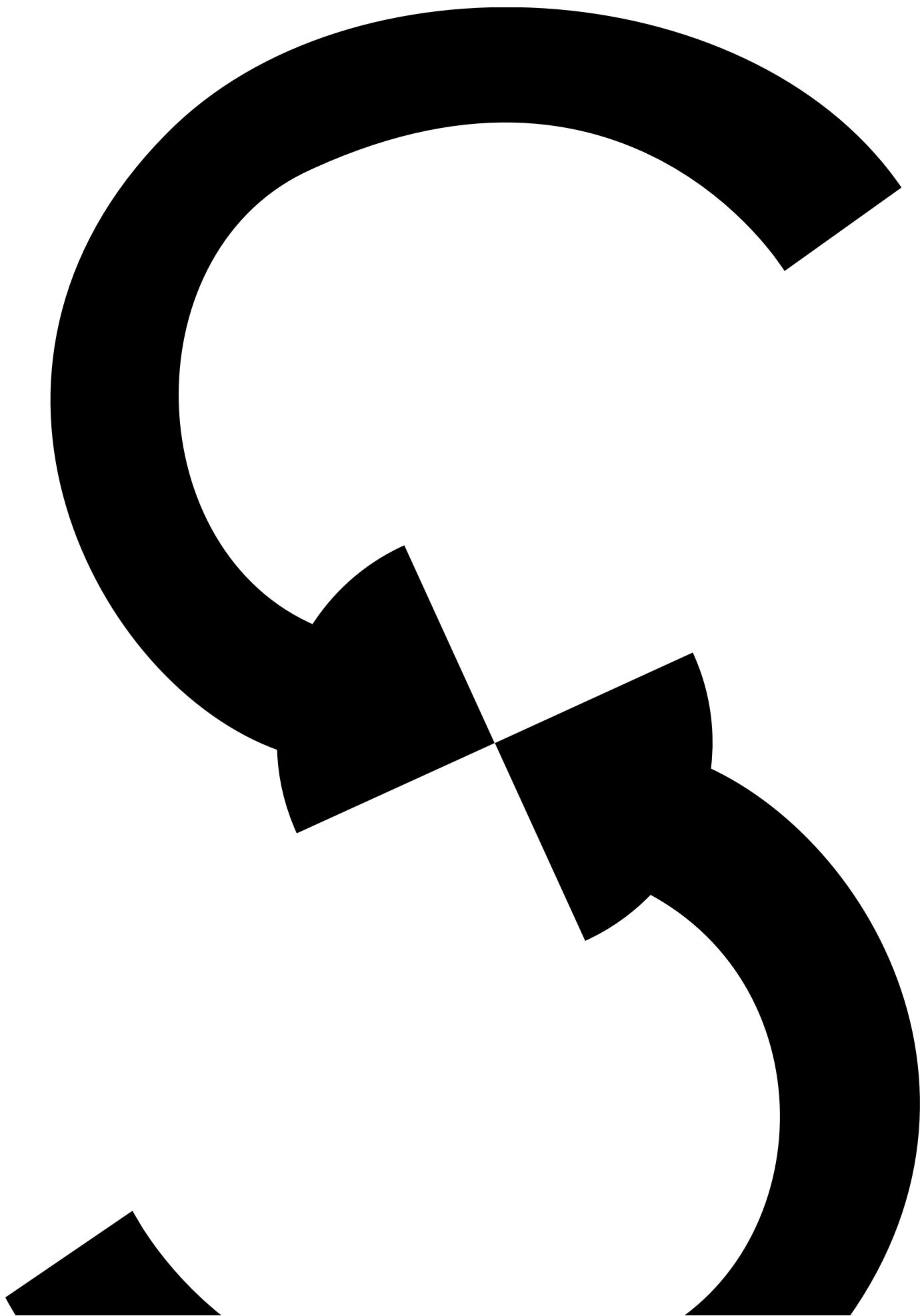
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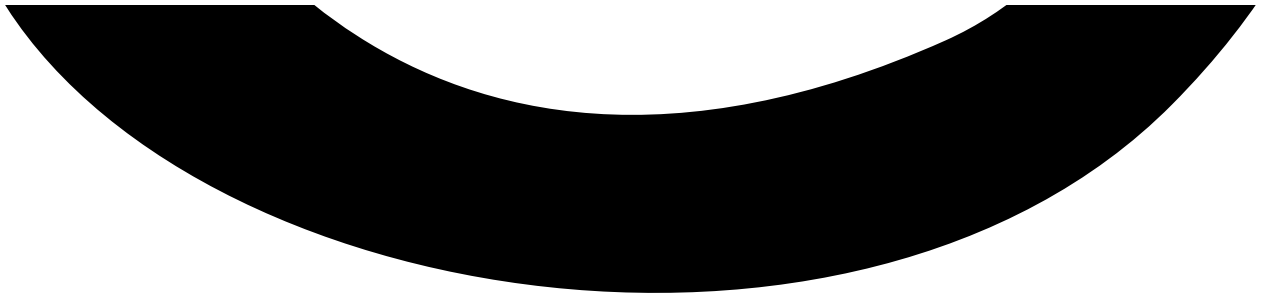
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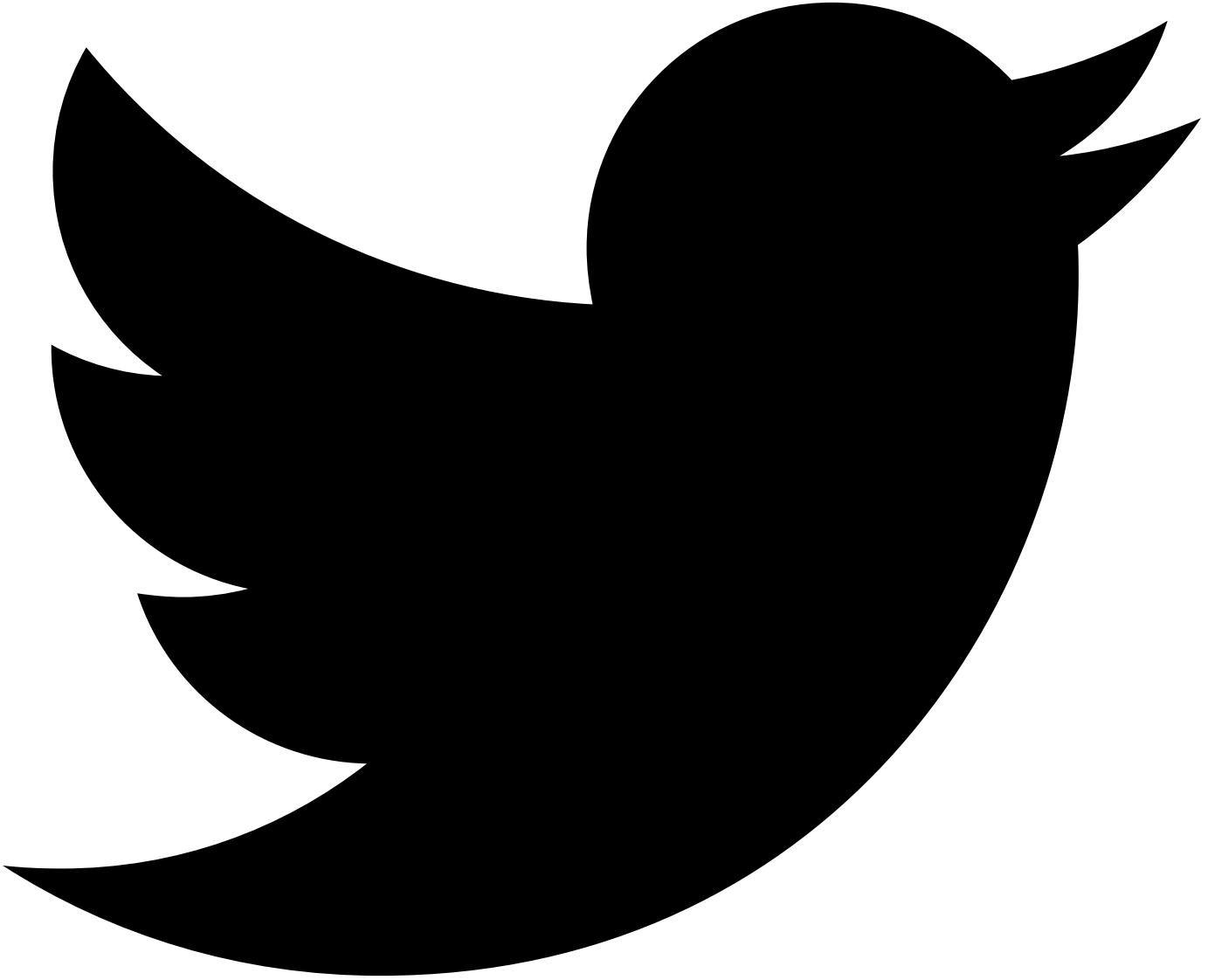
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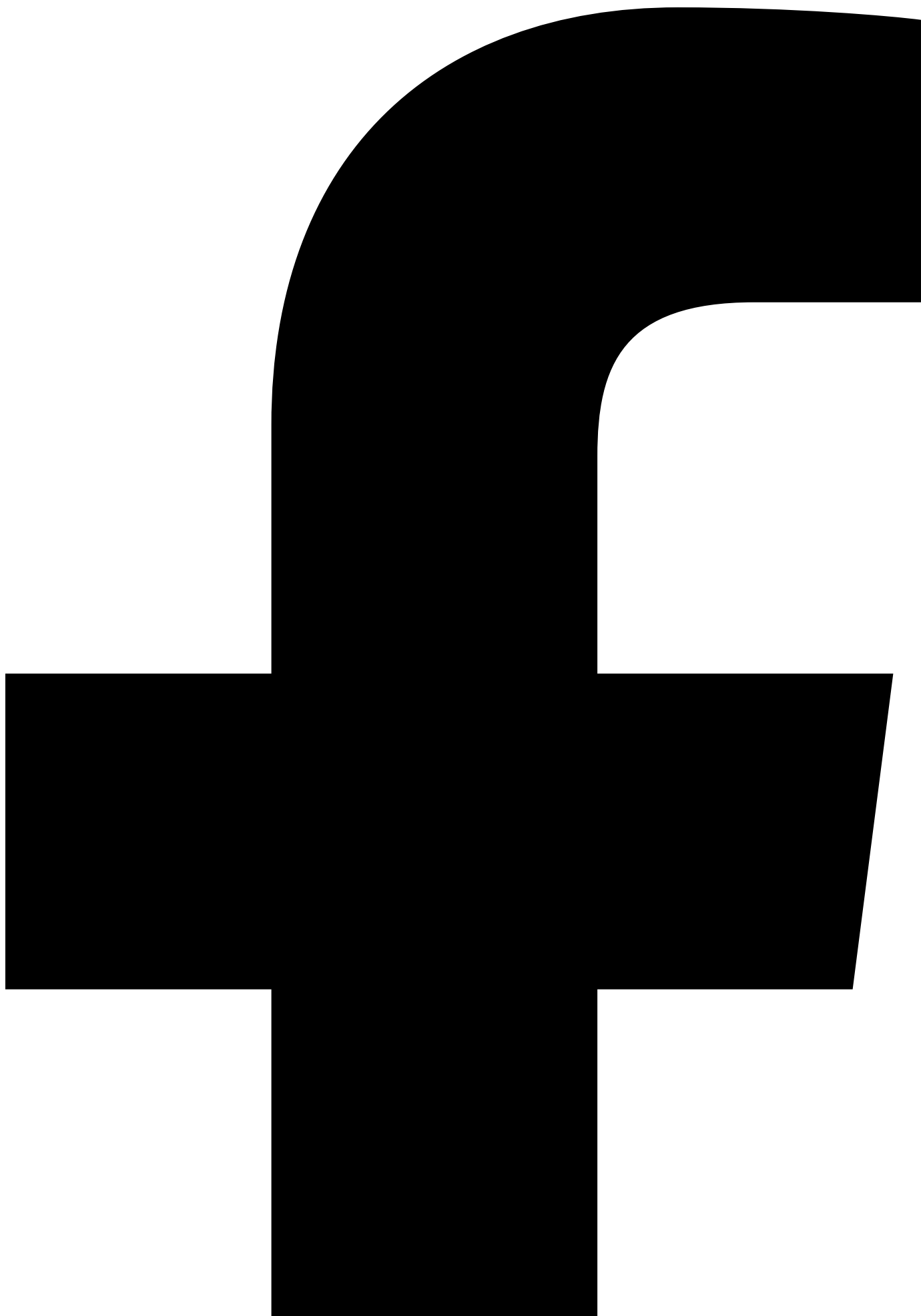
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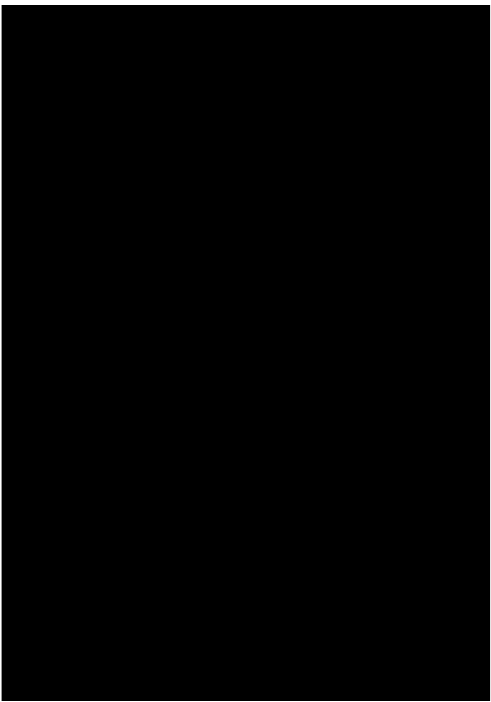
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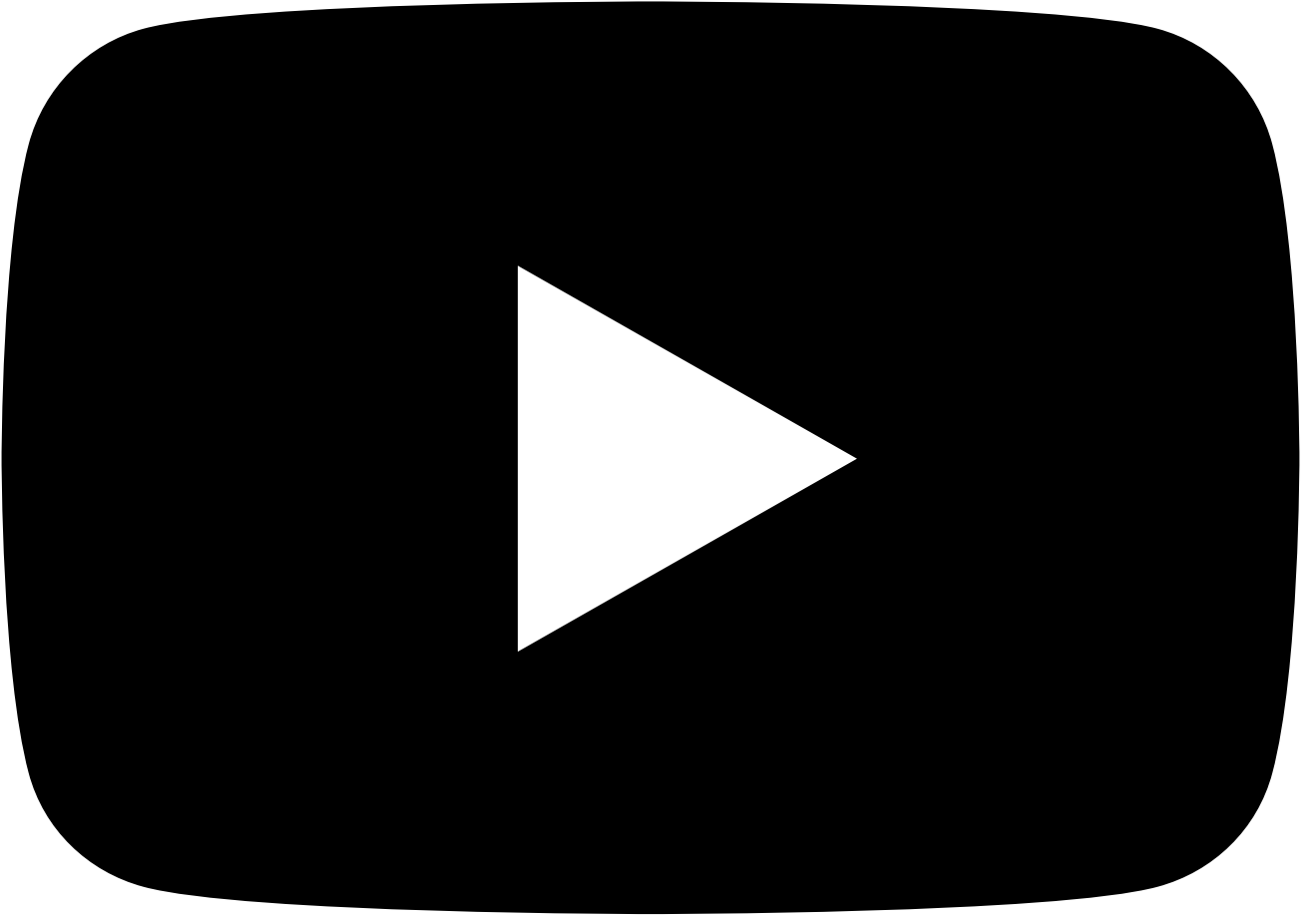
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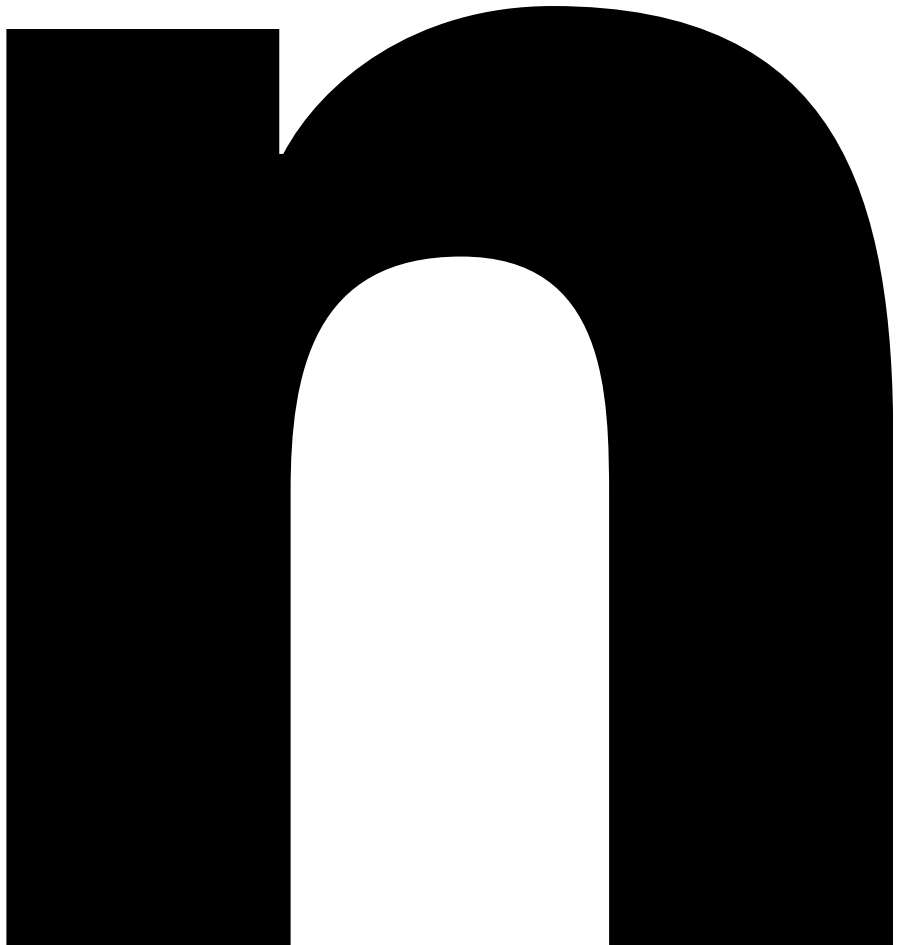
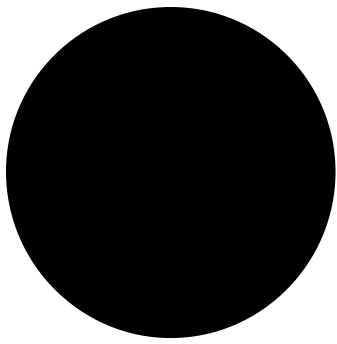




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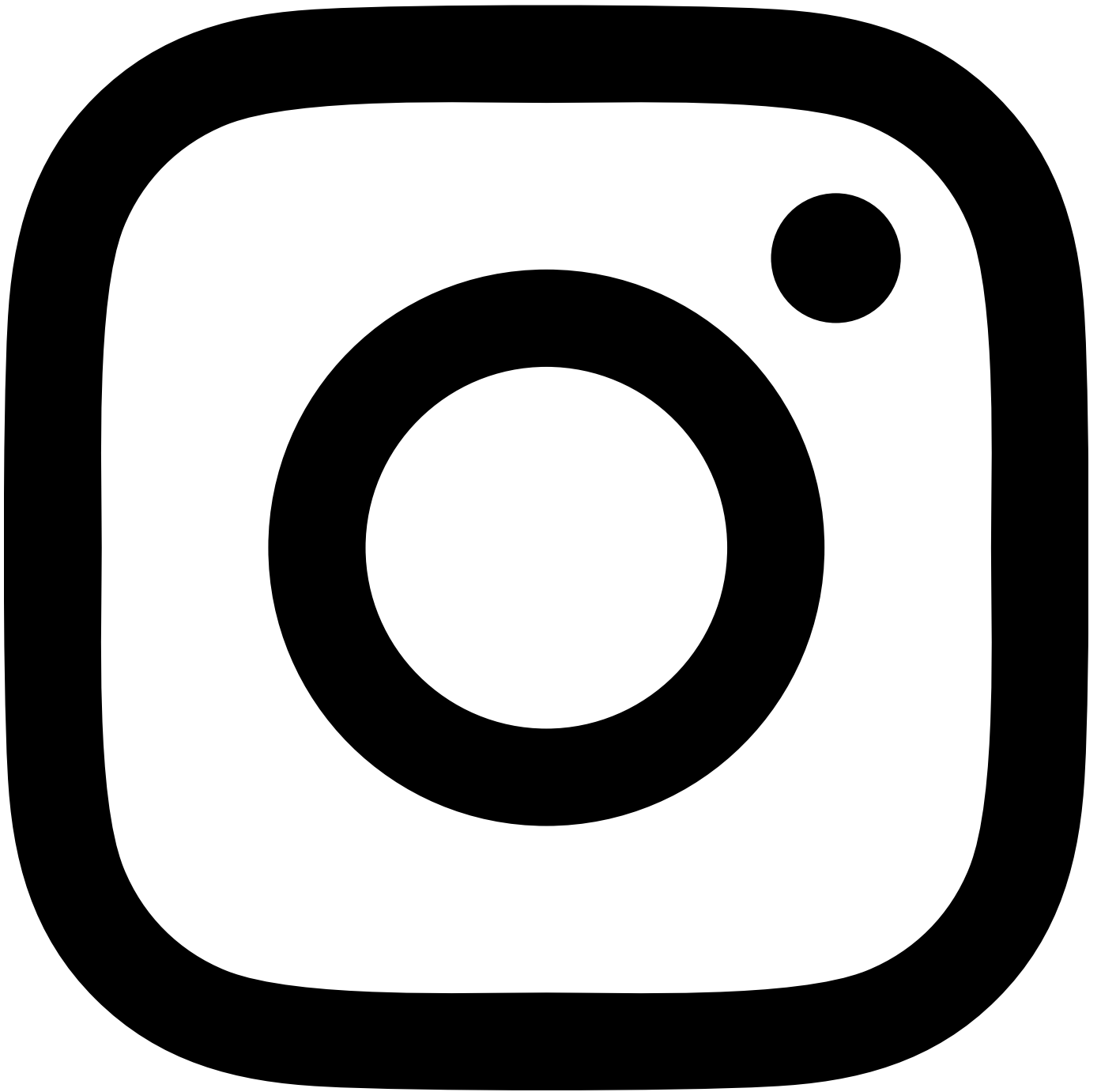


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