

September 13, 2022

**BY ELECTRONIC MAIL**

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Re: Complaint by Former Governor Andrew M. Cuomo  
Against Attorney General Letitia Ann James, Joon Kim,  
Esq., and Anne Clark, Esq.

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Dear Mr. Dopico:

**A. INTRODUCTION.**

I am the 56<sup>th</sup> Governor of the State of New York and write to bring to the Attorney Grievance Committee's ("Committee") attention certain professional misconduct by New York Attorney General Letitia Ann James ("AG James" or the "Attorney General"), and two Special Deputies to the First Deputy Attorney General appointed by AG James, Joon Kim, Esq., and Anne Clark, Esq., to assist in an investigation of allegations of sexual harassment against me.<sup>1</sup> The Complaint arises from the Office of the Attorney General's investigation and related August 3, 2021 "Report of Investigation Into Allegations of Sexual Harassment By Governor Andrew M. Cuomo" (the "Report"). A copy of the Report is attached hereto as "Exhibit A."

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<sup>1</sup> AG James, Mr. Kim, and Ms. Clark maintain offices in Manhattan and are within the disciplinary jurisdiction of the New York Supreme Court, Appellate Division, First Judicial Department, and your Committee.

As demonstrated below, the Attorney General's conduct in connection with the investigation and Report violated Rule 1.7(a)(2),<sup>2</sup> Rule 3.6(a),<sup>3</sup> Rule 4.1,<sup>4</sup> Rule 8.4(c),<sup>5</sup> Rule 8.4(d)<sup>6</sup> and Rule 8.4(h)<sup>7</sup> of the New York Rules of Professional Conduct (the "Rules"), 22 N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0. As for Mr. Kim and Ms. Clark, their conduct in the investigation and drafting of the publicly issued Report—which contained material omissions and errors rendering the Report misleading—violated Rule 4.1, Rule 8.4(c), and Rule 8.4(h).

In the current heated political environment, lawyers' responsibility to act ethically is particularly important and must be held to the highest regard. A lawyer must not conduct an investigation that poses a conflict of interest or issue a Report and make public statements that mislead the public. Lawyers in government service must also not use their position for personal gain and make prejudicial public statements and then selectively release evidence while investigations and a criminal charge are pending. As you know, the legal profession is self-governing, carrying with it special responsibilities for lawyers outlined in the Rules. As discussed herein, AG James cynically manipulated a legal process for personal, political gain. I refer evidence to your Committee that AG James purposefully inserted herself in an investigation which posed a clear conflict of interest and then misled the public to create a political situation forcing my resignation, in violation of the relevant Rules. Evidence of her unethical conduct includes (1) her prejudicial press conference on August 3, 2021, and other public statements that misled the press and the public to believe I sexually harassed eleven women; (2) inflammatory comments evidencing her personal interest in the Report following its issuance and personal attacks on me; (3) the slow-roll, selective and public release of *certain* transcripts and other evidence while several investigations on the allegations and a criminal charge (which was false and has since been dismissed on the merits) were pending; and (4) her refusal to address errors

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<sup>2</sup> Rule 1.7(a)(2) provides that "a lawyer shall not represent a client if a reasonable lawyer would conclude that ... there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests."

<sup>3</sup> Rule 3.6(a) provides that "[a] lawyer who is participating in or has participated in a criminal or civil matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter."

<sup>4</sup> Rule 4.1 provides that "[i]n the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person."

<sup>5</sup> Rule 8.4(c) provides that a lawyer or law firm shall not "engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

<sup>6</sup> Rule 8.4(d) provides that a lawyer or law firm shall not "engage in conduct that is prejudicial to the administration of justice."

<sup>7</sup> Rule 8.4(h) provides that a lawyer or law firm shall not "engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer."

and omissions in the Report, which rendered it materially misleading. As AG James has said: “No matter who you are, no one is above the law.”<sup>8</sup> AG James is subject to the same duties and rules of conduct as any other lawyer, as, as the chief legal officer of this state, she has a unique responsibility to act only in the public interest and not to mislead the public. She must be held accountable for her misconduct.

Fundamentally, the Attorney General and her investigators issued a purposefully inaccurate and misleading Report on August 3, 2021—which violated Rules 4.1 and 8.4(c)—bombastically and repeatedly implying that I sexually harassed eleven women, even though the allegations made by *most* of the eleven women did not constitute sexual harassment under state or federal law, even assuming *arguendo* the truth of those allegations. Indeed, the title of an August 6, 2021 press release issued by the Attorney General’s office and published on her official website furthered that false narrative: “Statement from the Attorney General’s Office in Response to Attacks on 11 Women Harassed by Governor Cuomo.”<sup>9</sup> The Attorney General’s August 3, 2021 press conference announcing the Report was meant to be prejudicial and highly inflammatory, and to villainize me in the public eye, and to mislead the public and the press that I had sexually harassed eleven women, which simply was not true. *See infra* Section D.3. But that was the narrative the press reported, over and over, without correction or rebuttal by the Attorney General.

AG James issued a Report, with the assistance of her hand-picked investigators Mr. Kim and Ms. Clark, that was grossly misleading, and purposefully omitted critical information that was inconsistent with credible allegations of sexual harassment, in violation of her duty of candor imposed by Rules 4.1 and 8.4(c). For example, the most damning (and potentially most publicized) allegation in the Report that I forcibly groped the breast of my assistant Brittany Commisso on November 16, 2020 at the Executive Mansion was not investigated in any meaningful way, and was rapidly discredited. The Report did not mention that while Ms. Commisso had previously stated that she was only in the Mansion for a short time to assist with a

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<sup>8</sup> NY AG James (@NewYorkStateAG), TWITTER (Sept. 10, 2022 4:43 PM), <https://twitter.com/NewYorkStateAG/status/1568701648905674753>.

<sup>9</sup> *See Statement from Attorney General’s Office in Response to Attacks on 11 Women Harassed by Governor Cuomo*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL (Aug. 6, 2021), <https://ag.ny.gov/press-release/2021/statement-attorney-generals-office-response-attacks-11-women-harassed-governor>.

phone issue,<sup>10</sup> the records from that day conclusively disproved this, as she was there for several hours with other staff to work on a speech. While the Attorney General claimed that the investigators “corroborated and substantiated [the] facts through interviews and evidence, including contemporaneous notes and communications,”<sup>11</sup> my understanding is that AG James and her investigators did not review Ms. Commisso’s work emails from November 16, or the emails of other staff members present at the Mansion with Ms. Commisso or who corresponded with her that day, which would have disproven her story. I also understand that the investigators did not ask the staff members present what they remembered about Ms. Commisso on that day.

Critically, when the Attorney General issued the Report, she refused to simultaneously release all the evidence underlying the Report (including the 41 under oath witness interview transcripts, witness interview memos from what are at least another 138 witness interviews, and the 74,000 documents collected by her office). Thus, no one—the media, the public, or me—could scrutinize what the Report stated versus what the evidence actually showed. And that was deliberate because any scrutiny of the evidence would show how inaccurate and misleading the Report was. To this day, she has refused to release all the evidence to me or the public. She has zealously guarded the witness interview memos from scrutiny. Indeed, the Attorney General’s Office denied on meritless privilege grounds a FOIL request from the New York Daily News for the witness interview memos underlying the Report.<sup>12</sup> Evidently, for the reasons set forth below, releasing all the evidence would undermine the false narrative AG James has been advancing about me since August 3, and show how misleading and inaccurate the Report is, such that she refuses to do so.

There are numerous other examples of critical omissions of facts from the Report, as this submission will further detail, particularly as they relate to other complainants. As a matter of law, the intentional omission of facts critical to witness credibility was tantamount to the

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<sup>10</sup> In an interview with the *Times Union*, Ms. Commisso made clear that, on the day of the alleged incident, after receiving the request regarding the phone issue, she “walked to her car parked at the Capitol and drove a short distance” to the mansion, and the alleged incident occurred “when she reached the office on the second floor,” after which she promptly left the mansion and got into her car. See Brendan Lyons, *In Her Own Words: Woman Describes Cuomo’s Alleged Groping at Mansion*, TIMES UNION (April 7, 2021), <https://www.timesunion.com/news/article/cuomo-alleged-groping-victimmansion-incident-16078748.php>.

<sup>11</sup> *NY Gov. Andrew Cuomo Sexually Harassed Multiple Women, Report Finds: Letitia James Press Conference Transcript*, REV (Aug. 3, 2021), <https://www.rev.com/blog/transcripts/ny-gov-andrew-cuomo-sexually-harassed-multiple-women-report-finds-letitia-james-press-conference-transcript>; see *Statement from Attorney General’s Office in Response to Rita Glavin’s Comments*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL (Aug. 20, 2021), <https://ag.ny.gov/press-release/2021/statement-attorney-generals-office-response-rita-glavins-comments>.

<sup>12</sup> Daily News Editorial Board, *Shine A Light: Release Documents From The Cuomo Sexual Harassment Investigation*, N.Y. DAILY NEWS (Aug. 3, 2022), <https://www.nydailynews.com/opinion/ny-edit-shine-a-light-james-cuomo-kim-clark-20220803-yepyy4vylzgexb5x4jeriamqg4-story.html>.

assertion of false statements. This is particularly alarming given the Attorney General’s public statements that the complainants’ allegations were true and that the Report’s conclusions were “corroborated by a mountain of evidence” from the “exhaustive, thorough” investigation.<sup>13</sup> The omission of facts, and failure to properly investigate, misled the public. The allegations were not corroborated by a “mountain of evidence,” and the most serious allegations by Ms. Comisso had no corroboration—because they were not true.

The Attorney General should not have been involved in investigating me or permitted to maintain authority over the Report and related decisions regarding the selective release of underlying evidence if she was also planning to run for governor—and she did run for governor, weeks after issuing the misleading and inaccurate Report. That is a textbook conflict of interest.<sup>14</sup>

As brief background, following complaints of sexual harassment against me, state legislative officials called for an investigation and AG James expressed interest in conducting the investigation. I stated to AG James directly, as well as to state legislators, that she had a clear conflict of interest because she would not publicly disavow running for governor. For that reason, I said that an investigation should be undertaken by a qualified independent investigator and recommended alternatives including former federal judge Barbara S. Jones—who was recently proposed by the U.S. Department of Justice to serve as Special Master in the Trump/Mar-a-Lago search case. The legislative leaders insisted, however, that AG James conduct the investigation and threatened me with impeachment if I did not refer the matter to the Attorney General. I directly communicated the conflict to AG James and expressed my opinion that it would be unethical for her to engage in the matter given her personal interest. AG James refused to acknowledge the conflict, persisted in creating political pressure to have the matter referred to her, and refused any alternative to cooperate with any other party to conduct the investigation. I structured a referral that sought to ensure an independent investigation and cure the apparent conflict by only providing AG James with the authority to select an independent law firm to

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<sup>13</sup> See *Statement from Attorney General’s Office in Response to Attacks on 11 Women Harassed by Governor Cuomo*, *supra* note 9; *Statement from Attorney General’s Office in Response to Rita Glavin’s Comments*, *supra* note 11; see also *NY Gov. Andrew Cuomo Sexually Harassed Multiple Women, Report Finds: Letitia James Press Conference Transcript*, *supra* note 11 (“The investigators independently corroborated and substantiated these facts through interviews and evidence, including contemporaneous notes and communications . . . These allegations were substantiated. They were corroborated,” and, from Ms. Clark, “[P]eople that we spoke to did tell people [about their allegations] at the time, and we confirmed with the people they spoke with or had written documentation, either text messages or emails in which they recounted things contemporaneously. So things, when you see the report, everything is documented. Things were very well corroborated.”).

<sup>14</sup> See *Wright v. United States*, 732 F.2d 1048, 1056 (2d Cir. 1984) (finding clear prosecutorial conflict of interest where individual was prosecuted by husband of his former political opponent, stating that prosecutor is not disinterested “if he has, or is under the influence of others who have, an axe to grind against the defendant, as distinguished from the appropriate interest that members of society have in bringing a defendant to justice”).

conduct the investigation and deliberately did not grant the Attorney General such authority to investigate on her own. Thereafter, AG James appointed Mr. Kim and Ms. Clark as deputized investigators, but, for the reasons discussed below, they lacked any semblance of independence—in contravention of my referral. Flouting ethical strictures, AG James evidently intended for the Report, the prejudicial press conference at which she announced the Report but then refused to release all the evidence for scrutiny, and the public narrative that followed to exact maximum political damage and compel other elected officials to call for my immediate resignation. Such damage was done, and I resigned on August 10, 2021, effective August 24, 2021.

Compounding her conflict, the Attorney General made various extrajudicial disclosures in violation of Rule 3.6(a) and Rule 8.4(d) that were clearly improper. For example, on November 10, 2021, less than two weeks after she announced her campaign for New York State Governor on October 29, 2021, AG James began to slowly and selectively release *some* evidence underlying the Report that was prejudicial to me while investigations by several district attorneys of the allegations from the Report were ongoing and one criminal charge was pending, thereby broadcasting to witnesses what other witnesses had said and creating a further negative press frenzy.<sup>15</sup> In addition, AG James made questionable choices regarding what to redact, and not redact, in the released transcripts which, in turn, caused further negative publicity and prejudice. The evidence suggests that her conduct was improperly motivated by her own personal interest. She was running for governor and wanted to ensure I would not enter the race. There was no law enforcement reason for the Attorney General to selectively release evidence at the time and in the manner she did. I submit that this was misconduct.

Since the Report's publication, reporters have reviewed the facts of the situation and contents of the Report, and raised significant issues regarding the Report's accuracy and credibility.<sup>16</sup> My attorneys have submitted requests to AG James for all of the underlying evidence—which has still not been released to me—and for the Attorney General to address

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<sup>15</sup> See *Transcripts and Exhibits From Independent Investigation Into Sexual Harassment Allegations Against Former Governor Cuomo Begin to Be Released*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL (Nov. 10, 2021), <https://ag.ny.gov/press-release/2021/transcripts-and-exhibits-independent-investigation-sexual-harassment-allegations>; *Additional Transcripts, Exhibits, and Videos From Independent Investigation Into Sexual Harassment Allegations Against Former Governor Cuomo Released*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL (Nov. 29, 2021), <https://ag.ny.gov/press-release/2021/additional-transcripts-exhibits-and-videos-independent-investigation-sexual-transcripts-exhibits-and-videos-from-independent-investigation-into-sexual-harassment-allegations-against-former-governor-cuomo-released>; *Transcripts, Exhibits, and Videos From Independent Investigation Into Sexual Harassment Allegations Against Former Governor Cuomo Released*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL (Jan. 20, 2022), <https://ag.ny.gov/press-release/2022/transcripts-exhibits-and-videos-independent-investigation-sexualharassment>.

<sup>16</sup> See, e.g., Cathy Young, *Reassessing Cuomo's Fall, One Year Later*, N.Y. DAILY NEWS (Aug. 28, 2022), <https://www.nydailynews.com/opinion/ny-oped-reassessing-cuomo-one-year-later-20220828-eyros3sefzarrjnrzysgc7ugl4-story.html>; Erik Wemple, *Why Did The Media Ignore An Allegation Against An Accuser Of Andrew Cuomo?*, WASH. POST (Jan. 10, 2022), <https://www.washingtonpost.com/opinions/2022/01/10/andrew-cuomo-accuser-lawsuit/>.

material flaws and omissions in the Report. To date, AG James has refused to answer these requests, address the Report's flaws, or correct the public record in any way.

For the reasons set forth more fully below, the Committee should investigate this matter and, if warranted, take appropriate action.<sup>17</sup>

**B. THE ATTORNEY GENERAL VIOLATED THE TERMS OF MY REFERRAL WHICH SPECIFICALLY SOUGHT TO AVOID HER RULE 1.7(a)(2) PERSONAL-INTEREST CONFLICT.**

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The Attorney General's reported public comments after the issuance of the Report reflect her improper personal involvement in the investigation in violation of Rule 1.7(a)(2). First, the Attorney General's comments at her August 3, 2021 press conference were inflammatory and prejudicial, and designed to exact pressure on politicians and state legislators to call for my resignation—which they did—without anyone carefully reviewing the Report and scrutinizing the evidence. And the Attorney General refused to release all the evidence underlying the Report and collected during the investigation. The Attorney General's bias and motives were apparent in the following comments made at the press conference, which were aimed to further the false narrative that I sexually harassed 11 women:

- “I am inspired by all the brave women who came forward, but more importantly, I believe them and I thank them for their bravery.”
- “And right now, I think we should all be focused on the courag[e] and bravery of the women who came forward, and all of us should be focused on keeping women safe, believing women, and allowing women to speak their truth. And that's exactly what this [Report] does.”

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<sup>17</sup> Lest there be any doubt about the Attorney General's pattern of using her Office to further her personal interests regardless of the rule of law and the need to protect it, it appears that the Attorney General's Office very recently leaked to a media outlet confidential tax documents identifying donors to former U.N. Ambassador Nikki Haley's nonprofit “Stand For America, Inc.” Post Editorial Board, *NY AG Letitia James Must Find The Felon In Her Midst — Pronto*, N.Y. POST (Sep. 3, 2022), [https://nypost.com/2022/09/03/ny-ag-letitia-james-must-find-the-felon-in-her-midst-pronto/?utm\\_campaign=iphone\\_nyp&utm\\_source=com.microsoft.Office.Outlook.compose-shareextension](https://nypost.com/2022/09/03/ny-ag-letitia-james-must-find-the-felon-in-her-midst-pronto/?utm_campaign=iphone_nyp&utm_source=com.microsoft.Office.Outlook.compose-shareextension). The leaked tax document reportedly bears the official stamp of the Attorney General's Office. Such a disclosure of tax information by a state employee violates both federal and state law and can be criminally prosecuted. 26 U.S.C. §§ 6103, 7213; N.Y. Tax L. §§ 697(e), 697(e)(4)(A), 1825. I request that this Committee separately investigate AG James for that reported conduct, and her apparent failure to investigate the illegal leak and address it in any way consistent with her duties as the Chief Legal Officer of New York, which is a violation of Rule 8.4(d).

- “And our focus, again, should be on the bravery and the courage of these 11 women and of the others who came forward.”
- “These allegations were substantiated. They were corroborated.”
- “They substantiated and corroborated the allegations and have issued findings.”
- “[Journalist, Rebecca Lewis:] What do you want the public to take away from this report? [AG James:] That these 11 women were in a hostile and toxic work environment, and that we should believe women and that what we have an obligation and duty to do is to protected women in their workplace. . . I believe women, and I believe these 11 women.”<sup>18</sup>

Then, on September 30, 2021, at the Ulster County Democratic Committee dinner, the Attorney General admitted that she was personally involved in the investigation and made her own determinations of the credibility of the witnesses. With respect to the sexual harassment complainants, AG James reportedly stated:

*When they came into my office, and they told me about the fact that Albany was toxic . . . how they were harassed. . . I believe them, because they were specific. They gave me concrete examples. And everyone in Albany, every politician that I knew said, “yeah, it was like that Tish,” but it was these young women who marched in, gave me the facts, gave me the evidence, worked with the independent attorneys . . . . They’re the heroes, not me, and not Mr. Cuomo. . . There are individuals, and one in particular, and his allies, who are trying to discredit and trying to undermine this investigation, and will argue that I politicized it. No. I put my head down. It was all about the facts, and all about the evidence.<sup>19</sup>*

The Attorney General again referred to her personal involvement in the investigation on November 16, 2021, claiming: “The investigation was referred to me by Governor Cuomo . . . . He said: ‘Tish investigate these allegations of sexual harassment.’ He said, ‘I believe in you. You’ve done a good job. Let Tish investigate,’ . . . I did. Unfortunate that he didn’t agree with

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<sup>18</sup> *NY Gov. Andrew Cuomo Sexually Harassed Multiple Women, Report Finds: Letitia James Press Conference Transcript, supra* note 11.

<sup>19</sup> Bernadette Hogan, ‘Stay tuned’: AG Letitia James Tells Dem Leaders on When She Will Decide Gov Run, N.Y. POST (Oct. 1, 2021), available at: <https://nypost.com/2021/10/01/letitia-james-hints-at-run-for-new-york-governor/> (emphasis added).

the outcome.”<sup>20</sup> To the contrary, the Referral did not confer jurisdiction on the Attorney General to personally supervise or participate in the investigation or drafting of the Report beyond selecting an independent law firm to conduct the review and receiving weekly status reports pursuant to Executive Law § 63(8): “Each deputy or other officer appointed or designated to conduct such inquiry shall make a weekly report in detail to the attorney-general, in form to be approved by the governor and the attorney-general . . . .”

The Attorney General made some of her most prejudicial comments about me in March of 2022 following a speech I gave at a church in Brooklyn. When asked about my comments, she replied, “Serial sexual harasser Andrew Cuomo won’t even spare a house of worship from his lies...[e]ven though multiple independent investigations found his victims to be credible, Cuomo wasn’t railroaded; he quit so he wouldn’t be impeached. New Yorkers are ready to move forward from this sick, pathetic man.”<sup>21</sup>

Such comments from the chief legal officer of the state<sup>22</sup> amid multiple ongoing state legislative and agency investigations, as well as other criminal and civil matters,<sup>23</sup> were prejudicial and showed that the Attorney General was acting solely as a politician concerned about her own re-election campaign. Moreover, such comments violate Rule 3.6(a), which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In this regard, Comment [5] to Rule 3.8 further explains that: “In the context of a criminal prosecution, a prosecutor’s extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments that have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium against the accused.” Among other things, referring to me as “sick” and “pathetic” certainly increased public opprobrium.

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<sup>20</sup> Candice Ferrette, *AG James Defends Harassment Investigation of Cuomo*, NEWSDAY (Nov. 16, 2021), available at: <https://www.newsday.com/long-island/politics/letitia-james-long-island-association-1.50424577>.

<sup>21</sup> Joseph Choi, *New York Attorney General Labels Andrew Cuomo A ‘Sick, Pathetic Man’*, THE HILL (Mar. 7, 2022), <https://thehill.com/homenews/state-watch/597161-new-york-attorney-general-labels-andrew-cuomo-a-sick-pathetic-man/>.

<sup>22</sup> *Our Office*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL, <https://ag.ny.gov/our-office> (last visited Sep. 9, 2022) (“[T]he Attorney General is both the ‘People’s Lawyer’ and the State’s chief legal officer. As the ‘People’s Lawyer,’ the Attorney General *serves as the guardian of the legal rights* of the citizens of New York, its organizations and its natural resources.”) (emphasis added).

<sup>23</sup> While the Assembly’s investigation report was published on November 22, 2021, JCOPE’s investigation regarding the sexual harassment allegations was ongoing until JCOPE was legislated out of existence in July 2022. Investigations by five district attorneys concluded by January 2022 with no charges filed. Trooper 1 filed a federal lawsuit alleging discrimination and retaliation in February 2022; that litigation is ongoing. *See* Trooper 1 v. New York State Police, et al., No. 22 Civ. 893 (E.D.N.Y.).

AG James had an obvious motive to draw every possible inference against me and issue the most damaging Report possible—a *Report that notably bears the Attorney General’s name on the cover page at the top*, and which she personally announced in an unprecedented and extraordinarily prejudicial press conference. AG James announced her campaign for governor on October 29, 2021, just weeks after the Report was issued, which showed and perpetuated the obvious conflict.<sup>24</sup> Yet, AG James apparently remained involved in the investigation and Report, and decisions such as the selective release of evidence after its issuance. In doing so, AG James violated (among other things) the plain language of Rule 1.7(a)(2), which prohibits a lawyer or law firm from undertaking a representation where “there is a significant risk that the lawyer’s professional judgment *on behalf of a client* will be adversely affected by the lawyer’s own financial, business, property or other *personal interests*.” (Emphasis added).

The Attorney General’s client is the *public*—*i.e.*, the citizens of the State of New York. *Matter of Sedore v. Epstein*, 56 A.D.3d 60, 67 (2d Dept. 2008) (“In the case of the prosecutor, all of these obligations flow not to the complainant, but to the public, which is the client”); *see also Matter of Kurtzrock*, 192 A.D.3d 197, 215 (2d Dept. 2020) (“A prosecutor is an officer of the court and a representative of the People of the State”).<sup>25</sup> In this regard, AG James had a duty to conduct a *disinterested* investigation and to assure that the investigation was conducted by disinterested individuals. *See Sedore*, 56 A.D.3d at 67 (“The prosecutor is appointed solely to pursue the public interest . . . A private attorney appointed to prosecute a criminal [offense] therefore certainly should be as disinterested as a public prosecutor who undertakes such a prosecution” (quoting *Young v. United States ex rel. Vuitton et Fils S. A.*, 481 U.S. 787, 804 (1987))). Legally, the prosecutor “is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a

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<sup>24</sup> When the Attorney General announced her run for governor, she specifically touted the investigation and Report as support for her campaign: “I’ve held accountable those who mistreat and harass women in the workplace, no matter how powerful the offenders.” Biba Adams, *Letitia James Announces Run For New York Governor: ‘I Have The Experience, Vision, And Courage’*, YAHOO! (Oct. 29, 2021), <https://www.yahoo.com/now/letitia-james-ag-investigating-trump-142719428.html>.

<sup>25</sup> *See generally* Exec. L. §§ 63(1), (2), (3). Moreover, “[a] prosecutor has the responsibility of a minister of justice and **not simply that of an advocate.**” (emphasis added). 22 N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0, Comment [1] to R. 3.8; *see also E.E.O.C. v. Fed. Express Corp.*, 268 F. Supp. 2d 192, 196 (E.D.N.Y. 2003) (“Where departments of the state government request the OAG to investigate and prosecute violations of the law, § 63(3) commands the OAG to do so. Nothing in the statute appears to limit the authority of the OAG to prosecute discrimination cases under the OAG’s primary enabling provision, § 63(1). That section confers broad authority upon the OAG to prosecute all types of legal cases by providing, in pertinent part, that the ‘attorney-general shall ... [p]rosecute and defend all actions and proceedings in which the state is interested.’ N.Y. Exec. L. § 63(1)”).

case, but that justice shall be done.” *Id.* at 66 (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).<sup>26</sup>

Here, AG James’ stated and reported involvement in the investigation despite her significant personal interest in that investigation was highly improper and unethical.<sup>27</sup> To the extent that AG James personally made evidentiary and credibility determinations, applied any pressure or input (directly or indirectly) to Mr. Kim and Ms. Clark regarding their investigation, the Attorney General violated Rule 1.7(a)(2) and the Referral that expressly constrained her role. Her public comments reflect that the Attorney General did not hand the reins of this investigation to an “independent” law firm as was required by the terms of the Referral. Rather, the Attorney General—who announced her own campaign for governor on October 29, 2021 and then suddenly withdrew from the race on December 9, 2021 and decided to seek re-election as attorney general—was apparently personally involved in and contributed to this investigation of a political rival against whom she planned to run for office.

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<sup>26</sup> To be sure, a prosecutor and law enforcement attorney such as the Attorney General cannot simply *consent* on behalf of the public to their own conflicted representation under Rule 1.7. A prosecutor simply cannot consent to conflicts of interest on behalf of the public in assigning a conflicted attorney to prosecute a criminal case because of the “unique role of the public prosecutor.” *Sedore*, 56 A.D.3d at 67. “The administration of justice must not only be above reproach, it must also be beyond the suspicion of reproach . . . [and] even the statutory authority of the district attorney to prosecute must yield when a conflict of interest potentially impairs the prosecutor’s obligation to do justice.” *Id.* at 67–68 (emphasis added).

<sup>27</sup> Beyond having prosecutorial duties, the Attorney General is the chief legal officer of the state. *See, e.g., Our Office*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL, *supra* note 22 (“As head of the Department of Law, the Attorney General is both the ‘People’s Lawyer’ and the State’s **chief legal officer**. As the ‘People’s Lawyer,’ the Attorney General serves as **the guardian of the legal rights of the citizens of New York**, its organizations and its natural resources. In fulfilling the duties of the State’s chief legal counsel, the Attorney General not only advises the Executive branch of State government, but also defends actions and proceedings on behalf of the State.”) (emphasis added); *see also Waldman v. State*, 140 A.D.3d 1448, 1449 (3d Dep’t 2016) (“Executive Law § 63(1) establishes the attorney-client relationship between the Attorney General and state agencies and offices, providing, in relevant part, that the Attorney General ‘shall ... [p]rosecute and defend all actions and proceedings in which the state is interested, and have charge and control of all the legal business of the departments and bureaus of the state, or of any office thereof which requires the services of attorney or counsel, in order to protect the interest of the state.’ . . . the Attorney General has the authority to commence civil actions to enforce state laws or protect the public interest.”); *Application of Miller*, 46 A.D.2d 999, 1000 (4th Dep’t 1974) (“Normally, of course, the Attorney General would represent the People in a case affecting the public interest”); 22 N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0, Preamble ¶ 10 (“Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide whether to agree to a settlement or to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state’s attorney in state government, and in their federal counterparts, and the same may be true of other government law officers. . . . These Rules do not abrogate any such authority.”).

Moreover, the Attorney General purportedly spoke to “everyone in Albany, every politician [she] knew” about the investigation, further injecting political influence into what should have been an independent review. Contrary to her Office’s statement on August 20, 2021, the investigation was not “exhaustive, thorough, and *without outside influence, period.*”<sup>28</sup> The Attorney General’s comments about the need to “believe women” regardless of facts or other evidence, in addition to her other political machinations, were meant to pressure other politicians to fall in line with the Report’s conclusions, in violation of Rule 1.7(a)(2).

**C. THE ATTORNEY GENERAL’S INTENTIONAL FAILURE TO SELECT INDEPENDENT INVESTIGATORS AS REQUIRED BY RULE 1.7(a)(2), YOUNG, AND THE EXPLICIT TERMS OF THE REFERRAL.**

On March 1, 2021, Beth Garvey, Esq., Special Counsel and Senior Advisor to me in my capacity as Governor, made a limited referral to the Attorney General pursuant to N.Y. Exec. L. § 63(8) (“Referral”).<sup>29</sup> The Referral specified that the Attorney General must “select an independent law firm to conduct an inquiry into allegations of and circumstances surrounding sexual harassment claims made against the Governor.” *Id.* This Referral followed discussions with the Attorney General in which she lobbied for me to refer the investigation of sexual harassment allegations against me solely to her office rather than a universally respected, independent former federal judge who had no aspirations to run for governor or any other political office.<sup>30</sup>

Given that the Attorney General refused to publicly disavow any intention to run for

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<sup>28</sup> *Statement from Attorney General’s Office in Response to Rita Glavin’s Comments, supra* note 11.

<sup>29</sup> Letter from Beth Garvey, Esq., Special Counsel and Senior Advisor to the Governor, to Attorney General Letitia James (Mar. 1, 2021), [https://ag.ny.gov/sites/default/files/letter\\_to\\_ag\\_3.1.21.pdf](https://ag.ny.gov/sites/default/files/letter_to_ag_3.1.21.pdf).

<sup>30</sup> By way of background, I initially announced in February 2021 that Barbara Jones, a highly respected former federal prosecutor and former federal judge, would lead a “full and thorough” independent review of the allegations, and I directed all state employees to cooperate fully, and pledged that I would have “no further comment until the review has concluded.” See Bill Mahoney, *2<sup>nd</sup> Woman Accuses Cuomo of Harassment*, POLITICO (Feb. 27, 2021), <https://www.politico.com/states/new-york/city-hall/story/2021/02/27/2nd-woman-accuses-cuomo-of-harassment-1366234>. When that appointment was met with resistance from the Attorney General and others because of a perception that Judge Jones was not sufficiently independent, with the Attorney General’s initial agreement, I asked that AG James and Chief Judge Janet DiFiore jointly select independent counsel to lead the review. However, the Attorney General subsequently insisted on overseeing the review herself.

governor in 2022, and I had already made clear my intention to run for a fourth term in 2022,<sup>31</sup> I insisted to the Attorney General that the investigation had to be entirely independent and conducted by an independent law firm with no bias or predisposition. As part of our discussions in advance of the Referral, AG James specifically assured me that she would not appoint a plaintiff's attorney to conduct the review after I raised to her my concern about the inherent predisposition such an attorney would have in approaching claims of sexual harassment.

The Attorney General was not to be personally involved in the investigation and Report given her obvious conflict, *i.e.*, that she would not publicly disavow running for governor in 2022. To that end, the Referral expressly provided, in the first paragraph, that the investigation was to be performed by “an independent law firm”—*not* by the Attorney General:

The Governor is hereby making a referral pursuant to Executive Law Section §63 (8) for you to select an independent law firm to conduct an inquiry into allegations of and circumstances surrounding sexual harassment claims made against the Governor.

Referral at 1.

The Attorney General did *not* select “independent” investigators as required by Rule 1.7(a)(2), *Young*, and the explicit terms of the Referral. *See Young*, 481 U.S. at 804 (“A private attorney appointed to prosecute a criminal [offense] therefore certainly should be as disinterested as a public prosecutor who undertakes such a prosecution.”). Nor did she abide by her assurance that she would not hire a plaintiff's attorney. Instead, AG James appointed a plaintiff's employment attorney whose practice is focused on representing employees in discrimination lawsuits, and a former prosecutor with whom I had a negative history, selecting as the purportedly “independent law firm” investigators:

(1) Anne Clark, Esq., of Vladeck, Raskin & Clark P.C., a plaintiff's attorney who had represented many women in suing employers for sexual harassment, and who is a partner at a law firm with a

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<sup>31</sup> *See e.g.*, Joseph Spector, *Cuomo 2022? Governor Hints at Running For a Fourth Term*, DEMOCRAT & CHRON. (Mar. 29, 2019), <https://www.democratandchronicle.com/story/news/politics/albany/2019/03/29/cuomo-2022-governor-hints-running-fourth-term/3311851002/> (“Asked if that meant he will run for a fourth term, Cuomo initially laughed and then said . . . yes.”); Michael Gormley and Candice Norwood, *‘I Know This Job’: Andrew Cuomo Will Run For 4<sup>th</sup> Term as New York Governor*, GOVERNING (May 29, 2019), <https://www.governing.com/archive/tns-cuomo-will-run-for-governor-2022.html> (“I plan to run for a fourth term” and “I know this job, I work seven days a week at it, and I think we have accomplishments. And the older you get, the simpler it gets. I think I’m doing good things . . .”).

practice focused on bringing lawsuits for harassment and discrimination<sup>32</sup>; and

(2) Joon Kim, Esq., of Cleary Gottlieb Stein & Hamilton LLP, who, as a former federal prosecutor, had a long and public history of investigating me and the Executive Chamber while I was Governor during his time at the United States Attorney's Office for the Southern District of New York.

The Attorney General knew that Mr. Kim had, as the *New York Times* observed, “a history with Mr. Cuomo.”<sup>33</sup> Indeed, it was well-known that, during his tenure as Chief Counsel, Chief of the Criminal Division, and eventually as Acting U.S. Attorney, Mr. Kim played major roles in the Southern District's grand jury investigation of my disbanding of the Moreland Commission and in the subsequent grand jury investigation and prosecution of Joseph Percoco, a member of my administration, and that he personally interviewed me during those investigations.

<sup>34</sup>

In sum, in further violation of Rule 1.7(a)(2), and seemingly because of her personal-interest conflict, the Attorney General chose investigators that were anything but disinterested: a plaintiff-side employment attorney with an obvious disposition toward a specific result, and a former prosecutor who had investigated me, personally interviewed me in that investigation, and whose office had been publicly critical of me.

**D. THE REPORT MISLED THE PUBLIC, CONTAINED MATERIAL OMISSIONS, IGNORED EXCULPATORY EVIDENCE, AND DISREGARDED EVIDENCE THAT UNDERMINED THE ALLEGATIONS AND CREDIBILITY OF COMPLAINANTS, IN VIOLATION OF RULES 4.1, 8.4 (C) & 8.4(H).**

**1. INTRODUCTION.**

The Attorney General understood that, unlike civil litigation or criminal prosecutions, where an investigation is followed by the opportunity for a trial or a hearing with forms of

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<sup>32</sup> See *About*, VLADECK, RASKIN & CLARK, P.C., <https://www.vladeck.com/about> (last visited Sept. 9, 2022).

<sup>33</sup> Luis Ferré-Sadurní and William K. Rashbaum, *Cuomo to Be Questioned in Sexual Harassment Inquiry*, N.Y. TIMES, (July 15, 2021), <https://www.nytimes.com/2021/07/15/nyregion/cuomo-investigation-harassment.html>.

<sup>34</sup> See Letter from Outside Counsel to the Executive Chamber to Joon H. Kim and Anne L. Clark, “Response to Special Investigators’ Report” (Aug. 4, 2021), [https://www.governor.ny.gov/sites/default/files/2021-08/Executive\\_Chamber-Response\\_to\\_Special\\_Investigators%27\\_Report.pdf](https://www.governor.ny.gov/sites/default/files/2021-08/Executive_Chamber-Response_to_Special_Investigators%27_Report.pdf) (detailing Mr. Kim’s role in matters involving myself and my administration).

reciprocal discovery, I would have no opportunity or formal procedure by which to obtain all the evidence and formally rebut the Report other than in the media.<sup>35</sup> Recognizing this fact, the Attorney General used the Report as an opportunity to further her own political interests at the cost of the truth. She released the Report on August 3 and proclaimed my guilt to the world, but did *not* release all of the underlying evidence. Given the length of the Report and the lack of advance notice or opportunity to review the Report, there was no meaningful opportunity to challenge, rebut, or even raise questions about the investigators' accuracy, their credibility determinations, or their thoroughness at the time of the Report's publication. This is in contrast

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<sup>35</sup> AG James has suggested that I could have challenged her Report and received due process in an impeachment proceeding. That suggestion is disingenuous. To the extent there was an "impeachment trial," the New York State Senate would have controlled the procedure. *See* N.Y. JUD. LAW § 241 (impeachment proceedings presided over by the Senate, not Assembly). No one indicated that I would be given access to all the evidence and the ability to publicly confront all witnesses against me at such a trial. Indeed, in an August 8, 2021 letter, the Assembly Judiciary Committee refused to provide me with the evidence underlying the Report when my attorneys asked for the evidence so that I could submit a response to the Judiciary Committee (which they invited me to do in an August 5, 2021 letter to my attorneys), which was considering potential articles of impeachment. I had no expectation that I would be given any meaningful process. The Committee had no intention of releasing all the evidence to me to defend myself. I made the difficult decision to resign because (a) the majority of the Assembly and Senate had already concluded he should leave office before reviewing the evidence, (b) I was not guaranteed access to the all the evidence and a "real trial" where all the witnesses publicly testify and may be cross-examined, and (c), most importantly, the litigation surrounding such an "impeachment trial" would have driven the New York State government to gridlock for months in the face of crises with COVID-19, economic woes, and crime. I worked for 11 years to establish New York State government as a "functioning" entity following two decades of government disfunction. I would not then put this State in a position of confusion and gridlock that could have extended for months, if not years. My obligation to the State and the people of the State came before my personal career.

to the practices of myriad state and federal investigative agencies.<sup>36</sup> The opportunity to review and respond prior to a report's issuance protects the subjects of investigations, the public, and the investigators themselves to ensure the "factual accuracy" of reports.<sup>37</sup> The failure to provide that opportunity before releasing the Report without notice at a nationally televised press conference further evidences the political aim of the Report: to inflict immense public and political pressure to force me from office without anyone first analyzing and reviewing all the evidence, and further a false public narrative that I sexually harassed eleven women. Such conduct is highly prejudicial to the administration of justice, and in violation of the Rules. See Rules 8.4(d) and (h). The fact that she did not release all the evidence underlying the Report at that time—or even just the interview memos and interview transcripts—was telling. The Attorney General wanted the media and the public to immediately believe her contrived prejudicial narrative that I sexually harassed eleven women, without having a chance to scrutinize the evidence. And they did, as I discuss below, when you look at the media headlines in the aftermath of her Report and press conference.

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<sup>36</sup> See, e.g., STATE OF NEW YORK OFFS. OF THE INSPECTOR GEN., INVESTIGATION OF THE NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES: POLITICAL SUBDIVISION PROGRAM 3 (2021), <https://ig.ny.gov/system/files/documents/2021/03/03.04.21.dmvpsd2761.014.2019-alb.pdf> (DMV "fully cooperated with the Inspector General's review and has examined its findings"); STATE OF NEW YORK OFFS. OF THE INSPECTOR GEN., INVESTIGATION OF THE NEW YORK STATE OFFICE OF MENTAL HEALTH HUTCHINGS PSYCHIATRIC CENTER 2 (2016), <https://ig.ny.gov/sites/g/files/oee571/files/2017-02/OMHHPCFinalReport10.31.16.pdf> ("In response to the Inspector General's report, OMH advised it was in agreement with the findings and recommendations . . ."); *Information Quality Guidelines: Application of Standards of Quality by the OIG, OIG Audits*, U.S. DEP'T OF JUST. OFF. OF THE INSPECTOR GEN., <https://oig.justice.gov/foia/guidelines> (last visited Sep. 9, 2022) (" . . . a copy of each internal audit report is provided in draft to the Department component that was the subject of the audit for review and comment prior to final dissemination. The audited entity's comments are published in the final report."); U.S. DEP'T OF JUST. OFF. OF THE INSPECTOR GEN., AUDIT OF THE DEPARTMENT OF JUSTICE POLICY ON BODY WORN CAMERAS i (2021), <https://oig.justice.gov/sites/default/files/reports/21-085.pdf> ("In May 2021, we provided a draft of this report to DOJ and the Components for review . . ."); U.S. DEP'T OF JUST. OFF. OF THE INSPECTOR GEN., AUDIT OF THE DRUG ENFORCEMENT ADMINISTRATION'S LABORATORY INFORMATION MANAGEMENT SYSTEM SUPPORT CONTRACTS App. 3 (2021), <https://oig.justice.gov/sites/default/files/reports/21-079.pdf> (appending "The Drug Enforcement Administration's Response to the Draft Audit Report" to investigatory report); U.S. DEP'T OF JUST. OFF. OF PRO. RESP., EXECUTIVE SUMMARY OF REPORT vi (2020), <https://www.justice.gov/opr/page/file/1336471/download> ("The subjects reviewed and provided comments on their respective interview transcripts and on OPR's draft report."); U.S. DEP'T OF JUST. OFF. OF PRO. RESP., REPORT OF INVESTIGATION INTO THE CONDUCT OF FORMER UNITED STATES ATTORNEY R. BOOTH GOODWIN II 5 (2018), <https://www.justice.gov/opr/page/file/1207181/download> ("On March 22, 2018, OPR sent its draft report to the USAO, Ruby, and Goodwin, and provided them with an opportunity to review and comment on the draft report.").

<sup>37</sup> See U.S. DEP'T OF JUST. OFF. OF THE INSPECTOR GEN., REVIEW OF THE DEPARTMENT OF JUSTICE'S PLANNING AND IMPLEMENTATION OF ITS ZERO TOLERANCE POLICY AND ITS COORDINATION WITH THE DEPARTMENTS OF HOMELAND SECURITY AND HEALTH AND HUMAN SERVICES 7, [https://oig.justice.gov/sites/default/files/reports/21-028\\_0.pdf](https://oig.justice.gov/sites/default/files/reports/21-028_0.pdf).

Beyond the misconduct attendant to its release, the Report itself is materially misleading, contained material omissions, ignored exculpatory evidence, and disregarded evidence that undermined the allegations and credibility of complainants, in violation of the Rules governing candor, including Rules 4.1 and 8.4(c), among others. *See Matter of Giuliani*, 197 A.D.3d 1, 6 (1st Dept. 2021) (“Under the Rules of Professional Conduct, the prohibition against false statements is broad and includes misleading statements as well as affirmatively false statements.”). The First Department has a proud history of holding government lawyers and their representatives accountable for the accuracy of their statements to the public. Most recently, in *Giuliani*, the First Department suspended the former United States Attorney for the Southern District of New York and long-time lawyer for former President Donald Trump pending a full hearing on disciplinary charges. In so ruling, the Court found that there was uncontroverted evidence that Giuliani had communicated misleading information to courts and the public in his capacity as lawyer for the former President in connection with matters relating to the 2020 election.

The *Giuliani* decision focused on many similar provisions of the ethics rules implicated by the conduct of AG James, Mr. Kim, and Ms. Clark, including Rules 4.1 and 8.4(c) (relating to misleading statements). As particularly relevant here, the *Giuliani* decision observed that misrepresentation can occur by omissions that are the equivalent of affirmative false statements. 197 A.D.3d at 6–7. And, notably, the opinion found violations of Rule 4.1 resulting from misleading and false statements made by Giuliani to the public, including at press conferences, *see id.*—the same venue in which AG James propagated the misleading narrative in the Report.

As discussed further below, the clearest proof of the Attorney General’s unethical conduct, as well as that of Mr. Kim and Ms. Clark, is in the fact that they allowed the false narrative to persist despite having been made aware of the many serious omissions and errors in the Report.

1. **THE REPORT’S FAULTS—INCLUDING OMISSIONS OF MATERIAL FACTS AND INVESTIGATIVE FAILURES—WERE IMMEDIATELY APPARENT AND BECAME EVEN MORE PRONOUNCED AS EVIDENCE WAS RELEASED AND RECEIVED IN DISCOVERY.**

Not only were some of the most serious allegations *not corroborated in any way*, but the Attorney General, Mr. Kim, and Ms. Clark possessed evidence that materially undermined those allegations, and declined to follow up on it in their investigation or include it in the Report. On the very day the Attorney General issued the Report, my attorneys began to point out the serious omissions and errors in the Report and investigation. An August 3, 2021 Position Statement issued by my attorneys, an August 4, 2021 letter by counsel to the Chamber, and public presentations on August 6, 10, and 20, 2021 by my attorneys laid out a number of these

omissions, errors, and problems.<sup>38</sup> In addition to the inconsistencies apparent from the face of the Report, further witness credibility issues came to light as transcripts were slowly released months later after my resignation, and upon my receipt of discovery from the Albany County District Attorney's Office.

Following my October 20, 2021 application to amend, correct and supplement the Report, I received some of the evidence underlying the Report that I had been asking for but refused. Specifically, as part of the discovery process involved in the short-lived, and since-dismissed, October 28, 2021 criminal charge against me brought by Albany County Sheriff Craig Apple, *infra* at Part D.2.iv, the Albany County District Attorney's Office obtained *some* evidence from the Attorney General in the course of the Office's compliance with statutory discovery obligations, and, as required, turned that information over to me.<sup>39</sup> The limited evidence underlying the Report that I did receive from the Albany County District Attorney during the discovery process in November and December 2021—including *some* witness interview transcripts and interview memos for the 179 witnesses interviewed that OAG had not made public—contained material exculpatory evidence, information consistent with my claims that I did not sexually harass or forcibly grope anyone, and material evidence that undermined the credibility of many allegations against me that the Report credited.<sup>40</sup>

A review of the evidence that the AG refused to release underlying the Report, but I then obtained through discovery, demonstrated that the Report omitted significant evidence that was favorable to me, undermined allegations, and resulted in a Report that misled the media and public to further a false narrative. For example, the staff at the Executive Mansion—where I lived for the last several years and worked throughout COVID-19—were interviewed and stated that they never saw me act inappropriately. Numerous male staffers, including the former head

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<sup>38</sup> *Attorney Rita Glavin Holds Media Availability*, YOUTUBE (Aug. 6, 2021), [https://www.youtube.com/watch?v=FP6\\_KMVBnNk](https://www.youtube.com/watch?v=FP6_KMVBnNk); *Outside Counsel Rita Glavin Makes an Announcement*, YOUTUBE (Aug. 10, 2021), <https://www.youtube.com/watch?v=otxfPhSoBkc>; *Gov. Cuomo's Outside Counsel Rita Glavin Holds Virtual Briefing*, YOUTUBE (Aug. 20, 2021), <https://www.youtube.com/watch?v=UpmviENazuA>; Exhibit B (Aug. 3, 2021 Position Statement and Aug. 4, 2021 Letter). Additional errors were also detailed in an October 20, 2021 detailed application to amend, correct, and supplement the Report submitted to the Attorney General by my counsel. A copy of the application is attached hereto as "Exhibit C" and I incorporate that application to my grievance complaint.

<sup>39</sup> Notably, however, per communications with the District Attorney's Office, *the OAG failed to provide their office with all the evidence* underlying the Report. Again, the Attorney General—for her political purposes—was selectively and misleading releasing information to control the narrative.

<sup>40</sup> The Attorney General has not publicly released any witness interview memos, and I only received a small number of those memos from the Albany County District Attorney's Office through the discovery process. My attorney made a public presentation about the exculpatory evidence contained in the discovery on January 13, 2022. *Andrew Cuomo's Attorney Rita Glavin Makes an Announcement*, YOUTUBE (Jan. 13, 2022), [https://www.youtube.com/watch?v=OrZVv\\_XuR18](https://www.youtube.com/watch?v=OrZVv_XuR18). I incorporate her presentation with that evidence as part of this complaint against AG James, Mr. Kim, and Ms. Clark.

of the PSU and another senior member of the detail, described me having kissed and hugged them—indicating that this conduct was not gender-based.<sup>41</sup> Indeed, the Report utterly failed to specifically address and cite to interviews of the many current and former staff members who knew me for many years and disputed any suggestion that I was someone who engaged in sexual harassment. I can provide that specific information to the Committee upon request.

As a result of the Attorney General’s intent to create a false narrative concerning me, and Ms. Clark and Mr. Kim’s willingness to bend and promote evidence to further that narrative in the Report (and ignore contrary evidence and evidence that complainants lied), none of this evidence made its way into the Report or, if it did, it was dismissed out of hand.<sup>42</sup> The Report failed to include significant exculpatory evidence and context related to the allegations by the below complainants, which would have enabled the public to draw their own conclusions based on a full and fair presentation of the facts. Set forth below are just some of the several examples of the misconduct by AG James, Mr. Kim, and Ms. Clark which rendered the Report inaccurate, and misled the public about the independence and thoroughness of their investigation, and which reflect adversely on Attorney General James’ fitness as a lawyer. *See* Rule 8.4(d) and 8.4(h).

**i. VIRGINIA LIMMIATIS.**

The Report stated that Ms. Limmiatis—who was not a state employee— “attended a conservation event in upstate New York” in May 2017 “on behalf of her employer,” at which I spoke. Report at 3–4; *see also id.* at 99–102. The Report found:

After the formal program, Ms. Limmiatis *joined a rope line* to meet the Governor. When the Governor reached her, Ms. Limmiatis *held out her hand* for a handshake. Governor walked up close to Ms. Limmiatis and pressed his first two fingers *of his right*

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<sup>41</sup> *See* Dively June 11, 2021 Tr. at 143, 152 (“[the Governor] is pretty consistent with both male and female members of staff, as far as the way he treats them from what I see . . . . [The Governor has] kissed me.”); Straface June 15, 2021 Tr. at 227 (“I don’t think he treats anybody different.”); *see also* Bamberger June 8, 2021 Tr. at 277 (Governor’s Communications Director stating that “The Governor has kissed me on my cheek, yes”); Alphonso David April 21, 2021 Tr. at 157 (Counsel to the Governor stating that “he would . . . sometimes kiss on the cheek”); Harold Moore April 15, 2021 Tr. at 112 (Chief Technology Officer in the Executive Chamber testifying, “yes,” that the Governor has hugged him); Jeffrey Pollock July 12, 2021 Tr. at 319 (pollster and public affairs strategist who worked with the Governor testifying the Governor had kissed him “on the cheek, yes, sure”); Larry Schwartz June 17, 2021 Tr. at 74 (Secretary to the Governor and state COVID-19 vaccine czar stating that “[T]he Governor has kissed me”).

<sup>42</sup> *Compare* Report at 119 (“[W]e encountered substantial evidence of recurring conduct by me that was suggestive or sexual in nature or otherwise gender- or sex-based and potentially offensive.”) *with* Report at 121 (“A number of former and current Executive Chamber staff, particularly the senior staff, as well as State Troopers on the PSU, denied having witnessed or experienced any conduct by me that could be characterized as sexual or otherwise inappropriate”).

*hand* on each letter of the Energy Company’s name printed across the chest of Ms. Limmiatis’ shirt. The Governor pressed his fingers on each letter before sliding his fingers to the next letter, while saying “[Energy Company] I know you.” The Governor leaned in *so his cheek was touching Ms. Limmiatis’ cheek*, and said something along the lines of, “I’m going to say I see a spider on your shoulder.” Ms. Limmiatis looked down to see that there was no spider or bug<sup>43</sup> on her, but the Governor brushed his hand in the area between her shoulder and breast below her collarbone. Ms. Limmiatis testified that she was too shocked and appalled during the interaction to say anything, and understood the Governor knew he had “done something wrong and that he had to create a cover story.” The Governor continued down the rope line and Ms. Limmiatis looked around to see if anyone else had noticed, but it appeared no one had.

Report at 99–100 (emphasis added). The Attorney General’s investigators asked if I recalled this event, and I did not. Contrary to typical investigative practice, however, Mr. Kim and Ms. Clark made no attempt to refresh my recollection by providing, for example, photos or details of the event. Report at 101.<sup>44</sup> And there were dozens of photos from this event, including photos capturing any interaction with Ms. Limmiatis that day. They also failed to note in the Report that members of my security detail were present with me throughout this event—which was an outdoor event—and I have seen no evidence that they were questioned about these photographs and whether they saw any inappropriate physical contact at this event. These actions show the biased and unfair manner in which they conducted the investigation and drafted the Report.

The Report “found Ms. Limmiatis to be credible both in demeanor and in the substance of her allegations,” which were “substantially corroborated by individuals whom Ms. Limmiatis spoke to contemporaneously about her experience.” Report at 102. However, Ms. Limmiatis’ allegations were contradicted by the contemporaneous photographs from this event, which the

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<sup>43</sup> Contrary to the statement attributed to me in the Report, the investigators asked me during my testimony if I ever recalled “running [my] hand across someone’s chest saying, ‘now I’m going to have to say I swatted a bee.’” Nowhere does the Report state whether this inconsistency was made by the investigators or in Ms. Limmiatis’s testimony.

<sup>44</sup> Notably, the Report devotes nearly an entire page to quoting a prepared statement Ms. Limmiatis read during her testimony but fails to mention that I was only asked seven questions about the entirety of Ms. Limmiatis’s allegations towards the end of a long, 11-hour testimony with no efforts to refresh my recollection.

Attorney General’s Office was in possession of, but noticeably chose to omit from the Report.<sup>45</sup> The failure to include the photos in the Report—which demonstrated that my interaction with Ms. Limmiatis was innocent and in no way inappropriate—was misconduct and misled the public.

The public event attended by Ms. Limmiatis, and dozens of others, took place on May 24, 2017 along the Salmon River in Oswego County. The Report does not provide important specifics about this event, including that it was an outdoor event attended by dozens of people where an official photographer followed me around taking photographs throughout the event. The Report also did not include a single photo of the hundreds of photos taken at that event, including a series of photos that capture and refute the characterization of this single interaction between myself and Ms. Limmiatis. These photographs, reproduced below, provide critical context to the interactions between myself and Ms. Limmiatis and numerous other attendees at the event, showing Ms. Limmiatis greeting and then trailing me as she took photos of me with her cellphone after our interaction—a fact that the Report does not include.



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<sup>45</sup> The Report references the photographs briefly, stating “Subsequent to Ms. Limmiatis’s testimony, we obtained photographs of the event from the Executive Chamber and conducted follow-up interviews with Ms. Limmiatis. Ms. Limmiatis identified the photographs as almost certainly being from the May 24, 2017 event, and explained that it was difficult for her to even review the photographs because they brought a flood of negative emotions about the incident, including shame.” Report at 100 n.899. This footnote is misleading because it implies that the photographs somehow corroborate Ms. Limmiatis—when those photos most certainly do not.



The omitted photos do not show Ms. Limmiatis standing in a “rope line,” as she testified. Instead, they show Ms. Limmiatis standing in a group of scattered individuals at the event as I greeted people who approached, including Ms. Limmiatis.

The omitted photos also do not show that I “pressed [the] first two fingers of [my] right hand” on Ms. Limmiatis’s shirt, as she testified. Instead, the photos show my right hand is at my side during our interaction, and certainly not close to Ms. Limmiatis’s shirt or chest. The photos also do not show my cheek “touching Ms. Limmiatis’ cheek” or my head anywhere hers. *Id.* The photos show Ms. Limmiatis holding my left shoulder and smiling at me. *Id.* At best, the photos show that my left hand may have brushed Ms. Limmiatis’s shoulder (not her chest), and that any contact was incidental. These photographs bear no resemblance to the interaction described in the Report. Indeed, after my interaction with Ms. Limmiatis, the photographs show Ms. Limmiatis following me at the event and taking photographs of me. The failure to include

these photographs in the Report, which contradict and undermine Ms. Limmiatis's testimony, was blatant misconduct.

The Report also finds that “shortly after the rope line, Ms. Limmiatis approached three other attendees of the event, and told them about the Governor’s conduct,” but provides an account by only one of those purported attendees, Attendee #1, who the Report found “recounted the events in a manner consistent . . . with . . . Ms. Limmiatis’ testimony.” Report at 100 (citing to Ex. 71), 100 n.903. The Report fails to provide any account, citation, or declaration by the two other attendees, but notes that “unlike Attendee #1, these two attendees did not recall Ms. Limmiatis being outwardly upset at the event.” Report at 100 n.903. The Report failed to include precisely what those other two attendees stated, including whether they disputed her allegations.

**ii. LINDSEY BOYLAN.**

Lindsey Boylan—who was the first person to make allegations against me on Twitter between December 5, 2020 and December 13, 2020 shortly after she announced her campaign for Manhattan Borough president—made threats against former colleagues and others, and engaged in threatening conduct in connection with her allegations. The Attorney General’s investigators interviewed her informally on March 13, 2021 and then under oath in a transcribed interview on May 20, 2021. I received those materials from the Albany County District Attorney in discovery. Upon review of the March 16, 2021 summary interview memo<sup>46</sup> prepared by the investigators, as well as the transcript of her May 20 formal interview, the Attorney General’s investigators notably did not ask Ms. Boylan about the following threats: (1) threatening texts that she made to my staff in March 2020 while running for office in the Democratic primary against Congressman Jerry Nadler; (2) threatening conduct toward others as referenced in the Attorney General’s report, *see* Report at 76 (some “individuals received communications from Ms. Boylan that they perceived as threatening, after they failed to respond in the way Ms. Boylan wanted them to”); and (3) a specific threat she made to her former boss, former Empire State Development Corporation (“ESD”) Chair and CEO Howard Zemsky, after he contradicted her allegations, *see* Report at 70–72.

When former colleagues failed to corroborate allegations of a toxic work environment in the Executive Chamber and sexual harassment, they “received communications from Ms. Boylan that they perceived as threatening.” Report at 76. Ms. Boylan indicated via text message that she

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<sup>46</sup> I can provide the Committee with copies of witness interview memoranda referenced herein upon request.

would hold those colleagues accountable for their actions (or lack thereof) when they “questioned [her] motives and her credibility” with regard to her allegations.<sup>47</sup> Report at 75.

In an essay published on February, 24, 2021, Ms. Boylan made claims of sexual harassment against me and alleged that I had suggested that we play strip poker on my plane in October 2017. *See* Report at 70–72. That same day, Ms. Boylan’s former boss, Mr. Zemsky, and three other Chamber staffers who were on the flight put out a public statement, stating that “this conversation did not happen.” Report at 70 n.605. After that public statement was issued, on the same day, Ms. Boylan reached out to Mr. Zemsky via a secure, self-deleting application called “Confide” and made the following threat: “I can’t wait to destroy your life, you[] shit follower.”<sup>48</sup> The Report did not include the specific language of this threat to Zemsky, the fact that Ms. Boylan sent it on the same day that Mr. Zemsky signed onto a statement denying the strip poker comment, and that Ms. Boylan sent the message via a secure, self-deleting application. For the AG and investigators to omit these facts from the Report was misconduct and misleading to the public about Boylan and her credibility. Indeed, following that threat, Mr. Zemsky completely changed his tune from denying having heard any “strip poker” comment by me on a plane to corroborating Ms. Boylan’s story regarding those alleged comments—*despite the fact that Ms. Boylan did not even remember that Mr. Zemsky was on the flight when she claimed this occurred.*<sup>49</sup>

Investigators also ignored evidence that Ms. Boylan was deliberately untruthful during her testimony under oath about her sexual relationship with Mr. Zemsky while they worked together at ESD. As part of two January 2018 meetings to address an employee complaint concerning a potential sexual relationship between Ms. Boylan and Mr. Zemsky, Alphonso

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<sup>47</sup> For example, after a witness failed to respond to Ms. Boylan asking for a favor, Ms. Boylan texted her: “I asked you for something that doesn’t require you anything, if you don’t respond we are not friends.” *Rita Glavin Press Conference: February 10th, 2022*, VIMEO (Feb. 10, 2022), <https://vimeo.com/687956093>. After the witness still did not respond, Ms. Boylan texted: “I hope your lack of courage was worth it. You had a friend in me for life but now you don’t, bitch. Good luck.” *Id.* The Report did not include these details.

<sup>48</sup> The Report did not specify what the threat was other than describing it as “threatening” and “jarring.” Since the Report’s publication, we have learned the contents of the threat and the method of conveyance via Mr. Zemsky’s July 8, 2021 Interview Memo, and his formal testimony. *See* Zemsky July 20, 2021 Tr. at 53.

<sup>49</sup> *See* Boylan May 20, 2021 Tr. at 125, 129 (explaining that Mr. Zemsky was on the plane for the “first part of the day” but she was “not 100% sure” he was on the plane later and that she “was not suggesting that Howard was on the plane” when the comment was allegedly made). The Report credits Ms. Boylan’s allegation regarding this comment on the ground that “[Howard] Zemsky testified under oath that he recalls me making such a comment, independently corroborating Ms. Boylan.” Report at 76. Nonetheless, just *five pages earlier*, the Report acknowledges that (1) Mr. Zemsky initially “didn’t have the slightest inkling of [such a comment],” and (2) that after Ms. Boylan first made this allegation in her *Medium* essay, Mr. Zemsky and other Chamber staffers released their statement disputing the allegation. Report at 70 n.605, 71.

David, then-counsel to me, separately asked Ms. Boylan and Mr. Zemsky if the two were having or had a sexual relationship, and both denied it. David April 21, 2021 Video Testimony at 7:21:04–21:40.<sup>50</sup> In her testimony with the AG’s investigators, Ms. Boylan testified that she and Mr. Zemsky kissed in late 2017 in New York City, but that she had been drinking and she did not remember anything else regarding that evening. Boylan May 20, 2021 Tr. at 164–65. Further, she testified that she and Mr. Zemsky told Mr. David that they did not have a sexual relationship. *Id.* at 163. She testified to investigators that she had “no idea” if Mr. David asked anyone else about whether she and Zemsky had a sexual relationship. *Id.* at 169.

Yet, Mr. Zemsky told the AG investigators that “Boylan called Zemsky [after the meeting with David] and said she knew about his meeting with [Alphonso] David, and asked what Zemsky had said. Zemsky said he had told David that there was no ongoing intimate relationship, and Boylan said that was good.” Zemsky July 8, 2021 Interview Memo at 5. Contrarily, despite his prior denial to Mr. David, in his July 8, 2021 informal interview Mr. Zemsky admitted to having a sexual encounter with Ms. Boylan in late 2017 when he was head of ESD, and Ms. Boylan was his Chief of Staff. *Id.* Mr. Zemsky also told investigators that during an earlier work trip in the UK, Ms. Boylan kissed him on the lips seemingly out of the blue. After Mr. Zemsky testified about his sexual relationship with Ms. Boylan and provided information that contradicted what Ms. Boylan previously told investigators about her relationship with Mr. Zemsky and her conversation with Mr. David, the OAG never followed up with Ms. Boylan.

The Report did not include, and I have not seen evidence to determine precisely how many women Ms. Boylan reached out to, what Ms. Boylan said in all those communications, and what caused them to understand that Ms. Boylan’s communications were “threatening” after they did not tell Ms. Boylan what she wanted to hear. Nor did the Report include the specific threat levied by Ms. Boylan against Mr. Zemsky, the fact that it occurred on the very same day that the public denial was issued, or the fact that the message was conveyed on a self-deleting application. The Report likewise makes no mention of Ms. Boylan’s intimate relationship with Mr. Zemsky, which was directly relevant to why she threatened Mr. Zemsky (both she and Zemsky were married at all relevant times) and Mr. Zemsky’s motive to change his story to assist Ms. Boylan—lest Mr. Zemsky become the target of sexual harassment allegations from Ms. Boylan. All of this goes to Ms. Boylan’s motive to lie and her credibility, as well as her willingness to try and influence testimony of potential witnesses to bolster her own claims.<sup>51</sup> This also goes to Mr. Zemsky’s credibility. The Report credited Lindsey Boylan’s allegations in their entirety, despite evidence that Ms. Boylan had provided false testimony to the investigators

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<sup>50</sup> I can provide the Committee with this excerpt of Mr. David’s video testimony upon request.

<sup>51</sup> Ms. Boylan also urged at least one other woman to publicly report her own allegations of harassment, even when she was not comfortable doing so, because such corroboration would help Ms. Boylan. Report at 76; Report Ex. 55.

and threatened others. The decision by the Attorney General, Mr. Kim, and Ms. Clark to not include all this information, or provide specifics about Ms. Boylan's pattern of threats, as well as what she said to Zemsky and his statements about his relationship with her, was misconduct given the public importance of their duties and unique role as attorneys, and it was tantamount to a false statement. They simply cast contradictory and troubling evidence aside without providing specifics because it would have materially undermined Ms. Boylan's credibility. This misled the public regarding the credibility of Ms. Boylan's allegations against me.

Finally, the Report inaccurately described the circumstances surrounding Ms. Boylan's departure from state employment in September 2018. These circumstances were crucial evidence that went to Ms. Boylan's motive to lie about her departure during her ongoing political campaign and mislead the public to believe that she left her job because of sexual harassment. The Report concludes that Ms. Boylan resigned following "a conflict" between "Ms. Boylan and *an assistant*," Report at 74 (citing Exs. 60–61 and David Tr. at 212, 217–218) (emphasis added). That was simply not accurate, and there is no excuse for the Report minimizing the circumstances that led to Ms. Boylan's abrupt resignation. Contemporaneous memos reflect, however, that the issue that caused Ms. Boylan to resign was *numerous* complaints within ESD and from *numerous* employees that Ms. Boylan was "abusive," "a bully," "yells," and "treats them like children," and did not follow agency procedures. *See* Chamber\_AG\_00035048 *et seq.* A September 2018 memorandum summarizing a conversation with ESD officials seeking Ms. Boylan's termination further noted that Ms. Boylan displayed a lack of professionalism that was felt "[o]n an agency-wide basis." *Id.* That memorandum also reflected that an employee took time off to deal with health effects related to her interactions with Ms. Boylan, and an employee reported feeling like a "punching bag." Moreover, the Report omitted context regarding Ms. Boylan's call to Mr. David following her resignation to ask for her job back, failing to explain that Ms. Boylan reached out to Mr. David *merely four days after she resigned*, *see* Report at 74, in an effort to get her job back. Ms. Boylan also sent an email to Stephanie Benton in an effort to speak with me, in which she stated that she loved me and wanted to speak to me—a fact omitted in the Report. Benton Tr. 152–53. I did not respond to Ms. Boylan's outreach. By inaccurately describing the circumstances of Ms. Boylan's departure from state employment, the Report misled the public.

iii. **CHARLOTTE BENNETT.**

In addition to Ms. Limmiatis, the Report devotes *twenty pages* to claims made by Ms. Bennett about conversations and interactions she purported to have had with me, finding "the level of detail and consistency in Ms. Bennett's account, her demeanor, and the circumstances of her allegations to be credible." Report at 64. The Report largely disregards my detailed testimony that provided important context to those conversations, and entirely elides important evidence that goes to Ms. Bennett's credibility.

The Report should have considered in the analysis Ms. Bennett’s history of making sexual misconduct allegations. A federal lawsuit filed on October 30, 2017, by a male student, “John Doe,” against Hamilton College alleged that Ms. Bennett made false sexual misconduct allegations against him, in coordination with three other female students, which resulted in the ban of John Doe from campus and graduation. The lawsuit is captioned *John Doe v. Hamilton College et al.*, No. 17 Civ. 1202 (N.D.N.Y.); Mr. Doe’s civil complaint outlining his allegations against Ms. Bennett and others is attached hereto as “Exhibit D” (“Complaint”). Specifically, Hamilton College senior “John Doe” alleged that on May 9, 2017—twelve days before he was supposed to graduate—the college unlawfully banned him from campus and denied his status as a graduating senior, based on false complaints of sexual misconduct for events that all allegedly occurred in 2014, made against him by four female students who were acting “in concert and with a malicious purpose.” *Id.* at ¶ 2.

One of those four female students was Charlotte Bennett, and she is referred to throughout the Complaint as “Sally Smith” or “CB” in paragraphs 81, 82, 118, 119, 120–24, 126 of Doe’s complaint. These four allegedly false complaints were made approximately two weeks apart in late April and early May 2017, shortly before John Doe was to graduate. *Id.* at ¶¶ 100, 103, 125. John Doe alleged that the complaints were intended to have him removed and expelled from Hamilton. *Id.* at ¶¶ 124, 127, 134, 152.

The Complaint alleges that in April of 2017, two women—who were friends—filed false complaints with Hamilton College against John Doe of non-consensual sexual contact that purportedly occurred in 2014. *Id.* at ¶¶ 2, 91, 93–96. Following those initial two complaints, another female student, “LL,” allegedly said she would consult with Ms. Bennett about the complaints in Ms. Bennett’s capacity as a member of the student group “Sexual Misconduct and Assault and Reform Taskforce” (“SMART”) and “someone familiar with the Title IX process.” *Id.* at ¶ 118. SMART was formed in 2016 “to better equip all members of the Hamilton community to help prevent and combat sexual misconduct on campus,” and Ms. Bennett published a piece about SMART in the Hamilton student newspaper on October 20, 2016, opining that “women and girls do not feel safe at Hamilton, and that all perpetrators should be expelled.” *Id.* at ¶¶ 79–81.

Soon thereafter, according to Mr. Doe, Ms. Bennett allegedly coordinated the filing of her own false complaint of sexual misconduct against Mr. Doe in early May 2017 with another woman referred to as “Rachel Roe,” at the urging of “LL,” because Ms. Bennett “had been through the complaint process before and understood that multiple reports against the same individual would likely result in that individual’s removal from campus.” *Id.* at ¶¶ 120–122. The Complaint asserts that Ms. Bennett falsely alleged that she had had “non-consensual sexual contact” with Doe in January 2014—more than three years earlier. *Id.* at ¶ 120.

John Doe contends that Ms. Bennett knew her complaint was false because Ms. Bennett had “recorded a conversation between her and Doe sometime in or around the spring of 2014 in which she stated that Doe did not sexually assault her.” *Id.* at ¶ 121. According to Mr. Doe, Ms. Bennett’s 2014 recording “unequivocally proved that [Ms. Bennett’s] allegations against Doe were fabricated.” *Id.* at ¶ 158.

On May 9, 2017, the college allegedly informed John Doe that, as of May 14, 2017, he was banned from campus and declared ineligible for graduation, which was to take place one week later. *Id.* at ¶ 127. According to Mr. Doe, “no one at Hamilton considered it all suspicious that, in the space of just two weeks, four separate women made complaints against Doe for sexual conduct that had all allegedly occurred over three years prior to the complaints.” *Id.* at ¶ 130.

Notably, Mr. Doe alleged, “[j]ust days after [he] was banished from Hamilton and denied the opportunity to graduate with his class,” Ms. Bennett and another woman withdrew their complaints against him. *Id.* ¶ 3, 134, 135. Hamilton College settled the lawsuit with John Doe on or about September 21, 2018, for undisclosed sum of money. *See John Doe v. Hamilton College et al.*, Dkt. 40.

Ms. Bennett’s May 2017 allegation of sexual misconduct by John Doe to Hamilton College was not even the first or only time that Ms. Bennett had made an allegation of sexual misconduct against a male student at Hamilton College. At an October 10, 2016 student assembly meeting, Ms. Bennett publicly spoke about another incident of sexual abuse that she reportedly endured during her sophomore year in college, detailing the college’s administrative review process that she described as inadequate. Ms. Bennett stated that she “reported seven events of abuse, ranging from stalking, to dating violence, to sexual assault,” and after investigation, Hamilton found the perpetrator responsible for one incident. Ms. Bennett further describes the consequences imposed on the perpetrator, which she decried as insufficient, and that he continued to violate the imposed no-contact order.<sup>52</sup>

Ms. Bennett later claimed on Twitter that when she spoke to the president of Hamilton College about her sexual assault, he “laughed in her face,” which seems highly improbable given the sensitive nature of their conversation.<sup>53</sup>

The Report credited Ms. Bennett’s claims in their entirety—despite my having disputed many of Ms. Bennett’s characterizations and details regarding our interactions. The allegations in John Doe’s lawsuit regarding Ms. Bennett should have given investigators very significant

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<sup>52</sup> Meeting minutes available at: <https://students.hamilton.edu/documents/Minutes101016.pdf>.

<sup>53</sup> Charlotte Bennett (@\_char\_bennett), TWITTER (Apr. 19, 2019 4:19 p.m.), [https://twitter.com/\\_char\\_bennett\\_/status/1119334727121604608](https://twitter.com/_char_bennett_/status/1119334727121604608).

pause regarding the credibility of Ms. Bennett’s allegations—and the lens through which she viewed her interactions with me. For example, when Ms. Bennett spoke with my Special Counsel and my Chief of Staff about her interactions with me in late June and early July 2020, she initially said that the I asked her who she “was sleeping with.”<sup>54</sup> When the Special Counsel followed up on this question and the precise words that I used, Ms. Bennett said that I had asked her who she “was hanging out with,” *id.*, which demonstrates the lens through which Ms. Bennett viewed and interpreted my comments. Ms. Bennett never suggested to the Special Counsel in her conversations that I had ever made sexual advances toward her.<sup>55</sup> In fact, when asked if I ever made a sexual advance, Ms. Bennett replied “No.” *Id.* Yet, after communicating with complainant Lindsey Boylan about Ms. Boylan’s allegations, in late February of 2021, Ms. Bennett then publicly alleged for the first time that she believed that my conversations with her indicated that I wanted to “sleep” with her, had a romantic interest in her and was “grooming her.”<sup>56</sup> This was simply not true. Yet, the Report makes no mention of whether the investigators: (1) sought and obtained all this information regarding Ms. Bennett’s history of making sexual misconduct allegations; (2) spoke to Ms. Bennett about the facts underlying this lawsuit, or spoke to the attorneys for John Doe or administrators at Hamilton College as to why it was alleged that she had fabricated sexual harassment allegations; and (3) weighed this information in assessing Ms. Bennett’s impressions and recollections of her interactions with me.

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<sup>54</sup> Report Ex. 3 (Chamber\_AG\_0739).

<sup>55</sup> Report Ex. 2 (Chamber\_AG\_0730).

<sup>56</sup> See, e.g., Zack Fink, ‘His Resignation Said It All’: Charlotte Bennett Says Cuomo Isn’t Taking Full Responsibility as He Prepares to Step Down, SPECTRUM NEWS (Aug. 20, 2021), <https://www.nyl.com/nyc/all-boroughs/news/2021/08/20/charlotte-bennett--cuomo-accuser--speaks-out-exclusive-interview-> (“the report came out and it corroborated everything that we had said in March . . . .”); Charlotte Bennett (@CharlotteBennett), TWITTER (Aug. 15, 2021, 9:55 AM), [https://twitter.com/char\\_bennett/status/1426905500197789702/photo/1](https://twitter.com/char_bennett/status/1426905500197789702/photo/1) (responding to Speaker Heastie’s decision to end the impeachment investigation, stating, “the Governor broke state and federal law.”); KatzMarshall&Banks (@kmblegal), TWITTER (Aug. 10, 2021, 2:49 PM), <https://twitter.com/kmblegal/status/1425167321581162496/photo/1> (“[the complainants] knew the pain and indignity of being sexually propositioned[.]”); Extended interview: Cuomo accuser Charlotte Bennett reacts to results of sexual harassment probe, CBS NEWS (Aug. 3, 2021), <https://www.cbsnews.com/video/extended-interview-cuomo-accuser-charlotte-bennett-reacts-to-results-of-sexual-harassment-probe/> (“The Governor broke federal and state law when he sexually harassed me[.]”); Charlotte Bennett (@CharlotteBennett), TWITTER (May 13, 2021, 12:54 PM), [https://twitter.com/char\\_bennett/status/1392886064872820738](https://twitter.com/char_bennett/status/1392886064872820738) (“When @NYGovCuomo propositioned me for sex, he broke the law. It is very simple: the issue is about his actions, it is not about my feelings. He broke the law (you know, the one he signed). Apologies don’t fix that, and neither do denials.”); “The Governor’s Trying to Sleep with Me”: Cuomo Accuser Recalls Alleged Harassment, CBS NEWS (Mar. 5, 2021), <https://www.cbsnews.com/news/cuomo-acuser-charlotte-bennett-interview-sexual-harassment/> (“on June 5, 2020, Cuomo asked multiple questions that led her to the conclusion that ‘The governor’s trying to sleep with me.’”); Jesse McKinley, *Cuomo is Accused of Sexual Harassment by a 2nd Former Aide*, N.Y. TIMES (Feb. 27, 2021), <https://www.nytimes.com/2021/02/27/nyregion/cuomo-charlotte-bennett-sexual-harassment.html> (“Asked if she felt Mr. Cuomo’s questions and comments were an entreaty to a sexual relationship, Ms. Bennett said: ‘That’s absolutely how it felt.’”).

Moreover, it is clear that the investigators *were* aware of at least the Hamilton College lawsuit, as they questioned my brother, Christopher, about it during his testimony. Christopher Cuomo July 15, 2021 Tr. at 161 (“Do you recall at some point that you received a complaint related to Hamilton College?”). It was incumbent upon the investigators to have fully analyzed Ms. Bennett’s history of making sexual misconduct allegations, asked Ms. Bennett about those allegations, and considered the impact that may have had on Ms. Bennett’s perspective in how she perceived and remembered her interactions with me, versus how I understood and remembered those interactions, and the Report made no effort to do so, resulting in an incomplete and one-sided narrative.

#### iv. **BRITTANY COMMISSO.**

The most obvious errors involved the most serious allegation against me (which is false): the Report’s finding that, on November 16, 2020, I forcibly groped the breast of my assistant Brittany Commisso at the Executive Mansion. *See, e.g.*, Report at 1, 24–26, 142. I did not grope Ms. Commisso on that day, or any other day.

On October 28, 2021—without any notice to the Albany County District Attorney’s Office, Ms. Commisso (i.e., the complainant), or my attorneys—Albany County Sheriff Craig Apple filed a misdemeanor groping complaint against me. That same day, the Attorney General issued a public statement touting this criminal charge (which was not only false, but the Albany County District Attorney characterized it as “potentially defective”)<sup>57</sup>: “The criminal charges brought today against Mr. Cuomo for forcible touching further validate the findings in our report.”<sup>58</sup> Notably, the day after Sheriff Apple filed the faulty and false charge against me, the Attorney General announced her run for governor and touted her flawed investigation of me as a reason she should be governor.<sup>59</sup>

Not only was AG James’ public statement about Sheriff Apple’s charge prejudicial against me and meant to pressure the District Attorney and any potential jury pool as the action proceeded, *but AG James’ statement was not true.* If anything, Sheriff Apple’s flawed charge

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<sup>57</sup> *See* Bill Mahoney, *Cuomo Criminal Complaint ‘Potentially Defective,’ DA Says*, POLITICO (Nov. 5, 2021), <https://www.politico.com/states/new-york/albany/story/2021/11/05/district-attorney-says-cuomo-criminal-complaint-potentially-defective-1392346> (noting that complaint did not include sworn statement from victim, and excluded parts of Ms. Commisso’s testimony that were “of an ‘exculpatory nature’”).

<sup>58</sup> *Attorney General James Releases Statement After Criminal Charges Are Brought Against Former Governor Andrew Cuomo*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL (Oct. 28, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-james-releases-statement-after-criminal-charges-are-brought>.

<sup>59</sup> *See* Katie Glueck, *Letitia James Declares Her Candidacy for N.Y. Governor*, N.Y. TIMES (Oct. 29, 2021) <https://www.nytimes.com/2021/10/29/nyregion/letitia-james-governor.html>.

demonstrated that AG James, Mr. Kim and Ms. Clark were completely wrong in claiming that the alleged incident happened on November 16 or any other date in November 2020.

Sheriff Apple charged that the alleged groping incident happened on *Monday, December 7, 2020*. In contrast, the Report is *insistent* that the incident occurred in November 2020; it repeats that specific finding *three times*. Report at 1, 24–26, 142. Ms. Clark also repeated this claim to the world at the August 3 press conference, definitively stating:

“On November 16<sup>th</sup>, 2020 in the executive mansion, the governor hugged Executive Assistant Number One and reached under her blouse to grab her breast.”<sup>60</sup>

Indeed, during my testimony, the investigators specifically informed me that the date of the alleged “groping” was November 16.<sup>61</sup> Although I denied this allegation during my testimony and testified that many people would normally be at the Mansion during working hours, the Report rejected my testimony out-of-hand and found “nor was there any evidence that there were ‘ten’ Mansion staff in the vicinity of his second-floor office that day.” Report at 26. Moreover, the Attorney General and her investigators refused to correct the Report despite being provided with incontrovertible proof that what they told the public was wrong. For example, New York State Police records reflected that, in addition to Mansion staff, Executive Chamber employees were at the Mansion while Ms. Commisso was there: Melissa DeRosa, Stephanie Benton and Peter Ajemian. And, incredibly, the Mansion staff and Chamber employees were not even asked about what they remembered regarding Ms. Commisso at the Mansion on November 16, 2020.

Moreover, Ms. Commisso’s very specific version of events that she told the *Albany Times Union*—as reported in an April 7, 2021 article—was that she was only in the Executive Mansion on an afternoon in November 2020 for a short time to assist with a phone issue when she claimed I forcibly groped her in my second-floor office and then she immediately left the Mansion. In fact, on November 16, 2020—the only day in November 2020 that New York State Police records reflect that Ms. Commisso was in the Mansion—Ms. Commisso was there for several hours with other staffers to work on a speech. What she told the *Times Union* in April 2021 about what occurred in November 2020 was completely contradicted by documentary evidence and contemporaneous emails regarding the only day in November she was in the Mansion. My understanding is that the investigators inexplicably failed to examine Ms. Commisso’s emails from November 16, along with the email traffic of others who were at the Mansion at the time

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<sup>60</sup> *NY Gov. Andrew Cuomo Sexually Harassed Multiple Women, Report Finds: Letitia James Press Conference Transcript, supra* note 11.

<sup>61</sup> Former Governor Andrew M. Cuomo July 17, 2021 Tr. at 397.

she was there.<sup>62</sup> A cursory review of the email traffic of the relevant staffers on that day—the only day in November that records show that Ms. Commisso was in the Mansion—would have demonstrated that what Ms. Commisso described to have occurred *did not occur*. For the investigators to have acted in this manner was misconduct in that it was extraordinarily prejudicial to me, and misleading to the public about the thoroughness of their investigation and bases for their findings against me as to Ms. Commisso. AG James’s claim about a “mountain of evidence” and corroboration for all the allegations was simply false. Further, once we pointed this serious error out to AG James in my August 3, 2021 and October 20, 2021 submissions, AG James did nothing. She had an obligation to the public to correct the record.

I also note that Ms. Commisso told the Albany Times Union in the April 7, 2021 article: “I remember exactly what I was wearing” on that day.<sup>63</sup> Yet, when interviewed by investigators under oath several weeks later (in a transcript I also received months later in discovery), she testified: “I remember my blouse, I don’t remember exactly what color though” and “I don’t remember the actual specifics of the material.” Commisso May 17, 2021 Tr. 148–149. The investigators never questioned her about the discrepancy, and the Report never mentions the discrepancy or Ms. Commisso’s testimony about what she was wearing. Indeed, Ms. Commisso also testified that she was wearing a long winter overcoat when she claims I somehow reached under her blouse, over her bra and groped her. The Report also does not include this fact. Nor did the Report mention that when Ms. Commisso was first informally interviewed by investigators on March 12, 2021, she specifically told them that the alleged groping incident happened *on November 19, 2020—not November 16* or any other day in November. Commisso March 12, 2021 Interview Memo.

Ms. Commisso first made her claim that I groped her breast on Saturday, March 6, 2021, during an evening birthday dinner for Ms. McGrath at an Albany restaurant attended by others who worked with me, including Executive Assistant #2 and Executive Assistant #3.<sup>64</sup> Ms. McGrath told investigators in her informal interview that “the attendees were drinking”—but the

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<sup>62</sup> Sheriff Apple likewise never bothered to examine the electronic communications, text messages, testimony, and other documentary evidence about what was happening between December 5 and 13, 2021—all of which made clear that Ms. Commisso was not forcibly groped on December 7 and if she had been (and she was not because I never groped her), she would not have forgotten the date because of what was happening that week and what she herself was doing that week. The evidence regarding the events from December 5, 2021 through December 13, 2021, some of which Ms. Commisso was a participant in, conclusively demonstrated that Ms. Commisso would never have misremembered that I assaulted her late in the afternoon on December 7 after returning from a press conference with Dr. Anthony Fauci in New York City and in the middle of the Lindsay Boylan “tweet storm” attacking me that week.

<sup>63</sup> Lyons, *supra* note 10.

<sup>64</sup> Executive Assistant #2 March 16, 2021 Interview Memo at 9.

Report failed to mention this or ask Ms. Commisso about it in her transcribed interview.<sup>65</sup> Notably, Ms. Commisso never mentioned this purported groping incident to Executive Assistant #2 and Executive Assistant #3 when Ms. Commisso first discussed her allegations about me with them on March 3, 2021. During this birthday dinner, Ms. Commisso learned that although she was “on call” earlier that Saturday to work at the Executive Mansion, Executive Assistant #3 had instead been called in and “this upset Commisso.”<sup>66</sup> The Report omitted mention of Executive Assistant #2’s informal interview that Ms. Commisso was “upset” upon learning another assistant had been called to the Mansion on March 6 and she had not. At some point later during the dinner, Ms. Commisso privately told Executive Assistant #2 that I forcibly grabbed her breast when she came to the Mansion at Ms. Benton’s request to assist me with my cellphone.<sup>67</sup> Executive Assistant #2 told Ms. Commisso that she—Executive Assistant #2—would have to report what Ms. Commisso told her.<sup>68</sup> Ms. Commisso forgot her cellphone at the restaurant that night, such that Ms. McGrath retrieved it and then met with Ms. Commisso the next day, March 7—facts also omitted from the Report, and facts that Ms. Commisso neither told investigators nor was asked about.<sup>69</sup>

Also the next day, March 7, Ms. Commisso and Executive Assistants #2 and #3 met up and went to an attorney’s office to discuss what Ms. Commisso claimed about me on the previous evening.<sup>70</sup> On Monday morning, March 8, 2021, Executive Assistants #2 and #3 reported to my Special Counsel what they learned from Ms. Commisso.<sup>71</sup> The Special Counsel’s contemporaneous notes from her calls with Executive Assistants #2 and #3 on that day state that they told her Ms. Commisso claimed I: “slammed door – pushed her up against wall – hands up shirt – touched breast, kissed her.”<sup>72</sup> Those notes were not quoted in the Report, nor attached as an exhibit to the Report. The Special Counsel testified that she understood from her March 8 conversations with Executive Assistants #2 and #3 that Ms. Commisso described me as having “forcefully thrown [Ms. Commisso] up against the wall.”<sup>73</sup> Ms. Commisso testified, however, that upon learning that the Executive Assistants #2 and #3 had reported to my Special Counsel that I slammed her against the wall, she “said no no no, I never said that. And that never

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<sup>65</sup> Alyssa McGrath March 23, 2021 Interview Memo at 12.

<sup>66</sup> Executive Assistant #2 March 16, 2021 Interview Memo at 9.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 9-10.

<sup>69</sup> Alyssa McGrath March 23, 2021 Interview Memo at 13.

<sup>70</sup> Executive Assistant #2 March 16, 2021 Interview Memo at 9.

<sup>71</sup> Report at 31; Commisso May 17, 2021 Tr. at 192–93.

<sup>72</sup> Mogul June 23, 2021 Tr. Ex. 30.

<sup>73</sup> Mogul June 23, 2021 Tr. at 381; Mogul Tr. Ex. 30.

happened. He didn't slam me up against the wall."<sup>74</sup> In other words, Ms. Commisso disputed critical details as to what Executive Assistants #2 and #3 said Ms. Commisso had told them about me in the last 36 hours—particularly what Ms. Commisso described to Executive Assistant #2 for the first time at the dinner where she had been drinking.

The evidence regarding Ms. Commisso's allegations shows a materially evolving story completely inconsistent with someone who claimed she was suddenly and forcibly groped *three months* earlier by me—the Governor of the State of New York—in the Executive Mansion as she claimed for the first time on March 6, 2021. The fact that the Albany County District Attorney publicly claimed to find Ms. Commisso “credible” about this allegation is inexplicable because if a jury could have found Ms. Commisso credible, then the charge would not have been dismissed following the District Attorney's exhaustive investigation of the full evidence.<sup>75</sup> The reality is that the District Attorney chose to dismiss the false charge against me after completing his own investigation and review of the facts and evidentiary defects.

Evidence I received in discovery also revealed material inconsistencies and the Report's omission of details as to *what, when, and to whom* Ms. Commisso first told about her allegations that I was in any way inappropriate towards her. Ms. Commisso testified under oath that the first time she told anyone of her allegations that I had acted inappropriately toward her was on March 3, 2021, when she made *some* allegations of inappropriate behavior by me to Executive Assistants #2 and #3--*but she did not mention her claim that I forcibly groped her breast in the Mansion.*<sup>76</sup> She first made that claim to Executive Assistant #2 several days later, as noted above, on a Saturday March 6 at an Albany restaurant. But, importantly, she was clear in her testimony that the very first time she ever said I had been inappropriate with her was on Wednesday March 3. The colloquy read as follows:

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<sup>74</sup> Commisso May 17, 2021 Tr. at 192.

<sup>75</sup> The Albany County District Attorney declined to pursue any charges. See ALBANY COUNTY DISTRICT ATTORNEY, *Statement from DA David Soares* (Jan. 4, 2022), [https://www.albanycountyda.com/media/news/22-01-04/Statement\\_from\\_DA\\_David\\_Soares.aspx](https://www.albanycountyda.com/media/news/22-01-04/Statement_from_DA_David_Soares.aspx). This was due in large part to Ms. Commisso's materially evolving narrative regarding the allegations, contradictory information from other witnesses about what Ms. Commisso said and when and how she acted towards me, compelling evidence that Ms. Commisso would never have forgotten the date when this alleged assault occurred given various texts, statements, and other records, and Ms. Commisso's personal credibility. My counsel also gave a presentation to the District Attorney, with supporting evidence from the documents received in discovery that were not in the public record, that demonstrated that the allegations were false, and there was no way (a) that I would have forcibly groped Ms. Commisso on that particular date (or any other date) and (b) that Ms. Commisso would have forgotten having been forcibly groped by me on December 7 (the only date she was in the Mansion during the first three weeks of December 2020).

<sup>76</sup> Commisso March 12, 2021 Interview Memo at 13 (“According to Commisso, the first time Commisso spoke in detail to anyone about the incidents with the Governor was on March 3, 2021).

Q. When was the first time that you actually did say anything to anyone about the Governor doing anything inappropriate?

A. It was definitely when the announcement – he made the press conference that day, I forget the date, he made a press conference down the hall in the red room and I was sitting in my desk and I was watching and he said in front of the camera I never inappropriately touched anyone.

...

Q. I'm going to stop you and break it down a little. The press conference, what day of the week was that?

A. I believe it was on a Wednesday [March 3].

Q. The dinner was on a Saturday?

A. Yes.

Q. Thursday and Friday you just go to work and do your usual work?

A. Yes, I went to work. Definitely a different tone in the room.

Q. Did you have any discussion with them about any of the incidents on Thursday or Friday?

A. Not that I recall.

Commisso May 17, 2021 Tr. at 182–83, 187–88.

Contrarily, Ms. McGrath testified under oath that the first time Ms. Commisso told Ms. McGrath that I had behaved inappropriately towards her on the *preceding Sunday, February 28, 2021*. Alyssa McGrath June 2, 2021 Tr. at 119–21. Specifically, Ms. McGrath testified that she learned about Ms. Commisso's allegations of incidents where she believed I was inappropriate with her *the day after Charlotte Bennett's allegations became public*. McGrath testified that on that Sunday she had gone to Ms. Commisso's home for a playdate with their children, and Ms. Commisso told her about some occasions where she thought I had been inappropriate with her, but did not mention the breast groping incident. The deposition transcripts do not reflect Ms. Commisso and Ms. McGrath being confronted about their inconsistencies. And the Report omits any discussion of these material inconsistencies.

The evidence indicates that Ms. Commisso wanted to conceal the extent of her communications with Ms. McGrath about me because the two wanted to avoid any inference of collusion between them as to when and how to come forward, and what to say to the press. Notably, following Ms. Commisso's claims of alleged misconduct by me, Ms. McGrath first

made her own claims of alleged misconduct by me via a *New York Times* article on March 19, 2021.<sup>77</sup>

The Report's omission of material details and inconsistencies that undermined both Ms. Commisso's credibility and the most serious allegation against me caused the public to be misled about the veracity of Ms. Commisso's allegations and her credibility.

v. **ALYSSA MCGRATH.**

AG James and her investigators similarly ignored a part of Ms. McGrath's testimony that did not align with other evidence. I only became aware of this after my attorneys received Ms. McGrath's testimony in discovery. In the Report, Ms. Commisso claimed that I inappropriately touched her buttocks in the Mansion just before taking a selfie photo on December 31, 2019 and then immediately texting that photo to Ms. McGrath. Ms. McGrath testified about that contemporaneous text exchange with Ms. Commisso, sharing the picture. After Ms. McGrath received the picture, she replied, "Where is my pic? I'm officially jealous." Alyssa McGrath June 2, 2021 Tr. at 125. When asked why she was "officially jealous," Ms. McGrath provided the following testimony:

A. I felt like I needed to say that *considering she was with him* and he wanted – *he asked that it be sent to me*. So she sent that in real time to me, so I felt like I should, like, be not rude.

Q. *How did you know that he had asked that she send you this picture?*

A. I knew *after the fact* when she told me.

Q. And so when you wrote the "officially jealous before that"—go ahead.

A. Yes. Yeah. Yup. And then I feel, like, in a text, she wrote again saying—reiterating that—to not—that he, like, said to her to make sure that her—that she doesn't share it and I don't share it.

Q. Okay. Just focusing on the text from December 31st, so recognizing that she told you after the fact that he had asked her to send it, do you remember why you said "I'm officially jealous"?

A. Just because she took it – she had a picture with him. I just wrote that in response to her thing. Like, I just – I knew she was with him so I just – that's just like how we talk.

*Id.* at 125–26 (emphasis added).

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<sup>77</sup> Jesse McKinley, *Cuomo Faces New Claims of Sexual Harassment From Current Aide*, N.Y. TIMES (Mar. 19, 2021), <https://www.nytimes.com/2021/03/19/nyregion/alyssa-mcgrath-cuomo-harassment.html>.

Ms. McGrath first explains she felt pressured to say she was jealous because she knew Ms. Commisso was with me and I directed Ms. Commisso to send the photo—which I deny, and also deny having inappropriately touched Ms. Commisso. But Ms. McGrath had no basis to conclude at the time she got that text that I had somehow directed Ms. Commisso to send it to her and Ms. Commisso was in my presence at that moment. Yet, when then asked how Ms. McGrath knew Ms. Commisso was with me at the time of the text, Ms. McGrath admitted she learned that *after the fact* and then stammered to find a justification for her text message that “I’m officially jealous”—and she needed some justification for that text because she began making sexual harassment allegations against me in March 2021 soon after Ms. Commisso. Despite this, the Report concluded Ms. McGrath was “credible” due to “the level of detail and *consistency* in the substance of her allegations and the *corroboration* from other individuals and *documents*.” Report at 81 (emphasis added). Such disregard for the proof—that Ms. McGrath’s testimony was not, in fact, consistent with Ms. Commisso’s allegations or the documentary evidence, and that there was no corroboration at all for Ms. Commisso’s claim—renders the Report unreliable.

Moreover, Ms. McGrath’s husband (with whom she was divorcing) materially undermined Ms. McGrath’s own claims of sexual harassment, yet, the Attorney General, Mr. Kim, and Ms. Clark made no mention of his testimony in the Report. Matthew McGrath testified that: “[Ms. McGrath] said nothing but positive things about the Governor (Matthew McGrath July 7, 2021 Tr. at 28), “I never sensed she was uncomfortable or . . . felt violated” (*id.* at 34), “[r]ight before [the New York Times] article came out, Alyssa called me and said, you know, there’s going to be something in the paper and I just need you to kind of have my back on this, and this was I kind of had to do it to keep my job” (*id.* at 43), and that Ms. McGrath kept a photograph of “of [Alyssa] and Brittany with the Governor . . . on a . . . pinboard next to her bed” (*id.* at 51) as well as “a handwritten card thanking her for her service, I think from the Governor, on the refrigerator” (*id.* at 52). He also stated that Ms. McGrath had “a lot of borderline adoration for Governor Cuomo” and “often talked about how handsome she thought he was.” Tr. at 27. Mr. McGrath testified that the photo Ms. McGrath kept on the “pinboard” was the “infamous” photo from the 2018 holiday party of Ms. Commisso, Ms. McGrath and me, and that Ms. McGrath had posted this same photo on her own Facebook account. *Id.* at 51. The Report included that photo and others as exhibits—*see, e.g.*, Report at 80 n.696 (citing Report Exs. 17–19)—as evidence of sexual harassment, without any mention of the fact that Ms. McGrath kept that photo by her bedside.

Mr. McGrath’s testimony very obviously contradicted Ms. McGrath’s recent claims that she found her interactions with me “troubling,” “embarrass[ing],” and “uncomfortable.”<sup>78</sup> Not only did the Report ignore or omit mention of Mr. McGrath’s testimony, but the investigators

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<sup>78</sup> McKinley, *supra* note 77; Alyssa McGrath June 2, 2021 Tr. at 58, 64.

chose not to question Ms. McGrath about the contradictory evidence Mr. McGrath provided—this was inexcusable for an investigation that AG James touted to the public as being “exhaustive” and “thorough.”<sup>79</sup> Mr. McGrath completely undermined Ms. McGrath’s credibility, but AG James and her investigators obviously did not want anyone to know. That is why AG James did not release all the underlying evidence when she released the Report. This was inexcusable misconduct.

3. **THE ATTORNEY GENERAL IGNORED MY REQUEST TO CORRECT AND SUPPLEMENT THE REPORT DESPITE KNOWING THAT IT WAS MISLEADING, REFUSED TO PROVIDE MY COUNSEL WITH ALL THE EVIDENCE, AND MADE PREJUDICIAL EXTRAJUDICIAL STATEMENTS**

Perhaps most egregiously, the Report misled the public, in violation of Rule 4.1 and Rule 8.4(c), into believing that I sexually harassed *eleven* women by stating on page one “we find that the Governor sexually harassed a number of current and former New York State employees,” and then listing a separate narrative for the eleven complainants under the heading “The Governor’s Sexually Harassing Conduct.”<sup>80</sup> Even assuming, *arguendo*, the truth of the allegations by the eleven complainants, three of the eleven were not even state employees,<sup>81</sup> and the allegations made by most of the eleven do not constitute sexual harassment under state or federal law for the reasons set forth in my October 20, 2021 submission to the Attorney General.<sup>82</sup> Indeed, two of

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<sup>79</sup> *Statement from Attorney General’s Office in Response to Rita Glavin’s Comments, supra* note 11.

<sup>80</sup> This contention was repeated *ad nauseum* throughout the Report. *See, e.g.*, Report at 1–6, 13, 16, 119 n.1062, 142, and 165.

<sup>81</sup> As a threshold matter, generally, a non-employee cannot state an actionable workplace sexual harassment claim. Three complainants cited in the Report were not Executive Chamber or state employees. Two of those women (Anna Ruch and Virginia Limmiatis), whom the Report concedes were “not employed by the state” and thus their allegations “were not of workplace harassment,” were nevertheless included in the Report only to misleadingly support its narrative that I sexually harassed “multiple” women. Report at 142–43. As for the third, State Entity Employee #1, the Report provides no support for its assumption that that an employee of the “New York State-affiliated entity” “created by State legislation” is a “State Entity Employee” for purposes of workplace harassment. *Id.* at 3, 93. And, even if those three women were state employees, the alleged conduct does not constitute sexual harassment for the reasons set forth in my October 20, 2021 application to amend, correct, and supplement the Report. Ex. C.

<sup>82</sup> Without analysis, the Report concludes that there was “sexual harassment that created a hostile work environment for State employees.” Report at 146. Although we challenge the Report’s conclusions, assuming *arguendo* they were correct, this conduct as alleged was not actionable under federal or state law, and the Report’s narrative is therefore misleading. *See Harris v. Forklift Sys.*, 510 U.S. 17, 21–22 (1993) (providing that the conduct must be objectively and subjectively severe or pervasive to be actionable under Title VII); *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986) (“For sexual harassment to be actionable, it must be sufficiently severe or pervasive”).

the women that AG James includes among the “eleven,” testified that they did not think their experience constituted sexual harassment.<sup>83</sup> Yet, the Report and the Attorney General’s press conference succeeded in convincing the media and the public that I had sexually harassed 11 women:

- “Outside lawyers hired by the attorney general’s office found that Cuomo *sexually harassed at least 11 women.*”<sup>84</sup>
- “New York Governor Cuomo *Sexually Harassed 11 Women, Report Finds.*”<sup>85</sup>
- “Cuomo Urged to Resign After *Probe Finds He Harassed 11 Women.*”<sup>86</sup>
- “Andrew M. Cuomo’s future as the governor of New York is in doubt after the state attorney general released *a report on Tuesday that found that he had sexually harassed 11 women, including nine current and former employees, in violation of state and federal law.*”<sup>87</sup>

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<sup>83</sup> See Kaitlin May 19, 2021 Tr. at 156 (“I don’t consider [my experience] sexual harassment”); State Entity Employee #2 May 24, 2021 Tr. at 168-69 (she recalled telling family members “This is not like a workplace sexual harassment”).

<sup>84</sup> Ryan Tarinelli, *State Regulator Who Helped Cuomo with Sexual Harassment Allegations Taught Ethics Course at NYU Law*, N.Y.L.J. (Sept. 2, 2021), <https://www.law.com/newyorklawjournal/2021/09/02/state-regulator-taught-nyu-law-government-ethics-course-while-helping-cuomo-with-sexual-harassment-allegations/> (emphasis added).

<sup>85</sup> Jonathan Allen & Nathan Layne, *New York Governor Cuomo Sexually Harassed 11 Women, Report Finds*, REUTERS (Aug. 3, 2021), <https://www.reuters.com/world/us/new-york-ag-says-probe-found-gov-cuomo-sexually-harrassed-multiple-women-broke-2021-08-03/> (“New York Governor Andrew Cuomo groped, kissed or made suggestive comments to 11 women in violation of the law, the state’s attorney general said on Tuesday, prompting local prosecutors to launch a criminal investigation and reigniting calls for him to resign or be impeached.”) (emphasis added).

<sup>86</sup> Michael R. Sisak & Marina Villeneuve, *Cuomo Urged to Resign After Probe Finds He Harassed 11 Women*, AP NEWS (Aug. 3, 2021), <https://apnews.com/article/andrew-cuomo-investigation-sexual-harassment-04b0e7ba80db368124a5e9c9bcf4dc0d> (“The nearly five-month, non-criminal investigation, overseen by New York’s attorney general and led by two outside lawyers, concluded that 11 women from within and outside state government were telling the truth when they said Cuomo had touched them inappropriately, commented on their appearance or made suggestive comments about their sex lives.”) (emphasis added).

<sup>87</sup> Jonah E. Bromwich, Dana Rubinstein, & Brian M. Rosenthal, *5 Things to Know About the Cuomo Sexual Harassment Findings*, N.Y. TIMES (Aug. 4, 2021), <https://www.nytimes.com/2021/08/04/nyregion/andrew-cuomo-future-takeaways.html> (emphasis added).

- “[I]n a damaging report from the New York State attorney general this week, which not only *found that Mr. Cuomo sexually harassed 11 women . . .*”<sup>88</sup>
- “Statement from Attorney General’s Office in Response to Attacks on *11 Women Harassed by Governor Cuomo*”<sup>89</sup>
- “[Cuomo] resigned in the wake of a *damning attorney general report that found Cuomo sexually harassed at least 11 women.*”<sup>90</sup>

The Report—when read past the Executive Summary that propagated the false narrative—never found that I “sexually harassed 11 women” because it could not under the facts or the law. But the Attorney General’s personal, political interest was to have that false narrative about me continue. On August 6, 2021, her office issued a press release on her official state website, citing to “11 women who came forward with allegations of sexual harassment” and stated, “There are 11 women whose accounts have been corroborated by a mountain of evidence.”<sup>91</sup> The Attorney General furthered this false narrative and refused to correct the deliberate misimpression she created. In misleading the media, and not correcting the false narrative they reported based on AG James’ public statements, AG James necessarily misled the public as well. This evidences misconduct.

Further, my attorneys pointed out in presentations myriad additional material omissions and errors with the Report that rendered the Report materially misleading.<sup>92</sup> Notably, the public recognized the Report’s shaky foundation, and the Editorial Board of the *New York Daily News* explicitly concluded in an August 24, 2021 editorial that: “The report authored by former U.S.

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<sup>88</sup> Luis Ferré-Sadurní and Jonah E. Bromwich, *How Cuomo and His Team Retaliated Against His Accusers*, N.Y. TIMES (Aug. 5, 2021), <https://www.nytimes.com/2021/08/05/nyregion/cuomo-accusers-alphonso-david-roberta-kaplan.html> (emphasis added).

<sup>89</sup> *Statement from Attorney General’s Office in Response to Attacks on 11 Women Harassed by Governor Cuomo*, *supra* note 9.

<sup>90</sup> Marina Villeneuve, *New York Health Chief, Defender of Cuomo Policies, Resigning*, AP NEWS (Sept. 23, 2021), <https://apnews.com/article/andrew-cuomo-new-york-coronavirus-pandemic-health-nursing-homes-274e3d04248dd8400679563b3a789916> (emphasis added).

<sup>91</sup> *See Statement from Attorney General’s Office in Response to Attacks on 11 Women Harassed by Governor Cuomo*, *supra* note 9.

<sup>92</sup> *Attorney Rita Glavin Holds Media Availability*, *supra* note 38; *Outside Counsel Rita Glavin Makes an Announcement*, *supra* note 38; *Gov. Cuomo’s Outside Counsel Rita Glavin Holds Virtual Briefing*, *supra* note 38.

Attorney Joon Kim and employment lawyer Anne Clark has problematic inclusions and omissions.”<sup>93</sup> Additionally, on October 20, 2021, my attorneys submitted to the Attorney General a lengthy application to amend, correct, and supplement the Report given the issues outlined above. *See generally* Ex. C. This application demonstrated in detail—using the limited materials available to us as of that time (before we received discovery from the District Attorney)—the flaws and misleading statements in the Report and the need for revisions to make the Report accurate, some of which are identified in this submission.

As a result, the Attorney General had an obligation under Rule 4.1 and Rule 8.4(c) to supplement and amend the Report to ensure its accuracy. *See* Comment [1] to Rule 4.1 (“Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.”). The Attorney General, however, permitted the misleading Report to stand, publicly dismissing all of the legitimate concerns and criticisms about the fairness and completeness of the Report, including material omissions and errors, and declining to issue any corrections or amendments to the Report. Without engaging in any of the detailed points concerning the accuracy of the Report, the Attorney General’s Office asserted, in an *ipse dixit* fashion, that the “investigation was exhaustive, thorough, and without outside influence, period.”<sup>94</sup> Despite the Attorney General’s Office dismissing my legitimate concerns regarding the Report as “lies[] and conspiracy theories,”<sup>95</sup> as the chief legal officer of the state and a member of the New York State bar, it was incumbent upon the Attorney General to address the glaring issues with the Report that undermined its conclusions, and her failure to do so is a violation of the Rules.

**E. THE ATTORNEY GENERAL’S SELECTIVE AND PREJUDICIAL PUBLIC DISCLOSURE OF SOME EVIDENCE UNDERLYING THE REPORT, WHILE CRIMINAL INVESTIGATIONS WERE ONGOING AND WHILE SHE WAS RUNNING FOR GOVERNOR, VIOLATED RULES 8.4(D), 1.7(A)(2), AND 3.6(A).**

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More fundamentally, I have never been afforded the opportunity to review all the evidence underlying the Report, despite the Attorney General’s promise at her August 3, 2021

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<sup>93</sup> Daily News Editorial Board, *No Heroes Here: Cuomo Should’ve Resigned, But Attorney General’s Report Has Serious Problems*, N.Y. DAILY NEWS (Aug. 24, 2021), <https://www.nydailynews.com/opinion/ny-edit-there-are-no-heroes-here-20210824-s5haa2xenjeftpvqfaz472cv5q-story.html>.

<sup>94</sup> *Statement from Attorney General’s Office in Response to Rita Glavin’s Comments*, *supra* note 11; *see also* Keshia Clukey, *Cuomo Lawyer to Ask N.Y. Attorney General to Correct Report*, BLOOMBERG (Aug. 20, 2021), <https://www.bloomberg.com/news/articles/2021-08-20/cuomo-s-lawyer-to-ask-n-y-attorney-general-to-correct-report>.

<sup>95</sup> *Statement from Attorney General’s Office in Response to Rita Glavin’s Comments*, *supra* note 11.

press conference to release the evidence to the public,<sup>96</sup> and despite my attorneys’ written requests to the Attorney General’s Office (“OAG”) for the same, including all transcripts, interview memos, and documents collected. It has become quite obvious that the reason the Attorney General did not want to release this information—which she subsequently decided to selectively and misleadingly release—was that the information would have contradicted her narrative. As my counsel also explained to the Assembly Judiciary Committee in a series of letters,<sup>97</sup> my lack of access to the evidence dramatically hindered my ability to respond to their investigation and report regarding sexual harassment, which was almost entirely based on the Attorney General’s investigation and findings. To this day, the Attorney General has refused to release to me all of the evidence underlying the Report for scrutiny.

Disturbingly, beginning on November 10, 2021, the Attorney General conducted a selective and manipulative, slow-roll public release of forty-one redacted witness interview transcripts and accompanying exhibits.<sup>98</sup> This conduct was manifestly prejudicial to the administration of justice in violation of Rule 8.4(d), done to further the Attorney General’s personal political interest in violation of Rule 1.7(a)(2), and meant to cause prejudice to me while a criminal charge was pending and investigations ongoing, in violation of Rule 3.6(a).

The Attorney General’s selective disclosure of evidence was done to further a false narrative concerning me and prejudice me during pending investigations. The Report states investigators “issued over 70 subpoenas for documents and other information, and received over 74,000 documents,” and “interviewed 179 individuals and took testimony under oath from 41 of

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<sup>96</sup> *NY Gov. Andrew Cuomo Sexually Harassed Multiple Women, Report Finds: Letitia James Press Conference Transcript*, *supra* note 11 (“We will be issuing this report, *along with evidence* to the general public. . . . The investigators independently corroborated and substantiated these facts through interviews and evidence, including contemporaneous notes and communications. *This evidence will be made available to the public*, along with the report.” (emphasis added)).

<sup>97</sup> Copies of the letters, dated August 5, August 9, September 13, October 8, and November 18, 2021, are attached hereto collectively as “Exhibit E.”

<sup>98</sup> *Transcripts And Exhibits From Independent Investigation Into Sexual Harassment Allegations Against Former Governor Cuomo Begin To Be Released*, *supra* note 15; *Additional Transcripts, Exhibits, and Videos From Independent Investigation Into Sexual Harassment Allegations Against Former Governor Cuomo Released*, *supra* note 15; *Transcripts, Exhibits, and Videos From Independent Investigation Into Sexual Harassment Allegations Against Former Governor Cuomo Released*, *supra* note 15. Not only was I not given notice of the release, but evidently other individuals—including complainants—were not advised that their testimony would be publicly released. *See, e.g.*, Bernadette Hogan & Bruce Golding, *State Troopers Union Blasts AG James For ‘Re-Victimizing’ Cuomo Accusers With Transcripts*, N.Y. POST (Nov. 17, 2021), <https://nypost.com/2021/11/17/ny-state-troopers-union-rips-ag-james-for-releasing-cuomo-transcripts/> (“The AG’s decision to release the transcripts has re-victimized these women, casting light on key witnesses, and all but publicly naming them,” NYSPIA President Tim Dymond said. . . . In an interview, Dymond told The Post that he ‘had no idea’ James was going to release the transcripts of interviews with Cuomo and 10 of his accusers”).

them.”<sup>99</sup> In her August 3, 2021 press conference announcing the Report, the Attorney General promised that she would release the Report “along with evidence to the general public.”<sup>100</sup> Yet, the Attorney General’s limited public disclosure beginning on November 10, 2021 failed to include *any* memoranda or notes summarizing the other 138 interviews OAG conducted but chose not to transcribe for public scrutiny. The Attorney General has refused to even identify the other 138 individuals interviewed or how many times each individual may have been interviewed.<sup>101</sup> Nor does the Report summarize the 74,000 documents they purportedly collected and from whom. The 111 exhibits appended to the Report account for a tiny fraction of 74,000 records AJ James collected and will not disclose.

Moreover, the disclosures were prejudicial given the pendency of criminal investigations stemming from the Report and the pendency of the since-dismissed criminal case against me, which was based on Ms. Comisso’s false allegation detailed in the Report. On August 25, 2021, news outlets reported that three district attorneys asked the Attorney General “not to publicly release evidence from her office’s sexual harassment investigation . . . that could compromise their ongoing cases.”<sup>102</sup> Specifically, Albany County District Attorney David Soares reportedly wrote to the Attorney General and said: “While I respect the right of the public to have access to the same materials, I fear that making them available at this time could compromise our investigation.”<sup>103</sup> The Nassau County District Attorney’s Office reportedly stated that releasing transcripts of witness depositions “at this stage” has the “potential to jeopardize the ongoing criminal investigation.”<sup>104</sup> The Oswego County District Attorney reportedly stated that he was “still exploring whether it is possible to file criminal charges regarding the alleged conduct” and “that the public release of additional information may hinder

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<sup>99</sup> Report at 15, 15 n.77; *see also NY Gov. Andrew Cuomo Sexually Harassed Multiple Women, Report Finds: Letitia James Press Conference Transcript*, *supra* note 11.

<sup>100</sup> *NY Gov. Andrew Cuomo Sexually Harassed Multiple Women, Report Finds: Letitia James Press Conference Transcript*, *supra* note 11.

<sup>101</sup> *See* Report at 15, 15 n.77 (“For certain individuals, [AG Investigators] both conducted an interview and took the testimony of the individual.”) For example, we had not seen any evidence that Lindsey Boylan’s former campaign consultant, Lupe Todd Medina, who resigned soon after Ms. Boylan first made her public allegations during her campaign, was interviewed by the AG Investigators. Yet, on or about January 13, 2022, Ms. Todd-Medina told the New York Times she had, in fact, spoken with investigators and claimed her resignation was not about the accuracy of Ms. Boylan’s allegations. Luis Ferré-Sadurní & Grace Ashford, *An Emboldened Cuomo Takes Swings at Accusers and Investigators*, N.Y. TIMES (Jan. 13, 2022), <https://www.nytimes.com/2022/01/13/nyregion/andrew-cuomo-rita-glavin.html>.

<sup>102</sup> Carl Campanile and Bernadette Hogan, *DAs Probing Cuomo Urge AG James To Not Make Sex Harass Report Evidence Public*, N.Y. POST (Aug. 25, 2021), available at: <https://nypost.com/2021/08/25/das-urge-ag-james-to-not-make-cuomo-sex-harass-evidence-public/>.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

or impair any potential prosecution.”<sup>105</sup> Of course, the Attorney General had her own politically motivated and self-interest driven agenda.

On September 1, 2021, the Attorney General stated that she would not release interview transcripts at the request of district attorneys who were conducting their own investigations.<sup>106</sup> The Attorney General then reversed course after she announced on October 29, 2021 that she was running for New York State Governor. Specifically on November 10, 2021, the Attorney General publicly released 11 transcripts of the following witnesses: Charlotte Bennett, Lindsay Boylan, Brittany Commisso, Kaitlin, Virginia Limmiatis, Ana Liss, Alyssa McGrath, State Entity Employee #1, State Entity Employee #2, Trooper 1, and myself.<sup>107</sup> In explaining her decision to publicly release the transcripts of only 10 complainants and myself *at that time and no other transcripts*, AG James stated although “multiple district attorneys asked that the OAG refrain from publicly releasing transcripts and other evidence so that their offices could first investigate and determine whether to file criminal charges against Cuomo,” her office was releasing materials now “in an effort to provide full transparency to the people of New York” because the Albany County District Attorney’s Office was releasing materials.<sup>108</sup> At the time the Attorney General released those 11 transcripts on November 10, there was no legitimate law enforcement reason to release them—and the AG did not offer one—with ongoing investigations and one criminal charge against me pending. And the criminal charge pending against me was one in which the Albany County District Attorney made clear that his investigation was still ongoing as it related to Brittany Commisso.

On November 29, 2021, while the Attorney General was still in the middle of her campaign for governor, she chose to release a second tranche of transcripts and exhibits to those transcripts. This time she released formal interview transcripts of “Former Executive Chamber Staff and Outside Advisors”: Rich Azzopardi, Peter Ajemian, Andrew Ball, Stephanie Benton, Steve Cohen, Christopher Cuomo, Alphonso David, Melissa DeRosa, Jill DesRosiers, Beth Garvey, Linda Lacewell, Dani Lever, Judy Mogul, Lis Smith, and Annabel Walsh.<sup>109</sup> Once again, this tranche was chosen to damage my staff and prejudice me.

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<sup>105</sup> *Id.*

<sup>106</sup> Nick Reisman, *New York Attorney General Says Transcripts In Cuomo Probe Won’t Be Released At This Time*, SPECTRUM NEWS (Sep. 1, 2021), available at: <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2021/09/01/ag-james-says-transcripts-in-cuomo-probe-won-t-be-released>.

<sup>107</sup> *Transcripts and Exhibits From Independent Investigation Into Sexual Harassment Allegations Against Former Governor Cuomo Begin to Be Released*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL, *supra* note 15.

<sup>108</sup> *Id.*

<sup>109</sup> *Additional Transcripts, Exhibits, and Videos From Independent Investigation Into Sexual Harassment Allegations Against Former Governor Cuomo Released*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL, *supra* note 15.

The third and final batch of interview transcripts OAG released on January 20, 2022 also contained material exculpatory evidence that was not included in the Report.<sup>110</sup> The Attorney General released exculpatory transcripts only *after* the criminal charge was dismissed, my attorney had publicly discussed the exculpatory evidence in those transcripts that AG James had not yet publicly released, and after several District Attorneys announced they were not moving forward with charges. Notably, AG James did not release any interview memos, of which there should be at least 138 given that 179 people were interviewed.

For example, included in the final transcript tranche was Matthew McGrath, Alyssa McGrath's now ex-husband, who disputed her allegations about me. *E.g.*, Matthew McGrath July 7, 2021 Tr. at 63. In yet another example, David Dively, a technical lieutenant who oversaw the PSU, testified that, "[the Governor] is pretty consistent with both male and female members of staff, as far as the way he treats them from what I see . . . . [The Governor has] kissed me." Dively June 11, 2021 Tr. at 143, 152. Additionally, the Attorney General released Howard Zemsky's transcribed testimony where he described the specific threat that Ms. Boylan made to him, which there was no reason to omit until the last tranche, other than to avoid undermining the credibility of Lindsay Boylan. There was no legitimate reason to hold back these transcripts until January 20, 2022.

Not only was the Attorney General's slow-roll release of transcripts misconduct, but the Attorney General's decisions regarding what information to be "redacted" from the publicly released transcripts was done to protect the Attorney General's office and hurt me and my staff. Simply, the Attorney General's redactions evidenced political motivations rather than principled decisions by the chief legal officer of the state. There are several illustrative examples.

First, the Attorney General left *unredacted* hearsay testimony from a witness who said that Senior Investigator #1 claimed to have seen me and a senior staffer kissing on a particular occasion. This resulted in a *New York Post* Story claiming that a senior staffer and I were caught

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<sup>110</sup> It bears repeating that the misdemeanor complaint against me was dismissed approximately two weeks earlier on January 7, 2022, and my attorney held a press conference on January 13, 2022 pointing out numerous examples of evidence excluded from the Report that undermined the allegations against me and credibility of some of the complainants. That the Attorney General released exculpatory transcripts only *after* the criminal charge was dismissed and other District Attorneys announced they were not moving forward with charges should be investigated. *See* Jane Wester, *Cuomo's Misdemeanor Forcible Touching Charge Formally Dismissed, Will Be Sealed in Albany*, N.Y.L.J. (Jan. 7, 2022), <https://www.law.com/newyorklawjournal/2022/01/07/cuomos-misdemeanor-forcible-touching-charge-formally-dismissed-will-be-sealed-in-albany/>; *see also* Andrew Cuomo's Attorney Rita Glavin Makes an Announcement, *supra* note 40.

“making out on the sidewalk like high schoolers.”<sup>111</sup> But the Attorney General’s investigators had informally interviewed Senior Investigator #1—the purported source of the rumor—and he told them *he saw no such thing*, as evidenced by his interview memo in which he told them “he never saw them kiss or do anything explicit” and “was not there” to witness the purported incident reported in the *New York Post*. Senior Investigator #1 June 22, 2021 Interview Memo. Another trooper purportedly present also denied having witnessed this purported kissing incident. PSU Trooper #2 May 12, 2021 Interview Memo at 3. Yet, the Attorney General misled the public by leaving that hearsay testimony unredacted and causing inflammatory hearsay about myself and a senior staffer to be repeated in the press when the Attorney General knew she had directly contrary information and chose not to release it. Once AG James released that portion of the transcript and the media then seized on it, AG James had an obligation to tell the public that other troopers contradicted the story. By failing to do so she misled the public and committed misconduct.

Second, the Attorney General redacted seven pages of Lindsey Boylan’s testimony transcript in which she testified about what she claimed was the nature of her relationship with Howard Zemsky that contradicted what Mr. Zemsky told the Attorney General’s investigators in his informal interview on July 8, 2021. Ms. Clark’s and Mr. Kim’s bias and misconduct in how they interviewed Mr. Zemsky under oath is relevant here. They first interviewed Mr. Zemsky informally, and that is when he admitted to having had an intimate encounter with Ms. Boylan. However, when Ms. Clark and Mr. Kim met with Mr. Zemsky for his formal, transcribed, under-oath interview, Mr. Kim and Ms. Clark deliberately did not ask Mr. Zemsky about his sexual relationship with Ms. Boylan while he was her superior and his subsequent meeting with Alphonso David about their relationship and Ms. Boylan’s concern about what Mr. Zemsky might have told Mr. David. The Attorney General’s subsequent release of Mr. Zemsky’s transcript, without the additional details he revealed about Ms. Boylan in his informal interview, also constituted misconduct. Further, the investigators’ decision not to ask Mr. Zemsky during his formal transcribed interview about his relationship with Ms. Boylan, which led to the complaint to Mr. David, is inexplicable. I presume this subject was avoided because the investigators knew the transcripts would be publicly released and did not want the media and the public to know about their relationship—which materially undermined the credibility of both Mr. Zemsky and Ms. Boylan.

Third, the Attorney General redacted the names of her Chief of Staff, Ibrahim Kahn, and former political consultant in her 2018 campaign for attorney general, Trip Yang, from Melissa DeRosa’s transcript in a clear effort to protect a top state official in AG James’ office and AG James’ former political consultant. Melissa DeRosa testified that both Mr. Kahn and Mr. Yang—who were close to the Attorney General—kept her apprised of Ms. Boylan’s plans to go public

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<sup>111</sup> Bernadette Hogan & Bruce Golding, *Ex-Gov. Cuomo, Married Aide DeRosa Allegedly Caught Making Out: Trooper*, N.Y. POST (Nov. 12, 2021), <https://nypost.com/2021/11/12/ex-gov-cuomo-married-aide-derosa-allegedly-caught-making-out-trooper/>.

with her allegations. DeRosa July 6, 2021 Tr. at 239–44, 249–50. Mr. Kahn and Mr. Yang were witnesses to what Ms. Boylan told others she planned to do about her allegations while running for office. There was no reason to redact their names from the transcript other than to protect the Attorney General in her campaign for governor, and then re-election for attorney general. These decisions demonstrate the Attorney General’s manipulation of the truth to the public for the purpose of her own personal political gain in violation of her ethical duties.

The decision to selectively release the transcripts, and the choices of what information to redact or not redact from those transcripts, during her campaign for governor, misled the public and were wrong and unethical, warrant investigation, and are squarely within the jurisdiction of your Committee.

#### **F. CONCLUSION.**

The Attorney General proceeded with an intolerable personal and political conflict of interest when she selected the investigators, conducted this investigation and issued the misleading and inaccurate Report, announced the Report at a prejudicial press conference without releasing all the evidence for scrutiny, and then how she chose to selectively release some evidence in a manner to advance her political campaign and deeply prejudice me while investigations were pending. She engaged in a terrible and quite obvious manipulation of facts, evidence and the law, furthered a false narrative about me, and hid evidence that undermined the Report from the media and the public. Mr. Kim and Ms. Clark likewise engaged in misconduct by misleading the public about the evidence and facts in the Report, and the manner in which they deliberately omitted evidence contradicting allegations of sexual harassment and undermining witness and complainant credibility. And as to the Attorney General’s continuing to further a false public narrative about me in and after the issuance of the misleading and inaccurate Report, and her subsequent release of *some* evidence during her political campaign while investigations were pending, and her prejudicial statements about me, it is important to note that false public statements by attorneys “erode[] the public’s confidence in the integrity of attorneys admitted to our bar and damages the profession’s role as a crucial source of reliable information . . . It tarnishes the reputation of the entire legal profession and its mandate to act a trusted and essential part of the machinery of justice . . .” *Matter of Giuliani*, 197 A.D.3d at 25 (internal citations omitted). As the *Giuliani* case demonstrates, no lawyer who promulgates false statements is above ethical rules and that certainly includes the Attorney General.

I respectfully request that the Committee investigate the evidence of professional misconduct by Attorney General Letitia James, Joon Kim and Anne Clark, and take appropriate action.

Jorge Dopico, Esq.  
September 13, 2022  
Page 48

Respectfully submitted,

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*Andrew M. Cuomo*