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November 18, 2021

VIA EMAIL

Hon. Letitia Ann James
New York State Attorney General
Office of the Attorney General
The Capitol
Albany, NY 12224-0341
Letitia.James@ag.ny.gov

Re: Request for New York State Attorney General's Office to: Recuse Itself from Ongoing Investigations Related to Governor Cuomo; Provide Us Access to All Evidence Underlying the August 3, 2021 Report; and Commence and Refer an Investigation into Unlawful Grand Jury Disclosures

Dear Attorney General James:

I represent former Governor Andrew M. Cuomo and write to request that you:

- (1) immediately recuse your Office from (a) any further involvement in decisions concerning the August 3, 2021 *Report of Investigation into Allegations of Sexual Harassment by Governor Andrew M. Cuomo* (the "Report"), and (b) your pending criminal investigation of Governor Cuomo for alleged misuse of state resources, because your Office's actions create the appearance that are you are using your Office to further your campaign for Governor—the same Office from which the Governor was essentially forced to resign following your August 3, 2021 Report, thereby clearing an easier path for your gubernatorial run announced on October 29, 2021;
- (2) provide us with immediate access to **all** of the underlying evidence (without redactions) of the Report, including all notes and memoranda concerning the more than 179 interviews your Office conducted, as well as the 74,000 documents your Office collected (as we have previously requested of you on numerous occasions and received no response); and
- (3) confirm that an investigation of Sheriff Craig D. Apple and his office for unlawful disclosure of grand jury information will be commenced and referred to a truly independent prosecutor, pursuant to N.Y. Exec. L. § 75, in response to our November 8, 2021 letter (to which you have not yet responded).

I. **Recusal of Your Office from Matters Concerning Governor Cuomo**

Your conduct since March 2021 has unquestionably resulted in, at minimum, an apparent conflict of interest in matters concerning Governor Cuomo.¹ In order to preserve the integrity of your Office and the ongoing review of the Governor's conduct, you should recuse your Office from: (a) any further decisions relating to your Report, and (b) the broad-ranging criminal investigation referred to you on April 13, 2021 by Comptroller Thomas DiNapoli into alleged misuse of state resources.

There remains widespread speculation that the former Governor may enter the gubernatorial race.² Indeed, the press reported this week that the Governor's "advisers haven't dismissed the idea he could try a political comeback — and soon[,]”³ and “keep floating the idea that he could run for something again — governor or attorney general perhaps[.]”⁴ Because you have viewed and continue to view the Governor as a political rival for the job you are now campaigning for, your strong motivation to handle these pending matters in a manner most beneficial to your political ambitions mandate you to recuse your Office. Similarly, the obvious motivation for you to unnecessarily prolong your Office's investigation into the alleged misuse of state resources (when there was none) and use government resources to continue publicly damaging the Governor and those who worked closely with him requires the recusal of your Office.

Your actions reflect a state official acting in her personal political interest rather than in the best interest of the state for the reasons set forth in more detail below, including: (1) your violation of the March 1, 2021 referral (the “Referral”) which provided that an independent law firm conduct the investigation, as opposed to you and your Office; (2) the resulting misleading Report you have failed to amend, correct, and supplement; (3) your promoting the misleading Report in support of your campaign for governor while dismissing our legitimate concerns of it that are also shared by journalists and members of the public; and (4) your selective and slow release on a rolling basis of

¹ Section 74(3)(h) of the Public Officer's Law requires state officials to “pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.”

² Anne Gronewold, *‘He’s Nuts and He’s Got a Vendetta’: Cuomo Won’t Leave New York Alone*, POLITICO (Nov. 15, 2021), <https://www.politico.com/news/2021/11/15/andrew-cuomo-wont-leave-ny-521205>.

³ *Id.*

⁴ S.E. Cupp, *Cuomo Still Haunts and Taunts N.Y.*, N.Y. Daily News (Nov. 17, 2021), <https://www.nydailynews.com/opinion/ny-oped-post-resignation-cuomo-20211117-yjpij2di7vhh3abf3ythaw7fpi-story.html>.

only some of the evidence underlying the Report to support your Report's findings and inflict maximum damage on the Governor.

A. The Flawed Investigation and Report Demonstrate an Appearance of Impropriety

Given (1) the two Investigators you appointed to handle the investigation were not “independent” as required by the March 1, 2021 Referral, (2) the manner in which your Office conducted the investigation did not comport with fairness principles, (3) you were personally involved in the Investigation in violation of terms of the Referral, and (4) the resulting Report was materially misleading given material omissions and errors, the entire process was infected with bias and driven toward a predetermined outcome – directly contrary to what was to be an independent and fair inquiry “into allegations of and circumstances surrounding sexual harassment claims made against the Governor.”⁵ At minimum, all these facts demonstrate an appearance of impropriety.

First, we have made our position clear that the two Investigators you appointed to handle the investigation were not “independent,” as required by the Referral. They had obvious biases and predispositions regarding the subject matter of the investigation and the Governor. Ms. Clark was a plaintiff's lawyer whose practice is focused on bringing lawsuits for sexual harassment and discrimination; and Mr. Kim was a former federal prosecutor who spent years supervising investigations into the Governor and the Executive Chamber, including personally interviewing the Governor in an investigation. The fact that you appointed a plaintiff's lawyer was telling, because you had specifically assured the Governor you would not do so at the time of the Referral when you both discussed appointing an “independent” law firm.

Second, the manner in which your appointed Investigators approached this investigation—including the evidence they obtained and did not obtain, the way they approached witness interviews of the complainants versus the Governor and his staff, and the glaring omissions and deficiencies in the Report produced from that investigation that bears your name at the top—demonstrates that this investigation had a predetermined outcome and was anything but “exhaustive, thorough, and without outside influence, period.”⁶ Indeed, the investigation was replete with missteps you have neither addressed nor corrected, including the failure to transcribe

⁵ *Attorney General James Receives Referral Letter to Investigate Allegations of Sexual Harassment Against Governor Cuomo*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL (Mar. 1, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-james-receives-referral-letter-investigate-allegations-sexual>.

⁶ *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>.

the more than 179 interviews conducted, which **allowed for inconsistencies in accounts to be addressed before the 41 final, transcribed interviews under oath.**

Critically, in violation of the Referral, you admitted having been personally involved in the investigation, as opposed to leaving it entirely to the purported “independent law firm” you selected. Governor Cuomo’s Referral to the Attorney General pursuant to N.Y. Exec. L. § 63(8) 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.”⁷ Governor Cuomo made clear as early as March 2019 that he intended to run for a fourth term in 2022⁸ and, at the time of the Referral, you would not disavow any intention to run for governor in 2022. This presented a conflict for your Office to investigate the Governor – a conflict about which the Governor specifically expressed his concern to you at the time of the Referral. Thus, the Governor’s Referral was drafted precisely to limit your personal involvement due to your refusal to disavow any intention to run for governor and the public knowledge at that time that the Governor Cuomo intended to run for a fourth term.

Specifically, on September 30, 2021, you made clear that you violated the Referral by admitting you were personally involved in the investigation and in reaching the investigation’s conclusions.⁹ You reportedly stated:

When they *came into my office*, and *they told me* about the fact that Albany was toxic . . . how they were harassed. . . *I believed them*,

⁷ *Attorney General James Receives Referral Letter to Investigate Allegations of Sexual Harassment Against Governor Cuomo*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL (Mar. 1, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-james-receives-referral-letter-investigate-allegations-sexual> (emphasis added).

⁸ *See e.g.*, Joseph Spector, *Cuomo 2022? Governor Hits at Running For a Fourth Term*, DEMOCRAT & CHRONICLE (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, ‘Well, it’s state money raised for a re-election. So yes.’”); Michael Gormley, *‘I Know This Job’: Andrew Cuomo Will Run For 4th 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 ...”).

⁹ Bernadette Hogan, *‘Stay tuned’: AG Letitia James tells Dem Leaders on When She Will Decide Gov Run*, N.Y. POST (Oct. 1, 2021), <https://nypost.com/2021/10/01/letitia-james-hints-at-run-for-new-york-governor/> (emphasis added).

*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.*¹⁰

By personally making evidentiary and credibility determinations, and personally injecting political influence into what was meant to be an independent review by receiving input from “everyone in Albany, every politician [you] knew,” you violated the Referral.

Just two days ago, you again admitted to violating the Referral. You claimed: “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 the outcome.”¹¹ The Governor never asked to you to “investigate these allegations,” nor did he state that he “believe[s] in you” and “Let Tish investigate.” The Referral did not confer jurisdiction on you to supervise or participate in the investigation or drafting of the Report, beyond selecting the independent law firm and receiving weekly status reports. To the contrary, the terms of the Report were meant to prevent your personal involvement given your refusal to disavow any intention to run for governor at the time of the Referral.

According to your public statements, you did not hand the reins of this investigation to an “independent” law firm, as was required by the Referral. Rather, you were personally involved and vested in the investigation of a political rival against whom you were exploring a campaign to run for governor. This was a clear violation of the terms of the Referral. Indeed, you put your name on the cover of the Report and have referred to it as “our investigation” and “our report.”

The lack of fairness in how the investigation was conducted culminated into the materially misleading Report that contained glaring omissions and errors. The Report cannot be accepted at face value for the many reasons—factual, legal, and evidentiary—detailed in our October 20, 2021

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

¹¹ Candice Ferrette, *AG James Defends Harassment Investigation of Cuomo*, NEWSDAY (Nov. 16, 2021), <https://www.newsday.com/long-island/politics/letitia-james-long-island-association-1.50424577>.

application to amend, correct, and supplement the Report, which you have refused to meaningfully address.¹²

B. Your Promotion of Your Flawed Report to Support Your Campaign for Governor

Your public comments over the last several months have further demonstrated your impartiality concerning Governor Cuomo, who resigned from office based on your Report, only for you to announce your candidacy for his office just three months later, relying on your Report with findings against him in support of your campaign.

First, when we pointed out the many material omissions and errors in your Report, instead of carefully considering those valid issues – shared by journalists as set forth below – as the chief legal officer of New York State, your Office immediately issued a statement dismissing those concerns as “attacks, lies, and conspiracy theories.”¹³ Indeed, on August 6, 2021, after we pointed out material omissions and errors in your Report, your Office issued a press statement under the misleading heading: “Statement from Attorney General’s Office in Response to Attacks on 11 Women Harassed by Governor Cuomo.”¹⁴ As you know, the Report did not find that the Governor sexually harassed eleven women, although the Report was written in a misleading manner to cause the public to believe that. More recently, your Office referred to our criticisms as a “charade[.]”¹⁵

Journalists have also questioned the Report’s conclusions and the investigative process, noting that, “the anti-Cuomo putsch was full of holes, predicated on the worst kind of emotional

¹² We have made clear in public presentations on August 6, 10, and 20, 2021, as well as in written submissions, the many material omissions and errors in your Report. We incorporate by reference our October 20, 2021 Application to Amend, Correct, and Supplement the Report, to which your Office has still not responded in any substantive manner.

¹³ *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>; 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>.

¹⁴ *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-rita-glavins-comments>.

¹⁵ *Attorney General’s Office Responds to Today’s Cuomo Attacks*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL (Oct. 20, 2021), <https://ag.ny.gov/press-release/2021/attorney-generals-office-responds-todays-cuomo-attacks> (emphasis added).

blackmail tactics, and spearheaded by people with manifestly dubious motives.”¹⁶ For example, the Editorial Board of the *New York Daily News* explicitly recognized the problems with the Report in an August 24, 2021 editorial, concluding: “The report authored by former U.S. Attorney Joon Kim and employment lawyer Anne Clark has problematic inclusions and omissions.”¹⁷ Later, former federal prosecutor Jim Zirin wrote, “Cuomo was the target of a smear campaign authored by two supposedly independent lawyers working for James. . . . Also seriously, Cuomo has never been given an opportunity to confront his accusers and probe this area on cross-examination. He has never been given full access to the . . . interview transcripts on which many of the report’s conclusions are based.”¹⁸ David Pinkus criticized the violation of “basic due process” for the gain of “political rivals.”¹⁹ But your Office has refused to meaningfully address our application to Amend, Correct, and Supplement the Report.

Further, you have been using your misleading and flawed Report to bolster your gubernatorial campaign. Just two days ago, at a Long Island Association event, “not billed as a campaign event,” you defended your Report in “[your] speech updat[ing] the business community on [your] office’s accomplishments while laying out political priorities.”²⁰ You stated that “it’s important that everyone understand the facts...” and that you “did” investigate, but the Governor “didn’t agree with the outcome.”²¹ For the reasons set forth above, these statements are inaccurate

¹⁶ Michael Tracey, *Unprecedented Abuse Of Power: What The Media Still Isn’t Telling You About The Cuomo Debacle*, SUBSTACK (Nov. 4, 2021), <https://mtracey.substack.com/p/unprecedented-abuse-of-power-what>; see also Michael Tracey, *What Exactly Is Andrew Cuomo Guilty Of?*, TABLET MAG. (Aug. 9, 2021), <https://www.tabletmag.com/sections/news/articles/cuomo-michael-tracey> (“While press accounts have near-uniformly declared the allegations set forth to be supremely “damning,” a closer examination of the report itself, as well as the peculiar surrounding details, leaves room for a bit more ambiguity.”).

¹⁷ 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-s5haa2xenjftpvqfaz472cv5q-story.html>.

¹⁸ Jim Zirin, *The Case Against Cuomo Weakens*, N.Y. DAILY NEWS (Oct. 22, 2021), <https://www.nydailynews.com/opinion/ny-oped-the-case-against-cuomo-teeters-20211022-ykgbhekj35d2nezanwzy3gmnqm-story.html>.

¹⁹ David Pinkus, *Ousting Cuomo Disenfranchised NY Voters*, NEWSDAY (Sep. 23, 2021), <https://www.newsday.com/opinion/commentary/cuomo-ouster-voter-suppression-1.50369097>.

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

²¹ *Id.*

and evidence a violation of the Referral. Tellingly, your comments show further politicization and promotion of your misleading Report to boost your campaign.

Similarly, in your gubernatorial campaign announcement, you “ma[de] several allusions to Mr. Cuomo,” including a statement that, “‘I’ve held accountable those who mistreat and harass women in the workplace, no matter how powerful the offenders.’”²² There is no doubt that you now have a vested interest in defending the Report at all costs, despite its demonstrated errors and omissions to which you have not meaningfully responded.

Moreover, following the announcement of a criminal charge against the Governor by your ally Sheriff Craig D. Apple,²³ you immediately issued a statement that Sheriff Apple’s criminal complaint “validate[d] the findings in *our* report.”²⁴ These are not the statements of a chief legal officer, but of a campaigning gubernatorial candidate. Notably, other than claiming the timing was of “coincidence,” you have not opined on Sheriff Apple’s complete failure to consult with the District Attorney about the Sheriff’s “separate” investigation before the Sheriff inexplicably and unilaterally filed the charge *on the day before you announced your campaign for governor*. The Sheriff’s inexplicable and unprofessional conduct has been uniformly criticized.²⁵

²² 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>.

²³ See, e.g., Craig Apple (@CraigDApplesr), TWITTER (Oct. 6, 2021 9:01 a.m.), <https://twitter.com/CraigDApplesr/status/1445736237269200897> (“Glad to team up with our Attorney General @TishJames who fought hard against big Pharma. . .”).

²⁴ *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>.

²⁵ See, e.g., Wall St. J. Editorial Board, *The Curious Andrew Cuomo Complaint*, WALL ST. J. (Oct. 31, 2021), <https://www.wsj.com/articles/the-curious-andrew-cuomo-charge-letitia-james-apple-soares-governor-race-11635707950> (arguing that the timing of the charges “raises questions about political motivations in the justice system that can’t be ignored.”); Brendan Lyons, *Cuomo’s Arraignment Delayed as District Attorney Cites ‘Exculpatory’ Evidence*, TIMES UNION (Nov. 5, 2021), <https://www.timesunion.com/state/article/cuomo-arraignment-delayed-16596096.php> (“The Albany County district attorney’s office, citing a ‘potentially defective’ criminal complaint filed against former Gov. Andrew M. Cuomo by the county sheriff’s office, on Friday was granted a 60-day adjournment for Cuomo to make his first scheduled court appearance on a misdemeanor forcible touching charge. A searing letter filed in City Court on Thursday by District Attorney David Soares also made reference to potentially ‘exculpatory’ evidence his office has turned over to Cuomo’s defense counsel.”); 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->

Further, as discussed in more detail below, there is strong evidence that Sheriff Apple committed a felony in unlawfully disclosing grand jury information concern those allegations to the press. Yet, despite the fact that N.Y. Exec. L. § 75 requires an investigation of law enforcement misconduct,²⁶ you have remained silent rather than expressing outrage at the blatant criminal disclosure of grand jury information and demanding accountability for the source of that unlawful disclosure.

Given the widespread criticism of your Report, and your demonstrated need to defend it as part of your gubernatorial campaign despite its omissions and errors, your Office should recuse itself from any further decision-making regarding the Report—including release of transcripts, the rest of the evidence, and any choice of redactions concerning the evidence.

C. Your Selective and “Slow Rolling” Public Release of Some Evidence During a Pending Criminal Case and the Questionable Redactions by Your Office

On November 10, 2021, without getting input from the district attorneys’ offices purportedly investigating certain allegations in your Report, you made the unilateral decision to release on a “rolling basis” select evidence underlying the Report – only the transcripts and exhibits from the 41 interviews that you chose to transcribe out of the more than 179 witnesses you interviewed. Your decision to make this limited and selective disclosure now—while a criminal case initiated by Sheriff Apple is pending and the Albany County District Attorney is continuing his own investigation—was a political one, demonstrating the conflict between you fulfilling your role as the Attorney General of this state and your simultaneous campaign for governor.

[criminal-complaint-potentially-defective-1392346](#) (“[Albany County District Attorney David] Soares wrote Judge Holly Trexler on Thursday that the ‘inexplicably filed’ criminal charge was ‘potentially defective’ and at ‘risk of a procedural dismissal.’”); Chris Churchill, *Churchill: Apple at the Eye of Cuomo Storm*, TIMES UNION (Nov. 6, 2021), <https://www.timesunion.com/churchill/article/Churchill-Apple-s-at-the-eye-of-Cuomo-storm-16596296.php> (“The complaint, apparently filed prematurely, was quickly engulfed in a swirl of confusion and controversy.”); Phil Serpico, *Letter: ‘Judgmental failure’ in Albany Sheriff Apple’s Handling of Cuomo Case*, TIMES UNION (Nov. 10, 2021), <https://www.timesunion.com/opinion/article/Letter-Albany-Sheriff-Craig-Apple-16588391.php> (“Albany County Sheriff Craig Apple, not an attorney, needs a refresher course in protocols because he set the stage for what should be a dismissal of charges upon the appearance of the defendant, former Gov. Andrew Cuomo, before the court.”)

²⁶ N.Y. Exec. L. § 75 (providing that the deputy attorney general has the duty and responsibility to “receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse in any covered agency.”).

First, you selectively transcribed only 41 interviews of the more than 179 witnesses you interviewed, and you are now selectively and slowly disclosing only those transcripts. **Those 41 transcripts do not tell the full story.** For example, Brittany Commisso was interviewed more than once by your Office, yet you only released the transcript of her one transcribed interview on May 17, 2021 even though she was first informally interviewed in March 2021.²⁷ Similarly, Ms. McGrath and Ms. Bennett were informally interviewed—yet your Office chose not to release the notes and memos from those informal interviews. Further, you also chose not to release memos of your Office’s informal interviews of Executive Mansion staff **who told your office they did not witness inappropriate behavior by the Governor.**

Second, your decision to slow roll the release of the 41 transcripts and accompanying exhibits is meant to inflict maximum damage to the Governor over the course of several weeks through numerous news cycles as you campaign and fundraise to become governor. Your purported explanation that the transcripts will be released on a “rolling basis” as “they become available” defies credibility because your Office has already provided the Assembly Judiciary Committee “with all relevant evidence.”²⁸ The only purpose of a slow roll of the transcripts is to prejudice to the Governor.

Third, your Office’s decisions of what to redact in the publicly released transcripts and exhibits demonstrates bias and that you are influenced by personal, political motivations. For example, your Office failed to redact Trooper-1’s hearsay testimony about an alleged relationship between the Governor and a senior staffer, leading to salacious articles spreading the false rumor.²⁹ Yet, your Office redacted from the Governor’s testimony evidence of potential conflicts concerning your investigation – references to Lindsey Boylan’s campaign consultant Trip Yang

²⁷ See Brendan Lyons, *In Her Own Words: Woman describes Cuomo's alleged groping at mansion*, TIMES UNION (Apr. 7, 2021), <https://www.timesunion.com/news/article/cuomo-alleged-groping-victim-mansion-incident-16078748.php> (“On March 12, the woman was accompanied by her attorney, Brian D. Premo of Albany, when she was interviewed in New York City by investigators with the state attorney general's office, according to a person briefed on that matter.”).

²⁸ See, e.g., *Attorney General James' Statement on Cooperation with NYS Assembly Investigation Into Sexual Harassment Allegations Against Governor Cuomo*, LETITIA JAMES NEW YORK STATE ATTORNEY GENERAL (Aug. 3, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-james-statement-cooperation-nys-assembly-investigation-sexual> (“At the Assembly’s request, we have provided the Assembly Judiciary Committee with the report that was released today, and we will provide them with all relevant evidence. We will cooperate with their investigation as needed.”).

²⁹ Bernadette Hogan and 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/>.

communicating with your chief of staff Ibrahim Khan about Ms. Boylan's allegations during her campaign. Your Office chose to redact Lindsey Boylan's testimony that we believed discussed her relationship with her former boss and ESD-chief Howard Zemsky. Given that Ms. Boylan sent Mr. Zemsky a "disparaging message" which he found "jarring" and "threatening" and caused him to flip-flop in his recollection, their relationship could not be more relevant to Ms. Boylan's credibility and any conclusions you drew about her credibility. Their relationship is critical to the lack of corroboration for Ms. Boylan's most serious claims against the Governor, which he adamantly disputes.

Fourth, your sudden decision on November 10, 2021 to release *some* of the evidence was not about transparency, fairness or the public interest. No legitimate law enforcement officer would publicly release *some* witness statements at this time, because of Sheriff Apple's pending criminal charge against the Governor and the Albany County District Attorney's announcement that he has a pending investigation. By blasting out the transcripts to the world in a high-profile matter, you broadcast to each potential witness what other witnesses have said. This severely prejudices a pending criminal case and investigation, as the press has written numerous stories about the witness testimony. Further, those transcripts contained false and salacious hearsay, as well as irrelevant information, which you knew would be prejudicial to the Governor publicly, as well as in Sheriff Apple's pending criminal case and the pending investigation in Albany County. That is improper and unprofessional in law enforcement.

Finally, over this past weekend, on or about November 13, 2021, your Office briefly took down some of the transcripts that were publicly released on November 10, 2021. Despite your Director of Communications' claim that "everyone has tech issues!"³⁰, comparisons between the transcripts released November 10, 2021 and re-posted on November 13, 2021 reveal alterations in redactions. For example, although changes to Alyssa McGrath's testimony increased redactions, the revised version of Lindsey Boylan's testimony removed redactions to identify certain individuals. You must explain why alterations were made to the transcripts publicly released on November 10 and by whom. Despite the November 10 press release that accompanied the transcripts and other evidence professing "an effort to provide full transparency to the people of New York,"³¹ your Office misled the public in stating that the transcripts were taken down due to technical issues when they were in fact removed and replaced with versions that changed existing redactions and publicly available information.

³⁰ Delaney Kempner (@delaneykempner), TWITTER (Nov. 13, 2021 5:56 p.m.), <https://twitter.com/delaneykempner/status/1459656489384255490>.

³¹ *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>.

II. Your Office Must Immediately Release to Us All Evidence Underlying the Report

Since the Report was issued on August 3, 2021, we have repeatedly requested the opportunity to access all evidence underlying the Report.³² In over *three months*, your Office still has not responded. Your refusal to provide us with all the evidence has handicapped our ability to make a submission to the Assembly Judiciary Committee pursuant to their invitation.

There is no question that you have been able to provide us with your investigative file at any time over the past several months. Just last week, your Office announced that it would publicly release the evidence on a “rolling basis.”³³ Indeed, you claim that reasoning for that selective, public disclosure – when you still have not responded to our requests for all the evidence – was “in an effort to provide full transparency to the people of New York” because the “Albany County District Attorney’s Office informed the OAG that it would begin releasing evidence to Cuomo to comply with New York state’s discovery laws.”³⁴ As discussed above, even this limited release of information demonstrated the need for us to be able to review *all* of the materials in your investigative file, not just those you cherry-picked to be released when it was politically convenient. We reserve the right to supplement our October 20, 2021 Application to amend, supplement, and correct the Report based on what the evidence will show.

III. Criminal Investigation Into Unlawful Grand Jury Disclosures By Sheriff

On November 8, 2021, we lodged a written demand, pursuant to N.Y. Exec. L. § 75, that an investigation be immediately commenced into the unlawful disclosures to the *New York Post* of grand jury information relating to Governor Cuomo and the strong evidence that Albany County

³² See, e.g., Aug. 6, 2021 letter to Special Deputies to the First Deputy Attorney General; Oct. 8, 2021 letter to the First Deputy Attorney General; Oct. 20, 2021 Application to Amend, Supplement, and Correct the Report; Governor Andrew M. Cuomo, *Attorney Rita Glavin Holds Media Availability*, YOUTUBE (Aug. 6, 2021), https://www.youtube.com/watch?v=FP6_KMVBnNk; Governor Andrew M. Cuomo, *Outside Counsel Rita Glavin Makes an Announcement*, YOUTUBE (Aug. 10, 2021), <https://www.youtube.com/watch?v=otxfPhSoBkc>; WGRZ-TV, *Gov. Cuomo’s outside counsel Rita Glavin holds virtual briefing*, YOUTUBE (Aug. 20, 2021), <https://www.youtube.com/watch?v=UpmviENazuA>.

³³ *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>.

³⁴ *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>.

Attorney General Letitia Ann James

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Sheriff Craig D. Apple was the source of that unlawful disclosure. Section 75 requires that this unlawful disclosure be investigated. We also requested that you appoint an independent prosecutor to handle the investigation, given your support of Sheriff Apple and his support of you.

You have not responded to our letter nor have you informed us that you have appointed an independent investigator to conduct the required investigation. Please inform us immediately if you intend to comply with your obligations under Section 75 and investigate the criminal disclosure of grand jury information and the strong evidence of Sheriff Apple's involvement. We reserve all rights with respect to this issue.

Sincerely,

_____/s/_____
Rita M. Glavin