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October 20, 2021

**VIA EMAIL**

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

Dear Attorney General James:

I represent former Governor Andrew M. Cuomo. I write to request that: (1) you appoint a truly independent reviewer to consider our attached application to amend, correct, and supplement the August 3, 2021 “Report of Investigation Into Allegations of Sexual Harassment by Governor Andrew M. Cuomo” (the “Report”), which, due to material omissions and errors, as well as your admitted involvement in the investigation and Report in violation of the Governor’s March 1, 2021 referral letter, render the Report materially misleading, flawed, and unreliable; and (2) you terminate your Office’s pending criminal investigation of Governor Cuomo and his staff pursuant to an April 13, 2021 referral letter from Comptroller Thomas DiNapoli under N.Y. Exec. L. § 63(3) given your conflict as a likely gubernatorial candidate or, alternatively, you recuse the Attorney General’s Office from any further involvement in that investigation and refer the matter to a local District Attorney’s office.

**I. The Attorney General’s Admitted Violation of the Terms of the Referral, and the Lack of Impartiality and Objectivity, Require the Appointment of a Truly Independent Reviewer to Assess the Report and the Application to Amend, Correct, and Supplement the August 3, 2021 Report**

Governor Cuomo’s March 1, 2021 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” (the “Referral”).<sup>1</sup> In other words, the review was to be entirely independent, conducted by a law firm with no bias or predisposition, and the Attorney General was not to be

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<sup>1</sup> *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).

personally involved in the investigation and Report. Governor Cuomo made clear as early as March 2019 that he intended to run for a fourth term in 2022<sup>2</sup> 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, and the Governor did not want your Office to conduct or oversee the investigation because such an investigation could not be truly independent. Indeed, the Governor specifically expressed his concern to you about your potential conflict of interest at the time of the Referral, and rightfully so. Thus, the Governor's Referral was drafted precisely to limit your 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.

Recent comments demonstrate you violated the terms of the Referral by being personally involved in the investigation. Specifically, you stated on September 30, 2021 at the Ulster County Democratic dinner that you personally assessed the evidence, spoke to witnesses, and made credibility determinations. 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, 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>3</sup>*

According to these 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.

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<sup>2</sup> 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 ...").

<sup>3</sup> 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).

This was a clear violation of the terms of the Referral, which did not confer jurisdiction on the Attorney General to supervise or participate in the investigation or production of the Report, beyond selecting an “independent law firm” to do the investigation and receiving a weekly status report from the independent law firm. Instead, you admittedly made evidentiary and credibility determinations, which were the foundation of the entire Report that ousted a governor for whom 3.6 million New Yorkers voted.

These recent public statements about your involvement in the investigation are even more alarming given the statements by your Office on August 6, 2021, and again on August 20, 2021, after the Report was released and we pointed out legitimate concerns about material omissions and errors. Your Office stated that the Governor “himself, requested that Attorney General James *oversee* an independent investigation.”<sup>4</sup> That was not correct. The Governor never requested that the Attorney General “oversee” the investigation, precisely because of the conflict presented by your refusal to disavow running for governor.

Further, by speaking to “every politician [you] knew” about the investigation, you necessarily injected political influence into what should have been an independent review. Contrary to your Office’s statement on August 20, 2021, the investigation was not “exhaustive, thorough, and *without outside influence, period.*”<sup>5</sup> According to your own statements, you were personally involved and got input from “everyone in Albany, every politician I knew.”

You had an obvious motive to draw every possible inference against Governor Cuomo and issue the most damaging Report possible—a *Report that notably bears your name on the cover page at the top*, and which you personally announced in an unprecedented and extraordinarily prejudicial press conference. This was not to be your investigation and Report. Yet, you made this your own investigation and Report, despite the express terms of the Referral and in violation of the Referral.

Further, 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: one was a plaintiff’s lawyer whose practice is focused on bringing lawsuits for sexual harassment and

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<sup>4</sup> *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>; *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> (emphasis added).

<sup>5</sup> *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> (emphasis added).

discrimination; and the second 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.<sup>6</sup> The fact that you appointed a plaintiff’s lawyer was telling, because you assured the Governor you would not do so at the time of the Referral when you both discussed appointing an “independent” law firm. How the Investigators approached this investigation—e.g., 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.”

Accordingly, you must appoint a truly independent reviewer to examine the Report, and to consider our application to amend, correct, and supplement the Report, which is what the Governor’s Referral directed in the first place. The conflict that the Referral was meant to address has only become more acute in the last several weeks as you have made clear your intent to run for governor in comments you made at various events. For example, at a September 29, 2021 Association for Better New York breakfast you stated, “Eric Adams was here last, and he, um, is the Democratic nominee. And here I am, Letitia James—and so who knows? Don’t read anything into that...OK, the reporters are already writing.”<sup>7</sup> On September 30, 2021, at the Ulster County Democratic Committee dinner, you claimed, “Speaking of elections, I know many of you might be wondering about my future plans...But that day is coming very, very soon when I need to make a decision . . . So just stay with me and pray with me...and stay tuned!”<sup>8</sup>

Finally, there has been no reason for your Office to refuse our requests for access to the underlying evidence, particularly given our offer to enter into an agreement to protect certain sensitive information. The fact that your Office has apparently provided transcripts to the Assembly Judiciary Committee, without providing them to us, is inexcusable. We cannot not fully and meaningfully respond to the Report and the Assembly Judiciary Committee, without the evidence—as you well know.

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<sup>6</sup> See Ex. A (Executive Chamber Outside Counsel Letter, “Response to Special Investigators’ Report,” Aug. 4, 2021).

<sup>7</sup> Michael Gartland & Chris Sommerfeldt, *New York AG Letitia James Teases Run for Governor, Bashes Cuomo as 2022 Race Takes Shape*, N.Y. DAILY NEWS (Sept. 29, 2021), <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-attorney-general-letitia-james-teases-run-for-governor-2022-20210929-gnbymn354jcbnb3kekvguqv43a-story.html>.

<sup>8</sup> 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).

To the extent that you have claimed some District Attorney's offices have criminal investigations that prevent your Office from sharing the "evidence" with us, that is plainly not so. Your Office can still provide us with the evidence that is not the subject of any criminal investigation. Some, if not all, of the memos or transcripts from the 179 interviews can be provided to us, and certainly a list of the individuals who were interviewed. Moreover, there is no reason to deny us access to the approximately 74,000 documents collected. Basic notions of fairness require that Governor Cuomo have access to the evidence, and the fact that you have continued to deny us access speaks volumes. We cannot help but draw the conclusion that political motives are behind the refusal of your Office, and the Assembly, to give us access to the evidence. Please inform me of when your Office will provide me access to the evidence.

**A. The Report's Material Omissions and Errors Render the Report Materially Misleading, Flawed, and Unreliable, and Require the Report to Be Amended, Corrected, and Supplemented**

As set forth in our attached application, the Report's glaring omissions and errors, and the lack of fairness in how the investigation was conducted, resulted in a materially misleading, flawed, and unreliable Report. The biased and one-sided nature of the Report renders it materially misleading to the public and any entity that relies upon it, including any law enforcement body, JCOPE, the New York State Assembly, or even a court of law. The Report cannot be accepted at face value for the many reasons—factual, legal, and evidentiary—detailed in our application. Further, we reserve the right to supplement our application when we are given access to all of the evidence underlying the Report, which your Office has refused to provide us despite promising at your August 3, 2021 press conference that you would make the "evidence available to the public."<sup>9</sup>

We have already pointed out some of the Report's material omissions and errors, as well as serious issues with the investigation, in three publicly broadcast presentations and in a written submission by me and by outside counsel to the Executive Chamber.<sup>10</sup> We are not alone in raising

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<sup>9</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> ("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.")

<sup>10</sup> Governor Andrew M. Cuomo, *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); 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>; see also "Former Governor Andrew M. Cuomo's Application to Amend, Correct, and Supplement the August 3, 2021 'Report of Investigation into Allegations of Sexual Harassment by Governor Andrew M. Cuomo'" at Ex. DD (Executive Chamber Outside Counsel Letter, "Response to Special Investigators' Report," Aug. 4, 2021); Ex. A (R. Glavin, "Position Statement of Governor Andrew M. Cuomo Concerning the Sexual Harassment Allegations Made Against Him," Aug. 3, 2021).

serious concerns about the Report. Notably, the Editorial Board of the *New York Daily News* explicitly recognized the problems with the Report in an August 24, 2021 editorial, appropriately concluding: “The report authored by former U.S. Attorney Joon Kim and employment lawyer Anne Clark has problematic inclusions and omissions.”<sup>11</sup>

On August 20, 2021, your Office dismissed these very legitimate concerns and criticisms about the fairness and completeness of the Report, and material omissions and errors. Specifically, in response to my public comments that we would provide the Attorney General with a submission requesting that your Office correct and supplement the Report, the Attorney General’s Office stated:

After multiple women made accusations that Governor Cuomo sexually harassed them, the governor, himself, requested that Attorney General James oversee an independent investigation. That investigation was exhaustive, thorough, and without outside influence, period.

Given the multiple, ongoing criminal investigations into the governor’s conduct, it would not be appropriate to respond further to these baseless attacks. The 168-page report and additional 486 pages of exhibits clearly corroborate the experiences of the complainants, yet the governor and his aides continue to undermine those who seek to expose this dangerous conduct.

We cannot allow survivors of sexual harassment to be further traumatized by these continued attacks, lies, and conspiracy theories.<sup>12</sup>

As noted above, the Governor did not request that the Attorney General “oversee” this investigation. In fact, quite the opposite. Further, your Office’s off-handed dismissal of our legitimate concerns as “lies” and “conspiracy theories” justifies our conclusion about the personal

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<sup>11</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-s5haa2xenjefpvqfaz472cv5q-story.html>.

<sup>12</sup> *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>.

involvement of you and your Office in the investigation and Report, in apparent violation of the Referral.

Below are just some of the glaring omissions and errors addressed in our attached submission, which render the Report materially misleading, flawed, and unreliable, and support our application to amend, correct, and supplement the Report.

***1. The Report Ignores Evidence Material to Ms. Boylan's Credibility***

- The Report omitted the specific circumstances of Ms. Boylan's September 2018 departure from state employment, which were contrary to her claim that she left her job because of the Governor's sexual harassment that created a hostile work environment. Those circumstances should have been analyzed when assessing her claims—first made in December 2020 after she announced her political campaign for Manhattan Burrough president—that she left state employment because of sexual harassment and a hostile work environment. The ESD management, including then-counsel Elizabeth Fine (and current counsel to Governor Kathy Hochul) requested in September 2018 that Ms. Boylan be terminated from the ESD because of bullying and hostile behavior, complaints from numerous employees, and failure to follow policies and procedures. ESD CEO Howard Zemsky authorized the request to terminate Ms. Boylan. When Ms. Boylan was confronted by then-counsel to the Governor, Alphonso David, with the ESD complaints about her behavior, Ms. Boylan resigned. She then asked Mr. David for her job back several days later, and attempted to contact the Governor directly as part of her efforts to get her job back, stating, in sum and substance, that she loved the Governor and had his best interests at heart. The Governor, after speaking with Mr. David, did not respond to Ms. Boylan's overtures. The Report should have included an assessment of those facts when considering Ms. Boylan's credibility, but it did not.
- Many of Lindsey Boylan's allegations were found to have been corroborated by crediting the testimony of Howard Zemsky—who changed his story after he received a “disparaging” message from Ms. Boylan that he found “jarring and “threatening,” which was not appended to the Report. The Report should have included a discussion of what Ms. Boylan and Mr. Zemsky told Investigators about their relationship, as that is materially relevant to both why Ms. Boylan would have sent this message to Mr. Zemsky, Mr. Zemsky's reaction to that message, and Mr. Zemsky's subsequent “flip-flop” in his recollection of a “strip poker” comment during a flight with Ms. Boylan and the Governor when *Ms. Boylan “did not recall that Mr. Zemsky was on the plane when the Governor made a comment about strip poker.”* Report at 71 n.606 (emphasis added).

- The Report prescribed no weight to the motives and timing of Ms. Boylan’s allegations in relation to her campaign for Manhattan Borough President.
- The Investigators did not interview Ms. Boylan’s campaign staff regarding what she told them about her allegations, including Ms. Boylan’s discussions with a communications consultant who quit several days after Ms. Boylan made her allegations. The Investigators also did not interview Ms. Boylan’s campaign consultant, Trip Yang, who spoke with the Attorney General’s chief-of-staff, Ibrahim Khan, about what Ms. Boylan said to Mr. Yang about her allegations and her intentions. What Ms. Boylan told campaign staff about her allegations, and what she did and did not say, was materially relevant to assessing Ms. Boylan’s credibility given the context of her political campaign.
- Our understanding is that the Investigators did not compel production of all records from Ms. Boylan and her campaign concerning any communications about her allegations, including for all drafts and records relating to her February 24, 2021 *Medium* essay, in which she first provided specific details of the alleged harassment. This is striking, given the breadth of the subpoena issued to the Executive Chamber for all records relating to the allegations, including records relating to any media response.
- The Report did not address favorable public statements by Ms. Boylan on Twitter during 2018–2019 about the Governor that materially undercut her recent claim in her February 2021 *Medium* essay that she became “truly fearful” of the Governor in December 2016. Nor did the Report address witness testimony about Ms. Boylan’s desire to have more direct interaction with the Governor (and frustration that she did not), which contradicts her claim that she became “truly fear[ful]” of the Governor in December 2016. If the Investigators did not inquire of Ms. Boylan on those specific issues, the Report should state this. To fairly assess her credibility, these questions needed to be asked of Ms. Boylan and address in the Report. We note that the Attorney General told Melissa DeRosa on March 1, 2021 that she had been informed by others that Ms. Boylan was not credible.
- In assessing Ms. Boylan’s credibility and claim of retaliation, the Report failed to meaningfully disclose and assess the threats Ms. Boylan made to two top staffers to the Governor threatening retaliation in March 2020, saying “I will find ways to respond. Life is long. And so is my memory. And so are my resources.”<sup>13</sup> The Report must address Ms. Boylan’s overt threats of retaliation against Governor Cuomo and his administration in the months leading up to her allegations when

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<sup>13</sup> See Ex. C (Executive Chamber Outside Counsel Letter, “Response to Allegations of Retaliation by the Executive Chamber of the State of New York Against Lindsey Boylan,” July 18, 2021) at 4.

assessing her motivation and credibility. The Report must include what Ms. Boylan told investigators about those March 2020 threats, as well as her threat to Howard Zensky.

- In assessing Ms. Boylan’s credibility, the Report failed to meaningfully assess Ms. Boylan’s conduct in “reach[ing] out to some women who were former colleagues [and] a couple of those individuals received communications from Ms. Boylan that they perceived as *threatening*, after they failed to respond in the way Ms. Boylan wanted them to.” Report at 76. The Report must address Ms. Boylan’s pattern of threatening behavior and what she told the Investigators about it, assuming she was even asked.

***2. The Report Omits Detailed Testimony that Provides Context to the Governor’s Conversations with Ms. Bennett and Other Facts Relevant to the Credibility of Ms. Bennett’s Allegations***

- The Report omitted detailed testimony by the Governor that provides crucial context to some of his discussions with Charlotte Bennett, and demonstrates to any credible observer that he never “sexually propositioned” Ms. Bennett as she now claims. For example, the Governor explained in detail that his conversations with Ms. Bennett were informed by his experience with a close family member about the same age as Ms. Bennet who was also sexually assaulted and what a *therapist* advised the Governor in dealing with victims of assault—these details were not included. The Governor further explained that Ms. Bennett initiated a number of the conversations with the Governor, including her desire to get a tattoo. Contrary to Ms. Bennett’s claim that the Governor told her to get it on her butt, he told her about the New York State Police policy of not having tattoos where they could be visible when wearing a uniform. That detail does not appear in the Report. With respect to his comment to Ms. Bennett about finding him a girlfriend, the Governor told Investigators this was a *joke* after Ms. Bennett told him she had been reviewing his social media and commented that women wanted to date him. The Governor explained this was a common joke among his staff and family during the time of the COVID-19 briefings and the attention he was receiving because he was single. These details are absent.
- The Report fails to address Ms. Bennett’s perceptions sometimes differing from reality. For example, she reported to the Special Counsel to the Governor in June 2020 that the Governor had asked her who she was “sleeping” with. When the Special Counsel questioned Ms. Bennet on this point, Ms. Bennett conceded that the Governor had only asked who she was “hanging out” with. Also, Ms. Bennett never told the Special Counsel in 2020 that she believed the Governor sexually

propositioned her, as she now claims.<sup>14</sup> The Report does not address what Ms. Bennett said about her more recent belief that she was “sexually propositioned,” when that is not what she reported in June 2020.

- The Report failed to consider Ms. Bennett’s history of making allegations of sexual misconduct, one of which resulted in a 2017 lawsuit against Hamilton College, before crediting Ms. Bennett’s allegations in their entirety. Specifically, the Report does not address or touch upon the allegations in a recent federal lawsuit against Hamilton College claiming that Ms. Bennett, in coordination with three other women at Hamilton College, made false allegations of sexual misconduct in the spring of 2017 against a male student shortly before graduation, and that Ms. Bennett withdrew her allegation after the student was banned from campus and not allowed to attend graduation, *see John Doe v. Hamilton College et al.*, No. 17 Civ. 1202 (N.D.N.Y. Oct. 30, 2017), Dkt. 1. The male student alleged that Ms. Bennett had “recorded a conversation between her and [John] 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, this 2014 recording “unequivocally proved that [Ms. Bennett’s] allegations against Doe were fabricated.” *Id.* at ¶ 158. Any assessment of Ms. Bennett’s credibility, and the lens through which she viewed her interactions with the Governor, must consider her history of making sexual misconduct allegations. Ms. Bennett also made another allegation of sexual misconduct in 2015 at Hamilton College, which is detailed in our submission, and she later accused the Hamilton College president of having “laughed in my face” when she described her alleged assault experience to him.

### ***3. The Report Must be Corrected to Include the Details of Ms. Commisso’s Evolving Version of Events and the Lack of Corroboration***

- The Report omitted any discussion of Brittany Commisso’s evolving version of events in her various accounts of the alleged breast “groping” incident that she stated occurred in November 2020 (now December 2020). The Report must include the specific testimony by Executive Assistants #2 and #3 demonstrating material inconsistencies versus what she told journalists and the Investigators at different times regarding what purportedly occurred and when. What Ms. Commisso specifically stated on March 1, 3, 6, 7 to Executive Assistants #2 and #3 must be included in the Report. What Ms. Commisso specifically stated to the Investigators in her first informal interview on March 12 must be included, as well as what she told the Investigators in her later formal transcribed interview. The Report must

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<sup>14</sup> Report at Ex. 2 (notes of the conversation in 2020 between Ms. Bennett, Judy Mogul and Jill DesRosiers, where Ms. Bennett was asked, “Did [the Governor] ever make a sexual advance?” to which Ms. Bennett replied, “No.”).

also analyze those accounts against what Ms. Commisso publicly told the *Times Union* and CBS News in various interviews, because the details have changed materially over time—as our submission demonstrates. For example, both Executive Assistants #2 and #3 claimed that Ms. Commisso initially told them the Governor *pushed her against a wall*, groped her breast, and *then kissed her*. Ms. Commisso later denied having told this to Executive Assistants #2 and #3, and the Report simply concluded that the Executive Assistants #2 and #3 were “mistaken[.]” when they first reported those details to the Special Counsel to the Governor on March 8, 2020.

- The Report omitted Alyssa McGrath’s testimony regarding the December 31, 2019 “selfie” photo that Ms. Commisso claims is evidence that the Governor grabbed and rubbed her butt just before the “selfie” and made her so nervous and uncomfortable that she had difficulty taking the selfies with him. Specifically, after Ms. Commisso sent the offending selfie to Ms. McGrath, Ms. McGrath responded that she was “jealous” and wanted to be photoshopped into the selfie. The Report must include what Ms. McGrath said about why she was jealous and what Ms. Commisso told her about this photo, which on its face does not corroborate Ms. Commisso’s claims. The Governor never grabbed or rubbed Ms. Commisso’s butt, and he testified that Ms. Commisso requested this selfie and wanted to send it to Ms. McGrath to make her jealous. The selfie photo itself, and the subsequent text response from Ms. McGrath corroborate the Governor’s testimony.

#### ***4. The Governor’s Interactions with Trooper #1***

- The Report omitted testimony and evidence showing that the Governor’s alleged comments or actions concerning Trooper #1 were not gender-based, and that the Governor supported Trooper #1’s transfer to the PSU because she came well-recommended by another PSU Trooper.
- Governor Cuomo asked Trooper #1 if he could kiss her on the cheek in attempt to be respectful and testified that he would routinely pat male and female troopers on the back, shoulder, or face as a customary greeting. This context should be included in the Report.
- With respect to discussing marriage with Trooper #1, the Report omits that the Governor admitted that he did “make jokes about marriage.” Further, after having reviewed the Report, the Governor recalls Trooper #1 spoke with him about her engagement to another police officer, on another police force, and conversed with him about her husband-to-be, the marriage planning, and her family’s reaction to the marriage and her fiancé. We assume that Trooper #1 mentioned this to the Investigators and this should have been included in the Report for context to their

conversations and the Governor's relationship with Trooper #1. As the Governor stated on August 10, 2021: "I got to know her over time, and she's a great professional and I would sometimes banter with her when we were in the car. We spent a lot of time driving around the state. This female Trooper was getting married, and I made some jokes about the negative consequences of married life. I meant it to be humorous."

**5. *Photographic Evidence Disproving Ms. Limmiatis' Claims were Omitted from the Report***

- The Report failed to include any photos of the May 24, 2017 outdoor event at which Virginia Limmiatis was present along the Salmon River in Oswego County, which provide critical context to the Governor's interactions with Ms. Limmiatis that day and materially undermine the Report's conclusions about the Governor's interactions with Ms. Limmiatis. The Governor did not inappropriately touch her that day, and those photos corroborate this. The Report also failed to note that the Investigators did not show any of those photos to the Governor during his testimony, despite showing them to Ms. Limmiatis. The photos do not support the Report's conclusions and were not appended to the Report so that the public could draw their own conclusions about Ms. Limmiatis interactions with the Governor.

**II. The Attorney General Must Terminate Her Ongoing Investigation of Governor Cuomo or, Alternatively, Recuse the Attorney General's Office and Refer the Matter to a Local District Attorney**

For the same reasons you must appoint an independent reviewer to consider our application regarding the Report, you must also terminate your Office's pending criminal investigation referred by the Comptroller on April 13, 2021 or, alternatively, recuse your Office and refer the matter to a local District Attorney's office. We note that the Comptroller referred that matter to you while he was contemplating running for governor in 2022,<sup>15</sup> you would not disavow any intention to run for governor, and Governor Cuomo's intention to run for a fourth term was public knowledge. Your Office cannot credibly lead any investigation of Governor Cuomo given your stated interest in running for governor and the Democratic primary just eight months away.

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<sup>15</sup> See e.g., Brian Schwartz, *New York Democrats start to discuss Running for Governor As Cuomo Resists Calls to Resign*, CNBC (Mar. 11, 2021) ("New York State Comptroller Thomas DiNapoli and Rep. Thomas Suozzi, D-N.Y., among others, have been engaging with supports and party leaders to discuss potentially running for governor in 2022, according to people familiar with the matter. *Their representatives did not deny such conversations were taking place.*"), <https://www.cnbc.com/2021/03/11/cuomo-under-fire-new-york-democrats-start-to-privately-discuss-running-for-governor.html> (emphasis added).

Attorney General Letitia James  
October 20, 2021  
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Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Rita M. Glavin

cc: First Deputy Attorney General Jennifer Levy