

**EXCERPT OF
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"**

RESPONSE TO BRITTANY COMMISSO ALLEGATIONS

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4. Brittany Commisso

A. The Governor Did Not Grope Ms. Commisso’s Breast on November 16, 2020 or Any Other Day

The Report finds unequivocally that the Governor groped Ms. Commisso’s breast on November 16, 2020 in the Executive Mansion. Report at 24 (“On November 16, 2020 . . .) *id.* at 24 n.165 (“Executive Assistant #1 did not remember the exact date of the incident, but recalled that it was around when she was tasked with photographing a document, and provided a copy of the photograph to us that was dated November 16, 2020.”); *id.* at 142 (“On November 16, 2020, the Governor hugged Executive Assistant #1 and then reached under her blouse and grabbed her breast.”). Investigator Anne Clark also affirmatively stated this at Attorney General Letitia James’ August 3, 2021 press conference announcing the Report: “On November 16th, 2020 in the executive mansion, the governor hugged Executive Assistant Number One and reached under her blouse to grab her breast.”⁷⁸ This “factual finding” is wrong—the Governor never groped Ms. Commisso on November 16, 2020 or any other day, and Ms. Commisso was not honest with the Investigators.

The Report’s finding is based almost exclusively on (1) Ms. Commisso’s testimony that it occurred in November 2020 and specifically around “when she was tasked with photographing a document” that she recovered from her phone and the photo was dated November 16, 2020, and (2) Blackberry PIN messages by the New York State Troopers Protective Services Unit (“PSU”) that showed that Ms. Commisso was at the Mansion on November 16, 2020—the only day in

⁷⁸ *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>.

November 2020 that state records reflect Ms. Commisso was in the Executive Mansion.⁷⁹ The evidence cited by the Report in support of this finding, however, is inaccurate, mischaracterized, and incomplete.

B. Ms. Commisso’s April 7, 2021 *Times Union* Interview Describing the “Groping” Incident is Completely Undermined by Contemporaneous Documentary Evidence Omitted from the Report

Contemporaneous documentary evidence demonstrates that the “groping” incident Ms. Commisso publicly described in detail in an anonymous interview published by the Albany *Times Union* on April 7, 2021 did not happen.⁸⁰ Ms. Commisso specifically told the *Times Union* that on a “weekday in late November,” the Governor’s assistant Stephanie Benton called Ms. Commisso and asked her to go to the Executive Mansion to assist the Governor with a “technical issue with his mobile phone.”⁸¹ In that interview, Ms. Commisso made clear that she was only briefly at the Mansion on the day of this incident.⁸² Specifically, Ms. Commisso claimed she drove the short distance from the Capitol to the Mansion and went to the Governor’s office on the second floor, where she alleged that the “governor came out from behind his desk, and began groping her in a sexually aggressive manner.”⁸³ She purportedly said to the Governor “What are you doing?”

⁷⁹ These messages are not appended to the Report.

⁸⁰ 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?IPID=Times-Union-HP-CP-Spotlight>.

⁸¹ *Id.*

⁸² Ms. Commisso in her *Time Union* interview described that she arrived at the Mansion, “reached the office on the second floor” and “I remember I walked out and he walked back into his office. . . . I remember going downstairs and escorting myself out and going to my car and sitting there for a second and going, ‘OK, I have to now go back into the Capitol, go back to my desk and do my job and pretend that, like, that didn’t just happen.’” *Id.*

⁸³ *Id.*

at which point “he slammed the door (shut)” and replied “I don’t care.”⁸⁴ She alleges in the *Times Union* interview that the Governor, after slamming the door, then walked back to her and put his hand under her blouse, over her bra, and groped her breast.⁸⁵ Ms. Commisso claimed that she did not know what to say, the Governor did not say anything, and she remembered walking out of his office after he groped her breast, going downstairs, leaving the Mansion and getting into her car.⁸⁶

The contemporaneous documentary evidence from November 16, 2020—the only day in November 2020 that state records reflect Ms. Commisso was inside the Mansion—completely refutes the version of events she told the *Times Union*. First, Ms. Commisso was at the Mansion that day to work on a speech—not to assist with “technical issue” with the Governor’s phone as she told the *Times Union*. Second, state records show that Ms. Commisso was at the Mansion for nearly *three hours*, during which the Governor had a full workday schedule, with other staffers present and actively engaged in preparing the Governor for a call with the Vice President and a number of Governors to discuss COVID-19. Third, the documentary evidence indicates that Ms. Commisso was working out of the Executive Assistants’ office on the first floor of the Mansion, rather than meeting with the Governor in his private office on the second floor.

Specifically, the documentary evidence—that the Report never even mentions—shows that Ms. Commisso arrived at the Mansion at 11:59 a.m. and left at 2:47 p.m.⁸⁷ At 12:05 p.m., six minutes after Ms. Commisso arrived at the Mansion, Ms. Benton forwarded by email to Ms.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See Exs. K, L.

Commisso a draft of a 17-page speech.⁸⁸ While Ms. Commisso was at the Mansion, Executive Chamber employees Melissa DeRosa, Stephanie Benton, and Peter Ajemian were also there, along with Mansion staffers.⁸⁹ At 2:00 p.m., the Governor had a Governors-only conference call with Vice-President Mike Pence.⁹⁰ At 2:09 p.m., Ms. Commisso emailed the speech draft she had been working on while at the Mansion to Stephanie Benton.⁹¹ At 2:14 p.m. Ms. Benton forwarded the speech draft to senior staff.⁹² Two minutes later, at 2:16 p.m., another executive assistant (who was at the Capitol) checked in with Ms. Commisso to see how it was going at the Mansion.⁹³ Ms. Commisso replied two minutes later, stating, “pretty good right now actually... carol just came through with some cheese and crackers. so im happy now[.]”⁹⁴ The other executive assistant replied six minutes later to Ms. Commisso: “Gotta love the cheese!”⁹⁵ Thirteen minutes later, Ms. Commisso emailed Ms. Benton: “Hey gov just came in and said he was good. Do you need me to do anything else for you before I head back to cap?”⁹⁶ This would indicate that Ms. Commisso was working out of the staff office on the first floor of the mansion and not visiting with the Governor in his second floor private office. Two minutes later, Ms. Benton replied to Ms.

⁸⁸ Ex. M.

⁸⁹ Ex. N.

⁹⁰ Exs. O, P.

⁹¹ Ex. Q.

⁹² Ex. R.

⁹³ Ex. S.

⁹⁴ Ex. T.

⁹⁵ Ex. U.

⁹⁶ Ex. V.

Commisso: “Sounds good. TY!”⁹⁷ and a few minutes after that, Ms. Commisso left the Mansion to return to the Capitol.⁹⁸

The Investigators did not obtain (or conveniently ignored) all these electronic communications, which is inexcusable and astonishing given the Report’s conclusive finding that the Governor groped Ms. Commisso on November 16, 2021. Ms. Commisso mentioned none of these important details in her anonymous interview with the *Times Union*. She was not at the Mansion to assist on a “technical issue” with the Governor’s cellphone. The Report must be amended to include the version of events that Ms. Commisso told the *Times Union*, and what the emails show, because the Report is materially misleading to the public and damaging to the Governor for failing to include the documentary evidence that absolutely refutes Ms. Commisso’s version of events and the Report’s findings.

Ms. Commisso’s allegations are inconceivable, and most especially implausible on November 16, 2020. We respectfully request that the Report include all the emails from November 16, 2020 documenting Ms. Commisso’s activities that day, none of which involve being summoned to the Mansion by Ms. Benton (who was already at the Mansion with the Governor) to assist with a “technical issue” on his phone. We also respectfully request that the Report note that the Attorney General’s Investigators did not review all of Ms. Commisso’s emails or text messages from November 16, 2020 or any other day in November 2020. We assume if the Investigators had reviewed those messages (or subpoenaed them from Ms. Commisso), and no corroborating evidence was found, the Report would have included this fact in assessing Ms. Commisso’s credibility.

⁹⁷ Ex. W.

⁹⁸ Ex. L.

In addition, the Report, in footnote 165, states that Ms. Commisso “did not remember the exact date of the incident, but recalled that it was around when she was tasked with photographing a document, and provided a copy of the photograph to [the Investigators] that was dated November 16, 2020.” Report at 24 n.165. We request that the Report note that this particular detail about Ms. Commisso claiming to be at the Mansion *to photograph a document* was not included in Ms. Commisso’s April 7, 2020 published interview with the *Times Union*, and the Report be amended to add the critical fact that state records—which include Trooper PINS logging whoever enters and exits the Mansion on any given day—demonstrate that Ms. Commisso was not in the Mansion on any other day in November 2020. What this footnote and Ms. Commisso’s testimony to Investigators demonstrates is that Ms. Commisso was not telling the truth. We also note that the Report makes no mention of what that particular document was, and we request that it be included in the Report and provided to us.

C. Other Errors and Omissions in the Report Regarding the “Groping” Incident and Ms. Commisso’s Evolving Version of Events

Perhaps because the Investigators were aware that Ms. Commisso was not at the Mansion to assist the Governor with a “technical issue” with his iPhone on November 16, as she attested was her reason for being at the Mansion to the *Times Union*, the Report is deliberately vague about why Ms. Commisso was at the Mansion on the day she was purportedly groped. Indeed, the *Times Union* April 7 interview of Ms. Commisso makes no reference to Ms. Commisso’s claim that the breast-groping incident occurred around the time she was tasked with “photographing a document” at the Mansion, which she retained on her phone and was dated November 16. The Report simply states that Stephanie Benton “asked Executive Assistant #1 to assist the Governor at the Executive Mansion” and that as she “*finished her assignment* and prepared to the leave the Governor’s personal office...and return to the Capitol,” she was groped, and then “walked out...walk[ed]

down the stairs, escort[ed] [her]self out the front door, and going back to [her] car.” Report at 24–25 (emphasis added).

Given that the Report makes no reference to Ms. Commisso going to the Mansion to assist with a “technical issue” with an iPhone—as opposed to “photographing a document”—we respectfully request that the Report be amended to include Ms. Commisso’s specific testimony to Investigators regarding what “her assignment” was at the Executive Mansion on that day. It most certainly was not to assist with an iPhone issue.

Moreover, the Report makes every effort to undermine the Governor’s testimony that “[t]o touch a woman’s breast who I hardly know, in the Mansion, with ten staff around, with my family in the Mansion, to say ‘I don’t care who sees us.’ . . . I would have to lose my mind to do such a thing.” Report at 26. The Report suggests that the Governor testified falsely that there were “ten staff around” in the vicinity of his second-floor office that day:

...nor was there any evidence that there were ‘ten’ Mansion staff in the vicinity of his second-floor office that day. Indeed, our understanding is that the total number of Mansion staff potentially on the premises at any given time would have included groundskeepers, chefs, and others who may not all be there at one time—nor would they be in the vicinity of his private second-floor office.⁹⁹

But the Report failed to mention the PSU Trooper PIN records demonstrating that staffers were indeed there that on November 16, including Ms. Benton, Ms. DeRosa, and Mr. Ajemian,¹⁰⁰ as well as the regular Mansion staff. This documentary evidence demonstrating that numerous staff were there must be added to the Report, which is materially misleading on this point.¹⁰¹ The

⁹⁹ Report at 26.

¹⁰⁰ Ex O.

¹⁰¹ The Report also makes no mention of Ms. Commisso’s email to Ms. Benton that the “gov just came in and said he was good,” indicating that the Governor himself “came in” to wherever Ms. Commisso had been working, even

Investigators, during their July 17, 2021 interview of the Governor, *specifically told the Governor that this alleged breast-groping incident at the Mansion occurred on November 16, 2021*. For the Report to state that there was no evidence others were around that day was incorrect.

Further, the Report found—and Ms. Commisso told the *Times Union* on April 7, 2021 and CBS News on August 9, 2021—that the Governor “slammed the door (shut),” or that she “remember[s] him slamming (the door) so hard,”¹⁰² or that “he walked over, *shut* the door. So hard to the point where I thought for sure, someone downstairs must think... They must think if they heard that what is going on. Came back to me. And that’s when he put his hand up my blouse and cupped my breast over my bra.”¹⁰³ Notably, the Investigators never asked Ms. Benton, Ms. DeRosa or Mr. Ajemian whether they had heard the slamming of the door in the Mansion that day. Nor did the Investigators ask them about anything they remembered, saw or heard from that day. Nor does the Report indicate if any Mansion staff, who are always around during the day, were asked similar questions and what their responses were.

The fact that the Investigators did not ask witnesses who were at the Mansion about Ms. Commisso’s specific claims must be included in the Report because it goes to the credibility of the investigation and what material investigative steps the Investigators did not take and the reliability of the Report’s conclusions. If the Investigators had asked those three senior staffers about that day, and showed them the documentary evidence about what the Governor was doing on that day, those staffers would have told the Investigators that the Governor works primarily out of a room

though it finds that the groping happened in the Governor’s “personal office,” where he presumably would have already been. *See* Report at 24.

¹⁰² Brendan Lyons, *In Her Own Words: Woman Describes Cuomo’s Alleged Groping at Mansion*.

¹⁰³ *Brittany Commisso Interview on Allegations Against Gov. Andrew Cuomo Transcript*, REV (Aug. 9, 2021) <https://www.rev.com/blog/transcripts/brittany-commisso-interview-on-allegations-against-gov-andrew-cuomo-transcript>. (emphasis added).

on the first floor when engaging in the activities he did that day—not in his second floor office. In addition, we request that the Report include Ms. Commisso’s testimony about precisely who, other than the Governor, Ms. Commisso saw in the Mansion that day. The Report says nothing on this issue. As Ms. Commisso is aware, people were most certainly there when she went to the Mansion, and those individuals must have been asked about what they saw and heard. If they were not asked, the Report must be amended to state as much.

Moreover, we understand that Ms. Commisso was interviewed by the Investigators more than once, and she gave various differing versions of her interactions with the Governor when describing those interactions to others, including the Investigators. Specifically, on March 12, 2021—three weeks before Ms. Commisso’s April 7, 2021 *Times Union* interview was published—the Investigators interviewed Ms. Commisso informally and did not transcribe that interview. She was then interviewed a second time under oath, which was transcribed, although we do not know the date of that interview because the Attorney General has not provided that information. The Report mentions in footnote 168, without providing details, that Ms. Commisso’s “recollection has varied” about when the Governor purportedly “slammed” the door relative to when he allegedly grabbed her breast (before or after) and cites to two separate portions of her interview transcript. Report at 24 n.168. We request that the Report include in the main text the precise quotes from Ms. Commisso’s testimony about those details that “varied,” so that the public can assess her credibility. The Report should specify how many times her testimony varied on that issue and what precisely she said each time she was interviewed.

After the Report was publicly released on August 3, 2021, and we pointed in our publicly released August 3, 2021 position paper to the overwhelming documentary evidence that completely undermined the Report’s conclusion that Ms. Commisso was groped on November 16,

2020, Ms. Commisso spoke again to the *Times Union* about when this alleged breast-groping incident occurred and provided yet another date in November. Specifically, in an August 9, 2021 *Times Union* article Ms. Commisso claimed she told the Investigators that the incident did not take place on November 16, but “sometime around that date,” and that she told the *Times Union* “in a series of interviews in March and April that the alleged groping incident *took place on a workday later that month, possibly around November 25.*”¹⁰⁴

The Report indicates that Investigators had access to PSU Trooper Blackberry PIN messages that logged the entry and exit of anyone entering the Mansion. *See* Report at 24, 79 n.691 (“Our review of Blackberry PIN message from the PSU Troopers who send messages for those covering the Governor on weekends at the Mansion confirmed that both Ms. McGrath and Executive Assistant #1 covered the Governor at the Executive Mansion on a regular basis during the pandemic.”). Given Ms. Commisso’s claim that the alleged groping incident took place on a workday “later that month, possibly around November 25,” it is essential that the Report include a statement that the PSU Trooper PIN entries do not show Ms. Commisso was at the Mansion on November 25 or any day in November 2020 other than November 16.

D. Testimony by Executive Assistants #2 and #3 Demonstrate Material Inconsistencies in how Ms. Commisso Described the November “Groping Incident” and Ms. Commisso’s Evolving Version of Events

The Report’s only cited evidence of “corroboration” of Ms. Commisso’s breast-groping allegation is not, in fact, corroboration of the event she describes. There is no

¹⁰⁴ Brendan Lyons, *Cuomo accuser: ‘I have a voice and now I’ve decided to use it’*, TIMES UNION (Aug. 9, 2021), <https://www.timesunion.com/state/article/cuomo-groping-accuser-Brittany-Commisso-16371749.php> (“But Commisso had told the attorney general’s investigators that the incident did not take place on Nov. 16, but sometime around that date; she could not pinpoint the exact day — a distinction that appears in a footnote of the attorney general’s report.”) A footnote in the Report notes that Ms. Commisso “did not remember the exact date of the incident, but recalled that it was around when she was tasked with photographing a document, and provided a copy of the photograph to us that was dated November 16, 2020,” Report at 24 n.165, a photograph that was not appended to the Report.

contemporaneous corroboration of this incident because this incident did not occur. Instead, the Report points out that Ms. Commisso, four months after the alleged “groping” incident, reacted negatively to a statement by the Governor that he had not touched anyone inappropriately, and that Executive Assistants #2 and #3 “corroborated her reaction.”¹⁰⁵ Notably missing from the Report was what Ms. Commisso specifically told Executive Assistants #2 and #3 on March 1, 2021, March 3, 2021, as well on Saturday, March 6, 2021 and Sunday, March 7, 2021.

Specifically, the Report states that on Monday, March 1, 2021, Ms. Commisso told Executive Assistants #2 and #3 “some details about how the Governor had touched her and had had inappropriate conversations with her.” Report at 30. However, the Report notably omits precisely what Ms. Commisso said (and did not say) in this March 1 conversation. We request that this information be included in the Report, because if Ms. Commisso had told them about any groping in the March 1 conversation, the Investigators most certainly would have included it.

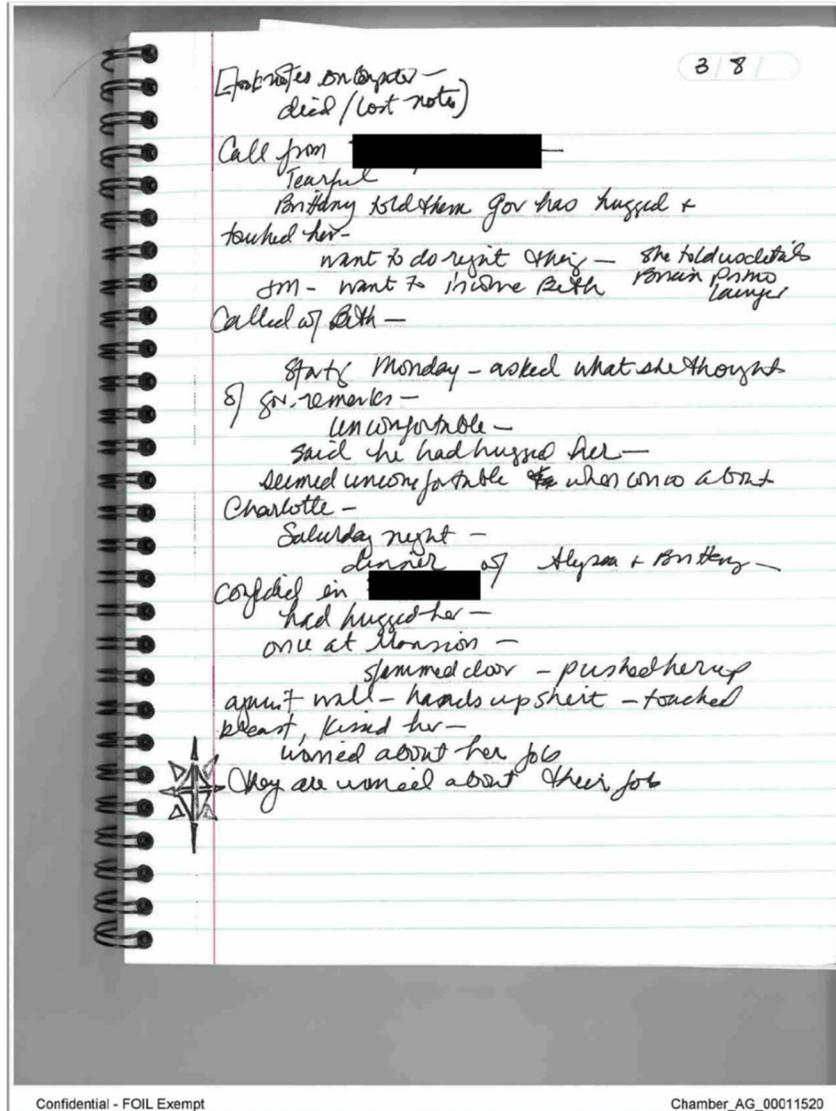
The Report then states that on Wednesday, March 3, 2021, after a public statement by the Governor regarding Ms. Bennett’s allegations, Ms. Commisso confided in Executive Assistants #2 and #3 “about some of the inappropriate contact the Governor had had with her.” *Id.* at 29–30. Again, the Report notably omits precisely what Ms. Commisso said (and did not say) in this March 3 conversation, where she gave a second version of events. We request that this information be included in the Report because it is very clear that Ms. Commisso did not mention any groping

¹⁰⁵ See Report at 32 (“*Her reaction to the March 3, 2021 statement by the Governor that he had never touched anyone inappropriately was one that her colleagues observed and one that corroborates her testimony that the Governor had in fact touched her inappropriately.*”); *id.* at 32 (“Executive Assistants #2 and #3 believed she was credible and *corroborated her reaction to the Governor’s March 3, 2021 public statement* responding to the sexual harassment allegations.”); *id.* at 32 (finding “...*many of her interactions with the Governor are independently corroborated by text exchanges with and the testimony of Ms. McGrath*” without noting which interactions) (emphasis added).

incident—on either December 31, 2019 or in November 2020. If Ms. Commisso had mentioned any “groping” on March 3, the Investigators surely would have included it in the Report.

The Report then states that Ms. Commisso was at a birthday dinner on Saturday evening, March 6 for her close friend Executive Assistant Alyssa McGrath and, while at this event, Ms. Commisso told Executive Assistant #2 that the Governor had “grabbed [her] and reached up her shirt.” Report at 31. The Report also fails to specify all the details Ms. Commisso relayed to Executive Assistant #2 at that time, which would be Ms. Commisso’s third version of events. The next day, March 7, Ms. Commisso, along with Ms. Commisso’s boyfriend, met with Executive Assistant #2 and her boyfriend, as well as Executive Assistant #3, and again discussed her interactions with the Governor (her fourth telling of her alleged interactions with the Governor). The Report similarly fails to specify all the details Ms. Commisso conveyed to that group in this next telling of the story. The Report also does not mention whether the Investigators interviewed Ms. Commisso’s boyfriend and Executive Assistant #2’s boyfriend about exactly what Ms. Commisso told them regarding the alleged groping incident and her interactions with the Governor. If they were not interviewed, the Report must include the fact that this important investigative step was not taken.

On Monday, March 8, Executive Assistants #2 and #3 reported via a telephone call to the Special Counsel to the Governor and the Acting Counsel to the Governor, that Ms. Commisso told them that the Governor *had pushed her up against a wall, grabbed her breast and then kissed her*. The Special Counsel took notes of that call, which the Report did not attach as an exhibit, and cites to the Special Counsel’s testimony about that March 8 call in a footnote. Report at 31 n.214. The Special Counsel’s contemporaneous notes from that conversation are as follows:



The Report notably does not include the fact that Executive Assistants #2 and #3 told the Special Counsel and Acting Counsel to the Governor that Ms. Commisso claimed the Governor *also kissed her* after allegedly groping her.

Ms. Commisso in her detailed interview published with the *Times Union*, her interviews with the Investigators, and her recent August 9, 2021 televised interview on CBS, made no claim about the Governor *pushing her up against a wall* and *kissing her* during the alleged breast “groping” incident. Indeed, the Special Counsel testified that she recalled Executive Assistants #2

and #3 describing to her on the March 8 call that the Governor had “forcefully thrown her up against the wall.” Report at 31 n.214.

On Friday, March 12—five days after she told Executive Assistants #2 and #3 about the alleged breast groping incident—the Attorney General’s investigators informally interviewed Ms. Commisso and made no transcript of that interview (which would be Ms. Commisso’s fifth telling of her interactions with the Governor). The Report did not include any of the specific details of what Ms. Commisso told the Investigators on March 12 about the November 2020 incident, or any other incident. Ms. Commisso’s March 12 informal interview occurred *before* the Investigators interviewed Executive Assistants #2 and #3. There is no question that Ms. Commisso did not tell the Investigators the same details she told Executive Assistants #2 and #3, i.e., the Governor *pushed her against a wall and then kissed her after groping her breast*. If she had, the Investigators would have included that in the Report.

Ms. Commisso then had a second “formal” interview with the Investigators, which was transcribed and cited in the Report. We do not know the date of this interview because the Investigators will not share it with us, but we presume it was after Executive Assistants #2 and #3 were interviewed. In this second interview with the Investigators, Ms. Commisso was asked about having told Executive Assistants #2 and #3 on March 6 and 7 that the Governor had “pushed her up against the wall.” Ms. Commisso denied to the Investigators that this occurred and denied that she told this to Executive Assistants #2 and #3. *Id.* Rather than grapple with and credit what *both* Executive Assistants #2 and #3 said they heard Ms. Commisso report to them when she described this incident on March 6 and 7, the Report simply finds that both Executive Assistants #2 and #3 were “mistaken[.]” *Id.* at 31. We can only assume that Report does not cite to or quote from the testimony of Executive Assistants #2 and #3 on this specific claim that Ms. Commisso said the

Governor *pushed her up against the wall*, groped her breast, *and then kissed her* because it undermines Ms. Commisso's later versions of this incident that she relayed to the *Times Union* and the Investigators in her informal March 12 interview.

We request that the Report be amended to include precisely what Executive Assistants #2 and #3 said that Ms. Commisso told them about her interactions with the Governor during every conversation leading up to their March 8, 2021 report to the Governor's Special Counsel and Acting Counsel. We also request that you include in the Report the Special Counsel's contemporaneous notes from the March 8 call. The failure to do so misleads the public about Ms. Commisso's credibility and Ms. Commisso's differing versions of what happened.

On March 7, Ms. Commisso retained a lawyer, Brian Premo. Mr. Premo spoke with the Acting Counsel to the Governor, on March 9, 2021 and told her that Ms. Commisso planned to proceed civilly by filing an EEO complaint and would not pursue the matter criminally. By proceeding civilly, this indicated Ms. Commisso was looking for a financial settlement and/or judgment. Nonetheless, Acting Counsel referred the matter to the Albany Police Department on March 10, 2021. Yet Ms. Commisso did not agree to an interview with the Albany Police Department. Instead, months later, after the Report was made public and we pointed out the documentary evidence refuting the Report's findings regarding Ms. Commisso, she filed a criminal complaint with the Albany County Sheriff on August 9, 2021. We request that these facts be included in the Report. The Report specified that "criminal authorities, including the Albany Police Department, have been alerted to the most egregious allegations of physical touching, including the groping of [Brittany Commisso]." Report at 147 n.1239. The Report's failure to note that it was the Executive Chamber that alerted the Albany Police Department further evidences the one-sided nature of the Report.

On August 9, 2021, after the August 3, 2021 Report was issued, CBS news aired an interview of Ms. Commisso and, once again, she told another version of the November 2020 alleged “groping” incident, with more detail than appeared in the April 7 *Times Union* interview and the Report, as well as details she did not convey to Executive Assistants #2 and #3 because they did not report these details to the Special Counsel on March 8. Ms. Commisso stated that, while in the Governor’s private second floor office:

. . . he gets up and he goes to give me a hug. And I could tell immediately when he hugged me, it was probably the most sexually aggressive manner than any of the other hugs that he had given me. It was then that I said, “Governor,” my words were, “You’re going to get us in trouble. And I thought to myself, that probably wasn’t the best thing to say. But at the time, I was so afraid that one of the mansion staff, that they were going to come up and see this and think, oh, is that what she comes here for? And that’s not what I came there for. And that’s not who I am. And I was terrified of that. And when I said that he walked over, shut the door. So hard to the point where I thought for sure, someone downstairs must think . . . They must think if they heard that what is going on. Came back to me. And that’s when he put his hand up my blouse and cupped my breast over my bra. . . . I exactly remember looking down, seeing his hand, which is a large hand. . . . It happened so quick. He didn’t say anything. When I stopped it, he just pulled away and walked away.¹⁰⁶

We request that the Report be amended to include that this version of the alleged November 2020 breast-groping incident is different than what she told Executive Assistants #2 and #3, the *Times Union* in the April 7 interview, and what the Report described Ms. Commisso told Investigators.

Moreover, in another interview with the *Times Union* published the same day, August 9, 2021, as the airing of the CBS interview, *Ms. Commisso added even more details to the alleged November 2020 groping incident that do not appear in the Report.* Ms. Commisso stated that she

¹⁰⁶ *Brittany Commisso Interview on Allegations Against Gov. Andrew Cuomo Transcript*, REV (Aug. 9, 2021), <https://www.rev.com/blog/transcripts/brittany-commisso-interview-on-allegations-against-gov-andrew-cuomo-transcript> (emphasis added).

went the Mansion on a day in November 2020 to send a text from the Governor’s iPhone to Stephanie Benton and then, immediately after she sent the text, *Ms. Commisso claimed that she called Ms. Benton from the Governor’s iPhone to confirm she received the text.*¹⁰⁷ This new detail appears nowhere in the Report and goes to Ms. Commisso’s evolving allegations and the Report’s unreliability.

We further note that earlier this week, on October 11, 2021, the *Times Union* reported that—instead of November 2020 as Ms. Commisso insisted in various interviews—the alleged breast-groping incident now likely took place in *early December 2020* based on phone and other records obtained by the Assembly Judiciary Committee. The *Times Union*, despite having interviewed Ms. Commisso extensively and reported on both April 7, 2021 and August 9, 2021 that Ms. Commisso affirmatively stated to them that the breast-groping incident happened in November 2020, reported that Ms. Commisso’s lawyer is stating that she could not recall if the incident happened in November *or December 2020*.

State records reflect that the only day that Ms. Commisso was at the Mansion in early December 2020 was December 7, 2020. Despite Ms. Commisso’s new claim that after sending a text from the Governor’s mobile phone to Ms. Benton, Ms. Commisso “immediately called Benton from that mobile phone to confirm her receipt of the text,”¹⁰⁸ the Governor’s iPhone records do not show any such call placed to Ms. Benton. There was a text message sent from the Governor’s iPhone to Ms. Benton on December 7, 2020 while Ms. Commisso was at the Mansion that day.

¹⁰⁷ Brendan Lyons, *Cuomo Accuser: ‘I Have a Voice and Now I’ve Decided to Use it’* (“Commisso said after she completed the task and sent the text — which took seconds — she called Benton from Cuomo’s phone to confirm she had received it.”).

¹⁰⁸ Brendan Lyons, *Subpoenaed Records Support Timeline of Mansion Visit by Cuomo’s Alleged Groping Victim*, TIMES UNION (Oct. 11, 2021), <https://www.timesunion.com/state/article/Subpoenaed-records-support-account-of-mansion-16524725.php>; see Lyons, *Cuomo accuser: ‘I have a voice and now I’ve decided to use it’*.

However, *no phone call was placed to Ms. Benton from the Governor's iPhone as Ms. Commisso's now claims.*

Further, we request that the Report be amended to include the Governor's testimony regarding the only private interaction that the Governor recalled having with Ms. Commisso at the Mansion in late 2020. The Governor testified about this interaction in detail to the Investigators, and we included this interaction in our August 3, 2021 position paper. *See Ex. A.* The specific details of that interaction were entirely omitted from the Report.

Specifically, the only interaction that the Governor recalls having with Ms. Commisso bears no resemblance to her allegations. Ms. Commisso came to the Governor's office in the Executive Mansion and asked if she could speak to him about an important matter. She then told the Governor that she was divorcing her husband and needed a different work schedule to accommodate her increased childcare responsibility and shared that the divorce would create additional financial pressure on her. She was adamant with the Governor that she loved her job and did not want to be transferred to a different position because she could not work the required hours. The Governor, who experienced a divorce as a parent of young children, asked Ms. Commisso whether she had fully considered the situation, and shared that from his own experience, divorce can be very difficult, particularly when children are involved. Other staffers have sought the Governor's guidance from time to time on their own potential divorces, and the Governor has set points that he makes in these situations, which he shared with Ms. Commisso. He explained to Ms. Commisso that based on his own experience, when parents divorce, their divorce does not end the relationship because they will need to continue to work together for the good of their children. The Governor asked Ms. Commisso if she had pursued marital counseling. During this conversation, the Governor remembers Ms. Commisso became visibly emotional, and

she told the Governor that she felt that he was suggesting that she was a “bad parent” for wanting a divorce. The Governor told her he supported whatever decision she made regarding the divorce. The Governor never noticed any change in Ms. Commisso’s behavior towards him after this conversation. The Governor never groped Ms. Commisso’s breast as she has alleged.

Finally, we request that the Report be amended to note that Ms. Commisso chose not to confide in her closest friend in the Executive Chamber, Executive Assistant Alyssa McGrath, about the breast groping incident at any point prior to the week of March 8, 2021, when this allegation became public due to a *Times Union* story. If she had, the Report most certainly would have included this. Ms. Commisso did not include Ms. McGrath in the conversations she had with Executive Assistants #2 and #3 on March 1, 3, 6, and 7—despite that these four women all worked so closely together in the Chamber and Ms. Commisso socialized with Ms. McGrath more than any of the others. Indeed, Executive Chamber records reflect that Ms. Commisso and Ms. McGrath were so close that they are listed as each other’s “emergency contact” for any work emergency, and Ms. Commisso planned vacations with Ms. McGrath. All these facts should be included and analyzed in the Report as they are relevant to Ms. Commisso’s credibility.

E. The Governor Did Not Grab or Rub Ms. Commisso’s Butt

The Report finds that on December 31, 2019, when Ms. Commisso was assisting the Governor in his second floor office at the Executive Mansion, the “Governor asked her to take a ‘selfie’ photograph with him,” and as she took the selfie with her right hand, the Governor “moved his hand to grab her butt cheek and began to rub it...[for] at least five seconds.” Report at 22. She claimed that she was “shaking so much during this interaction that her initial selfies with the Governor were very blurry.” Report at 23. This is false.

First, the Report renders to a footnote that Ms. Commisso claimed to Investigators that she “deleted the blurry photographs immediately because, when the Governor asked to see the

photographs, she was embarrassed by how blurry they were and did not want him to see how nervous she was.” Report at 23 n.150. This simply does not ring true. Moreover, it is telling that the Investigators were unable to retrieve those purportedly “deleted” photos. *Id.*

Second, we ask that the Report be amended to assess the December 31, 2019 “selfie” that gave rise to this allegation when determining its weight.¹⁰⁹ Ms. Commisso claimed that after she deleted the first few “blurry” photos because of her nervousness when taking the photo, “the two of them then sat down and took one more selfie, with the Governor’s hand around [Ms. Commisso’s] waist.” Report at 23. Notably, the Report does not mention that the selfie shows that Ms. Commisso has her arm draped tightly around the Governor’s neck and shoulder, with her body pressed against him—another example of the biased nature in which the Report was written. Further, the selfie photo does not show what Ms. Commisso alleges, including that she was “nervous” and “shaking so much during this interaction that her initial selfies with the Governor were very blurry.” Report at 23, 23 n.150. This photo paints a very different story of their interaction that day:

¹⁰⁹ Photo excerpted below. Tamar Lapin, *Who is Brittany Commisso, the latest Andrew Cuomo accuser to go public?*, N.Y. POST (Aug. 9, 2021), <https://nypost.com/2021/08/09/who-is-brittany-commisso-the-latest-cuomo-accuser-to-go-public/>; see also Report at 23 n.152 (citing to Ex. 24, a blurred-out version of the photo given Ms. Commisso’s anonymity at the time of the Report).



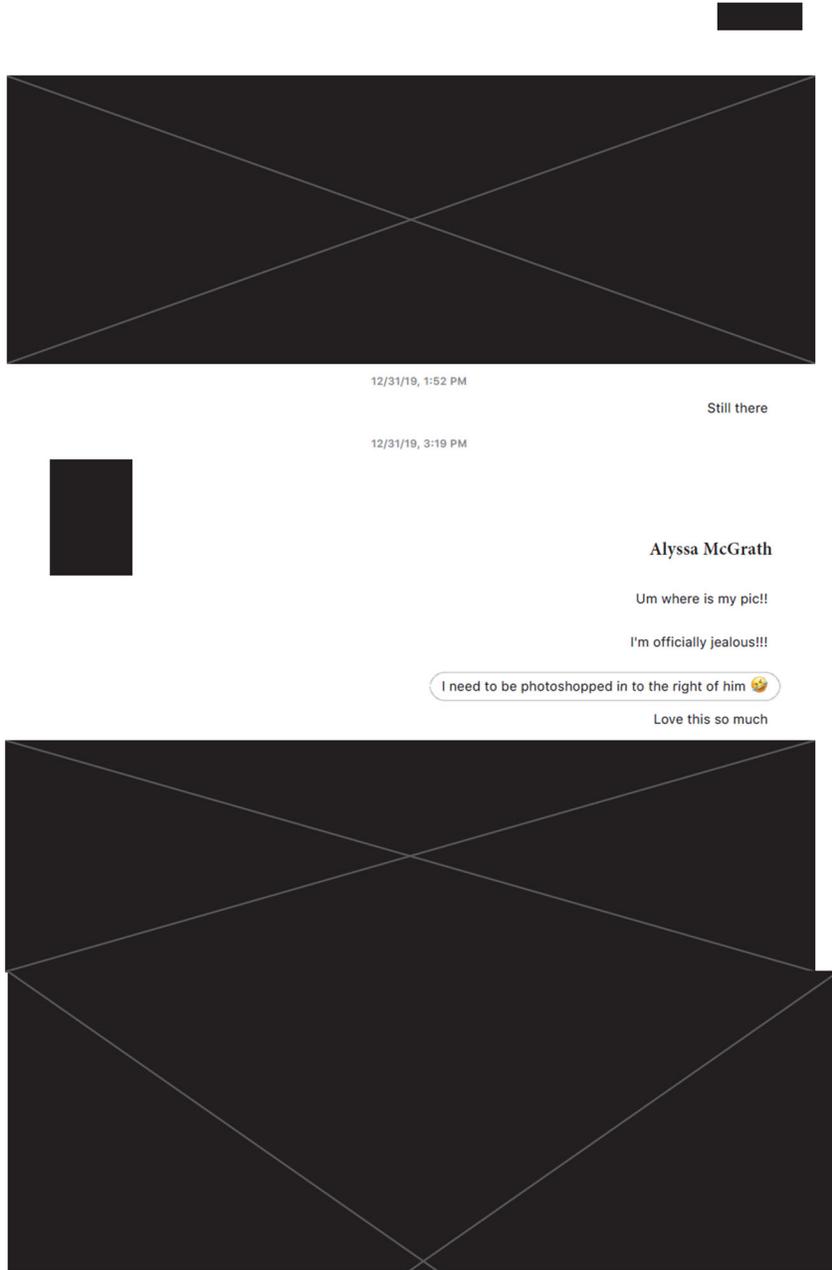
110

This photo shows Ms. Commisso smiling and sitting closely to the Governor, body pressed against him, with Ms. Commisso’s arm around him, and her face leaning in to touch the Governor’s. Although Ms. Commisso has stated she gets “hives”¹¹¹ when she is nervous, there is no indication of such a reaction in this photo. Moreover, it appears Ms. Commisso took the time to apply a filter to this photo to make herself (and the Governor) look better—which is entirely inconsistent with her claim about how she felt so uncomfortable and nervous while taking the photo. If the Investigators did not inquire of Ms. Commisso about applying a filter to this photo, the Report needs to include this fact. The December 31, 2019 selfie speaks a thousand words and does not corroborate Ms. Commisso’s testimony about what happened that day.

¹¹⁰ Lapin, *Who is Brittany Commisso, the latest Andrew Cuomo accuser to go public?*

¹¹¹ Report at 22.

The Report also fails to assess Ms. McGrath's telling and unsurprising reply text upon receiving this photo from her close friend Ms. Commisso:



Report at Ex. 25.

The Report redacts the texts above and below this exchange quoted in the Report. *Id.*; *id.* at 23 n.152. We request that those texts be unredacted so all of the texts between Ms. Commisso and

Ms. McGrath on December 31, 2019 are available for the public to consider. The photo, and the text exchange between Ms. Commisso and her close friend Ms. McGrath, corroborate the Governor's testimony that Ms. Commisso asked to take the selfie with him and then said she wanted to send it to Ms. McGrath to make her jealous. The Governor testified:

Mr. Kim: Remember Brittany Commisso coming over to mansion to help on New Year's Eve in 2019?

Governor Cuomo: No, not particularly.

Mr. Kim: Mentioned the selfie. How many occasions have you taken a selfie with her?

Governor Cuomo: *Remember once, and remember her saying she would send to Alyssa McGrath and Alyssa [McGrath] would be so jealous. Which was peculiar to me, but I remember her saying that.*

Mr. Kim: That day she said that, where were you?

Governor Cuomo: Think in the mansion office.

Mr. Kim: There to help you?

Governor Cuomo: That's why.

Mr. Kim: Remember with what?

Governor Cuomo: No.

Mr. Kim: How did discussion of selfie come up. She raised?

Governor Cuomo: *She asked if we could take a selfie.*

Mr. Kim: You say?

Governor Cuomo: I said okay.

Mr. Kim: Where in mansion did you take it?

Governor Cuomo: Don't remember.

Mr. Kim: Remember if standing or sitting?

Governor Cuomo: No.

Mr. Kim: Remember at any point she had to delete it because it was blurry didn't come out well, took another?

Governor Cuomo: No

Mr. Kim: Just remember one selfie?

Governor Cuomo: Yes.

Ms. Glavin: Know how many times she hit the button?

Governor Cuomo: No.

Mr. Kim: Don't remember there being a blurry one?

Governor Cuomo: No. There's never just one selfie, why I don't take them. Can't turn around camera, doesn't work, cropped head off.

Mr. Kim: Remember taking one set of selfies or selfie standing up and another sitting down?
Governor Cuomo: I don't remember.

Mr. Kim: Where hands were in selfie?
Governor Cuomo: No.
Mr. Kim: On her butt?
Governor Cuomo: No don't believe it was. She wanted to take the selfies. However we took them was however she wanted to.

Mr. Kim: What did she say?
Governor Cuomo: *She said would send to Alyssa McGrath, she'll be so jealous.*

Mr. Kim: You said?
Governor Cuomo: *Nothing, but thought it was peculiar she would send to Alyssa McGrath, who is her good friend to make her jealous. Rang a little bit peculiar.*

Mr. Kim: See her actually send to Alyssa McGrath?
Governor Cuomo: Don't think so.
Mr. Kim: Did she tell you what Alyssa McGrath said in response?
Governor Cuomo: Don't think so.
Mr. Kim: Seen it?
Governor Cuomo: I think she showed – I don't remember.
Mr. Kim: Did you tell her not to share with anyone?
Governor Cuomo: No.
Mr. Kim: Didn't say anything about selfie?
Governor Cuomo: No not that I remember.

Notably, the Investigators *did not show the Governor the selfie at issue during his testimony*, again underscoring the biased nature of the investigation and the Report. There was no reason not to show the Governor the very picture he was being questioned about.

The Investigators should have assessed and reported on the nature of Ms. Commisso and Ms. McGrath's relationship, including how long they have known each other, how close they are as friends (including that they are each other's emergency contacts), and whether they competed for the Governor's attention. By failing to engage in any assessment of the nature of their relationship and omitting evidence that would serve to credit the Governor's testimony that Ms.

Commisso had asked to take the selfie to make Ms. McGrath jealous, the Report pads its one-sided narrative that the Governor engaged in a “pattern of inappropriate conduct” with Ms. Commisso. He did not, and the Report should be amended with that context.

Further, the Report must include what Ms. Commisso specifically told Executive Assistants #2 and #3 on March 1, 3, 6 and 7 about the Governor’s behavior that she deemed inappropriate, and whether she mentioned to them the December 31, 2019 alleged incident of inappropriate physical contact. There is no question that, if Ms. Commisso had told Executive Assistants #2 and #3 about this alleged incident, they would have reported it on March 8 to the Special Counsel and told the Attorney General’s investigators. The fact that the Report makes no mention of what Ms. Commisso told Executive Assistants #2 and #3, or even her close friend Alyssa McGrath, about this incident requires the Report to be supplemented to include when Ms. Commisso first made this claim. Any assessment of Ms. Commisso’s credibility requires this to be made public, particularly given the nature of the photo taken on the couch that day and the fact it is clear Ms. Commisso was in no way uncomfortable.

F. The Governor Did Not Kiss Ms. Commisso on the Lips

The Report finds, “[m]ost of the kisses were on her cheek—but, on at least one occasion in early 2020, the Governor quickly turned his head and kissed her on the lips,” Report at 21, and undermines the Governor’s testimony that he never kissed Ms. Commisso on the lips. The Governor affirmatively denied kissing Ms. Commisso on the lips multiple times throughout his eleven-hour testimony, stating, for example, he “feel[s] confident saying never kissed her on the lips,” *id.* The Governor testified:

Mr. Kim:	Kissed any staff member on lips?...Brittany Commisso?
Governor Cuomo:	<i>Never.</i>
Mr. Kim:	You’re sure?
Governor Cuomo:	<i>Yeah.</i>

Mr. Kim: How?
Governor Cuomo: *Limited interactions with her.*
...
Mr. Kim: Kiss her on cheek?
Governor Cuomo: Don't recall, but sure I did.
Mr. Kim: Once or both cheeks?
Governor Cuomo: I don't remember.
Mr. Kim: Mouth?
Governor Cuomo: She may have fallen to Italian two-cheek
kiss. *Never kissed her on the lips.*
Mr. Kim: Even where one of you went in for cheek, but
lips ended up touching?
Governor Cuomo: Don't remember any of that.

Despite the Governor's numerous affirmative denials, the Report simply notes "he *denied any recollection of kissing* Ms. Commisso on the lips." Report at 21 (emphasis added). The Report should be corrected to accurately portray and meaningfully weigh the Governor's testimony. He denied having kissed her on the lips and there is absolutely no corroboration for Ms. Commisso's claim otherwise.

The Report finds that during some interactions with the Governor, Ms. Commisso would get "so nervous" that she would experience "hives on her neck." Report at 22. The Report notes that on one such occasion, "[Ms. Commisso] ran into a member of the Executive Mansion's staff after leaving the Governor's office while feeling wide-eyed and while her hives were still present," *id.* at 22 n.143, but "[the Investigators] were not able to corroborate this interaction." *Id.* The Report must be supplemented with the identity of the staff member, what this witness said that did not corroborate Ms. Commisso's testimony, and when this purported incident occurred.

G. The Governor Did Not Sexually Harass Ms. Commisso

The Report further finds the Governor "engaged in a pattern of inappropriate conduct" with Ms. Commisso, including "inquiring multiple times about whether she had cheated or would cheat on her husband" and calling her and her friend Ms. McGrath "mingle mamas." Report at 1. The Report is wrong and should be corrected.

The Report completely discredits the Governor’s testimony that Ms. Commisso herself “volunteered on a number of occasions that she was seeing other people.” Although the Report notes that he testified that “it was [Ms. Commisso] who volunteered information about her social and marital life, and that he participated only to go along with her conversations,” it offers no reasoning as to why Ms. Commisso’s denial “that this was the case, and specifically [her noting] that she only spoke about her romantic relationships when the Governor asked, rather than volunteering such information,” should be credited over the Governor’s testimony. *Id.* at 19–20. As the Governor testified, he jokingly called Ms. McGrath and Ms. Commisso “mingle mamas” *only in response to them telling him that they were “single and ready to mingle” on their trip to Florida.* *Id.* at 19. Indeed, the Governor testified—and the Report did not include—that Ms. Commisso volunteered to the Governor that she planned to meet with an old boyfriend while she was in Florida with Ms. McGrath, and that she also had a boyfriend in Saratoga.

In addition, the Report notably omits the specific testimony of numerous Executive Chamber witnesses that Ms. Commisso welcomed the Governor’s conduct towards her, which the December 31, 2019 selfie photo certainly corroborates. All the Report states is that “[w]hile certain witnesses within the Executive Chamber raised questions about whether [Ms. Commisso] welcomed the Governor’s conduct toward her, based on their view of [Ms. Commisso’s] personality, we did not find that her outgoing personality. . . . undermined her allegations that the Governor touched and spoke to her in an unwelcome and offensive way.” Report at 32. We request that Report be amended to include the specific testimony of every witness who said they believed Ms. Commisso welcomed the Governor’s conduct towards her and precisely why, including what they said about her personality.

The Report also concludes that text message exchanges between Ms. McGrath and Ms. Commisso “independently corroborated” “many of” Ms. Commisso’s allegations. Report at 32. Yet, the Report attached just a handful of text messages between them, but not those that purportedly corroborate “many of” Ms. Commisso’s allegations, including her claims that the Governor acted physically inappropriate with her.¹¹² We request access to all of the text messages between Ms. Commisso and Ms. McGrath that in any way refer to or relate to the Governor beyond the handful attached as exhibits to the Report. We further request that the Report be amended to state that none of the text messages attached as exhibits to the Report corroborate Ms. Commisso’s claims that the Governor was physically inappropriate with her. In addition, if the Investigators did not subpoena Ms. McGrath and Ms. Commisso for all text messages referring or relating to the Governor, the fact that this investigative step was not taken should be noted in the Report.

Finally, the Report concludes that Ms. McGrath’s testimony “corroborated *much* of [Ms. Commisso’s] sworn testimony,” Report at 16 n.84, but omits what specific portions of the testimony were corroborated. As noted *supra*, Ms. Commisso chose not to confide in Ms. McGrath on March 1, 3, 6 or 7 about her purported inappropriate interactions with the Governor, and the Report makes no reference to Ms. Commisso confiding in Ms. McGrath about the two most significant physical interactions with the Governor alleged by Ms. Commisso, i.e., the December 31, 2019 “selfie” photo interaction and the November 2020 alleged breast-groping incident before Ms. Commisso’s claims were reported to the Special Counsel and Acting Counsel to the Governor. Thus, the Report’s statement that Ms. McGrath corroborated “much” of Ms. Commisso’s testimony is materially misleading, and the Report must be amended to state that Ms. McGrath

¹¹² Report at Exs. 16 (“What did he write lol mingle mama [emoji]”); 25 (in response to the New Years Eve selfie, Ms. McGrath wrote “Um where is my pic!! / I’m officially jealous!!!! / I need to be photoshopped in to the right of him [emoji]” / “Love this so much”); 26 (“He brought up the selfie and definitely only supposed to stay between you and me”).

does not corroborate Ms. Commisso’s testimony about December 31, 2019 and November 2020 groping claims. The Report is also materially misleading by its failure to explain the extraordinarily close relationship of Ms. Commisso and Ms. McGrath.

H. The Report Fails to Include and Explore Evidence Regarding Ms. Commisso’s Motive to Fabricate and Embellish Her Interactions with the Governor

Governor Cuomo, Stephanie Benton and Melissa DeRosa (and perhaps others) gave testimony to the Investigators about issues in Ms. Commisso’s personal life in the weeks before she first made her allegations against the Governor. Specifically, Ms. Commisso expressed concerns in late 2020 and early 2021 to the Governor and others about maintaining her job as an Executive Assistant to the Governor and her need for more income as a result of her divorce and childcare situation.

As noted above, the Report completely omits the Governor’s detailed testimony about the private interaction he recalled having with Ms. Commisso in late 2020 about her personal and financial situation. He testified that Ms. Commisso asked to speak to him at the Mansion sometime in late 2020 and during that conversation she told him that she was divorcing her husband and needed a different work schedule to accommodate her increased childcare responsibilities resulting from the divorce.¹¹³ After Ms. Commisso raised the issue, the Governor, who experienced a divorce as a parent of young children, asked her whether she had fully considered the situation, and shared that from his own experience, divorce can be very difficult, particularly when children are involved.¹¹⁴ The Governor testified that Ms. Commisso was “concerned about job security

¹¹³ The Reports footnotes a one-sentence summary of this detailed testimony by the Governor. Report at 27 n.182 (“Governor Cuomo and Ms. Benton testified that Executive Assistant #1 told them—possibly around November 2020—that, following her separation from her husband, she was concerned about money and wanted to keep her job and be considered for overtime shifts.”)

¹¹⁴ Ex. A at 19–20.

because she was getting a divorce,” and told the Governor that “she had to leave in the afternoons” given she had joint custody of her young child, and was “worried about money.” He testified that his response was to the effect of “we can figure it out,” and that “there are a lot of single mothers in government.”

The Governor further testified that Ms. Commisso said that “she didn’t want to move her job” as his one of his four Executive Assistants because of her need for a different schedule, and she “want[ed] to keep the same job” and work more “overtime on the weekends.” The Governor thought this situation was “beyond [him],” so he “just left that alone” because that was something her supervisor or Ms. Benton would have to address.

The Governor sensed during this conversation that Ms. Commisso was upset that he would not say to her “you can have the same job on whatever schedule she was talking about, and get the overtime on the weekends to make up the money that she would lose,” but the Governor testified that he did not want to say “don’t worry you have the job, you will stay in the Governor’s office,” because that was not up to him. The Report omits and gives no weight to this detailed testimony, even though Ms. Commisso’s concerns about her income and job were corroborated by her own testimony. Report at 27 (“Executive Assistant #1 testified that she needed the income (including the overtime pay received from working on weekends), particularly as she was going through a divorce and was focused on not risking losing her job.”); *id.* at 29 (“odds are you are going to be the one to go and I liked my job”). The Governor testified that this is the only private interaction action he remembers with Ms. Commisso in late 2020.

Subsequent to her conversation with the Governor, in late 2020 and early 2021, Ms. Commisso spoke with her supervisors about her family and work situation. In those conversations, Ms. Commisso told them what she had told the Governor—she would need to leave work early at

times due to childcare responsibilities—and she also asked for a raise and more overtime hours on weekends when she was available. No promises were made to Ms. Commisso by her supervisors about her work situation, and she was told by a supervisor in early 2021 that a raise was not possible at the time because of budget constraints.

The Report should be amended to include evidence of Ms. Commisso’s concerns regarding her job security and income in the weeks before she first made her allegations in March 2021, and analysis of Ms. Commisso’s motives and the timing of her allegations in light of those concerns. Notably, after Ms. Commisso first made her allegations about the Governor in early March 2021, the Chamber took steps to ensure that Ms. Commisso was insulated from any retaliation, including maintaining the Executive Assistant position she had been so concerned about no longer having.