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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

August 5, 2021

BY ELECTRONIC TRANSMISSION

The Hon. Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20150

Dear Chairman Durbin:

I am writing to request that this letter, relating to Human Rights Campaign President Alphonso David, who testified before our committee on March 17, 2021, at the hearing entitled “The Equality Act: LGBTQ Rights are Human Rights,” be included in our committee’s record of that hearing.

A troubling report by the Attorney General for the State of New York found that this hearing witness for the majority played some role in efforts by current and former staff of Governor Andrew Cuomo to discredit a former employee who publicly complained of harassment. Not only did Mr. David retain a confidential file discussing this former female aide after leaving his own position as counsel to Governor Cuomo,¹ but Mr. David later transferred this aide’s file to another member of the Governor’s staff on December 11, 2020,² days before damaging information in it was circulated to others, including reporters, according to the Attorney General’s report.³

¹ State of New York Office of the Atty. Gen. Letitia James, *Report of Investigation Into Allegations of Sexual Harassment by Governor Andrew M. Cuomo* at 74, 104-105, 108-110, 125-126, 157-160 (Aug. 3, 2021), available at https://ag.ny.gov/sites/default/files/2021.08.03_nyag_-_investigative_report.pdf.

² *Id.* at 104 (“On December 11, Mr. David sent to Mr. Azzopardi files relating to his investigation into and counseling of Ms. Boylan shortly before her departure from the Executive Chamber (“Confidential Files”) that he had retained and taken with him when he left the Executive Chamber.”)

³ *Id.* at 104-105 (“On December 13, 2020, just hours after Ms. Boylan tweeted that the Governor had sexually harassed her, Mr. Azzopardi sent the Confidential Files to David Caruso of the Associated Press, Dana Rubinstein of the New York Times, and Bernadette Hogan of the New York Post, along with a statement from Press Secretary Caitlin Girouard that “[t]here is simply no truth to these claims.” The Confidential Files consisted of (1) a September 20, 2018 memorandum to Mr. David regarding “Confidential Personnel Matter”; (2) a September 26, 2018 memorandum to Mr. David labeled “Draft, privileged and confidential - Attorney Client Privileged Communication / Intra-Agency Communication / Memo to File”; and (3) a September 30, 2018 email from Mr. David labeled “Privileged and confidential / Attorney client communication / Attorney work product.”⁹²² The Confidential Files discussed complaints against Ms. Boylan.”)

The Attorney General's report concluded that actions by current and former employees of the Governor gave such employees justification for fearing retaliation if they came forward with allegations of sexual harassment.⁴ As further noted in a media report yesterday:

"Human Rights Campaign (HRC) President Alphonso David allegedly helped leak the confidential personnel file of a former aide to New York Gov. Andrew Cuomo (D) who accused the state leader of sexual harassment. That allegation was detailed in a report released by New York Attorney General Letitia James (D) Tuesday, following an independent probe of accusations brought forth by several women. The report found that Cuomo sexually harassed several women in violation of federal and state law."⁵

The New York Attorney General's findings respecting Mr. David are relevant to the record of this Senate hearing, at which the potential adverse impacts of the Equality Act on women and girls were an important aspect of our hearing discussion. To illustrate: Mr. David testified at the hearing: "The Equality Act does not in any way undermine the rights of others.... [T]he contention that providing these protections to LGBTQ people in some way will result in the sky falling, will compromise women's rights, is not true, because if it was true we would have seen it already." It is highly concerning that Mr. David, who purports to speak for victims of discrimination and retaliation, reportedly played some role in retaliation against a female victim of sexual harassment.

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⁴ As stated in the Attorney General's report: "The evidence obtained in our investigation revealed that the complainants' fears of retaliation were justified. In response to Ms. Boylan's allegation of sexual harassment, first made in a tweet on December 13, 2020, the Executive Chamber engaged in a series of responsive actions that were intended to discredit and disparage Ms. Boylan... Those involved have justified these actions as necessary to respond to what they viewed as misleading statements made by Ms. Boylan about the reasons for her departure, and an appropriate response to what they believed were improper political and retaliatory motives for her allegations. However, the confidential internal documents were released to reporters only after Ms. Boylan made allegations of sexual harassment against the Governor, and we do not find credible the claim that they were released only to rebut other statements Ms. Boylan had made days earlier about the manner in which she departed the Executive Chamber. As for the draft letter attacking Ms. Boylan, although it was never actually published (in part because, as the evidence revealed, many who reviewed it found that it constituted victim shaming that they found inadvisable), its substance was shared with a significant number of current and former Executive Chamber employees who were not otherwise aware of the information in it." State of New York Office of the Atty. Gen. Letitia James, *supra* note 1 at 10.

⁵ Karls Evers-Hillstom, "Human Rights Campaign president allegedly helped leak personnel file of Cuomo accuser," The Hill (August 4, 2021), available at <https://thehill.com/homenews/state-watch/566399-human-rights-campaign-president-allegedly-helped-leak-personnel-file-of?rl=1> . See also Jacob Shamsian, "Andrew Cuomo's office retaliated against one of his accusers by leaking confidential documents about her, NY Attorney General says," Insider (Aug. 4, 2021), available at <https://www.businessinsider.com/andrew-cuomo-advisors-leaked-lindsey-boylan-documents-ag-report-2021-8>.

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Thank you in advance for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Ranking Member