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August 31, 2020

TO: Joint Commission on Public Ethics (JCOPE)

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Conflict of Interest Ethics Complaint vs SUNY's Board of Trustees & its Other Officers & Staff for Violating Public Officers Law §74 in the Appointment of James Malatras as SUNY Chancellor – & in Perpetuating SUNY's False, Deficient, & Non-Existent Scholarship on the New York State Constitution and New York State Governance

As JCOPE is the enforcing agency with respect to compliance with [Public Officers Law §74](#) by SUNY and its Board of Trustees, I hereby initiate this sworn complaint against the 17 trustees¹ and SUNY's other officers and staff who conspired and influenced them to violate Public Officers Law §74 and to proceed unlawfully and through fraud in appointing James Malatras as SUNY's new chancellor. Such appointment was made: (1) without any actual "search"; and (2) in face of open-and-shut, *prima facie* evidence that would have disqualified his candidacy in any screening process meeting cognizable standards – *to wit*, evidence of his facilitating role as a public officer in unconstitutionality, fraud, and larceny of huge sums of public monies by Governor Cuomo and other

¹ The SUNY Board of Trustees does not have its statutory complement of 18 members [[Education Law §353.1](#)], as Governor Cuomo made only three appointments to fill four vacancies that were his to fill. Those three appointments – of Marcos Crespo, James Haddon, and Camile Varlack, ESQ. (Brooklyn Law School) – were announced by a [July 23, 2020 press release](#), simultaneous with their Senate confirmation. The same press release also announced the re-appointment and confirmation of Board Chair Merryl Tisch. Governor Cuomo's other appointments/re-appointments to the SUNY Board of Trustees are: Cesar Perales, ESQ. (Fordham Law School), who he also designed its vice-chair; Joseph Belluck, ESQ. (Buffalo School of Law); Courtney Eagles Burke; Eric Corngold, ESQ. (Yale Law School); Robert Duffy; Eunice Lewin; Stanley Litow; Richard Socarides, ESQ. (Hofstra Law School); Edward Spiro, ESQ. (Boston University Law School); and Cary Staller, ESQ. (Harvard Law School) – for a total of 14 members. The three non-governor appointed Board members, each serving *ex officio* as presidents of entities of "shared governance", are: President of the University Faculty Senate Gwen Kay and President of the Faculty Council of Community Colleges Christine Fogal, each non-voting members; and the president of the Student Assembly, who is a voting member. Until July 11, 2020, the Student Assembly president was Austin Ostro, who "left early". He was NOT succeeded by the Student Assembly vice president or acting vice president/chief of staff, or by anyone in a line of reasonable succession. Rather, Jahad Hoyte was purported to be president and, apparently, seated on the Board, without any question being raised – although his position was – as perhaps still is – "Agriculture, Technology and Statutory Campuses Representative".

constitutional officers of New York's three government branches involving the state budget and the "force of law" commission/committee scheme raising their salaries.

Simultaneously, to cover-up their Public Officers Law §74 violation and fraud, the 17 SUNY trustees committed a further Public Officers Law §74 violation. Confronted with evidence that SUNY scholarship is false, deficient, and non-existent with respect to the New York State Constitution and New York State governance – and that Mr. Malatras' politicized his office as president of SUNY's Rockefeller Institute of Government to perpetuate same – they took no corrective steps to examine SUNY scholarship. In so betraying their fiduciary duties to ensure the adequacy and accuracy of SUNY's scholarship and teaching, they were motivated by their own self-interest, which was – and will remain for as long as they sit as Board members – to prevent scholarship and teaching revealing the corruption disqualifying Mr. Malatras – and their own corruption in appointing him.

As for other SUNY officers against whom this complaint is filed, the most important and powerful are:

(1) SUNY's Senior Vice Chancellor and Chief Operating Officer Robert Megna, who served as interim chancellor from June 3rd to the August 21st date of Mr. Malatras' appointment, was present at all the Board of Trustees' meetings, and who, with Mr. Malatras, directly participated in the three-branch governmental corruption at issue – most visibly, in 2019, when both were appointed by Governor Cuomo to the seven-member "force of law" [Commission on Legislative, Judicial and Executive Compensation](#);² and

(2) SUNY's Chair Emeritus of its Board of Trustees, H. Carl McCall, so-recognized at its August 21st meeting appointing Mr. Malatras, at which he participated – and whose corruption and fraud as chair of the four-member 2018 "force of law" [Committee on Legislative and Executive Compensation](#)³ was covered up by the 2019

² Prior thereto, as Governor Cuomo's budget director, Mr. Megna directly participated in the corruption involving the 2011 "force of law" Commission on Judicial Compensation AND the state budget – and then in the corruption of the 2015-2016 "force of law" Commission on Legislative, Judicial and Executive Compensation, to which Governor Cuomo appointed him in its waning days, following the unexplained departure of one of the Governor's appointees to that Commission. Such past history disqualified him from serving on the 2019-2020 Commission on Legislative, Judicial and Executive Compensation – and in 2019, in substantiation of my November 4, 2019 testimony before that Commission on which he, Mr. Malatras, and four other disqualified commissioners sat, I created an evidentiary webpage about this entitled "[Appointment of Commissioners disqualified as participants and conspirators in fraud, & based on interests and relationships they have not disclosed](#)". The webpage, whose link I furnished the Commission, posed the QUESTION: "[Did the Appointing Authorities Apprise the Commissioners of CJA's 2nd CITIZEN-TAXPAYER ACTION -- commenced September 2, 2016 & at the NY Court of Appeals – or didn't the Commissioners know about it, independently?](#)"

³ The corruption and fraud of the 2018 "force of law" Committee on Legislative and Executive Compensation is comprehensively detailed by [CJA's July 15, 2019 analysis](#) of its [December 10, 2018 report](#)

Commission on Legislative, Judicial and Executive Compensation on which Messrs. Malatras and Megna served.

The facts establishing that the SUNY Board of Trustees did not undertake even a truncated, limited “search” in the 2-1/2 months after its [June 3rd news release](#) that former Chancellor Kristina Johnson would be leaving are set forth by the e-mail I sent to the Board at 4:48 pm on Friday, August 14th, *via* an e-mail address that goes to staff.⁴ Bearing the subject line “(1) FOIL: SUNY’s ‘confidential search’ for a new chancellor; (2) NOTICE: ‘leading candidate’ James Malatras is corrupt; (3) QUESTIONS: SUNY scholarship & teaching of the NYS Constitution, as written & applied; (4) SCHOLARSHIP: primary-source evidence”, the e-mail described the Board’s conduct, in favor of Mr. Malatras, as violating Public Officers Law §74, as follows:

“...inasmuch as Mr. Malatras is a close aide, advisor, and protégé of Governor Cuomo – and 14 of the Board of Trustees’ current 17 members are Governor Cuomo appointees – the Board of Trustees’ ‘confidential search’ where Mr. Malatras has the ‘inside track’ plainly runs afoul of Public Officers Law §74 proscribing not only conflicts of interest, but conduct that gives the impression or raises suspicion of conflicts of interest. Helpfully, [SUNY’s webpage for the Board of Trustees](#) posts much information on the subject: (1) [Public Officers Law §74](#) (2) a [handbook of general information about the Board of Trustees](#) – with a section entitled ‘Ethics’ (at pp. 8-9) highlighting Public Officers Law §74; (3) a [Code of Conduct for State University Officers](#), also incorporating and annexing Public Officers Law §74; (4) a [Statement on the Governance Role of a Trustee or Board Member](#), which – under the

[recommending legislative and executive pay raises](#), furnished to Governor Cuomo, the attorney general, and legislative leaders, with an accompanying [NOTICE](#). As immediately obvious from the cover of the analysis, it parallels [CJA’s October 27, 2011 opposition report](#) to [the Commission on Judicial Compensation’s August 29, 2011 report recommending judicial pay raises](#) – an opposition report sent to Mr. Megna with a [November 1, 2011 letter](#), five days after I had hand-delivered four originals, each with all substantiating exhibits, to the New York City offices of Governor Cuomo, the Chief Judge, Assembly Speaker, and Temporary Senate President.

In the absence of any response from any governmental officer to CJA’s July 15, 2019 analysis, none denying its obvious accuracy, I filed a [June 4, 2020 public corruption complaint](#) against them with Albany County District Attorney P. David Soares – just as, seven years earlier, I filed a [July 19, 2013 public corruption complaint](#) with him pertaining to CJA’s October 27, 2011 opposition report, whose obvious accuracy was also not contested by any governmental officer. [District Attorney Soares has been “sitting on” these and all the other related complaints I filed with him](#) – all chronicling the corruption that has now metastasized to SUNY’s Board of Trustees.

⁴ Although this complaint contains hyperlinking to referred-to evidence, I have created a webpage for the complaint on CJA’s website, www.judgewatch.org, from which fuller substantiating evidence, elaborated by additional evidentiary webpages, is accessible. It is part of a series of webpages entitled: “Bringing Accountability to a Politicized SUNY – & Securing Scholarship”. The easiest way to reach it is *via* the top panel “Latest News”. The direct link is the same as was formerly the webpage for my August 14th e-mail to the SUNY Board of Trustees: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/malatras-suny.htm>.

heading ‘Duty of Loyalty/Conflicts of Interest’ – pertinently instructs (at p. 4):

‘Trustee/board members owe allegiance to the institution and must act in good faith with the best interest of the institution in mind. The conduct of a trustee/board member must, at all times, further the institution’s goals and not the member’s personal or business interests. Consequently, trustees/board members should not have any personal or business interest that may conflict with their responsibilities to the institution. A trustee/board member should avoid even the appearance of impropriety when conducting the institution’s business. Acts of self-dealing constitute a breach of fiduciary responsibility that could result in personal liability and removal from the board.’

and (5) a [statement of ‘Board Responsibility for Institutional Governance’ of the Association of Governing Boards of Universities and Colleges](#) stating (at #5) ‘...so should individual board members avoid even the perception of any personal agendas or special interests. Board members and governing boards should not be seen as advocates for their appointing authorities...’” (hyperlinking in the original).

No changes were made to this above-quoted section of the August 14th e-mail when, [at 8:14 a.m. on Monday, August 17th, I e-mailed a revision](#), stating: “I have corrected typographical errors and made mostly non-substantive clarifying changes”.

Obvious from the most cursory inspection of the [August 14th e-mail](#) – and its indicated [substantiating webpage on CJA’s website, posting and linking all the referred-to evidence](#) – is that the SUNY Board of Trustees could not, consistent with its fiduciary responsibilities, proceed further with Mr. Malatras’ appointment without verifying the accuracy of its content – beginning with its first section as to the Board’s violation of Public Officers Law §74. And determination of that issue was easy for [the Board](#), seven of whose 17 members are lawyers, including Trustee Spiro, “an expert in the areas of legal ethics and standards of care”, and Trustee Belluck, chair of the New York State Commission on Judicial Conduct, the state agency whose duty is to enforce Public Officers Law §74 as relates to judges. The Board also had, at its disposal, [SUNY’s Office of General Counsel](#) whose function is “to provide legal advice and guidance to the Board of Trustees” – and JCOPE, which provides advisory opinions, with a [website](#) not only stating this, but furnishing contact information for “immediate guidance”, *to wit*, both an e-mail address [legal@jcope.ny.gov](#) AND a phone number “call 1-800-87-ETHICS (873-8442) and press ‘2’ when prompted”.

In any event, based on the recitation of Mr. Malatras’ corruption in the second section of the August 14th e-mail and, additionally, in the third section, pertaining to his politicization of scholarship as president of SUNY’s Rockefeller Institute of Government, covering up and perpetuating an edifice of corruption of New York’s governance, any fair and impartial Board of Trustees, discharging its fiduciary responsibilities, would have had to reject him, irrespective of the “appearance” of a Public Officers Law §74 violation. For the Board to simply ignore such evidence would go beyond “appearance” to actuality – a far more serious violation of Public Officers Law §74.

Certainly, any fair and impartial Board of Trustees, discharging its fiduciary responsibilities, would have promptly arranged to interview me about my August 14th e-mail – including to probe my astonishing assertion, in its third section:

“that New York’s taxpayer-supported SUNY system, spanning 64 institutions and serving nearly 1.3 million students, apparently has NO scholarship and teaching about the New York State Constitution, *as written and as applied*, let alone any degree program to recognize proficiency in an area so critical to our governance.” (capitalization and italics in the original).

The e-mail expressly asked:

“Is SUNY’s Board of Trustees – whose members include a good many lawyers – able to answer the two **QUESTIONS** posed by [my April 18, 2017 and July 20, 2017 e-mails to the Rockefeller Institute and its then President Malatras] as to where I might find:

- (1) scholarship on the Court of Appeals’ 2004 consolidated decision in *Silver v. Pataki/Pataki v. Assembly and Senate* (4 NY3d 75) – and the constitutional provisions relating to the New York State budget;
- (2) scholars to whom I might furnish the ‘on-the-ground’, empirical evidence that the New York State budget is so flagrantly ‘OFF the constitutional rails’ and violative of the Court of Appeals’ 2004 *Silver v. Pataki/Pataki v. Assembly and Senate* decision and Article VII, §§4, 5, 6 and Article III, §10 of the New York State Constitution as to mandate SUMMARY JUDGMENT declarations – relief sought by *CJA v. Cuomo...DiFiore*, the monumental citizen-taxpayer action brought by CJA on behalf of the People of the State of New York and the public interest against the constitutional officers of New York’s three government branches.” (capitalization and italics in the original).

These were QUESTIONS which, if the Board could not answer, imposed upon it a duty to do what had been Mr. Malatras’ duty as the Rockefeller Institute’s president – and the fourth section of my August 14th e-mail so-stated, *to wit*:

“forward[ing] the extraordinary primary-source evidence that is [the record of the CJA v. Cuomo...DiFiore citizen-taxpayer action](#) for **SCHOLARSHIP** by the Rockefeller Institute – and by other SUNY institutes, centers, departments, colleges, and schools as purport to be engaged in research and teaching of state and local governance, public administration, political science, law, and professional responsibility and ethics.” (hyperlinking, bold, capitalization, underlining in the original).

The seven lawyers on the Board would have had no difficulty in assessing the significance of the [CJA v. Cuomo...DiFiore record](#), about which [I had testified before Messrs. Malatras and Megna at the Commission on Legislative, Judicial and Executive Compensation's November 4, 2019 hearing](#) – and which, as the fourth section of my e-mail explained, was “Exhibit A” in establishing “*prima facie* and conclusively, Mr. Malatras unfit for the SUNY chancellorship.”

Yet, the only response I received to my August 14th e-mail was an [e-mailed acknowledgment of receipt by the Board's staff, at 6:30 p.m. on August 14th](#). I received no confirmation of its distribution, nor contact as to its substance from Board staff or from any of the trustees – and, of course, no thanks for the effort I had made in presenting such clearly vital information, both with respect to Mr. Malatras and the state of scholarship at SUNY.⁵

Instead, on Sunday, August 16th, the Board secretary apparently sent an “[Official Notice](#)” to the trustees that a meeting would be held the next day, Monday, August 17th, at 5 p.m., *via* teleconference, for a “Full Board Executive Session”. The “Official Notice” did not identify the purpose of the meeting. [A separate document, giving the appearance of an agenda, but not so-titled](#), bearing only an August 17th date, also does not identify the purpose of the “Executive Session”.⁶

⁵ I also received no response to the FOIL request, contained within the first section of the August 14th e-mail, for “written guidelines and procedures [] regulating how the Board of Trustees appoints the SUNY chancellor – including whether a specific salary is offered to the candidates – or whether the candidates compete as to the salary they would accept.” Pursuant to [FOIL](#) (Public Officers Law §89.3(a)), a response was required “within five business days”.

⁶ These documents are posted on the SUNY's webpage entitled “[Board of Trustees Archived Meetings](#)”, where they are identified as “Supporting Documents” and represented as “Notice” and “Agenda”. I do not believe either was posted in advance of the August 17th meeting – and further believe that the undated “Agenda”, which does not, in fact, bear that title or any other, is what SUNY sends out to the press, perhaps only on the day of the meeting, so that the chair of the SUNY Board can then open the meeting by purporting it to have been “publicly noticed”. The notice and open meetings law requirements are set forth in [Education Law Article 8](#) – posted on [the Board's own homepage](#). Its §353.2 reads, in pertinent part:

“a. The board may provide for regular meetings, and the chairman, or the vice-chairman, or any eight members by petition, may at any time call a special meeting of the board of trustees and fix the time and place therefor; and at least seven days notice of every meeting shall be mailed to the usual address of each trustee, unless such notice be waived by a majority of the board. Resolutions for the consideration of the board of trustees must be mailed to the usual address of each trustee no less than seven days prior to a meeting, unless the chair shall make available in writing on the day of the meeting the facts which necessitate an immediate vote. Eight trustees attending shall be a quorum for the transaction of business and, unless a greater number is required by the by-laws, the act of a majority of the members present at any meeting shall be the act of the board. ...

b. The agenda for any such meeting of the board of trustees shall be electronically available on the state university of New York website three days prior to the meetings unless an executive committee meeting has been called in which an agenda must be available twenty-four hours in advance, and shall be considered a public record. A summary of resolutions and board actions for any such meeting of the board of trustees shall be

Nor was its purpose identified at the open portions of the meeting itself. The [video](#) of the less than two minutes that preceded the executive session shows Chair Tisch stating, without specificity, that the meeting had been “publicly noticed”, followed by reading the role of members present to establish a quorum, a motion to waive the seven-day notice requirement for meetings, and then a motion to move into executive session, which violated [Public Officers Law §105](#) in that it failed to “identify[] the general area or areas of the subject or subjects to be considered”. After a nearly 1-1/2 hour executive session, there is a one-minute public session in which Chair Tisch reports that “no action was taken in executive session”, asks for a motion to adjourn, and then thanks the members for their “valuable time, comments, input, and thoughtfulness”, adding that it was “one of the best conversations that I’ve ever had the privilege of chairing.”

It must be determined whether, in fact, the August 17th meeting was “publicly noticed”, consistent with the open meetings law requirements of [Public Officers Law §104](#). In any event, such notice as there was would not have alerted the public and the press to what was happening. I myself did not know of the meeting until Tuesday evening, August 18th, when I did a google search. It was then

electronically available on the state university of New York website no later than seven days after the meeting and shall be considered a public record. The approved minutes, attendance, voting record and either transcripts or video record for any such meeting must be posted no later than seven days following their approval by the board or executive committee. Information posted on the state university of New York website regarding board of trustee meetings shall remain on the site as archived data for a minimum of ten years.

c. Any such meeting of the board of trustees shall be conducted in accordance with article seven of the public officers law.”

The referred-to [“article seven of the public officers law” is the Open Meetings Law](#). §104 thereof, entitled “Public notice”, states, as follows:

“1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given or electronically transmitted to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.

2. Public notice of the time and place of every other meeting shall be given or electronically transmitted, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.

3. The public notice provided for by this section shall not be construed to require publication as a legal notice.

4. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.

5. If a meeting will be streamed live over the internet, the public notice for the meeting shall inform the public of the internet address of the website streaming such meeting.

6. When a public body has the ability to do so, notice of the time and place of a meeting given in accordance with subdivision one or two of this section, shall also be conspicuously posted on the public body’s internet website.”

that I discovered two articles. The first was a New York Post article published on its website at 9:08 p.m. on August 17th. Entitled “[SUNY Board set to appoint Cuomo right-hand Jim Malatras next chancellor: source](#)”, it read, in pertinent part:

“During a closed-door board meeting Monday night, SUNY board officials showed ‘overwhelming’ support for the Cuomo-loyalist...

‘Jim Malatras has the overwhelming support of the Board,’ said a source close to the deliberations who said he will be formally interviewed by SUNY’s board of trustees on Tuesday.

No other candidate is scheduled to be interviewed and the SUNY board could vote Malatras the new chancellor as early as Wednesday, the source said.

...

A SUNY insider said the board has the discretion on whether it wants to hold a broader search or not.

...The source said the optics of hiring a Cuomo loyalist was not raised as a problem.”

None of this was reconcilable with what my August 14th e-mail had particularized, with evidence – and the anonymous “source” outrightly misrepresented the situation that the Board had “discretion on whether it wants to hold a broader search or not”. The reality was – as my August 14th e-mail had demonstrated – that not even a limited “search” was taking place.

The second article, by the Albany Times Union, published on its website at 5:10 p.m. on August 18th, was entitled “[SUNY poised to name Cuomo loyalist Malatras as chancellor](#)” and expressly confirmed the information in the previous day’s Post article, based on “Two sources with knowledge of the situation”. As to the Board’s meetings, the Times Union stated:

“The board, which is required to publicly announce its meetings, conducted a meeting Monday evening and scheduled two additional meetings on Tuesday and Wednesday. The meetings are expected to be conducted behind closed doors, which the board is allowed to do to discuss hiring decisions.”

Implied was that there had been no public announcement of either the Monday or Tuesday meetings – and, clearly, had the Tuesday meeting been publicly noticed, the Times Union would have known that it had begun at 3:30 p.m., was still in progress – indeed, that the trustees had not emerged from what would be a 2-1/2 hour executive session.

Had the Times Union had notice of the Tuesday meeting, this is what it might have reported: The date on the “[Official Notice](#)” of the meeting from the Board’s secretary to the trustees was that very day for what was to be a “Full Board Executive Session”, *via* teleconference, at 3:30 p.m. No purpose was identified therein – or in the [untitled August 18th agenda](#). At the meeting itself – established by the [video](#) – in the two minutes before the Board moved into its executive session,

Chair Tisch purported, without specifics, that the meeting had been “publicly noticed” – following which, after a roll call of members, a motion was made to waive the seven-day notice requirement for meetings. Thereupon, Chair Tisch asked for a motion to move into executive session, interrupted by the Board secretary, asking “can we just finish that language, motion to proceed in executive session under the provisions of section 105 of the public officers law for the purpose of discussing matters relating to the appointment of a particular person”.

Presumably, the Times Union would have held back on publication of its article until after the Board returned from its 2-1/2 hour executive session, so as to be able to report that, in the less than one-minute public session at the end, Chair Tisch announced that “no action was taken in executive session” and a motion was made to adjourn, with Chair Tisch concluding “Thank you very, very much. Thank you all, so very, very much”.

Meantime, the already published August 18th Times Union article had gone on to state:

“Members of the university faculty, SUNY community college faculty and the United University Professions union, which represents faculty and staff in the university system, all expressed concerns about the board’s decision to apparently hire Malatras without conducting a broader search.

‘Secrecy has increasingly become the modus operandi of search committees, particularly for senior leadership. This is anathema to our philosophy of inclusive shared governance for SUNY as an institution,’ the SUNY Faculty Council of Community Colleges and University Senate wrote in a joint statement. The presidents of those two groups are both non-voting members of the board.

‘Conversely, when a final group of candidates has been identified by the search committee, it is important that candidates be vetted beyond the search committee so that a broader cross-section of parties can offer their own insights of the finalists,’ they added.

The statement goes on to critique SUNY for not considering a diverse pool of candidates – Malatras is white – which the statement said is inconsistent with previous promises made by SUNY to recruit diverse candidates. When universities in the SUNY system hire new leadership, it is common for broad selection committees to be formed that undertake a national search.”

The Times Union gave no identification as to when this “joint statement” had been issued – and did not link to it, but it was obvious that objection to the Board’s proceeding without “a broader search”, or “national search” was a factual misrepresentation of what was a no-search situation, in favor of Mr. Malatras – and that, seemingly, the two non-voting members of the SUNY Board who were the presidents of the University Faculty Senate and the Faculty Council of Community Colleges were ignorant of my August 14th e-mail on the subject – and the Public Officers Law §74 violation.

Upon my google-search discovery of the August 17th and August 18th articles, I immediately embarked upon a further google search, this time for the direct e-mail addresses for each of the 17 trustees. I found e-mail addresses for five – and at 7:58 a.m. the next morning, Wednesday, August 19th, sent the five an e-mail whose subject line was the question: “Were SUNY Board of Trustees’ members furnished with my Aug. 14th e-mail as to Mr. Malatras’ unfitness to be chancellor – & the unlawfulness of the ‘confidential search’?”. The [e-mail](#) read, in full:

“TO: SUNY Board of Trustees
Gwen Kay/President – Faculty Senate
Christy Fogal/President – Faculty Council of Community Colleges
Jahad Hoyte/President – Student Assembly
Edward Spiro, Esq.
Eric Corngold, Esq.

Based on yesterday’s Albany Times Union article ‘[SUNY poised to name Cuomo loyalist Malatras as chancellor](#)’ and Monday’s New York Post article, ‘[SUNY Board set to appoint Cuomo right-hand Jim Malatras next chancellor: source](#)’, it appears that members of the Board of Trustees are unaware of my below two e-mails, sent to Board staff late Friday afternoon, August 14th, and early Monday morning, August 17th, **particularizing, with proof**, that the Board’s purported ‘confidential search’ for a chancellor involving Mr. Malatras is unlawful, violating Public Officers Law §74, and that he is a corrupt public officer who must be categorically rejected.

Am I correct in surmising that Board staff did not distribute either e-mail to you – and that you were, instead, pushed into meetings to approve Mr. Malatras’ appointment? Indeed, prior to sending the August 14th e-mail, I spoke with Board Coordinator Pamela Morrison (cell: 518-888-4650), who promised to both confirm the e-mail’s receipt AND, following preliminary review by staff, its distribution to the Board. The only confirmation I received was as to the e-mail’s receipt – and it is above attached.

As you are the only Board members whose e-mail addresses I was able to find on the internet, I ask that you immediately forward this e-mail to the Board’s other members – and place it on the agenda of today’s meeting at which Mr. Malatras’ appointment as chancellor is expected to be approved.

I am available to assist you – and will, meantime, forward this e-mail to the press and other appropriate parties for investigation and report as to who, at SUNY, reviewed the August 14th and August 17th e-mails, upon receipt, whether they were thereafter distributed to the Board, and whether the scheduling of the Monday night Board meeting was prompted by the August 14th e-mail.

Thank you.” (hyperlinking, bold, and capitalization in the original).

[At 9:01 am, I sent a second e-mail to Trustees Kay, Fogal, and Hoyte](#) – these being the respective presidents of the Faculty Senate, the Faculty Council of Community Colleges, and the Student Assembly who are not appointed by the Governor – asking them to forward my e-mail to Trustees Spiro and Corngold, as my e-mailing to them had bounced back as “rejected due to security policies”.

Later that same day, [Wednesday, August 19th, I sent Trustees Kay, Fogal, and Hoyte a further e-mail, by cc'ing them on e-mails to their respective organizational entities](#), requesting distribution to all their executive committee members, other committee members, and membership. Each of these three emails furnished my August 14th e-mail as the “Backstory to the SUNY Board of Trustees’ closed-door meetings, since Monday, to appoint James Malatras as SUNY’s new chancellor”.⁷

I received no responses from Trustees Kay, Fogal, and Hoyte, who could have, but did not, relieve me of the notion that my August 14th e-mail had been withheld from Board members, such as themselves – and could have, but did not, reassure me that my August 19th e-mail would be, or had been, forwarded to the other Board members, as I had asked them to do. Nor did I receive any response from other Board members or from the Board, as a whole, confirming that the August 14th e-mail was before them, to be taken up at their next meeting, as I had requested – or that it was otherwise under review.

Instead, on Friday, August 21st – doubtless emboldened by the [lapse of two days without any press report of my August 14th e-mail](#) – the SUNY Board of Trustees held a further meeting. The Board secretary’s “[Official Notice](#)” to the Board was dated August 18th for a “Full Board Open Formal” meeting, *via* teleconference, to begin at 10 a.m. The subject was not indicated. However, the subject: “Appointment of the 14th Chancellor of the State University of New York” appeared in the [August 21st untitled agenda](#).

As reflected by the [video](#), the August 21st meeting opened with Chair Tisch purporting that it had been “publicly called and noticed”. After the roll was taken, and the minutes of the three past regular meetings were approved, Chair Tisch announced that the “occasion” called for the Board to be joined by the Board’s “chairman emeritus”, who she introduced as “the honorable, the very, very honorable, the very, very, very honorable, H. Carl McCall”. She then read a written statement describing that the Board’s “first instinct” was “to have a traditional search process”, but that a “rational examination of the facts on the ground, led us to a different path”; that “the board felt it was imperative to act now in a reasonable, deliberate, and socially-aware moment to protect the SUNY system against the full array of challenges”, that “we must be reasonable, we must be thoughtful, we must be deliberate for our students, our faculty, our administrators, and our citizens”. She continued by reciting Mr. Malatras’ qualifications, including that he had been “a public servant”, with much to offer to SUNY’s “grand tradition”, including “scholarship”. Having finished reading from her statement, she thanked the “executive leadership team” which had “stepped in so ably...

⁷ I sent a similar [August 19th e-mail to the president and other officers of the United University Professions Union](#), stating that it had a “vital role to play in ensuring a proper role for SUNY’s new chancellor” inasmuch as it was “the nation’s largest higher education union, representing the faculty and professional staff of the SUNY system.”

in caring for our institutions and all that that means”. She gave special thanks to Mr. Megna who she described as “an able champion of allowing us to move forward...and everything one can hope for as a partner” – and thanking him on behalf of “the state and in particular SUNY”. She also praised her fellow trustees, stating “You are truly a model board” – and that they had acted to “preserve, protect, and defend...the integrity of the system on behalf of our faculty, students, and our community”. After inviting Mr. Malatras to sit beside her, the resolution of his appointment was read. Remarks by the trustees and by Chair Emeritus McCall followed – and then acceptance of the appointment by Mr. Malatras.

None of the participants at the August 21st meeting mentioned my August 14th e-mail, nor used the word “lawful” to describe how the Board had proceeded, nor mentioned Public Officers Law §74. All concealed that the Board had dispensed with any search, despite the fact that they had had 2-1/2 months, since June 3rd, to do so, falsely making it appear that they had simply not undertaken a “traditional search”, “national search”, “broader search” – or that they had proceeded by a “process... a little flawed”. Likewise, all concealed that Mr. Malatras was anything but qualified, indeed uniquely qualified.

So that all 17 trustees may be held to account, fully, for the Public Officers Law §74 violations at issue – and for their underlying and accompanying fraud – each must be required to identify when and how he/she received the August 14th e-mail – and what each did to determine its truth, beginning with the violation of Public Officers Law §74 it asserted. And they must each be asked what disclosure and discussion they had amongst themselves of their conflicts of interest born of personal, professional, and political relationships with Mr. Malatras and the myriad of others involved in the corruption he had aided, abetted, and covered up involving the state budget, the “force of law” commission/committee-scheme to raise salaries, and the [CJA v. Cuomo...DiFiore citizen-taxpayer action](#). Topping the list, of course, their relationships with Governor Cuomo and Messrs. Megna and McCall.

Needless to say, the 17 trustees would have readily discerned other conflicts of interest, impacting on fair and impartial judgment. As illustrative, Trustee [Crespo](#), a recently-resigned assemblyman, was and is – by his pension – a financial beneficiary of the legislative pay raises resulting from the [fraudulent 2018 report of the Committee on Legislative and Executive Compensation](#). And specific conflicts of interest are apparent from the [SUNY’s bios](#) of Chair Tisch, Trustee Litow, Trustee Belluck, and Trustee Spiro.⁸

⁸ Their [SUNY’s bios](#) reveal the following:

- [Chair Tisch](#) serves on the executive committee of the so-called Citizens Budget Commission and [Trustee Litow](#) serves on its board. [The Citizens Budget Commission](#) purports to be a “watchdog”, “research organization” and “nonpartisan resource”. As readily-discoverable from CJA’s website, I furnished the Citizens Budget Commission with the evidence of the corruption of the state budget, involving the “force of law” pay commissions, [repeatedly](#). Indeed, in August 2018, I furnished it with a hard copy of [the appeal brief and three-volume record on appeal in the CJA v. Cuomo...DiFiore citizen-taxpayer action](#) – the same as [I hand-delivered to the Rockefeller Institute on August 2, 2018](#), during Mr. Malatras’

Finally, with respect to Trustees Kay, Fogal, and Hoyte, to whom I successfully sent my August 19th e-mails, their fraud at the August 21st meeting by their weak, inadequate remarks, concealing the August 14th e-mail and all that had gone on with respect thereto – and Trustee Hoyt’s astonishing vote to abstain, rather than oppose, the appointment – is compounded by their after-the-fact attempts to distinguish themselves from the so-called “politically-appointed members of the SUNY Board of Trustees”. Evidence the [August 21st resolution by the Executive Committees of the Faculty Council of Community Colleges and Faculty Senate](#), headed by Trustees Fogal and Kay, respectively. Addressed to the Faculty Council of Community Colleges, the Faculty Senate, and the Student Assembly, it asserts: “THEREFORE BE IT RESOLVED that SUNY FCCC, SUNY SA, and SUNY UFS express no confidence in the politically appointed members of the SUNY Board of Trustees

presidency – and the same as I thereafter handed-up to the Committee on Legislative and Executive Compensation at its November 30, 2018 hearing, presided by Chair McCall ([VIDEO](#)), and to which I referred in testifying before Messrs. Malatras and Megna at the November 4, 2019 hearing of the Commission on Legislative, Judicial and Executive Compensation, of which they were and are members ([VIDEO](#)).

- [Trustee Belluck](#) serves not only a member of the New York State Commission on Judicial Conduct, but its [chair](#). The Commission on Judicial Conduct is the monitor of the state judiciary – and I so-stated in testifying before Messrs. Malatras and Megna on November 4, 2019 about its corruption. CJA has long chronicled this corruption, including by two Article 78 proceedings against the Commission on Judicial Conduct, in [1995](#) and [1999](#), each defended by the attorney general, who – in the absence of any legitimate defense, engaged in litigation fraud – for which he was rewarded by fraudulent judicial decisions, including at the New York Court of Appeals. This same scenario replayed in the *CJA v. Cuomo...DiFiore* citizen-taxpayer action – fraudulent judicial decisions, including at the Court of Appeals, covering up litigation fraud of the attorney general, who had no legitimate defense – and I testified about this *modus operandi*, on November 4, 2019, before Messrs. Malatras and Megna ([VIDEO](#)). Parenthetically, CJA’s filed two facially-meritorious, fully-documented judicial misconduct complaints arising from *CJA v. Cuomo...DiFiore*, with the Commission on Judicial Conduct in [2017](#) and [2018](#) – each unlawfully dismissed by it, without investigation – precisely what the 1995 and 1999 Article 78 proceedings had challenged – and the dismissals letters each reflect Mr. Belluck’s chairmanship.
- [Trustee Spiro](#) serves as a member of the Appellate Division First Department’s attorney disciplinary committee – and is a former chair of the attorney disciplinary committees of both the New York County Lawyers Association and New York City Bar Association. CJA has long chronicled the corruption of New York’s court-controlled attorney disciplinary system – and the complicitous role of New York’s bar associations. In [2016](#) and [2017](#), CJA filed two facially-meritorious, fully-documented attorney disciplinary complaints – the first against New York’s 62 district attorneys, based on the fraudulent “force of law” commission-based judicial pay raises, of which the district attorneys are beneficiaries, and the second against the then attorney general and his lawyer staff for their litigation fraud in *CJA v. Cuomo...DiFiore*. Each complaint was unlawfully dismissed, without investigation, including by the First Department attorney disciplinary committee on which Mr. Spiro was then, as now, a member.

who voted in favor of the appointment of a new chancellor on August 21, 2020” and gives, as part of its “RATIONALE”: “disregard[ing] norms, practices and traditions in higher education”. The implication is that these three entities of SUNY’s “shared governance” are adherents of “norms, practices, and traditions in higher education”. This is false, both as to the executive committees of all three entities and their presidents Fogal, Kay, and Hoyte. All concealed, including by their August 21st resolution, [my August 19th e-mails to them](#) – and plainly had not, as requested, forwarded the e-mails to their members so that they could “be apprised of, and appropriately advocate with respect to, what has been going on”.

Apparently, too, there was a joint statement of Trustees Kay and Fogal – and quotes from it appeared in the August 21st [Albany Times Union](#) article “[Malatras named SUNY chancellor as faculty votes no confidence in the board](#)”, as follows:

“Play by the rules. We’ve been told that since we were young and we believed it, taking delight in a game — including the game of life — that was played fairly. Yet life isn’t always fair,” Christy Fogal and Gwen Kay, representatives of the faculty from the SUNY community colleges and universities respectively, said in a joint statement.

‘Because why play by the rules? The game is fixed, right?’ they wrote, quoting actor Matt Damon.”

Neither Trustees Kay or Fogal or Hoyte – the SUNY Board’s not “politically-appointed members” – “played by the rules”. There are no “rules” permitting what they did, which was to betray their fiduciary responsibilities not only as members of the SUNY Board of Trustees, but to their constituencies of university faculty, community colleges, and students whose interests they purported to represent as presidents. They knowingly and deliberately concealed the truth of what was going on from each of their constituencies – and that truth is that they could have EASILY secured what they publicly proclaimed to have wanted: an appropriate search for a new SUNY chancellor. To achieve that goal, all it required was “whistleblowing” about my [August 14th](#) and [August 19th e-mails](#), which was their ethical and legal duty to do. Only conflict-of-interest, violative of Public Officers Law §74, can account for their failure to have identified those dispositive e-mails at the August 21st meeting and by their subsequent resolution and public statements.

To assist JCOPE in discharging the mandatory duties imposed upon it by [Executive Law §94.13\(a\)](#) “[Investigations](#)”, requiring that it provide the persons and entities complained-against “a fifteen day period in which to submit a written response” and setting a time-table of “sixty calendar days” for the commissioners to “vote on whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred” – which, at bar, plainly exists – a copy of this sworn, evidence-substantiated complaint is being simultaneously e-mailed to the SUNY Board of Trustees for appropriate distribution.

Finally, I take this opportunity to note that this sworn, fully-documented conflict of interest ethics complaint is related to, and arises from, a prior sworn, fully-documented conflict of interest ethics complaint I filed with JCOPE, on [June 27, 2013](#), against the constitutional and public officers and staff of New York's executive and legislative branches, beginning with Governor Cuomo and named persons including the Governor's then budget director, Mr. Megna – and unknown persons, perhaps including Mr. Malatras. To date, more than seven years later, the complaint, with its particularized list of reasons for the Public Officers Law §74 violations it identified – and resting on facts and evidence specified by my accompanying [April 15, 2013 criminal corruption complaint](#) that I had filed with then U.S. Attorney Preet Bharara⁹ – remains pending before JCOPE, no advice to the contrary, written or otherwise, having been given to me pursuant to [Executive Law §94.13\(b\) "Substantial basis investigation"](#), expressly stating:

“If the commission determines at any stage that there is no violation, that any potential violation has been rectified, or if the investigation is closed for any other reason, it shall so advise the individual and the complainant, if any in writing within fifteen days of such decision.”

The status of this June 27, 2013 complaint was the subject of repeated inquiry and correspondence from me, including a further sworn, fully-documented [December 11, 2014](#) conflict of interest ethics complaint that I filed with JCOPE, against JCOPE itself and against Governor Cuomo and legislative leaders pertaining to the statutorily-required JCOPE review commission that had not been appointed.¹⁰ This December 11, 2014 complaint also remains pending before JCOPE, no advice to the contrary, written or otherwise, having been given me.

Likewise, I was never advised as to how JCOPE was handling its obvious conflicts of interests with respect to either complaint. Certainly, as to this complaint, there are comparable, if not more severe, conflicts of interest, many apparent from the posted [bios of the JCOPE Commissioners](#)¹¹ and also pertaining to long-time staff, whose names and bios are not posted on [JCOPE's website](#).¹²

⁹ Both the [June 27, 2013 ethics complaint to JCOPE](#) and [April 15, 2013 corruption complaint to U.S. Attorney Bharara](#) were [enclosures to the July 19, 2013 corruption complaint to Albany County District Attorney Soares](#), referred to at fn. 3, *supra*. And all three of these complaints were furnished by me to Governor Cuomo's so-called Commission to Investigate Public Corruption, to which District Attorney Soares was a member – and identified by [my testimony at its September 17, 2013 hearing \(VIDEO clip\)](#).

¹⁰ [The December 11, 2014 ethics complaint was also supplied to District Attorney Soares, as well as U.S. Attorney Bharara.](#)

¹¹ Posted on JCOPE's webpage of Commission member bios is its ["Code of Conduct for Members"](#) and its addendum ["Recusal Policy and Procedure"](#).

¹² Even the top position of executive director is not currently posted because, as I learned today upon calling JCOPE, it is vacant, though being temporarily handled by Monica Stamm, JCOPE's general counsel. Apparently, JCOPE is having its own "search" issues pertaining to this top position, involving, as with SUNY, charges of conflicts of interest and influences, emanating from the Governor – as reflected by the June 10, 2020 [Albany Times Union](#) article ["State ethics panel split over charges of Cuomo influence"](#). Suffice to

For the convenience of the current JCOPE commissioners who were not on JCOPE in 2013, 2014, and 2015, CJA's website posts [the record of the June 27, 2013 and December 11, 2014 complaints](#) – and [my correspondence concerning the JCOPE review commission, my October 14, 2015 testimony before it, and a succession of FOIL requests reflecting what had taken place](#). And, of course, the links are accessible from [CJA's webpage for this complaint](#).

Thank you.

cc: SUNY Board of Trustees
University Faculty Senate
Faculty Council of Community Colleges
Student Assembly
United University Professions Union
The Press – & the professors & others on whom it relies and quotes

note that by contrast to SUNY, which – as detailed by [my August 14th e-mail](#) – did not even post a listing on its website of the vacancy in the office of chancellor, JCOPE's website posts a listing for its executive director vacancy, accessible from its bottom link "[Employment Opportunities](#)".