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2020 MAY 26 PM 3:25

SECRETARY OF STATE
STATE OF WEST VIRGINIA

May 26, 2020

By hand delivery

Hon. Mac Warner
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Re: EMERGENCY REQUEST FOR INVESTIGATION:
False advertisement by Woody Thrasher for Governor

Dear Secretary Warner:

I write to submit this emergency request for an investigation of a false advertisement by Woody Thrasher for Governor. In a last-ditch effort to influence voters in the impending Republican primary election, the Thrasher campaign is blanketing the airwaves with a false claim that Governor Justice approved the early release of a murderer. The claim appears to refer to the release of Michael David Day, a former inmate at the Western Regional Jail. Day was incarcerated January 27, 2020, for an alleged parole violation, and was released March 27, 2020, after serving the statutory-maximum 60-day sentence for a first-time parole violation. *See* W. Va. Code. § 62-12-19(a)(1)(C). Day was not released early, nor did Governor Justice release him, nor did Governor Justice approve his release.

Rather, Day's name was erroneously included in a FOIA response by the Division of Corrections and Rehabilitation that listed parole violators released to reduce jail populations amid the COVID-19 pandemic. The Department of Military Affairs and Public Safety corrected that error in a public statement on May 4, 2020.¹ The Thrasher campaign was aware of the correction and commented on it publicly,² yet continued to falsely claim in its advertisements that Governor Justice approved the early release of a murderer. On May 19, 2020, the Committee to Re-elect Jim Justice therefore sent a cease-and-desist letter to the Thrasher campaign reiterating that Governor

¹ *See Statement on inmate management during COVID-19 pandemic*, West Virginia Dep't of Military Affairs and Public Safety (May 4, 2020), available at <https://dmaps.wv.gov/News-Announcements/Pages/Statement-on-inmate-management-during-COVID-19-pandemic.aspx> (enclosed as Exhibit A).

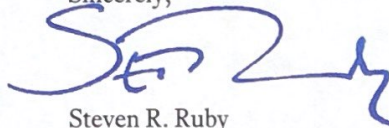
² *Officials: Thrasher attack on Justice is inaccurate*, The Parkersburg News and Sentinel (May 5, 2020), available at <https://www.newsandsentinel.com/news/local-news/2020/05/officials-thrasher-attack-on-justice-is-inaccurate> (enclosed as Exhibit B).

Hon. Mac Warner
May 26, 2020
Page 2

Justice had nothing to do with Day's release and demanding the end of the false advertising.³ Yet the Thrasher campaign continues to run the advertisement in heavy rotation as recently as yesterday, exploiting a statement it knows is false to seek a last-minute boost with voters.

State law prohibits knowingly making a false statement in regard to a candidate that is intended to or tends to affect voting in an election. W. Va. Code. § 3-8-11(c). The Secretary of State possesses authority to investigate the administration of election laws and report violations of those laws. W. Va. Code. § 3-1A-6(c). Accordingly, the Committee to Re-elect Jim Justice requests that your office investigate the Thrasher campaign's illegal false advertisement regarding Governor Justice. With the primary election only two weeks away and the advertisement appearing frequently on television, we ask that this matter be treated as an emergency and handled as expeditiously as possible.

Sincerely,

A handwritten signature in blue ink, appearing to read 'SR Ruby', with a stylized flourish at the end.

Steven R. Ruby
Counsel to Committee to Re-elect Jim Justice

³ Letter from Steven R. Ruby to Ann Ali (May 19, 2020) (enclosed as Exhibit C).

ELECTIONS COMPLAINT FORM

WV SECRETARY OF STATE'S OFFICE
1900 Kanawha Blvd., East
Building 1, Suite 157-K
Charleston, WV 25305-0770



Telephone: (304) 558-6000
Toll Free: 1-877-FRAUD-WV
FAX: (304) 558-0900
www.sos.wv.gov
Email: investigationssupport@wvsos.gov

WV Code §3-8-8 strictly prohibits anyone employed by the Office of the WVSOS from disclosing information of any complaint, investigation or report.

Today's Date: May 26, 2020 Date(s) of Alleged Offenses: Approximately April 1 to present

Nature of Complaint (PLEASE SELECT ONE): ☒ Election ☐ Voter ☐ Campaign Finance

Complainant's Name: Steven R. Ruby Phone Number: 6817534000

Address: 106 Capitol St. City: Charleston State: W Zip: 25301

Person(s) Allegations are Against: Woody Thrasher for Governor

Position Held (current): ☐ N/A Elected Position Sought: Governor ☒ N/A

Describe your allegations to the best of your ability: See attached letter.

☐ (cont on attached sheet)

Relief Sought: Investigation and other relief as appropriate in light of results thereof.

I acknowledge that all of the above information is true and accurately reflects the matter(s) in question, to the best of my knowledge.

X

Complainant Signature

STATE OF WEST VIRGINIA, COUNTY OF Kanawha

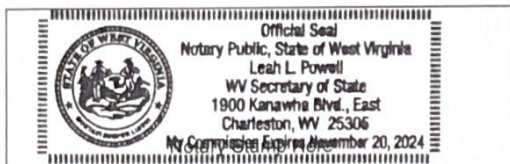
The foregoing instrument was acknowledged before me, this 26 day of May, 2020 by

Steven R. Ruby

COMPLAINANT NAME

X Leah L. Powell

Notary Public



MY COMMISSION EXPIRES

11/20/2024

DO NOT WRITE BELOW THIS LINE

Case No. Assigned: _____ Date: _____ By: _____

Investigator Assigned: _____ Date: _____ By: _____

Date of Completion: _____ Outcome: _____

Revised 9/5/2019

EXHIBIT A

[Click Here for Current Coronavirus Disease \(COVID-19\) Alerts and Updates](#)

DMAFS > News > Statement on inmate management during COVID-19 pandemic

Statement on inmate management during COVID-19 pandemic

5/4/2020

May 4, 2020

Statement on inmate management during COVID-19 pandemic

CHARLESTON, W.Va. – Information provided by the W.Va. Division of Corrections and Rehabilitations in response to an April 16 Freedom of Information Act request incorrectly included the name of a parolee.

Michael David Day, 35, was granted parole in December 2017, after serving 15 years for a 2003 first-degree murder conviction. Day was admitted to the Western Regional Jail on Jan. 27, 2020 on an alleged parole violation. Day was released on March 27, having served the full 60-day graduated sanction as per §62-12-19(a)(1)(C).

As a result, Day is not among the parolees released early from graduated sanctions as a response to the COVID-19 pandemic. Because his release coincided with those, Day was incorrectly included in the FOIA response.

Day is among several offenders convicted and sentenced as adults for crimes committed while they were juveniles, and who have since become eligible for parole through 2014 legislation enacted in response to the U.S. Supreme Court's 2012 decision in *Miller vs. Alabama* (567 U.S. 460).

###

LAWRENCE MESSINA (304) 957-2515 Lawrence.C.Messina@wv.gov

EXHIBIT B

The Parkersburg News and Sentinel

Officials: Thrasher attack on Justice is inaccurate

CHARLESTON — A Republican candidate for governor challenging Jim Justice released a new TV ad Monday accusing Justice's Division of Corrections of releasing a person convicted of murder as part of a release of non-violent offender to help pre-empt a possible coronavirus spread in state prisons, but state law enforcement officials said the inmate in question was not part of that group.

Woody Thrasher, a businessman and former secretary of the Department of Commerce under Gov. Justice, is challenging Justice in the Republican primary for governor on Tuesday, June 9. Thrasher released a new TV ad on his YouTube channel Monday morning hitting Justice for the release of 70 nonviolent offenders from the state's prisons and regional jails in March.

On March 27, Department of Military Affairs and Public Safety Secretary Jeff Sandy said that 70 nonviolent offenders who were close to completing their sentences would be released. The decision was reached by Betsy Jividen, commissioner of the Division of Corrections and Rehabilitation, with consultation from the West Virginia Supreme Court of Appeals.

The decision came a day after the West Virginia chapter of the American Civil Liberties Union called on state officials to release some non-violent offenders in order to ease overcrowding in state prisons and regional jails to prevent the spread of the coronavirus. So far, state officials have said no inmates have tested positive for COVID-19 and only one correctional official has tested positive, an individual who was put on self-quarantine.

In the ad, Thrasher accused Justice of not thoroughly vetting the kinds of inmates who were being released early.

"Justice didn't even check on who he let out," Thrasher said in the ad. "One was a murderer who killed a homeless Vietnam veteran and a father of two. Murdered him in cold blood. We just can't trust Jim Justice to protect us."

The released offender in question was Michael David Day, 35, who was convicted in 2003 of first-degree murder and conspiracy in the death of Gerald King, Jr. in Cabell County in 2002.

According to a rejection of an appeal of his conviction by the West Virginia Supreme Court of Appeals, Day, Jarrett Roscoe Bailey and Sunney Freeman (who was a juvenile at the time) were accused of murdering King at his encampment using fists, kicks, beer bottles and sticks. According to a 2002 report from the National Coalition for the Homeless, witnesses in the trial said, *"somebody killed him just to be mean."*

Day was up for parole in Dec. 9, 2017 and was released sometime after that. According to The Ironton Tribune, Day was picked up again in 2018 for drug charges and for possession of a firearm as a felon and sent back to West Virginia for parole violations on Jan. 27 and was at the Western Regional Jail.

According to a statement from DMAPS Monday, Day was not one of the 70 inmates released for nonviolent offenses. DMAPS spokesman Lawrence Messina said Day's name was inadvertently included on the list of released inmates released to prevent a future coronavirus spread.

Instead, Day was released around the same time as part of a law passed in 2014 by a Democratic-controlled legislature. House Bill 4210, relating to juvenile sentencing reform, prevents *"juveniles convicted of first-degree murder from being sentenced to life without parole, and to provide considerations for courts to make when sentencing juveniles*

tried and convicted as adults.” Day was 17 when he was arrested for King’s murder.

“Information provided by the W.Va. Division of Corrections and Rehabilitations in response to an April 16 Freedom of Information Act request incorrectly included the name of a parolee,” Messina said. “As a result, Day is not among the parolees released early from graduated sanctions as a response to the COVID-19 pandemic. Because his release coincided with those, Day was incorrectly included in the FOIA response.”

The Thrasher campaign, in a statement released Monday afternoon, was skeptical about the response from DMAPS.

“Jim Justice released a first-degree murderer into our communities, and only after Woody Thrasher publicly questioned it did the administration suddenly feel the need to change its story,” said Ann Ali, spokeswoman for the Thrasher campaign. “It sure seems like they’re playing politics with the safety of our families.”

Day’s information was still available on the West Virginia Regional Jail and Correctional Facility Authority website as of Monday morning, but a check of the website Monday afternoon showed that no results showed up for Day.

The Justice campaign accused Thrasher of dishonestly attacking Justice and called on Thrasher to apologize for the ad.

“This ad is another dishonest attack on Governor Jim Justice by Woody Thrasher,” said Roman Stauffer, campaign manager for Justice. “This attack is an example in a long list of things where Woody Thrasher has failed West Virginians once again. Woody should take a basic civics class and learn about the three branches of government. He should apologize to the people of West Virginia for this false and misleading

ad.”

Steven Allen Adams can be reached at sadams@newsandsentinel.com.

NEWSLETTER

Today's breaking news and more in your inbox

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EXHIBIT C



106 Capitol Street • Charleston • West Virginia • 25301
TEL: (681) 753-4000 • info@justiceforwv.com

May 19, 2020

By email and overnight mail

Ms. Ann Ali
Campaign Manager
Woody Thrasher for Governor
110 Patrick Street Plaza
Charleston, West Virginia 25387
ann@woodythrasher2020.com

Re: Demand to cease and desist false campaign advertisements

Dear Ms. Ali:

This letter concerns two video advertisements released by the Thrasher campaign, both of which contain false statements concerning Governor Justice. Governor Justice hereby demands that the Thrasher campaign cease and desist all publication or dissemination of these false advertisements. One of the advertisements falsely claims that Governor Justice released a murderer who killed a homeless Vietnam veteran. The other, evidently referring to the same inmate, falsely claims that Governor Justice approved the early release of a murderer.

Both false advertisements appear to concern inmate Michael David Day. Day was incarcerated January 27, 2020, for an alleged parole violation. Under state law, the maximum period of incarceration for a first-time parole violation is 60 days. Day served the maximum time permitted by law and was released 60 days after his incarceration, on March 27, 2020. In other words, Day was not released early, nor did Governor Justice release him, nor did Governor Justice approve his release. Rather, his release, including the date of his release, was required by state law. The West Virginia Department of Military Affairs and Public Safety made this clear in a statement issued more than two weeks ago, on May 4, 2020.

State law prohibits knowingly making a false statement in regard to any candidate that is intended or tends to affect voting in any election. W. Va. Code § 3-8-11(c). In accordance with this prohibition, and in light of the information provided herein, please promptly acknowledge that the Thrasher campaign will cease and desist all publication and dissemination of these false advertisements.

Sincerely,

Steven R. Ruby
Counsel to Committee to Re-elect Jim Justice