

STATE OF RHODE ISLAND
PROVIDENCE, Sc

BOARD OF ELECTIONS

IN RE: THE CANDIDACY OF
ROBERT J. HEALEY, JR.
OBJECTION FILED 9-15-14

REPLY TO OBJECTION FILED

Now comes the respondent, Moderate Party of RI, as the apparently named party, and Robert J. Healey, Jr., the subject of the objection, and makes the following reply to the filing.

Whereas the Objection is not necessarily in the form of an answerable complaint, the Respondents first generally deny all allegations in the Objection and attempts to provide answers to the objections raised in more specificity

Respondents admit point 1 of the History and Brief Statement of Facts (hereinafter "the History");

Respondents admit point 2 of the History insofar as the Exhibit A speaks for itself;

Respondents admit point 3 of the History;

Respondents admit point 4 of the History;

Respondents admit point 5 of the History

Respondents neither admit nor denies point 6 of the Objection but leaves the Objector to his proof;

Respondents admit point 7 in that the objection speaks for itself, however the Respondent does not waive any defenses related to such a statement, including but not limited to laches, standing, and all other objections raised in this reply.

Respondents has no knowledge or belief to make determinations as to the who the Secretary of State identifies as the Moderate Party's President and leaves the Objector to his proof.

ISSUE 1 – Allegations, to the extent they can be determined, are denied generally but more specifically denied as follows:

Objectors have confused the replacement letter with the resignation letter and attempt to make both appear as one. The Moderate Party's letter is a "replacement" letter. Mr. Spooner's filing is a "withdrawal".

The documents speak for themselves. The resignation of Mr. Spooner is unequivocal in his letter of withdrawal.

The replacement letter names Robert J. Healey, Jr. as the replacement candidate, conditional on his meeting all the requirements, if any, of a candidacy. The purpose of the line is to clearly indicate to the Board of Elections and the Secretary of State that if the replacement candidate did not meet the criteria, the Party would retain the right to be on the ballot with either a new candidate or, much like a deceased

candidate, in name only. The conditional language does not speak to the withdrawal nor the resignation other than to protect the rights of the established political party.

The Objectors seek relief in the form of having Robert J. Healey, Jr. removed from the ballot, but the argument rings hollow in that it would appear they would prefer to run against James Spooner. The Moderate Party under law has the right to the second spot on the ballot, but the sole determination is whether the line will reference Healey or Spooner as the candidate. It would be an miscarriage of justice to allow the election ballot to reflect a candidate who has withdrawn under a disability than to have the electors choose a real and viable candidate.

Whereas it is clear by the letter of Mr. Spooner that he has withdrawn, and it is conclusive by the letter of the Moderate Party that Mr. Healey was the replacement candidate under its powers to replace, the protective language has little or no bearing on the actual words of the documents.

ISSUE 2 – The Objectors provide the Moderate Party’s letter as Exhibit A. The letter states:

Therefore, I, acting a Chairman of the Moderate Party of Rhode Island State Committee as authorized RI Gen. Laws § 17-15-38 and § 17-12-5 **and by the Moderate Party of Rhode Island State Committee’s Friday, June 27, 2014 meeting** hereby replaces James Spooner

The State Committee, having delegated its power to do so at a meeting, in short made the Chairman a subcommittee to handle this situation should it occur at any time (in essence, a subcommittee of one). This is further bolstered by the full and complete power of the party chair to act in such situations if the State Committee is unavailable.

Further, the Objector offers no proof being offered that the State Committee did not meet to ratify, concur, and otherwise modify the action.

The Letter offered clearly indicates the source of the authority to act on behalf of the State Committee.

While long established parties may have the luxury to have many bodies to fill State Committees, a newcomer rarely has this luxury. Subcommittees, where established, often consist of one or more party members. In this case, the State Committee has authorized its Party Chair to also serve as the one man subcommittee to take such actions.

Under such authority, the Moderate Party submitted its letter, claiming not only the authority granted it by the State Committee, but also under all authority granted a political party chair.

Further, it needs to be noted that a political party is a private interest and while under a duty to obey state law, may organize itself internally as it sees fit.

It is argued that the Respondents followed the provisions of law in effectuating the nomination of Robert J. Healey, Jr. as the candidate of the party.

Whereas the authority is found in the letter to the Board, no evidence to the contrary as to the authority, the Respondents move to dismiss this objection.

ISSUE 3 – The objections raised in this are similar to that in Issue 2 and, as such, the replies to Issue 2 are incorporated into this, along with the additional information determined to be relevant.

Objector relies on the incorporation papers of found at the Rhode Island Secretary of State's corporate division. Respondents simply answer that such paperwork is irrelevant. The controlling documents, not filed by the Objector, is the actual filing of amendment of organization filed with the Board of Elections.

The Moderate Party filed such reorganization document at the Board of Elections on June 26, 2014 at 3:16 PM (a day before the State Committee meeting created the authority in the Party Chair to serve on the subcommittee of one, being June 27, 2014).

While there can be corporations as political parties, there is no requirement of such as to a political party. The Cool Moose Party, during its period as a state recognized political party was not a corporation. The controlling document is not a filing of a corporation but the requisite filings at the Board of Elections.

Additionally, it should be noted that the corporation known as Moderate Party of RI is the property of someone, but not the people who filed the reorganizational documents with the Board of Elections. As such, we cannot speak to the issue of the corporate entity, only the political party.

It should be noted, however, that the corporation has failed to file its 2014 annual report required of all corporations. Because the political party is a separate and distinct interest, it has no corporate authority to make any filings on behalf of the corporation, only the political party, which it did with the Board of Elections.

Mr. Gilbert derives his authority from the Moderate Party, which derives its authority from the Board of Elections. As such, to attempt to confuse corporate law under Title 7 of the General Laws with election authority under Title 17 is an attempt to confuse. As such, the Respondents rely on Title 17 as the controlling authority.

Being irrelevant to the issue before this Board, the Respondents move to dismiss this objection.

ISSUE 4 – Respondents make no denial that Mr. Healey was an unaffiliated voter, unaffiliated with the Moderate Party until the filing of the replacement documents.

Petitioner disagrees with the Republican's interpretation of the Moderate Party's by-laws. The by-laws relied upon by the (an interestingly enough not included as an exhibit), do not read as the Objector purports.¹ The statement is found in Section II (2.2) of those by-laws.

It states, candidates for elective office appearing on the ballot as MPRI candidates must be members of MPRI and meet the residency and other requirements set forth in the Rhode Island Election Code.

Respondent contends that by assuming any candidacy, in accordance with RI law, a candidate is a member of that party. Rhode Island law would preclude a Healey candidacy if Healey was unable to be a party member (eg. If he were a registered Republican and unable to disaffiliate within the requisite timeframe). As an unaffiliated elector, he was free to declare his party at the time of candidacy. The objectors do not seem to challenge Healey's legal ability to become a member of the party.

¹ In fact, those by-laws, filed with the Board of Elections on November 4, 2009 at 11:21 AM, grant sweepingly broad powers to the Party Chair, a fact omitted in the arguments related to issues 1 and 2 of the objection.

As an unaffiliated voter, both at the time of the replacement and 90 days prior to the final day of declaration of candidacy, the issue is moot.

The objector relies on the internal documents of a private political party to challenge the candidacy under law. This objection should be limited to members of the party.

Additionally, while it is an interesting argument that a political party can attempt to restrict its membership via by-laws, the controlling power is state election law. A political party cannot adopt valid regulations that would be in contravention with election law, for example, it could not provide by its by-laws that only whites could be members or that gay and lesbian could not be member. The by-laws may supplement laws but cannot serve in their stead.

Further, the objector is not a member of the Moderate Party and therefore has no right to object to the internal workings of the political party, a private entity under law.

For all of these reasons, the Respondents seek dismissal of this objection.

ISSUES RAISED VIA AMENDED LETTER

Respondents firstly object on procedural grounds (failure to obtain leave to amend, service, timeliness, and other procedural objections).

Respondents additionally object to the filing of an amendment to a verified objection without the sworn statement of the original objector.

Respondents, however, will answer without waiving said defenses.

EXTRA ISSUE(S) – The Objector, through his attorney, additionally claims that the replacement is in violations of § 17-14-1.1 and § 17-14-1(9).

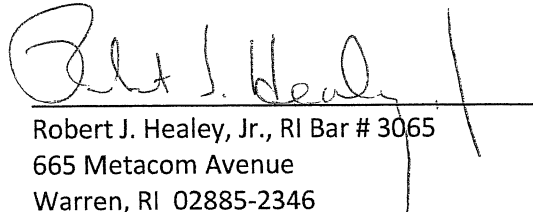
Respondent contends that provisions of § 17-14-1.1 are not in contradiction with the replacement. Healey was not a member of a political party 90 prior to either the declaration date or the actual date of the replacement. As an unaffiliated voter under Rhode Island law, he was free to submit his candidacy as an Independent or as a Moderate/Democrat/Republican (or any other state recognized party, although there are presently only three).

As to whatever issues are being raised by reference to § 17-14-1(9), the Respondent asserts that they relied completely on the acceptance of the replacement by the Secretary of State's Election Division and the subsequent placement of Healey on the ballot, the office's initiating the changes in the candidacy, and the fact that the Secretary of State's office changed Healey's voter registration *sua sponte*.

Finally, the objector fails to recognize the distinction made between a replacement authorized under law and the filing for candidacy. Following the objector's logic to its end, Healey did not collect the requisite 1000 signatures and other requirements of a person "declaring" rather than a person being "replaced".

For these reasons, the Respondents ask that this objection be dismissed.

WHEREFORE, the Respondents pray for the Board to dismiss the complaint in its entirety.



Robert J. Healey, Jr., RI Bar # 3065
665 Metacom Avenue
Warren, RI 02885-2346
(401) 245-0306
roberthealey@msn.com



State of Rhode Island and Providence Plantations
A. Ralph Mollis
Secretary of State

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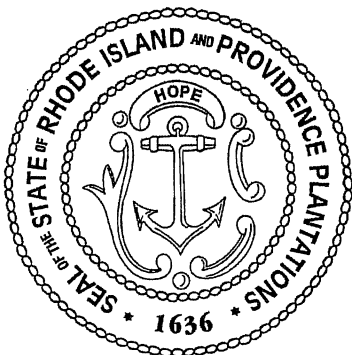
Date: **September 16, 2014**

Moderate Party Organization letter
(2 Page)

A TRUE COPY WITNESSED UNDER THE SEAL OF THE STATE OF
RHODE ISLAND AND PROVIDENCE PLANTATIONS

Secretary of State

By



ENDORSED



Moderate Party
of RHODE ISLAND

209 Yorktown Road, North Kingstown RI 02852

RECEIVED
SECRETARY OF STATE
ELECTIONS DIV.

2014 JUN 26 PM 3:02

Thursday, June 26, 2014

Rhode Island Board of Elections
C/O Michael Narducci

Please be advised that on January 25th, 2014 an emergency meeting was held of the then active members of the Moderate Party of Rhode Island State Committee.

At this meeting it was determined that Ken Block was no longer eligible to be chairman of the committee as he left the Moderate Party and has become a registered Republican.

A vote was taken to replace Ken Block as Chairmen. The vote was unanimous of those present to appointment William H. Gilbert of 209 Yorktown Road, North Kingstown Rhode Island 02852 as Chairmen of the committee.

As Chairmen with all the powers vested to me under RIGL 17-12-11(a)(2) the Moderate Party of Rhode Island State Committee hereby nominates William H. Gilbert of 209 Yorktown Road, North Kingstown Rhode Island 02852 for the state office of Lt. Governor.

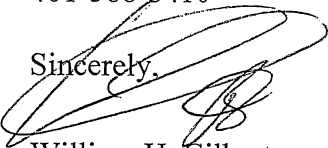
The current Moderate Party of Rhode Island State Committee consists of the following members;

William H. Gilbert (Chair)
209 Yorktown Road
North Kingstown, RI 02852
401-932-8364

Mark Tremblay
303 Courthouse Lane
Pascoag, RI 02859
401-568-3410

Stephen Costa Arruda
46 Mountain Avenue
Riverside, RI 02915
401-568-3410

Sincerely,


William H. Gilbert
Chairmen

Moderate Party of Rhode Island State Committee

6/26/14

Inquiry - View Voter Registration

**SOSMIKE /
PROVIDENCE**

Previous Name

Previous Address

Previous Party

Voter Information:

Prefix Name:
Voter's Name: WILLIAM H
GILBERT
Date of Birth: 04/05/1967
Voter ID: 23000539965
**Driver's License
Number:** 9421495
Last 4 Digits SSN: 8671
Unique ID:

Residence Address:

Street Number: 209
Street No Suffix A:
Street No Suffix B:
Street Name: YORKTOWN
RD
Unit:
Address Line 2:
City/Town: NORTH
KINGSTOWN
State: RI
Zip: 02852 2144

Party

Information:

Current Party
Moderate

Miscellaneous:

Gender: Male
Mail Ballot Type:
Registration Type
In Person

Status Information:

Eligibility Date: 07/21/1994
Current Status : Active
Last Active Date:
Reject/Cancel Date:
Reject/Cancel Reason:

Mailing Address:

Street Number **Street No Suffix A** **Street No Suffix B**
Street Name **Unit** **Address Line 2**
City/Town **State** **Zip Code**
Country:

Districts:

Precinct: 2302 **Cong Dist:** 2 **Sen Dist:** 36 **Rep Dist** 31
Rep Vote Dist: 002 **Ward/Council:** **Ward Dist:** **School Committee:**
Special Dist:

Memo: