

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
MALCOLM A. SMITH, Temporary President and :
Majority Leader of the New York State Senate, : Index No.: 09/_____
:
Plaintiff, :
-against- :
:
PEDRO ESPADA, Jr., New York State Senator, :
:
Defendant. :
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AFFIRMATION OF KEITH C. ST. JOHN, ESQ.

KEITH C. ST. JOHN, an attorney duly admitted to practice in this State, under penalties of perjury, deposes and affirms as follows:

1. My name is Keith C. St. John, and I reside in the town of Kinderhook, New York.
2. I am an attorney in good standing, licensed to practice law in the State of New York.
3. I have been continuously employed by the State Senate since April, 1999, and have had the titles of Minority Floor Counsel and Senior Counsel to the Minority.
4. My current title is Parliamentarian and Home Rule Counsel.

5. My appointing authority is Senator Malcolm A. Smith.
6. By Senate Resolution Number 1 (attached hereto as Exhibit A), adopted on January 7, 2009, Malcolm A. Smith was elected as Temporary President of the Senate for the years 2009-2010. To date, the Senate has not considered or acted upon any resolution to remove Senator Smith as Temporary President of the Senate.
7. As Senate Parliamentarian, I advise the Temporary President of the Senate, and the various members of the Senate that he designates to preside over sessions of the Senate, on matters of legislative and parliamentary procedure as established by the rules of the Senate and rules of legislative procedure.
8. In the absence of applicable provisions of the Rules of the New York State Senate, it is the custom and practice of the Senate to follow Mason's *Manual of Legislative Procedure* (National Conference of State Legislatures, 2000 ed.).
9. The Monday, June 8, 2009 session of the Senate was called to order by Senator Neil Breslin, the designated presiding officer.
10. The pre-scripted order of business for the June 8, 2009 session included: 1) recitation of the Pledge of Allegiance to the Flag; 2) the reading and approval of the Senate Journal; 3) presentation of petitions; 4) messages from the Assembly; 5) messages from the Governor; 6) reports of standing committees (including the confirmation of gubernatorial appointments to state offices); 7) reports of select committees; 8) communications and reports from state officers; 9) motions and resolutions (i.e., adoption of a concurrent

resolution of the Senate and Assembly sponsored by Senator Smith, and adoption of a legislative resolution sponsored by Senator Perkins); 10) consideration of the Senate Calendar; 11) miscellaneous housekeeping (i.e., procedural motions to amend bills on the Senate Calendar and motions to substitute Assembly bills for Senate bills); 12) announcements; and, 13) adjournment.

11. I personally and regularly prepare the script for the sessions of the Senate. On June 8, 2009, prior to session, I delivered a draft copy of the session script to the Journal Clerk and Clerk of the Senate, Thomas Testo, as well as to the designated presiding officer for the day, Senator Breslin.
12. Just before the June 8 session was called to order by the presiding officer, Patricia Przekop, Director of Calendar Operations, informed me that the Deputy Minority Leader, Senator Libous, wished to make a motion to offer two bills for which amendments would be offered on behalf of members of the Minority Conference.
13. Upon receiving this information, I passed it along to presiding officer, Senator Neil Breslin, so that he would be prepared and know to recognize the Deputy Minority Leader, because this item was not in the original script.
14. Once the presiding officer gaveled the Senate into session, the house proceeded through the regular order of business as scripted.
15. A quorum being present, the Senate proceeded to the order of Motions and Resolutions.

16. Just as the presiding officer was preparing to recognize the Deputy Majority Leader, for the purpose of consideration of Concurrent Resolution 2408, establishing a plan setting forth an itemized list of grantees for certain appropriations in the 2009-2010 state fiscal year, the Deputy Minority Leader rose from his seat and called to be recognized by the presiding officer.
17. Based upon the information given to me by the Director of Calendar Operations—that the Deputy Minority Leader planned to make a motion—the presiding officer recognized the Deputy Minority Leader for the purpose of offering the two pre-identified housekeeping amendments.
18. Instead of offering either of the two expected housekeeping amendments, the Deputy Minority Leader stated that he had just handed up a so-called “privileged” resolution at the Senate Desk, and requested that the Journal Clerk read the resolution in its entirety.
19. Rule VI, section 9 (a) of the Rules of the Senate for the year 2009 require that resolutions be filed in quadruplicate, furnished to the Temporary President or referred to a standing or select committee by the Temporary President or his designated officer, and reported by the committee of reference designated by the Temporary President for placement on the Senate Resolution Calendar.
20. As is the established custom and practice of this Senate, and as reported to me by the Senate Journal Clerk in my capacity as Senate Parliamentarian, a privileged resolution is a resolution offered by a Senator for adoption by the house with the consent of the Temporary President, without having been previously introduced and referred to a

standing or select committee of the Senate by the Temporary President or his designee as otherwise required by the Rules of the Senate.

21. For the many legislative sessions during which I have served as either Senate Minority Floor Counsel or Senate Parliamentarian, it has always been the custom and practice for a privileged resolution—whether offered by a Senator in the Majority or Minority Conference—to require the consent of the Temporary President, or his designee, before being allowed for consideration on the Senate Floor.
22. Upon information and belief, generally accepted rules of parliamentary procedure for legislative bodies regard a privileged resolution as being a resolution granted precedence—with the consent of the legislative leader—over an ordinary legislative resolution because it concerns a matter of great importance or urgency.
23. Upon hearing the reading of the resolution title by the Journal Clerk, it became clear to me that the Deputy Minority Leader’s resolution was not offered for consideration by the house in accordance with the Senate Rules or in conformity with generally accepted parliamentary procedure.
24. Neither the Senate Majority Leader and Temporary President, the presiding officer nor I was given a copy of the Deputy Minority Leader’s resolution read by the Journal Clerk.
25. Based upon my experience as Senate Parliamentarian, I immediately advised the presiding officer to rule the so-called privileged resolution out of order as, upon

information and belief, it was neither filed in quadruplicate, as required by Senate rule; furnished to the Temporary President or referred to a standing or select committee by the Temporary President or his designated officer and reported by the committee of reference designated by the Temporary President for placement on the Senate Resolution Calendar; nor before the house for consideration with the knowledge and consent of the Temporary President or his designee.

26. Once the Journal Clerk completed his reading of the resolution title, the Deputy Majority Leader moved for the Senate to stand at ease.

27. Upon the Deputy Majority Leader's motion, the presiding officer announced that "the Senate will stand at ease."

28. Immediately following announcement of the presiding officer's ruling, the Deputy Minority Leader objected to the Senate standing at ease, and asked for a vote to be taken—by a show of hands—on the Deputy Majority Leader's motion for the Senate to stand at ease.

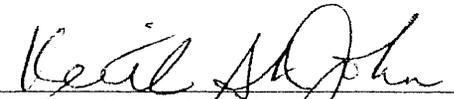
29. Thereupon, the presiding officer ruled from the chair that the Deputy Minority Leader's so-called privileged "motion" was out of order, as not being "privileged" or otherwise properly before the house.

30. Upon information and belief, the presiding officer's use of the term "privileged motion" was intended to refer to the Deputy Minority Leader's so-called "privileged resolution."

31. Immediately following the presiding officer's announcement of his ruling that the Deputy Minority Leader—his resolution—was out of order, the Deputy Minority Leader appealed from the ruling of the Chair.
32. This appeal taken by the Deputy Minority Leader became, then, the second appeal pending before the house for determination—the first appeal being on the presiding officer's ruling that the Senate was at ease, and the second appeal being on the presiding officer's ruling that the Deputy Minority Leader was out of order as his resolution was not properly before the house
33. The presiding officer proceeded forthwith to put the question before the house: "Whether the decision of the Chair shall stand as the judgment of the Senate?"
34. At the direction of the presiding officer—and request of the Deputy Minority Leader—the question was put to the house for decision by a show of hands, with the presiding officer directing all those in favor of overruling the decision of the Chair to so signify by raising their hands.—
35. Upon the completion of a tally of the votes by the Journal Clerk, the presiding officer directed the clerk to announce the results.
36. The Deputy Minority Leader immediately then thanked Senator Breslin, recognizing him and referring to him as "Mr. President."

37. Immediately following the clerk's announcement of the results of the vote on the appeal of the Chair's ruling, the Deputy Majority Leader moved to adjourn.
38. Under Senate Rule V, §8 (a), a motion to adjourn takes precedence over all other motions when a question is before the Senate.
39. Under Senate Rule V, §8 (b), a motion to adjourn "shall be decided without debate, and shall always be in order" except under limited circumstances set forth in Senate Rules V, VII and IX. None of these circumstances were present at the time the Deputy Majority Leader moved to adjourn the Senate's session.
40. Acting on the Deputy Majority Leader's motion, consistent with the custom of the house, the presiding officer announced that the house was adjourned and gaveled the chamber out of session.
41. Attached hereto as Exhibit B is a true and correct copy of a digital video disc of the June 8, 2009 session of the New York State Senate, prepared by New York State Senate Media Services. Another and separate digital video disc recording also attached hereto as Exhibit C truly and correctly depicts alleged proceedings in the Senate chamber that occurred after the Senate adjourned on June 8, 2009.

42. Also attached hereto as Exhibit D is a true and correct transcript of the legislative proceedings held during the June 8, 2009 session of the New York State Senate.

By: 
KEITH C. ST. JOHN, ESQ.

Dated: June 10, 2009
Albany, New York