

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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MALCOLM A. SMITH, Temporary President and :  
Majority Leader of the New York State Senate, : Index No.: 4912-09  
:  
Plaintiff, :  
-against- :  
:  
PEDRO ESPADA, Jr., New York State Senator, :  
:  
Defendant. :  
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**AFFIRMATION OF MICHAEL FALLON, ESQ.**

MICHAEL FALLON, an attorney duly admitted to practice in this State, under penalties of perjury, deposes and affirms as follows:

1. My name is Michael Fallon, and I reside in the town of Bethlehem, 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 December, 2008; I also previously worked for the Senate from December 1992 to July 2003, and from February 2004 to December 2006. I have held the titles of Assistant Counsel to the Minority, Floor Counsel to the Minority, Deputy Counsel to the Minority and Legislative Counsel to the Minority.
4. My current title is Legislative Counsel to the Majority.
5. My appointing authority is Senator Malcolm A. Smith.

6. As Legislative Counsel, I advise the Temporary President of the Senate, the Deputy Majority Leader and the various members of the Senate on the processes of developing and moving legislation through the committee process and ultimately to the floor for passage. I also supervise and advise the procedure in the day-to-day sessions on the Senate floor.
7. The Monday, June 8, 2009 session of the Senate was called to order by Senator Neil Breslin, the designated Presiding Officer. I was the lead counsel advising the Floor Leader, who is Deputy Majority Leader Jeffrey Klein.
8. Keith St. John, the Senate Parliamentarian, regularly prepares the order of business on the Senate floor. Except for specific matters to come before the Senate (including, bills, resolutions and nominations), the Senate's order of business is determined by the Rules of the Senate for 2009, as adopted by Senate Resolution 9 of 2009.
9. The 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.
10. Once the presiding officer gaveled the Senate into session, the house proceeded through the regular order of business as provided for in the Senate Rules.
11. A quorum being present, the Senate proceeded to the order of Motions and Resolutions.

12. 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 for 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.
13. The Deputy Minority Leader stated that he had just handed up a “privileged” resolution at the Senate Desk, and requested that the Journal Clerk read the resolution in its entirety, and move for its immediate adoption.
14. The Rules of the Senate require that resolutions be filed in quadruplicate, furnished to the Temporary President or his designated officer, and reported by the Finance Committee to put onto the Senate Resolution Calendar.
15. As has been the custom and practice for as long as I have worked for the Senate, 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.
16. Upon information and belief, parliamentary procedure for legislative bodies regards a privileged resolution as being a resolution granted precedence—with the consent of the Temporary President or his designee—over an ordinary legislative resolution because it concerns a matter of great importance or urgency.
17. The designee selected by the Temporary President for the purposes of deeming a resolution appropriate for privilege is Deputy Majority Leader Jeffrey Klein.
18. Deputy Majority Leader Klein customarily reviews resolutions that have been requested to be privileged in advance of the start of session. Typically such resolutions would be

received for Deputy Majority Leader Klein's review during the day previous to session, or on the morning of session.

19. Neither the Senate Majority Leader and Temporary President, the Deputy Majority Leader, the Presiding Officer, the Parliamentarian, nor I was given a copy of the Deputy Minority Leader's resolution any time prior to the start of session on June 8, 2009 or prior to it being read by the Journal Clerk.
20. Senate Minority Counsel, Adam Richardson, handed me a copy of the Deputy Minority Leader's resolution, simultaneous to the Deputy Minority Leader requesting that the resolution be read by the Journal Clerk. Accordingly, at the same time the resolution was being placed in my hand, I heard it being read by the Journal Clerk.
21. None of the proper procedures were followed for the proper consideration of the resolution offered by Deputy Minority Leader Libous on June 8, 2009. Accordingly, upon information and belief, there was no notice given to the Senate Majority Leader and Temporary President, either through his designee, the Deputy Majority Leader, or through counsel.

A handwritten signature in cursive script, appearing to read "M. Fallon", written over a horizontal line.

MICHAEL FALLON, ESQ.

Dated: June 14, 2009

Albany, New York