

At a Motion Term of the Appellate Division of the Supreme Court of the State of New York, for the Third Judicial Department, held in the County of ULSTER, Kingston, New York, on the 11th day of June, 2009.

**P R E S E N T: HON. KAREN PETERS, Justice of the Appellate Division**

**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION, THIRD DEPARTMENT**

**MALCOLM A. SMITH, Temporary President and  
Majority Leader of the New York State Senate,**

**Plaintiff,**

**-against-**

**PEDRO ESPADA, JR., New York State Senator,**

**Defendant.**

Index No. \_\_\_\_\_

**ORDER TO  
SHOW CAUSE**

Upon reading the annexed and accompanying:

- (1) Summons and Verified Complaint, dated June 10, 2009;
- (2) Affirmation of Keith C. St. John, dated June 10, 2009;
- (3) Affirmation of Neil D. Breslin, dated June 10, 2009;
- (4) The annexed Memorandum of Law, dated June 10, 2009; and
- (5) All other pleadings and proceedings relevant to this action,

It is hereby ORDERED that Defendant, or counsel, shall show cause before this Court, at the Courthouse located at the \_\_\_\_\_, New York, on the 12th day of June 2009, at 9:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard,

why an order should not be issued pursuant to CPLR 5704 temporarily restraining and enjoining Defendant from exercising any of the powers accorded to the Temporary President of the New York State Senate by Article 4, section 6, of the New York State Constitution, pending a further order of the Supreme Court, Albany County.

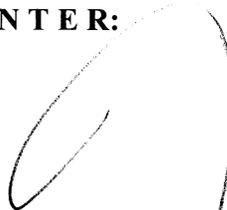
It is further ORDERED that pending the determination of the motion brought on by this Order to Show Cause, Defendant is restrained and enjoined from exercising any of the powers accorded to the Temporary President of the New York State Senate by Article 4, section 6, of the New York State Constitution, pending a further order of the Supreme Court, Albany County.

It is further ORDERED that the Motion brought on by this Order to Show Cause shall not be orally argued.

It is further ORDERED that Defendant's papers in opposition, if any, be served on Plaintiff's counsel at 2 ~~PM~~ PM on the return date.

Service of a copy of this Order to Show Cause and the papers on which it is based, by personal service on the Defendant, or delivery of a copy thereof to the office of the Defendant, shall be deemed good and sufficient service thereof.

**ENTER:**

  
\_\_\_\_\_  
**Justice of the Appellate Division**

*Karen K Peters*