

BR2 CONLEY

STATE OF WISCONSIN : CIRCUIT COURT : OCONTO COUNTY

KEVIN BARTHEL
17485 County Road F
Lakewood, WI 53138,

Case No.: 11-CV-100

Plaintiff,

v.

JAMES HOLPERIN
3575 Monheim Road
Conover, WI 54519,

Defendant.

FILED
MAR 1 - 2011
CLERK OF COURTS
OCONTO COUNTY, WI

SUMMONS

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

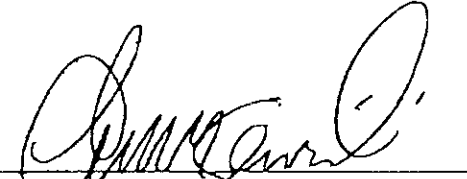
Within forty-five (45) days of receiving this summons you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 301 Washington Street, Oconto, WI 54153, and to Troupis Law Office LLC, Plaintiff's attorneys, whose address is 7609 Elmwood Ave., Suite 102, Middleton, WI 53562.

You may have an attorney help or represent you. If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your

right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: February 28, 2011

By:



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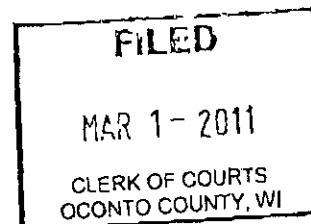
Case No.: 11 CV 100
Class Code: 30952

Plaintiff,

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JAMES HOLPERIN
3575 Monheim Road
Conover, WI 54519,

Defendant.



VERIFIED COMPLAINT AND PETITION FOR WRIT OF MANDAMUS

The plaintiff, Kevin Barthel, alleges and states for his Verified Complaint and Petition for Writ of Mandamus as follows:

1. This is an action seeking a Writ of Mandamus to compel the Defendant, James Holperin, to complete his sworn duty as the Senator from the 12th Wisconsin Senate District to attend sessions of the Wisconsin State Senate.
2. The Plaintiff/Petitioner, Kevin Barthel, is an individual who resides at 17485 County Road F, Lakewood, Wisconsin 54138, , Oconto County He is a resident and voter in the 12th Senate District of the State of Wisconsin .
- 3 The Defendant/Respondent, James Holperin, is an individual who resides at 3575 Monheim Road, Conover, WI 54519. Mr. Holperin was elected to the position of State Senator for the 12th Senate District.

JURISDICTION AND VENUE

- 4 This court has jurisdiction under Wisconsin Statute Chapter 783, et seq

5. This particular Circuit Court for Oconto County affords the proper venue for this action in that both the plaintiff and the defendant reside in this district.

6 This action seeks to compel the defendant immediately to return to Madison Wisconsin and attend the daily sessions of the Wisconsin State Senate in accordance with his mandatory, nondiscretionary and ministerial duty of being in attendance at each daily session of the Senate and to otherwise respond to the Call of the Majority Leader.

7 Mr. Barthel has standing to bring this action because "where the relief sought [by mandamus] is a matter of public right, the people at large are the real party, and *any citizen* is entitled to a writ of mandamus to enforce the performance of such public duty." *State ex rel. Burnham v. Cornwall*, 97 Wis. 565, 567-68, 73 N.W. 63 (1897)(emphasis added).

BACKGROUND AND FACTS

8. On February 17, 2011, the Wisconsin State Senate was called into session and the Budget Repair Bill, January 2011 Special Session Senate Bill 11, ("SS SB 11") was introduced.

9. Senator Holperin, and thirteen other Wisconsin State Senators, walked out of the Senate Chambers and refused to attend the floor session or respond to the Call of the Majority Leader, instead, on information and belief, they fled the State of Wisconsin to Illinois, where they have apparently been staying at least during Senate sessions since that date.

10. Art. IV, Sec. 28 of the Wisconsin Constitution provides that "[m]embers of the legislatures... shall... take and subscribe an oath . . . faithfully to discharge the duties of their respective offices to the best of their ability." Among those duties is attendance of duly elected State Senators at sessions of the Wisconsin State Senate.

11. In addition to the Constitutional obligation to perform the duties of office, and inherent duties applicable to any elected official to carry-out their duties in a representative democracy,

Wisconsin Senate Rule 16 also requires attendance of State Senators on days when the Senate is in session.

12. The Senate was in session on February 17, 18, 19, 22, 24, and 25.

13. Senator Holperin failed to attend any of those sessions, and has publicly indicated that he does not intend to attend any sessions at which the Budget Repair Bill may be considered.

14. Article VIII, Section 8 of the Wisconsin Constitution requires 3/5 quorum for a vote on all fiscal issues, which means that there must be 20 senators present to constitute a quorum and convene a vote on the Budget Repair Bill.

15. On information and belief, Senator Holperin's walkout was conceived and executed for the specific purpose of denying the Senate a quorum sufficient to vote on the Budget Repair Bill.

16. As a direct result of Senator Holperin's refusal to perform his mandatory, non-discretionary duty of attending the daily sessions of the State Senate and responding the Call of the Majority Leader, the Senate has been unable to meet the quorum requirement and cannot conduct business or vote on critical legislation.

17. On information and belief, the failure of the Legislature to complete action on January 2011 Special Session Assembly Bill 11 ("SS AB 11") by Wednesday, March 2, 2011, will prevent major provisions of that Bill from becoming effective, and those provisions are essential to balancing the state Budget for the current biennium.

18. On information and belief, the failure to address the current year budget deficit of at least \$137 million will result in the layoff of an estimated 1,500 state workers and the failure of the state to pay Medicaid and other bills.

19. Additionally, the state operates under a state constitutional requirement that the budget be balanced (Article VIII, Section 5). SS AB 11 is the only means so far proposed as legislation or by amendment on the floor of the State Senate to meet that State constitutional requirement,

20. On information and belief, the major provision of the Bill that allows the financial obligations of the State to be met is the refinancing of a portion of state general obligation debt. The process of debt refinancing must begin with passage of SS SB 11 by Wednesday, March 2. No other means has been proposed as legislation or by amendment on the floor of the State Senate to allow the State to meet the financial requirements of the \$153 million shortfall in Medicaid in the fiscal year that ends June 30.

21. On information and belief, SS AB 11 depends upon \$30 million in increased payments by state employees for retirement and healthcare. If this provision or another of equal significance is not adopted, the alternative the State Executive Branch intends to adopt is the layoff of approximately 1,500 current employees.

22. The actions of Senator Holperin described here have been, and continue to be, particularly harmful to the citizens of the 12th Senate District. This Senate District depends, in great measure, on tourism. By fleeing the State, rather than address forthrightly, on the floor of the Senate, the important budget issues of our State, Senator Holperin has and continues to create a negative impression on those who might otherwise travel to this area. Particularly in these difficult economic times, Senator Holperin's actions will have a seriously negative impact on the citizens of the 12th.

23. Senator Holperin has not provided any option to the proposed legislation pursuant to the normal legislative process on the floor of the State Senate, and cannot do so unless he attends those sessions and responds to the Call of the Majority Leader to address the Bill. On information and belief, no other option has been brought before the State Senate in the form of legislation or amendment to legislation on the floor of the State Senate to prevent these layoffs and if SS AB does not pass, it is expected layoff notices will be issued within the coming week.

24. There is no adequate remedy at law to prevent this substantial harm that will befall the State of Wisconsin and its citizens if this Writ of Mandamus is not issued.

25. Mr. Barthel has brought this action to compel Senator Holperin to comply with the inherent obligations of his elective office, the Wisconsin State Constitution and rules of the State Senate, and to otherwise fulfill his duty as an elected State Senator to his constituents

COUNT I
PETITION FOR PEREMPTORY
WRIT OF MANDAMUS

26. Plaintiff/Petitioner repeats and realleges the allegations in Paragraphs 1 through 25 above as if incorporated in their entirety herein.

27. Plaintiff/Petitioner and Senator Holperin's other constituents have a clear legal right to have their elected Senator comply with his inherent duties as an elected Senator, the mandates of the Wisconsin Constitution and the Rules of the Wisconsin State Senate

28. Senator Holperin's public duty is plain and positive: he must attend the daily sessions of the State Senate and respond to the Call of the Majority Leader to address the Budget Repair Bill.

29. Substantial damage will follow if Senator Holperin is not compelled to fulfill his plain and positive duty to attend the daily sessions of the Senate and respond to the Call of the Majority Leader to address the Budget Repair Bill.

30. There is no adequate remedy at law to prevent this substantial harm, as there is no substitute for representative democracy in this country or in this state

31. There are no special reasons that would make Mr. Barthel resort to this remedy of issuing a peremptory writ of mandamus inequitable

WHEREFORE, plaintiff/petitioner Kevin Barthel, respectfully requests that:

A.) This Court issue a Peremptory Writ of Mandamus compelling the Defendant/Respondent, James Holperin, to immediately return to Madison, Wisconsin, attend all daily sessions of the Wisconsin State Senate and respond to the Call of the Majority Leader;

B.) That in the event James Holperin refuses or neglects to perform that prescribed duty that he be found guilty of a Class H felony pursuant to Wis.Stat. §783.07;

C.) That the Court award the Plaintiff/Petitioner appropriate costs and attorneys fees, and

D.) That the Court grant such other and further relief that this Court deems just and appropriate, including such orders as may be required to insure compliance with this Court's Writ.

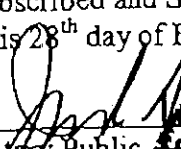
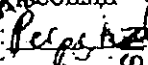
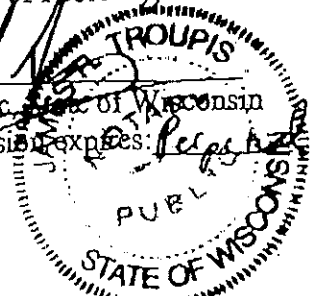
VERIFICATION

State of Wisconsin
County of Oconto

I, Kevin Barthel, verify that the factual allegations set forth in the foregoing Verified Complaint and Petition for Writ of Mandamus are true and correct to the best of my knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. Dated this 28th day of February, 2011.


Kevin Barthel

Subscribed and Sworn to before me
This 28th day of February, 2011.


Notary Public, State of Wisconsin
My Commission expires: 


TROUPIS LAW OFFICE LLC

By: 
James R. Troupis

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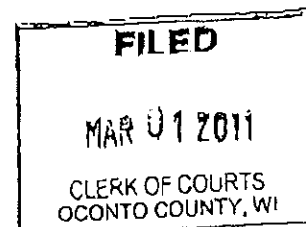
Case No : 11 CV100

Class. Code 30952

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NOTICE OF MOTION AND MOTION FOR EMERGENCY PEREMPTORY WRIT OF MANDAMUS

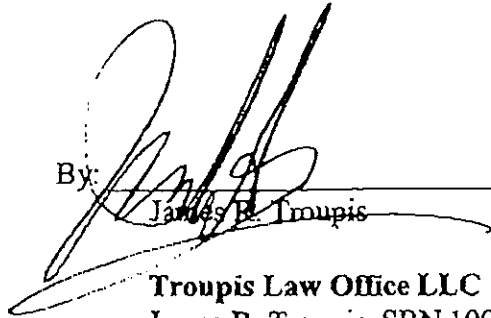
PLEASE TAKE NOTICE that the plaintiff, Kevin Barthel, by his undersigned attorneys, hereby moves this Court for an emergency peremptory writ of mandamus pursuant to Wisconsin Statutes, including Wis Stat. Chapter 783, *et seq* , Wis Stat. § 781.01, Wis Stat § 781.02, Wis Stat § 801.15(4) and Wis Stat. § 801.02(5), compelling the defendant, James Holperin, to perform his mandatory, nondiscretionary and ministerial duty as a Wisconsin State Senator by immediately returning to Madison, Wisconsin and attending the daily sessions of the Senate and responding to the Call of the Majority Leader, in accordance with his inherent public duty and obligation as the elected Senator of the 12th Wisconsin State Senate District, his obligations and duties provided in the Wisconsin Constitution, including, but not limited to those provided by Article IV, Section 28 and his duties and obligations as a member of the Wisconsin Senate pursuant to the rules of that body. Senator Holperin has willfully chosen to avoid his public duty to attend the sessions of the Wisconsin State Senate or to otherwise respond to the Call of the Majority Leader.

In support of said Motion the Plaintiff/Petitioner hereby incorporates his Verified Complaint, his Brief in Support of Petition for Emergency Peremptory Writ of Mandamus filed herewith, those matters of public record to which the Court may take judicial notice and such other and further items as may become a part of the proceedings.

WHEREFORE, plaintiff/petitioner Kevin Barthel, moves this Court to:

- 1.) Immediately set this matter for a hearing, on an emergency, ex parte, basis;
- 2.) Issue a Peremptory Writ of Mandamus compelling the Defendant/Respondent, James Holperin, to immediately return to Madison, Wisconsin for the purpose of attending all daily sessions of the Wisconsin State Senate, responding to the Call of the Majority Leader and addressing on the floor of the Senate chamber the Budget Repair Bill;
- 3.) Set a hearing as soon as practicable for the Defendant/Respondent to address the matters of this Writ, if he so chooses, and
- 4.) To grant such other and further relief as this Court deems just and reasonable.

Dated: February 28, 2011

By: 
 James R. Troupis

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