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## MEMORANDUM

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**TO:** Senator Scott Fitzgerald, Senate Majority Leader

**FROM:** James R. Troupis  
Troupis Law Office LLC (assisted by others)

**SUBJECT:** Summary of Wisconsin State Senate Powers to Compel Attendance of Absent Members

**DATE:** March 3, 2011

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**Constitutional Authority to Act:** Article IV, § 7 of the Wisconsin Constitution, provides that each house “may compel the attendance of absent members in such manner and under such penalties as each house may provide.” This makes clear that, should each body require, attendance is mandatory. The quorum requirement is not a grant of authority to a minority of the body to prevent it from acting and to frustrate the will of the majority.

**Senate Rules Confirm every Senator’s Duty to Attend All Sessions:** Wisconsin legislators have a non-discretionary duty to attend legislative sessions. The Senate itself has reinforced that constitutional duty. Senate Rule 16 provides that “[m]embers of the senate may not be absent from the daily session during the entire day without first obtaining a leave of absence.”

**Senate Rules Confer Authority to Compel Attendance:** Senate Rule 15, “When a roll call discloses the lack of a quorum...the members present may take measures to procure a quorum...” Senate Rule 84, “[t]he chief clerk shall furnish the sergeant at arms with a list of those who are absent without leave, and the sergeant at arms shall forthwith proceed to find and bring in such absentees.”

**The Senate, and Only the Senate, May Act to Enforce the Duty of Attendance:** Article IV, § 8 provides that “each house may determine the rules of its own proceedings, [and] punish for contempt and disorderly behavior.” On Wednesday, March 2, the Circuit Court of Oconto County found that Senator Holperin violated his plain and positive duty to attend Senate Sessions, as provided in Senate Rule 16, but then held that the Senate, and only the Senate, had the right and obligation to enforce the rule of attendance.

Citing Article IV, §8, the court held “[i]t is the State Senate that must enforce its own rules, if it chooses to do so.” *Barthel v. Holperin*, Case No. 11CV100 (Order, March 2, 2011). All 14 absent Senators are subject to the same Court holding. The Senate has clear legal authority to act to compel the return of its members. The Circuit Court explicitly stated, “Each house may determine the rules of its own proceedings...’, and may punish for contempt.”

In response to a request from the legislature, the Wisconsin Attorney General’s Office came to the same conclusion many years ago. “Members of the assembly,

regardless of number, in lawful session, can compel attendance of absent members in such manner...as are authorized by the assembly itself." 18 Op. Atty. Gen. 406 (1929)

**Other Legislative Bodies have held Wilfully Absent Members in Contempt and Compelled them to Return:**

*United States Senate:* United States Senate Rule VI, authorizes a majority of the Senators present to direct the sergeant at arms "to request, and when necessary, to compel the attendance of the absent Senators." That Senate rule was invoked in February 1988 when "Capitol Police carried Senator Bob Packwood feet first into the Senate chamber. This occurred after the Senate ordered the arrest of absent senators to maintain a quorum during a filibuster on campaign finance legislation." See U.S. Senate, Compulsory Attendance, at [http://www.senate.gov/artandhistory/history/minute/Compulsory\\_Attendance.htm](http://www.senate.gov/artandhistory/history/minute/Compulsory_Attendance.htm) (last visited March 2, 2011).

*Alaska.* In *Schultz v. Sundberg*, 759 F.2d 714 (9<sup>th</sup> Cir. 1985), Kerttula, president of the state senate, ordered Alaska State Troopers to compel Schultz, an Alaska state representative, to attend a joint session of the state legislature for the purpose of achieving a quorum. Schultz sued and the district court dismissed the case because the defendants were immune from suit. The Ninth Circuit affirmed.

*New Hampshire.* The Speaker of the New Hampshire House of Representatives ordered the House Sergeant at Arms to arrest an absent representative and return him to the chamber in order to secure a quorum. *Keefe v. Roberts*, 116 N.H. 195, 355 A.2d 824 (1976). The absent representative sued and the court held that "the right of a legislative body to have the attendance of all its members and to enforce such attendance, if necessary, is one of its most undoubted and important functions" and that the Speaker in trying to secure a quorum was acting in performance of official duties.