

**STATE OF WISCONSIN  
ELECTIONS COMMISSION**

COMPLAINT FORM

**Please provide the following information about yourself:**

Celeste Koeberl and John Gostovich

Name \_\_\_\_\_

870 Strawberry Drive, Hudson, WI 54016

Address \_\_\_\_\_

651-247-0399 CK mobile; 715-386-5240 home landline

Telephone Number \_\_\_\_\_

Koeberl@mac.com and Gostovich@mac.com

E-mail \_\_\_\_\_

State of Wisconsin

Before the Elections Commission

Celeste Koeberl and John Gostovich

The Complaint of \_\_\_\_\_

\_\_\_\_\_, Complainant(s) against  
Town of Hudson WI, Clerk Vicki Shaw; Board Chair, Don Jordan

\_\_\_\_\_, Respondent, whose  
980 County Road A, Hudson WI. 54016  
address is \_\_\_\_\_

(Rev. 2/01 E-0001) 3/23/09 6/26/10 ADA Title II

This complaint is under \_\_\_\_\_ (Insert the applicable sections of law in chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing)

Celeste Koeberl and John Gostovich

I, \_\_\_\_\_, allege that:

Complaint attached as PDF

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(Set forth in detail the facts that establish probable cause to believe that a violation has occurred. Be as specific as possible as it relates to dates, times, and individuals involved. Also provide the names of individuals who may have information related to the complaint. Use as many separate pages as needed and attach copies of any supporting documentation.)

Date: December 23, 2020

*Celeste Koeberl*  
Complainant's Signature

Celeste Koeberl and John Gostovich

I, \_\_\_\_\_, being first duly sworn, on oath, state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

*John Gostovich*  
Complainant's Signature

STATE OF WISCONSIN

County of St. Croix  
(county of notarization)

ROY A. SJOBERG  
NOTARY PUBLIC  
STATE OF WISCONSIN

Sworn to before me this 23<sup>rd</sup> day of

December, 2020.

*Roy A. Sjoberg*  
(Signature of person authorized to administer oaths)

My commission expires \_\_\_\_\_, or is permanent.

Notary Public or \_\_\_\_\_  
(official title if not notary)

**Please send this completed form to:**  
Mail: Wisconsin Elections Commission  
P.O. Box 7984  
Madison, WI 53707-7984  
Fax: (608) 267-0500  
Email: [elections@wi.gov](mailto:elections@wi.gov)

TO: Wisconsin Elections Commission

FROM: Celeste Koeberl and John Gostovich  
870 Strawberry Drive in the Town of Hudson Wisconsin

RE: January 4, 2021 Hudson Town Caucus

DATE: December 22, 2020

Pursuant to Wisconsin Statutes section 5.06(1), we are filing this sworn complaint with the Wisconsin Elections Commission regarding a decision or action or inaction of an election official contrary to law and in abuse of their discretion concerning administration and conduct of the 2021 Hudson Town Caucus.

**COMPLAINT:**

Wis. Stat. 8.05(1)(a) specifies that between December 1 and January 1 the town board shall set a date between January 2 and January 21 for the caucus, and it directs that when possible preference should be given to having the caucus on January 21.

At its December 1, 2020 meeting the Board of Supervisors for the Town of Hudson Wisconsin set January 4, 2021, at 6PM, in the Hudson High School, located at 1501 Vine Street in the City of Hudson, as the date, time, and location of the Hudson Town Caucus at which candidates for election in the April 6, 2021 Spring Election to three of the five positions on the Hudson Town Board will be nominated and selected.

John B. Gostovich and Celeste Jean Koeberl are qualified electors eligible to participate and vote in the January 4, 2021 Town of Hudson Caucus, per Wis. Stat. 6.02(1).

Mr. Gostovich is a native-born United States citizen, 72 years of age, has resided in the Town of Hudson for more than twenty years, and is not disqualified from voting for any reason.

Ms. Koeberl is a native-born United States citizen, 66 years of age, has resided in the Town of Hudson for more than twenty years, and is not disqualified from voting for any reason.

For the last four 2020 federal, state, and/or local elections during the on-going covid-19 pandemic and because of the covid-19 exposure and spread risks of in-person voting, Mr. Gostovich and Ms. Koeberl have voted absentee by requesting absentee ballots mailed to their home and returning their absentee ballots by mail or by deposit in a designated drop box.

Mr. Gostovich and Ms. Koeberl want to participate and vote in the January 4, 2021 Hudson Town Caucus.

Mr. Gostovich's male sex, older age, serious underlying medical conditions, and qualified disability under the Americans with Disabilities Act, put him at elevated risks of becoming

severely ill, requiring hospitalization, and dying from covid-19 if he is infected with the highly contagious novel coronavirus that causes covid-19.

Ms. Koeberl's older age and serious underlying medical conditions put her at elevated risks of becoming severely ill, requiring hospitalization, and dying from covid-19 if she is infected with the highly contagious novel coronavirus that causes covid-19.

The January 4, 2021 Hudson Town Caucus at which qualified and eligible Town electors will vote to select candidates for local office is required to be accessible to all voters. Wis. Stat. 5.25(4)(a) requires all polling places to be accessible to all individuals with disabilities, and Wis. Stat. 5.02(15) defines "polling place" as the actual location where the elector's vote is cast.

In violation of Wis. Stat. 5.25(4)(a), the January 4, 2021 Hudson Town Caucus will not be accessible to the elderly and disabled voter Mr. Gostovich because of the high covid-19 exposure and spread risks presented by in-person attendance: typically, the Caucus is an indoor public meeting of from seventy-five to one-hundred (75 – 100) or more people and conducted over one-hour or longer. When he is infected at the Caucus with the highly contagious novel coronavirus that causes covid-19, the elderly and disabled Mr. Gostovich will be at high risk of severe illness, hospitalization, and death. In-person attendance at the January 4, 2021 Hudson Town Caucus will put Mr. Gostovich's health and life at unreasonable risk. A polling place that puts the health and lives of elderly and disabled voters at unreasonable risks cannot be considered accessible to them.

Wis. Stat. 5.25(5)(b) allows an elderly or handicapped voter to be reassigned to another voting location that is accessible to the elderly or handicapped voter. Because of the high covid-19 exposure and spread risks presented by in-person attendance at the January 4, 2021 Hudson Town Caucus and Mr. Gostovich's elevated risks of severe illness, hospitalization, and death if he is infected at the Caucus with the highly contagious novel coronavirus that causes covid-19, Mr. Gostovich requires an alternative to in-person attendance at the Caucus.

Similarly, Ms. Koeberl requires an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus so that she may exercise her constitutional and civil rights to participate and vote in this local government electoral process. Although Ms. Koeberl is not disabled under the ADA, she is elderly and has serious underlying health conditions, and she is Mr. Gostovich's spouse living in the same household, so she, too, must avoid the high covid-19 exposure and spread risks of in-person attendance at the Caucus.

At least one-third of eligible electors qualified to participate and vote in the January 4, 2021 Hudson Town Caucus are similarly situated to Mr. Gostovich and Ms. Koeberl, and they, too, may require an alternative to in-person attendance at the January 4, 2021 Hudson Town Caucus.

Due to their disabilities, ages, and/or serious underlying medical conditions including obesity, at least one-third of people in the Town of Hudson who are eligible to participate and vote in the January 4, 2021 Hudson Town Caucus are at elevated risks of severe illness,

hospitalization, and death if they are infected at the one-hour or longer Caucus with the highly contagious novel coronavirus that causes covid-19.

Some portion of the approximately 16% or 1,440 people in the Town of Hudson who are 65 or older (11%) or are younger than 65 and disabled (5%) reasonably would be expected to want to participate and vote in the January 4, 2021 Hudson Town Caucus.

Some portion of the approximately 27% or 1,823 adults in the Town of Hudson who are obese reasonably would be expected to want to participate and vote in the January 4, 2021 Hudson Town Caucus.

At this point in the on-going covid-19 pandemic, federal, Wisconsin, and St. Croix County public health officials recommend that people over 60 and people with serious underlying medical conditions and disabilities stay home, avoid all gatherings with people from outside their immediate households, and never enter any indoor space in which anyone is not wearing a face covering.

The St. Croix County Health Advisory in effect during the on-going covid-19 pandemic recommends public indoor gatherings should have no more than ten (10) people; and regardless of the size of the event, attendees should wear masks and maintain six-foot distance from people not in their immediate household, seating should be assigned or fixed, a contact list should be made for covid-19 contact tracing, and health screenings should be done.

Wisconsin Governor's Executive Order #94, issued November 10, 2020, recommends holding business meetings online during the on-going covid-19 pandemic.

Wis. Stat. 5.36 allows any individual with a disability to notify their municipal clerk that they intend to vote and to request a specific accommodation that will facilitate their voting.

Mr. Gostovich and Ms. Koeberl have requested the reasonable accommodation and modification that the Town provide an option for remote participation and voting in the January 4, 2021 Hudson Town Caucus via Zoom, or another remote meeting platform in common use during the on-going covid-19 pandemic, through multiple written and verbal communications, made between November 30 and December 18, 2020, to the Hudson Town Board, the Hudson Town Board Chair, the Hudson Town Clerk, and the Hudson Town attorney.

During the on-going covid-19 pandemic, the Hudson Town Board uses the remote meeting platform of Zoom to allow remote access to and participation in its monthly meetings, and to provide reasonable accessibility for the public to the government meetings.

The Hudson High School, at which the January 4, 6PM, 2021 Hudson Town Caucus is scheduled to be held, is providing a remote instruction option for its students using the Google Meet platform during the on-going covid-19 pandemic. Should the Town choose to offer an option of remote participation and voting for the Caucus, the Hudson High School has the technological and staff capabilities to facilitate that option: IT staff would be required to enable

the Town's web camera and Zoom account to operate on the school's network, and the Hudson High School IT Director recommends that Town staff allow about an hour to set up and test the equipment and connection by no later than on the afternoon of January 4, in advance of the 6PM Caucus start.

To date, officials in the Town of Hudson have refused to provide an option for remote participation and voting in the January 4, 2021 Hudson Town Caucus.

To date, officials in the Town of Hudson have failed to provide any information in writing with reasons why the Town cannot provide an option for remote participation and voting in the January 4, 2021 Hudson Town Caucus.

To date, officials in the Town of Hudson have failed to offer, or to engage in discussions of, any alternative reasonable accommodation and modification that will effectively allow Mr. Gostovich and Ms. Koeberl to exercise their constitutional and civil rights to participate and vote in the January 4, 2021 Hudson Town Caucus.

Mr. Gostovich is a qualified individual with a disability Under ADA Title II Subtitle A, and ADA Title II Regulations: 28 C.F.R. Part 35, Subpart A, section 35.108 Definition of disability, and is entitled to protections from discrimination on the basis of disability in services, programs, and activities provided by state and local government entities.

Title II of the ADA applies to state and local government entities, and, in Subtitle A and in ADA Title II Regulations, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by state and local government entities.

Under ADA Title II Subtitle A, and ADA Title II Regulations: 28 C.F.R. Part 35, Subparts A, B, and D, the Town of Hudson must ensure people with disabilities have a full and equal opportunity to vote in the local government electoral process, and the Town must provide program access or remove barriers to accessibility for the January 4, 2021 Hudson Town Caucus.

Mr. Gostovich's qualified disability puts him at high risk of becoming severely ill, requiring hospitalization, and dying if he is infected with the highly contagious novel coronavirus at the January 4, 2021 Hudson Town Caucus.

Without an option of remote participation and voting for the January 4, 2021 Hudson Town Caucus, Mr. Gostovich will be denied accessibility to and equal participation in this local government electoral process, because in order to exercise his constitutional and civil rights to participate and vote, Mr. Gostovich will be required to attend the Caucus, with its high covid-19 exposure and spread risks, in-person, and thereby put his health and life at unreasonable risk.

By its conduct toward Mr. Gostovich, the Town of Hudson has violated his constitutional and civil voting rights, including those under Article II of the Americans with Disabilities Act (ADA).

By its conduct toward Ms. Koeberl, the Town of Hudson has violated her constitutional and civil voting rights.

**RELIEF REQUESTED:**

**We request that the Wisconsin Elections Commission**, through the exercise of its authority in Wis. Stat. 5.06 to require an election official to conform their conduct to the law, and be restrained from taking any action inconsistent with the law or to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by the law, now:

1. Order the Town of Hudson Wisconsin to provide an option of remote participation and voting to all qualified and eligible electors for the January 4, 2021 Hudson Town Caucus; and
2. Order the Town of Hudson Wisconsin to create and publicize a public health protection plan for the January 4, 2021 Hudson Town Caucus sufficient to (i) ensure that the public meeting will be conducted in accord with federal, Wisconsin, St. Croix County, and Hudson School District recommended and required public health protections against covid-19 exposure and spread risks for the benefit of Caucus attendees, and (ii) prevent the public meeting from being a covid-19 super-spreader event for the benefit of all people in the community; and
3. Order the Town of Hudson Wisconsin to postpone convening any 2021 Hudson Town Caucus until it has demonstrated satisfactory compliance with the above requirements.

## ANALYSIS:

### I. HORNETS AND THE NOVEL CORONAVIRUS

**The severity of an insect sting reaction varies among people—from normal to localized to allergic.** A normal reaction is pain, swelling, and redness around the sting site. A large local reaction is redness and swelling spreading up to four inches around the sting site over a day or two, but it goes away in five to ten days. Most people are not allergic to insect stings, but some people are severely allergic. The most severe allergic reaction to an insect bite is systemic—**anaphylaxis**—and it requires immediate medical attention, or the allergic reaction may be life-threatening or even fatal. Among insect stings, bee, wasp, yellow jacket, or hornet stings are some of those most often triggering allergic reactions. (See: Allergic Reactions to Insect Stings, WebMD, at: <https://www.webmd.com/skin-problems-and-treatments/insect-stings#1>).

**If one-third of the qualified and eligible Town of Hudson electors were allergic to hornet stings, would their constitutional and civil rights to participate and vote in the January 4, 2021 Hudson Town Caucus be violated if the meeting room where the one-hour or longer Caucus was held contained nests of live hornets that might fly around the room and sting people attending the meeting?**

- Would the participation and voting rights of the one-third of qualified and eligible Town electors allergic to hornet stings be violated if anyone who attended the one-hour or longer Caucus were free to choose to bring their own nests of live hornets into the meeting room and were free to allow their hornets to fly around and sting anyone attending the meeting?
- Would an option of remote participation and voting for this local government electoral process be required in order to preserve the participation and voting rights of this one-third of qualified and eligible Town electors whose health and lives are put at risk by hornet stings?

**Would the participation and voting rights of any qualified and eligible Town elector be violated if, in order to reduce the number of hornets that might be released to fly about and sting anyone present in the meeting room during the one-hour or longer Caucus, every person attending the public meeting were required to contain their nest of live hornets in a bag and to keep their nest of live hornets at least six-feet away from other people?**

**Would an option of remote participation and voting for this local government electoral process be required in order to preserve the participation and voting rights of all qualified and eligible Town electors, so that no one would be required to risk hornet stings?**



**During the on-going covid-19 pandemic, will the constitutional and civil rights of the one-third of people qualified and eligible to participate and vote in the January 4, 2021 Hudson Town Caucus who are disabled, 65 or older, and/or have serious underlying medical conditions such as obesity, be violated, if, in order to exercise their voting rights, they are required to attend the one-hour or longer Caucus in-person and subject themselves to the covid-19 exposure and spread risks of the public meeting that will especially threaten their health and lives?**

- Will the participation and voting rights of this one-third of qualified and eligible Town electors be violated if anyone who attends the one-hour or longer Caucus may choose not to voluntarily follow the federal, Wisconsin, and St. Croix County recommended public health protections against covid-19 exposure and spread risks for such a public meeting, including wearing a face covering and maintaining at least six-foot distance from people outside their immediate household?
- Is an option of remote participation and voting for this local government electoral process required in order to preserve the participation and voting rights of this one-third of qualified and eligible Town electors, so that their health and lives are not put at unreasonable and unnecessary risk by exposure at the in-person Caucus to the highly contagious novel coronavirus that causes covid-19?

**Will the participation and voting rights of any qualified and eligible Town elector be violated if, in order to reduce covid-19 exposure and spread risks for everyone during the one-hour or longer Caucus, every person attending the public meeting is required to wear a face covering and maintain at least six-foot distance from people outside their immediate household?**

**Is an option of remote participation and voting for this local government electoral process required in order to preserve the participation and voting rights of all qualified and eligible Town electors, so that no one is required to put their health and life at risk by exposure at the Caucus to the highly contagious novel coronavirus that causes covid-19?**

**A. Like stinging hornets, the highly contagious novel coronavirus that causes covid-19 is borne through the air to infect people.**

The **Centers for Disease Control and Prevention (CDC)** explains that covid-19 spreads easily when people share their air with an infected person who breathes, talks, coughs, and/or sneezes among people who are within six-feet or are in an enclosed space with poor ventilation. People spread covid-19 when they share their air with another person for as little as fifteen minutes over twenty-four hours.

The **CDC** also explains that many people who are infected with the highly contagious novel coronavirus do not know it and do not realize they are spreading it, but they still are making other people sick with covid-19, and some of the people they infect may get very sick and die.

(See: CDC, FAQs, How does the virus spread? at: <https://www.cdc.gov/coronavirus/2019-ncov/faq.html?fbclid=IwAR2mxJ6YhpgyNbgswb1CNsgLgKjkcshiKHM4fi43Fgsdo1UmqRizQyK6U6w#:~:text=The%20virus%20that%20causes%20COVID,many%20affected%20geographic%20areas>)

Recent research, using a highly sensitive infrared camera capable of detecting exhaled breath, demonstrates how easily and widely the highly contagious novel coronavirus that causes covid-19 may be spread by airborne particles among people talking in a meeting room. It illustrates that the more people who are in the meeting room and the longer they are there, then the greater the viral load in the meeting room will be and the greater the risks will be to all meeting attendees of contracting covid-19, getting severely ill, requiring hospitalization, and dying. These risks are especially dangerous for everyone who is older, has serious underlying medical conditions, and/or is disabled. The risks of exposure increase even more when people are not wearing masks and are close together in an enclosed space or in an area with poor ventilation. (See: Military-grade camera shows risks of airborne coronavirus spread, at: <https://www.washingtonpost.com/investigations/2020/12/11/coronavirus-airborne-video-infrared-spread/?arc404=true>).

**A. Not unlike swarms of agitated hornets buzzing about and stinging people, the highly contagious novel coronavirus that causes covid-19 now is spreading fast and wide in our community.**

**St. Croix County, in which the Town of Hudson is located, has been experiencing the rapidly escalating exponential growth of an uncontrolled covid-19 pandemic since September 2020.** The covid-19 cumulative epidemic curve for St. Croix County has been sharply upward since September, and when that curve is sharply upward it means that covid-19 is spreading much faster. (See: WI DHS Covid-19: County Data, Cumulative total number of reported confirmed and probable COVID-19 cases by date of symptom onset or diagnosis: St. Croix County, at: <https://www.dhs.wisconsin.gov/covid-19/county.htm>)

**From September 1 to December 20, 2020, the number of people in St. Croix County with covid-19 has increased by about 831%: from 740 total cases on Sept. 1 to 6149 on Dec. 20, 2020:**

- On **Sept. 1**, St. Croix Co. had "only" 680 confirmed cases and 60 probable cases of covid-19, for a total of **740** cases;
- On **Oct. 1**, the County had 1143 confirmed cases and 71 probable cases of covid-19, for a total of **1214** cases;
- On **Nov. 1**, the County had 2560 confirmed cases and 111 probable cases of covid-19, for a total of **2671** cases;
- On **Dec. 1**, the County had 4682 confirmed cases and 524 probable cases of covid-19, for a total of **5206** cases; and
- By **Dec. 20**, the County had 5243 confirmed cases and 906 probable cases of covid-19, for a total of **6149** cases.

(See: WI DHS Covid-19 County Data, at <https://www.dhs.wisconsin.gov/covid-19/county.htm>)

As of December 20, 2020, **St. Croix County reports that the seven-day rolling average of positive covid-19 tests for people in the County is at 30%, up from the previous 28%, which indicates that the current presence of covid-19 in the community is very high and growing.** (See: St. Croix County COVID-19 Dashboard, at: <https://infogram.com/st-croix-county-covid-19-dashboard-1h9j6gggxzn754g?live>)

**B. The fast and wide community spread of covid-19 here will continue unabated, and likely increase even more, for the foreseeable future.**

In the two weeks until the January 4, 2021 Hudson Town Caucus, people here will gather to celebrate Christmas and New Year's with their extended families, friends, neighbors, and strangers in bars and restaurants; at these holiday celebrations, they will either infect others with the highly contagious novel coronavirus that causes covid-19 or become infected by others. People from areas adjacent to St. Croix County and the Town of Hudson where there are enforced public health protections against covid-19 exposure and spread risks will continue to crowd into the Hudson bordertown bars, restaurants, and shops, where there are no enforced requirements to wear face coverings and maintain appropriate distance. (See: WI DHS, COVID-19: Staying Safe in Your Community: Holidays, at: <https://www.dhs.wisconsin.gov/covid-19/community.htm>; and Hudson city leaders say big crowds of visitors attracting violent crime, at: <https://kstp.com/news/hudson-city-leaders-say-big-crowds-of-visitors-attracting-violent-crime/5944910/>)

**The January 4th date of the 2021 Hudson Town Caucus is ten days after Christmas and four days after New Year's Eve, just when everyone who caught the novel coronavirus at holiday celebrations will be shedding the highly contagious virus and will be highly infectious to others.**

People who are infected with covid-19 typically experience symptoms between two to fourteen days after exposure to the highly contagious novel coronavirus, but some people have no or very mild symptoms and do not realize they are infected and infectious to others. People with covid-19 are most infectious to others just before they experience symptoms, but some people shed the highly contagious novel coronavirus for shorter or longer periods of time and may be infectious to others earlier than or beyond the end of a fourteen-day quarantine begun after symptoms first appear.

(See: CDC, COVID-19 FAQs, Symptoms & Emergency Warning Signs, Spread, at: <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Basics>; and CDC, COVID-19, Options to Reduce Quarantine for Contacts of Persons with SARS-CoV-2 Infection Using Symptom Monitoring and Diagnostic Testing, at: <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-options-to-reduce-quarantine.html>)

**C. Like reactions to hornet stings, the severity of the covid-19 illness varies among people.**

Some people who are infected with the highly contagious novel coronavirus that causes covid-19 may have no illness symptoms, some may have mild symptoms, some may have severe symptoms and complications that require hospitalization, and some people will die. (See: CDC, Symptoms of Coronavirus, at: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>)

**Older people and people with underlying medical conditions including heart or lung disease or diabetes are at higher risks of developing more serious complications, requiring hospitalization, and dying if they are infected with the highly contagious novel coronavirus that causes covid-19.** (See: CDC, COVID-19, People at Increased Risk, at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>)

The risks for severe illness and hospitalization with covid-19 increase with age, and older adults are at the highest risks. In the United States, compared to people 18 to 29 years of age, people 65 to 74 years are five times more likely to require hospitalization and 90 times more likely to die, people 75 to 84 years are eight times more likely to require hospitalization and 220 times more likely to die, and people 85 or older are 13 times more likely to require hospitalization and 630 times more likely to die. (See: CDC, COVID-19, Older Adults, at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>)

Eight out of ten covid-19 deaths reported in the United States have been in people 65 years old or older. **In Wisconsin, 92% covid-19 deaths have been in people 60 years or older. In St. Croix County, 96% of covid-19 deaths have been in people 60 years or older.** (See: CDC, COVID-19, Older Adults, at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>; Wisconsin Dept. of Health Services (WI DHS), Percent of COVID-19 deaths by age group, at: <https://www.dhs.wisconsin.gov/covid-19/deaths.htm#demographics>; and St. Croix County COVID-19 Dashboard, at: <https://infogram.com/st-croix-county-covid-19-dashboard-1h9j6qggxzn754q?live>)

**Covid-19 fatality rates also are somewhat higher among men than women.** (See: Male sex identified by global COVID-19 meta-analysis as a risk factor for death and ICU admission, at: <https://www.nature.com/articles/s41467-020-19741-6>)

**Adults of any age are at increased risk of severe illness if they are infected with the novel coronavirus that causes covid-19 and have certain medical conditions,** including: cancer; chronic kidney disease; chronic obstructive pulmonary disease; heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; an immunocompromised state

from organ transplant; **obesity or severe obesity**; pregnancy; sickle cell disease; smoking; and/or type 2 diabetes. **Adults of any age with other medical conditions may be at increased risk** of severe illness from the virus that causes covid-19, including the medical conditions of: asthma; cerebrovascular disease; cystic fibrosis; high blood pressure; immunocompromised state; neurologic conditions, such as dementia; liver disease; **overweight**; pulmonary fibrosis; thalassemia; and/or type 1 diabetes. (See: CDC, COVID-19, People with Certain Medical Conditions, at: [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html))

**D. Because of their disabilities, ages, and/or serious underlying medical conditions, at least one-third of adults residing in the Town of Hudson are at elevated risks of getting severely ill, requiring hospitalization, and possibly dying if they are infected with the highly contagious novel coronavirus that causes covid-19.**

The US Census Bureau estimates that, **of the approximately 9,000 people now living in the Town of Hudson, about eleven percent (11%) or 990 people are 65 years or older in age, and about five percent (5%) or 450 people are disabled and under the age of 65.** (See: US Census Bureau, Quick Facts, Hudson Town, St. Croix County, WI, at <https://www.census.gov/quickfacts/fact/table/hudsonstownstcroixcountywisconsin/BZA110218>)

In addition, the 2020 – 2022 Community Health Needs Assessment and Implementation Plan for St. Croix County (Healthier Together) reports that **twenty-seven percent (27%) of adults in St. Croix County are obese. If 27% of adults in the Town of Hudson are obese, that amounts to about 1,823 people.** The US Census Bureau estimates that about seventy-five percent (75%) of people in the Town of Hudson are older than 18, which is about 6,750 adults among the approximately 9,000 population here now, and 27% of 6,750 is 1,823 people. (See: Healthier Together, p. 4, at <http://www.healthiertogetherstcroix.org/wp-content/uploads/2020/02/2020-2022-Healthier-Together-Community-Health-Needs-Assessment-and-Implementation-Plan.pdf>; and US Census Bureau, Quick Facts, Hudson Town, St. Croix County, WI, at <https://www.census.gov/quickfacts/fact/table/hudsonstownstcroixcountywisconsin/BZA110218>)

## II. AVOID THE NOVEL CORONAVIRUS LIKE THE PLAGUE

### A. Federal Public Health Protection Recommendations

The CDC strongly cautions that it is especially important for older people and people with serious underlying medical conditions, as well as those who live with them, to protect themselves from becoming infected with the highly contagious novel coronavirus that causes covid-19. The CDC advises that older people and people with underlying medical conditions, as well as those who live with them, should take precautions, including:

- Limit interactions with other people as much as possible;
- Avoid close contact with people who are sick;
- Maintain at least six-feet distance from people outside your immediate household;
- Cover your nose and mouth with a mask when around other people and/or out in public;
- Avoid interactions with people not wearing masks;
- Evaluate the covid-19 exposure and spread risks of events and gatherings:
  - The higher the level of community transmission, the higher the risk of covid-19 infection and spread;
  - Indoor events and gatherings generally are higher risk than those outdoors;
  - The more people present, the higher the risk of covid-19 infection and spread;
  - The more people one interacts with and the longer the interaction, the higher the risk of covid-19 infection and spread;
  - An event or gathering of people not wearing masks is higher risk than one where all wear masks;
  - Lowest risk: Virtual only activities, events, and gatherings;
  - More risk: Smaller outdoor and in-person gatherings in which individuals from different households all maintain at least six-feet distance, all wear masks, all do not share objects, and all are from the same local area;
  - Higher risk: Medium-sized in-person gatherings that maintain at least six-feet distance between people, but with attendees from outside the local area; and
  - Highest risk: Large in-person gatherings where at least six-feet distance is not maintained between people and attendees are from outside the local area.

(See: CDC, COVID-19, How to Protect Yourself & Others, at: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; CDC, COVID-19, Deciding to Go Out, at: <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/deciding-to-go-out.html>; and CDC, COVID-19, Considerations for Events and Gatherings, at: <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>)

The November 29, 2020, report from the **White House coronavirus task force** said: **"It must be made clear that if you are over 65 or have significant health conditions, you should not enter any indoor public spaces where anyone is unmasked due to the immediate risk to your health;** you should have groceries and medications delivered." (See: White House coronavirus task force warns states: 'We are in a very dangerous place', at: <https://www.cnn.com/2020/12/02/politics/white-house-coronavirus-task-force-states->

[report/index.html?fbclid=IwAR3ZdEH7zABojVPSiw1dWLC9XcBNkXGQ9QFFdThsmCuUG\\_LK-AguYm\\_HVyk](https://www.wisconsin.gov/reports/index.html?fbclid=IwAR3ZdEH7zABojVPSiw1dWLC9XcBNkXGQ9QFFdThsmCuUG_LK-AguYm_HVyk))

## **B. Wisconsin Public Health Protection Recommendations**

Currently, the **Wisconsin Governor's Executive Order #94**, issued on November 10, 2020, advises us all to take specific precautions against further spread of covid-19, including:

- (1) Stay home, except for necessary trips out to get medical care, get food, and get to work;
- (2 a) Avoid gatherings of any size with individuals outside our immediate household, and wear a face covering and maintain at least six-foot distance whenever in proximity to individuals outside our immediate household;
- (2 c) Stay home if over 60 years old, pregnant, immunocompromised, obese, diabetic, have lung, kidney, and/or heart disease, and/or have or have had cancer; and
- (3) Limit numbers of individuals at meetings, and offer remote participation options.

(See: WI Governor's Ex. Ord. #94, at: <https://evers.wi.gov/Documents/COVID19/EO094-COVIDRecommendations.pdf>)

The **Wisconsin Governor's Executive Order #1**, renewed on November 20, 2020, and in effect to January 19, 2021 unless further extended, with limited and specified exceptions **requires that every person age five or older wear a face covering when indoors or in an enclosed space**, other than a private residence, **and another person from outside their immediate household is present**. (See: WI Governor's Ex. Ord. #1, at: [https://content.govdelivery.com/attachments/WIGOV/2020/11/20/file\\_attachments/1607585/EmO01-NovFaceCovering.pdf](https://content.govdelivery.com/attachments/WIGOV/2020/11/20/file_attachments/1607585/EmO01-NovFaceCovering.pdf))

## **C. St. Croix County Public Health Protection Recommendations**

The **St. Croix County Public Health Department** similarly recommends that we all take specific precautions against further spread of covid-19, including:

- Follow advice of Wisconsin Governor's Executive Order #94;
- Limit indoor public gatherings to no more than ten (10) people;
- Limit outdoor public gatherings to no more than fifty (50) people; and
- At all public gatherings of any size, every person should wear a mask and maintain six-foot distance from people outside their immediate household, seating should be assigned or fixed, a contact list should be made, and health screenings should be done.

(See: St. Croix County Covid-19 Information, Health Advisory, at: <https://www.sccwi.gov/951/Health-Advisory>)

### **III. CAUCUS, CORONAVIRUS, AND ACCESS**

The Town of Hudson has chosen to use a caucus process under Wisconsin Statutes section 8.05, rather than nomination papers, to nominate candidates for Town elective offices.

#### **A. Get together and share air with the neighbors, or**

In previous years, such as at the 2019 Hudson Town Caucus, from seventy-five to one-hundred (75 – 100) people from the Town of Hudson have attended the approximately one-hour Caucus. Attendees arrived early and stood in a close line to show their IDs to Town staff stationed near the meeting room entrance who checked lists and confirmed attendees' identities and eligibility to participate and vote. After checking in, attendees took seats in the crowded meeting room, and talked with their neighbors until the Caucus was convened. Caucus officials explained the public meeting procedures; the assembled electors selected tellers, made nominations and seconds of candidates for each office on that year's Spring Election ballot, and voted on the nominees when required to select candidates to appear on the Spring Election ballot. At the conclusion of Caucus business, many attendees lingered to talk more with their neighbors.

#### **B. Stay apart to stay safe.**

Now, the recommended federal, Wisconsin, and St. Croix County public health protections against covid-19 exposure and spread risks applicable to the at least 3,263 adults in the Town of Hudson who are disabled, 65 or older, and/or have serious underlying medical conditions such as obesity, are that they stay home, avoid all gatherings with people outside their immediate household, and never enter any indoor space where anyone is not wearing a face covering.

Due to their disabilities, ages, and/or serious underlying medical conditions, about one-third or more of the qualified and eligible Town electors who might participate and vote in the January 4, 2021 Hudson Town Caucus are at elevated risks of getting severely ill, requiring hospitalization, and possibly dying if they are infected at the one-hour or longer Caucus with the highly contagious novel coronavirus that causes covid-19.

#### **C. No absentee ballots and absentee voting options for safer voting**

Some portion of the approximately 3,263 people in the Town who are disabled, older than 65, and/or have serious underlying medical conditions reasonably would be expected to want to participate and vote in the January 4, 2021 Hudson Town Caucus.

Federal and state laws require Town of Hudson elections, including the January 4, 2021 Hudson Town Caucus, to be inclusive and accessible for voters with disabilities and for older voters. Disabled voters include people who are blind and low vision, deaf and hard of hearing, with intellectual and development disabilities, physical disabilities, mental health disabilities, aging-related disabilities, complex medical needs, and chronic health conditions. In the on-going covid-19 pandemic, it is more important than ever to protect and preserve the voting



rights of disabled voters and of older voters by ensuring that reasonable accessibility and modifications are provided so that disabled voters and older voters are not disenfranchised. Voters with disabilities and older voters always make higher use of absentee voting than non-disabled voters and younger voters. In the on-going covid-19 pandemic, absentee voting has been used by even greater portions of disabled voters and of older voters. (See: Wisconsin Disability Vote Coalition, Informational Testimony for Joint Committee Hearing: 2020 General Election Review, Barbara Beckert, December 11, 2020, pages 2 – 4, at: <https://disabilityvote.org/wp-content/uploads/2020/12/WDVC-Joint-Committee-Hearing.pdf>)

**Rather than vote in-person for the last four 2020 elections during the on-going covid-19 pandemic, many of the Hudson Town voters who are at elevated covid-19 risks because they are disabled, older, and/or have serious underlying medical conditions chose to request absentee ballots and use absentee voting in order to protect their health and lives from the covid-19 exposure and spread risks of in-person voting.**

**But the traditional procedure for conducting a town hall to nominate candidates for election to a town office does not provide for the options of absentee ballots and absentee voting.** The traditional procedure in the January Hudson Town Hall is for the in-person Caucus attendees to nominate and second people as candidates for election to a Town Board position in the April Spring Election, and if there are more than two nominees for one position, then the in-person Caucus attendees vote immediately to select only two of the nominees whose names will be included as candidates for the position on the April Spring Election ballot. (See: Wisconsin Elections Commission (WEC), Procedures For Nomination Of Candidates By Caucus, For Use By Clerks, Rev. August 2017, at: <https://elections.wi.gov/publications/manuals/caucus>; and Wis. Stat. section 8.05 (1) CAUCUS, at: <https://docs.legis.wisconsin.gov/statutes/statutes/8/05/1>)

**In the context of the on-going covid-19 pandemic, the lack of the options of absentee ballots and absentee voting for the January 4, 2021 Hudson Town Hall amounts to the impermissible exclusion of and discrimination against qualified and eligible electors who, due to their disabilities, older ages, and/or serious underlying medical conditions such as obesity, are at elevated covid-19 risks and cannot participate and vote in an in-person local government electoral process without putting their health and lives at unreasonable risks.**

#### **D. Use alternative voting methods for equal access and participation**

The Town of Hudson is required by law to ensure that voting be accessible for people with disabilities in a manner that provides equal access and participation. (See: WEC, Introduction to Voting Accessibility, at: <https://elections.wi.gov/voters/accessibility>)

As explained in the Settlement Agreement DJ# 204-85-119 between the City of Milwaukee WI and the US Department of Justice under Title II of the ADA and regarding accessibility of city polling places, **the Town of Hudson may be required to provide, and publicize in advance, alternative methods to in-person voting for the January 4, 2021 Hudson Town Caucus in**

**order to ensure this local government electoral process will allow equal access and participation for disabled electors [emphases added below]:**

30. In the rare circumstances that the City is unable to select an accessible facility (or one that can be made temporarily accessible) to be used as a polling place in a particular voting precinct, then the City will apply the Program Accessibility provisions of the title II regulation to the City's voting program. See 28 C.F.R. Part 35, Subpart D. The City will notify the United States when these circumstances arise. The City will **provide alternative methods to in-person voting that are effective in making voting accessible to persons with disabilities, while giving priority to those methods that offer services, programs, and activities in the most integrated setting appropriate.**
31. . . . .
32. . . . prior to each election, the City will **identify and widely publicize** to the public, people with disabilities, and organizations serving people with disabilities **the other options available for voting**, which may include implementing temporary remedies to make the polling place accessible on election day, to vote by an absentee ballot that is accepted if postmarked on the day of the election, to vote curbside at the inaccessible polling place, **or to vote by any other method that affords the same degree of information as is available to others.**
33. . . . the City will **provide Election Day balloting for voters with disabilities whose assigned polling place has accessibility barriers.** The method for providing these opportunities may include implementing temporary remedies to make the polling place accessible on election day, allowing the individual to vote at another nearby accessible polling place, to vote by an absentee ballot that is accepted if postmarked on the day of the election (or picked up by election officials at the home of the voter on the same day as the election), to vote curbside at the inaccessible polling place, **or to vote by any other method that affords the same degree of information when casting their ballots as is available to others.**

(See: DJ# 204-85-119, June 6, 2016, Settlement Agreement Between the United States of America AND the City of Milwaukee, Wisconsin, H. Polling Places: #30, #32, and #33, at: [https://www.ada.gov/milwaukee\\_pca/milwaukee\\_sa.html](https://www.ada.gov/milwaukee_pca/milwaukee_sa.html))

**Offering an option of remote participation and voting for the January 4, 2021 Hudson Town Caucus via Zoom or a similar remote meeting platform now commonly in use during the on-going covid-19 pandemic, is an alternative method to in-person voting that would be effective in making voting accessible to persons with disabilities, provide the same degree of information as available to in-person Caucus attendees, and be an entirely integrated setting if the option were offered to all qualified and eligible Hudson Town electors.**

#### **E. Use alternative voting methods for public health protection**

A polling place that puts the health and lives of elderly and disabled voters at unreasonable risks cannot be considered accessible to them.

Town of Hudson election officials have a legal and moral imperative to implement public health guidance, and to ensure that all qualified and eligible Town electors may safely participate in the January 4, 2021 Hudson Town Caucus in a manner that does not put their health and lives at risk. (See: Wisconsin Disability Vote Coalition, Informational Testimony for Joint Committee Hearing: 2020 General Election Review, Barbara Beckert, December 11, 2020, page 2, at: <https://disabilityvote.org/wp-content/uploads/2020/12/WDVC-Joint-Committee-Hearing.pdf>)

But the Town of Hudson Notice of Caucus, which sets the date of Monday January 4, 2021, at 6PM, and the location of the Hudson High School, provides no information regarding how the Caucus will be conducted to be in accord with the current federal, Wisconsin, and St. Croix County recommended public health protections against covid-19 exposure and spread risks, and there is no further information on the Town website. (See: Town of Hudson Notice of Caucus, at: <https://townofhudsonwi.com/wp-content/uploads/2020/12/2021-Notice-of-Caucus.pdf>; and Town of Hudson WI website, at: <https://townofhudsonwi.com>)

We cannot reasonably rely on all, or even most, of the qualified and eligible electors voluntarily wearing masks and keeping their distance at the January 4, 2021 Hudson Town Caucus.

People who usually have attended the Hudson Town Caucus in previous years are among the many people who absolutely refuse to voluntarily follow the universally recommended public health protections against covid-19 exposure and spread risks, including always maintaining at least six-foot distance and wearing face coverings when around people from outside their household or when in public places. Instead, crowds of these maskless people have shown up at most every recent public governmental meeting to promote disproven treatments and cures for covid-19, to advocate for herd immunity, and to discount the deaths of people who caught covid-19 because those of us most likely to die if we catch covid-19 are old and/or in poor health and/or disabled. (For example, see: HHS Public Health Communications Subcommittee, Oct. 7, 2020 Digital Town Hall video, at [https://stcroixcountywi.igam2.com/Citizens/Detail\\_Meeting.aspx?ID=2985](https://stcroixcountywi.igam2.com/Citizens/Detail_Meeting.aspx?ID=2985))

**F. WEC guidance for elections that have the options of absentee ballots and absentee voting does not fit the entirely in-person Caucus in the context of the on-going covid-19 pandemic.**

**Exactly what public health protections against covid-19 exposure and spread risks may be REQUIRED at the January 4, 2021 Hudson Town Caucus is a question on which further Wisconsin Elections Commission (WEC) guidance is needed.**

For previous 2020 elections during the on-going covid-19 pandemic **where OPTIONS of absentee ballots and absentee voting WERE available**, the WEC issued the guidance that **in-person voters MAY be strongly encouraged but NOT required to wear face coverings when voting at their polling locations**. The WEC staff advised that, in their legal analysis: Under the Wisconsin Constitution **ONLY** the Wisconsin Legislature can establish individual voter qualifications; the WEC, any state agencies, county or local governing bodies, and/or election officials **CANNOT** add qualifications for an eligible elector to cast a ballot; and requiring voters to wear face coverings in order to cast their ballots would be an **ADDITIONAL**

individual voter qualification that is not set forth in state statutes. (See: WEC, Face Coverings While Voting and Conducting Elections – COVID-19, Q&A #1, at: <https://elections.wi.gov/node/6981>)

### **But how will this WEC guidance work for a local electoral process WHERE THERE IS NO OPTION OTHER THAN IN-PERSON PARTICIPATION AND VOTING?**

If for the January 4, 2021 Hudson Town Caucus during the on-going covid-19 pandemic, no elector may be required to wear a mask and maintain six-foot distance from other people at the indoor, public meeting of from 75 – 100 or more people that will be conducted over an hour or longer, the Caucus will be **a covid-19 super-spreader event that will endanger every person who attends as well as our larger community.**

If no elector at the January 4, 2021 Hudson Town Caucus may be required to wear a mask and maintain six-foot distance from other people, then **every elector will be required to choose between EITHER protecting their health and life by skipping the covid-19 super-spreader Caucus OR exercising their constitutional and civil rights to participate and vote in their local government electoral process.**

The WEC guidance ALSO states: **“Clerks may establish procedures to allow for voters without facial coverings to cast a ballot safely on election day.** This may involve using designated areas of the polling places for these voters or assigning poll workers with additional personal protective equipment (PPE) to serve these voters.” (See: WEC, Face Coverings While Voting and Conducting Elections – COVID-19, Q&A #1, at: <https://elections.wi.gov/node/6981>)

### **G. Meeting together apart**

**The safest voting procedure for the electors who refuse to wear masks is the same as the safest voting procedure for the electors who are disabled, older, and/or have serious underlying health conditions that put their health and lives at risk if they must Caucus with the maskless electors—and that is to provide an option of remote participation and voting for the January 4, 2021 Hudson Town Caucus.**

In the covid-19 pandemic that has been going on for more than nine months now, families, businesses, and government functions have transitioned to using remote meeting technologies and platforms in place of physical meetings in the same rooms.

Common and now prevalent examples of circumstances in which we all now meet together apart include: public and private meetings of governing bodies at the federal, state, and local government levels; administrative law proceedings; arguments and hearings in bench and jury trials; federal and state appellate court hearings; arbitrations and mediations; medical care appointments; psychotherapy; business teams and sales meetings; job interviews, hiring, and employment on-boarding; high school and college classes; poetry salons and book clubs; and lots of family reunions.

We all are still meeting together, we all are still doing the same functions, but we are doing it apart because of covid-19 exposure and spread risks.

**Offering the option of a functional equivalent of absentee ballots and absentee voting during the on-going covid-19 pandemic would provide reasonable accessibility, participation, and information for disabled voters so that their voting rights would be preserved rather than violated, AND it would protect the public health.**

#### **H. It's not OK to just say "NO"!**

In a December 14, 2020 phone conversation with Ms. Koeberl, WEC attorney James Witecha advised that Wisconsin's election law does not prohibit a town from conducting its caucus remotely.

For the January 4, 2021 Hudson Town Caucus, Mr. Gostovich and Ms. Koeberl have requested the reasonable accommodation and modification that the Town of Hudson provide an option for remote participation and voting via Zoom, or another remote meeting platform now in common use during the on-going covid-19 pandemic, through multiple written and verbal communications, made between November 30 and December 18, 2020, to the Hudson Town Board, the Hudson Town Board Chair, the Hudson Town Clerk, and the Hudson Town attorney.

To date, officials in the Town of Hudson have refused to provide the requested reasonable accommodation and modification that the Town provide an option of remote participation and voting for the January 4, 2021 Hudson Town Caucus; have failed to provide any information in writing with reasons why the requested reasonable accommodation and modification cannot be provided; and have failed to offer, or to engage in discussions of, any alternative reasonable accommodation and/or modification that will effectively allow us and similarly situated electors to exercise our constitutional and civil rights to participate and vote in the January 4, 2021 Hudson Town Caucus.

Instead, the Hudson Town Board Chair and the Hudson Town attorney have just said "NO"!

In the course of a 10:29AM to 10:50AM Thursday December 10, 2020 phone conversation with a Town resident (Celeste Koeberl at 651-247-0399) the **Hudson Town attorney** (Paul Mahler at 715-246-3800) **said that the Town would NOT offer an option of remote participation and voting for the January 4, 2021 Hudson Town Caucus, and went on to say that people who could not participate in-person at this year's Caucus during the on-going covid-19 pandemic just would have to wait until next year when the covid-19 pandemic might be over.**

In a 9:04AM to 9:10AM Friday December 18, 2020 phone conversation with a Town resident (Celeste Koeberl at 651-247-0399) the **Hudson Town Board Chair** (Don Jordan at 612-418-2422) **confirmed that the Town would NOT offer an option of remote participation and voting for the January 4, 2021 Hudson Town Caucus** which had been previously requested by the Town resident in order to ensure reasonable accessibility to the public and to provide a

reasonable accommodation and modification for disabled persons in the context of the on-going covid-19 pandemic. (See: November 30, 2020 memo from Koeberl/Gostovich to Town of Hudson Board, RE: Dec. 1, 2020, Town of Hudson Board Meeting Agenda Item 3.h. Set date for Caucus; Emails from Celeste Koeberl to Don Jordan, et. al., sent December 5 at 1:52PM, December 7 at 10:29AM, December 11 at 9:22AM, December 11 at 3:13PM, and December 18 at 12:02PM, 2020; and Email from Celeste Koeberl to Hudson Town Clerk, Vicki Shaw, et. al., sent December 16 at 11:34AM, 2020)

During this Friday December 18, 2020 phone conversation between the Town Resident, Celeste Koeberl, and the Town Board Chair, Don Jordan, Ms. Koeberl **asked several questions regarding how the Town planned to manage covid-19 exposure and spread risks at the entirely in-person January 4, 2021 Hudson Town Caucus** in accord with federal, Wisconsin, and St. Croix County recommended public health protections against covid-19, as well as in compliance with those of the Hudson School District. Ms. Koeberl **attempted to explain that, in the absence of an effective plan to manage covid-19 exposure and spread risks for in-person attendees that is clearly communicated beforehand, many Town residents eligible to participate and vote in the January 4, 2021 Hudson Town Caucus but who are at risk of severe illness, hospitalization, and death from covid-19 would not even consider attending the Caucus in person, and so they would be prevented from participating and voting in this local government electoral process. Mr. Jordan became angry during the conversation, refused to answer questions about the Town's plan for managing covid-19 exposure and spread risks at the entirely in-person Caucus, said he would not call back to provide more information, and abruptly hung up.** (See: Email from Celeste Koeberl to Don Jordan, et. al., sent December 18 at 12:02PM, 2020)

**The Hudson Town Clerk, Vicki Shaw, has made no reply at all to Ms. Koeberl's voicemails and emails requesting the reasonable accommodation and modification** that the Town of Hudson provide an option for remote participation and voting in the January 4, 2021 Hudson Town Caucus. (See: Email from Celeste Koeberl to Hudson Town Clerk, Vicki Shaw, et. al., sent December 16 at 11:34AM and December 18 at 12:02PM, 2020)

**If Hudson Town officials would in good faith take up the requested accommodation and modification, they would find that it would be neither a fundamental alteration nor an undue burden.**

**Hudson High School has the technological and staff capabilities** to facilitate an option of remote participation and voting for the Caucus. **All the Town staff have to do is arrive early enough before the Caucus start-time with the web cam** so that the school's IT staff can help set it up and enable the Town's Zoom account to use the school's network. (See: Zoom Help Center: Audio, Video, Sharing, at: <https://support.zoom.us/hc/en-us/categories/201137166>)

**Town staff already are familiar with Zoom, since the Town Board uses Zoom to provide a remote participation option for its Board meetings and to make the government meetings reasonably accessible to the public.** (See: Zoom Help Center: Getting started

with Zoom, at: [https://support.zoom.us/hc/en-us/articles/206175806#h\\_12512067-340a-4ca9-8d5b-f52a7ed016fb](https://support.zoom.us/hc/en-us/articles/206175806#h_12512067-340a-4ca9-8d5b-f52a7ed016fb))

Whether they are conducted in-person or on Zoom, Town Board meetings are still Town Board meetings open to the public **and the fundamental character of the activity is not changed just because some or all meeting participants are meeting together via Zoom.**

**It would not be difficult to verify the identities and eligibility of people** who participated and voted remotely. For example, a remote participant could show their ID and face on camera to be checked against the same list used by Town staff to confirm the IDs and eligibility of everyone attending in-person.

**It would not be difficult to prevent people who are not qualified and eligible Town electors from voting.** For example, the Zoom meeting host may lock the meeting to prevent anyone new from joining. (See: Zoom Help Center: Managing participants in a meeting, at: <https://support.zoom.us/hc/en-us/articles/115005759423-Managing-participants-in-a-meeting>)

**It would not be difficult provide and conduct secret balloting** by qualified and eligible electors who participate and vote remotely in the 2021 Hudson Town Caucus, if that is required. For example, a remote participant on Zoom could be renamed with an anonymous number to use when casting a ballot, instead of being identified by their name in the Zoom meeting; and a remote participant could vote through Zoom's polling for meetings feature. (See: Zoom Help Center: Controls for hosts and co-hosts, at: [https://support.zoom.us/hc/en-us/articles/115005759423-Managing-participants-in-a-meeting#h\\_221b3acc-9a66-4f0b-ad84-a70359148d1b](https://support.zoom.us/hc/en-us/articles/115005759423-Managing-participants-in-a-meeting#h_221b3acc-9a66-4f0b-ad84-a70359148d1b); and Polling for meetings, at: <https://support.zoom.us/hc/en-us/articles/213756303-Polling-for-meetings>)

**In the context of the on-going covid-19 pandemic, we should protect the health and lives of all Town electors and protect the public health of our community by adapting our Caucus procedures to the now common and robust remote meeting platforms that will allow us all to participate and exercise our voting rights.**

## **I. “Secret” ballots may not be required**

The WEC’s guidance publication for clerk’s “Procedures For Nomination Of Candidates By Caucus” does refer to “secret ballots”, but if there is a discrepancy between WEC guidance and Wisconsin Statutes, it is clear law that the language in provisions of Wisconsin Statutes is controlling over that used in WEC guidance documents.

**The statutory definition of “ballot” does NOT contain the word “secret”.**

**Wis. Stat. 8.05(1)** provisions regarding the conduct of town caucuses do NOT specify that voting on matters at the caucus must be done by a method that is secret. Rather, under Wis. Stat. 8.05(1), the identities of everyone who attends the caucus in-person in order to select candidates for election to a town office are visible to all; officials to conduct the caucus may be chosen by a non-private voice vote, and so may the caucus tellers; nominations of candidates may be made by motions and seconds from the floor, during which the identities of people making nominations are visible to all; and while selecting among nominated candidates when more than two people are nominated for the same town office is required to be done by “ballot”, the statute does NOT say “secret ballot”, and the statute does not define “ballot” to mean “secret ballot”.

**Wis. Stat. 5.02(1e)** defines “ballot” as “a ballot label, sheet of paper or envelope on which votes are recorded. The term also includes a sheet or card, filmstrip or other device listing or containing information relative to offices, candidates and referenda which is placed, projected or composed on the board or screen inside a voting machine.”



**ATTACHMENTS:**

- **Email and November 30, 2020 memo from Koeberl/Gostovich to Town of Hudson Board, RE: Dec. 1, 2020, Town of Hudson Board Meeting Agenda Item 3.h. Set date for Caucus:**

**From:** Celeste Koeberl <koeberl@mac.com>

**Subject:** Dec. 1, 2020, Town of Hudson Board Meeting, Agenda Item 3.h. Set date for Caucus

**Date:** November 30, 2020 at 2:52:43 PM CST

**To:** chairman@townofhudsonwi.com, supervisor1@townofhudsonwi.com, supervisor2@townofhudsonwi.com, supervisor3@townofhudsonwi.com, supervisor4@townofhudsonwi.com

**Cc:** dave.ostness@sccwi.gov, paulette.anderson@sccwi.gov, Cathy Leaf - District 4 <cathy.leaf@sccwi.gov>, Carah Koch - District 5 <carah.koch@sccwi.gov>, scottie.ard@sccwi.gov, greg.telljohn@sccwi.gov, natasha.ward@wwhealth.org, pmcginnisgov@gmail.com, Ed.Schachtner@sccwi.gov, Shawn.Anderson@sccwi.gov, Bob.Long@sccwi.gov, Tim.Hall@sccwi.gov, Paul.Berning@sccwi.gov, Rick.Ottino@sccwi.gov, Bob.Feidler@sccwi.gov, Scott.Counter@sccwi.gov, daniel.hansen@sccwi.gov, david.peterson@sccwi.gov, judy.achterhof@sccwi.gov, Shelly.Tomtschik@sccwi.gov, William.peavey@sccwi.gov, Kelli.Engen@sccwi.gov

**TO:** Town of Hudson Board

**CC:** St. Croix County Health & Human Services Board  
St. Croix County Board of Supervisors  
St. Croix County Public Health Officer

**RE:** Dec. 1, 2020, Town of Hudson Board Meeting, Agenda Item 3.h. Set date for Caucus

**DATE:** Nov. 30, 2020

**FROM:** Celeste Koeberl and John Gostovich  
870 Strawberry Drive in the Town of Hudson

Please accept our attached written Comment regarding the Dec. 1, 2020, Town of Hudson Board Meeting Agenda Item "3.h. Set date for Caucus".

Please ensure that the 2021 Town of Hudson Caucus will be accessible to all Town residents who cannot attend in-person due to covid-19 exposure and spread risks, and please ensure that these Town residents may participate and vote in the Caucus remotely.

TO: Town of Hudson Board

CC: St. Croix County Health & Human Services Board  
St. Croix County Board of Supervisors  
St. Croix County Public Health Officer

RE: Dec. 1, 2020, Town of Hudson Board Meeting  
Agenda Item 3.h. Set date for Caucus

DATE: Nov. 30, 2020

FROM: Celeste Koeberl and John Gostovich  
870 Strawberry Drive in the Town of Hudson

Please accept our written Comment regarding the **December 1, 2020, Town of Hudson Board Meeting Agenda Item “3.h. Set date for Caucus”**.

**Please ensure that the 2021 Town of Hudson Caucus will be accessible to all Town residents who cannot attend in-person due to covid-19 exposure and spread risks, and please ensure that these Town residents may participate and vote in the Caucus remotely.**

**I. Wisconsin Open Meeting Law requires Town of Hudson 2021 Caucus during covid-19 pandemic to be “reasonably accessible”**

The Wisconsin Open Meeting Law requires that all governmental meetings be “reasonably accessible” to the public, and this requirement applies to the 2021 Town of Hudson Caucus.

In general, a governmental meeting has been considered reasonably accessible when held in a room reasonably calculated to be large enough to accommodate all people who are entitled to attend, who wish to attend, and who may be reasonably expected to attend.

But when planning the Town of Hudson 2021 Caucus during our increasingly spreading and concerning covid-19 pandemic in Wisconsin, St. Croix County, and the Town of Hudson, it is also necessary to reasonably take into account and follow the recommended public health protections against covid-19 exposure and spread risks in order to ensure that the 2021 Caucus will be reasonably accessible to the public.

## II. Remote participation and voting option for Town of Hudson 2021 Caucus is required to make it “reasonably accessible” under recommended covid-19 public health protections

**Our federal, state, and county governments all have recommended covid-19 public health protections that we all should follow in our covid-19 pandemic.**

The **Centers for Disease Control and Prevention (CDC)** explains that covid-19 spreads easily when people share their air with an infected person who breathes, talks, coughs, and/or sneezes among people who are within six-feet or are in an enclosed space with poor ventilation.

The CDC also explains that people who are infected with the covid-19 virus may not have any illness symptoms and may not know they are infected, but they still do infect other people who may become very sick with covid-19.

The CDC warns that older adults and people with certain underlying conditions such as heart or lung disease or diabetes are at much increased risk of severe illness, hospitalization, and death from covid-19.

The CDC recommends that everyone, and especially people who are at higher risk of getting very sick with covid-19, should:

- Avoid close contact with people from outside their immediate household and maintain at least six-foot distance from them; and
- Wear a mask when around people from outside their immediate household and/or whenever out in public, with limited exceptions.

(See: CDC, How to Protect Yourself & Others, at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>)

Currently, the **Wisconsin Governor’s Executive Order #94**, issued on November 10, 2020, advises us all to take specific precautions against further spread of covid-19, including:

- (1) Stay home, except for necessary trips out to get medical care, get food, and get to work;
- (2 a) Avoid gatherings of any size with individuals outside our immediate household, and wear a face covering and maintain at least six-foot distance whenever in proximity to individuals outside our immediate household;
- (2 c) Stay home if over 60 years old, pregnant, immunocompromised, obese, diabetic, have lung, kidney, and/or heart disease, and/or have or have had cancer; and
- (3) Limit numbers of individuals at meetings, and offer remote participation options.

(See: WI Governor’s Ex. Ord. #94 at <https://evers.wi.gov/Documents/COVID19/EO094-COVIDRecommendations.pdf>)

The **St. Croix County Public Health Department** similarly recommends that we all take specific precautions against further spread of covid-19, including:

- Follow advice of Wisconsin Governor’s Executive Order #94;
- Limit indoor public gatherings to no more than ten (10) people;

- Limit outdoor public gatherings to no more than fifty (50) people; and
- At all public gatherings of any size, every person should wear a mask and maintain six-foot distance from people outside their immediate household, seating should be assigned or fixed, a contact list should be made, and health screenings should be done.

(See: St. Croix County Covid-19 Information, Health Advisory, at

<https://www.sccwi.gov/951/Health-Advisory>)

**No one in the Town of Hudson should be required to put their health, and possibly their life, at risk in order to participate and vote in the 2021 Caucus.**

**But because of their ages and/or underlying conditions, many residents of the Town of Hudson are at greatly elevated risks of getting very sick, requiring hospitalization, and possibly dying if they are infected with the covid-19 virus via in-person attendance at the 2021 Caucus.**

The US Census Bureau estimates that, **of the approximately 9,000 people now living in the Town of Hudson**, about eleven percent (11%) or **990 people are 65 years or older** in age, and about five percent (5%) or **450 people are disabled and under the age of 65** (see: US Census Bureau, Quick Facts, Hudson Town, St. Croix County, WI, at

<https://www.census.gov/quickfacts/fact/table/hudsonstownstcroixcountywisconsin/BZA110218>).

**Some portion of these approximately 1,440 people in the Town of Hudson who are disabled or older than 65 would reasonably be expected to want to participate and vote in the 2021 Caucus.** However, because these 1,440 people are at much increased risk of severe illness, hospitalization, and death from covid-19, and because the recommended public health protections against catching covid-19 applicable to these 1,440 people are that they all stay home as much as possible and all avoid gathering with people outside their immediate household, **the 2021 Caucus will not be reasonably accessible to any of these 1,440 people unless they have an option to participate and vote remotely in the 2021 Caucus.**

In addition, **obesity puts people at elevated risk of getting very sick, requiring hospitalization, and possibly dying if they are infected with the covid-19 virus**, and the 2020 – 2022 Community Health Needs Assessment and Implementation Plan for St. Croix County (Healthier Together) reports that **twenty-seven percent (27%) of adults in St. Croix County are obese** (see: Healthier Together, p. 4, at

<http://www.healthiertogetherstcroix.org/wp-content/uploads/2020/02/2020-2022-Healthier-Together-Community-Health-Needs-Assessment-and-Implementation-Plan.pdf>).

**If 27% of adults in the Town of Hudson are obese, that amounts to about 1,823 people.**

The US Census Bureau estimates that about seventy-five percent (75%) of people in the Town of Hudson are older than 18, which is about 6,750 adults among the approximately 9,000 population here now, and 27% of 6,750 is 1,823 people (see: US Census Bureau, Quick Facts, Hudson Town, St. Croix County, WI, at

<https://www.census.gov/quickfacts/fact/table/hudsonstownstcroixcountywisconsin/BZA110218>).

**Some portion of these approximately 1,823 people in the Town of Hudson who are obese would reasonably be expected to want to participate and vote in the 2021 Caucus.** However again, because these 1,823 people are at much increased risk of severe illness, hospitalization, and death from covid-19, and because the recommended public health protections against catching covid-19 applicable to these 1,823 people are that they all stay home as much as possible and all avoid gathering with people outside their immediate household, **the 2021 Caucus will not be reasonably accessible to any of these 1,823 people unless they have an option to participate and vote remotely in the 2021 Caucus.**

**The Town of Hudson can and should provide an option for remote participation and voting in the 2021 Caucus in order to make this governmental meeting reasonably accessible to the public as required by the Wisconsin Open Meeting Law.**

The Town of Hudson has made its Town Board meetings during our covid-19 pandemic reasonably accessible to the public by offering the option to connect to the proceedings on Zoom. It can use the same technology, or another similar platform, to make the 2021 Caucus reasonably accessible to people in the Town of Hudson who want to participate and vote but cannot attend in-person due to covid-19 exposure and spread risks.

But even if no one in the Town of Hudson had any elevated risks of becoming very sick, requiring hospitalization, and dying because they were infected with the covid-19 virus via in-person attendance at the 2021 Caucus, it would be advisable to provide an option for remote participation in order to ensure the 2021 Caucus will be reasonably accessible to the public.

In previous years, such as at the 2019 Caucus in which we voted, from seventy-five to one-hundred (75 – 100) people have attended the Caucus in-person. As a practical matter, there is not adequate space in the Hudson Town Hall meeting room to allow always maintaining at least six-feet of distance between each of 75 to 100 people, and an option to participate and vote remotely will avoid the potential problem of having to turn away and exclude people who have a right to and want to participate in the 2021 Caucus.

**Please act to both reasonably protect our public health during our covid-19 pandemic and ensure reasonable access to the 2021 Caucus by providing an option for remote participation and voting by the people of the Town of Hudson.**

**Email from Celeste Koeberl to Don Jordan, et. al., sent:**

- **December 5 at 1:52PM:**

**From:** Celeste Koeberl <koeberl@mac.com>

**Subject: Please talk with WEC Attorney Jim Witecha about remote participation and voting options for 2021 Town Caucus**

**Date:** December 5, 2020 at 1:52:18 PM CST

**To:** chairman@townofhudsonwi.com

**Cc:** "James.Witecha@wi.gov" <James.Witecha@WI.Gov>

Hudson Town Board Chair, Don Jordan:

**Thank you for taking my phone call this morning**, Sat. Dec. 5, about how to ensure reasonable accessibility during our covid-19 pandemic to the 2021 Town of Hudson Caucus for everyone who is eligible to participate and vote.

I understand from our conversation today that, at the Dec. 1, 2020 meeting of the Hudson Town Board, the 2021 Caucus was rescheduled to Monday January 4 and relocated to a meeting room at the Hudson High School that is larger than the Hudson Town Hall meeting room in order to allow maintaining greater distance between all the people who attend in-person.

**Thank you for having the Town Board make this change in Caucus venue!** This school meeting room also likely has a superior HVAC system with better ventilation than the Town Hall meeting room, and since the school is offering a remote instruction option it certainly could facilitate a remote participation and voting option for the Caucus.

While moving the 2021 Town of Hudson Caucus to a larger venue with better ventilation is a welcome improvement, it is not a sufficient accommodation for people like me and my spouse, who because of our ages, health conditions, and disabilities are at very high risks of becoming seriously ill, requiring hospitalization, and possibly dying if we catch covid-19 at the Caucus.

The November 29, 2020, report from the White House coronavirus task force said: "It must be made clear that if you are over 65 or have significant health conditions, you should not enter any indoor public spaces where anyone is unmasked due to the immediate risk to your health; you should have groceries and medications delivered." (see: White House coronavirus task force warns states: 'We are in a very dangerous place', at [https://www.cnn.com/2020/12/02/politics/white-house-coronavirus-task-force-states-report/index.html?fbclid=IwAR3ZdEH7zABojVPSiw1dWLC9XcBNkXGQ9QFFdThsmCuUG\\_LK-AguYm\\_HVyk](https://www.cnn.com/2020/12/02/politics/white-house-coronavirus-task-force-states-report/index.html?fbclid=IwAR3ZdEH7zABojVPSiw1dWLC9XcBNkXGQ9QFFdThsmCuUG_LK-AguYm_HVyk)).

Even when held in a larger and better ventilated meeting room, the 2021 Town of Hudson Caucus will present unreasonably high covid-19 exposure risks for people attending in-person if not EVERYONE ALWAYS wears a mask and maintains at least six-foot distance from others

who are not part of their immediate household as the people attending the Caucus gather, conduct Caucus business, and disperse.

In the circumstances of our community's increasingly worsening covid-19 pandemic, coupled with our personal covid-19 risk factors, we cannot attend the 2021 Town of Hudson Caucus in-person without putting our health and lives at unreasonable risks.

**We are requesting a remote participation and voting option for the 2021 Caucus in order for the public meeting to be made reasonably accessible to us, and to the many people like us, who are residents in the Town of Hudson, have rights to participate and vote, want to participate and vote, but cannot attend the 2021 Caucus in-person because of the covid-19 exposure risks.**

During our phone call today, I also understood you to say that the Town has been advised by the Town attorney and attorneys for an association of municipalities that it is not legally permissible to offer a remote participation and voting option for the 2021 Caucus. I replied that yesterday, Fri. Dec. 4, I spoke with an attorney at the Wisconsin Elections Commission (WEC), Jim Witecha, who said it WAS permissible to conduct a Town Caucus remotely, and that the WEC was compiling information on technologies a Town could choose to use in order to conduct a Town Caucus even entirely remotely. You said you'd like to learn more about those possibilities, and I said I'd email you Mr. Witecha's contact info.

**Thank you very much for your willingness to explore and consider options for remote participation and voting in the 2021 Town of Hudson Caucus!**

**Please contact Mr. Witecha for more information on this topic: [James.Witecha@WI.Gov](mailto:James.Witecha@WI.Gov) and 608-266-0136.**

**And please keep me in the communication loop, too.**

Best,  
Celeste Koeberl

**From:** Don Jordan <chairman@townofhudsonwi.com>

**Subject: Re: Please talk with WEC Attorney Jim Witecha about remote participation and voting options for 2021 Town Caucus**

**Date:** December 7, 2020 at 7:47:25 AM CST

**To:** Celeste Koeberl <koeberl@mac.com>

Celeste: Thank you for your phone call and note. I will forward this information on to our attorney for follow up.

Sincerely,

Don Jordan

Chair Town of Hudson

715-220-2984

On 2020-12-05 1:52 pm, Celeste Koeberl wrote:



Email from Celeste Koeberl to Don Jordan, et. al., sent:

- December 7 at 10:29AM:

**From:** Celeste Koeberl <koeberl@mac.com>

**Subject: Re: Please talk with WEC Attorney Jim Witecha about remote participation and voting options for 2021 Town Caucus**

**Date:** December 7, 2020 at 10:29:35 AM CST

**To:** Don Jordan <chairman@townofhudsonwi.com>

**Cc:** "James.Witecha@wi.gov" <James.Witecha@WI.Gov>

Thank you, Mr. Jordan!

As I recall, one of the concerns you expressed during our Sat. Dec. 5 phone call was about the possible lack of secrecy for ballots cast remotely via Zoom in the 2021 Town of Hudson Caucus.

FYI, **Wis. Stat. Section 8.05 Nomination in towns and villages (1) CAUCUS**, does not appear on its face to strictly require secret balloting when selecting candidates for election to town positions; rather, **(d)** allows making the non-secret nomination of candidates by motions and seconds from the floor, **or** making nominations by writing the name of a candidate on a piece of paper returned to the tellers; and **(g)** states that voting for each office's nominated candidates "shall be by ballot" when more than two people are nominated for the same office, but it does not specify a secret ballot  
(see: <https://docs.legis.wisconsin.gov/statutes/statutes/8/05>).

But even if secret balloting is required when selecting among more than two candidates nominated for election to the same town office, there are technologies available that provide for remote participation and secret balloting. For example, we recently voted online to choose among candidates for election to a corporate board of directors, and instead of voters being identified by their names, each qualified voter was issued a unique ID number to use when casting their ballots.

I'm sure Mr. Witecha will be able to suggest a number of alternative technologies for providing a remote participation and voting option that the Town of Hudson could choose among in order to ensure that the Jan. 4, 2021 Caucus will be reasonably accessible to everyone residing in the Town who wants to participate and vote in the Caucus but cannot do so in-person because of the covid-19 exposure risks.

I and my spouse have had our home in the Town of Hudson for twenty-seven years, during which we have participated and voted in previous Town Caucuses. We have rights to participate and vote in the 2021 Caucus, and we want to exercise those rights. But I'm 66, and my spouse is 72 with several underlying health conditions and disabilities that put him at great risk of getting very sick, needing to be hospitalized, and possibly dying, if he contracts covid-19. Attending the January 4, 2021 Town of Hudson Caucus in-person would put our health and lives at unreasonably high risks of serious illness, hospitalization, and death.

Ensuring that the Jan. 4, 2021 Town of Hudson Caucus will be reasonably accessible to the public during our rapidly worsening covid-19 pandemic is not a minor concern to just a handful of people. A significant portion of people residing in the Town of Hudson are situated similarly to me and my spouse. As I wrote in my Nov. 30 comment for the Dec. 1 meeting of the Hudson Town Board regarding the 2021 Caucus, the US Census Bureau reports that about 5% or 450 people among the Town's 9,000 population are disabled and under 65, and that about 11%, or 990 people, are 65 or older; and the 2020 - 2022 Community Health Needs Assessment reports that 27% of adults, or 1,823 people in the Town, are obese. These disability, age, and obesity characteristics put at least one-third of the people residing in the Town of Hudson at greatly elevated risks of getting seriously ill, requiring hospitalization, and possibly dying if they catch covid-19. Some portion of these people in the Town of Hudson who are disabled, elderly, and/or have compromising underlying health conditions such as obesity, can be reasonably expected to want to participate and vote in the Jan. 4, 2021 Caucus, but because of covid-19 exposure risks they cannot attend the 2021 Caucus in-person without putting their health, and possibly their lives, at unreasonable risk.

Please provide an option for remote participation and voting in the Jan. 4, 2021 Town of Hudson Caucus.

Best,  
Celeste Koeberl  
715-386-5240 home landline  
651-247-0399 mobile

**Email from Celeste Koeberl to Don Jordan, et. al., sent:**

• **December 11 at 9:22AM:**

**From:** Celeste Koeberl <[koeberl@mac.com](mailto:koeberl@mac.com)>

**Subject:** Hudson High School CAN facilitate remote option for Jan. 4, 2021 Town of Hudson Caucus

**Date:** December 11, 2020 at 9:22:04 AM CST

**To:** [chairman@townofhudsonwi.com](mailto:chairman@townofhudsonwi.com)

**Cc:** "[James.Witecha@wi.gov](mailto:James.Witecha@wi.gov)" <[James.Witecha@WI.Gov](mailto:James.Witecha@WI.Gov)>, [info@disabilityvote.org](mailto:info@disabilityvote.org), Barbara Beckert <[Barbara.Beckert@drwi.org](mailto:Barbara.Beckert@drwi.org)>, "[PMahler@bakkenorman.com](mailto:PMahler@bakkenorman.com)" <[PMahler@BakkeNorman.com](mailto:PMahler@BakkeNorman.com)>

Hudson Town Board Chair, Don Jordan:

This morning, Friday Dec. 11, 2020, I spoke with the Hudson High School Facilities Scheduler, Betsy Ganz at 715-377-3708, about the school's technological capability to facilitate remote access and participation for the Jan. 4, 2021 Town of Hudson Caucus, if the Town wanted to provide an option of remote participation and voting for people in the Town who cannot attend in-person due to covid-19 exposure risks.

Betsy Ganz said, paraphrased:

- The Jan. 4, 2021 Town of Hudson Caucus is scheduled in the Lyceum, a glass-walled room called the "Fish Bowl", located near Door #1, which is the main entrance to the building, from 5PM to 8PM;
- The Lyceum IS equipped with technology capable of facilitating remote access and participation;
- Ms. Ganz needs about two weeks in advance to schedule the necessary technical staff and all equipment;
- Ms. Ganz is waiting for direction from the Town regarding whether it wants to provide a remote access and participation option;
- Other groups of people also will be in and out of the school building for other activities on Jan. 4, during the time of the 2021 Hudson Town Caucus, and also will be using Door #1, including, as of now:
  - Girls Basketball games at 5:45PM and 7:15PM
  - Fitness Center from 5:30PM to 9:30PM
- The school requires that everyone in the building wear a face mask; and
- The school requires that outside groups using the school facility keep an attendance log of everyone who was at the school for at least the following thirty days in order to facilitate contact tracing for covid-19 spread.

Please DO choose to use the school's technological capacity to provide an option for remote participation and voting in the Jan. 4, 2021 Caucus.

The Jan. 4, 2021 date of the Caucus is ten days after Christmas and four days after New Year's Eve, when everyone who celebrated with others from outside their immediate family and caught covid-19 will be shedding the virus and infecting more people.

The covid-19 exposure risks for attendees of the Jan. 4, 2021 Caucus at the school will be further increased by the presence of additional nearby groups of people who will be using the same building access door.

The covid-19 exposure risk from in-person attendance at the Jan 4, 2021 Caucus will put the health and lives of at least one-third of the Town population who are eligible to participate and vote at unreasonably high risk because we are older, have underlying health conditions and/or are disabled.

Because the Jan. 4, 2021 Caucus will be held at the Hudson High School, which has the necessary technology and staff, it is EASY to provide an option for remote participation and voting so that no one is required to choose between risking their health and life or giving up their rights to participate and vote in our local government electoral process.

PLEASE provide a remote participation and voting option for the Jan. 4, 2021 Caucus.

Celeste Koeberl

Email from Celeste Koeberl to Don Jordan, et. al., sent:

- December 11 at 3:13PM:

**From:** Celeste Koeberl <[koeberl@mac.com](mailto:koeberl@mac.com)>

**Subject:** Re: Hudson High School CAN facilitate remote option for Jan. 4, 2021 Town of Hudson Caucus

**Date:** December 11, 2020 at 3:13:37 PM CST

**To:** [chairman@townofhudsonwi.com](mailto:chairman@townofhudsonwi.com)

**Cc:** "[James.Witecha@wi.gov](mailto:James.Witecha@wi.gov)" <[James.Witecha@WI.Gov](mailto:James.Witecha@WI.Gov)>, [info@disabilityvote.org](mailto:info@disabilityvote.org), Barbara Beckert <[Barbara.Beckert@drwi.org](mailto:Barbara.Beckert@drwi.org)>, "[PMahler@bakkenorman.com](mailto:PMahler@bakkenorman.com)" <[PMahler@BakkeNorman.com](mailto:PMahler@BakkeNorman.com)>

Hudson Town Board Chair, Don Jordan:

Please read this linked article and watch the associated video from today's Washington Post, 12/11/20; it illustrates how the virus causing covid-19 will spread among people at the in-person Jan. 4, 2021 Town Caucus (Military-grade camera shows risks of airborne coronavirus spread, at <https://www.washingtonpost.com/investigations/2020/12/11/coronavirus-airborne-video-infrared-spread/?arc404=true>).

For the 2019 Caucus that I and my husband attended and at which you were nominated for election in the 2019 Spring Election, there were between 75 to 100 people present. The more people who are in the meeting room for the Jan. 4, 2021 Caucus, and the longer they are there, the greater the viral load in the room will be, and the greater the risks will be of catching covid-19, getting seriously ill, requiring hospitalization, and dying for anyone there, but especially for everyone who is older, has underlying health conditions, and/or is disabled.

PLEASE work with the Hudson High School to provide an option for remote participation and voting in the 2021 Caucus.

Celeste Koeberl

Video at:

<https://www.washingtonpost.com/investigations/2020/12/11/coronavirus-airborne-video-infrared-spread/?arc404=true>

The Washington Post

Investigations

# Military-grade camera shows risks of airborne coronavirus spread

By Dalton Bennett, Sarah Cahlan, Daron Taylor

DECEMBER 11, 2020



As winter approaches, the United States is grappling with a jaw-dropping surge in the number of novel [coronavirus](#) infections. More than 288,000 Americans have been killed by a virus that public health officials now say can be spread through airborne transmission.

The virus spreads most commonly through close contact, scientists say. But under certain conditions, people farther than six feet apart can

Email from Celeste Koeberl to Hudson Town Clerk, Vicki Shaw, et. al., sent:

• December 16 at 11:34AM:

**From:** Celeste Koeberl <koeberl@mac.com>

**Subject:** Plan to prevent spreading covid-19 and protect voting rights in 2021 Caucus

**Date:** December 16, 2020 at 11:34:41 AM CST

**To:** clerk@townofhudsonwi.com

**Cc:** chairman@townofhudsonwi.com, supervisor1@townofhudsonwi.com, supervisor2@townofhudsonwi.com, supervisor3@townofhudsonwi.com, supervisor4@townofhudsonwi.com, Kelli.Engen@sccwi.gov, "James.Witecha@wi.gov" <James.Witecha@WI.Gov>, "SullivanFX@doj.state.wi.us" <SullivanFX@DOJ.State.WI.US>, "PMahler@bakkenorman.com" <PMahler@BakkeNorman.com>

Town of Hudson Clerk, Vickie Shaw:

I have read the "Town of Hudson Notice of Caucus" (<https://townofhudsonwi.com/wp-content/uploads/2020/12/2021-Notice-of-Caucus.pdf>) posted on the Town's website that sets the date of Monday January 4, 2021, at 6PM, and the location of the Hudson High School.

However, this Notice **provides no information regarding how the Caucus will be conducted in the context of our on-going covid-19 pandemic and in accord with the current federal, state, and county recommended public health protections to manage covid-19 exposure and spread risks.**

Relevant federal, state, and county recommended public health protections against covid-19 exposure and spread risks are that everyone, but especially people who are older, have underlying health conditions, and/or are disabled, should:

- Stay home if over 60 years old, pregnant, immunocompromised, obese, diabetic, have lung, kidney, and/or heart disease, and/or have or have had cancer (Governors Emergency Order #94);
- Not enter any indoor public space where anyone is unmasked (White House coronavirus task force);
- Avoid close contact with people from outside their immediate household (CDC and Governors Emergency Order #94);
- Avoid gatherings of any size with people outside their immediate household (Governors Emergency Order #94);
- Limit indoor public gatherings to no more than ten (10) people (St. Croix County Covid-19 Health Advisory);
- At all public gatherings of any size, every person should wear a mask and maintain six-foot distance from people outside their immediate household, seating should be assigned or fixed, a contact list should be made, and health screenings should be done (St. Croix County Covid-19 Health Advisory); and
- Limit numbers of individuals at meetings, and offer remote participation options (Governors Emergency Order #94).

**We should avoid making our local covid-19 situation even worse because of how the 2021 Hudson Town Caucus is conducted.**

**We should avoid requiring anyone in the Town of Hudson to put their health, and possibly their life, at unreasonable and unnecessary risk in order to participate and vote in the 2021 Hudson Town Caucus.**

- **What is the plan for conducting the January 4, 2021 Hudson Town Caucus so that it will not be a covid-19 super-spreader event?**
- **What is the plan for conducting the January 4, 2021 Hudson Town Caucus in a manner that preserves the voting rights of people residing in the Town who are eligible to participate and vote, who want to participate and vote, but who cannot attend the Caucus in-person due to its likely very high covid-19 exposure and spread risks coupled with their risks of getting seriously ill, requiring hospitalization, and possibly dying, if they are infected with the novel coronavirus that causes covid-19?**

**FYI:**

**The easiest way to avoid increasing our community's covid-19 exposure and spread risks AND to ensure that the voting rights of people in the Town are preserved is to offer an option of remote participation and voting for the January 4, 2021 Hudson Town Caucus.**

- It is not necessary for the Town to have or acquire technology or staff in order to offer an option of remote participation and voting in the 2021 Hudson Town Caucus.

The Hudson High School Facilities Manager (Betsy Ganz at 715-377-3708) has confirmed that the school is offering a remote instruction option, and so has the technological and staff capabilities required to facilitate a remote participation and voting option in the room where the January 4, 2021 Town Caucus is scheduled to be held, and Ms. Ganz has asked the Hudson Town Board Chair, Don Jordan, whether the Town wants to have the required equipment and staffing scheduled.

- State law does NOT prohibit offering an option of remote participation and voting in the 2021 Hudson Town Caucus.

Wisconsin Elections Commission (WEC) attorney Jim Witecha ([James.Witecha@WI.Gov](mailto:James.Witecha@WI.Gov) and 608-266-0136) has advised that state election laws do NOT prohibit offering an option of remote participation and voting in a town caucus. Mr. Witecha also has advised that other towns are planning to conduct their caucuses entirely remotely.

- It would not be difficult to verify the identities and eligibility of people who participate and vote remotely in the 2021 Hudson Town Caucus.



For example, a remote participant could do on camera what they would do to confirm their ID and eligibility if they attended the Caucus in-person: Simply show their ID and face on camera to be checked against the same list used by Town staff to confirm the IDs and eligibility of everyone attending in-person.

- It would not be difficult to provide for secret balloting by people who participate and vote remotely in the 2021 Hudson Town Caucus, if that is required.

For example, a remote participant could be assigned an anonymous number to use when casting a ballot, instead of being identified by their name.

But Wis. Stat. 8.05(1) provisions regarding the conduct of town caucuses do NOT specify that voting on matters at the caucus must be done by a method that is secret. Rather, under Wis. Stat. 8.05(1), the identities of everyone who attends the caucus in-person in order to select candidates for election to a town office are visible to all; officials to conduct the caucus may be chosen by a non-private voice vote, and so may the caucus tellers; nominations of candidates may be made by motions and seconds from the floor, during which the identities of people making nominations are visible to all; and while selecting among nominated candidates when more than two people are nominated for the same town office is required to be done by “ballot”, the statute does NOT say “secret ballot”, and the statute does not define “ballot” to mean “secret ballot”.

While the WEC “Procedures For Nomination Of Candidates By Caucus” does refer to “secret ballots”, it is clear law that the language in provisions of Wisconsin Statutes is superior to that used in WEC guidance documents.

**Moving the 2021 Hudson Town Caucus to a larger venue with possibly better ventilation is a welcome improvement, but ONLY changing the meeting location is NOT sufficient to adequately reduce covid-19 exposure and spread risks for in-person attendees.**

- Only changing the meeting location is not sufficient for people who are at very high risk of becoming seriously ill, requiring hospitalization, and possibly dying if they are infected with the novel coronavirus that causes covid-19 at the Caucus.

At least one-third of the people in the Town of Hudson who are entitled to participate and vote in the 2021 Caucus are in covid-19 high risk categories due to their ages (11% are 65 or older), underlying health conditions (27% of adults are obese), and/or disabilities (5% are disabled and younger than 65).

**Only changing the meeting location is not sufficient in the context of the local incidence and spread of covid-19.**

- Since September 2020, St. Croix County has been experiencing the rapidly escalating exponential growth of an uncontrolled covid-19 pandemic.

The covid-19 cumulative epidemic curve for St. Croix County has been sharply upward since September, and when that curve is sharply upward it means that covid-19 is spreading much wider and much faster.

From September 1 to December 13, 2020, the number of people in St. Croix County with covid-19 has increased by about 760%: from 740 total cases on Sept. 1 to 5626 on Dec. 13, 2020.

As of December 15, 2020, St. Croix County reports that at least 2376 people in the County currently have active covid-19 infections, which means they contracted the highly communicable infectious disease within the past thirty days; and to date, about half of the total number of people in the County who have been infected with covid-19 have a Hudson home address, which includes people residing in the Town of Hudson.

**Only changing the meeting location is not sufficient in light of the likely incidence and spread of covid-19 by the January 4, 2021 date of the Hudson Town Caucus.**

- In the three weeks from now until the January 4, 2021 Hudson Town Caucus, covid-19 quite likely will spread even faster and wider in the Town of Hudson than it is now.

People from areas adjacent to St. Croix County where there ARE enforced public health protections against covid-19 exposure and spread risks in place, such as the State of Minnesota and Pierce County WI, will have continued to crowd into the Hudson bordertown bars, restaurants, and shops.

People here will have gathered with others from outside their immediate households to celebrate Christmas and New Year's, and during their celebrations with their families, friends, and neighbors, they will have either infected others, or been infected themselves, with the novel coronavirus that causes covid-19.

- The January 4th date of the 2021 Hudson Town Caucus is ten days after Christmas and four days after New Year's Eve, just when everyone who caught the novel coronavirus at holiday celebrations will be shedding the highly contagious virus and will be highly infectious to others.

Ms. Ganz also has confirmed that during the January 4, 2021 Hudson Town Caucus additional groups of people will be present at the Hudson High School and using the same Door #1 as Caucus attendees to enter and exit the building for other activities open to the public, including: two girls basketball games and the fitness center facility. The presence of these additional groups of people will further increase the covid-19 exposure and spread risks for in-person attendees of the Caucus as they gather and disperse.

**Only changing the meeting location is not sufficient to prevent the January 4, 2021 Hudson Town Caucus from being a covid-19 super-spreader event.**

- It is ill-advised even for young, entirely healthy, and fully able people to attend the 2021 Hudson Town Caucus in-person.

Recent research illustrates just how easily and widely the novel coronavirus that causes covid-19 will spread among people in the meeting room for the January 4, 2021 Hudson Town Caucus; it also demonstrates that the more people who are in the meeting room and the longer they are there, then the greater the viral load in the meeting room will be and the greater the risks to all attendees will be of contracting covid-19, getting seriously ill, requiring hospitalization, and dying (See: Military-grade camera shows risks of airborne coronavirus spread, at <https://www.washingtonpost.com/investigations/2020/12/11/coronavirus-airborne-video-infrared-spread/?arc404=true>).

**Only changing the meeting location is not sufficient to preserve the voting rights of a significant portion of Town residents.**

- It is extremely ill-advised for anyone who is older, has underlying health conditions, and/or is disabled to attend the 2021 Hudson Town Caucus in-person.

Every person among the at least one-third of the Town's population who are older, have underlying health conditions, and/or are disabled, will be put at especially high risk of serious illness, hospitalization, and death if they must attend the 2021 Hudson Town Caucus in-person in order to exercise their legal rights to participate and vote in our local government electoral process.

No one should be required to choose between their voting rights and their health, and quite possibly their life.

**In these circumstances, it seems imperative to take the easy steps required in order to offer an option of remote participation and voting for the January 4, 2021 Town of Hudson Caucus. Please do so.**

Celeste Koeberl  
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**Email from Celeste Koeberl to Don Jordan, et. al., sent:**

• **December 18 at 12:02PM, 2020:**

**From:** Celeste Koeberl <koeberl@mac.com>

**Subject:** Provide plan for public health protections against covid-19 exposure and spread risks at Jan. 4, 2021 Hudson Town Caucus

**Date:** December 18, 2020 at 12:02:46 PM CST

**To:** chairman@townofhudsonwi.com

**Cc:** clerk@townofhudsonwi.com, supervisor1@townofhudsonwi.com, supervisor2@townofhudsonwi.com, supervisor3@townofhudsonwi.com, supervisor4@townofhudsonwi.com, "PMahler@bakkenorman.com" <PMahler@BakkeNorman.com>, Cindy Campbell <Cindy.Campbell@sccwi.gov>, corpCounsel@sccwi.gov, Kelli.Engen@sccwi.gov, "James.Witecha@wi.gov" <James.Witecha@WI.Gov>, fergusonpm@doj.state.wi.us, Barbara Beckert <Barbara.Beckert@drwi.org>

Hudson Town Board Chair, Don Jordan:

Last week, during my conversations with you and with the Town's attorney, Paul Mahler, about the request for an option of remote participation and voting in the Jan. 4, 2021 Hudson Town Caucus, I was told that an update on the Town's plans for conducting the Caucus would be provided by the end of this week.

Having not yet received any more information, this morning, Friday Dec., 18, 2020, I phoned you at the number you previously told me call, 612-418-2422, to request an update on the Town's plan for taking reasonable and necessary public health protections against covid-19 exposure and spread risks at the Jan. 4, 2021 Hudson Town Caucus.

You informed me that the Town would not provide an option of remote participation and voting for the Jan. 4, 2021 Hudson Town Caucus.

I then asked you to reply to specific questions regarding whether and how the Town would implement the federal, state, and St. Croix County Public Health Department's recommended public health protections against covid-19 exposure and spread risks, as well as those of the Hudson School District, for the entirely in-person Jan. 4, 2021 Hudson Town Caucus, including:

- Would the room size accommodate always maintaining a six-foot minimum distance between people from different immediate households during the Caucus meeting?
- Would the area for attendees waiting to show their IDs in order to demonstrate their eligibility to participate and vote accommodate always maintaining a minimum six-foot distance between people from different immediate households?
- Would all attendees be required to always maintain at least six-foot distance from people outside their immediate households? If so, who would enforce the requirement, and how would it be enforced?

- Would all attendees be required to wear face coverings or masks at all times? If so, who would enforce the requirement, and how would it be enforced?
- Would seating be assigned or fixed?
- Would the Town keep a list of attendees for use in covid-19 exposure contact tracing?
- Would the Town conduct health screenings of attendees?

All of the information I requested about the Town's plan for conducting the Caucus is regarding public health protections against covid-19 exposure and spread risks that are recommended to be taken by the St. Croix County Health Advisory for public gatherings such as the Jan. 4, 2021 Hudson Town Caucus (see: <https://www.sccwi.gov/951/Health-Advisory>) and/or are required by the Hudson School District in its Back to School Blueprint (see: <https://drive.google.com/file/d/1srcBjTjQLxN3tJrbc7QOmAbaGa2JUUV/view>).

I attempted to explain to you that I was requesting this information because the Town of Hudson Notice of Caucus for the Jan. 4, 2021 Hudson Town Caucus included NO information regarding ANY precautions that would be taken to manage covid-19 exposure and spread risks at the in-person meeting (see: <https://townofhudsonwi.com/wp-content/uploads/2020/12/2021-Notice-of-Caucus.pdf>); and many people in the Town of Hudson would not even consider attending the Caucus in-person without knowing beforehand what public health protections against covid-19 would be followed because they were at very high risk of becoming seriously ill, requiring hospitalization, and possibly dying if they are infected at the Caucus with the novel coronavirus that causes covid-19.

I understand you were driving when you answered my phone call, and I asked you to return my call when you were not driving if that would be more convenient for you.

After replying to the first few questions about the Town's plan for conducting the Caucus, you seemed to become quite angry and said you would not "play 20 questions", would not call me back, and abruptly hung up.

It is not acceptable for a Town official to refuse to inform people in the Town of Hudson who have rights to participate and vote in the Jan. 4, 2021 Hudson Town Caucus of how their local government will or will not take reasonable and necessary steps to protect their health and lives from covid-19 exposure and spread risks at this entirely in-person local government electoral process.

It is not acceptable for our Town government to require that any person gamble blindly with their health, and possibly their life, when deciding whether to attend and participate in the Jan. 4, 2021 Hudson Town Caucus.

There now are just over two weeks remaining in which to inform people of how the Jan. 4, 2021 Hudson Town Caucus will be conducted in the context of our on-going covid-19 pandemic to reasonably protect the public health; please ensure that this is done without further delay.

Thank you for your help.

Celeste Koeberl

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