

Testimony of Jaye Pershing Johnson  
Governor's Legal Counsel

**S. 310, An act relating to natural disaster government response, recovery, and resiliency**

**Good morning – JPJ – thank you for inviting me to testify.**

**I am limiting my testimony to two very specific changes in S. 310 regarding the Governor's emergency powers. These are found in Section 28 on p. 52, lines 3-5 and Section 30, page 53, lines 9-10 and 54, lines 4-5. As you know, the emergency powers are exercised to protect Vermonters in true emergency situations. These changes concern me because they could put the health and welfare of Vermonters at risk. We are very lucky the Legislature has provided the flexibility it has for the purpose of responding to the diverse emergencies we have faced in the last 4 years. However, these changes remove some of that flexibility.**

**The first** repeals a “catch all” emergency powers provision in 20 V.S.A. § 11 which authorizes the Governor “To perform and exercise other functions, powers, and duties as necessary to promote and secure the safety and protection of the civilian population.” We learned during COVID, and to a certain extent during recent flood relief operations, that **the Governor's emergency powers need to read in a way that meets the needs of a particular emergency.** The thing about emergencies, as we learned from COVID, is no one can predict how, who or where they will impact the State. **No one could foresee the nature and extent of the measures that would need to be taken across the country to address the dangers of the pandemic.**

Our emergency response was unrivaled, and all of the actions taken during COVID were solidly legally supportable but:

- 20 V.S.A. §11(6) provides an added measure of flexibility when needed to withstand a challenge.
- During COVID the State prevailed in all 3 legal challenges to the Governor's emergency powers but I am sure you remember this was not the case in many states across the country.

**[Please see Complaints and a Motion for a Temporary Restraining Order prepared by the Office of the Attorney General making reference to 20 V.S.A. §11(6)]**

I am not clear what problem it is this change is trying to address, but **it could serve to restrict the ability of a Vermont governor to act “to promote and secure the safety and protection of the civilian population” in future “all hazard events.” Please re-insert the repealed language.**

**The second (Section 30, page 53, lines 9-10 and 54, lines 4-5)** relates to the ability and flexibility of the Governor to accept federal and private gifts and grants during an emergency. The changes would require compliance with the 32 V.S.A. § 5 grants acceptance process.

- In July 2023, even before the flooding, FEMA was poised to provide resources and funding when the storm hit. Within days the State received and was delivering shipments of water, fans, dehumidifiers and other gifts and grants from public and private sources.
- During an emergency there is an enormous amount of logistical coordination needed simply to respond to the emergency at hand. Life safety is the priority. The response of donors is immediate and generous.

- When donated dehumidifiers from Amazon came in they were loaded onto trucks and delivered. Think how frustrating (and in some cases life threatening) it would have been for Vermonters who were told water, fans and dehumidifiers were sitting in warehouses poised for delivery once the 32 V.S.A. § 5 grant approval process had been completed.
- Again this is a restriction that could put Vermonters at risk during an “all hazards event.”
- It is also unclear what the harm it is this is trying to address. An easy fix would be to require reporting to the JFO or the JFC as soon as practicable regarding gifts and grants received.