

STATE OF VERMONT

SUPERIOR COURT  
ORLEANS UNIT

CIVIL DIVISION  
Docket No. 21-CV-332

STATE OF VERMONT

V.

HNR DESAUTELS LLC, and  
ANDRE M. DESAUTELS

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**DEFENDANT'S REPLY TO STATE'S SUPPLEMENTAL BRIEF  
ON SEPARATION OF POWERS**

COME NOW, Defendants, HNR DESAUTELS LLC and ANDRE M. DESAUTELS, by and through counsel, Robert J. Kaplan, Esquire and KAPLAN AND KAPLAN and in reply to the State's Supplemental Brief on Separation of Powers state as follows:

**1. Executive Order 01-20 Appears to have been Issued without Statutory Authority and is Illegal, Invalid and a Legal Nullity**

In their Supplemental Memorandum of Defendants Concerning Emergency Power of Governor and Authority of Agencies to Issue Guidelines, Defendants pointed out that the record appears devoid of evidence that the statutory requirements for the Governor's authority to issue Executive Order 01-20 were satisfied. In particular, Defendants noted that there is seemingly no declaration by the Commissioner of Public Safety that Covid-19 is an "all-hazards" event. The State's Supplement Brief of Separation of Powers validates this contention with the glaring omission of any contrary evidence.

The emergency management statutory framework set out at 20 V.S.A. § 1 *et. seq.* (Emergency Management Statutes) does not grant the Governor unilateral, singular authority to

declare an emergency. The Governor's authority to claim emergency powers is provided in 20 V.S.A. § 9 which provides

Subject to the provisions of this chapter, in the event of an **all-hazards** event in or directed upon the United States or Canada that causes or may cause substantial damage or injury to persons or property within the bounds of the State in any manner, **the Governor may proclaim a state of emergency** within the entire State or any portion or portions of the State. Thereafter, the Governor shall have and may exercise for as long as the Governor determines the emergency to exist the following additional powers within such area or areas:

(Emphasis added). By the plain language of this statute, an "all-hazards" event is a necessary pre-requisite to the Governor's authority to "proclaim a state of emergency" and exercise "additional powers." "All-hazards" is a defined term set forth in 20 V.S.A. § 2 (1) which provides

"All-hazards" means any natural disaster, health or disease-related emergency, accident, civil insurrection, use of weapons of mass destruction, terrorist or criminal incident, radiological incident, significant event, and designated special event, any of which may occur individually, simultaneously, or in combination and which poses a threat or may pose a threat, **as determined by the commissioner or designee**, to property or public safety in Vermont.

(Emphasis added). Like "all-hazards," "**commissioner**" is also a defined term in 20 V.S.A. § 2 (2) which provides "'Commissioner'" means the **commissioner of public safety**." The plain language of these statutory provisions makes clear that it is the Commissioner of Public Safety who determines that an existing condition amounts to an "all-hazards" occurrence. It is only after this determination by the Commissioner of Public Safety that an "all-hazards" event exists that authority arises with the Governor to "proclaim a state of emergency" and thereby garner authority to exercise the enumerated "additional powers." As Defendants previously noted,



















