STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

At Charleston

EXECUTIVE ORDER NO. 71-20

By the Governor

WHEREAS, a State of Emergency was declared on the Sixteenth Day of March, Two Thousand Twenty for all counties in West Virginia (the "State of Emergency Declaration"), to allow agencies to coordinate and create necessary measures to prepare for and respond to the outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19; and

WHEREAS, Chapter 15, Article 5, Section 6 of the Code of West Virginia authorizes the Governor to, among other things, control ingress and egress to and from a disaster area or an area where large-scale threat exists, the movement of persons within the area, and the occupancy of premises therein, and to perform and exercise other functions, powers, and duties that are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, Executive Order 9-20 required all businesses and operations in West Virginia, except Essential Businesses and Operations as defined therein, to cease all activities within the state except for such minimum basic operations as are necessary to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or related functions, and the minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences, and provided exceptions for businesses such as home-based businesses and certain small businesses while requiring proper social distancing and hygiene practices be maintained at such businesses; and

WHEREAS, since the issuance of Executive Order 9-20 and other executive orders ordering closed or otherwise limiting occupancy of certain establishments and facilities in this state, implementation of successful public health measures has resulted in revised projections of rates of infection and COVID-19 related deaths in West Virginia, as well as ever-strengthening

supply chains for personal protective equipment and other medical equipment and supplies, resulting in greater preparedness and response capacity throughout the state; and

WHEREAS, on April 27, 2020, I, Governor Jim Justice, announced the state's reopening plan, West Virginia Strong: *The Comeback* (the "Comeback Plan"), to phase in the reopening of businesses in the state of West Virginia on a week by week basis to most effectively monitor and respond to the public health effects of this phased reopening, to be based upon certain metrics and conditions to safely reopen segments of West Virginia's economy and get our citizens back to work, while ensuring the health and protection of all West Virginians, and especially the state's significant elder and vulnerable population who are at most risk from the COVID-19 virus; and

WHEREAS, Executive Order 28-20 and Executive Order 30-20 allowed for the resumption of all medical procedures throughout the state while requiring that hospitals and ambulatory surgical centers around the state limit procedures to only more urgent procedures to ensure adequate response capacity and preserve necessary personal protective equipment and other resources at such facilities in the event of any surge of COVID-19; and

WHEREAS, under the Comeback Plan, Executive Order 32-20, Executive Order 36-20, Executive Order 37-20, Executive Order 39-20, Executive Order 40-20, Executive Order 41-20, Executive Order 42-20, Executive Order 43-20, Executive Order 44-20, Executive Order 45-20, Executive Order 49-20, Executive Order 51-20, and Executive Order 56-20 have been issued to transition the State to a safer-at-home policy and to allow certain types of businesses and activities to begin to resume or expand their operations, provided that certain safety measures are in place; and

WHEREAS, reopening additional segments of the state's economy in accordance with the Comeback Plan, utilizing a phased approach to reopen sectors of the economy week by week, while continuing to prioritize and provide for the health and protection of all West Virginians, and especially the state's significant elder and vulnerable population, is in the public interest; and

WHEREAS, Executive Order 56-20, among other things, allowed for private and public pre-K through 12 schools to resume in-person instruction no sooner than September 8, 2020; and

WHEREAS, since the publication of Executive Order 56-20, West Virginia's public health experts have developed a County Alert System, which is a county-by-county color-coded system and map to monitor COVID-19 case rates throughout the state of West Virginia, which County Alert System and map may be found on the West Virginia Department of Health and Human Resources dashboard for COVID-19, at https://dhhr.wv.gov/COVID-19/Pages/default.aspx; and

WHEREAS, throughout the state, the students, teachers, staff, and employees of private and public pre-K through 12 schools are members of our communities and, as COVID-19 case rates may change from time to time, the public health concerns related to the occupancy of educational institutions for in-person instruction and athletic and extracurricular activities persist; and

WHEREAS, West Virginia's public health experts have advised that requiring private and public pre-K through 12 schools throughout the state to follow the County Alert System's county-by-county color-coded system to ensure the safety of students, teachers, staff, employees, and their surrounding communities, with respect to limitations placed on in-person instruction and athletic and extracurricular activities as COVID-19 case rates may change from time to time in each county, is appropriate at this time; and

WHEREAS, the State of West Virginia and its public health experts recognize and acknowledge the independent nature of private pre-K through 12 schools, and, in an effort to balance the independent operation of such private schools with the ongoing public health concerns related to bringing individuals together in "orange" and "red" counties, the State of West Virginia has worked with officials and representatives from private schools to develop a method for allowing in-person operations in "orange" counties; and

NOW, THEREFORE, I, JIM JUSTICE, pursuant to the authority vested in me pursuant to the provisions of Chapter 15, Article 5, Section 6 and Chapter 15, Article 5, Section 1 of the Code of West Virginia, hereby **DECLARE** and **ORDER**, that the effectuating clause of Executive Order 68-20 is hereby amended and restated as follows: that private and public pre-K through 12

schools are required to follow the County Alert System's county-by-county color-coded system maintained by the West Virginia Department of Health and Human Resources ("DHHR"), as it relates to any limitations or prohibitions on occupancy of such educational institutions for in-person instruction and/or athletic and extracurricular activities; provided that private pre-K through 12 schools which elect to enter into an agreement with the State of West Virginia regarding testing and safety protocols prior to resuming in-person instruction may resume or continue operation of in-person instruction and/or athletic and extracurricular activities in accordance with such agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

DONE at the Capitol in the City of Charleston, State of West Virginia, this Twenty-third day of September, in the year of our Lord, Two Thousand Twenty in the One Hundred Fifty-eighth year of the State.

GOVERNOR

By the Governor

SECRETARY OF STATE