EXECUTIVE ORDER NO. 177

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, and 171 issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, and August 1, 2020, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act, N.J.S.A. App. A:9-33 et seq. and the Emergency Health Powers Act, N.J.S.A. 26:13-1 et seq., to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, and No. 175 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, as of August 14, 2020, according to the World Health Organization, there were over 20,730,000 confirmed cases of COVID-19 worldwide, with over 751,000 of those cases having resulted in death; and

WHEREAS, as of August 14, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were over 5,228,000 confirmed cases of COVID-19 in the United States, with over 166,000 of those cases having resulted in death; and

WHEREAS, as of August 14, 2020, there were over 187,000 positive cases of COVID-19 in New Jersey, with at least 14,064 of those cases having resulted in death; and

WHEREAS, there have been positive cases of COVID-19 in every county in New Jersey, and there have been deaths relating to COVID-19 in every county in New Jersey; and

WHEREAS, on March 19, 2020, I issued Executive Order No. 105, which declared that certain elections set to take place in March and April were postponed until May 12, 2020, because allowing those elections to proceed as they were originally planned during this unprecedented COVID-19 health crisis would create hardships and health risks for voters, poll workers, and candidates alike; and

WHEREAS, pursuant to Executive Order No. 120 (2020), the primary election set to take place on June 2, 2020, was postponed until July 7, 2020 ("July Primary Election"), because preparing for the election to take place in June during the potential height of the COVID-19 emergency would have negatively impacted election officials' preparation efforts; and

WHEREAS, on May 15, 2020, I issued Executive Order No. 144, which declared that the July Primary Election would be conducted primarily via vote-by-mail ballots with a minimum number of polling places open in each municipality; and

WHEREAS, I issued Executive Order No. 164 (2020), which postponed any election scheduled between July 7, 2020 and November 3, 2020, until November 3, 2020, and declared that no other elections may be held or proceed prior to November 3, 2020; and

WHEREAS, to accommodate the increase in vote-by-mail ballots, Executive Order No. 144 (2020) extended the time that ballots must be received by five (5) days, provided that such ballots must be postmarked by July 7, 2020, and received by July 14, 2020, in order to be counted; and

WHEREAS, Executive Order No. 144 (2020) extended the deadline to certify election results under N.J.S.A. 19:23-55 by five (5) days in order to account for the revised timeframe that Boards of Elections had to receive vote-by-mail ballots, thereby extending the certification deadline to July 24, 2020; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreased, the ongoing risks presented by COVID-19 have meant that many of the State's current measures must remain in place, both to reduce additional new infections and to save lives; and

WHEREAS, the COVID-19 emergency and its impact are likely to extend for an as-yet-undetermined period of time; and

WHEREAS, the COVID-19 emergency makes it difficult for election officials, candidates, and voters to properly plan and prepare for and fully participate in the general election on November 3, 2020 ("November General Election") if it was to proceed as it would under normal circumstances; and

WHEREAS, States generally have discretion to dictate the time, manner, and place of elections in the absence of controlling federal law; and

WHEREAS, pursuant to 3 U.S.C. §1, the presidential election shall be held on the Tuesday after the first Monday in November, which is November 3, 2020; and

WHEREAS, pursuant to 3 U.S.C. §7 and N.J.S.A. 19:36-1, the State's electors for President and Vice President must meet and vote on the first Monday after the second Wednesday in December, which is December 14, 2020; and

WHEREAS, the results of the November General Election must be certified in advance of the federal deadline for the meeting of electors; and

WHEREAS, although the dates for the November General Election and the meeting of electors are established by federal law and cannot be changed, allowing the November General Election to proceed as it would under normal circumstances during this unprecedented COVID-19 health crisis will create hardships and health risks for voters, poll workers, and candidates alike; and

WHEREAS, the county Boards of Elections had difficulty retaining poll workers for the July Primary Election due to the COVID-19 pandemic and are likely to face the same issue for the November General Election so long as the health crisis exists; and

WHEREAS, election officials require flexibility and sufficient lead time to adapt their locality's voting infrastructure to confront the magnitude of the public health and safety risks of the COVID-19 pandemic; and

WHEREAS, failing to take proactive actions to mitigate the adverse impacts of the current health crisis on the upcoming November General Election carries the risk of disenfranchising citizens; and

WHEREAS, social distancing measures are required for a period of as-yet-undetermined duration, and the COVID-19 outbreak may have significant effects on New Jersey's voting systems as long as social distancing measures are in place and for some time thereafter; and

WHEREAS, failing to offer voters a ready alternative to reporting to public polling locations to vote in the upcoming November General Election in the midst of the COVID-19 crisis will hinder public participation in the democratic process, particularly among elderly and immune-compromised voters, and undermine the legislative intent of provisions such as N.J.S.A. 19:8-2 and 19:8-3.1, which are designed to ensure that such voters can exercise their right to vote; and

WHEREAS, the United States Post Office has advised that voters must use First-Class postage to return their ballots to the county Boards of Elections so that it will be delivered 2-5 days after it is received by the Postal Service, and recent reports have indicated that mail is taking longer for delivery than is typical; and

WHEREAS, in July the United States Post Office sent letters to the county Boards of Elections advising that mail-in ballots were in the mail stream on or before the July Primary Election, notwithstanding the postmark on the ballots and that the ballots were delivered to the county Boards of Elections the day after the July Primary Election; and

WHEREAS, the United States Post Office has advised that international mail service has been suspended to and from sixty-seven (67) destinations, see https://about.usps.com/newsroom/service-alerts/international/welcome.htm, for further details; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The November General Election shall be conducted primarily via vote-by-mail ballots, which will be sent to all "Active" registered voters without the need for an application to receive a vote-by-mail ballot.

2. All vote-by-mail return envelopes shall have prepaid First-Class postage in order to facilitate the proper delivery of all cast vote-by-mail ballots.

3. The requirements of N.J.S.A. 19:14-25 that sample ballots be sent shall be suspended. In lieu of sending a sample ballot, the appropriate county official, as identified in N.J.S.A. 19:14-25, shall send notice to all "Active" voters, pursuant to N.J.S.A. 19:14-21, advising of the voter's polling place, the URL to the Division of Election's website that contains polling place information, locations of secure ballot drop boxes within the county, information on where to obtain a sample ballot prior to the election, a statement indicating that a sample ballot will be available at the polling place on the day of the election, and, if applicable, information on a county website where a sample ballot may be viewed. This notice in lieu of a sample ballot shall be sent return receipt requested as required by N.J.S.A. 19:14-23. The time to mail the notice in lieu of a sample ballot, under N.J.S.A. 19:14-25, shall be modified such that the notices are to be mailed by October 23, 2020.

4. To the extent possible, each county shall have at least a total of ten (10) secure ballot drop boxes in locations that are readily accessible to the registered voters within the county. To the best of their ability, the county Boards of Elections shall

place secure ballot drop boxes based on geographic location and population density to best serve the voters of each county. The Secretary of State shall establish guidelines for the placement of the ballot drop boxes, the security of the ballot drop boxes, and the schedule for ballot pickup from the ballot boxes.

5. All public primary and secondary schools shall be closed to in-person instruction on November 3, 2020, and pursuant to N.J.S.A. 19:8-2, the authorities in charge of such schools shall not deny the request of county Boards of Elections for use of their buildings as polling places. All public primary and secondary schools shall work cooperatively with the county elections officials for the delivery of the necessary equipment for the November General Election.

6. Each county shall open a minimum of at least one (1) polling place in each municipality. Each county shall open a minimum of fifty (50) percent of its regularly used polling places, and may open more than the minimum number of its regularly used polling places. If a county Boards of Elections is unable to reach a minimum of fifty (50) percent of its regularly used polling places, the county Boards of Elections must utilize schools or other large facilities to serve as large voting centers, which will accommodate more voting districts in one polling place. To the best of their ability, the county Boards of Elections shall select polling places based on geographic location and population density to best serve the voters of each municipality. County Boards of Elections must ensure that polling places and poll workers implement, at a minimum, the following requirements:

a. Limit occupancy within all polling places to a number that permits voters to maintain a distance of six feet between each other and poll workers at any time;

b. Ensure six feet of distance between voters and ensure six feet of distance between voters and poll workers through the demarcation of six feet of spacing in voter lines and poll worker stations to demonstrate appropriate spacing for social distancing;

c. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;

d. Provide poll workers break time for repeated handwashing throughout their shifts;

e. Require frequent sanitization of high-touch areas in polling places consistent with CDC guidelines as of the date of the election;

f. Place conspicuous signage at entrances and throughout the polling place alerting poll workers and voters to the required six feet of physical distance;

g. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to poll workers, voters, and those accompanying voters;

h. Require poll workers to adhere to CDC guidelines as of the date of the election regarding face coverings while in the polling place, except where doing so would inhibit that individual's health, and require poll workers to wear gloves when in contact with voters and those accompanying voters. County Boards of Elections must provide any required face coverings and gloves for poll workers, without charge to the poll workers. If a poll worker refuses to wear a required cloth face

covering for non-medical reasons, then a county Board of Elections may decline entry to the individual. Nothing herein should prevent a poll worker from wearing a surgical grade mask or other more protective face covering if the individual is already in possession of such equipment. Where a poll worker declines to wear a required face covering at a polling place due to a medical condition that inhibits such usage, they shall not be required to produce medical documentation verifying the stated condition;

i. Require appointed challengers to adhere to CDC guidelines as of the date of the election regarding face coverings while in the polling places and while in any location where the challenger is serving in such a capacity, such as while observing the counting of ballots. If an appointed challenger refuses to wear a required cloth face covering, then a county Board of Elections may decline entry to the individual; and

j. Strongly encourage voters and those accompanying voters to adhere to any CDC guidelines as of the date of the election regarding face coverings while inside polling places except where doing so would inhibit that individual's health. County Boards of Elections may provide such face coverings for voters and those accompanying voters, without charge to them. If a voter or person accompanying a voter refuses to comply with the CDC guidelines, a poll worker shall not deny entry to the voter or person. Nothing herein should prevent a voter from

wearing a surgical grade mask or other more protective face covering if the individual is already in possession of such equipment.

7. The Secretary of State may modify the requirements of N.J.S.A. 19:31-21 concerning the use of poll books and the information contained therein as necessary to address the procedure by which the November General Election will be conducted under this Order, and the needs resulting therefrom.

8. Any voter who appears at a polling place on the day of the November General Election and does not return a voted mail-in ballot, pursuant to paragraph 9 of the Order, shall vote via a provisional ballot, except that accommodations will be made for voters with disabilities.

9. Pursuant to N.J.S.A. 19:63-16, the county Boards of Elections shall designate each polling place as a location to receive voted mail-in ballots. A voter may return only the mail-in ballot that they personally voted to their designated polling place. The Secretary of State shall establish appropriate standards for the acceptance of mail-in ballots, including, but not limited to, the poll worker verification that the voter returning the voted mail-in ballot at the polling place is the individual who voted the mail-in ballot, the securing of the returned mail-in ballots, and the return of the mail-in ballots to the county Boards of Elections after the close of polls.

10. Each polling place shall have signage that provides the location of all ballot drop boxes in the county in which the polling place is located.

11. The time restrictions of N.J.S.A. 19:63-9 shall be modified as follows: vote-by-mail ballots shall be mailed to all "Active" voters on or before the 29th day before the November General Election and in a manner to ensure the timely receipt and

return of ballots for counting in the November General Election, and whenever the county Clerk forwards a mail-in ballot by mail to a voter between the 29th day and the 13th day before the November General Election it shall be transmitted within three (3) business days of receipt of the application and in a manner to ensure the timely receipt and return of ballot for counting in the November General Election. All other provisions of N.J.S.A. 19:63-9 remain, and this paragraph does not modify the requirements set forth in the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §20302(a)(8)(A).

12. To allow enough time for the county Clerks to print and mail the ballots to voters, the following deadlines are modified as follows: the deadline to submit a public question for November school board elections to the county Clerk by the School Board Secretary, pursuant to N.J.S.A. 19:16-4, shall be August 31, 2020; the last day a vacancy may occur for primary election nominees for the November General Election, under N.J.S.A. 19:13-20, shall be August 29, 2020; the deadline to fill a vacancy in the primary election nominees for the November General Election, under N.J.S.A. 19:13-20, shall be August 31, 2020; the deadline to apply for a mail-in ballot by mail, under N.J.S.A. 19:63-3, shall be October 23, 2020; and the deadline for returning a vote-by-mail application in-person in N.J.S.A. 19:63-3(d) shall be suspended.

13. Vote-by-mail ballots shall be processed and canvassed in accordance with guidelines provided by the CDC, the New Jersey Department of Health, and the respective county departments of health.

14. To account for the increase in vote-by-mail ballots and to ensure that registered voters' efforts to vote are not impacted by delays in the postal service, the requirements of N.J.S.A. 19:59-15(d) shall be suspended and the ballot-return deadline in

N.J.S.A. 19:63-22 shall be suspended. Every vote-by-mail ballot that is postmarked on or before November 3, 2020, and that is received by November 10, 2020, at 8:00 p.m. shall be considered valid and shall be canvassed, assuming the ballot meets all other statutory requirements. Additionally, every ballot without a postmark, and ballots mis-marked and confirmed by the post office that those ballots were received by the post office on or before November 3, 2020, that is received by the county Boards of Elections from the United States Postal Service within forty-eight (48) hours of the closing of polls on November 3, 2020, shall be considered valid and shall be canvassed, assuming the ballot meets all other statutory requirements.

15. To account for the increase in vote-by-mail ballots and to provide the county Boards of Elections sufficient time to canvass the returned ballots, N.J.S.A. 19:63-18 is hereby suspended. The county Boards of Elections may continue the counting of ballots beyond the close of polls on November 3, 2020, and may adjourn counting after 11:00 pm on November 3, 2020 to immediately continue counting at 9:00 am on November 4, 2020, and continue every business day thereafter, until the counting is completed within the limits of this Order.

16. In order to expedite the signature-verification process outlined in N.J.S.A. 19:63-17, the county Boards of Elections shall meet at least four (4) days per week starting October 13, 2020. Voters whose ballots are rejected pursuant to N.J.S.A. 19:63-17, for a missing or discrepant signature, shall be given the opportunity to cure the signature defect in accordance with procedures established by the Secretary of State.

17. Because of the need to meet the federal deadlines for the State's electors to meet, the meeting of the county Board of Canvassers, under N.J.S.A. 19:19-1, must occur on or before

November 20, 2020 to certify the results of the November General Election, and no extension under N.J.S.A. 19:19-4 or -6 shall be sought. The county Clerks' transmittal of the Official November General Election Results to the Secretary of State, under N.J.S.A. 19:19-13, must occur on or before November 23, 2020, and the county Clerks may not seek an extension of this deadline. The meeting of the Board of State Canvassers, under N.J.S.A. 19:21-1, shall occur on or before December 8, 2020 to certify the results of the November General Election.

18. To allow for greater flexibility in obtaining poll workers, the county-resident requirement for poll workers set forth in N.J.S.A. 19:6-2 is hereby suspended.

19. Due to the limited number of polling places that will be open for the November General Election, the 1,000-foot limitation on the location of polling places set forth in N.J.S.A. 19:8-2 shall be suspended.

20. Due to the suspension of N.J.S.A. 19:63-22 and N.J.S.A. 19:63-18, the time to prepare reports pursuant to N.J.S.A. 19:53B-21 and 19:53C-21 is extended to November 23, 2020.

21. To allow enough time for results to be certified prior to the meeting of electors, N.J.S.A. 19:61-9(c)(8) is suspended, and counties may certify their election results prior to the commencement of the election audit required in N.J.S.A. 19:61-9.

22. The Secretary of State shall establish other appropriate standards for ensuring that all voters with disabilities are able to exercise their right to vote in the November General Election.

23. The Secretary of State and county election officials, as appropriate, shall coordinate with the United States Postal Service to facilitate proper delivery of ballots by the United States Postal Service.

24. The Secretary of State and county election officials, as appropriate, shall act to facilitate the public's understanding of the rules governing the November General Election.

25. The Secretary of State shall establish a hotline number for reports of violations of the election laws and this Order in connection with the November General Election.

26. Any actions taken by the Secretary of State pursuant to this Order shall not be subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

27. December 2020 special school elections pursuant to N.J.S.A. 19:60-2(a) shall be suspended until the authorized January 2021 special school election date. No special elections to fill any vacancies shall be held prior to January 12, 2021.

28. This Order shall take effect immediately.

GIVEN, under my hand and seal this 14th day of August, Two Thousand and Twenty, and of the Independence of the United States, the Two Hundred and Forty-Fifth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor