EXECUTIVE ORDER NO. 179

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, and Nos. 177-178 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, as of August 24, 2020, according to the World Health Organization, there were over 23,311,000 confirmed cases of COVID-19 worldwide, with over 806,000 of those cases having resulted in death; and

WHEREAS, as of August 24, 2020, according to the Centers for Disease Control and Prevention, there were over 5,682,000 confirmed cases of COVID-19 in the United States, with over 176,000 of those cases having resulted in death; and

WHEREAS, as of August 24, 2020, there were over 189,000 positive cases of COVID-19 in New Jersey, with at least 14,120 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, on August 14, 2020, I issued Executive Order No. 177, the facts and circumstances of which are adopted by reference herein, which established the voting procedures for the November General Election; and

WHEREAS, Executive Order No. 177 (2020) requires modification as set forth below to ensure enough time to complete preparations for the November General Election, to minimize voter confusion, to ensure voters have a process by which they may cure a ballot with a signature deficiency, and to ensure timely counting of the November General Election ballots; 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. Paragraph 3 of Executive Order No. 177 (2020) is modified such that the notice in lieu of a sample ballot authorized pursuant to this subsection shall be sent return service requested as required by N.J.S.A. 19:14-23.

2. Paragraph 12 of Executive Order No. 177 (2020) is modified such that 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 28, 2020. Furthermore, vacancies occurring after August 28, 2020, and any initiatives or

referendums not on the ballot by August 31, 2020, shall not be placed on the November General Election ballot.

3. Paragraph 15 of Executive Order No. 177 (2020) is modified such that 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 day thereafter, until the counting is completed within the limits of this section.

4. Paragraph 16 of Executive Order No. 177 (2020) is modified such that 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, in the absence of any governing statute.

5. Paragraph 21 of Executive Order No. 177 (2020) is modified such that counties may certify their election results prior to the commencement of the election audit required in that section, provided that the audit is completed by December 4, 2020.

6. To allow enough time for the county Boards of Elections to complete the count of the provisional ballots, N.J.S.A. 19:53C-13 is suspended. The county commissioner of registration may forward provisional ballots to the county Board of Elections for counting on an ongoing basis as the verification process is completed.

7. To avoid voter confusion, N.J.S.A. 19:63-6 is suspended. In lieu of the statutory notice, the county clerks shall, in a time set forth by the Secretary of State, publish a notice to be prepared by the Secretary of State.

8. This Order shall take effect immediately.

GIVEN, under my hand and seal this 25th 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