EXECUTIVE ORDER NO. 198

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, 171, 180, 186, and 191 issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, August 1, 2020, August 27, 2020, September 25, 2020, and October 24, 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, No. 175, Nos. 177-181, No. 183, Nos. 186-187, and Nos. 189-197 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, as of November 19, 2020, according to the World Health Organization, there were over 55,928,000 confirmed cases of COVID-19 worldwide, with over 1,344,000 of those cases having resulted in death; and

WHEREAS, as of November 19, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were over 11,654,000 confirmed cases of COVID-19 in the United States, with over 249,000 of those cases having resulted in death; and

WHEREAS, as of November 19, 2020, there were over 293,000 positive cases of COVID-19 in New Jersey, with at least 14,877 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, on July 13, 2020, I issued Executive Order No. 164, 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, Executive Order No. 144 (2020) extended the deadline to certify election results under N.J.S.A. 19:23-55 by five (5) days 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, 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 general election on November 3, 2020 ("November General Election") and declared that the election would be conducted primarily by vote-by-mail; and

WHEREAS, to accommodate the increase in vote-by-mail ballots, Executive Order No. 177 (2020) delayed the meeting of the county Board of Canvassers to certify the results of the November General Election until no later than November 20, 2020; and

WHEREAS, on August 25, 2020, I issued Executive Order No. 179, making modifications to Executive Order No. 177 (2020) to ensure enough time to complete preparations for the November General Election and minimize voter confusion, the facts and circumstances of which are adopted by reference herein; and

WHEREAS, legislation subsequently codified the standards adopted by Executive Order and addressed other issues relating to upcoming elections; and

WHEREAS, N.J.S.A. 19:61-9 requires the Secretary of State to annually appoint an independent, professional audit team to oversee an audit of each election for federal or State offices, and for county and municipal offices selected for audit by the Secretary of State; and

WHEREAS, N.J.S.A. 19:61-9(c)(8) prohibits a county from certifying the results of an election that is subject to an audit prior to the completion of the audit and the announcement and publication of the audit results; and

WHEREAS, to allow enough time for the results of the November General Election to be certified prior to the meeting of electors, Executive Order No. 177 (2020) suspended N.J.S.A. 19:61-9(c)(8), thereby allowing counties to certify their election results prior to the commencement of the election audit required under N.J.S.A. 19:61-9; and

WHEREAS, Executive Order No. 179 (2020) modified Executive Order No. 177 (2020), permitting counties to certify their election results prior to commencing the election audit and ordering the audit to be completed by December 4, 2020; and

WHEREAS, the federal deadline for the meeting of electors is December 14, 2020; and

WHEREAS, despite best efforts to socially distance and adhere to CDC guidelines and public health protocols, several county boards of elections are experiencing COVID-19 outbreaks among county boards of election members and staff; and

WHEREAS, these COVID-19 outbreaks have resulted in staff shortages in affected counties as boards of elections work to meet the November 20, 2020 deadline to certify the election results; and

WHEREAS, allowing county boards of election an additional week to conduct the audit will enable employees in impacted counties to isolate and quarantine for the recommended two weeks following certification of the election results, while still ensuring that the audit occurs before the meeting of the electors; and

WHEREAS, the Ocean County Board of Elections (Ocean County Board") had approximately sixty-seven people working more than full-time every day, and approximately thirty additional people working after traditional work hours, to process ballots for the November 2020 General Election; and

WHEREAS, since the November 2020 General Election, the Ocean County Board has had seventeen COVID-19 positive cases, which resulted in the need to shut down the ballot counting operations on November 9, 2020 at 4:00 p.m., for deep cleaning and the rapid testing of staff on November 11, 2020, which identified additional positive COVID-19 cases; and

WHEREAS, on November 12, 2020 at 4:00 p.m., the ballot counting operations again had to be shut down for deep cleaning as a result of another COVID-19 positive test result and the testing of all staff on November 13, 2020, which identified additional positive COVID-19 cases; and

WHEREAS, the Ocean County Board's ballot processing operations remained shut down from November 12, 2020 at 4:00 p.m. through November 16, 2020, with staff being permitted back on November 17, 2020 gradually as their negative test results were received; and

WHEREAS, the Ocean County Board effectively lost five full days of ballot processing for the November 2020 General Election; and

WHEREAS, the Salem County Board of Elections ("Salem County Board") had four permanent employees, four Board of Elections Commissioners, six voting machine technicians, twenty-six temporary employees, and ten National Guard members on staff in an effort to complete the November 2020 General Election ballot count for the November 20, 2020 certification of the election results; and

WHEREAS, since November 5, 2020, the Salem County Board has had seventeen COVID-19 positive cases, which resulted in the quarantine of the remaining thirty-three staff members; and

WHEREAS, all quarantined Salem County Board staff were required to leave the county offices by 9:00 p.m. on November 6, 2020; and

WHEREAS, due to COVID-19, and the fact that all of the remaining Salem County Board staff are under quarantine, the alternate site in the Salem County Board's Continuity of Operations Plan could not be used; and

WHEREAS, Salem County provided the Salem County Board with a temporary satellite office on November 7, 2020, which could not be outfitted with access to the tabulation equipment; and

WHEREAS, only four Salem County Board staff can work in the temporary satellite office under social distancing guidelines and those four staff are responsible for reviewing and manually processing the ballots in preparation for counting; and

WHEREAS, allowing the Ocean County Board and Salem County Board an additional five days to complete the ballot count so the respective county Boards of Canvassers can meet and certify the results of the November 2020 General Election is necessary given the hardships these Boards have faced in their attempt to complete the ballot count amid the public health crisis; and

WHEREAS, failing to take proactive actions to mitigate the spread of the virus risks further infecting election officials; 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, the COVID-19 emergency and its impact are likely to extend for an as-yet-undetermined period of time; and

WHEREAS, states generally have discretion to dictate the time, manner, and place of elections in the absence of controlling federal law; 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. For any county board of elections that has notified the Office of the Secretary of State prior to the issuance of this Order that the county board of canvassers cannot hold their meeting under N.J.S.A. 19:19-1 by November 20, 2020 due to the significant impact of COVID-19 on their staff and facilities, which are the Ocean and Salem County Boards of Elections, such meeting must occur on or before November 25, 2020. For such counties, 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 25, 2020, and the county Clerks may not seek an extension of this deadline.

2. Due to the suspension of N.J.S.A. 19:63-22 and N.J.S.A. 19:63-18, the production of reports pursuant to N.J.S.A. 19:53B-21 and 19:53C-21 must occur on or before November 25, 2020, for any county that receives an extension under Paragraph 1 of this Order.

3. The deadline to conduct the election audit required under N.J.S.A. 19:61-9, which is currently December 4, 2020, is extended an additional week, until December 11, 2020, for all counties.

4. Any deadline set forth in P.L.2020, c.72, Executive Order No. 177 (2020), or Executive Order No. 179 (2020) that is inconsistent with the provisions of this Order is suspended to the extent of such inconsistency.

5. This Order shall take effect immediately.

GIVEN, under my hand and seal this 19th day of November, 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/ Parimal Garg

Chief Counsel to the Governor