



MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: December 10, 2021

RE: OPPOSITION TO HB 1596 P.N. 2178 (Wheeland)

Bill summary: [HB 1596](#) (PN 2178) is a proposed amendment to the Pennsylvania Constitution that would make several constitutional changes to how Pennsylvania conducts elections. Proposed constitutional amendments must pass in two consecutive legislative sessions before being placed on the ballot for voters to adopt or reject; they are not subject to a gubernatorial veto. **If HB 1596 is adopted, it would:**

Voter identification

- **In-person voting:** Require voters to provide a valid government-issued identification.
- **Absentee and mail-in voting:** Require voters to provide proof of a valid government-issued identification and the qualified elector's signature.
- Require counties to match signatures on absentee and mail-in ballots with signatures on record.

Qualifications to vote in Pennsylvania

- Require voters to be registered no later than 30 days before an election [current requirement is 15 days].

Method of elections

- Prohibit the use of donated funds or funds provided by private individuals or organizations to pay for any part of the administration of elections.
- Require watermarks on all paper ballots.
- Require all paper ballots to be available for public inspection for at least two years after the election has been certified.

Election audits

- Create a new section in the constitution granting authority to the Auditor General to:
 - Audit each election **prior** to certification;
 - Conduct other election audits, including audits of the administration of elections by the commonwealth or a political subdivision, the certification of election machines, the accuracy of the list of registered voters, and the administration of voter registration.
- Require the Auditor General to appoint an independent auditor when the Auditor General stands for election to any office.

Secretary of the Commonwealth

- Establish the Secretary of the Commonwealth as an elected, rather than appointed, position that would stand for election every four years on the same cycle as other row offices (Attorney General, Treasurer, Auditor General). The position would be limited to two consecutive terms.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 1596.

HB 1596 would ask voters to decide on whether to require voter ID without properly defining a “valid” ID.

HB 1596 would enshrine in the constitution an identification requirement for all manner of voting. However, HB 1596 only defines a valid ID to include, but not be limited to, a valid government-issued identification. Further clarification would be left to the General Assembly to decide at a later date. The devil is always in the details, but those details would not be determined until after voters decide whether or not to adopt this amendment.

As a result, this question would return the General Assembly to the perennial, contentious debate regarding what types of identification are valid for the purposes of voting. However, because HB 1596 would require ID—even in the absence of the specific qualifications for identification—it is unclear what happens in the event clarifying legislation fails to pass. Furthermore, it is a dangerous game to legislate at constitutional gunpoint.

HB 1596 raises additional concerns.

Signature matching

- Signature matching as contemplated in the amendment is problematic for several reasons. Best practice requires that robust training of election workers and adequate procedural safeguards be implemented when a signature matching requirement is mandated. These types of procedural safeguards would prevent arbitrary decisions to disqualify ballots because of mismatched signatures. Studies have shown that voters of color are more likely to have their ballots disqualified because of an alleged non matching signature. Nothing in this bill language would require or provide for such procedural safeguards.

30-day registration deadline

- Act 77 changed the deadline to 15 days before the election in an effort to encourage more people to vote. This provision is a step backward as more states move towards same day or Election Day registration to ensure as many eligible voters as possible vote.

Election reviews

- This provision highlights the inadequacy of legislating by constitutional amendment, as there are no standards to guide the auditor nor are there any definitions of what constitutes an audit. In general, after-action reviews are good practice but unfettered discretion that could disrupt the operations of county and state election officials or foster skepticism about the conduct of elections is ill-advised.

Elected Secretary of the Commonwealth

- Although many states elect their chief election officer, requiring the Secretary to stand for election adds an additional level of partisanship to the role designated as the chief elections officer of the Commonwealth. If the Secretary and the Governor are members of different parties, current divisions over election policy will be exacerbated rather than mitigated. Additionally, a separate budget would need to be created for this office, since it would no longer be under the Governor's jurisdiction. Given the already strained funding for counties to run their election offices, a new position and new budget may lead to more underfunding of elections.

HB 1596 contributes to the dangerous trend of legislating by constitutional amendment.

Many of the proposed changes under HB 1596, including voter ID, do not require amending the constitution. Changes to how elections are administered can—and should be—changes that are legislatively enacted by amending the Election Code. Legislating by constitutional amendment establishes a dangerous precedent of creating an end-run around the principle of checks and balances that lies at the core of our democratic process. It also risks turning our constitution into a scattershot dumping ground of provisions that are more appropriately enacted under statute.

The Pennsylvania constitution is NOT statute. In the event that any of the provisions in HB 1596 prove to be impractical, ill-defined, burdensome, and/or in error, the **ONLY** way to adjust those procedures would be to **re-amend the constitution**—a process that could easily take at least 2-3 years to implement.

For these reasons, we urge you to oppose House Bill 1596.