



MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: November 19, 2020

RE: OPPOSITION TO HOUSE RESOLUTION 1100 P.N. 4611 (TOPPER)

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Resolution 1100 (PN 4611) for the following reasons:

HR 1100 needlessly creates a new and rushed mechanism to study the 2020 general election

The ACLU-PA strongly supports measures and processes that ensure greater transparency and accuracy in our election system. We applaud the Pennsylvania Department of State for assembling a [workgroup](#) to study models of post-election audits and [piloting risk-limiting audits](#) in Mercer and Philadelphia counties in 2019. In a similarly laudable move, the Pennsylvania General Assembly passed [Act 35 of 2020](#), which generated the [Pennsylvania 2020 Primary Election Report](#) — a valuable and useful study of this year’s primary election. Both of these already-established mechanisms could be used to examine the process and outcomes of the 2020 general election. But instead of utilizing these resources, [HR 1100](#) (PN 4611) proposes yet another mechanism that risks duplicating existing processes, potentially conducted by an outside private vendor, on an incredibly tight timeline, and under dubious authority granted to the Legislative Budget and Finance Committee under [Act 195 of 1959](#) via resolution.

HR 1100 appears to be designed to “prove” predetermined conclusions

The content of the “audit” proposed in HR 1100 betrays a worrisome, partisan intent. It is difficult to ignore that the resolution includes provisions identical to the alleged “inconsistencies” that have so far been unsubstantiated in court in any of the Trump campaign’s recent election litigation efforts. HR 1100 seeks to collect data regarding mail-in ballots, poll watcher access, ballot drop boxes, processes to “cure” or fix mail-in ballots, and the like. This resolution appears to create a fishing expedition, using a respected, bipartisan committee and taxpayer money to find “evidence” of claims alleged in partisan lawsuits.

HR 1100 confuses a process audit for a risk-limiting audit

HR 1100 includes the following provision: “RESOLVED, That the House of Representatives direct the Legislative Budget and Finance Committee to coordinate and manage a risk-limiting audit of the 2020 general election;” [page 2; lines 13-15]. What this resolution describes is a [process audit](#); **it is not** a “risk-limiting audit.” A risk-limiting audit is a post-election tabulation audit that uses statistical methods for sampling ballots and manual examination of the sampled ballots to confirm that computers counted the votes accurately. That is not what is proposed in this resolution.

Furthermore, this provision is inconsistent with the kind of audit HR 1100 purports to direct: “RESOLVED, That the audit shall include statistically significant samples chosen from each county in this Commonwealth;” [page 2; lines 17-19]. This isn’t how sampling works. In order to obtain “statistically significant” samples, they must be random. Samples are not random if there is a mandate that ballots are chosen from every county. While it’s possible that the sample *could* include ballots from each county; it’s also possible that it wouldn’t. Samples should come from the entire universe of all valid ballots cast in the particular race being audited.

HR 1100 includes unclear and ill-defined provisions

Given the gravity of the task at hand, it is vital that the terms, processes, and directives in HR 1100 are clearly crafted. The resolution criticizes the Pennsylvania Supreme Court and the Department of State for creating “confusion” in the weeks leading up to the general election. However, it was the lack of clarity in the statute itself that necessitated judicial and/or administrative interpretation. Among the list of 24 data points that the resolution requires to be included in the report, there are three provisions we find to be the most worrisome in their lack of clarity and/or definition:

“(16) (iii) An absentee ballot or mail-in ballot which was returned to the county board of elections by a means other than that which is permissible by law, notwithstanding any court opinion or order.”

- **“Means other than that which is permissible by law”** needs to be defined.
- Most confounding is that “by a means other than that which is permissible by law” is followed by **“notwithstanding any court opinion or order.”** One might argue that a court opinion or order *is the law*. This provision needs further clarification and definition.

“(20) A review of any inconsistencies in the manner in which counties processed deficient ballots under Articles XIII and XIII-D of the Pennsylvania Election Code.”

- **“Deficient ballots”** needs to be defined.

“(24) A review of issues or incidents of the review process of absentee, mail-in, in-person and provisional ballots and any inconsistencies in the standards applied to determine the eligibility of voters or ballots by counties.”

- We are not sure what this provision means — what kinds of “issues or incidents”? Which “review process”? By whom? What “standards” are being referenced and which entities are responsible for applying those standards?

For these reasons, we urge you to oppose House Resolution 1100 (PN 4611).