

ACLU-PA Position: Opposes

Bill summary

[SB 106](#) (P.N. 1857) proposes five separate amendments to the Pennsylvania Constitution, making changes to abortion rights, voting and election procedures, and executive power. The proposed amendments would: deny the right to abortion care and funding in Pennsylvania—even in cases of rape, incest, or life-threatening conditions; permit the legislature to reject, by a simple majority, any executive branch regulation; change how candidates for PA Lieutenant Governor are chosen; require voters to present “valid identification” prior to voting; and would shift the authority to audit elections from counties to the Auditor General.

What the bill proposes

If adopted by voters, [SB 106](#) (P.N. 1857) would:

****Note:** *bullet points with a star indicate ACLU-PA comments and/or concerns.*

1 | Deny the right to abortion care and abortion funding in Pennsylvania, without exception.

- SB 106 would add a new subsection under [Article I](#) (Declaration of Rights) to:
 - Deny the right to abortion care in Pennsylvania—even in cases of rape, incest, or life-threatening conditions—if federal protections are weakened or overturned.
 - Preempt any state court from protecting the right to abortion care in the absence of federal protections.
 - Prohibit public insurance coverage of abortion care.
 - ★ Public funding of abortion care is already prohibited in Pennsylvania.
- ★ SB 106 would allow legislators to radically regulate all manner of reproductive health care:
 - ★ It would allow for extreme regulation of—and even a total ban on—abortion, but could also allow politicians to restrict access to IVF, contraception, and birthing care.
 - ★ It would allow legislators to enact regulations on abortion or other reproductive health care that prevent doctors from treating ectopic pregnancies or miscarriage.
 - ★ It would allow legislators to pass laws that impede doctors from offering medical care to a pregnant woman if that care might endanger an ongoing pregnancy.
 - ★ It could open the door to complete criminalization, Texas-style citizen vigilante bans, and restricting activities of pregnant people perceived to potentially harm the zygote, embryo or fetus.

2 | Allow the legislature to reject executive-level regulations by a simple majority.

- SB 106 would amend [Article III, Section 9](#) (Action on concurrent orders and resolutions) to provide a new exception to traditional legislative procedure by allowing the General Assembly to disapprove of an executive regulation without needing the Governor's approval.
- ★ Currently, Article III, Section 9 establishes a general rule that all orders, resolutions or votes requiring approval by both the House of Representatives and Senate must be presented to the Governor for approval or veto. Resolutions for the adjournment of the General Assembly and disaster declarations are exempted from this process. If the order, resolution or vote is approved by the Governor, it becomes law. If the Governor vetoes the resolution, it does not become law unless two-thirds of the House and Senate vote to override the veto. SB 106 would create an additional exception to this procedure, which would remove veto power from the Governor if/when the legislature rejects a regulation issued by the Governor or an executive-level agency.

3 | Change the process for determining the Lieutenant Governor from elected to party-selected.

- Currently, the Lieutenant Governor of Pennsylvania is elected separately from the Governor.
- SB 106 would amend [Article IV, Section 4](#) (Lieutenant Governor) of the Constitution to require each candidate for Governor, upon winning the nomination of the candidate's party, to choose a candidate for Lieutenant Governor no later than 90 days before the general gubernatorial election. Candidates for Lt. Governor would be subject to approval of the candidate's political party.
- SB 106 would prohibit a candidate from seeking election to both offices of Governor and Lieutenant Governor simultaneously.
- ★ This process would be similar to how candidates for Vice President are selected and appear on the ballot.

4 | Require voters to present "valid identification" prior to voting, regardless of the voting method.

- SB 106 would add a voter identification requirement under [Article VII, Section 1](#) (Qualifications of electors) to:
 - Require that all voters must present "valid identification" regardless of voting method.
 - Define valid identification as "any unexpired government-issued identification, unless otherwise authorized by statute."
 - If a voter does not have "valid identification," the voter must request and be furnished with a government-issued Identification at no cost to the voter.
- ★ As is often the problem with the General Assembly attempting to legislate by constitutional amendment, SB 106 proposes changes that are unclear, lack necessary detail, and are better accomplished through statutory, not constitutional, changes. For example:
 - ★ SB 106 does not specify what counts as a government-issued ID. Would a SEPTA ID with a picture count? A school district ID? A township or county employee ID? SB 106 leaves the door open for the legislature to narrow, or perhaps expand, the types of ID that would comply with the amendment.
 - ★ SB 106 does not provide guidance around the process for requesting and furnishing the free, government-provided ID. This lack of clarity could sow confusion at the polls. If a voter doesn't have an approved form of ID at the polls, can the voter request and be furnished one at that time?
 - ★ [Applewhite v. Commonwealth](#) struck down a 2012 voter ID bill that required IDs to have an expiration date. SB 106 requires that valid identification must be "unexpired," but this language is ambiguous—if an ID has no expiration date, does that mean it's unexpired? Or does "unexpired" presume / require that an ID must have an expiration date? Again, this leads to needless confusion and invites the legislature to clarify those definitions **only after voters are asked whether or not to adopt this constitutional amendment.**

5 | Shift responsibility and oversight of election audits from counties to the Auditor General.

- SB 106 would add a new section to [Article VII](#), Section 15 (Election audits), to require the General Assembly to provide for the auditing of elections via statute, which must include audits of:
 - Administration of elections
 - Certification of election machines
 - Accuracy of the registered voters list
 - Administration of voter registration
 - Election results
- SB 106 would require the Auditor General to conduct the audits. In years when the Auditor General stands for election to any office, an independent auditor will conduct the audit.
- ★ This provision would shift audit authority from counties to the auditor general. The Auditor General has no expertise in elections and no staff trained to conduct such audits, likely creating enormous disruption to the certification of elections.

Bill status

- As [originally introduced](#), SB 106 was limited to changing how the Lieutenant Governor is selected. This version [passed in the Senate](#) and was reported out of the [House State Government](#) committee.
- When SB 106 reached the House floor, the bill was [amended](#) to include additional provisions. It passed the House, as amended, by a vote of [113-87](#).
- Because the House amended a Senate bill, SB 106 PN 1279 went back to the Senate for an up-or-down vote on concurrence.
- In a late night maneuver on July 7, 2022, the Senate [amended SB 106 in the Rules committee](#) to add language from [SB 956](#), another proposed constitutional amendment denying the right to abortion in PA.
- SB 106 PN 1857 passed the Senate on July 8, 2022 by a vote of [28-22](#).
- The bill returned to the House on July 8th to await a concurrence vote.

Constitutional amendment process

- Pennsylvania's constitution can only be amended by legislatively referred constitutional amendments as outlined under [Article XI](#) of the PA Constitution.
- Any proposed amendments must pass by a simple majority of both chambers in **two consecutive legislative sessions** (PA has two-year legislative sessions).
- After a proposed amendment passes the first session, the Constitution requires that public notice of the amendment be provided 90 days before the General Election.
- This means SB 106 would need to pass this session by August 10, 2022 (90 days before the November 8th General Election) and then pass **again** in the 2023-2024 session.
- If SB 106 passes this session and again next session, the amendment goes on a statewide ballot as a referendum asking voters to approve or reject the amendment.
- If SB 106 fails to pass before August 10, 2022, the clock is reset, which means it would have to pass during the 2023-2024 session and again in the 2025-2026 session before it would appear as a statewide ballot question.