



MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: June 21, 2021

RE: OPPOSITION TO SB 735 P.N. 899 (Ward)

Bill summary: [SB 735](#) (PN 899) is a proposed amendment to the Pennsylvania Constitution that would require voters to provide valid identification at each election, whether voting in person or by mail-in or absentee ballot.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 735.

SB 735 contributes to the dangerous trend of legislating by constitutional amendment.

Requiring voter ID does not require a constitutional amendment. Voter ID can — and should be — a change that is 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 a statute. In the event that any of the provisions in SB 735 prove to be impractical, ill-defined, burdensome, and/or in error, the **ONLY** way to adjust the requirements or mechanisms of voter ID is to **re-amend the constitution** — a process that could easily take at least 2-3 years to implement.

SB 735 would ask voters to decide on whether to require voter ID without properly defining a “valid” ID.

SB 735 would enshrine in the constitution an identification requirement for all manner of voting. However, SB 735 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 SB 735 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. In such a scenario, would this provide the pretext for nullifying an entire election? It is certainly also a dangerous game to legislate at constitutional gunpoint.

SB 735 invites worrisome privacy and accessibility concerns.

SB 735 requires that: “when not voting in person, the qualified elector shall provide a copy of a valid identification with his or her ballot.” Section B(2). This raises several concerns:

- In order to request a mail or absentee ballot, voters must already provide their PA driver's license or PennDOT ID card number or the last four digits of their social security number. Requiring voters to enclose a paper copy of their ID when they return a mail ballot is a duplicative step and an unnecessary hurdle to voting absentee or by mail.

- Requiring voters to make a copy of their ID would create barriers to those without access to a printer, likely depressing the number of voters who would return their mail ballot.
- Enclosing a copy of a person's ID with their voted ballot risks violating the privacy of their vote. There is nothing that prevents election workers from (intentionally or unintentionally) matching a voted ballot with an elector's ID.
- Finally, there are no provisions that address any rules or requirements regarding the destruction (or retention) of all the paper copies of Pennsylvania voters' IDs. This invites all manner of privacy concerns and risks, not the least of which includes identity theft.
 - This level of detail is yet another example of why voter ID should be enacted through a statutory amendment and not a constitutional amendment. It is too granular to be included in a constitutional amendment, but yet it is too important to ignore or overlook.

For these reasons, we ask you to oppose Senate Bill 735.