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Staggered Elections and Redistricting

In about half of U.S. states, voters elect one or more of their legislative chambers on a staggered basis. Margaret B. Weston, *One Person, No Vote: Staggered Elections, Redistricting, and Disenfranchisement*, 121 Yale L.J. 2013, 2014 (2012). In California, for example, half of its state senatorial districts are up for election every two years and each senator serves a four-year term. *Id.* In many of these states, including California, voters elect odd-numbered districts during presidential-election years and even-numbered districts during midterm-election years. *Id.* Staggered terms have the effect of insulating upper legislative chambers from political influence and promoting continuity in the legislative body by ensuring that all districts are never up for election at the same time. *Id.* at 2025. However, an often-overlooked consequence of these staggered term systems occurs in many of these states every ten years after they redraw their district lines.

The process of decennial redistricting coupled with staggered terms essentially causes some voters to be temporarily disenfranchised while others become temporarily double-enfranchised. *Id.* at 2013. In California's case, a voter who, as a result of redistricting, moved from district one to district two, will have voted in 2020 for their old representative and will vote again in 2022 for their new representative after redistricting. League of Women Voters of California, *Deferred and Accelerated Voters Redistricting and the California State Senate*. These voters, who are essentially double-enfranchised by having the opportunity to vote twice in a four-year period, are termed "accelerated" voters. *Id.* Whereas a voter who moved from district two to district one will have voted in 2018 for their old representative but will not have the opportunity to vote for a new representative until 2024. *Id.* For two years that voter will have a

representative that they had no hand in selecting. These citizens, who will not have the opportunity to vote for six years, are termed “deferred” voters. *Id.*

State and federal courts across the country have deemed this temporary disenfranchisement to be an “inevitable byproduct of reapportioning a legislative body whose members are elected for staggered four-year terms.” *Legislature v. Reinecke*, 516 P.2d 6, 12 (Cal.1973). Furthermore, courts have determined that this type of disenfranchisement does not violate the Equal Protection Clause “so long as no particular group is uniquely burdened” *Baldus v. Members of Wisconsin Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 852 (E.D. Wis. 2012). Courts use the “rational-basis” test to determine constitutionality in these cases, and many courts throughout the country have determined that temporary disenfranchisement due to redistricting in staggered election states meets the rational-basis test. *Donatelli v. Mitchell*, 2 F.3d 508, 515–16 (3d Cir. 1993). As long as the state has a rational reason for creating this disenfranchisement, this outcome does not violate Equal Protection. *Reinecke*, 516 P.2d at 12 (holding that California’s goal of maintaining “orderly operation of the four-year staggered terms system” in an effort to keep “stability and continuity in the Senate” qualified as a rational basis for producing temporary disenfranchisement). While courts have found this type of disenfranchisement to be constitutional, many states have taken measures to prevent this consequence.

States that have not altered their laws to address this are left with deferred and accelerated voters after each redistricting cycle. They may also see representatives whose terms continue past redistricting (“holdover” senators) now representing a district where they do not reside or where few or none of their former constituents reside. To combat this, some states continue to allow deferred and accelerated voters but reassign holdover senators to new

numbered districts. Margaret B. Weston, *One Person, No Vote: Staggered Elections, Redistricting, and Disenfranchisement*, 121 Yale L.J. 1033, 1066 (2012). They will usually reassign these senators to districts that align more closely with the makeup of their former district. *Id.* Still others have taken more drastic steps to resolve these issues. Several states have adopted a system of truncated terms following redistricting. In these states, including Florida, after the new lines are drawn, all districts hold elections in the first cycle after redistricting so that all voters in their new districts have the opportunity to vote for a representative. *Id.* at 1068. To restore their staggered system, half of the districts will have a truncated two-year term following redistricting. *Id.* at 1069. Some states alternate truncated terms while others draw lots to determine short and long terms. *Id.* This solution eliminates the risk of temporary disenfranchisement and double-enfranchisement due to redistricting in a staggered term system. *Id.*

State	Handling of staggered terms after redistricting	Citation
Alaska	Truncation	<i>Egan v. Hammond</i> , 502 P.2d 856, 873–74 (Alaska 1972) <i>Groh v. Egan</i> , 526 P.2d 863, 881 (Alaska 1974) <i>In re 2001 REDISTRICTING CASES, Plaintiffs, v. REDISTRICTING BOARD, et al., Defendant.</i> , No. 3AN-01-8914CI, 2002 WL 34119573 (Alaska Super. Feb. 01, 2002)
Arkansas	Truncation	<i>Moore v. McCuen</i> , 317 Ark. 105, 876 S.W.2d 237 (1994) Ark. Const. art. V, § 3
California	Allow deferred/accelerated voters	<i>Legislature v. Reinecke</i> , 516 P.2d 6, 12 (Cal. 1973)

Colorado	Allow deferred/accelerated voters but reassigns holdover senators	<i>In re Reapportionment of Colorado Gen. Assembly</i> , 647 P.2d 191, 198 (Colo. 1982) <i>Kallenberger v. Buchanan</i> , 649 P.2d 314, 317 (Colo. 1982)
Delaware	Truncation	Del. Code Ann. tit. 29, § 806 (West) (2021)
Florida	Truncation	Fla. Const. art. III, § 15 <i>In re Apportionment L. Appearing as Senate Joint Resol. 1 E, 1982 Special Apportionment Session; Constitutionality Vel Non</i> , 414 So. 2d 1040, 1050 (Fla. 1982) <i>In re Senate Joint Resol. of Legislative Apportionment 1176</i> , 83 So. 3d 597, 658 (Fla. 2012)
Hawaii	Truncation	Haw. Const. art. IV, §§ 7- 8
Illinois	Truncation	Ill. Const. art. IV, § 2 <i>People ex rel. Pierce v. Lavelle</i> , 56 Ill. 2d 278, 281–82, 307 N.E.2d 115, 117 (1974)
Indiana	Allow deferred/accelerated voters	Ind. Const. art. IV, § 3
Iowa	Truncation	Iowa Const. art. III, § 35 <i>In re Legislative Districting of Gen. Assembly</i> , 193 N.W.2d 784, 791 (Iowa), <i>supplemented</i> , 196 N.W.2d 209 (Iowa 1972), <i>amended sub nom. Matter of Legislative Districting of Gen. Assembly</i> , 199 N.W.2d 614 (Iowa 1972)
Kentucky	Unclear, appears to allow deferred/accelerated voters	<i>Anggelis v. Land</i> , 371 S.W.2d 857, 859 (Ky. 1963) 1982 Ky. Op. Att'y Gen. 2-18 (1982)
Missouri	Allow deferred/accelerated voters	Mo. Const. art. III, § 11
Montana	Allows deferred/accelerated voters but assigns holdover senators to new districts	<i>Wheat v. Brown</i> , 2004 MT 33, 35, 320 Mont. 15, 25, 85 P.3d 765, 771 Op. No. 2, 40 Mont. Op. Att'y Gen. 7 (Jan. 21, 1983)

Nebraska	Allows deferred/accelerated voters but assigns holdover senators to new districts	<i>Pick v. Nelson</i> , 247 Neb. 487, 493, 528 N.W.2d 309, 315 (1995) <i>Carpenter v. State</i> , 179 Neb. 628, 636, 139 N.W.2d 541, 546 (1966) Neb. Const. art. III, § 7
Nevada	Allow deferred/accelerated voters	<i>State ex rel. Herr v. Laxalt</i> , 84 Nev. 382, 388, 441 P.2d 687, 691 (1968) Nev. Const. art. XVII, § 9
North Dakota	Truncation	N.D. Cent. Code Ann. § 54-03-36 (2021) (West) <i>Kelsh v. Jaeger</i> , 2002 ND 53, ¶ 29, 641 N.W.2d 100, 110 https://ndlegis.gov/files/resource/committee-memorandum/23.9158.01000.pdf
Ohio	Allow deferred/accelerated voters but assigns holdover senators to new districts	Ohio Const. Article XI, Section 5
Oklahoma	Allow deferred/accelerated voters	<i>Ferrell v. State of Okl. ex rel. Hall</i> , 339 F. Supp. 73, 82 (W.D. Okla.), <i>aff'd sub nom. Ferrell v. Hall</i> , 406 U.S. 939, 92 S. Ct. 2045, 32 L. Ed. 2d 328 (1972) Okla. Stat. Ann. tit. 14, § 80.35.14 (2021) (West)
Oregon	Allow deferred/accelerated voters but assigns holdover senators to new districts	<i>Republican Party of Oregon v. Keisling</i> , 959 F.2d 144, 145–46 (9th Cir. 1992) Or. Const. art. IV, § 6 (2010) “Any Senator whose term continues through the next odd-numbered year regular legislative session after the operative date of the reapportionment shall be specifically assigned to a senatorial district.”
Pennsylvania	Allow deferred/accelerated voters but assigns holdover senators to new districts	<i>Donatelli v. Mitchell</i> , 2 F.3d 508, 510 (3d Cir. 1993)
Tennessee	Allow deferred/accelerated voters	<i>Mader v. Crowell</i> , 498 F. Supp. 226, 231 (M.D. Tenn. 1980)
Texas	Truncation	Tex. Const. art. III, § 3
Utah	Allow deferred/accelerated voters	Utah Code Ann. § 36-1-102 (2021) (West)

Washington	Allow deferred/accelerated voters	<i>Prince v. Kramer</i> , No. CIV. NO. 9668, 1972 WL 123242, at *5 (W.D. Wash. Apr. 21, 1972)
West Virginia	Allow deferred/accelerated voters	W. Va. Const. art. VI, § 3
Wisconsin	Allow deferred/accelerated voters	<i>Baldus v. Members of Wisconsin Gov't Accountability Bd.</i> , 849 F. Supp. 2d 840, 852–53 (E.D. Wis. 2012)
Wyoming	Unclear	Wyo. Att'y Gen. Formal Op. No. 2011-003, 2011 WL 5304071 (Oct. 10, 2011)