Is It Time to Draw the Line?: The Impact of Redistricting on Competition in State House Elections

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ELECTION OBSERVERS of the House of Representatives have decried the decline of competition for U.S. House seats. Sam Hirsch notes that the number of incumbents reelected by over 20 points in the post-reapportionment election of 2002 was much higher than the average of other recent post-reapportionment elections.[1] Noted political scientists Bernard Grofman and Gary Jacobson agree with this assessment. They show that the number of competitive seats has declined over the past 40 years when measured by the number of seats won by less than either ten or twenty percent. Like Hirsch, they note that congressional competition in 2002 was exceptionally low for a post-reapportionment election. Grofman and Jacobson suggest competition will reach record lows later in the decade if the pattern of declining competition post-redistricting in the 1980s and 1990s is followed.[2] Much of the blame for the decline in congressional competition has been attached to the partisan and incumbent-protection redistricting processes and racial redistricting.[3]

The focus on congressional elections is natural due to the importance of the federal legislature but scholars ought to study competition in state legislative elections more closely. Partisan and incumbent protection gerrymandering and racial redistricting also occur during the redrawing of state legislative maps. If these factors explain declining competition in congressional elections, their presence should also be associated with lower levels of competition in state legislative elections. Moreover, redistricting arguably has even greater consequences in state legislative elections. Congressional redistricting occurs on a state-by-state basis so no single redistricting authority controls the national process. But power over redistricting at the state level influences the shape of the entire state legislature. The potential impact of partisan gerrymandering is therefore much greater at the state than the federal level.

This paper takes a first cut at examining competition outside of the congressional election arena by exploring the aggregate level of competition in lower chamber state legislative elections in 37 states in 2000 and 2004. While this study is only a first step toward exploring competition in state legislative races, it should be highly useful to illuminate the level of competition in state legislative elections, and see whether theories of the impact of redistricting on electoral competition appear to hold water outside of the congressional arena from which they were abstracted. Before turning to the sta-

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[1] Sam Hirsch, "The United States House of Unrepresentatives: What Went Wrong in the Latest Round of Congressional Redistricting," *Election Law Journal* 2: 2(2003): 182–4

[2] Bernard Grofman and Gary Jacobson, *Vieth v. Jubelirer*, Brief as *Amici Curiae* in Support of Neither Party, No. 02-1580 (August 2003).

[3] The claim that redistricting has reduced competitive elections appears in editorial pages across the political spectrum (e.g., *The Wall Street Journal*. 2004. "No Contest." Nov. 12, 2004. *The Washington Post*. 2003. "The Partisan Fix" September 14, 2003: B06.)

tistical analysis of the level of competition in state legislative elections and explanations for variations among the states, the article briefly explores how partisan gerrymandering and racial redistricting may undermine competition.

PARTISAN GERRYMANDERING, RACIAL REDISTRICTING, AND ELECTORAL COMPETITION

Much of the blame for the decline in competition in congressional elections has been placed on the highly political process used to conduct redistricting in most states. Partisan gerrymanders, such as those enacted by Democrats in Maryland and Republicans in Pennsylvania, attempt to pack many minority party voters into a few districts and to limit concentrations of minority party voters outside these districts to make it possible for the majority party to win the remaining districts as easily as possible. The ideal partisan gerrymander packs as many minority party voters into as few districts as possible while guaranteeing the majority party a solid, but not overwhelming, majority in the other districts. The majority party must be careful to balance the distribution of voters most efficiently against the desire to assure that their candidate can carry the district solidly even if there is an electoral swing against the party.[4]

If the majority party spreads its voters too thinly, overestimates it support, or if there is an electoral swing against it, the plan may not work as intended. For example, Indiana Republicans crafted a plan designed to give their party a majority of the state's congressional seats throughout the 1980s. The plan worked reasonably well at first. The Indiana congressional delegation went from 6-5 Democratic in 1980 to 6-4 Republican in 1982. However, Indiana Democrats ran strong candidates and gained support over the decade. By 1990, the delegation was 8-2 Democratic—hardly the intent of the Republicans who pushed the plan. The failure of the partisan gerrymander had positive consequences for electoral competition. Indiana saw a number of congressional seats change hands during the 1980s despite the efforts of GOP mapmakers to secure a safe majority of seats for their party. Forty percent of Indiana's fifty congressional races between 1982 and 1990 were won with less than 60 percent of the vote and 26 percent were won by less than 55 percent.[5]

Democrats may miscalculate when they draw redistricting plans, too. Prior to the 2002 elections, Democrats hoped to win seven out of thirteen seats in Georgia's newly expanded congressional delegation. However, Georgia Republicans increased their support in 2002, winning the governor's mansion for the first time since Reconstruction. Republicans managed to edge out Democrats in two of the "Democratic" seats. Democrats won only five seats and one of their five winners gained his seat by only a one percent margin over his Republican opponent.[6]

Due to failed partisan gerrymanders, like those in Indiana and Georgia, some believe partisan gerrymandering increases electoral competition. Burham argues that: " . . . partisan gerrymandering is the best producer of competitive districts"[7] because parties may act sub-optimally in their quest to maximize seats, inadvertently shave their margins too close, and thereby create competitive districts. Burnham offers the unsuccessful Republican gerrymander of New York's congressional seats in 1961 as an example. However, Burnham notes that " . . . comparable efforts have been resoundingly successful,"[8] and provides analysis of successful partisan gerrymanders in eight other states.

[4] Guillermo Owen and Bernard Grofman, "Optimal Partisan Gerrymandering." *Political Geography Quarterly*, 7: 1(1988) 5–22; Bruce E. Cain, *The Reapportionment Puzzle* (Berkeley, CA: University of California Press, 1984).

[5] *Congressional Elections: 1946–1996* (Washington: Congressional Quarterly, 1998): 283, 288, 293, 298, 304.

[6] Democrats defeated one Republican incumbent in 2004. See Brian Nutting and H. Amy Stern, eds., *CQ's Politics in America 2002: The 107th Congress* (Washington: Congressional Quarterly, 2001): 254–81; David Hawkings and Brian Nutting, eds., *CQ's Politics in America 2004: The 108th Congress* (Washington: Congressional Quarterly, 2003): 265–92.

[7] Walter Dean Burham, "Congressional Representation: Theory and Practice of Drawing the Districts" in *Reapportionment in the 1970s*. ed, Nelson W. Polsby (Berkeley, CA: University of California Press, 1971): 277.

[8] *Id*. at 276.

Both Democrats and Republicans have often augmented their number of seats through partisan gerrymandering and limited electoral competition in the process. Arizona Republicans corralled Democrats into a single district in the 1980s by linking the Democratic portions of Phoenix and Tucson with Yuma across hundreds of miles of empty desert. Except for one narrow victory in 1982, Democrats failed to win any congressional elections outside of Arizona's Second District from 1982 through 1990. In all but three of the 25 elections held during this period, the winner's margin of victory exceeded 20 percent.[9]

Maryland Democrats managed to shift the partisan makeup of their state's congressional delegation from a 4-4 even split in 2000 to 6-2 Democratic in 2002 by manipulating the boundaries of the state's districts. The new map added many more Democrats to the Second District even as it removed the home of incumbent Republican Rep. Robert Ehrlich, spurring him to run successfully for governor but leaving the district open for a Democrat victory in 2002. Elsewhere, the new map removed favorable Republican territory and added more Democratic bastions to the already strongly Democratic Eighth District in a successful effort to defeat incumbent Republican Connie Morella.[10] Competition in Maryland's congressional elections was quite weak in 2004. Both new Democratic incumbents had no problem winning reelection. Indeed, no Maryland congressional incumbent won by less than 30 percent of the major-party vote.

Competition may be reduced to a minimum when the two parties reach a bipartisan agreement to divide seats to draw a plan designed to provide electoral safety for incumbents of both parties. California and Illinois adopted bipartisan gerrymanders for their congressional districts during the post-2000 Census round of congressional redistricting. As a result, the percentage of California congressional districts won by less than 20 points dropped from 27 percent in 2000 to 6 percent in 2002 and 4 percent in 2004.[11] The share of Illinois congressional races won by less than 20 percent also declined, though less spectacularly, from 25 percent in 2000 to 11 percent in 2002 and 16 percent in 2004.

California also adopted incumbent protection gerrymanders for the state legislature.[12] The share of competitive seats dropped, though not by as much as the share of marginal congressional seats. In 2000, 20 percent of the 80 Assembly seats were won by less than 20 points, and 10 percent were won by less than 10 points.[13] The share of seats won by less than 20 points fell to 11 percent in 2002 before rising again to 16 percent in 2004. The share of districts where the winner had a 10-point margin of victory dropped to 5 percent in 2002 and 6 percent in 2004.

The presence of two chambers in all state legislatures, except Nebraska, makes possible the adoption of a different sort of incumbent protection gerrymander, where a party cedes control over redistricting in one chamber in exchange for control over the other. These trades tend to occur when each party has a pre-redistricting majority in a chamber, thus splitting control of the redistricting process. The majority party leadership and membership in each chamber may prefer maintaining their majority in one chamber of the legislature to the uncertain chance of gaining a majority in both through court action resulting from gridlock. The leadership in each chamber has a strong incentive to make a deal with its opposite-party counterpart in the other chamber as legislative leaders in both chambers stand to lose majority status and powerful institutional positions

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[9] The winner's margin of victory was greater than 10 percent in all but two elections. See *Congressional Elections: 1946–1996*: 282, 287, 292, 297, 303.

[10] As it existed at the time of the 2000 election, 36 percent of the residents of Maryland's Eighth District voted for President Bush. The new map adopted before the 2002 election dropped the percentage of Bush supporters within the Eighth District to 31 percent. The share of Bush voters within Maryland's Second District similarly fell from 55 to 41 percent. See Brian Nutting and H. Amy Stern *supra* note 6: 448; David Hawkings and Brian Nutting *supra* note 6: 454.

[11] In 2000, the percentage of districts won by 20 points or less of the major-party vote, rather than the total vote figures used in the text, was 21 percent.

[12] In Table 1, the California plan is labeled a Democratic plan because it also entrenched the legislature's Democratic majority.

[13] The share of Assembly seats won by less than 20 percent of the major-party vote, rather than the total vote used in the text, was 18 percent.

such as committee chairs. The level of control ceded to the other party can vary from state to state based upon factors other than split control. For example, governors who have veto power over redistricting plans can gain leverage even if the leaders of each house of the divided legislature have agreed to split the redistricting spoils through a cross-chamber logroll.

In Indiana, Kentucky, Nevada, and New York, lower house Democrats drew maps for their chamber while upper house Republicans drew maps for their's. In New York, decades of cross-chamber deals between the powerful Democratic House Speaker and Republican Senate President have almost become an Empire State tradition. Dividing the spoils over redistricting has likely aided the successful efforts by House Democrats and Senate Republicans to maintain control of their respective chambers over the past several decades. Not all such situations resulted in bipartisan logrolls. New Mexico legislators could not broker a cross-chamber compromise for the lower house and redistricting fell to a court.

Not all states use the legislative process for state legislative redistricting. Nineteen states use a commission at some stage of the redistricting process, either as a primary authority or as a backup to the legislative process if stalemate occurs. McDonald broadly characterizes these institutions based on their membership and rules as either producing partisan or incumbent protection gerrymanders.[14] In either case, the result may be reduced electoral competition. Two exceptions are Arizona and Iowa, which use a primarily nonpartisan process for redistricting.

Racial redistricting may also undercut electoral competition. The creation or protection of new African-American or Latino majority districts may aid, intentionally or not, the adoption of an anti-competitive plan favorable to Republicans. Since most African Americans and Latinos vote heavily Democratic,[15] majority-minority districts are usually uncompetitive, heavily Democratic bailiwicks. The placement of so many Democratic voters into a few majority-minority districts may greatly aid Republican efforts elsewhere.[16] In short, racial redistricting has the potential to force the creation

of greater numbers of safe minority Democratic districts and safe white Republican districts than would otherwise exist.

THE DATASET

Our examination of competition in state legislative elections includes data from State House elections from 2000 and 2004 in 37 states. Almost all of the 37 states use single-member districts in order to elect members of the State House. Washington State utilizes two-member districts with a numbered post system for each seat, so its elections are easily compared with those in states with single-member districts. During the 2000 election, Arkansas utilized single-member districts to elect the State House except for one multimember district with three representatives. These representatives were also elected by a numbered-post system so the 2000 election results can be compared to

[14] Michael P. McDonald, "A Comparative Analysis of Redistricting Institutions in the United States, 2001–02," *State Politics and Policy Quarterly* 4: 4(Winter 2004): 371–95.
[15] One important exception is the Latino population of Florida. Florida Latinos, especially Cuban Americans, appear more likely to vote Republican than Latinos elsewhere in the country.
[16] David Lublin, *The Paradox of Representation: Racial Gerrymandering and Minority Interests in Congress* (Princeton University Press, 1997): 103–19; David Lublin, *The Republican South: Democratization and Partisan Change* (Princeton University Press, 2004): 99–115; David Lublin and D. Stephen Voss, "The Partisan Impact of Voting Rights Law," *Stanford Law Review* 50 (February 1998): 765–77; David Lublin and D. Stephen Voss, "Racial Redistricting and Realignment in Southern State Legislatures," *American Journal of Political Science* 4 (October 2000): 792–810; Carol M. Swain, *Black Faces, Black Interests: The Representation of African Americans in Congress*, Enlarged Edition (Harvard University Press, 1995): 197–206; Charles Cameron, David Epstein, and Sharyn O'Halloran, "Do Majority-Minority Districts Maximize Substantive Representation?," *American Political Science Review* 90: 4(December 1996); 794–812; David Lublin and D. Stephen Voss, "The Missing Middle: Why Median-Voter Theory Can't Save Democrats from Singing the Boll-Weevil Blues," *Journal of Politics* 65: 1(March 2003). But see John R. Petrocik and Scott W. Desposato, "The Partisan Consequences of Majority-Minority Districting in the South, 1992 and 1994," *Journal of Politics* 60 (October 1998): 613–33; Kenneth W. Shotts, "Does Racial Redistricting Cause Conservative Policy Outcomes? Policy Preferences of Southern Democrats in the 1980s and 1990s" *Journal of Politics* 65: 1(February 2003) 216–26.

the 2004 results with single-member districts only.[17]

Thirteen states are not included in the analysis. Nebraska's unicameral legislature, called the Senate, is elected on a nonpartisan basis so its electoral contests are quite different from the partisan contests held in other states. Arizona, Maryland, New Hampshire, North Dakota, South Dakota, Vermont, and West Virginia used multimember districts or a mixture of single-member and multimember districts for State House elections in 2000 and 2004. Alabama, Louisiana, Mississippi, New Jersey, and Virginia did not hold state legislative elections in 2004 and are excluded from the analysis. Election results from Wisconsin were not available for 2000 so it is excluded from discussions of the 2000 elections or comparisons of results from 2000 and 2004. North Carolina used multimember districts in 2000 but was forced by a state court decision to switch to single-member districts before the 2004 election,[18] so it is likewise excluded from analyses involving the 2000 elections.

The process of redistricting may spur greater competition over the short term even if the partisan composition of a district remains unchanged. Redistricting frequently disrupts existing links between incumbent representatives and their constituents. Representatives may gain unfamiliar constituents from outside their districts and lose familiar constituents to other districts. Much of the incumbency advantage in congressional elections may result from greater knowledge by voters of the incumbents than of challengers.[19] As a result, redistricting may weaken incumbents by reducing the share of constituents who are familiar with them. Following a redistricting, strong challengers to incumbents are more likely to emerge.[20] However, the weakening of the incumbency advantage will likely be temporary as the representative becomes more familiar to his or her new constituents.

If one seeks to discern the important potential impacts of partisan and incumbent protection gerrymandering on competition and electoral outcomes, one must allow for the possibility that electoral competition will have increased during the election held immediately after redistricting relative to the one prior to redistricting. Competition may have increased

simply due to the severing of established ties between representatives and their constituents. Elections held after the first post-redistricting elections are less likely to exhibit this effect as new incumbents establish ties within their new districts. While the effect of scrambling constituents on the incumbency advantage may not completely dissipate by the time of the second post-redistricting election, it is likely reduced as incumbents have had greater opportunity to build name recognition in the new portions of their districts.

In almost all of the 37 states included here, the 2004 election was the second scheduled general election after the regular decennial redistricting. Georgia, Maine, Montana, and North Carolina constitute the exceptions. According to their state constitutions, Maine and Montana redistrict in years ending in "3." Georgia adopted a new map for the 2002 elections but it was successfully challenged in federal court in 2004.[21] The court imposed its own new map before the 2004 elections after the state legislature failed to meet the Court's deadline to enact a new, more acceptable plan.[22] North Carolina drew a new map for

[17] Candidates for Arkansas State House Districts 12, 13, and 14 were combined into a single district. While all State House candidates ran at-large in the district, candidates had to declare in which of the three districts they sought election in a manner parallel to the numbered-post system used in Washington State. William Lilley III, Laurence J. DeFranco, Mark F. Bernstein, *The Almanac of State Legislatures*, Second Edition (Washington: Congressional Quarterly, 1998): 21–6.

[18] *Stephenson v. Bartlett*, Supreme Court of North Carolina, No. 94PA02-2 (16 July 2003).

[19] Gary C. Jacobson, *The Politics of Congressional Elections*, Fifth Edition (New York: Addison Wesley Longman, 2001): 110–21; Scott W. Desposato and John R. Petrocik, "The Variable Incumbency Advantage: New Voters, Redistricting, and the Personal Vote," *American Journal of Political Science* 47(January 2003): 18–32; Petrocik and Desposato *supra* note 16.

[20] Marc J. Hetherington, Bruce A. Larson, and Suzanne Globetti, "The Redistricting Cycle and Strategic Candidate Decisions in U.S. House Races," *Journal of Politics.* 65(2003): 1221–1235.

[21] *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. Feb 10, 2004).

[22] *Larios v. Cox*, 306 F. Supp. 2d 1212 (Mar. 1, 2004); *Larios v. Cox*, 306 F. Supp. 2d 1214 (Mar. 2, 2004); *Larios v. Cox*, No. 1:03-CV-693-CAP (N.D. Ga. Mar. 15, 2004); *Larios v. Cox*, 300 F. Supp. 2d 1320, 2004 WL 867768 (N.D. Ga. Apr 15, 2004).

2004 after its highest court ruled that the plan used for the 2002 elections violated the state constitution through its use of multimember districts and its unnecessary division of counties.[23]

THE LEVEL OF COMPETITION IN STATE HOUSE ELECTIONS

We measure electoral competitiveness in two ways: (1) "contestedness," or the share of seats with both a Democratic and Republican candidate, and (2) "competitiveness," or the share of seats in which the winner received less than 60 percent of the major-party vote.[24] The presence of more than one major-party candidate is crucial to competition and the idea of democratic choice. Democrats and Republicans dominate state legislative elections. In the states examined here, independents won three, or 0.08 percent, of races held in 2000 and two, or 0.05 percent of races held in 2004. Moreover, voters are often familiar with the general philosophical differences between the two major parties that have dominated American politics since the Civil War. The presence of a candidate from each major party on the ballot therefore adds greatly to the ability of a voter to express a meaningful choice. Candidates are also more likely to lose when they have a major-party opponent on the ballot. The percentage of the vote received by the winner in a contested election will be smaller than in a contested race assuming that the loser receives at least one vote.

Our measure of competitiveness captures the proportion of seats that are closely contested as reflected in vote percentage for the winning candidate. Elections in which the victor wins by a relatively small amount are more competitive than elections won by a large amount. Following congressional elections scholar Gary Jacobson's past practice in assessing competitiveness in congressional elections, we use 60 percent as a threshold for determining which seats are marginal in State House elections.[25] We recognize that the choice of any particular cutoff point between "competitive" and "uncompetitive" seats is somewhat arbitrary, as competition is a continuum. An election in which the winner receives 59 percent of the

vote is only two percentage points more competitive than an election in which the winner receives 61 percent of the vote. Moreover, a decline in the winner's vote share from 63 to 61 percent is comparable to a decline from 61 to 59 percent, but only in the latter instance would a district move from a classification of "uncompetitive" to "competitive."

Table 1 presents the percentage of State House seats with two major-party candidates and the percentage of seats where the winner received less than 60 percent of the major-party vote in each state in 2000 and 2004. The order of the states is from highest to lowest according to the share of marginal seats as measured by the percentage in which the winner received less than 60 percent of the major-party vote in 2004. The table also notes where the state was a covered jurisdiction under Section 5 of the Voting Rights Act (VRA) in 2000. Non-covered jurisdictions may have to engage in racial redistricting to comply with Section 2 of the VRA. However, the federal supervision provided by Section 5 of the VRA historically made it easier to compel jurisdictions to draw new majority-minority districts or to protect existing ones.[26] Table 1 also notes whether the State House map used in 2004 was a Democratic (D) or Republican

[23] *Stephenson v. Bartlett supra* note 20.
[24] For the few seats won by independents, the vote share of the winner is calculated as a percentage of the total vote.
[25] Jacobson *supra* note 21 at 27–8. The share of districts won by less 60 percent of the major-party vote in 2004 is highly correlated with the share of districts won by less than 55 percent (r = 0.90) or 52 percent (r = 0.80).
[26] The Supreme Court has gradually limited the ability of the Department of Justice (DOJ) to use its Section 5 powers to force jurisdictions to draw additional majority-minority districts. In *Beer v. United States*, 425 U.S. 130 (1976), the Supreme Court declared that only retrogression, rather than a failure to create possible new majority-minority districts, constituted an abridgement of minority voting rights within the meaning of Section 5. In *Reno v. Bossier Parish*, 520 U.S. 471 (1997) and 528 U.S. 320 (2000), the Court said that DOJ could not use its Section 5 power to object to a redistricting plan in a covered jurisdiction to enforce Section 2. In *Georgia v. Ashcroft*, 000 U.S. 02-182 (2003), the Court ruled that non-majority-minority districts might be sufficient under certain circumstances to meet a jurisdiction's burden to prevent retrogression under Section 5, even if the percentage of minorities declined within individual districts.

TABLE 1.   COMPETITIVENESS OF STATE HOUSE ELECTIONS IN 37 STATES

	Percentage of seats with two major-party candidates		Percentage of seats in which the winner received under 60%		VRA covered (all or part)	Plan type, 2004
	2000	2004	2000	2004		
Maine	69	96	38	59		I
Minnesota	89	99	34	49		O
Washington	80	82	32	43		I
Montana	75	75	40	42		D
Nevada	69	81	38	40		D
Oregon	77	77	42	40		D
Iowa	64	62	37	39		O
Hawaii	73	94	41	37		I
Colorado	68	75	38	37		O
Alaska	58	73	15	35	All	O
Kentucky	32	52	17	35		D
Michigan	98	98	19	35	Part	R
Wisconsin		57		33		O
Idaho	50	53	19	30		I
Oklahoma	55	63	24	28		R
Rhode Island	33	63	11	25		D
Missouri	52	59	20	25		R
Ohio	85	75	34	24		R
Utah	81	60	36	23		R
Indiana	58	57	23	22		D
Delaware	54	51	17	22		R
Wyoming	48	42	28	22		R
Tennessee	36	49	14	21		I
Connecticut	60	59	19	21		I
Kansas	54	45	17	21		R
New Mexico	59	39	29	20		D
Texas	28	40	12	19	All	R
North Carolina		41		18	Part	D
Arkansas	28	27	17	18		D
Georgia	32	39	14	17	All	R
California	98	93	18	16	Part	D
Florida	58	30	33	15	Part	R
Pennsylvania	53	50	14	14		R
New York	72	65	11	13	Part	D
Illinois	48	48	13	11		D
South Carolina	35	23	15	8	All	R
Massachusetts	29	51	7	8		D
Average: all states	59	61	24	27		
Average: all states but GA, ME, and MT	59	60	23	25		

Notes: "D" or "R" denote maps drawn by Democrats or Republicans where they controlled the process, were in a cross-chamber log-roll in a divided legislature, or a court adopted their preferred map. "I" refers to an incumbent protection map. "O" refers to a process that did not result in an overtly political map.

(R) partisan plan.[27] Most seats are not very competitive. In the average state in either 2000 or 2004, around one-quarter of State House elections were won with less than 60 percent of the vote. Approximately 40 per-

[27] Determining if a map is a partisan plan can be difficult. We relied primarily on McDonald *supra* note 14 at 371–95, and information posted at www.fairvote.org, to determine if the State House plan utilized in 2004 was a partisan plan. The authors would appreciate additional information if a reader believes that a state has been misclassified.

cent of seats were won without major-party opposition in both years.

The level of competition in State House elections varied dramatically across states in both 2000 and 2004. Only 28 percent of seats in Arkansas and Texas in 2000 had two major-party candidates as did only 23 percent of South Carolina seats in 2004. In contrast, 98 percent of Michigan and California districts had two major-party candidates in 2000 as did 99 percent of Minnesota districts in 2004. In the average state, roughly 40 percent of districts lacked candidates from both major parties in 2000 and 2004.

The variation in the share of marginal seats, defined as the winner receiving less than 60 percent of the major-party vote, was also considerable. Massachusetts saw the fewest marginal contests in both 2000 and 2004 with only 7 and 8 percent, respectively, having marginal status. South Carolina had a similarly low share of seats where the winner received less than 60 percent in 2004. Around one-quarter of seats were marginal in the average state in either 2000 or 2004.[28]

Several states experienced great changes in competitiveness between 2000 and 2004. The share of competitive districts fell precipitously in Florida where the percentage of seats with two-major party candidates tumbled by 28 percent and the percentage of marginal seats dropped 18 percent. On the other hand, the share of seats with two major-party candidates rose most strongly in Rhode Island, which experienced an impressive 30 percent gain in the share of seats where both Democrats and Republicans fielded candidates.[29] Maine had the greatest increase in the share of marginal seats, with the percentage of representatives winning by less than 20 points rising by 21 percent between 2000 and 2004. We might expect a rise in the number of competitive elections in Maine because the state had a new map in 2004. Among those states without a new map, Michigan had the greatest increase in the share of marginal seats, rising 16 percentage points from 19 to 35 percent.

While the share of competitive seats changed greatly in many states, the average level of competition was little altered between 2000 and 2004. The statistics at the bottom of Table 1 re-

veal that the average share of seats with two major-party candidates crept up by two points across all of the states for which data were available for both years. The average percentage of marginal seats rose by three percent. Excluding the three states (Georgia, Maine, and Montana) that adopted new redistricting plans between 2002 and 2004 reduces these small changes even further.

EXPLAINING VARIATION IN ELECTORAL COMPETITION

We investigate factors related to the presence of two major-party candidates and the competitiveness of the elections through a multivariate regression analysis. The scope of our analysis extends to the 37 states that conducted elections for the lower state legislative chamber in single-member districts in 2004. The unit of our analysis is the state, not the individual district, as we are interested in factors that affect statewide rates of competition, such as the presence of a politically motivated redistricting, the effects of the Voting Rights Act, and the average population size of the districts. Our analysis is constrained by the small number of observations, and we have made some compromises with regards to variables included in our regressions so that we might increase the degrees of freedom in our analysis.

The two dependent variables in our analysis are the percentage of 2004 state legislative elections with two major-party candidates and the percentage of elections won by less than twenty percentage points, as presented in Table 1. We tried alternative competitiveness measures, such as a ten-point and four-point spread between the top two candidates. These alternative models demonstrated the same patterns

[28] Excluding the states that redistricted between the 2002 and 2004 elections does not greatly alter the mean number of either marginal seats or seats with two major-party candidates.

[29] Heightened competition might be explained by the shrinking of the size of the Rhode Island legislature, which made seats scarcer and placed some incumbents in the same district. However, the 2004 elections were the second set of elections held for the smaller legislature.

we describe here, albeit slightly less strongly statistically significant. This finding is expected, as there is less variation among states using these narrower ranges of competitiveness spreads and thus less to explain from a statistical standpoint.

We are primarily interested in the effect of redistricting on state legislative competition. There are two important constraints related to redistricting that may affect the levels of competition within a state, the political motivations of the map and the drawing of special majority-minority districts to satisfy the Voting Rights Act. We argue that there are two important types of gerrymanders that may reduce electoral competition, partisan and incumbent protection gerrymanders. These state legislative maps may be contrasted with those that are specifically drawn by courts or are remanded by a court back to a redistricting authority to fix specific state constitutional deficiencies, such as those in Alaska, Colorado, Georgia, Minnesota, and Wisconsin. Places in these categories theoretically are neutral and benefit neither political parties nor incumbents. However, we should be careful in categorizing all court approved plans as neutral.[30] Courts may adopt partisan or incumbent protection maps offered through the regular political process, as happened in Missouri, North Carolina (in 2002), New Hampshire, New Mexico, and South Carolina (in 2002). State government in North Carolina and South Carolina replaced court ordered incumbent protection maps with partisan maps in 2004. Redistricting institutions in Arizona and Iowa produced relatively neutral maps without overt political benefits for the parties or incumbents.[31] In operationalizing our measure, we combine partisan and incumbent protection gerrymanders into one category of *Political Map*.[32]

Another important factor affecting competition in state legislative elections is drawing of non-competitive minority districts to satisfy Section 5 of the *Voting Rights Act*. There are nine states that are fully covered, though of these nine only Alaska, Georgia, South Carolina, and Texas are within our data set. To these states we add two partially covered states, Florida and North Carolina, which have sizable minority populations within the states' covered jurisdictions. We do not categorize other par-

tially covered states, namely California, Michigan and New York, because only small, non-populous areas are covered or the populous areas that are covered are located in uncompetitive areas, such as the three covered boroughs of New York City.[33]

We include two control variables in the analysis, the *Average District Size* of a state legislative district and a dummy variable indicating if a state used a *New Map* in 2004. We expect relatively populous average sized districts to be associated with a larger supply of candidates, and thus related to a higher percentage of contested races. Populous districts may, however, retard competitive elections as challengers must raise a larger amount of money to contact more constituents. We construct *Average District Size* by dividing the 2004 voting-eligible population of the state (in units of thousands of people) by the number of state legislative districts.[34] From our previous discussion, we expect a newly redistricted map for 2004 in four states—Georgia, North Carolina, Maine and Montana—to be related to more competitive elections than other states that did not redistrict after the 2002 election.[35]

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[30] In our regression analysis, an indicator variable identifying court ordered plans was not close to statistical significance.

[31] Michael P. McDonald, "A Comparative Analysis of Redistricting Institutions in the United States, 2001–02," *State Politics and Policy Quarterly* 4: 4(Winter 2004): 371–95

[32] An unreported analysis identifying partisan and incumbent protection maps separately indicated no statistical difference between partisan and incumbency protection gerrymanders, consistent with Owen and Grofman's (1988) theoretical assertion that these types of gerrymanders both produce non-competitive elections.

[33] However, for the sake of accuracy, these states are listed as partly covered in Table 1.

[34] For a description of state level voting-eligible population, see Michael P. McDonald. 2002. "The Turnout Rate Among Eligible Voters for U.S. States, 1980–2000." *State Politics and Policy Quarterly* 2 (2): 199–212. The authors constructed 2004 voting-eligible numbers.

[35] An alternative method of controlling for states with a new redistricting map in 2004 is to drop them from the analysis. We tried this model specification and found substantially the same results reported in Table 2, albeit slightly fewer statistically significant coefficients. Part of the small decrease in the observed statistical significance is related to the dropping four observations from an already small number of thirty-seven observations. We decided to gain three degrees of freedom in the model by including the indicator variable identifying states with a new state legislative map in 2004.

TABLE 2.   LINEAR REGRESSION MODELS OF COMPETITIVENESS IN 2004

	Two candidates		*Marginal seats*	
	Coefficient	*SE*	*Coefficient*	*SE*
Political Map	−13.15*	7.44	−9.42**	4.45
Voting Rights Act	−31.48**	8.35	−13.76**	5.00
Average District Size (1000's)	0.13**	0.07	−0.04	0.04
New Map	16.16	9.81	11.87*	5.87
Constant	68.95**	7.16	36.98**	4.29
R-squared	0.35		0.37	
Adjusted R-squared	0.27		0.25	
Number of cases	37		37	

Notes: *p < 0.10, **p < 0.05, two-tailed test. The dependent variable for the two candidates models is the percentage of districts with two major-party candidates. The dependent variable for the marginal seats models is the percentage of districts won by less than 20 percent of the major-party vote.

The regression analysis results are presented in Table 2. Results are presented for two models: the percentage of 2004 state legislative races with two major-party candidates and the percentage of state legislative elections won by less than twenty percentage points. We present the coefficients and indicate if the coefficients are statistically significant at the $p < 0.10$ and $p < 0.05$ levels, and present the standard errors (SE) associated with the coefficients.[36]

States with a political map are predicted to have approximately 13 percent fewer races with two major-party candidates than other states. This result can only be regarded as suggestive rather than conclusive because the coefficient on *Political Map* achieved statistical significance only at the $p < 0.10$ level. However, the coefficients for the variables controlling for states mostly covered by the *Voting Rights Act* and *Average District Size* both are statistically significant at the $p < 0.05$ level so we can be somewhat more certain about our conclusions. The population of a district has a relatively small impact on the percentage of seats with two major-party candidates. An increase of 10,000 in the population of a district raises the predicted share of seats with two major-party candidates by 1.3 percent. In contrast, states mostly covered by the Voting Rights Act are expected to have slightly more than 31 percent fewer races with two major-party candidates than other states. The *New Map* coefficient is just outside the $p < 0.10$ level and in the expected direction, so the relationship estimated here is strongly suggestive that a new map indeed induces challengers to emerge, relative to other states that did not redistrict after 2002.

Both key variables measuring the impact of a political map and coverage by the Voting Rights Act have a strong impact on the share of state Houses seats won by less than twenty points. As the model of marginal seats indicates, political maps reduce the share of seats which are marginal by over 9 percent. That corresponds to a nine-seat reduction in the number of seats won by under 60% percent of the major-party vote in a 100-seat legislative body. States mostly covered by the Voting Rights Act have almost 14 percent fewer marginal seats than other states—the equivalent of 14 fewer marginal seats in the same 100-seat chamber. Both findings are statistically significant at the $p < 0.05$ level. A new redistricting map for 2004 is also associated with fewer competitive races, though the results are statistically significant just outside the $p < 0.05$ level. Unlike the model for two candidates, the average population size of a district is neither substantively nor statistically significant, though it is in the predicted direction, opposite of that of the two candidate model.

One should perhaps exhibit caution in attributing the decline in competition to the Voting Rights Act. Historically, the South has tra-

[36] The small number of observations raises the possibility that the results are confounded by outlier observations. We ran 1,000 bootstrap simulations and found substantially similar results as presented in Table 2.

ditionally had lower levels of general election competition than other states. All of the states coded as covered by the Voting Rights Act are located in the South. Except for Arkansas and Tennessee, all of the southern states included in the data set are categorized as covered by the Voting Rights Act. Of course, the low levels of southern competition may be attributed to the historic overwhelming dominance of the Democrats and the great weakness of the Republicans, conditions which certainly no longer describe southern politics. On the other hand, racial redistricting spurred by the Voting Rights Act systematically created safe Democratic districts and removed Democratic voters from surrounding districts.[37]

Models not presented here tested various measures for the distribution of voters within a state. If Democrats and Republicans are highly segregated within a state, most districts may be safe for one party without any particularly strong effort to manipulate the lines due to partisanship or racial redistricting. Conversely, if Democrats and Republicans are evenly dispersed throughout a state, many districts may be competitive. Even if a party wishes to gerrymander the state, they may find their task more difficult if members of the two parties are sufficiently intermixed. Two separate measures were used to test the impact of voter distribution. One crude measure was simply the margin of victory for the winning 2000 presidential candidate within a state. Large margins of victory may indicate that politics is heavily dominated by one party with only weak competition. Moreover, candidates who win by a healthy margin statewide often easily carry a disproportionate number of single-member districts. This measure ranged from 0.01 percent (Bush's narrow victory in Florida) to 40.49 percent (Bush's easy win in Utah).

A second, more sophisticated measure was based on the population-weighted average of the 2000 margin of victory within a state's counties. If each county were evenly divided between Bush and Gore, then the variable would take a value of zero. However, the measure takes larger values in states where Bush or Gore won many counties, especially populous ones, by sizeable margins. Unlike the first,

cruder measure, the county breakdown gives a sense of the distribution of voters within a state—not just the overall level of support for the winning party. This measure ranged from 5.69 percent in Iowa to 18.58 percent in Rhode Island with the average state taking a value of 10.97 percent (standard deviation: 3.72).

Perhaps surprisingly, neither measure of the distribution of voters came close to achieving statistical significance in any model tested. This result may reflect that neither measure captures the distribution of voters very well. Voters may also be sufficiently unevenly distributed that creative mapmakers, especially with the aid of sophisticated computer mapping programs, do not find gerrymandering for parties or incumbents too difficult even in states where voters are comparatively evenly distributed. Conversely, in less competitive states, state parties are sufficiently able to distance themselves from the national party platform and offer policies and candidates that appeal to voters within the state, consistent with findings by Erikson, Wright, and McIver.[38]

We further tested models that investigated the relationship between both court-drawn plans and the presence of term limits with our two measures of competitiveness. We again found no statistical relationship, and due to the small number of states to observe, we choose not to include any of these statistically insignificant variables in the model we present. We were somewhat surprised that term limits were not statistically related to competition, though we believe that further investigation into the percentage of open seats—a variable we were unable to construct with our data—may uncover such a relationship.

CONCLUSION

This article provides a first step toward showing that both partisan redistricting plans

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[37] Lublin *supra* 16 at 75–81, 99–115; Charles S. Bullock, III (2005). "The GOP Comes of Age in the South." *Election Law Journal* 4(3): 207–10.

[38] Gerald C. Wright, Robert S. Erikson, and John P. McIver (1987). "Popular Control of Public Policy in the American States." *American Journal of Political Science*. 31(4): 980–1001.

and racial redistricting can reduce the overall level share of competitive State House seats. The findings are based on the results from the 2004 State House elections for the 37 states included in the study. The impact of any individual redistricting plan can vary substantially from the overall tendency of either partisan plans or racial redistricting to undercut competition. Nevertheless, the multivariate analysis indicates that partisan plans reduce the proportion of marginal seats, defined as seats won by less than 20 points, in State Houses. Additionally, it suggests that states with covered jurisdictions for purposes of Section 5 of the Voting Rights Act see fewer marginal districts and fewer districts with two major-party candidates. We also see more contested elections as the average population size district increases. New redistricting maps are also related to higher levels of competition.

The potential impact of racial redistricting may decline in the future due to the Supreme Court's 2003 decision in *Georgia v. Ashcroft*. That decision indicated that states may reduce the share of minorities in various districts as long as overall minority influence and opportunity are enhanced. Even the dissenters from the majority opinion agreed that the percentage of minorities required in any district should be determined by the share of minorities needed to elect a minority-preferred candidate, rather than arbitrarily set at fifty percent or higher.[39] Reducing the share of minorities in districts designed to allow minorities to elect candidates of choice may also decrease the number of packed Democratic districts and increase competition.

However, the widespread use of partisan redistricting plans for State Houses seems likely to have a negative influence on competition over the long term. In *Davis v. Bandemer*,[40] the Supreme Court ruled in 1986 that partisan gerrymandering is a justiciable issue under the Equal Protection Clause.[41] However, federal courts have yet to overturn a redistricting plan on partisan grounds. Recently, in *Veith v. Jubelirer*,[42] the Supreme Court ruled that no satisfactory legal standard or scholarly measure has emerged to permit a court to determine if it should overturn a plan. Indeed, Justice Scalia wrote for a plurality that it is impossible to

come up with such a satisfactory standard; consequently, he believes that partisan gerrymandering should not be justiciable and the Court should overrule *Bandemer*.[43]

At least for now, partisan redistricting plans seem likely to continue to flourish in the United States. Is this really a problem for electoral competition? Gerrymandering has its origins in the early days of the Republic. Law Professor Daniel Lowenstein agrees with Justice O'Connor that partisan gerrymandering is a "self limiting enterprise."[44] More specifically, it may be difficult for political minorities to construct redistricting plans that protect their majority over the long term without risk of weakening their safe seats. The failure of the Georgia Democrats, who had won legislative majorities with a minority of votes in several elections during the 1990s, to hold on to their majority in 2002 despite aggressive efforts to protect it through redistricting seemingly confirms this assertion. Popular majorities can additionally protect their interests by electing governors. In states with the initiative process, majorities can even take control of redistricting away from legislative majorities as they have done in Arizona. In a nutshell, Lowenstein and O'Connor both doubt that gerrymandering will ever cause the United States to arrive at the point where the government has essentially dissolved the peo-

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[39] See Bernard Grofman, Lisa Handley and David Lublin, "Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence," *North Carolina Law Review* 79: 5(June 2001) for a discussion of why selected minority-preferred candidates may be able to win election from some districts where they do not constitute a majority.

[40] 478 U.S. 109 (1986).

[41] Bernard Grofman, "Toward a Coherent Theory of Gerrymandering: *Bandemer* and *Thornburg*" in Bernard Grofman, ed., *Political Gerrymandering and the Courts* (New York: Agathon Press, 1990): 29–63; Daniel Hays Lowenstein, "Bandemer's Gap: Gerrymandering and Equal Protection" in Bernard Grofman, ed., *Political Gerrymandering and the Courts* (New York: Agathon Press, 1990): 64–116.

[42] *Vieth v. Jubelirer*, 541 U.S. 267 (2004).

[43] Justice Scalia's opinion was joined by Chief Justice Rehnquist and Justices O'Connor and Thomas.

[44] Lowenstein *supra* note 51 at 88–9; *Davis v. Bandemer* (1986), 478 U.S. 109, 152. O'Connor cites the work of political scientist Bruce Cain to support her claim; see Cain *supra* note 4 at 151–9.

ple and elected another, to paraphrase Bertolt Brecht.[45]

Nathaniel Persily further argues that partisan gerrymandering has not limited electoral competition because even if the share of districts won by close margins declines, legislatures may still be closely divided with competition for control remaining quite fierce.[46] Grofman and Jacobson point out that the size of U.S. House majorities has been quite small by historical standards in recent years.[47] Indeed, the tight nature of the 2000 and 2004 presidential elections along with heightened turnout further suggests that national politics remain quite competitive.

Of course, the tight nature of political competition in the United States makes the ability to manipulate political boundaries all the more important. Turnout statistics further indicate that voters are more likely to vote when they are participating in a close contest. Turnout in 2004 moved upward primarily in the battleground states and states with other tightly contested high profile races.[48] Voters may unsurprisingly feel left out of an election that turns on close contests in only a few seats—a familiar complaint against the Electoral College by residents of safe states.[49] Moreover, many state legislatures are far from closely divided.

Like Lowenstein, Richard Pildes is uncomfortable with the Supreme Court's reliance on the Equal Protection Clause in the partisan gerrymandering and other redistricting and election law cases more broadly.[50] However, Pildes does not believe that the judiciary should revert to regarding partisan gerrymandering as a political question. Along with his coauthor Samuel Issacharoff, Pildes believes that the Court should instead ground its review of legislative districting, and its rulings involving election law more broadly, in the goal of protecting the democratic process and marketplace of ideas against political elites who wish to entrench themselves through the manipulation of district lines and other electoral ground rules.[51]

At the core of the Issacharoff and Pildes argument is a deep concern over the manipulation of political institutions, such as electoral district boundaries, by current officials in order to entrench themselves in power and a belief that the judiciary should serve as a check on

these anti-democratic efforts. This paper focuses only on an interval of 2000 to 2004, so it can only hint at long-term trends in state legislative electoral competition. The results nevertheless suggest that minimizing political considerations during redistricting can result in greater electoral competition. In Minnesota and Wisconsin, courts drew maps when the regular redistricting process failed. These maps were largely received as being fair by leaders of both political parties and were not seen as protecting incumbents, as evidenced in the resulting electoral competition.[52] In Alaska, Colorado, and Idaho, the state Supreme Court remanded redistricting back to the states' redistricting commissions to fix legal violations.

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[45] Bertolt Brecht's poem, "The Solution," was a critique of the East German government's repression of the 1953 uprising against it. It reads: "After the uprising of the 17th June / The Secretary of the Writers Union / Had leaflets distributed in the Stalinallee / Stating that the people / Had forfeited the confidence of the government / And could win it back only / By redoubled efforts. / Would it not be easier / In that case for the government / To dissolve the people / And elect another?" See John Willett and Ralph Manheim, eds., *Poems by Bertolt Brecht* (Methuen 1976).

[46] Nathaniel Persily, "In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent Protecting Gerrymandering," 116 *Harvard Law Review* (2002): 649, 656.

[47] Grofman and Jacobson *supra* note 2 at 4–5.

[48] Cox, Gary W. and Michael C. Munger. 1989. "Closeness, Expendatures, and Turnout in the 1982 U.S. House Elections." The American Political Science Review, Vol. 83, No. 1, pp. 217–231. Michael P. McDonald, "Up, Up, and Away! Voter Participation in the 2004 Presidential Election," *The Forum* 2: 4(December 2004), available at: ⟨www.bepress.com/forum/vol2/iss4/art4/⟩.

[49] Lawrence Longley and Neal R. Pierce, *The Electoral College Primer 2000* (Yale University Press 1999).

[50] Richard H. Pildes, "The Supreme Court 2003 Term: Forward: The Constitutionalization of Democratic Politics," *Harvard Law Review* 118: 1(November 2004): 28–154.

[51] *Id*. at 54–5; Samuel Issacharoff and Richard H. Pildes, "Politics As Markets: Partisan Lockups of the Democratic Process," *Stanford Law Review* 50: 3(February 1998): 643–717; Samuel Issacharoff, "Private Parties with Public Purposes: Political Parties, Associational Freedoms, and Partisan Competition," *Columbia Law Review* 101: 2(March 2001): 274–313; Samuel Issacharoff, "Gerrymandering and Political Cartels," *Harvard Law Review* 116: 2(December 2002): 601–48.

[52] Dane Smith. 2002. "A State Rejiggered: New Maps for Congress, Legislature May Change Political Fortunes." *Minneapolis Star Tribune*, March 20, 2002: 1A. JR Ross. "Federal Court Redraws Wisconsin Legislative Districts." *The Associated Press State and Local Wire*, May 23, 2002.

Court involvement in these situations produced maps with higher levels of electoral competition, even in the largely uncompetitive state of Idaho.

Furthermore, the court is not the only institutional pathway to minimizing political influence. In Iowa, the Legislative Service Bureau, nonpartisan legislative support staff, drew districts that maintained relatively high levels of electoral competition. Arizona—a state not analyzed here due to their two-member districts—adopted a commission system in 2000 by initiative. However, analyses indicate that the plan adopted by the Arizona Independent Redistricting Commission actually reduced the number of competitive districts due to the greater priority of factors other than promoting competition in drafting the new plan.[53] Voters in California and Ohio rejected commission proposals in 2005. Florida may have the opportunity to decide the same question in 2006. Voters in many states, particularly those with no initiative process, may find it difficult to bring about the adoption of non-judicial remedies to partisan gerrymandering. Efforts by the current crop of elected officials to entrench themselves in power through redistricting are often little known or understood. The key redistricting decisions often take place outside the public view. New York even exempts redistricting data compiled by its reapportionment task force from the state equivalent of the Freedom of Information Act. Judicial action may be the only remedy to partisan gerrymandering in some states.

But the courts are not a panacea for removing political influence from redistricting. In Missouri, only four of six members of a panel of judges adopted a map in what many perceived to be a partisan vote.[54] In New Mexico, a state court essentially adopted a state House map that had been passed by the Democratic legislature but vetoed by the Republican governor.[55] The intrusion of politics into these court decisions resulted in maps with lower levels of electoral competition.

Redistricting in South Carolina and Georgia further demonstrate the limits of what courts—

or anyone—can do to encourage electoral competition in southern Republican states that must draw uncompetitive Democratic majority-minority districts to satisfy the Voting Rights Act. In South Carolina, a court produced new 2002 maps that increased the number of majority-minority districts by four, but also brightened prospects for Republicans in a chamber they already dominated.[56] Court drawn plans in Georgia and South Carolina produced little electoral competition; nor did other plans enacted by state legislatures in Southern states covered by Section 5 of the Voting Rights Act. The court-drawn plan in Georgia was actually much less competitive that the partisan plan drawn by Democrats that was used in 2002.

Georgia's recent experience serves as a valuable reminder that partisan gerrymanders sometimes fail and that court-drawn plans do not always result in greater competition. However, these are exceptions to an overall pattern indicating that partisan gerrymandering more often has a dampening effect on competition. Judicial action can help alleviate, if not totally solve, the problem of partisan efforts to strangle the democratic process.

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[53] Michael P. McDonald "Drawing the Line on Competition." *PS* 39: 1 (January 2006): 91–94.

[54] Bill Bell, "New House Maps Boost GOP Chances, Boundaries Could Tip Balance of Power in Legislature," *St. Louis Post-Dispatch* (December 14, 2001): C1.

[55] Editoral. "Judge Redistricts House to Democrats' Plan," *Albuquerque Journal* (January 28, 2002): A8.

[56] Warren Wise and Schuyler Kropf, "Judges Unveil New Districts for S.C.," *The Charleston Post and Courier* (March 21, 2002): 1A.