

IPPSR EVALUATION OF REMEDIAL MI HOUSE MAP FOR COMPLIANCE WITH THE *AGEE v BENSON* ORDER

Summary

I analyze Michigan House map Motown Sound FC E1, which the Michigan Redistricting Commission has submitted to the Court as a Remedial MI House map. This analysis is meant to complement the work of consultants working for the Commission, by providing quantitative evidence to help jurists and the public interpret how the maps comply with the Equal Protection clause, with the Court Order in *Agee v Benson*, with the Voting Rights Act, and with some of the seven redistricting criteria in the Michigan Constitution.

The Remedial House map improves upon the 2022 House map in its compliance with the Court Order and the constitutional redistricting criteria, as follows:

- a) Its distribution of voters by race across districts is indistinguishable from that of well-configured maps drawn without attention to race;
- b) it creates twelve districts that are likely to be districts of opportunity for Black voters; and
- c) it better reflects county and township lines, while inducing only a minimal effect (if any) on the partisan composition of the legislature.

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Check out the latest version [here](#).

I. MOTIVATION

In December 2021, the Michigan Independent Citizens Redistrict Commission adopted a map of electoral districts for the Michigan House of Representatives (henceforth “the 2022 House map”) for the 2022-2030 elections.

In December 2023, a federal Court panel ruled that districts 1, 7, 8, 10, 11, 12, and 14 were drawn “*predominantly on the basis of race*” in violation of the Equal Protection clause in the U.S. Constitution (see [Agee v Benson](#)). In a subsequent scheduling order, the Court held that “*the district lines for not only for the unconstitutional districts, but also other districts as reasonably necessary, will be redrawn.*”

In this study, I evaluate the House map that the Commission has submitted to the Court as a Remedial map. I use quantitative evidence that is informative of the draft maps’ compliance with the Equal Protection clause, with the Court’s Order, and with the Voting Rights Act.

This analysis complements the evaluations conducted by the Commission’s consultants, drawing on their work where appropriate, and contributing additional evidence that can be used to evaluate the Commission’s Remedial maps. I show evidence focused on five goals that the Remedial map should satisfy.

1. Compliance with the Equal Protection clause.
2. Adherence to the Court’s Order to redraw other districts “*as reasonably necessary.*”
3. Compliance with the Voting Rights Act.
4. Partisan fairness, the fourth redistricting criterion under the Michigan Constitution.
5. Reflecting county, city and township boundaries, the sixth criterion. In the map analyses that the Commission has posted to its portal, this sixth criterion receives less attention than the lower-ranked seventh-criterion (compactness), so there is room for additional analysis here.

The Commission has named its remedial map “Motown Sound FC E1.”

II. PROCESS

In January 2024, the Commission drew several draft maps collaboratively, and without overt consideration of race. Once consultants hired by the Commission evaluated these draft maps –and others submitted by the public— for compliance with the Voting Rights Act (VRA) and other constitutional criteria, the Commission considered race to make edits narrowly targeted toward better compliance with the VRA, and then it submitted nine collaborative Draft Proposed maps, and one map drawn by an individual commissioner, for public comment. Following public comment, the Commission made minor further edits, and then on February 28 it voted to adopt map Motown Sound FC E1 as a Remedial map to submit to the Court.

Motown Sound FC derives originally from the Draft Proposed map Spirit of Detroit, through the edits that led to the Proposed map Motown Sound, reaching Motown Sound FC E1 through subsequent edits following public comments. An IPPSR Report, dated February 2, on these two earlier drafts and on other draft proposed maps is available [here](#).

The current report follows the same structure and methods as the previous IPPSR Report on the Draft Proposed maps, now applied to evaluate the proposed Remedial map.

III. EQUAL PROTECTION CLAUSE.

The Commission’s legal counsel advised the Commission to first draw draft maps without attention to race, and to then “tweak” these drafts as necessary with minor interventions narrowly tailored to comply with the Voting Rights Act.

I show evidence on whether the draft maps have been drawn without attention to race. While as a matter of process, the Commission avoided discussion of race, and ostensibly proceeded to draw without attention to race, in theory it could be that commissioners paid attention to race in their line drawing, without explicitly mentioning race as a motivation for their line drawing.

I do not address commissioners’ intent or thought process. Rather, I evaluate whether maps appear to be drawn on the basis of race according to their outcomes. The key assumption I make is that maps drawn not on the basis of race are likely to look like maps that we know, with certainty, were drawn with no information at all.

The MGGG Redistricting Lab at Tufts University drew computationally-generated 100,000 maps of Michigan House districts, following an algorithmic code that has no information about race, and favors compact districts over non-compact ones.

In most (to be precise, in more than 95,000) of these maps, the distribution of ethnic minority voting age population in each district is such that there are:

between	and	districts in which at least ___ of voting-age residents identify as “Black” (alone).
1	3	85%
2	5	75%
3	6	65%
4	8	55%
5	9	50%
6	10	45%

Table 1. Typical range of number of districts with large Black population in 100,000 MI House maps.

Table 1 is meant to be read by row. For instance, the first row says that in most maps (precisely, in at least 38 out of every 40) drawn without information about race, there are between one (1) and three (3) districts in which at least 85% of voting-age residents identify by race as “Black” exclusively 2020 U.S. Census. If the number of districts with such shares of residents who identify by race exclusively as “Black” (including those who identify as “Black” exclusively by race and as “Hispanic” by ethnicity in the 2020 Census) departs much from these values, such departure is statistical evidence indicative that the drawing of district boundaries was probably influenced by race. After all, without information about race, there is only less than a 2.5% probability (less than one in forty) that a map ends up with a number outside that range of between one and three.

I compare the 2022 House map, and the current draft maps, against these ranges that we expect from maps not drawn on the basis of race.

A technical caveat: The definition of the set of voters who identify as “Black” in the 2020 Census varies by depending on whether one includes or excludes those who also identify with another race besides “Black”, and/or those who identify as “Hispanic” by ethnicity. The range for the computationally generated maps is for “Black” exclusively by race, regardless of “Hispanic” ethnicity. If the number of districts for the draft maps depends on which definition we use, I indicate the number with the most restrictive definition (“Black” only, with no other racial or ethnic identification) and the number with most inclusive definition (“Black” as one of possibly many racial or ethnic identifications). The number of districts in which at least a certain share of voting-age residents identifies as “Black” in the draft maps is then as follows.

Identify as “Black”	Range w.o. race info	2022 map	Remedial Map
>85%	1 to 3	0	1
>75%	2 to 5	0	2
>65%	3 to 6	0	5
>55%	4 to 8	2-4	6-7
>50%	5 to 9	7	9
>45%	6 to 10	7-9	9-10

Table 2. Number of districts with large Black population.

According to this quantitative evidence, the Remedial map appears indistinguishable from maps drawn without racial information. As a matter of process, we know the Remedial map was edited on the basis of race, yet these race-conscious edits appear so minimal and narrowly tailored, that their cumulative effect does not make the Remedial map quantitatively distinguishable from the larger collection of maps drawn not at all on the basis of race.

IV. ADHERENCE TO THE COURT’S ORDER TO REDRAW AS “REASONABLY NECESSARY.”

The Court Order instructs the Commission to redraw districts D1, D7, D8, D10, D11, D12 and D14, and those of additional districts “*as reasonably necessary.*”

The Remedial map redraws the boundaries of eight additional districts, besides the seven that must be redrawn. In particular, it also redraws districts D2, D3, D4, D5, D6, D9, D13 and D16. Six of these districts (all but D5 and D16) are adjacent to an unconstitutional district. Any change to a boundary line between an unconstitutional district and a constitutional district adjacent to it necessarily redraws the adjacent district as well.

Whereas districts D5 and D16 are not adjacent to any of the unconstitutional districts. Districts D5 and D16 are adjacent to a district that is itself adjacent to an unconstitutional one, so they are two steps removed from the unconstitutional ones. It was not directly necessary to redraw districts D5 and D16 in order to the unconstitutional districts as in the Remedial map (changes to the boundaries of the seven unconstitutional districts could have been accommodated with a different redrawing of the districts adjacent to the unconstitutional ones).

Commissioners or their legal counsel have advanced two arguments to redraw boundaries that could have left intact as in the original map while drawing districts D1, D7, D8, D10, D11, D12 and D14 as in the Remedial map. One argument is that districts such as D5 and D16, were also drawn with the same predominance of consideration of race as the ones deemed unconstitutional, so redrawing districts D5 and D16 is only providing the same remedy that the Court ordered for districts D1, D7, D8, D10, D11, D12 and D14. A second argument is that while the Commission is ordered by the Court to provide remedy by redrawing D1, D7, D8, D10, D11, D12 and D14, the Commission can also act on its own legislative capacity to redraw any other districts.

Our only quantitative observation is to contribute is to note that one collaborative Draft Proposed map drawn by the Commission (map “Tulip”) changed the boundaries of only three additional districts, all of them adjacent ones (namely D4, D9 and D13), and it appears similar to maps drawn without consideration of race in its distribution of racial composition across districts.

V. EVIDENCE ON COMPLIANCE WITH THE VOTING RIGHTS ACT

As summarized by Mark Braeden’s 1/29 presentation, to prove a Section 2 violation of the Voting Rights Act, under the *Gingles* precedent, plaintiffs must satisfy three preconditions. The first one is the one I shed light on: The “*minority group must be sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district.*”

The relevant minority group in our case is the population of residents who identify as Black. How many Black majority districts can there be in “reasonably configured” maps? We answer this question by looking at the 100,000 maps computationally generated by the MGGG Lab. The algorithm to create these maps imposes population equality and contiguity, and is more likely to generate maps with more compact districts. The algorithm does not have any information of race or past election results.

Table 5 shows the number of maps with zero to three, with four, five, ... and up to eleven, or with twelve or more Black majority districts, and their share of the total.

# Districts	# Maps	Share
0-3	0	0.0%
4	73	0.1%
5	4404	4.4%
6	27740	27.7%
7	41051	41.1%
8	21269	21.3%
9	4924	4.9%
10	539	0.5%
11	0	0.0%
12-110	0	0.0%

Table 3. Number of majority-Black districts.

Almost all maps feature between 5 and 10 Black-majority districts. We infer that there are **ten**, and no more than ten, distinct compact geographic areas with a Black majority of size large enough to meet the first *Gingles* precondition. Some maps draw an opportunity district for each of these areas; others do not. But any map that draws ten districts of opportunity, one for each of these compact geographic areas, is one in which there appears to be no eleventh geographic area that can meet the first *Gingles* precondition to raise a claim under the Voting Rights Act.

An eleventh Black-majority district does not emerge organically through a natural line-drawing process. Rather, such an eleventh district can only be artificially created through a race-conscious line-drawing process that optimizes the distribution of voters by race to attain this result. Such a line-drawing process is in tension not only with the Equal Protection clause requirement to draw districts not predominantly on the basis of race, but also with the goals of reflecting Communities of Interest (3rd constitutional criterion) and reflecting county, city and township boundaries (6th constitutional criterion).

The evidence in Table 5 does not argue for an upper limit to the number of districts of opportunity. Depending on the voting patterns, maps with at most ten Black-majority districts may have eleven or more districts of opportunity for Black voters (many do). In fact, it may be desirable to draw maps with eleven or more districts of opportunity.

The evidence in Table 5 only provides an argument that Section §2 of the Voting Rights Act cannot require more than ten districts of opportunity for Black voters in 2024 electoral district maps for the MI House of Representatives, because there are no more than ten geographically compact Black-majority communities that can simultaneously meet the first *Gingles* precondition.

According to the VRA analysis publicly posted by the Commission, the Remedial map creates thirteen districts of opportunity for Black voters, merely in the Metro Wayne area under consideration. It also features an additional majority Black district outside Metro Detroit: D70 in Genessee county; presumably it too would be a district of opportunity, if it were considered in the analysis. On the other hand, questions persist as to whether two of the districts included in the count of thirteen are reliable districts of opportunity. First, the analysis compares the Black turnout to the non-Hispanic White turnout in Democratic primaries; yet district D1 features a larger minority of residents of voting age identifying as “Hispanic” than those identifying as “Black” (albeit not of voting age citizens), so the district might be one of opportunity for voters who identify as Hispanic (regardless of race), and not for those who identify as Black (regardless of ethnicity). Further, districts D13 is one in which the candidate preferred by most Black voters is expected to win a Democratic primary, but may not win the general election.

Therefore, we might infer that the number of districts of opportunity in the Remedial map may be twelve, and not thirteen. We note as well that twelve such districts constitute approximately 11% of the total number of districts, so it is less than proportional to the share of the voting-age citizens statewide who identify as Black (14%).

Still, even this lower number of twelve is greater than the maximum number of distinct geographically compact Black communities (ten) that can simultaneously meet the first *Gingles* precondition.

V. EVIDENCE ON MICHIGAN CONSTITUTIONAL CRITERIA

While the Michigan Constitution provides seven explicit and ranked criteria that maps must follow, I seek to provide only analysis that is complementary, and not any analysis that is redundant or competing with the evaluations that the Commission relies on generated by the consultants it employs. The Commission's posted [materials](#) on Remedial map's performance on compliance with the seven constitutional criteria provide quantitative measures on population and VRA compliance (criterion 1), partisan fairness (criterion 4) and compactness (criterion 7). The Remedial map features districts that satisfy contiguity (criterion 2); no additional evaluation is needed on this criterion.

Among the three criteria for which the Commission has not posted an evaluation, reflecting Communities of Interest and not favoring or disfavoring candidates (criteria 3 and 5) have proven difficult to evaluate in a quantitative manner; I will not attempt analysis here.

I offer evidence on partisan fairness (criterion 4) that complements the Commission's analysis, and on reflecting county, city and township boundaries, (criterion 6), for which the Commission provides no evaluation.

On partisan fairness, the Commission relies on four academic measures presented as percentages; I merely present simpler information in terms of seats gained or lost under the Remedial map, compared to the 2022 MI House map. If the differences were more notable, a more nuanced analysis (and additional measures besides, or instead of, the ones that the Commission relies on) would be warranted, but as we can see according to any measure, the differences across maps are minimal.

Averaging across the 2016 and 2020 Presidential elections, the 2018 and 2020 MI Senate elections, and the 2018 MI Governor election, the Democratic party won 56.2 of the 2022 House districts, and the GOP won the remaining 53.8 districts. Whereas, the Democratic party won exactly 56 of the Remedial map's districts, and the GOP the remaining 54 districts. The Remedial map is thus 0.2 seats more favorable to the GOP.

Reflection of county, city and township boundaries is the 6th criterion, and thus subordinate to the five criteria that precede it. It is, however, higher ranked than compactness, and thus the relatively greater attention that the Commission paid to maps' performance on compactness (with a quantitative check of performance on two compactness measures for each map proposed for public comment), than to the maps' performance on following county, city and township boundaries is perhaps not warranted.

If districts do not follow county lines, they split counties, creating two or more county pieces assigned to a different district. If each of Michigan's 83 counties were in one piece, the map would have 83 pieces. Because this is impossible, some county splits are inevitable. According to criterion 6, all else equal, the fewer splits and county pieces, the better. The 2022 MI House map and the Remedial map split 48 counties. The 2022 MI House map creates 202 distinct county pieces. The Remedial map creates 198 distinct county pieces; it thus improves performance on this criterion.