

BakerHostetler

Michigan Independent Citizens Redistricting Commission

Redistricting & Voting Rights Act Compliance

Mark Braden – January 29, 2024

Overview

Objectives for this presentation:

1. Brief summary of the requirements of the Voting Rights Act (“VRA”).
2. Review of the House plans provided by the Commission to Drs. Palmer, Handley and myself. Principally, addressing the opportunity of Black voters to elect representatives of their choice to the Michigan House.
3. No opinion will be offered on plan compliance with Michigan Constitutional requirements. I will offer only an opinion on draft plans’ compliance with VRA.

Section 2 of the VRA, *Gingles*

To prove a § 2 violation under *Gingles*, plaintiffs must satisfy three preconditions.

1. The “minority group must be sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district.”
2. The minority group must be able to show that it is politically cohesive.
3. The minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it to defeat the minority’s preferred candidate.

-
- A plaintiff who demonstrates the three *Gingles* preconditions must then show, under the “totality of circumstances,” that the challenged political process is not “equally open” to minority voters.
 - The totality of circumstances inquiry recognized that application of the *Gingles* factors is fact-dependent and requires courts to conduct “an intensely local appraisal: of the electoral mechanism at issue, as well as a “searching practical evaluation of the past and present reality.”
 - There is no genuine issue that *Gingles* requires a review of any Michigan House plan for compliance with the VRA.
 - The Commission, its experts, the Court and plaintiffs agree that legally significant polarization is present.

Review Process

Scope of Review

- **Not** reviewing plans for compliance with Michigan Constitutional requirements.
 - Any opinions on VRA compliance are based on the assumption that the reviewed proposed House districts are (1) “reasonably configured” and (2) race was **not** impermissibly used in the creation of any plans.
-

How?

- The question is: Does a particular House plan provide a reasonably equal opportunity for Black voters to elect their candidates of choice?
 - The answer is not based on how many majority/minority districts are in a plan or any set racial target. An answer is based on how many districts will likely “perform” with the election of Black voters’ candidates of choice.
-

Result?

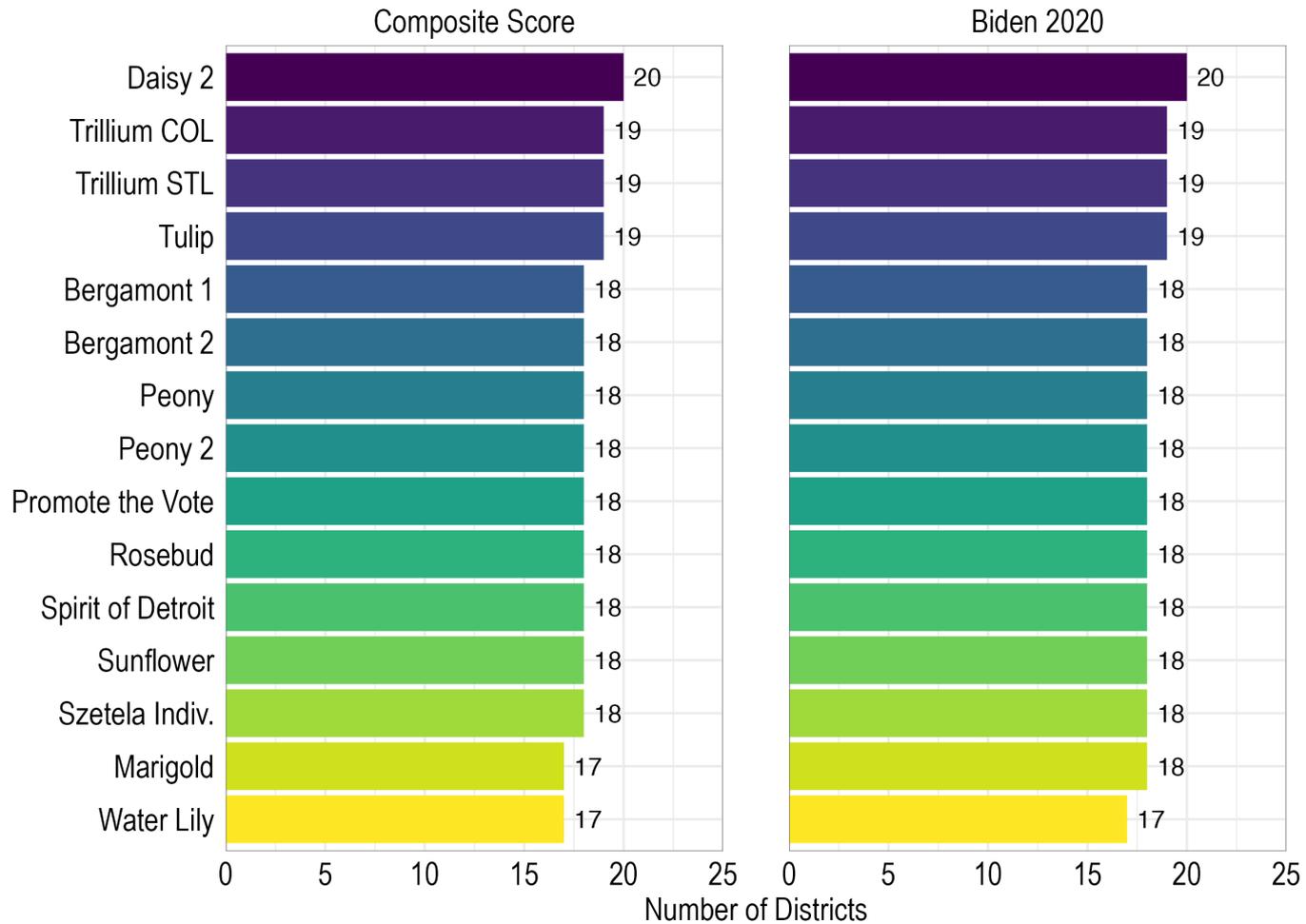
- The State of Michigan, through this Commission, can decide whether to create majority/minority districts, crossover districts or some combination for compliance with the VRA.

Minority Voters' Ability to Elect Candidates of Choice

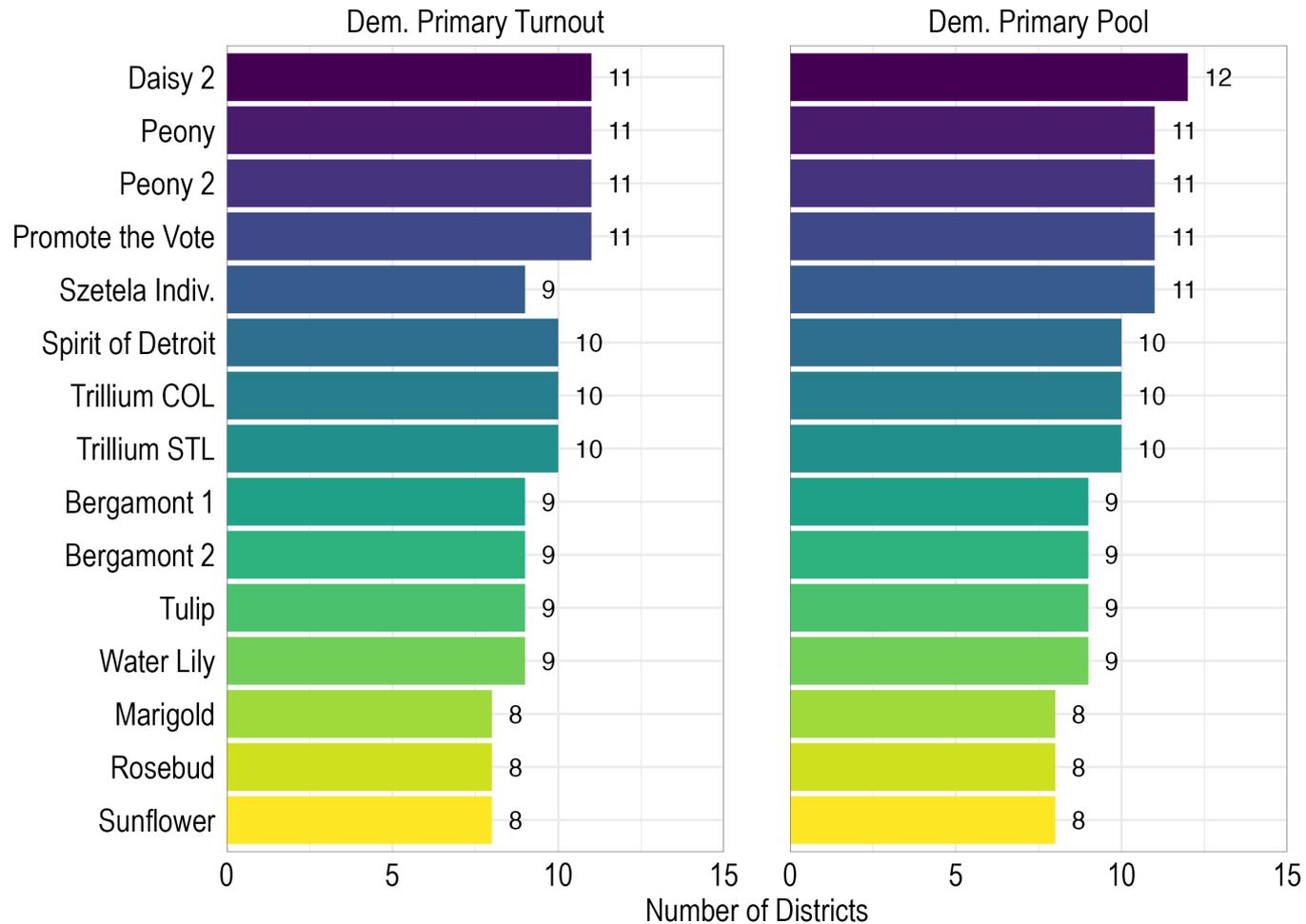
Two types of elections are considered.

- **A. General Elections**
 - Analysis of plans based on recompiled elections results.
- **B. Primary Elections**
 - Analysis of plans relies on estimates of Black and White turnout in the Democratic primary election, with an eye to whether Black turnout is likely to exceed White turnout in a proposed district.
 - The reasonably-equal-opportunity analysis does not guarantee any particular election results.

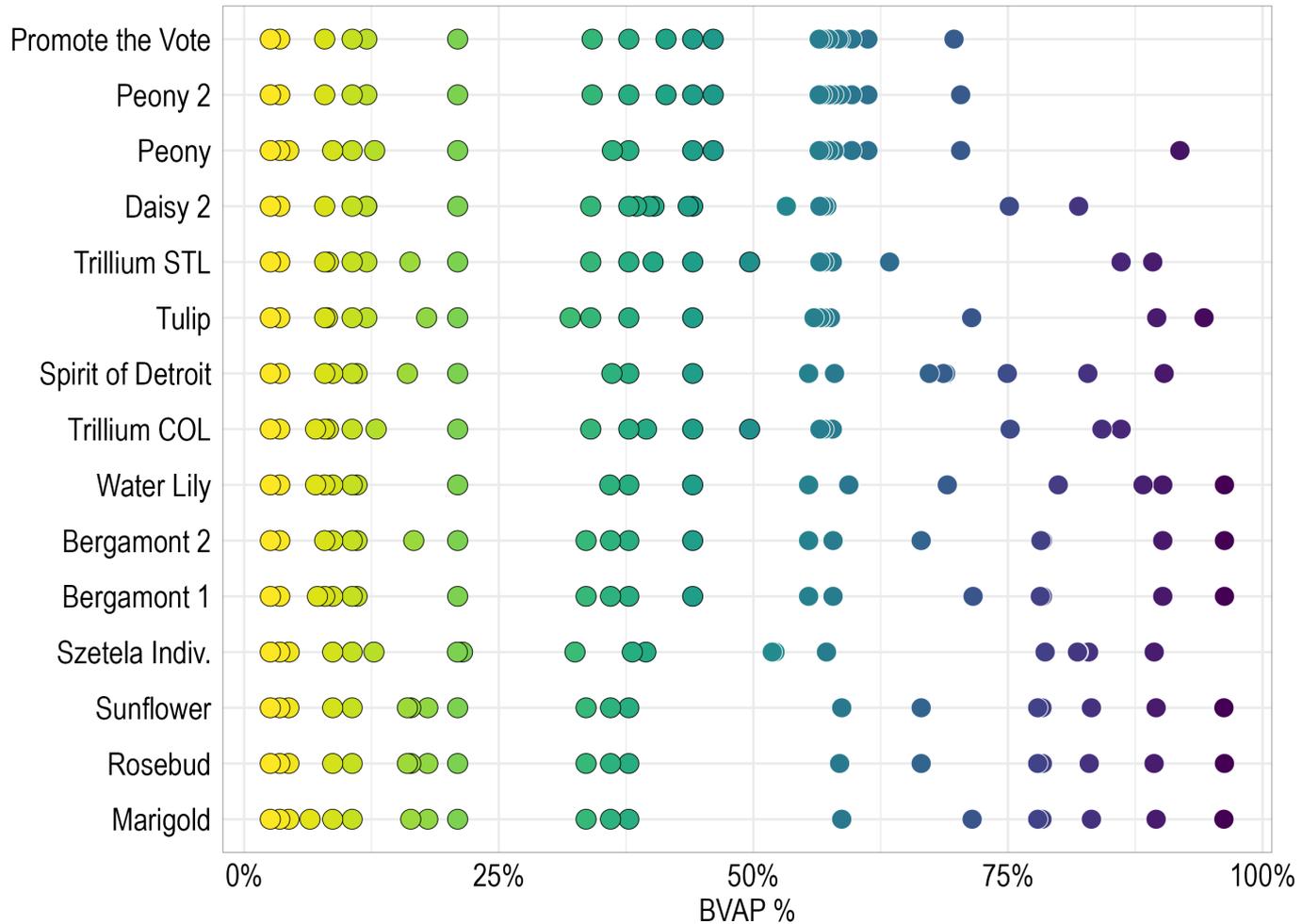
General Elections



Primary Elections



Distribution of BVAP by Plan



Opinions on Compliance of Proposed Plans with VRA

- Based on the analysis performed by Drs. Handley and Palmer, we conclude that the following plans comply with Section 2 of the VRA:
 - Daisy 2
 - Peony
 - Peony 2
- We offer no legal opinion on whether plans submitted by third parties comply with the VRA.
- We have no basis for assessing whether such third-party plans comply with traditional redistricting criteria or applicable court orders.

Questions?
