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**MORE THAN THE VOTE:
16-YEAR-OLD VOTING AND THE RISKS OF LEGAL
ADULTHOOD[†]**

KATHARINE SILBAUGH*

ABSTRACT

Advocates of 16-year-old voting have not grappled with two significant risks to adolescents of their agenda. First, a right to vote entails a corresponding accessibility to campaigns. Campaign speech is highly protected, and 16-year-old voting invites more unfettered access to minors by commercial, government, and political interests than current law tolerates. Opening 16-year-olds to campaign access undermines a considered legal system of managing the potential exploitation of adolescents, which sometimes includes direct regulation of entities and also gives parents authority in both law and culture to prohibit, manage, or supervise contacts with every kind of person interested in communicating with their minor child through the age of 18. Second, voting is the most significant civil right. The history of other campaigns to earn the vote, including Woman's Suffrage and 18-year-old voting, suggests that lowering the voting age will lead to a more far-reaching civil equality, meaning a lower age of majority, regardless of the current protestations of the Vote16 advocates. Lowering the voting age will therefore undermine the protective commitments we make to youth in school, in the justice system, and in the child welfare system. The neuropsychological development framework for evaluating 16-year-old voting needs to operate alongside a missing institutional analysis of the age of majority. Vote16 advocates cannot continue to avoid filling out the broader case for a 16-year-old age of majority and reckoning its inconsistency with current protective family and child welfare law. The Vote16 movement repeatedly justifies its case with evidence that lifelong voter turnout can be improved by starting younger. Conceding this point, this Article argues that lifelong voter turnout should not be improved at the cost of our ongoing commitment to a youth-protective legal posture. Because the agenda of Vote16 is to improve lifelong voter turnout rather than to address the status of adolescents, the movement has not grappled with situating its claim within the legal identity of adolescents broadly. Until Vote16 addresses these issues, state legislatures and local governments should pause their consideration of Vote16 proposals.

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*“The demand for the vote was, in short, a challenge to the order of
coverture.”*

—Reva B. Siegel, “She the People”¹

INTRODUCTION: THE LIMITED FRAMEWORK OF THE CAMPAIGN TO LOWER THE
VOTING AGE

Do we want 16-year-old voting if it will include a 16-year-old age of majority or full civic equality? Or if it undermines efforts to extend foster care from 18 to 21 and juvenile court jurisdictions from 16 or 18 to 21? Vote16 advocates reject the premise of these questions. They deny that voting rights are entwined with equal civil and political equality—with the legal *status* of adulthood.² Vote16 arguments silo voting from larger questions of civil and political identity, appearing to believe that such a silo is functionally possible. The stories of the Nineteenth Amendment and the Twenty-Sixth Amendment tell us otherwise: Voting entails civil equality. Voting is more than casting a ballot. It is the signifier and anchor of civil status around which other law must and does organize itself. The campaign for the Nineteenth Amendment embraced this understanding of the vote, and the consequences of the Twenty-Sixth Amendment provide evidence of its inevitability.

A number of localities have recently lowered the voting age to 16, and the pace of the campaign to do so has accelerated in the past year.³ These include four localities in Maryland that have implemented the change and a number of other localities across the country that have approved the change but await state approval, including Concord, Northampton, and Somerville, Massachusetts; Berkeley, California; and Brattleboro, Vermont.⁴ State legislatures are deliberating on lowering the voting age statewide or allowing municipalities to do so.⁵

¹ Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947, 987 (2002).

² “It is also important to emphasize that our efforts are only to lower the voting age to 16. All other legal age limits should be set in accordance to what is best for each individual issue. Our country has set the driving age, in most states, at 16, and the drinking age at 21. Each should be considered on its own merits. For this specific issue, the voting age should be 16.

GENERATION CITIZEN, YOUNG VOICES AT THE BALLOT BOX: AMPLIFYING YOUTH ACTIVISM TO LOWER THE VOTING AGE IN 2020 AND BEYOND 8 (2020), <http://vote16usa.org/wp-content/uploads/2020/02/2020-Vote16USA-White-Paper-v2.10.pdf> [<https://perma.cc/4EM5-HP5L>].

³ *See id.* at 10-14.

⁴ *See id.* at 10-12.

⁵ *See id.* at 11-12, 15 (noting that other cities in Massachusetts and Vermont are waiting for home rule approval from their respective state legislatures which would allow change in voting age, and that state legislatures in California, Connecticut, Hawaii, Kentucky, Massachusetts, Michigan, Nebraska, New York, North Dakota, Oregon, and Virginia are considering measures that would lower voting age in their state).

In its advocacy for 16-year-old voting, the Vote16 movement has failed entirely to grapple with the implications of a voting right *beyond the vote itself*. Preoccupied with and driven by the very significant benefit that 16-year-old voting offers to overall voter turnout and to developing the voting habit, Vote16 advocates have failed to investigate whether full civic adulthood at 16 will be the inevitable consequence of their campaign and, if it is, what child protective values and legal benefits are worth losing to achieve the vote.⁶ They do not entertain whether 16 will become the new age of citizenship, recognition, autonomy, and responsibility. The vote is carved away from the legal framework that defines the childhood of 16-year-olds. The troubling consequences of projecting such responsibilities on children, termed “adultification,” are entirely unexamined.

Proponents do not consider the current web of regulations restricting speech aimed at minors—by commercial, government, and private actors—and do not ask how those regulations will bend to the political speech rights of candidates and campaigns. There is a lack of imagination about the change to communication practices that 16-year-old voting would create, as political and commercial entities would target young voters with protected campaign speech in an effort to influence their development.

As child welfare advocates seek to protect adolescents from harmful encroachments on the age of majority in the commercial system, schools, and the juvenile justice system or to raise the age of majority in those contexts, it is essential to evaluate the anchoring role that voting plays and has played in establishing civil, political, and commercial rights in the past.⁷ Ideally, that evaluation will cultivate some humility among Vote16 advocates about their ability to control the social, political, and legal meaning of their campaign to lower the age of the franchise.

Lowering the voting age risks reducing the protections afforded to adolescents by their status as minors in two ways. First, a voting age of 16 risks reanchoring a lower age of civic adulthood. Second, because it effectively authorizes campaigning to minors, it risks dismantling the mechanisms through which we channel or restrain access to adolescents in order to reduce the risk of their use or exploitation by individuals or entities that work to influence their behavior. Neither of these risks can be addressed with the stylized appeal to the cognitive

⁶ Generation Citizen focuses its argument on the benefits of youth voting to turnout. *Id.* at 5. These benefits are real. Where it has been enacted, 16-year-old voting improves voter turnout among newly eligible voters relative to an 18-year-old voting age. *Id.* Prior research has established that once someone votes, they are more likely to continue voting. *See id.*

⁷ *See* Teresa Wiltz, *How ‘Raise the Age’ Laws Might Reduce Recidivism*, PEW (May 31, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/05/31/how-raise-the-age-laws-might-reduce-recidivism> [<https://perma.cc/GU3H-TSMS>] (reporting on efforts in several states to raise age of criminal responsibility to 18 or higher and its impact).

readiness of adolescents to cast a ballot responsibly, as these risks remain despite that cognitive readiness.⁸

The argument proceeds in two parts. The first claim in Part I is that full civil and political equality is not good for 16-year-olds. This claim approaches the age of majority with institutional analysis, rather than as a developmental or psychological state. This argument differs from extant criticisms of 16-year-old voting, which focus on developmental capacities. It concedes the capacity of 16-year-olds to vote. Instead of asking whether their votes would be immature and harm the polity, this Part asks whether pushing them into the political sphere will hurt them by subjecting them to campaign messaging and serving as an anchor to a lower age of civil adulthood and to adult consequences. Among child welfare advocates, there is widespread consensus that 16-year-olds still need the most significant protections associated with their minor status, which include rights of material support from their family and the state, protection from exploitation by commercial and government actors, and forbearance from the state in school discipline procedures and the criminal justice system. Indeed, many child welfare advocates seek to extend these protections into the early 20s.

The second claim in Part II is that the full civil and political equality, *including reduced protections*, will in fact follow voting rights, and the proponents of Vote16 will be unable to control the consequences of the reform. The history of the Nineteenth Amendment, which extended the franchise to women, and the Twenty-Sixth Amendment, which extended the franchise to 18-year-olds, teaches us that voting is inextricably linked with civil equality, and the consequences of the franchise inevitably extend beyond the franchise, transforming legal status more fully. For the Nineteenth Amendment, that broader challenge to women's status was explicit for many reformers.⁹ For the Twenty-Sixth Amendment, it arose periodically in discussions, without the sustained messaging seen in the fight for the Nineteenth Amendment.¹⁰ In both instances the larger status change occurred. Part III evaluates the relationship between youth political interests and the voter turnout motivations of Vote16 organizations in light of the arguments in Parts I and II that we make a commitment reflected in law to protect and support minors and not to use minors for adult purposes.

⁸ Adults are highly susceptible to manipulation, despite cognitive maturity. *See generally* YOCHAI BENKLER, ROBERT FARIS & HAL ROBERTS, NETWORK PROPAGANDA: MANIPULATION, DISINFORMATION, AND RADICALIZATION IN AMERICAN POLITICS (2018) (discussing case studies tracking emergence and propagation of disinformation in American public sphere).

⁹ *See generally* Reva B. Siegel, *The Nineteenth Amendment and the Democratization of the Family*, 129 YALE L.J. F. 450 (2020) (stating that suffragists sought to create a world in which adult household members could be recognized and could participate democratically as equals).

¹⁰ *See* WENDELL W. CULTICE, YOUTH'S BATTLE FOR THE BALLOT: A HISTORY OF VOTING AGE IN AMERICA 228 (1992) (stating that Twenty-Sixth Amendment opponents found it illogical to grant suffrage to 18-year-olds prior to reaching majority).

I. HARMS OF POLITICAL EQUALITY BY AGE

There are substantial dangers to the protection of children in lowering the voting age. This Part argues that extending the vote to 16-year-olds would undermine the protections that we currently extend to minors by reanchoring a lower overall age of adulthood, and it invites us to consider the history of the Nineteenth Amendment and the Twenty-Sixth Amendment as we evaluate a Vote16 future. Section I.A describes the concept of the age of majority, its continued institutional viability and purposes, and the current efforts to raise the age of majority from 18 to 21 in order to extend foster care protection¹¹ and to apply pressure to the age cutoffs in the juvenile justice system.¹² It concludes that an 18-year-old age of majority serves the ongoing purpose of supporting adolescents and protecting them from exploitation. The political equality of 16-year-olds that will accompany the franchise may be contrary to the social and civic commitments we attempt to make to them and to their overall welfare.

Vote16 advocates participate in a discourse that applies to the extension of *license* to minors—privileges or permissions ranging from sheltered workforce participation to automobile driving. *License* discussions focus on developmental capacity. The argument goes: Teenagers have the developmental capacity to vote, therefore they should have the license to vote. However, it is not the vote itself, but the protection from campaigning that illuminates the function of the age of majority. The age of majority screens the way that institutions, businesses, adults, and governments communicate with minors and screens conflicts with the rights of campaigns and candidates to access voters.

A. *The Age of Majority Versus Ages of License*

Once a person turns 18, reaching the age of majority, they occupy the legal status of an adult. As a status, adulthood is comprehensive, not a series of permissions for particular purposes. It is common to enumerate the legal attributes of adulthood as though they are a discrete set of changes from being a minor. That kind of enumeration risks minimizing the coherence of the legal age of majority when compared to the variety in the ages of license. For example,

¹¹ *Extended Foster Care*, JUV. L. CTR., <https://jlc.org/issues/extended-foster-care> [<https://perma.cc/587X-9E9S>] (last visited Sept. 27, 2020) (noting that most 18-year-olds still require “financial, emotional, and other kinds of assistance as they enter adulthood” and arguing that foster care should be extended through age 21).

¹² See, e.g., JEREE THOMAS, CAMPAIGN FOR YOUTH JUSTICE, *RAISING THE BAR: STATE TRENDS IN KEEPING YOUTH OUT OF ADULT COURTS (2015-2017)*, at 41 (2017), http://www.campaignforyouthjustice.org/images/StateTrends_Report_FINAL.pdf [<https://perma.cc/95PS-2D9N>] (recommending raising age of transfer from juvenile to adult criminal courts); Editorial, *18-Year-Old Offenders Belong in the Juvenile Justice System*, BOS. GLOBE, Mar. 2, 2020, at A1 (arguing that age for juvenile justice system should be raised because neurological developments mean that most juvenile offenders “age out” of offending in their mid-20s).

an adult is entitled to the following: living apart from parents;¹³ entering binding contracts,¹⁴ including leases; being a party to a lawsuit; serving on juries; buying or selling real estate; writing a will; enrolling in the school of their choice; or agreeing to any type of medical treatment.¹⁵ Those 18 and over are not subject to curfews under local law.¹⁶ They lose the protection of the juvenile justice system and the foster care system, both of which are essential to the protective commitment society makes to children. They lose the right to their parents' financial support and the right to be housed. Whatever an adult can do, an 18-year-old can do, except for the very narrow privileges of purchasing controlled substances such as alcohol or cannabis and running for offices with age limits set out in constitutions. While the 21-year-old drinking age may influence the concept of a gradual process of legal adulthood in popular culture, it is in reality an outlier, the rhetorical importance of which is amplified by its singularity.

A number of *licenses*—meaning permissions for a category of activity—are extended below the age of majority. Older minors may obtain driver's licenses, work in the paid labor force, pay taxes, drop out of school,¹⁷ and in some states engage in sexual conduct.¹⁸ Popular commentary, local lawmakers, Vote16 advocates, and state legislators conflate ages of license, meaning permission,

¹³ See, e.g., Tex. Att'y Gen. Op. No. JC-0229 at 1 (June 7, 2000), <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2000/jc0229.pdf> [<https://perma.cc/P87S-D4EW>] (concluding that police officers were required to return 17-year-old missing person to their parents and that apprehending children to return them does not violate their constitutional rights).

¹⁴ See Cheryl B. Preston & Brandon T. Crowther, *Infancy Doctrine Inquiries*, 52 SANTA CLARA L. REV. 47, 50 (2012).

¹⁵ *Rights, Privileges, and Duties of Emancipation*, FINDLAW, <https://family.findlaw.com/emancipation-of-minors/rights-privileges-and-duties-of-emancipation.html> [<https://perma.cc/39AK-C3SF>] (last updated Sept. 28, 2018) (listing rights generally associated with legal adult status).

¹⁶ E.g., L.A., CAL., MUN. CODE § 45.03(a) (2020) (establishing curfew of 10:00 p.m. for minors); JACKSONVILLE, FLA., ORDINANCE CODE §§ 603.104, 201 (2020) (establishing curfew of 11:00 p.m. on weekdays and 12:00 a.m. on weekends and holidays for minors); INDIANAPOLIS, IND., REV. CODE §§ 381-101 to -102 (2020) (establishing 11:00 p.m. curfew, although children 15 and older can stay out until 1:00 a.m. on weekends); PHILA., PA., CODE, § 10-303 (2020) (establishing curfew of 9:00 p.m. on weekdays and 10:00 p.m. on weekends for children under 13, but 10:30 p.m. on weekdays and 12:00 a.m. on weekends for children over 13).

¹⁷ *Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, by State: 2017*, NAT'L CTR. FOR EDUC. STAT., U.S. DEP'T OF EDUC., https://nces.ed.gov/programs/statereform/tab5_1.asp [<https://perma.cc/9CZX-CHLE>] (last visited Sept. 27, 2020).

¹⁸ ASAPH GLOSSER, KAREN GARDINER & MIKE FISHMAN, THE LEWIN GRP., STATUTORY RAPE: A GUIDE TO STATE LAWS AND REPORTING REQUIREMENTS 6-7 (2004), <https://aspe.hhs.gov/system/files/pdf/75531/report.pdf> [<https://perma.cc/9SA6-WAZK>].

with the age of majority. They point to the range of permissions minors receive to drive, to donate blood, or to work. In effect, critics of the age of majority see the *ages of license* as both so numerous and so significant as to undermine the coherence of the minor status altogether.¹⁹ In part, they see it this way because exceptions stand out, while the baseline fades into the background.

The habit of enumerating variable licenses misleads as against the weight of the age of majority in private and public law. They are enumerated permissions on a status of protective legal immaturity. The age of majority, by contrast, marks the status of adulthood. Vote16 explicitly treats voting as a license in this regard—a specific enumerated permission for limited purposes.

It is also important to emphasize that our efforts are only to lower the voting age to 16. All other legal age limits should be set in accordance to what is best for each individual issue. Our country has set the driving age, in most states, at 16, and the drinking age at 21. Each should be considered on its own merits. For this specific issue, the voting age should be 16.²⁰

Vote16 is dependent on this misunderstanding. It buries the meaning of the transition from the status of minor to the status of adult by mischaracterizing exceptions as central to the legal status of youth by treating highly celebrated licenses as the end of the legal significance of childhood.

The enumerated licenses that are familiar in popular thought do not transform the status of the minor from one entitled to a protective stance from government and private actors alike to one standing on equal footing with all other adults. Seeing the distinction between underage licensing for enumerated purposes and the age of majority depends on understanding the legal system that protects children until they turn 18, even when it is too naturalized to notice. Looking past the relatively unimportant variability of drinking and driving, there remains a conceptual and functional difference between a license for enumerated purposes and a changed status. Moreover, the few visible ages in the popular imagination—drinking, driving, voting, and military service—are laid on a far more widespread status distinction, touching many areas of legal regulation that are so taken for granted that they are barely visible to many. Fewer 18-year-olds celebrate the fact that they can no longer be made to live with their parents and that their parents are no longer required to house them than 21-year-olds celebrate drinking. But this does not make the drinking age more important to the concept of legal adulthood than the legally imposed living arrangements and financial support of minors. Adulthood is not solely a matter for celebration, and

¹⁹ E.g., Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 TUL. L. REV. 55, 58 (2016) (“The inadequacy of the categorical age of majority is reflected in the ever-growing number of exceptions to it.”); Jonathan Todres, *Maturity*, 48 HOUS. L. REV. 1107, 1118-19 (2012) (“[I]n reality, an individual does not cross [the age of majority] neatly at one point in time into adulthood and self-governance, but rather the law allows individuals to cross into adulthood for select activities while holding them back with respect to others.”).

²⁰ GENERATION CITIZEN, *supra* note 2, at 8.

the minor status provides significant protection from homelessness, not just from alcohol. The popular imagination about rites of passage distorts the cultural understanding of the age of majority.

Under Roman Law, the age of full majority was 25, if lower for some purposes.²¹ At the time of the Magna Carta in 1215, the age of majority in England was 21.²² In the United States, the age of majority was 21 until the 1970s, when it was lowered to 18 in forty-four states.²³ That downward adjustment of the age of majority happened in response to the passage of the Twenty-Sixth Amendment, which extended voting to 18-year-olds.²⁴ Lowering the age of majority cascaded quickly into the removal of other legal supports and protections of 18- to 21-year-olds, resulting in the newly enfranchised youth losing the right to their parents' material support and to government provision of foster care.

Family law scholars in recent years have questioned the concept of an "age of majority," categorically and conceptually.²⁵ They argue, and it must be conceded, that the age of majority is a legal construct. It draws on capacities as well as pragmatic concerns; it generalizes; and it is leaky on matters small, such as driving, and large, such as reproductive decision-making. It has evolved over time, bouncing between 15 and 25'; it has been fashioned and refashioned by

²¹ T.E. James, *The Age of Majority*, 4 AM. J. LEGAL HIST. 22, 33 (1960).

²² *Id.* at 26.

²³ See Hamilton, *supra* note 19, at 64-65 ("Once eighteen had become the age of conscription and of the franchise, it began to replace twenty-one across a range of contexts and has been adopted as the near universal age of majority. Forty-four states have adopted eighteen as the presumptive age of legal majority." (footnote omitted)). In Mississippi, it remains 21, and it is 19 in five other states. *Termination of Child Support*, NAT'L CONF. ST. LEGISLATURES (Apr. 29, 2020), <https://www.ncsl.org/research/human-services/termination-of-child-support-age-of-majority.aspx> [<https://perma.cc/3WVQ-XJM3>].

²⁴ See Katharine Silbaugh, *Developmental Justice and the Voting Age*, 47 FORDHAM URB. L.J. 253, 266 (2020).

²⁵ See, e.g., Annette Ruth Appell, *The Pre-Political Child of Child-Centered Jurisprudence*, 46 HOUS. L. REV. 703, 710 (2009) ("As a legal matter, these developing beings are minors and are dependent on others for care and decisionmaking from birth to the age of eighteen. The breadth of childhood dependency is vast, while the contours of childhood are shallow, confined primarily to private, psychological, and physical developmental sites." (footnotes omitted)); Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448, 1454 (2018) ("Children who are deemed mature have access to adult rights and responsibilities, while those who are deemed immature remain subject to more paternalistic regulations. Yet focusing exclusively on maturity risks masking the real interests at stake in any given situation."); Hamilton, *supra* note 19, at 60 ("The legal construction of adult status is starkly at odds with the modern social meaning and experiences of adulthood."); Todres, *supra* note 19, at 1118-19 ("[T]he law allows individuals to cross into adulthood for select activities while holding them back with respect to others. This system has created a confusing and potentially discouraging framework for children, as most often duties are imposed well before meaningful rights are granted." (footnote omitted)).

social, commercial, and legal forces; and it is experienced differently depending on race especially but also depending on other categories of stratification.²⁶

But its “unnatural,” constructed nature does not itself undermine its functional value in protecting and supporting minors, and critics of the concept of an age of majority do seek to carve out continued protections, such as the juvenile justice system and foster care jurisdiction.²⁷ Even those who want to challenge the concept of the age of majority or the concept of the adult/child dichotomy value age-related consideration.²⁸

Critiques of the current legal framework undervalue what I call *the institutional analysis* of childhood. The institutional analysis of childhood is grounded not in neuroscience or rights, but in the *functional value* of a legally recognized institution of childhood, one that draws special resources and consideration to the safety and well-being of children. The institutional benefit of the minor status includes support and protection from excessive consequences, premature responsibility for housing and finances, and protection from exploitation by institutions or individuals who would recognize and take advantage of either the inexperience or the immaturity of adolescents, as well as the variability in experience and maturity in this age group.

B. *The Minor Status As a Protection from Exploitation*

Proponents of 16-year-old voting are too quickly distracted by the many exceptions, or licenses, to the age of majority. Vote16 dispenses with the age of majority entirely in only three sentences.

In most states, they can work without any restriction on hours, pay taxes, drive, and in some cases be tried for crimes as adults. The legal age of consent in many states is 16, and the compulsory school attendance age

²⁶ See BARBARA BENNETT WOODHOUSE, HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN’S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE 15 (2008); Priscilla A. Ocen, *(E)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 UCLA L. REV. 1586, 1590 (2015) (“[T]he protections of childhood afforded to . . . Black girls . . . are dynamic and highly contingent on other identity categories such as race, gender, and class. As such, when applied to them the concept of childhood is often partial, or incomplete, especially within the juvenile justice system.”).

²⁷ See Dailey & Rosenbury, *supra* note 25, at 1514, 1524 (advocating for expansion of foster care parents’ rights when child has “primary attachment” to them and “reorienting the juvenile justice system to harness children’s heightened capacity for change through rehabilitation”); Hamilton, *supra* note 19, at 66-67, 94-95 (arguing that parental support and foster care should be extended past age 18 and advocating for individualized assessment of cognitive capacity in juvenile criminal justice system).

²⁸ See Dailey & Rosenbury, *supra* note 25, at 1478.

ends at 16 in many states. The legal definition linking adulthood to the age of 18 should not affect voter eligibility.²⁹

Those exceptions track two truths: Adolescent development is a process rather than a bright line, and teenagers may need to be able to do certain things before the age of majority. Some contemporary research indicates that children continue to develop into their 20s. They likely have the capacity to make electoral judgments before they turn 18, and for Vote16 advocates, that capacity ends the inquiry. As important as arguments relying on neuroscience or theories of cognitive development are to understanding the law of childhood, they have greater limits than Vote16 advocates acknowledge because the minor status regulates third parties, not just minors.

1. Exploitation Concerns

The maturity and neuroscience debate is perhaps the beginning, but is not the end, of understanding the legal age of majority. Its prominence in discussions of legal age distracts from other functions of age-based status.³⁰ The institutional analysis of adulthood brings to the center this observation: On the other side of every question of teen capacity is an entity that is constrained in its behavior toward the teenager in the knowledge that it is dealing with a minor. The maturity discussion occurs in a contextualized environment that currently protects minors from third parties. We should not treat those conditions as decontextualized or immutable. The maturity discussion, in other words, cannot assume that minors are equally able to withstand the influence of commercial or political interests in a world without limits on those interests in exactly the same way that they may currently evaluate those interests given extant limits on third-party reach to minors. Nor should the maturity discussion assume that it is good for adolescents to be fully responsible for withstanding unfettered interest pressures, even if they have some capacity to do so. Adults struggle with manipulation in elections, and the impact of that manipulation may extend beyond their political participation.³¹ Extending the franchise to minors makes minors not just accessible, but an appealing target for manipulation.

Understanding the legal considerations afforded to minors through the lens of protection against exploitation builds the institutional analysis of the age of majority and explains the law of adolescents as protective where they interact with adults.

Employers. Under the Fair Labor Standards Act, it is illegal to employ a minor under the age of 18 in a long list of positions, including in forestries, bakeries, or meat-packing facilities; in the manufacture of brick and tile; and in occupations using power tools or involving driving, roofing, or excavation, to

²⁹ GENERATION CITIZEN, *supra* note 2, at 8.

³⁰ See Dailey & Rosenbury, *supra* note 25, at 1466.

³¹ See generally BENKLER, FARIS & ROBERTS, *supra* note 8.

name a few.³² In a majority of states, labor law further protects 16- and 17-year-olds from nighttime work or imposes maximum hour restrictions through age 18.³³ Such restrictions undeniably interfere with youth employment opportunities and equally undeniably protect them from employer exploitation that may await them when they reach the age of majority.

Infancy Doctrine. The common-law infancy doctrine prevents minors from being held to their contracts.³⁴ It has two rationales. The first is to protect minors from their own imprudence, a maturity concept. The second is to protect minors from exploitation by actors who would take advantage of their inexperience or immaturity. Some will argue that the exceptions to the infancy doctrine have seriously compromised it—exceptions for necessities, emancipation, and misrepresentation of age, for example. Scrutinized, they do not displace the core rule that until a person turns 18, they may avoid the consequences of their contracts.³⁵ The common law rule injects into commerce risk for those who attempt to exploit minors for commercial gain. By allowing a minor to enforce a contract or confirm it upon reaching the age of majority but not allowing the contract to be enforced against a minor, the infancy doctrine expresses the distinction between licenses granted to minors and the protective benefits of the age of majority.

Releases of Liability. Adults are generally able to release recreational operators from liability in advance of a potential injury. On the other hand, in a majority of states that have considered the question, minors do not have the same capability, either directly or even through their parents.³⁶ The beneficiary of the

³² 29 C.F.R. §§ 570.50-.68 (2019).

³³ *Selected State Child Labor Standards Affecting Minors Under 18 in Non-Farm Employment as of January 1, 2020*, U.S. DEP'T OF LABOR, <https://www.dol.gov/agencies/whd/state/child-labor> [<https://perma.cc/C8YM-9P6D>] (last updated Jan. 2020) (listing fifteen states with both nighttime and maximum hour protections for 16- and 17-year-olds, seven states with nighttime protection only, and four states with maximum hour protection only).

³⁴ RESTATEMENT (SECOND) OF CONTRACTS § 14 (AM. LAW INST. 1981) (“Infants: Unless a statute provides otherwise, a natural person has the capacity to incur only voidable contractual duties until the beginning of the day before the person’s eighteenth birthday.”).

³⁵ Preston & Crowther, *supra* note 14, at 50.

³⁶ See, e.g., *Mavreshko ex rel. Mavreshko v. Resorts USA, Inc.*, 299 F. App’x 120, 124 (3d Cir. 2008) (holding that negligence release signed by minor was voidable); *Chi., Rock Island & Pac. R.R. v. Lee*, 92 F. 318, 321 (8th Cir. 1899) (holding that waiver of liability signed by father was void as applied to his minor son); *Kindermann ex rel. L.K. v. LFT Club Operations Co.*, No. 2:16-cv-11749, 2017 WL 2868542, at *3 (E.D. Mich. July 5, 2017) (holding that Michigan law barred covenants not to sue and waivers of liability for negligences signed by parent on behalf of child); *Thode ex rel. J.T. v. Monster Mountain, LLC*, 754 F. Supp. 2d 1323, 1328 (M.D. Ala. 2010) (“The majority rule in jurisdictions throughout the United States is that a parent may not bind a child to a liability waiver.”); *Apicella v. Valley Forge Military Acad. & Junior Coll.*, 630 F. Supp. 20, 24 (E.D. Pa. 1985) (holding that Pennsylvania law did not allow parents to release potential claims on behalf of

minor child); *Fedor v. Mauwehu Council, Boy Scouts of Am., Inc.*, 143 A.2d 466, 468 (Conn. Super. Ct. 1958) (finding that parents did not have right to waive minors' rights to claims arising out of negligence due to "policy of the law which attempts in every way possible to protect infants"); *Kirton v. Fields*, 997 So. 2d 349, 358 (Fla. 2008) (finding that state could use *parens patriae* power to void releases signed by parent on behalf of minor for negligence claims against commercial establishment); *Meyer ex rel. Meyer v. Naperville Manner, Inc.*, 634 N.E.2d 411, 414 (Ill. App. Ct. 1994) (finding that parent cannot waive liability on behalf of minor child); *Galloway v. State*, 790 N.W.2d 252, 257 (Iowa 2010) ("While this court has found valid policy reasons supporting the rule allowing the enforcement of releases against adults who voluntarily, and in some cases foolishly, waive their own personal injury claims in advance of injury, we believe the strong public policy favoring the protection of vulnerable minor children demands a different rule here."); *Doyle ex rel. Doyle v. Bowdoin Coll.*, 403 A.2d 1206, 1208 n.3 (Me. 1979) (noting that Maine law does not allow parent or guardian to release minor's cause of action); *Woodman ex rel. Woodman v. Kera LLC*, 785 N.W.2d 1, 9 (Mich. 2010) (holding that parents cannot bind children to contractual release of liability); *Khoury v. Saik*, 33 So. 2d 616, 618 (Miss. 1948) (in banc) (holding that because minors cannot waive their rights, their guardians cannot waive them on their behalf); *Perry v. SNH Dev., Inc.*, No. 2015-CV-00678, 2017 N.H. Super. LEXIS 32, at *13 & n.5 (Sept. 13, 2017) (holding that New Hampshire law prevented parent from waiving liability on behalf of their minor child and that public policy favored finding such waivers void); *Hojnowski ex rel. Hojnowski v. Vans Skate Park*, 901 A.2d 381, 389-90 (N.J. 2006) (holding parent cannot release child's cause of action against commercial entity for negligence); *Fitzgerald ex rel. Fitzgerald v. Newark Morning Ledger Co.*, 267 A.2d 557, 558 (N.J. Super. Ct. Law Div. 1970) ("A parent, as natural guardian, owes his child a duty of protection and guidance, and there is at least a moral duty to see that a child's property rights are fully protected. A parent has no authority unless he has been appointed guardian to compromise or release claims or causes of action belonging to the child."); *Valdimer ex rel. Valdimer v. Mount Vernon Hebrew Camps, Inc.*, 172 N.E.2d 283, 284-85 (N.Y. 1961) (holding that settlement agreement for insufficient consideration entered into by parents on behalf of infant plaintiff was unenforceable); *Ohio Cas. Ins. Co. v. Mallison*, 354 P.2d 800, 804 (Or. 1960) (holding that release of claims and indemnity agreement by parents on behalf of child was void as against public policy); *Shaner v. State Sys. of Higher Educ.*, 40 Pa. D. & C.4th 308, 313-14 (Ct. Com. Pl. 1998) (finding that release of minor's claims was invalid due to infant doctrine and because parents did not have authority to release claims on her behalf); *Blackwell ex rel. Blackwell v. Sky High Sports Nashville Operations, LLC*, 523 S.W.3d 624, 652 (Tenn. Ct. App. 2017) (holding that parent could not waive child's right to bring tort action because "where a child's financial interests are threatened by a parent's contract, it appears to be this State's longstanding policy to rule in favor of protecting the minor"); *Rogers v. Donelson-Hermitage Chamber of Commerce*, 807 S.W.2d 242, 245, 247 (Tenn. Ct. App. 1990) (ruling that release signed by decedent plaintiff's mother precluded mother from bringing her own claims but was ineffective against claims brought on behalf of minor); *Munoz ex rel. Munoz v. II Jaz Inc.*, 863 S.W.2d 207, 209-10 (Tex. App. 1993) (holding that general statutory grant of legal authority to parents did not include authority to release personal injury claims on behalf of child); *Hawkins ex rel. Hawkins v. Peart*, 37 P.3d 1062, 1066 (Utah 2001) (holding that parent has no authority to release child's right to bring negligence claims); *Scott ex rel. Scott v. Pac. W. Mountain Resort*, 834 P.2d 6, 10 (Wash. 1992) (en banc) (finding that parents did not have authority to waive child's personal injury claims).

enforcement of a liability waiver is neither the parent nor the child, but the third-party recreational operator. Parents and minors do not seek to enforce these contracts against the operators. Rather, the operators seek to enforce them against the minors or their parents. The age of majority prevents the exploitation of minors by these commercial interests.³⁷ Adults do not enjoy such protection.

Federal Trade Commission Advertising Regulations on Nicotine. The Federal Trade Commission (“FTC”), under Section 5 of the FTC Act, considers the marketing of nicotine products to those under 18 an unfair trade practice.³⁸ Nicotine companies seek to create addiction in adolescents, because addiction is core to their business model. Nine out of ten adult smokers begin smoking before reaching the age of majority.³⁹ The FTC’s position recognizes the need to protect minors from exploitation by the nicotine industry. In many states, it is also illegal to advertise a wide range of products to minors under the age of 18, including dietary supplements, tanning salon services, and lottery tickets.⁴⁰ In each case, we believe that teenagers deserve protection from influence by these industries.

Military Recruitment. Under federal law, a parent has the right to block military recruiters from communicating with a child until the child turns 18.⁴¹ Because we have an all-volunteer military, recruitment is a constant concern. Military recruiters have targets to meet, and they focus on teenagers with what are sometimes characterized as aggressive campaigns that concentrate where teenagers congregate, such as around high schools or gaming events.⁴² In an

³⁷ See Katharine Silbaugh, *The Legal Design for Parenting Concussion Risk*, 53 U.C. DAVIS L. REV. 197, 251-52 (2019) (surveying availability of state recreation programs and arguing that there is no evidence that nonenforcement limits availability of recreational activity).

³⁸ See Press Release, Fed. Trade Comm’n, FTC, FDA Take Action Against Companies Marketing E-Liquids That Resemble Children’s Juice Boxes, Candies, and Cookies (May 1, 2018), <https://www.ftc.gov/news-events/press-releases/2018/05/ftc-fda-take-action-against-companies-marketing-e-liquids> [https://perma.cc/VT9Q-N68L].

³⁹ Office of Adolescent Health, *Adolescents and Tobacco: Trends*, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://www.hhs.gov/ash/oah/adolescent-development/substance-use/drugs/tobacco/trends/index.html> [https://perma.cc/WJE9-L7S9] (last updated May 1, 2019); see also LLOYD D. JOHNSTON ET AL., MONITORING THE FUTURE: NATIONAL SURVEY RESULTS ON DRUG USE, 1975-2018, at 5 (2019), <https://files.eric.ed.gov/fulltext/ED594190.pdf> [https://perma.cc/5RGM-MTJP].

⁴⁰ E.g., CAL. BUS. & PROF. CODE § 22580 (West 2020).

⁴¹ 20 U.S.C. § 7908(a)(2) (2018); see also Lila A. Hollman, *Children’s Rights and Military Recruitment on High School Campuses*, 13 U.C. DAVIS J. INT’L L. & POL’Y 217, 232 (2007); Damien Cave, *Growing Problem for Military Recruiters: Parents*, N.Y. TIMES, June 3, 2005, at A1; *Parents, Teens and Military Recruiting*, NPR (July 5, 2005, 12:00 AM) <https://www.npr.org/templates/transcript/transcript.php?storyId=4730222> [https://perma.cc/76U3-ALDU].

⁴² See Hollman, *supra* note 41, at 224-25; Adryan Corcione, *The Military Targets Youth for Recruitment, Especially at Poor Schools*, TEEN VOGUE (Jan. 22, 2019),

effort to ease recruitment, Congress requires high schools to provide the names and contact information of teenagers to the military for recruitment purposes. However, in recognition of the fact that recruits may still be minors, federal law allows parents to opt out of the requirement and to prevent the military from contacting their minors.

These are just a few of the many protections for minors that aim to hold at arm's length many commercial, government, and individual actors seeking to access or use the teenager. In much the way a person can void a contract they entered before they turned 18, California online privacy law allows individuals to erase information about themselves posted when they were under 18.⁴³ Many states legislate special protections for stage and film actors under the age of 18.⁴⁴ In nearly every state, it is illegal to tattoo a minor unless a parent consents.⁴⁵ In ways far too numerous to recount, the age of majority serves as a framework for filtering interests and influence from pressuring or exploiting adolescents until they turn 18.

Parental Authority: Parents have the legal authority to control who may speak with their children. This right was among the earliest established by the Supreme

<https://www.teenvogue.com/story/the-military-targets-youth-for-recruitment> [<https://perma.cc/9TYK-TG37>] (reporting that military recruiters target poorer high schools because they can promise students college scholarships and path to citizenship); Chad Garland, *Uncle Sam Wants You – To Play Video Games for the US Army*, STARS & STRIPES (Nov. 9, 2018), <https://www.stripes.com/news/uncle-sam-wants-you-to-play-video-games-for-the-us-army-1.555885> [<https://perma.cc/6LVD-FNZN>] (reporting that Army has assembled team to compete in video game tournaments to attract young recruits); *Resources and Forms*, TRUTH IN RECRUITMENT, <https://truthinrecruitment.org/resources-and-forms/> [<https://perma.cc/8KMR-H8X5>] (last visited Sept. 27, 2020) (providing information on how parents can opt out of having school districts send their child's information to recruiters).

⁴³ CAL. BUS. & PROF. CODE § 22581 (West 2020).

⁴⁴ *Child Entertainment Law as of January 1, 2020*, U.S. DEP'T OF LABOR, <https://www.dol.gov/agencies/whd/state/child-labor/entertainment> [<https://perma.cc/5B9X-3YXN>] (last updated Jan. 2020).

⁴⁵ *Tattooing and Body Piercing: State Laws, Statutes and Regulations*, NAT'L CONF. ST. LEGISLATURES (Mar. 13, 2019), <https://www.ncsl.org/research/health/tattooing-and-body-piercing.aspx> [<https://perma.cc/8KNJ-FPZG>].

Court⁴⁶ and is reaffirmed regularly.⁴⁷ This right has been so well established that law has tightly crafted exceptions for de facto parents. Those exceptions elevate certain carefully considered third parties who have functioned in ways that are similar to a parent and allow for contact with minors over the objections of parents in those narrow circumstances.⁴⁸ In those cases, law assesses the depth of the child's relationship to that third party, and only when likening it to a parent will contact be authorized.⁴⁹ Parents are expected to use their ordinary authority for the child's benefit. Every time a parent prevents a child from spending time with other adolescents or adults—a daily occurrence in families everywhere as they seek to temper the influence of peer drug users, cosmetic marketers, and internet mobs—they do so pursuant to this parental authority. They are indeed expected to interfere with connections and communications that they judge to be interfering with the child's positive development if lesser steps are not feasible, and schools and communities implore parents to stay engaged and set these difficult limits when necessary. This most fundamental feature of the status of a minor operates in conjunction with the examples above.

Each of the external influences and interests that law has restrained from contacting minors has a correlate in election campaigns. Most industry groups have a campaign arm, from tobacco companies to real estate developers to

⁴⁶ See *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (holding that statute interfering with modern language teacher's right to teach schoolchildren interfered with "the right of parents to engage [the teacher] so to instruct their children"); see also *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972) (recognizing "traditional interest of parents with respect to the religious upbringing of their children"); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925) (holding parents have liberty interest to "direct the upbringing and education of children under their control"); *Holtzman v. Knott (In re Custody of H.S.H.-K.)*, 533 N.W.2d 419, 421 (Wis. 1995) (recognizing that courts must respect parent's constitutionally protected interests in rearing their children before allowing visitation by nonparent).

⁴⁷ See *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality opinion) ("In light of this extensive precedent; it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."); Emily Buss, *Allocating Developmental Control Among Parent, Child and the State*, 2004 U. CHI. LEGAL F. 27, 31-34; see also *Hawkins v. Grese*, 809 S.E.2d 441, 447 (Va. Ct. App. 2018).

⁴⁸ Brian Bix, *Philosophy, Morality, and Parental Priority*, 40 FAM. L.Q. 7, 9, 9 n.11 (2006) (noting that stepparents and partners in same-sex households can have more rights than other relatives, especially when they have filled parental role); Naomi Cahn, *State Representation of Children's Interests*, 40 FAM. L.Q. 109, 116-17 (2006) (explaining that state has role similar to parents on taking care and protecting children, allowing it to intervene when parents cannot act); Joanna L. Grossman, *Family Boundaries: Third-Party Rights and Obligations with Respect to Children*, 40 FAM. L.Q. 1, 6 (2006) (noting that third-party visitation can require showing of parental unfitness when parents object).

⁴⁹ UNIF. PARENTAGE ACT § 609(d) (UNIF. LAW. COMM'N 2017) (setting out seven criteria that de facto parent had to demonstrate by clear and convincing evidence to demonstrate sufficient connection to child).

defense contractors. Most ideologies have concrete political agendas, whether they are White supremacists, antiglobalists, or pacifists. Not only do the rights of third parties pose a technical conflict between political speech and child protective legal standards, but insofar as the legal fabric of information management for minors reflects a core exploitation concern, that concern extends to political campaigns. Campaigns are no more immune to *using* adolescents than are commercial or government actors.

2. Child Welfare Advocacy to Raise the Age of Majority Above 18

In recognition of the significant benefits of seeing late teenagers as legal minors, child welfare advocates are seeking *to raise* the age of majority for two of the most pivotal purposes: the jurisdiction of the juvenile justice system and the support of the foster care system. Other purposes include raising the age required to marry to 18.⁵⁰

Juvenile Court Jurisdiction. In forty-four states, once a person turns 18, juvenile courts cannot take jurisdiction over their criminal offenses, and they will automatically be sent through the adult criminal justice system, meaning that they will be tried as adults.⁵¹ Researchers at Harvard's Kennedy School of Government use the term "emerging adults" to describe individuals over the age of 18 and into their early 20s who should be getting greater consideration for their youth in the criminal justice system.⁵²

⁵⁰ See TAHIRIH JUSTICE CTR., MAKING PROGRESS, BUT STILL FALLING SHORT: A REPORT ON THE MOVEMENT TO END CHILD MARRIAGE IN AMERICA 2 (2020), <https://www.tahirih.org/pubs/making-progress-but-still-falling-short-a-report-on-the-movement-to-end-child-marriage-in-america/> [<https://perma.cc/TWV2-8HSV>]; *Details on State Marriage Act Requirements*, FINDLAW, <https://statelaws.findlaw.com/family-laws/details-on-state-marriage-age-requirements.html> [<https://perma.cc/Y2VF-L8NN>] (last updated June 20, 2016) ("Most states allow minors as young as 16 to get married with parental consent, although Massachusetts allows females as young as 12 to get married with parental *and* judicial consent (14 for males). There is no marriage age limit in California as long as the parties obtain parental and judicial consent."); Amy Harmon & Alan Blinder, *Delaware Has Banned Marriage Under Age 18. Other States Also Consider Limits.*, N.Y. TIMES (May 17, 2018), <https://www.nytimes.com/2018/05/17/us/child-marriage-minimum-age-minors.html> (noting that arguments to raise age of marriage include minors' inability to access courts to seek divorce).

⁵¹ See Anne Teigen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NAT'L CONF. ST. LEGISLATURES (July 1, 2020), <https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx> [<https://perma.cc/G5HC-J7KJ>].

⁵² SELEN SIRINGIL PERKER & LAEL CHESTER, EMERGING ADULTS: A DISTINCT POPULATION THAT CALLS FOR AN AGE-APPROPRIATE APPROACH BY THE JUSTICE SYSTEM 1 (2017), https://scholar.harvard.edu/files/selenperker/files/emerging_adult_justice_issue_brief_final.pdf [<https://perma.cc/YJ64-6KH9>].

Even when the age for juvenile jurisdiction is permissive up to the age of majority, there has been an ongoing effort to fight the tendency of prosecutors to put older teenagers—particularly teenagers of color—into the adult criminal justice system.⁵³ Some states require a transfer of jurisdiction from the juvenile system to adult courts for certain specified crimes, such as murder.⁵⁴ All states have a process for “judicial waiver” of teenagers to remove them from the juvenile justice system and process them instead through adult courts as long as they have reached a minimum age, typically 13 or 14.⁵⁵ African American youth make up 14% of the national population, but over half of the juveniles tried in adult criminal courts.⁵⁶ Even with an 18-year-old age of majority, we already have difficulty recognizing the child in African American adolescents. Because transfer to the adult system threatens a large share of juvenile system cases, the perception of late teenagers as young or instead mature influences actors in the system, and therefore that perception—adult or child, responsible or protected—sets the life prospects of many teenagers, especially teenagers of color.⁵⁷ Adultification, the projection of adult capacity and responsibility onto youth, is dramatically different depending on the race of the child.⁵⁸ Because children of color are the most likely to be viewed as older than they are, stronger protections

⁵³ See *id.* at 3-4.

⁵⁴ *Juvenile Waiver (Transfer to Adult Court)*, FINDLAW, <https://criminal.findlaw.com/juvenile-justice/juvenile-waiver-transfer-to-adult-court.html> [https://perma.cc/65RM-LVX5] (last updated Jan. 28, 2019).

⁵⁵ See *Juveniles Tried as Adults*, OFF. JUV. JUST. & DELINQ. PREVENTION (Jan. 22, 2020), https://www.ojjdp.gov/ojstatbb/structure_process/qa04110.asp?qaDate=2018&text=yes&maplink=link1 [https://perma.cc/6THY-NDWU].

⁵⁶ Jeree Thomas, *The Prosecution of Black Youth as Adults*, CAMPAIGN FOR YOUTH JUST. (Feb. 1, 2018), <http://www.campaignforyouthjustice.org/voices/item/the-prosecution-of-black-youth-as-adults> [https://perma.cc/LUN2-AFVW].

⁵⁷ See *Unbalanced Youth Justice*, BURNS INST., <https://usdata.burnsinstitute.org/#comparison=3&placement=3&racess=1,2,3,4,5,6&offenses=5,2,8,1,9,11,10&year=2015&view=map> [https://perma.cc/JD6X-SEPY] (last visited Sept. 27, 2020).

⁵⁸ See generally JAMILIA J. BLAKE & REBECCA EPSTEIN, GEORGETOWN LAW CTR. ON POVERTY & INEQUALITY, *LISTENING TO BLACK WOMEN AND GIRLS: LIVED EXPERIENCES OF ADULTIFICATION BIAS* (2019), <https://endadultificationbias.org/wp-content/uploads/2019/05/Listening-to-Black-Women-and-Girls-v7.pdf> [https://perma.cc/664D-9FVA] (describing adultification bias as the view of Black girls as less innocent and more adult-like than White girls); REBECCA EPSTEIN, JAMILIA J. BLAKE & THALIA GONZÁLEZ, GEORGETOWN LAW CTR. ON POVERTY & INEQUALITY, *GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS' CHILDHOOD* (2017), <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf> [https://perma.cc/RE3B-UQDF] (providing data showing that Black girls are viewed as less innocent and more adult-like than White girls); Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526 (2014) (arguing that there is a systemic dehumanization of Black children that makes them less likely to be seen as children).

premised on the age of majority are necessary to combat significant racial bias in the justice system.⁵⁹

By keeping youth cases in juvenile court, we lower the likelihood of suicide and reoffending, while also improving access to mental health services and increasing a minor's chances of remaining employable.⁶⁰ Most youth mature out of criminal offending, so the ability to characterize them as youthful and to set policy accordingly dramatically changes the life course of a teenager entering the justice system.⁶¹ Since a disproportionate number of incarcerated adults begin their contact with the justice system as teenagers, the way we treat teenagers is central to our carceral culture.⁶² While the juvenile justice system is hardly itself a panacea,⁶³ it produces better outcomes than the adult system.⁶⁴ The adult system is physically dangerous to adolescents, who suffer sexual and physical abuse at much higher rates than adults and who do not receive basic youth supports, such as education and disability services.⁶⁵

In recent years, an extensive, yearslong "Raise the Age" campaign to extend the ages at which youth enter the juvenile courts and may remain under that court's jurisdiction has succeeded in raising that age from 16 to 18.⁶⁶ In response

⁵⁹ See generally *Unbalanced Youth Justice: About*, BURNS INST., <https://usdata.burnsinstitute.org/about> [<https://perma.cc/4PKV-4ZZT>] (last visited Sept. 27, 2020) (providing data set suggesting that youth justice system is inequitable).

⁶⁰ Thomas, *supra* note 56.

⁶¹ See Caitlin V.M. Cornelius, Ross Gore & Christopher J. Lynch, *Aging Out of Crime: Exploring the Relationship Between Age and Crime with Agent Based Modeling*, PROC. AGENT-DIRECTED SIMULATION SYMP., Apr. 2017, at 1, 2.

⁶² See Caitlin Curley, *Juveniles Tried as Adults: What Happens When Children Go to Prison*, GENFKD (Nov. 11, 2016, 3:10 PM), <http://www.genfkd.org/juveniles-tried-adults-happens-children-go-prison> [<https://perma.cc/HW8U-WZHJ>] ("[Y]oung people who go through the adult system are 34 percent more likely than those in the juvenile system to be re-arrested." (citation omitted)).

⁶³ Chris Sweeney, *Juvenile Detention Drives Up Adult Incarceration Rates, MIT Study Finds*, BOS. MAG. (June 11, 2015, 11:25 AM), <https://www.bostonmagazine.com/news/2015/06/11/juvenile-detention-mit-study/> [<https://perma.cc/RVP7-LB8E>]; *Unbalanced Youth Justice*, *supra* note 57.

⁶⁴ Curley, *supra* note 62; see also *Model Programs Guide*, OFF. JUV. JUST. & DELINQ. PREVENTION, <https://www.ojjdp.gov/mpg> [<https://perma.cc/JPM2-DBQ9>] (last visited Sept. 27, 2020).

⁶⁵ Curley, *supra* note 62; Maddy Troilo, *Locking Up Youth with Adults: An Update*, PRISON POL'Y INITIATIVE (Feb. 27, 2018), <https://www.prisonpolicy.org/blog/2018/02/27/youth/> [<https://perma.cc/L7PK-ERFZ>].

⁶⁶ *Youth in the Justice System: An Overview*, JUV. L. CTR., <https://jlc.org/youth-justice-system-overview> [<https://perma.cc/Y2ML-8GH7>] (last visited Sept. 27, 2020) ("[I]n most states delinquency is defined as the commission of a criminal act by a child who was under the age of 18 at the time; most states also allow youth to remain under the supervision of the juvenile court until age 21."); see also John Kelly, *In Another Big Year for "Raise the Age" Laws, One State Now Considers All Teens as Juveniles*, IMPRINT (June 25, 2018, 8:59 PM),

to continued efforts by juvenile justice reformers, Vermont recently became the first state to raise the age of juvenile court jurisdiction to 19,⁶⁷ and other states are considering a similar move, with state legislatures in Illinois, Massachusetts, and Connecticut considering raising the age to 21.⁶⁸

The movement to raise the age of juvenile jurisdiction, first to 18 and now to 19 or even 21, entails a widespread reconceptualization of the substantial vulnerability of young adults, which in turn induces a protective response to them from citizens, lawmakers, and those in the system with discretionary authority. Included in this effort is a substantial reliance on neuroscience that indicates that the adolescent brain continues to respond differently to stimuli through the mid-20s.⁶⁹ But also included in this effort is a critique of the carceral state⁷⁰ and of the devastation that adult criminal prosecution plays in the lives of any individual.⁷¹ Because those subject to prosecution are likely to be young, whether juvenile or not, questions of legal adulthood are tied closely to the problem of mass incarceration.

By separating spheres of decision-making, Vote 16 advocates skirt around the importance of social perception of age in the legal system. That perception influences policymakers setting ages in code, but it also influences the discretionary decision makers—from school resource officers to community police to prosecutors—whose unconscious adultification may be more susceptible to the cultural messaging associated with 16-year-old voting.

<https://imprintnews.org/youth-services-insider/juvenile-justice-raise-the-age-vermont-missouri-state-legislation/31430> [<https://perma.cc/XQ3V-ZQDR>]; Aidan Ryan, *Crime Bill Would Redefine Juveniles as Up to Age 21*, BOS. GLOBE (July 9, 2019, 8:14 PM), <https://www.bostonglobe.com/metro/2019/07/09/crime-bill-would-redefine-juveniles-age/maHshbBT6QaaX9ooVDVidN/story.html>; Wiltz, *supra* note 7.

⁶⁷ Deborah Becker, *Why Vermont Raised Its Juvenile Court Age Above 18—and Why Mass. Might, Too*, WBUR (Oct. 3, 2019), <https://www.wbur.org/news/2019/10/03/juvenile-court-age-vermont-massachusetts> [<https://perma.cc/48UD-H2VK>].

⁶⁸ Kelly, *supra* note 66.

⁶⁹ *Juvenile Justice & the Adolescent Brain*, MASS. GEN. HOSP. CTR. FOR L. BRAIN & BEHAV., <http://clbb.mgh.harvard.edu/juvenilejustice/> [<https://perma.cc/UQB8-GF2F>] (last visited Sept. 27, 2020).

⁷⁰ See generally ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA* (2016) (arguing that bipartisan federal drivers systematically constructed justice system that targets, criminalizes, polices, and imprisons members of marginalized communities at staggering rates); ANNE E. PARSONS, *FROM ASYLUM TO PRISON: DEINSTITUTIONALIZATION AND THE RISE OF MASS INCARCERATION AFTER 1945* (2018) (arguing that lack of community-based services, fear-based politics of mental illness, and economics of institutions fed cycle of incarceration that became an epidemic).

⁷¹ Troilo, *supra* note 65.

Foster Care Services. Because the age of majority is 18, most states only guarantee services in the foster care system until that age.⁷² Aging out of foster care is a traumatic and dangerous time for youth as they navigate self support without the backing of a family, with limited experience, and with still-emerging cognitive development.⁷³ In recent years, child welfare advocates have successfully campaigned for programming in many states that either permits, but does not require, extended foster care services through age 19 or 21 or that provides alternative forms of transitional support to 18-year-olds as they age out.⁷⁴

In 2010, in response to child welfare advocacy, Congress passed the Fostering Connections to Success and Increasing Adoptions Act (“FCA”), which for the first time permitted states to use some of the federal funding for foster care on those over age 18.⁷⁵ State implementation is voluntary, and the Annie E. Casey Foundation, along with other advocacy organizations, has worked to encourage states to opt for extending services.⁷⁶ To date, twenty-eight states have opted to provide some support to those who have aged out.⁷⁷ Most of these states require the young adult to meet certain conditions to receive assistance, such as educational enrollment or workforce participation.⁷⁸ Because the age of majority is 18, however, the nature of the services provided to 18- to 21-year-olds differs from what is provided to minors. The FCA funding is typically used, if at all, for resources such as supervised independent living arrangements, educational programs, and pregnancy prevention.⁷⁹ In other words, these services provide

⁷² Cristina Squiers, *Aging Out of Foster Care: 18 and On Your Own*, SHARED JUST. (Mar. 30, 2017), <http://www.sharedjustice.org/most-recent/2017/3/30/aging-out-of-foster-care-18-and-on-your-own> [<https://perma.cc/VQ7U-ZSBR>].

⁷³ *Id.*

⁷⁴ KATHERINE GAUGHEN & BARBARA HANSON LANGFORD, PROMISING PROGRAM MODELS FOR EXTENDED FOSTER CARE & TRANSITION SERVICES 2 (2019), http://ytfg.org/wp-content/uploads/2019/06/PromisingProgramModels_Web.pdf [<https://perma.cc/MY5Q-V5DV>]; *Extending Foster Care Beyond 18*, NAT’L CONF. ST. LEGISLATURES (July 28, 2017), <https://www.ncsl.org/research/human-services/extending-foster-care-to-18.aspx> [<https://perma.cc/8M3D-GGKF>].

⁷⁵ Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949; *Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351)*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/systemwide/laws-policies/federal/fosteringconnections/> [<https://perma.cc/GP5E-NA5J>] (last visited Sept. 27, 2020).

⁷⁶ *Jim Casey Youth Opportunities Initiative*, ANNIE E. CASEY FOUND., <https://www.aecf.org/work/child-welfare/jim-casey-youth-opportunities-initiative/> [<https://perma.cc/A3M3-H65T>] (last visited Sept. 27, 2020).

⁷⁷ See GAUGHEN & LANGFORD, *supra* note 74, at 2, 8.

⁷⁸ See *id.* at 7-8.

⁷⁹ *Jim Casey Youth Opportunities Initiative*, *supra* note 76.

young adults with some support, but they do not provide the home and family to which they were entitled before turning 18.

The impetus for the movement to add support during the years between 18 and 21 came from the realization that difficult outcomes for those aging out result from the combination of trauma, lack of preparedness, and immaturity.⁸⁰ The lowering of the age of majority from 21 to 18 in the early 1970s created several generations of youth expected to behave like adults without the support of the child welfare system. Since that time, child welfare advocates have fought, with limited success, to revise our social compact with those over the age of 18 but not yet fully adults.⁸¹

The perception of 16-year-olds as adult voices that will emerge in a Vote16 world will spill into other spheres as it did when the voting age was lowered from 21 to 18, and that impact will be difficult for advocates to calibrate. The perception of juvenile capacity has been shown to influence policy makers. One study of the outsized adultification of children of color found that “adultification may serve as a contributing cause of the disproportionality in school discipline outcomes, harsher treatment by law enforcement, and the differentiated exercise of discretion by officials across the spectrum of the juvenile justice system.”⁸²

In legal and social thought, seeing 16- and 17-year-olds as possessing adult capacities risks a tendency to hold them responsible for adult decision-making in the criminal justice system; in disciplinary mechanisms at school;⁸³ and as they navigate a transition to independent finances, housing, and employment as they age out of the foster care system.

Raising the Age of Child Support Obligation. When the age of majority was lowered to 18, parents were liberated from the obligation to provide what is called “post-majority” child support.⁸⁴ In most states, child support is only mandatory through age 18.⁸⁵ Beyond 18, most states give courts discretion to award additional support, but ordinarily it must be used for educational expenses and does not include support for the ongoing care of the 18-year-old.⁸⁶ Lowering the age of majority from 21 to 18 in the 1970s had meaningful unanticipated negative consequences for this group who subsequently lost the right to child

⁸⁰ Keely A. Magyar, *Betwixt and Between but Being Booted Nonetheless: A Developmental Perspective on Aging Out of Foster Care*, 79 TEMP. L. REV. 557, 558 (2006).

⁸¹ *Extending Foster Care Beyond 18*, *supra* note 74.

⁸² EPSTEIN, BLAKE & GONZÁLEZ, *supra* note 58, at 8.

⁸³ KIMBERLÉ WILLIAMS CRENSHAW WITH PRISCILLA OCEN & JYOTI NANDA, BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED AND UNDERPROTECTED 10 (2015), https://www.atlanticphilanthropies.org/wp-content/uploads/2015/09/BlackGirlsMatter_Report.pdf [<https://perma.cc/FH85-Y8T6>] (detailing harsh punitive punishments like suspensions and expulsions given to Black girls because of adultification bias when more age-appropriate methods like counseling would be better served).

⁸⁴ *Termination of Child Support*, *supra* note 23.

⁸⁵ *Id.*

⁸⁶ *Id.*

support for their daily living. That downward movement flowed from lowering the voting age.

C. *Campaigning to Minors: The Role of a Voter Before Election Day*

Elections end on Election Day, but they start long before that day. Campaigns and candidates seek to access potential voters by any legal means. Parties, causes, and commercial interests seek to form political identities of potential voters long before an election is looming to develop narratives that are anti-corruption, egalitarian, anti-immigrant, free market, democratic socialist, or White supremacist. The building of those identities may lead to loose party affiliation and then influence voting behavior. Campaigning includes mailers and leafleting, online advertisements, and door-to-door canvassing. But it also includes influencers' interactions online and in person with ideas loosely and more purposefully formed to build political identity to be mobilized on Election Day. Campaigns use social networks to promote messages, making the distinction between a campaign activity and a teenage social interaction at times hard to draw. Specifically, campaigns use data brokers to shape targeted advertisements.⁸⁷ Campaigns are actively trying to reach teenagers already, and some states seek to protect preregistered teenagers from aggressive campaign tactics by blocking campaign access to their voter data until they turn 18.⁸⁸ Teenagers are already overwhelmed with unreliable digital information and propaganda, and available research indicates that teenagers do not distinguish well between reliable and false information.⁸⁹

Within our system of speech rights, it is often said that campaign speech, or political speech, enjoys the strongest protection. Supreme Court opinions are full of statements affirming that “the right to engage in political expression is fundamental to our constitutional system.”⁹⁰ The reason that political speech enjoys this protection relates to self-governance. “[A] major purpose of [the First] Amendment was to protect the free discussion of governmental affairs.

⁸⁷ See Danielle Keats Citron, *Reservoirs of Danger: The Evolution of Public and Private Law at the Dawn of the Information Age*, 80 S. CAL. L. REV. 241, 259-61 (2007) (examining interests against data security legislation, including utilization of personal information for reelection purposes).

⁸⁸ Darren Samuelsohn, *How Campaigns Are Courting 16-Year-Olds*, POLITICO (Jan. 11, 2015, 8:05 AM), <https://www.politico.com/story/2015/01/young-voters-campaigns-114141> [<https://perma.cc/QF4E-9N6W>] (stating that California, Colorado, Delaware, Minnesota, Nevada, and Rhode Island will not release voter information while preregistered voter is still minor).

⁸⁹ PETER LEVINE & KEI KAWASHIMA-GINSBERG, *THE REPUBLIC IS (STILL) AT RISK—AND CIVICS IS PART OF THE SOLUTION 5* (2017), <https://www.civxnow.org/sites/default/files/resources/SummitWhitePaper.pdf> [<https://perma.cc/UP5A-7FMT>].

⁹⁰ *Austin v. Mich. State Chamber of Commerce*, 494 U.S. 652, 666 (1990), *overruled on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010).

For speech concerning public affairs is more than self-expression; it is the essence of self-government.”⁹¹

Meanwhile, families and schools seek to manage the information adolescents receive, both through limitations and through involuntarily consumed counternarratives. These limitations and involuntarily consumed counternarratives employed by nonguardians would sound in authoritarian propaganda, as they would simultaneously sound in good parenting. It is impossible to support 16-year-old voting without confronting the myriad ways families channel, manage, and limit information in the exercise of their responsibility to nurture adolescents in their development. Even among the teenage political leaders that have emerged in recent years, it is possible to see the hand of enabling parenting.⁹² Svante Thunberg, the father of teenage climate activist Greta Thunberg, speaking of his own efforts to respond to climate change and to participate in his daughter’s health and development, said, “I did all these things, I knew they were the right thing to do . . . but I didn’t do it to save the climate, I did it to save my child.”⁹³ Parenting and politics, idealized. Greta’s parents are engaged in the development of her political identity and embedded that development in her overall health and well-being as she struggled with a depression so significant that she stopped talking or eating.⁹⁴ Development first, political identity in its service, because Greta Thunberg is being cared for by her parents. In her case, that means activism, but it may not mean activism for all children.

Consider a new strain on that adolescent development: a set of interested third parties eager to exploit the plasticity of adolescence. Given a brand new cohort of voters, still minors living at home, parents will not be the only, or even the main, entities guiding the development of political identity. All campaigns will contemplate the best way to reach teenagers and influence their political development.⁹⁵ Their efforts will constitute core political speech protected by the First Amendment. To protect minors from exploitation by interested entities, we have limited the ability of the military to recruit them and of commercial interests from holding them to their contracts.⁹⁶ Yet, in adopting 16-year-old

⁹¹ *Burson v. Freeman*, 504 U.S. 191, 196 (1992) (first quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966); and then quoting *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964)); *see also* *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1885 (2018) (holding that law banning political apparel in polling place violates First Amendment).

⁹² *See, e.g.*, Stephanie Dube Dwilson, *Kevin Hogg, David Hogg’s Dad: 5 Fast Facts You Need to Know*, HEAVY (Feb. 22, 2018, 1:24 PM), <https://heavy.com/news/2018/02/kevin-hogg-david-hogg-dad-father-fbi-parents/> [<https://perma.cc/94YQ-67LP>]; *Greta Thunberg’s Father: ‘She Is Happy, but I Worry,’* BBC (Dec. 30, 2019), <https://www.bbc.com/news/uk-50901789> [<https://perma.cc/VV2S-X6EW>]; .

⁹³ *Greta Thunberg’s Father*, *supra* note 92 (alteration in original).

⁹⁴ *Id.*

⁹⁵ Samuelsohn, *supra* note 88.

⁹⁶ *See* 10 U.S.C. § 503 (2018).

voting, we invite organized interests to campaign to them and to participate in the formation of their political identities.

One parent wrote a rich narrative of her teenage son's political transformation through online interactions with alt-right websites:

Those online pals were happy to explain that all girls lie—especially about rape. And they had lots more knowledge to impart. They told Sam that Islam is an inherently violent religion and that Jews run global financial networks. (We're Jewish and don't know anyone who runs anything, but I guess the evidence was convincing.) They insisted that the wage gap is a fallacy, that feminazis are destroying families, that people need guns to protect themselves from government incursions onto private property. They declared that women who abort their babies should be jailed.⁹⁷

The family approached their son's transformation with the parenting version of counterspeech.

My husband and I countered all of Sam's off-kilter theories with data and introduced him to people whose views might outweigh ours. We also took him to movies, signed him up for rock climbing, bribed him to play with his baby cousins, and insisted he continue to join us at the dinner table. We flat-out begged him to go on hikes, bike rides, and even trips to the grocery store with us—anything to extract him from the echo chamber. The most insignificant outings were preceded by Camp David-level negotiations. Most of the time, we lost.⁹⁸

When the child wished to attend the Mother of All Rallies ("M.O.A.R.") in 2017, a political event in Washington, D.C. expected to attract White supremacists, the parents chose to attend with him in order to participate in his interpretation of what he saw.⁹⁹ These anonymous parents exercised their authority, if in a measured way, to shape his response to political information and, at times, to prohibit his exposure, such as when they would remove him from the speech and activism altogether for camp or activities.¹⁰⁰ They would have been within their rights had they chosen to prevent the teenager from attending the political rally. Parents may take receipt of letters sent through the U.S. Postal Service to their minor children.¹⁰¹ One might imagine and dismiss a parent's effort to prevent any information at all from breaching the home

⁹⁷ *What Happened After My 13-Year-Old Son Joined the Alt-Right*, WASHINGTONIAN (May 5, 2019), <https://www.washingtonian.com/2019/05/05/what-happened-after-my-13-year-old-son-joined-the-alt-right/#Caller-You-re-on-the-Air> [<https://perma.cc/W3GP-RCCT>].

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ MICHAEL K. PLUNKETT, U.S. POSTAL SERV., MAILING STANDARDS OF THE UNITED STATES POSTAL SERVICE, DOMESTIC MAIL MANUAL 889 (2007), <https://pe.usps.com/Archive/PDF/DMMArchive20070717/maillingstandards.pdf> [<https://perma.cc/8JAJ-SUUI>].

environment. Yet, it must be acknowledged that almost all parents manage information flow to their teenagers, if only by managing to some extent their time use. Had Sam become violent, his parents would be judged in the public imagination for failing to curtail communications with the individuals seeking to shape Sam's ideological identity.

In fact, the management of information coming at teenagers is at the heart of so much of the legal framework reviewed in Section I.B.1. The institutional benefit of the minor legal status is protection from exploitation by third parties, from contractual limitations that frustrate commercial actors through the infancy doctrine to regulations on advertising and military recruitment. We believe that there are people, like the White supremacy organizations that reached Sam or military recruiters that frequent gaming events, who recognize the pliability of adolescents and would use that pliability without regard for the youth's benefit; in other words, that they would exploit that pliability. For that reason, we sometimes regulate the entities directly, including the military and tobacco companies. We also give parents far-reaching authority in both law and culture to limit, prohibit, manage, supervise, and participate in contacts with every kind of person interested in communicating with a minor through the age of 18. Complete control in practice is neither wise nor feasible, but complete absence of monitoring contacts is routinely assessed to be problematic as well, and the law authorizes parents to implement the balance in context.

The age of majority is playing a protective function in the case of the current voting age. Campaign speech enjoys the greatest protection in our constitutional system.¹⁰² The vote invites campaigns—whether of candidates, corporate political action committees, social media platforms, White supremacists, or anarchists—to target teenagers. Given the pliability of teenagers and the potential size of the group, campaigns would be foolish not to.¹⁰³ Some of the “political speech” invited by 16-year-old voting would be from entities we have typically attempted to protect teenagers from, including tobacco companies, the military, credit card companies, and extremist groups. Nonetheless, these entities have political interests that drive political campaigns, and they have thoroughly protected rights to communicate with voters. Disabling youth from voting also protects youth from being the target of campaigning.¹⁰⁴ When

¹⁰² *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (“Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order ‘to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’” (alteration in original) (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957))).

¹⁰³ See JULIET B. SCHOR, *BORN TO BUY: THE COMMERCIALIZED CHILD AND THE NEW CONSUMER CULTURE* 180-81 (2004) (describing undue influence of advertisers and children's susceptibility).

¹⁰⁴ See Office of Mgmt., *Dear Colleague Letter from Director of Family Policy Compliance Office Dale King*, U.S. DEP'T EDUC. (Nov. 1, 2016), <https://www2.ed.gov>

imagining a world with 16-year-old voting, advocates need to look beyond the current, protective framework around youth and information and consider the new framework that the franchise will engender. If Vote16 intends to mount a defense of ending information management to 16-year-olds, it should do so thoroughly and directly, with an understanding of the disruption to extant family law and child welfare legislation. Its declaration that it is excising the franchise from all other legal consequences of a 16-year-old status is not sufficient or credible.

II. VOTING WILL PLAUSIBLY LEAD TO A 16-YEAR-OLD AGE OF MAJORITY, DESPITE INTENTIONS

I assume that Vote16 advocates would agree that emerging adults need the protection of the foster care and juvenile justice system into their 20s, just as they would agree that they do not wish to see the age of military enlistment lowered to 16. Therefore, it is not enough for this Article to show that the 18-year-old age of majority is protective in important ways and should be raised in some critical contexts as I have attempted to do in Part I. It is also necessary to show the genuine risk—or even likelihood—that voting at 16 will lead to a lowering of the age at which we anchor important youth protections and that this is not a parade of horrors but a genuine risk to child welfare while creating a significant benefit to the electoral process that interests advocates.

Vote16, the lead organization advocating on behalf of 16-year-old voting, has devoted almost no attention to the practical challenge of isolating voting from civil equality. Instead, it takes the position that it is not speaking to civil equality and only intends to advance the vote.¹⁰⁵

The legal definition linking adulthood to the age of 18 should not affect voter eligibility. It is also important to emphasize that our efforts are only to lower the voting age to 16. All other legal age limits should be set in accordance to what is best for each individual issue. Our country has set the driving age, in most states, at 16, and the drinking age at 21. Each should be considered on its own merits. For this specific issue, the voting age should be 16.¹⁰⁶

This is a declaration, not a plan. A white paper by Generation Citizen, cited by FairVote,¹⁰⁷ devotes one nearly identical paragraph to the concept of legal

/policy/gen/guid/fpco/pdf/military-recruiter.pdf [https://perma.cc/T9C6-WT55]; Cave, *supra* note 41.

¹⁰⁵ See *supra* note 20 and accompanying text.

¹⁰⁶ GENERATION CITIZEN, *supra* note 2, at 8.

¹⁰⁷ *Lower the Voting Age for Local Elections*, FAIRVOTE, https://www.fairvote.org/lower_the_voting_age [https://perma.cc/5ABK-E357] (last visited Sept. 27, 2020).

adulthood.¹⁰⁸ There is no attention to the historical nexus between the franchise and civil equality in the Nineteenth Amendment or the franchise and civil maturity in the Twenty-Sixth Amendment. The assertion that Vote16 does not intend to lower the age of majority can only be as persuasive as it is realistic. Because the agenda of Vote16 is to improve lifelong voter turnout rather than to address the status of adolescents, the movement has not addressed the legal identity of adolescents broadly. Rather, it has cited a variety of ages of license and, from their variability, concluded that there is nothing to see here. The history of voting tells us it is *not* another license. We should not engage 16-year-old voting in isolation as though our desire to contain the matter to voting will define how the vote is understood.

A. *Voting Is Entwined with Civil Status and Civil Rights*

The legal and political world struggled in the wake of the Nineteenth Amendment to integrate its meaning, pulled between the “incremental” and the “emancipatory” conceptions of the franchise for women’s rights.¹⁰⁹ Similarly, in the wake of the adoption of the Twenty-Sixth Amendment, some legislators understood the movement as undermining the 21 age of majority altogether, and states rapidly amended their state codes to reflect the broader meaning of the vote.¹¹⁰ In both cases, there was controversy. There were incremental and emancipatory interpretations of the franchise. In both cases, emancipatory conceptions were inevitably implicit even when some proponents tried to defang them, and those emancipatory conceptions would come to reshape legal status well beyond the vote.¹¹¹ In the case of the Twenty-Sixth Amendment, the change occurred almost immediately. For the Nineteenth Amendment, the process of realization continued for fifty years.

1. The Nineteenth Amendment

Historical and legal accounts of the Nineteenth Amendment establish the cohesion of full civil and political rights with the franchise. Legal historian Reva Siegel describes how movement activists and opponents of the era appreciated

¹⁰⁸ GENERATION CITIZEN, LOWERING THE VOTING AGE TO 16, at 8, <https://fairvote.app.box.com/v/voting-age-white-paper> [<https://perma.cc/LG3Y-XE4Z>] (last visited Sept. 27, 2020) (“Sixteen-year-olds play an important role in our society, and the age has special significance in our culture. Sixteen-year-olds can drive in most states, work without any restriction on hours, pay taxes, and in some cases be tried for crimes as adults. Also, high school students volunteer at twice the rate of adults, which shows a commitment to the community that is deserving of a vote in local elections. The legal definition should not affect their ability to vote.” (footnote omitted)); GENERATION CITIZEN, *supra* note 2, at 8.

¹⁰⁹ Jennifer K. Brown, *The Nineteenth Amendment and Women’s Equality*, 102 YALE L.J. 2175, 2177 (1993).

¹¹⁰ See CULTICE, *supra* note 10, at 212, 228, 235; Hamilton, *supra* note 19, at 65.

¹¹¹ See Brown, *supra* note 109, at 2177.

that voting could not be an isolated privilege but necessarily entailed full civil rights.

The question of women voting became “*the woman question*,” as it was called, in mid-nineteenth-century America . . . [T]he practice of voting became a site in which to make and find meanings about the relations of men and women. Opposition to women voting was as much about preserving the arrangements that make men men and women women as it was about the deep pragmatic question of what women would do with the ballot if allowed to participate in matters of civic governance.¹¹²

Behind the effort to allow women to vote were questions of women’s lack of equal citizenship in all areas of civil life, ranging from their dependency on male heads of household to their exclusion from professions and political life. Today the Nineteenth Amendment is celebrated as a constitutional promise of a future that would transform the existing status relationships, with the franchise serving as the central recognition of that equality.

Other constitutional scholars have drawn the same conclusion from the Nineteenth Amendment. Akhil Amar has asserted that the Nineteenth Amendment “can be understood as establishing a kind of *a fortiori* argument: if women have equal political rights, *a fortiori* they should have equal civil rights.”¹¹³ Michael Dorf argues that the voting right in the Nineteenth Amendment should stake a claim for broader equality for women when interpreting the Fourteenth Amendment.¹¹⁴

By Siegel’s account, suffragists had a clear understanding of the relationship between all of the legal restraints on women and the franchise:

[T]o demonstrate why women needed the vote, suffragists provided a detailed indictment of male privilege in the family and elsewhere. Suffragists protested the sex-based restrictions on employment and compensation that impoverished women and drove them into marriage. They challenged women’s legally enforced dependency in marriage, particularly property rules that vested in the husband a right to his wife’s earnings and to the value of his wife’s household labor. They denounced the law’s failure to protect women from physical coercion in marriage, including domestic violence, marital rape, and “forced motherhood.” Suffragists objected to conventions that held men and women to inconsistent standards of sexual propriety, and they protested women’s

¹¹² Siegel, *supra* note 1, at 977-78 (footnote omitted).

¹¹³ Akhil Reed Amar, *Women and the Constitution*, 18 HARV. J.L. & PUB. POL’Y 465, 471 (1995).

¹¹⁴ Michael C. Dorf, *Equal Protection Incorporation*, 88 VA. L. REV. 951, 981-82 (2002) (describing “enterprise of extrapolating a general gender-equality norm from the Nineteenth Amendment” and importance of Nineteenth Amendment in women’s path “from second-class citizenship to full equality”).

exclusion from juries, especially in cases involving women accused of committing crimes.¹¹⁵

In Siegel's account, analytically separating the franchise itself from civil equality deprives constitutional equality of its "enactment history: a narrative of political struggle in which we can see women asserting rights claims that 'We the People' steadfastly repudiated for over a half century until finally recognizing women as equal citizens in our constitutional order."¹¹⁶

Jennifer Brown details the early cases interpreting whether the Nineteenth Amendment necessarily made women eligible for jury duty.¹¹⁷ While federal courts eventually denied the link, no one doubted the relevance of the question. At the same time, state courts took the view that jury duty must attach to the franchise and began the process of building civic equality out of the Nineteenth Amendment.¹¹⁸ One such opinion in 1918, after Nevada had extended the franchise to women under state law, exemplifies the broader, emancipatory logic of the franchise:

When the people of this state approved and ratified the constitutional amendment making women qualified electors of the state, it is to be presumed that such ratification carried with it a declaration that the right of electorship thus conferred carried with it all of the rights, duties, privileges, and immunities belonging to electors; and one of the rights, one of the duties, and one of the privileges belonging to this class was declared by the organic law to be grand jury service.¹¹⁹

With regard to a more technical reading of the ratification of the Nineteenth Amendment in Nevada—namely, that it might only give women the right to vote and did not introduce a broader understanding of women's civil equality—the Nevada Supreme Court added that "[t]he spirit of the constitutional amendment silences such an assertion."¹²⁰

Brown details a series of similar opinions from courts in California, Iowa, Michigan, Ohio, and Washington.¹²¹ Citizenship, recognition, rights, and autonomy were intertwined with the franchise, to be interpreted in light of one another. Many courts could not read the extension of the franchise to women as limited to its language. These opinions serve as the precursor to the emancipatory interpretations of current constitutional law thinkers Siegel, Amar, and Dorf. It was not possible to consider the question of women voting separate

¹¹⁵ Siegel, *supra* note 1, at 992 (footnotes omitted).

¹¹⁶ *Id.* at 949.

¹¹⁷ *See generally* Brown, *supra* note 109.

¹¹⁸ *See id.* at 2185-92 (discussing state court decisions in California, Iowa, Michigan, Nevada, Ohio, and Washington).

¹¹⁹ *Parus v. Dist. Court of Fourth Judicial Dist. of Nev.*, 174 P. 706, 709 (Nev. 1918).

¹²⁰ *Id.*

¹²¹ *See* Brown, *supra* note 109, at 2185-92.

from the question of women's legal status, just as it will not be possible to consider the question of 16-year-olds voting separate from the question of 16-year-olds' legal status.

2. The Twenty-Sixth Amendment

In 1971, the Twenty-Sixth Amendment was ratified, granting 18-year-olds the right to vote. Ratification followed a yearslong campaign triggered by the drafting of 18-year-old men to fight in the Vietnam War.¹²² The slogan of the movement was “old enough to fight, old enough to vote.”¹²³ Given the extraordinary sacrifice of citizenship that military service entailed, the downward pressure on the vote seemed unavoidable, as the link between the franchise and military service enjoyed a long history¹²⁴ and dominated the congressional debate.¹²⁵ After a series of partial starts and court opinions questioning whether Congress, state government, or a constitutional amendment was the legitimate method of lowering the voting age, the states ratified the amendment proposed by Congress in a matter of months.¹²⁶ The core equation of military service and the franchise dominated the successful campaign. Subsequent to the adoption of the Twenty-Sixth Amendment, state legislatures responded by lowering the age of majority for all purposes.¹²⁷

The Twenty-Sixth Amendment, therefore, was not the first step in lowering the age of majority to 18. Lowering the draft to 18 was the precursor to lowering the voting age, which was the precursor to lowering the age of majority. President Franklin Roosevelt lowered the age for conscription into the armed

¹²² See CULTICE, *supra* note 10, at 212, 228 (explaining that fervor for suffrage extension mushroomed during World War II and Korean War and became gospel during protracted years of Vietnam War); Jenny Diamond Cheng, How Eighteen-Year-Olds Got the Vote 6, 10 (Aug. 4, 2016) (unpublished manuscript) [hereinafter Cheng, Eighteen-Year-Olds], <https://ssrn.com/abstract=2818730> [<https://perma.cc/MQF2-XZ6E>].

¹²³ Cheng, Eighteen-Year-Olds, *supra* note 122, at 6.

¹²⁴ See CULTICE, *supra* note 10, at 226-27 (stating that extension of franchise was “premised almost solely on youth’s coerced military citizenship position within our society”).

¹²⁵ See generally Jenny Diamond Cheng, Uncovering the Twenty-Sixth Amendment 29-43 (2008) (unpublished Ph.D. dissertation, University of Michigan) [hereinafter Cheng, Uncovering], https://deepblue.lib.umich.edu/bitstream/handle/2027.42/58431/jdiamond_1.pdf?sequence=1&isAllowed=y [<https://perma.cc/YH6Y-8FG4>] (examining “several different conceptual relationships between military service and suffrage” highlighted during congressional debates).

¹²⁶ See CULTICE, *supra* note 10, at 232-35.

¹²⁷ See *id.* at 234 (explaining that Vermont’s ratification of Twenty-Sixth Amendment gave “18-year-olds the right to vote, purchase liquor, make binding legal contracts, and marry without parental consent”); *Termination of Child Support*, *supra* note 23.

services to 18 in 1942.¹²⁸ The same day that Congress approved lowering the age of military service from 21 to 18 in 1942, the first constitutional amendment was filed to lower the voting age as well, showing how tightly woven these anchors of citizenship have been.¹²⁹

Why was the military age lowered? While a desire to increase the overall number of soldiers played a significant role in the debate, lawmakers and military leaders focused on the particular value of 18-year-old men to the military effort.¹³⁰ It was not their maturity that the military sought but their relative *immaturity*, or their status as what we would now call “emerging adults.”¹³¹ Emerging adults, at that time still minors, are less likely to have dependents themselves. This was an explicit concern of decision makers.¹³² In 1942, married men received draft deferment from Congress.¹³³ In explaining the decision, Oklahoma Senator Joshua Lee said, “We want the unmarried men taken first.”¹³⁴ In later debates over 18-year-old voting, New York Representative Emanuel Celler, longtime Chair of the Judiciary Committee, would argue:

When the draft age was lowered from 21 to 18 years of age, the generals told us that this was a necessary move because young men under 21 were more easily molded into good soldiers than were their elders who had grown to maturity. Young men under 21 are more pliable and more amenable to indoctrination. They are not likely to exercise critical judgment in matters demanding instant obedience. Instant and unquestioning obedience may be most desirable from soldiers in the battlefield, but in a voter such obedience would be most undesirable. Self-

¹²⁸ See Andrew Glass, *Congress Changes Draft Age, Nov. 11, 1942*, POLITICO (Nov. 11, 2014, 7:42 AM), <https://www.politico.com/story/2014/11/this-day-in-politics-congress-draft-november-11-1942-112752> [<https://perma.cc/Z4QU-4RJA>].

¹²⁹ H.R.J. Res. 352, 77th Cong. (1942); Cheng, *Uncovering*, *supra* note 125, at 30.

¹³⁰ See Cheng, *Eighteen-Year-Olds*, *supra* note 122, at 15 (explaining “that manpower needs exceeded the number of men classified as liable for military service”).

¹³¹ See *id.* (“In particular, the 1942 push to lower the draft age was intended to postpone drafting married men, especially those with dependent children, as long as possible.”).

¹³² *Id.*

¹³³ C.P. Trussell, *Deferring of Married Men in Draft Is Written into Allowances Bill*, N.Y. TIMES, June 12, 1942, at 1.

¹³⁴ *Say Family Heads Do Not Face Draft*, N.Y. TIMES, June 15, 1942, at 17; see also Kara Dixon Vuic, *Women May Soon Have to Register for the Draft. It's Long Overdue.*, WASH. POST (Mar. 4, 2019, 6:00 AM), <https://www.washingtonpost.com/outlook/2019/03/04/women-may-soon-have-register-draft-its-long-overdue/> (explaining that married men received exceptions not because they made good soldiers but because “the family is the fundamental unit of organized society”).

interested groups and corrupt politicians would find such obedience a fertile playground.¹³⁵

Celler was repeating the understanding of the decision to lower the age of military service as one disconnected from maturity except insofar as immaturity may be exploited.

Periodically, as Congress debated 18-year-old voting, the larger question of the age of majority would intrude on the discussions.¹³⁶ One member of Congress attempted to introduce a provision lowering the age of majority as a rider to the final vote on the Twenty-Sixth Amendment, but the attempt failed.¹³⁷ Others puzzled over the mismatch:

Support for teenage suffrage notwithstanding, more than a few professional politicians—Senator Frank Lausche of Ohio among them—continued to believe that it was irresponsible, illogical, and inconsistent to grant 18- to 20-year-olds the ballot some three years before they had reached legal chronological majority, which was 21 in most states.¹³⁸

While most lawmakers and activists sought to ignore the issue of the age of majority during the debate over 18-year-old voting—just as Vote16 advocates wish to contain their meaning—their wishes did not impact the consequences of the change. After 18-year-olds won the right to vote, the age of majority dropped in almost all states in direct response.¹³⁹ The Twenty-Sixth Amendment quickly fueled state legislatures to lower the age of majority in order to create a more coherent system that reflected the gravity of the franchise.

As was the case for the Nineteenth Amendment, extension of the franchise triggered a reevaluation of the status of the new voter, one that would have immediate and long-term consequences in law and culture. Voting, like military service, is not an isolated license. It is a core attribute of civil equality. After the Twenty-Sixth Amendment was ratified, the 18-year-old became responsible for self-support and housing, without much meaningful discussion in the voting debate, beyond notation of the inconsistencies. In the move to lower the voting age to 16, we should do better by acknowledging the significance of the vote and anticipating a wider scope and meaning.

¹³⁵ 100 CONG. REC. 3050 (1954) (statement of Rep. Celler).

¹³⁶ CULTICE, *supra* note 10, at 91-92 (“Toward the end of the third phase of the teen suffrage movement, it was becoming trenchant that the age issue, even if successfully passed, was the forerunner of a subsequent and much broader issue, that of a lower majority age.”).

¹³⁷ *Id.* at 212.

¹³⁸ *Id.* at 91.

¹³⁹ *Id.* at 91-92, 212, 228, 235; Hamilton, *supra* note 19, at 64-65.

B. *16-Year-Old Voting Will Anchor Legal Maturity at a Lower Age in Policy Deliberations*

In the space between the comprehensive statuses of childhood and adulthood is a claim for case-by-case reasoning.¹⁴⁰ Reformers suggest that we should cultivate a greater tolerance for the inherent instability of the maturation process and the variety of legal ages at which adolescents confront rites of passage. As argued in Section I.A, this reasoning may come from a tendency to overthink the significance of exceptions like driving and drinking, rushing through the significance and scope of the underlying rule to the material and psychological care and welfare of minors.

But taking the concept of variable adulthood on its face, what *are* the most significant legal gateways? Vote16 would have us believe that driving, drinking, and paying a very small amount in taxes qualify. I argue that military service, jury duty, voting, juvenile court jurisdiction, foster care placement, parental authority, and the housing and financial support of parents are the most significant attributes of the adult/child distinction. Voting, though, might be among the most important in political theory; consequently, a change to the voting age risks reanchoring age discussions for a variety of other legal purposes, regardless of the intentions of proponents. It did so when the voting age was lowered from 21 to 18, and the concern cannot be wished away.

In a world with 16-year-old suffrage, what arguments should we expect from military recruiters unable to meet their quotas about their justifications for contacting, or even enlisting, 16- or 17-year-olds?¹⁴¹ What about a credit card company or other lender seeking to sign 16- or 17-year-olds up for loans on unfavorable terms? What about plastic surgeons arguing that a 16-year-old is mature enough to choose dramatic cosmetic surgery or a prosecutor bringing a request to transfer a 16-year-old to adult court? They will all argue that 16-year-olds are old enough to vote, therefore old enough for their purposes. If interested entities already cite driving in support of the legal maturity of teenagers, imagine the conceptual strength of an argument grounded in a 16-year-old right to vote.

III. THE PURPOSES OF THE MOVEMENT TO LOWER THE VOTING AGE AND THE QUESTION OF CIVIL EQUALITY

In light of the social movements surrounding the Nineteenth and Twenty-Sixth Amendments that sought and succeeded at restructuring legal status well beyond the franchise itself, what is the claim for 16-year-old voting and who is advancing the claim?

¹⁴⁰ GENERATION CITIZEN, *supra* note 2, at 8; Daily & Rosenbury, *supra* note 25, at 1462 (“Respecting children’s autonomy interests sometimes calls for an individualized examination of a child’s maturity . . .”); Hamilton, *supra* note 19, at 90-94.

¹⁴¹ 17-year-olds can enlist but not serve.

Voter turnout in the United States is very low. In an effort to increase voter turnout over the long term, some advocates and some jurisdictions have lowered the voting age, including cities and towns in the United States, as well as twenty countries including Austria, Brazil, Ecuador, and Norway.¹⁴² Speaker of the House Nancy Pelosi anchors her own support for 16-year-old voting in the long-term prospects for increasing turnout: “I think it’s really important to capture kids when they’re in high school, when they’re interested in all of this, when they’re learning about government, to be able to vote.”¹⁴³

There is some evidence from Austria that 16-year-olds who are allowed to vote exercise their right at higher rates than those granted the franchise at age 18.¹⁴⁴ Indeed, voter turnout increased in Takoma Park, Maryland, after it adopted 16-year-old voting.¹⁴⁵ These examples bolster the case for those who want to see 16-year-olds vote in order to improve their lifelong odds of voting regularly. Advocates argue that 18-year-olds are making too many other developmental transitions toward adulthood, and therefore they lack the attention to this one particular aspect of adulthood amidst other transitions out of the nest.¹⁴⁶ This justification for lowering the voting age is everywhere in the materials and deliberations over the issue. In Berkeley, California, the City Clerk’s explanation of the arguments in favor of Vote16 begin as follows:

Voting is the cornerstone of our democracy. Yet less than 20% of 18-29 year olds voted in the 2014 midterm elections, the lowest youth turnout rate ever recorded. We must do something to better engage our youth – Measure Y1 will do just that by allowing 16- and 17-year olds to vote in Berkeley school board elections.¹⁴⁷

¹⁴² Zachary Crockett, *The Case for Allowing 16-Year-Olds to Vote*, VOX (Nov. 7, 2016, 9:00 AM), <https://www.vox.com/policy-and-politics/2016/11/7/13347080/voting-age-election-16> [<https://perma.cc/96UP-FN9W>].

¹⁴³ John Bowden, *Pelosi Says She Backs Lowering Voting Age to 16*, HILL (Mar. 14, 2019, 3:19 PM), <https://thehill.com/homenews/house/434115-pelosi-says-she-backs-lowering-voting-age-to-16> [<https://perma.cc/N4SD-RE38>].

¹⁴⁴ Eva Zeglovits & Julian Aichholzer, *Are People More Inclined to Vote at 16 than at 18? Evidence for the First-Time Voting Boost Among 16- to 25-Year-Olds in Austria*, 24 J. ELECTIONS PUB. OPINION & PARTIES 351, 358 (2014) (“In fact, turnout of 16- to 17-year-olds in Vienna was estimated to be 64.2% and thus significantly and substantially higher than the turnout of 18–20-year-olds, which was 56.3%.” (citation omitted)).

¹⁴⁵ Crockett, *supra* note 142.

¹⁴⁶ See Yosef Bhatti & Kasper M. Hansen, *Leaving the Nest and the Social Act of Voting: Turnout Among First-Time Voters*, 22 J. ELECTIONS PUB. OPINION & PARTIES 380, 396 (2012) (explaining that residential patterns largely track low voter turnout among 18- to 20-year-olds); Joshua A. Douglas, *The Right to Vote Under Local Law*, 85 GEO. WASH. L. REV. 1039, 1057 (2017).

¹⁴⁷ NANCY SKINNER ET AL., ARGUMENT IN FAVOR OF MEASURE Y1, <https://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/2016/Y1%20-%20Primary%20In%20Favor.pdf> [<https://perma.cc/R4BD-E9E3>] (last visited Sept. 27, 2020).

Brookline, Massachusetts recently opted to lower the voting age, adopting a proposal initiated and sponsored entirely by adults.¹⁴⁸ Youth were noticeably absent from the campaign process for their franchise until the day of the final vote.¹⁴⁹ Voter turnout dominated the formal explanation for the submission of the proposal, complete with charts showing annual turnout by year.¹⁵⁰ The same story can be found in the other jurisdictions that have considered the proposals—lengthy discussions weighing maturity against the benefits of increasing voter turnout.¹⁵¹ Voter turnout is the key driver of the movement.¹⁵² I agree with Vote16 advocates both that improving voter turnout is a high priority and that 16-year-old voting is a promising way to do so. I question whether that agenda, though, is youth-driven; whether adults are rearranging youth's legal status for purposes that are not their own.

CONCLUSION

We are living in an era of resurgent youth activism, from the Black Lives Matter movement to students staging a global strike to address climate change and marching on Washington to seek action on gun control. Part of the appeal of extending votes to youth is their evident political engagement. While youth themselves have played a meaningful role in the effort to lower the voting age to 16, there exists a substantial infrastructure either supporting those youth or driving the agenda that is not youth-led.¹⁵³

¹⁴⁸ See NOVEMBER 21, 2019 STM – 3RD NIGHT (2019), <https://www.brooklinema.gov/DocumentCenter/View/20783/Electronic-Voting-Night-3---November-21-2019> [<https://perma.cc/Y2TB-XLSY>] (showing that petition to lower voting age was approved by 142 to 71 vote); TOWN OF BROOKLINE, MASSACHUSETTS, REPORTS OF SELECT BOARD AND ADVISORY COMMITTEE ON THE ARTICLES IN THE WARRANT FOR THE SECOND SPECIAL TOWN MEETING 1-1 to -2 (2019), <https://www.brooklinema.gov/DocumentCenter/View/20735/Combined-Reports-November-2019-Second-Special-Town-Meeting-With-Supplements> [<https://perma.cc/53CF-2TZV>].

¹⁴⁹ See Julie Leonardi, *Brookline Considering Proposal to Lower Voting Age to 16 for Local Elections*, BOS. 25 NEWS (Oct. 31, 2019, 5:26 AM), <https://www.boston25news.com/news/brookline-proposal-seeks-to-give-16-year-olds-right-to-vote-in-local-election/1003489819/> [<https://perma.cc/DQC2-G7TF>] (“The proposal is spearheaded by a local leader who believes young teens in town deserve the right to have their voices heard on local issues.”).

¹⁵⁰ TOWN OF BROOKLINE, *supra* note 148, at 1-1.

¹⁵¹ See, e.g., SKINNER ET AL., *supra* note 147.

¹⁵² NAT'L LEAGUE OF CITIES, LOWER THE VOTING AGE IN MUNICIPAL ELECTIONS 2 (2019), https://www.nlc.org/sites/default/files/users/user93/TYEF-Lower-the-Voting-Age_web.pdf [<https://perma.cc/N532-9627>]; 4 REASONS TO LOWER THE U.S. VOTING AGE TO 16, VOTE16USA, <http://vote16usa.org/reasons-for-lowering-voting-age-16/> [<https://perma.cc/SR55-65JT>] (last visited Sept. 27, 2020).

¹⁵³ See *The Movement to Lower the Voting Age: A History*, NAT'L YOUTH RIGHTS ASS'N, <https://www.youthrights.org/issues/voting-age/history-of-the-movement/>

I do not argue that this makes the claim illegitimate. Because people are only 16 and 17 for two years, the Vote16 movement has a structural problem that requires an institutional memory and infrastructure that cannot be rebuilt every two years.¹⁵⁴ Youth with a serious interest in accessing the ballot are well served by the maintenance of that existing infrastructure. But the adult influence on the campaign is unmistakable: Every piece of literature, op-ed, and white paper centers on increasing voter turnout. Yet, it is not clear that increasing voter turnout is a driving political concern of adolescents themselves. Judging by their social and political movements, they are concerned about climate change, criminal justice, social equality, and gun control, certainly. The problem of voter turnout is a fairly sophisticated, second-order concern for those new to political life, one focused on the structure of political discourse rather than on the issues. It is an unlikely candidate for sparking youth activism. Where women sought the franchise as an assertion of their civic equality, adult election and democracy enthusiasts seek the franchise on behalf of 16-year-olds, not to assert their deeper civic equality or to fully engage the question of their legal status. They seek 16-year-old voting to improve voter turnout, a worthy cause that is noteworthy for its appeal to relatively seasoned activists. The deeply rooted status of legal minority protects youth from even well-intentioned uses just as it provides protection from deliberately exploitative ones.

Is 16-year-old voting a part of a serious effort by adolescents to reimagine their legal status? Are they, or we, arguing for overthrowing what Siegel calls “the family-based status order”¹⁵⁵ reflected in the age of majority? Serious scholars have argued for eliminating the legal distinction between adulthood and

[<https://perma.cc/PLA9-SMFG>] (last visited Sept. 27, 2020). Vote16 has a youth advisory board. *2019-2020 Youth Advisory Board: Meet the Board*, VOTE16USA, <http://vote16usa.org/about-us/2019-19-youth-advisory-board/> [<https://perma.cc/L6XH-M6NF>] (last visited Sept. 27, 2020).

¹⁵⁴ Several groups, organized and run primarily by adults, claim a central role in the effort to raise the vote. According to FairVote, it “has served as a thought leader and catalyst for lowering the voting age to 16 in cities, playing a critical role at the local level in Takoma Park (MD), which became the first U.S. city to lower the voting age in 2013, and later Hyattsville (MD), which followed in 2015.” *Lower the Voting Age for Local Elections*, *supra* note 107. According to the front page of Vote16USA’s website, “Vote16USA is a national campaign, organized by Generation Citizen, that supports efforts to extend voting rights to 16- and 17-year-old[s] on the local and state levels, help[s] start new local campaigns, and elevate[s] the issue’s prominence on a national level.” VOTE16USA, <http://vote16usa.org/> [<https://perma.cc/4FRR-ZGPF>] (last visited Sept. 27, 2020). Deeper into the website, a slightly different version of the mission statement appears, which includes the term “youth-led.” VOTE16USA, VOTE16USA: STRENGTHENING DEMOCRACY BY LOWERING THE VOTING AGE TO 16, at 1 (2020), <http://vote16usa.org/wp-content/uploads/2020/04/Vote16USA-fact-sheet-updated-4.8.20.docx> [<https://perma.cc/6THX-RHQA>] (“Vote16USA is a national initiative, organized by Generation Citizen, that supports youth-led efforts to extend voting rights to 16- and 17-year-olds on the local level and promotes the issue nationally.”).

¹⁵⁵ Siegel, *supra* note 1, at 952.

childhood and replacing it with a case-specific analysis.¹⁵⁶ If this argument is underlying Vote 16, or is an acceptable consequence of Vote 16, I ask that Vote 16 advocates show knowledge and regard for the protective status children enjoy as they give the franchise greater weight than that status. Otherwise, a movement to reorganize their legal status, one that risks lowering their protections in a variety of other spheres, looks like one more effort to use youth for adult purposes, an irresistible temptation that child welfare law is designed to disable.

¹⁵⁶ See *supra* note 140 and accompanying text.