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ESSAY

IN DEFENSE OF LOWERING THE VOTING AGE

JOSHUA A. DOUGLAS[†]

INTRODUCTION

In the upcoming November election, voters in San Francisco will decide whether to lower the voting age from eighteen to sixteen for local elections.¹ It is by no means a radical idea. The Maryland municipalities of Takoma Park and Hyattsville recently lowered the voting age to sixteen for their own elections.² Turnout among sixteen- and seventeen-year-olds has been robust, strengthening the democratic process in these cities.³ Lowering the voting age represents good policy. Policymakers and voters should embrace this innovation.

This Essay outlines the various policy arguments in favor of lowering the voting age to sixteen, the subject of Proposition F on the San Francisco ballot this year. Part I presents a very brief history of the voting age in U.S. elections. It notes that setting the voting age at eighteen is, in many ways, a historical accident, so lowering the voting age for local elections does not cut

[†] Robert G. Lawson & William H. Fortune Associate Professor of Law, University of Kentucky College of Law. Thanks to Scott Bauries for useful comments and to Grant Sharp for invaluable research assistance. Thanks also to the *University of Pennsylvania Law Review Online*, and particularly Alex Aiken and Bill Seidleck, for timely and excellent edits.

¹ Emily Green, *Supervisors OK Ballot Measure to Lower SF Voting Age to 16*, SF GATE (May 10, 2016), <http://www.sfgate.com/politics/article/Supervisors-OK-ballot-measure-to-lower-SF-voting-7458077.php> [<https://perma.cc/5B88-DZBX>].

² Elena Schneider, *Students in Maryland Test Civic Participation and Win Right to Vote*, N.Y. TIMES (Jan. 9, 2015), <http://www.nytimes.com/2015/01/10/us/politics/students-in-maryland-test-civic-participation-and-win-right-to-vote.html> [<https://perma.cc/K3RD-LX7V>].

³ See J.B. Wogan, *Takoma Park Sees High Turnout Among Teens After Election Reform*, GOVERNING (Nov. 7, 2013), <http://www.governing.com/news/headlines/gov-maryland-city-sees-high-turnout-among-teens-after-election-reform.html> [<https://perma.cc/23HT-XAJP>] (reporting that “roughly 44 percent of registered voters in the under-18 voting bloc participated in” elections in Takoma Park, Maryland, compared to an overall turnout rate of only 11%).

against historical norms. Part II explains that there are no constitutional barriers to local jurisdictions lowering the voting age for their own elections. Part III highlights the benefits to democracy and representation that lowering the voting age will engender. Turning eighteen represents a tumultuous time for most young adults as they leave home either to enter the workforce or go off to college. Sixteen, by contrast, is a period of relative stability when young people are invested in their communities and are learning about civic engagement in school. Lowering the voting age can, therefore, create a habit of voting and increase overall turnout in later years. Finally, Part IV presents psychological studies demonstrating that, by age sixteen, individuals possess the cognitive capabilities required to perform an act that takes time and deliberation, like voting. That is, sixteen-year-olds are as good as, say, forty-year-olds at making deliberative decisions necessary for democratic participation. This Part also refutes the claim that lowering the voting age will create additional votes for parents, as prior experience shows that young people do not simply follow their parents in the voting booth.

In sum, lowering the voting age is a sound mechanism to improve our elections. It brings additional, competent individuals with a stake in electoral outcomes into the democratic process. San Francisco voters should pass Proposition F to lower the voting age, and other cities should follow suit.

I. A BRIEF HISTORICAL ACCOUNT OF THE VOTING AGE IN U.S. ELECTIONS

At the Founding, the voting age under British common law was twenty-one.⁴ American colonies simply copied this prior British rule.⁵ Although the reason for setting the voting age at twenty-one is “lost in the mists of time,” “[o]ne—perhaps apocryphal—claim that popped up often in the voting age debates was that twenty-one was the age at which a medieval adolescent was thought capable of wearing a suit of heavy armor and was therefore eligible for knighthood.”⁶ Thus, for the first 182 years of our history (until the ratification of the Twenty-Sixth Amendment), the voting age of twenty-one was, in many ways, a historical accident. There was no sustained discussion or reasoned

⁴ See Jenny Diamond Cheng, *How Eighteen-Year-Olds Got the Vote* 9 (Aug. 4, 2016) (unpublished manuscript), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2818730 [<https://perma.cc/U3E8-TPQE>] (noting that “British common law put the age of majority at twenty-one”); see also ROBERT J. DINKIN, *VOTING IN PROVINCIAL AMERICA: A STUDY OF ELECTIONS IN THE THIRTEEN COLONIES, 1689-1776*, at 30-31 (1977) (noting that the colonies at the time of the Founding generally barred individuals under twenty-one from voting in local elections, following the traditions and wisdom of the Old World).

⁵ DINKIN, *supra* note 4, at 30-31.

⁶ Cheng, *supra* note 4, at 9.

justification for not allowing individuals aged twenty or younger to vote. It was just common practice left over from colonial England.

The Twenty-Sixth Amendment changed that practice nationwide when it lowered the voting age to eighteen for all national and state elections.⁷ The main impetus for the Twenty-Sixth Amendment was the Vietnam War. Eighteen-year-olds were expected to fight and die for their country, so supporters of the Twenty-Sixth Amendment rallied around the cry of “old enough to fight, old enough to vote.”⁸ Further, the youth-driven protests of the late 1960s and early 1970s required an outlet for young peoples’ political engagement. The right to vote provided such an outlet.⁹

The main point for today’s debate is that the current voting age is more happenstance than reasoned judgment. The states initially set the age at twenty-one because that was the custom in British common law. The Twenty-Sixth Amendment lowered the voting age to eighteen because young people were asked to fight in an unpopular war and were engaged in significant political protests. But few people considered in-depth why eighteen, as opposed to a different age, was the appropriate age to choose.

II. THE U.S. CONSTITUTION DOES NOT BAR LOWERING THE VOTING AGE FROM EIGHTEEN

The text of the Twenty-Sixth Amendment to the U.S. Constitution provides that “[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or any state on account of age.”¹⁰ Thus, the Twenty-Sixth Amendment sets the voting age at eighteen, but it does not stipulate that eighteen is a floor. Nothing in the language of the amendment prohibits states or localities from setting a lower voting age.

Similarly, most state constitutions and laws do not forbid a lower voting age for local elections.¹¹ For the San Francisco debate this fall, California law certainly allows this innovation, as its relevant constitutional provision

⁷ U.S. CONST. amend. XXVI, § 1.

⁸ See Cheng, *supra* note 4, at 43-46 (detailing the effects of the Vietnam War on efforts to lower the voting age and concluding that “[t]he ‘old enough to fight, old enough to vote’ refrain from the early 1940s gained new resonance in the late 1960s, as American involvement in Vietnam reached its zenith and public opinion swung against the war”).

⁹ See *id.* at 46-57 (arguing that “the notion that reducing the voting age would stem the rising tide of student unrest by channeling youthful energies . . . gained a surprising amount of traction, especially among federal legislators”).

¹⁰ U.S. CONST. amend. XXVI.

¹¹ In a forthcoming article, I explain in detail the legal arguments that surround voter expansions for local elections. See Joshua A. Douglas, *The Right to Vote Under Local Law*, 85 GEO. WASH. L. REV. (forthcoming 2017).

closely tracks the language of the Twenty-Sixth Amendment and its state laws do not impose any impediments.¹²

III. BENEFITS OF LOWERING THE VOTING AGE TO SIXTEEN

Lowering the voting age to sixteen, at least for local elections, will improve our democracy. Democracy flourishes when those who have an actual stake in the outcome participate—so long as they can make reasoned judgments about who should lead them. Experience has shown that lowering the voting age is one way to improve voter turnout now, and likely into the future.

Turnout among the youngest current voters, those age eighteen to twenty-four, is abysmal. In the 2012 presidential election, for example, the turnout rate for persons age eighteen to twenty-four was 38%, compared to an overall population turnout rate of just under 62%.¹³ But jurisdictions that have lowered the voting age have seen improved voter turnout. For example, in the November 2013 municipal election in Takoma Park, Maryland—an election with “no state or national offices on the ballot and no competitive local races”—turnout among newly eligible and registered sixteen- and seventeen-year-olds was 44%, while the overall turnout was 11%.¹⁴ Similarly, in Hyattsville, Maryland, turnout among sixteen- and seventeen-year-olds in the 2015 city election was 25%, helping the city to exceed its overall turnout goals.¹⁵

These examples illustrate that young people have seized the opportunity to vote in those jurisdictions that have lowered the voting age. Individuals are more likely to turn out for the first time when they are age sixteen and seventeen as opposed to age eighteen. Why? One possible answer is that sixteen- and seventeen-year-olds are part of their communities, engaged in local debates, and immersed in civic education in high school. By contrast, eighteen-year-olds are graduating from high school, moving away from home, and entering the workforce or enrolling in college. The sheer fact of moving

¹² See CAL. CONST. art. II, § 2 (“A United States citizen 18 years of age and resident in this State may vote.”); CAL. CONST. art. XI, § 5(a) (conferring upon municipalities broad home rule power to govern “municipal affairs”); CAL. ELEC. CODE § 2000(b) (West 2016) (“Any person who will be at least 18 years of age at the time of the next election is eligible to register and vote at that election.”); see also Douglas, *supra* note 11, app. (providing a fifty state survey of state constitutions and statutes regarding the power of municipalities to enact local rules for voting); cf. Tara Kini, *Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections*, 93 CALIF. L. REV. 271, 284 (2005) (outlining analogous legal arguments supporting San Francisco’s push to allow noncitizens to vote in school board elections).

¹³ Thom File, *Young-Adult Voting: An Analysis of Presidential Elections, 1964–2012*, U.S. CENSUS BUREAU (Apr. 2014), <https://www.census.gov/prod/2014pubs/p20-573.pdf> [<https://perma.cc/Z5R4-9HFE>].

¹⁴ Wogan, *supra* note 3.

¹⁵ Rebecca Bennett, *Ward and Warner Election Winners; City Exceeds Voter Turnout Goal*, HYATTSVILLE LIFE & TIMES (May 6, 2015), <http://hyattsvillelife.com/ward-and-warner-election-winners-city-exceeds-voter-turnout-goal/> [<https://perma.cc/YX2U-2YRH>].

makes it more difficult to begin voting. These individuals will have to both register ahead of the election and often deal with absentee balloting hurdles. Thus, at an already tumultuous time in their lives, we also expect eighteen-year-olds to jump through various administrative hoops to participate in our democracy. Sixteen-year-olds do not face these same hurdles. Instead, they are living at home and are in the supportive environment of high school, where they can learn about the registration process and the intricacies of voting—not to mention the candidates and issues. Once they begin voting at a younger age, they are more likely to continue the habit when they leave home.¹⁶

Lowering the voting age thus presents one way to increase overall voter turnout: high participation among young people in local elections will eventually lead to higher turnout in all elections, as these individuals turn eighteen and become eligible to vote in federal and state elections. Studies show that voting is habit-forming; once someone votes in one election, he or she is more likely to vote in subsequent elections.¹⁷ Consequently, lowering the voting age in local elections can serve as a catalyst for increased turnout nationwide in later elections. Assuming, from a normative perspective, that higher turnout is better for our democracy, then lowering the voting age is one path to achieve that goal. In addition, once a few cities like San Francisco lower the voting age without negative consequences to their elections, other cities, and eventually states, will likely follow.

Moreover, there is a fairness aspect to lowering the voting age.¹⁸ Although eighteen is the age of legal majority in many areas, our society grants certain privileges to, and imposes legal obligations on, sixteen- and seventeen-year-olds. In particular, in most states, sixteen-year-olds may obtain a drivers' license¹⁹

¹⁶ See *infra* note 17 & accompanying text.

¹⁷ See Alexander Coppock & Donald P. Green, *Is Voting Habit Forming? New Evidence from Experiments and Regression Discontinuities*, 60 AM. J. POL. SCI. 1044, 1060 (2015), (reviewing various studies and concluding that “a vast body of evidence now suggests that habits form when people vote”); Alan S. Gerber, Donald P. Green & Ron Shachar, *Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment*, 47 AM. J. POL. SCI. 540, 545-48 (2003) (using regression analysis to evaluate voter turnout in separate elections and concluding, “[T]he reason voting behavior is correlated over time is not simply that the background factors that cause people to vote at one point in time reassert their influence during each subsequent election. In addition to the continuities created by socio-psychological and environmental influences, voting and nonvoting per se appear to create behavioral patterns that persist over time.”).

¹⁸ See *Lower the Voting Age*, FAIRVOTE, <http://www.fairvote.org/reforms/right-to-vote-amendment/lowering-the-voting-age/> [<https://perma.cc/6L9V-VN53>] (last visited Oct. 23, 2016) (noting that lowering the voting age is “also a matter of fairness: when unable to vote until turning 18, some citizens won’t have a chance to vote for their mayor until they are almost 22”); *Top Ten Reasons to Lower the Voting Age*, NAT’L YOUTH RTS. ASS’N, <http://youthrights.org/issues/voting-age/top-ten-reasons-to-lower-the-voting-age/> [<https://perma.cc/DV8N-JT2D>] (last visited Oct. 23, 2016) (“Youth suffer under a double standard of having adult responsibilities but not rights.”).

¹⁹ Judith G. McMullen, *Underage Drinking: Does Current Policy Make Sense?*, 10 LEWIS & CLARK L. REV. 333, 360 (2006).

and work in part-time jobs.²⁰ But they must follow the local driving rules and pay taxes on their wages. Sixteen is also the age of majority for consenting to sexual activity in most states.²¹ Further, in many states, compulsory school attendance ends at age sixteen or seventeen—meaning that high school students may choose to drop-out of school at that age.²² Unless there is a competency-based reason to bar them from voting, then, it seems only fair that we permit sixteen- and seventeen-year-olds to participate in our democratic process.

IV. PSYCHOLOGICAL STUDIES SUPPORT SETTING THE VOTING AGE AT SIXTEEN

Psychologists are in general agreement: sixteen-year-olds are as good, cognitively, as twenty-year-olds, forty-year-olds, or anyone else older than them at processing the information necessary for voting. Psychologists have recognized two primary kinds of decisionmaking: “hot” cognition and “cold” cognition. Activities that entail “hot” cognition are those that are impulsive, include high levels of emotion or stress, and suffer from significant peer pressure.²³ Individuals’ brains are not fully developed to make proper “hot” cognition decisions until about age twenty-one, or perhaps twenty-four or twenty-five.²⁴ “Cold” cognition activities, on the other hand, require deliberation and measured decisionmaking.²⁵ Brains develop the full

²⁰ See Fair Labor Standards Act, 29 U.S.C. §§ 212, 213(c) (2012) (specifying restrictions on child labor); 29 C.F.R. § 570.2(a) (2015) (noting that the FLSA “sets a general 16-year minimum age which applies to all employment subject to its child labor provisions in any occupation other than in agriculture”); Peter J. McGovern, *Children’s Rights and Child Labor: Advocacy on Behalf of the Child Worker*, 28 S.D. L. REV. 293, 298 (1983) (“In general, the state laws parallel the restrictions and the statutory age breakdowns of the federal statutory scheme . . .”).

²¹ Kate Sutherland, *From Jailbird to Jailbait: Age of Consent Laws and the Construction of Teenage Sexualities*, 9 WM. & MARY J. WOMEN & L. 313, 314 (2003). The age of sexual consent in California, however, is eighteen. See CAL. PENAL CODE § 261.5(a) (West 2016).

²² See *Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, By State: 2015*, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/statereform/tab5_1.asp [<https://perma.cc/MF2B-9KJ2>] (last visited Oct. 23, 2016) (listing each states’ respective age requirements for compulsory school attendance). California, however, requires school attendance up to age eighteen. *Id.*

²³ Laurence Steinberg, *A 16-Year-Old Is as Good as an 18-Year-Old—or a 40-Year-Old—At Voting*, L.A. TIMES (Nov. 3, 2014) <http://www.latimes.com/opinion/op-ed/la-oe-steinberg-lower-voting-age-20141104-story.html> [<https://perma.cc/6PYM-CEM3>]; accord Patrick Begley, *Hot and Cold Thinking: Why 16-Year-Olds Are Smart Enough to Vote, but Not Drink*, SYDNEY MORNING HERALD (Mar. 27, 2015), <http://www.smh.com.au/nsw/nsw-state-election-2015/hot-and-cold-thinking-why-16-year-olds-are-smart-enough-to-vote-but-not-drink-20150212-13cpgo.html> [<https://perma.cc/UF2Y-CNQ5>] (discussing how there is no evidence to suggest that sixteen- and seventeen-year-olds cannot make informed decisions).

²⁴ See *supra* note 23 and accompanying text.

²⁵ See *supra* note 23 and accompanying text.

mechanism for appropriate “cold” cognition by age sixteen.²⁶ These “cold” cognition capabilities do not improve in later years.²⁷

Voting requires “cold” cognition.²⁸ It occurs on a certain, known date, so individuals can take the time to learn about the candidates and issues in advance. There is typically little emotion or stress involved. Although there may be peer pressure to support a particular candidate, peer pressure is not a concern when individuals actually vote because of the secret ballot. As one psychologist notes, “[a]dolescents may make bad choices [in voting], but statistically speaking, they won’t make them any more often than adults.”²⁹ In one study, sixteen- and seventeen-year-olds scored about the same as older adults on measures of political tolerance, skill, efficacy, and interest.³⁰

Thus, nothing magical happens, from a psychological or cognitive standpoint, when someone turns eighteen. But something magical *does* occur by at least age sixteen, because by that time individuals have gained the cognitive capabilities to engage in measured, reasoned decisionmaking. This fact is probably why, as mentioned earlier, we allow sixteen-year-olds to drive, work in part-time jobs, consent to sexual activity, and drop-out of school (in many states). If we already treat these young people like “adults” in these settings—because we believe they are cognitively mature enough to make these decisions—then there is little reason why we should not also extend to them the right to vote.

Some might protest that, because of their young age and because most youth are still living with their parents, granting voting rights to sixteen- and seventeen-year-olds is tantamount to giving their parents an extra vote. In other words, parents could unduly influence, or even require, their children to vote in a certain way. Yet this was the same kind of specious argument that

²⁶ See *supra* note 23 and accompanying text.

²⁷ See Vivian E. Hamilton, *Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority*, 77 BROOK. L. REV. 1447, 1504-10 (2012) (surveying various cognitive studies and concluding that “adolescents’ basic cognitive abilities are mature by the age of sixteen, giving them the capacity to process information and make rational decisions. But the heightened sensitivity to reward that increases and peaks around midadolescence inclines young people towards risk taking, sensation seeking, and impulsivity. These inclinations may dominate or overwhelm their cognitive processes and shape their behaviors, especially in situations triggering heightened emotion or pressure.”). Some psychologists, however, have questioned whether age is the driving force behind poor decisionmaking among youth—instead suggesting that socioeconomic inequalities may be the more important factor. See generally Mike Males, *Age, Poverty, Homicide, and Gun Homicide: Is Young Age or Poverty Level the Key Issue?* SAGE OPEN (Mar. 5, 2015) <http://sgo.sagepub.com/content/spsgo/5/1/2158244015573359.full.pdf> [<https://perma.cc/KLG7-GRUW>] (noting that some studies of youth behavior fail to control for socioeconomic status).

²⁸ Steinberg, *supra* note 23.

²⁹ *Id.*

³⁰ Daniel Hart & Robert Atkins, *American Sixteen- and Seventeen-Year-Olds Are Ready to Vote*, 633 ANNALS AM. ACAD. POLI. & SOC. SCI. 201, 212-13 (2011).

many people used in opposing the Nineteenth Amendment's extension of the right to vote to women: that wives would simply follow their husbands at the voting booth.³¹ Not only is that argument itself insulting, it is simply not true. Married women have never blindly adhered to how their husbands want them to vote.³² Moreover, in places that have lowered the voting age, such as Scotland, studies show that young individuals do not just follow their parents. For instance, one survey leading up to the Scottish independence vote of 2014 found that only about half of sixteen- and seventeen-year-olds planned to vote the same way as their parents.³³

In sum, psychological studies, as well as prior experience in places that have tried it, support lowering the voting age to sixteen. This reform also comports with an understanding of democracy that favors a broader electorate with a high turnout rate.

CONCLUSION

This Essay has not yet addressed the elephant in the room (pun intended): politics. The conventional wisdom is that younger voters will skew the electorate to the left, as young people tend to support Democrats.³⁴ Of course, there is no guarantee that sixteen- and seventeen-year-olds will always vote for Democrats. We simply do not know, *ex ante*, who might benefit from this reform. Further, an expanded electorate simply gives all political parties the opportunity to recruit new members at an early age. In any event, the ideal of an expanded electorate and higher turnout should outweigh any political concerns. There is a strong moral claim that democracy is better when more people participate.³⁵ That said, nothing I can write here

³¹ See Eleanor Barkhorn, 'Vote No on Women's Suffrage': Bizarre Reasons for Not Letting Women Vote, ATLANTIC (Nov. 6, 2012) <http://www.theatlantic.com/sexes/archive/2012/11/vote-no-on-womens-suffrage-bizarre-reasons-for-not-letting-women-vote/264639/> [<https://perma.cc/HQU9-8E8E>] (presenting a pamphlet from 1910 that argued women should not be allowed to vote because "80% of the women eligible to vote are married and can only double or annul their husband's votes").

³² Cf. Alex Wagner, *Marriage after Trump*, ATLANTIC (Oct. 18, 2016) <http://www.theatlantic.com/politics/archive/2016/10/marriage-after-trump/504440/> [<https://perma.cc/QW3F-LRT8>] (noting that married couples are increasingly voting for different presidential candidates).

³³ Emma Langman, *Scottish Independence: Research Finds Young Voters 'Don't Copy Parents'*, BBC NEWS (Mar. 4, 2014) <http://www.bbc.com/news/uk-scotland-scotland-politics-26265299> [<https://perma.cc/E9MG-XFJV>].

³⁴ For instance, in the 2012 Presidential Election, 60% of voters aged eighteen through twenty-nine voted for Democratic nominee President Barack Obama, as compared to 37% voting for Republican nominee Governor Mitt Romney. *How Groups Voted in 2012*, ROPER CTR., <http://ropercenter.cornell.edu/polls/us-elections/how-groups-voted/how-groups-voted-2012/> [<https://perma.cc/592C-EBSK>] (last visited Oct. 23, 2012).

³⁵ See, e.g., Hamilton, *supra* note 27, at 1479 (arguing "that a democratic government derives its authority from the individuals governed by it," which "presumptively entitles the[se] individual[s]

will convince those who will look at this issue *purely* through a partisan lens that lowering the voting age will necessarily help or hurt one side or the other.

But the legal and policy arguments, separate from politics, are strong. Eighteen is the current voting age largely through historical accident. Sixteen makes more sense from both legal and psychological perspectives. We impose legal obligations on sixteen-year-olds through driving laws and tax obligations, and we believe they are mature enough to consent to sexual activity and drop-out of school (in most states). Psychologically, sixteen-year-olds are no different from older individuals in making the reasoned decisions required of voting. We should allow them to participate in our democratic system.

The benefits of lowering the voting age are myriad. Lowering the voting age will likely increase turnout, perhaps for years to come. It will give young people, who are engaged already in their local communities, a political voice. This voice, in turn, will force politicians to pay greater attention to the views and needs of younger individuals, who, after all, will have to live with the consequences of policy decisions for much longer than older voters.

All of this is to say that bringing people into the political system earlier in their lives will have tangible future benefits. If the right to vote is our most precious, fundamental right, then we should extend it to anyone who is competent enough to make democratic decisions and has a sufficient, actual stake in the outcome. For these reasons, San Francisco, and other cities, should lower the voting age to sixteen.

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to participate in the governance of a democratic system” by, for instance, voting); *see also* Douglas, *supra* note 11 (discussing the benefits of extending the vote to sixteen- and seventeen-year-olds).