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Youth Suffrage: In Support of the Second Wave

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YOUTH SUFFRAGE: IN SUPPORT OF THE SECOND WAVE

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INTRODUCTION

The 100th anniversary of the 19th Amendment to the United States Constitution is an appropriate moment to reflect on the history—and consider the future—of the right to vote in the United States. High school and college classes teach the nation’s suffrage story as integral to our identity, focusing on the enfranchisement of women under the 19th Amendment and African Americans pursuant to the 15th Amendment.¹ Constitutional law courses also present the 15th Amendment as foundational knowledge for the legal profession.² Critical legal theory and women’s legal history texts frequently cover the 19th Amendment as central to understanding the first wave of feminism in this country.³

1. See, e.g., Voting Rights Readings and Lessons, CIVIL RIGHTS TEACHING (2017), <https://www.civilrightsteaching.org/voting-rights> [<https://perma.cc/MV2L-DL3Z>].

2. See, e.g., Jack M. Balkin, *Con Law Fall 2016 Syllabus*, YALE U. (2016), <https://jackbalkin.yale.edu/balkin-con-law-fall-2016-syllabus> [<https://perma.cc/UW3X-WS86>] (apparently covering race and voting, women and voting—but not youth and voting).

3. See generally TRACEY THOMAS & TRACEY BOISSEAU, *LAW, HISTORY & FEMINISM* (2011); Robin West, *Women in the Legal Academy: A Brief History of Feminist Legal Theory*, 87 *FORDHAM L. REV.* 977 (2018). See also Mae C. Quinn, *Feminist Legal Realism*, 35 *HARV. J. L. &*

In all these accounts, one important group of voters—and efforts relating to their election law rights—gets left out. That group is youth.⁴ In 1971, when the 26th Amendment was ratified, the minimum voting age dropped nationwide from 21 to 18—granting additional citizenship privileges to millions in this country.⁵ Now, nearly 50 years later, we find ourselves riding another wave of advocacy around youth suffrage. Today many are calling for further expansion of youth voting rights to allow those as young as 16 to cast their ballots.⁶

This article seeks to surface youth suffrage as an important feature of our shared history and heritage, suggesting it is a significant site for further discussion and analysis of the idea of citizenship. It also counters simplistic understandings of constitutional capacity in this country and pushes back against our longtime commitment to childism in United States law and daily life. It proceeds in three parts.

Part I begins with an account of this nation's first-wave youth suffrage movement which culminated with the ratification of the 26th Amendment in 1971. It explains how this constitutional change allowed for 18, 19, and 20 year olds to vote nationwide. However, it goes on to describe how pushback against youthful involvement in the democratic process soon emerged. As Part I further describes, throughout the 1970s, 1980s, and 1990s, adult stakeholders curtailed youthful franchise in a variety of ways—both intentionally and unintentionally. Strict voter registration and other requirements have worked to chill efforts of college students to cast their ballots. In addition, the criminalization of youth of color and poverty has caused many kids to lose voting rights even before they turn 18. And many simply avoid the polling place for fear of arrest. This history offers powerful context to better understand low turnout of

GENDER 1 (2012) (offering a history of feminist legal theory, including its discussion of the different “waves” of feminist thought).

4. To be sure, this telling elides others as well—including Native American women who did not receive the right to vote following the passage of the Fifteenth or Nineteenth Amendments. Alicia Ault, *How Women Got the Vote Is a Far More Complex Story Than the History Textbooks Reveal*, SMITHSONIAN MAG. (Apr. 9, 2019), <https://www.smithsonianmag.com/smithsonian-institution/how-women-got-vote-far-more-complex-story-history-textbooks-reveal-180971869/> [https://perma.cc/N6CU-BV2M]. Indeed, talking about voting rights in terms of Blacks and whites and men and women, also works to advance non-nuanced binary categories in this country that can work to erase identities in whole or part. As further described below, the same holds for the concept of child versus adult for purposes of voting. For more on these ideas, see Mae C. Quinn, *Black Women and Girls and the 26th Amendment: Constitutional Connections, Activist Intersections, and the First Wave Youth Suffrage Movement* (working title), 43 Seattle L. Rev. ____ (forthcoming 2020).

5. See *infra* Section II.

6. See *infra* Section IV.

youth voters and an alternative narrative to claims of youthful apathy and disconnection from political concerns.

Indeed, as Part II demonstrates, modern American youth—including those under the age of 18—are very much concerned and engaged with the world around them. From the Ferguson uprisings to the Parkland High School protests, the news has provided many examples of young people not just speaking up about political issues but actually impacting politics and outcomes. More than this, during the 21st century, 16 and 17 year olds in the United States have become political candidates themselves in an effort to have a seat at the local legislative table or Governor's mansion. They have also looked beyond our nation's boundaries to join forces with international allies to press for change around such important life and death issues such as global warming.

Part II thus describes the most recent wave of youthful activism—including seeking to further reduce the voting age in this country to allow youth as young as 16 to vote in all elections. We refer to this as the second-wave youth suffrage movement. Many believe that this is not a plausible political position, in part because recent federal legislative efforts on this front have failed. But as Part II further describes, the second-wave youth suffrage movement is not only supported by the strong evidence of meaningful engagement of young teens with important issues of our times, but other compelling developments. First, several localities in this country have reduced the voting age to 16 without any significant issues. The same holds true for purposes of registering to vote in state elections and primaries. Second, lowering the voting age to permit younger teens to vote is consistent with international norms and emerging practices in countries around the globe. Many people do not realize that countless countries already let teens younger than 18 vote in all elections.

Part IV provides further support for the second-wave youth suffrage movement. It argues that expanding youth suffrage to 16 and 17 year olds would help this country begin to better grapple with the problem of childism that has long existed in United States law and life. Young people as a group historically have been overlooked and ignored as persons with thoughts, ideas, and capacities. While they may, in some respects, be seen as vulnerable persons in need of protection, we should not discount their abilities to inform the nation's future. Moreover, this position is consistent with other constitutional doctrines relating to children. The United States Supreme Court has noted that youth are categorically less culpable than adults and therefore generally should be evaluated differently when it comes to criminal sentences. But making sure that criminal accountability systems consider adolescent development is wholly consistent with also

supporting healthy growth in youth by helping them develop as engaged citizens and moral actors.

In the end, this article supports calls for extending suffrage to those ages 16 and 17. Such a change, it concludes, would be consistent with the remarkable capacities of modern youth in this country, shifts in global thinking about the need for more youthful engagement, and nuanced understandings of the most recent United States Supreme Court cases that define the category of youth.

I. YOUTH SUFFRAGE'S 20TH CENTURY FIRST WAVE—18 AND UP TO VOTE

A. *26th Amendment Ratification, Roll Out, and Rumbblings of Resistance*

Less than four months after it was approved by Congress, the 26th Amendment to the United States Constitution was fully ratified by the states in July 1971.⁷ While it was the most quickly ratified federal constitutional Amendment in United States history,⁸ the journey to that point was anything but speedy or straightforward.⁹

Despite what many have claimed, the passage of the 26th Amendment was not just a reaction to the 1970 Supreme Court case of *Oregon v. Mitchell*.¹⁰ *Mitchell* held that, absent constitutional change, the federal legislature could only address age requirements in federal elections—not state races.¹¹ Nor was it singularly brought about by anger regarding the Vietnam War draft, which sent thousands of men under the age of 21 to fight overseas.¹² Instead, robust efforts to reduce the voting

7. U.S. CONST. amend. XXVI, § 1 (“The right of the 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 by any state, on account of age.”).

8. See *Nixon Hails Youth Vote as 26th Amendment is Certified at the White House*, N.Y. TIMES, July 6, 1971, at 1 [hereinafter *Certified at the White House*]. See also THOMAS H. NEALE, CONG. RESEARCH SERV., 83-103 GOV, THE EIGHTEEN YEAR OLD VOTE: THE TWENTY-SIXTH AMENDMENT AND SUBSEQUENT VOTING RATES OF NEWLY ENFRANCHISED AGE GROUPS 14 (1983) (noting the Amendment was ratified with “unprecedented speed.”).

9. See WENDELL W. CULTICE, YOUTH'S BATTLE FOR THE BALLOT: A HISTORY OF VOTING AGE IN AMERICA (1992); See also Jenny Diamond Cheng, *Voting Rights for Millennials: Breathing New Life into the Twenty-Sixth Amendment*, 67 SYRACUSE L. REV. 653 (2017); Quinn, *supra* note 4.

10. See *Oregon v. Mitchell*, 400 U.S. 112 (1970).

11. See, e.g., *Certified at the White House*, *supra* note 8, at 21 (suggesting that the outcome in *Mitchell* necessitated ratification of the 26th Amendment).

12. See Eric S. Fish, Note, *The Twenty-Sixth Amendment Enforcement Power*, 121 YALE L. J. 1168, 1170 (2012) (noting the Twenty-Sixth Amendment is “conventionally understood” as responsive to youthful uprisings relating to the Vietnam War draft); *Jolicoeur v. Mihaly*, 488 P.2d 1,

age from 21 to 18 can be traced back several decades earlier to at least the 1940s in the United States.¹³ Such 20th century activism around the issue might be characterized as the first wave of the youth suffrage movement in the modern era.¹⁴

Young people were not always the most vocal proponents during the youth suffrage movement's first wave, but by the end of the 1960s, several youth-led organizations, including the NAACP's Youth and College Division, helped convince the country that 18 year olds nationwide deserved the right to vote.¹⁵ Thus, by November 1971, 11 million new voters were eligible to go to the polls in federal, state, and local elections—at least in theory.¹⁶

NAACP and other groups led voter registration drives targeting 18, 19, and 20 year olds.¹⁷ Thus, many believed that newly minted young voters would come together as a united progressive front during the presidential election.¹⁸ Yet, in 1972, Nixon still beat his Democratic

7 (Cal. 1971) (“America’s youth entreated, pleaded for, demanded a voice in the governance of this nation. . . . And in the land of Vietnam they lie as proof that death accords youth no protected status.”).

13. See CULTICE, *supra* note 9 (describing how the issue had been raised intermittently since the nation’s founding but was not addressed in any sustained way until the 1940’s). See also NEALE, *supra* note 8, at 4 (recounting that “broad support” for reducing the voting age did not emerge until the Second World War).

14. For more on the first wave phenomenon and the leadership role Black youth played in that effort, see Quinn, *supra* note 4; Cf. Jenny Diamond Cheng, *supra* note 9, at 667–73 (suggesting that the passage of the 26th Amendment was largely a top-down affair with little in the way of meaningful youthful engagement with the issue). For pre-20th century efforts to expand youth suffrage, see CULTICE, *supra* note 9.

15. See CULTICE, *supra* note 9, at 99–106; Quinn, *supra* note 4 (focusing on the significant contributions of Black youth, including Carolyn Quillion, to the first-wave youth voting rights movement). See also NAACP 62nd Annual Convention Resolutions, CRISIS, Mar. 1972, at 1, 7 (publishing the July 1971 Resolutions, adopted at the NAACP’s National Convention, which included a history of the Youth and College Division’s ongoing engagement and advocacy around youth voting rights).

16. CULTICE, *supra* note 9, at 232–35 (claiming that more than 11 million new youthful voters were eligible to register for the 1971 November election); NEALE, *supra* note 8, at 16 (same). *But see* Warren Weaver, *Impact of Youth Vote in 1972 is Unclear*, N.Y. TIMES, Nov. 4, 1971, at 35 (suggesting that the 26th Amendment opened the door to nearly 25 million new voters for the 1972 general election).

17. See NAACP 62nd Annual Convention Resolutions, *supra* note 15, at 7. See also John Lewis and Archie E. Allen, *Black Voter Registration Efforts in the South*, 48 NOTRE DAME L. REV. 105, 118, 127–31 (1972) (calling for engagement by young Black voters following ratification of the 26th Amendment); Mark Leonard Newman, *The Millennial Generation: A New Group of Young, Political Actors on the Stage 17–20* (2008) (unpublished thesis, Georgetown University Graduate School of Arts and Sciences) (on file with author) (recounting the work of the Youth Citizenship Fund and National Movement for the Student Vote, which registered young voters prior to the 1972 presidential election at high schools, colleges, parks, and other settings).

18. See John Aloysius Farrell, *Capturing the Youth Vote*, DENVER POST (Aug. 11, 2008), <https://www.denverpost.com/2008/08/11/capturing-the-youth-vote/> [<https://perma.cc/VLH7-T6X5>]

challenger, George McGovern.¹⁹ In fact, 33.7% of all potential voters supported Nixon as compared to only 26.4% during the 1968 election.²⁰

Interestingly, while Nixon's approval rating among potential voters increased, the total percentage of participating voters decreased between 1968 and 1972. Almost 61% of the eligible electorate voted in the 1968 presidential election, but only 55.4% voted in 1972. In addition, only half of all possible voters aged 18 to 20 participated in the 1972 presidential race.²¹ Thus, youth turned out at a significantly lower rate than the rest of all eligible voters.²²

In the 1980 election, youth voter turnout reached a low of 39.9%.²³ Voting rates of minority youth were even lower with a Black youth voting rate of 30.1% and Hispanic youth voting at a rate of 15.9% that year.²⁴ There were also disparities with regard to which youth *registered* to vote.²⁵ In 1980, a total of 49.2% of young voters were registered but 51% of white youths were registered as compared to 41.3% of Black youths and 22.5% of Hispanic youths.²⁶ These numbers represent a decline from just eight years earlier, when a much larger segment of the youth population both registered and participated in the election.²⁷

Many claimed low youth voter turnout in the years immediately following ratification the 26th Amendment proved the concerns that were raised in opposition to it—that young people were just too irresponsible, immature, and/or unconcerned to take seriously the democratic privilege of voting.²⁸ To be sure, many youth age 18 to 20 who now had the right to vote questioned whether their participation in elections would matter. For instance, during a Florida television show filmed months after the 26th Amendment became law, one teen said he still felt disillusioned with

(recounting that in 1972 “anti-Nixon Democrats” had “persuaded themselves that the youth of America would rise up and carry George McGovern’s battered presidential campaign to victory.”); Weaver, *supra* note 16, at 35 (discussing possibility of youth voting blocks).

19. See CHARLES E. JOHNSON, JR., NON-VOTING AMERICANS 1, 8–9 (U.S. Dep’t of Commerce, 1980).

20. See *id.* at 7–9.

21. See NEALE, *supra* note 8, at 17 (reporting that 48.3% of eligible voters under the age of 21 went to the polls for the 1972 presidential race).

22. *Id.* at 16.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* 58.9% of youth registered while 49.9% voted in the 1972 election and meaning both statistics declined nearly 10 percentage points just eight years later.

28. See NEALE, *supra* note 8, at 16 and accompanying text; See generally Bart Cammeats, et al., *The Myth of Youth Apathy: Young Europeans’ Attitudes Towards Democratic Life*, 58 AM. BEHAV. SCI. 645 (2013).

the government and feared young voters were not taken seriously. “You’re never going to take the politics out of politics,” he lamented.²⁹

In addition, relatively low turnout rates for those under the age of 21 continued throughout the 1980s and 1990s, and persist today.³⁰ But studies have shown that limited numbers of youthful voters also may stem from lack of knowledge about the process, difficulties in registering, and other impediments to accessing the franchise.³¹ While it is difficult to know the exact number of young voters who have experienced such challenges, recent research demonstrates that when jurisdictions implement measures that make voting more difficult, fewer citizens appear on election day—especially young people.³² Indeed, many modern scholars and commentators have pointed to voter registration and residency restrictions as the real reasons young people do not come to the polls in higher numbers.³³ As the next section suggests, college students are one group that face many such difficulties when seeking to vote.³⁴

B. *Residency Requirements and Further Impediments for Student Voters*

Since the early days of voting rights for 18 to 21 year olds, college students have faced significant barriers to casting ballots.³⁵ Much of the

29. *Youths Probe Voting Right*, PALM BEACH POST, July 23, 1971. Interestingly, some groups did see youth as an important group to access to advance their agenda—such as NASA. See Frank Macomber, *NASA Seeking the Support of Youthful Voters*, NAPLES DAILY NEWS, Nov. 4, 1971. This may be an example of the politics in politics concern identified by the Florida youth quoted above.

30. SHANTO AYENGAR & SIMON JACKMAN, TECHNOLOGY AND POLITICS: INCENTIVES FOR YOUTH PARTICIPATION 1–2 (Center for Information and Research on Civic Engagement 2003) (providing data regarding youth voter turnout during the 1976 presidential and 1978 non-presidential election cycles); *Youth Voting, Appendix 1*, CHILD TRENDS (Sept. 14, 2016), <https://www.childtrends.org/indicators/youth-voting> [<https://perma.cc/XCP5-UCLZ>].

31. See JOHNSON, *supra* note 19 (addressing impediments to voting that might explain historically low turnout rates in the United States, including complicated or demanding voter registration requirements); NEALE, *supra* note 8, at 17 (speculating about a range reasons explaining why those newly enfranchised by the 26th Amendment did not go to the polls in 1972).

32. See Joshua Harder & Jon A. Krosnick, *Why Do People Vote? A Psychological Analysis of the Causes of Voter Turnout*, 64 J. SOC. ISSUES 525, 528 (2008). See also Sarah Jackel and Stuart Thompson, *Opinion, The Myth of the Lazy Non-Voter*, N.Y. TIMES (Oct. 5, 2018), <https://www.nytimes.com/interactive/2018/10/05/opinion/midterm-election-voter-turnout-photo-id.html> [<https://perma.cc/DWQ6-859R>].

33. *Id.*

34. *Id.*

35. See, e.g., Elizabeth Aloi, *Thirty-Five Years After the 26th Amendment and Still Disenfranchised: Current Controversies in Student Voting*, 18 NAT’L BLACK L. J. 283, 294–95 (2004–2005). See also *Opinion, Keeping Students From the Polls*, N.Y. TIMES (Dec. 26, 2011), <https://www.nytimes.com/2011/12/27/opinion/keeping-college-students-from-the-polls.html> [<https://perma.cc/W57H-YKR6>].

issue centers on how jurisdictions interpret “domicile” or “residence” for purposes of voting.³⁶ Many states adopted “gain or lose” provisions that state no person can gain or lose their residence or domicile while attending school.³⁷ Some have tried to use such provisions to force students to vote where their parents live.³⁸ Several lawsuits have sought to ban such restrictions when imposed upon college students.

During the 1970s and 1980s, several cases challenged the concept of domicile under the 26th Amendment.³⁹ For instance, in 1980 in *Matter of Falcher*, a Long Island trial court considered the question of whether two college students, Andrea Falcher and Janet Allen, resided where they attended school or retained the residence of their parents.⁴⁰ Falcher and Allen went to Adelphi University in Nassau County, New York, living there for two years prior to seeking to vote.⁴¹ The students’ parents lived in Queens County.⁴²

At the time, New York’s election law required the local Board of Elections to consider an applicant’s conduct surrounding their intention to vote, including sources of income, residence of parents, leaseholds, and personal property holdings.⁴³ Applying this test, the Board concluded Falcher and Allen were local residents on Election Day and were entitled to vote in Nassau County.⁴⁴ But because the Board’s process to determine whether the students were entitled to vote concluded at 8:40 p.m., and the polls closed at 9:00 p.m., they were prevented from casting their votes at the polling place.⁴⁵ Following an emergency application on behalf of the students, the trial court ordered the Board of Elections to provide the youth with paper ballots to submit their votes belatedly.⁴⁶ In doing so, the trial court noted that, given low voter turnout generally: “we should look to encourage a greater participation in the voting process and not seek to impede and restrict the right to vote.”⁴⁷ The Board apparently did not take an appeal.

36. Rakesh C. Lal, *What Johnny Didn’t Learn in College: The Conflict Over Where Students May Vote*, 26 BEVERLY HILLS B. ASS’N J. 28, 29 (1992).

37. *Id.* at 29.

38. *Id.*

39. *See e.g.*, *Dyer v. Huff*, 382 F. Supp 1313 (D. S.C. 1973).

40. *Matter of Falcher*, 433 N.Y.S.2d 981, 983 (N.Y. App. Div. 1980).

41. *Id.* at 297.

42. *Id.*

43. *Id.* at 298.

44. *Id.*

45. *Id.*

46. *Id.* at 298–99.

47. *Id.* at 300.

Matter of Falcher is not an outlier. Instead, it is demonstrative of the kinds of barriers many young people face when they seek to vote. It also begins to provide better understanding of why some youth may feel that voting is more trouble than it is worth. Indeed, just two years after *Falcher*, the Second Circuit Court of Appeals ruled against a group of similarly situated youth in *Auerbach v. Rettaliata*.⁴⁸ In *Rettaliata*, students pursued class action relief after being barred from voting where they attended college. They directly challenged Section 5-104 of the New York Election Law—the same statute at issue in *Falcher*.

Section 5-104 defined “residence” for voting purposes as “that place where a person maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return.”⁴⁹ The Second Circuit found that using the test described in *Falcher* to interpret this statute did not establish a different substantive standard for students than others. Instead, the standard properly identified “recognizable categories of persons whose presence in this State might properly be deemed transient and who thus present special problems in determining residence for voting purposes.”⁵⁰ Therefore, the New York law did not violate the Equal Protection Clause by applying additional requirements to students that were not applied to other citizens in the same communities.⁵¹

A year later in *Williams v. Salerno*, the Second Circuit Court of Appeals again considered New York election law for student voters.⁵² In September of 1983, nearly 450 students at the State University of New York at Purchase tried to vote locally.⁵³ However, most of the applicants were denied the right to vote in Purchase by the Board of Elections, which determined college dorms could not be considered a “fixed, permanent home” for purposes of voting.⁵⁴ These students sought and received preliminary injunctive relief in the Northern District of New York.⁵⁵

The Second Circuit found Section 5-104 of New York’s Election Law to be facially valid but it upheld the finding that the Board was interpreting and applying the law in an unconstitutional manner.⁵⁶ To be sure, students living in dormitories could not live in such quarters

48. *Auerbach v. Rettaliata*, 765 F.2d 350, 356 (2d Cir. 1985).

49. *Id.* at 351.

50. *Id.* at 354.

51. *Id.*

52. *Williams v. Salerno*, 792 F.2d 323, 325 (2d Cir. 1986).

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 327–28.

permanently. But they could still abandon their former residences with intent to remain where they attended school.⁵⁷ Otherwise, an entire class of potential voters—students—might become disenfranchised.⁵⁸

Students on the West Coast have faced similar efforts to squelch their involvement in the electoral process resulting in yet more litigation. A 1983 Santa Cruz investigation claimed voting irregularities took place at four on-campus precincts at the University of California, Santa Cruz, violating Section 200 of the California Election's Code.⁵⁹ Specifically, over 400 of those who voted on campus were believed to be domiciled elsewhere at the time of the election because they had not yet secured permanent housing after moving out of their dormitories.⁶⁰ Thus, their votes were challenged as improper in *Walters v. Weed*.⁶¹

However, in 1988, the California Supreme Court upheld the election results, allowing the students' votes to be counted. The Court agreed with the complainants that Section 200 controlled the issue of ascertaining a citizen's residence or domicile for purposes of voting.⁶² However, it went on to hold that a person does not lose a domicile until they gain a new one. Thus, students who recently moved out of their dorms but had yet to secure new housing could use the address of their prior residence for voting purposes.⁶³

Notably, however, it took five years of litigation—with a state high court decision in 1988—to ensure that college students who voted in 1983 had their voices heard.⁶⁴ And similar efforts to suppress student voting continue today. This can be seen, for instance, in strict voter identification requirements that preclude the use of college identification cards at the polls, early registration requirements that may blindsides college students who are new to town, and threats to investigate those who vote locally but are paying out of state tuition.⁶⁵ As the New York Times' editorial board correctly noted: “[i]mposing these restrictions to win an election will embitter a generation of students in its first encounter with the machinery of democracy.”⁶⁶

57. *Id.* at 328.

58. *Id.*

59. *Walters v. Weed*, 752 P.2d 443, 444 (Cal. 1988).

60. *Id.*

61. *Id.*

62. *Id.* at 446.

63. *Id.* at 447.

64. *Id.* at 444.

65. See *Keeping Students From the Polls*, *supra* note 35.

66. *Id.*

C. *Criminalization of Youth of Color and Poverty as Disenfranchisement Drivers*

Of course, college students are not the only youth impacted by restrictive registration schemes and structural impediments to democratic participation. Youth who do not attend college may have their right to vote chilled in other ways—both direct and indirect. For instance, the over-criminalization of youth of color in this country has resulted in a disproportionate number of Black and Brown children charged as adults for events that occur long before they reach voting age. In some jurisdictions, like the state of Virginia, even very young teens may wind up with adult felony convictions on their records that will forever bar them from participating in elections.⁶⁷ In that state, while only 20% of the youth population are African American, African American youth represent 73% of the youth transferred to adult criminal court.⁶⁸

In places like Missouri, being on active probation for a felony conviction also bars an individual from voting. There is no express exception for those convicted in adult court and placed on probation while under the age of 18, a supervision term that can last as long as five years.⁶⁹ And such Missouri matters—whether juvenile transfer or direct-file cases for 17 year olds—are also rife with racial disproportionality.⁷⁰

After completing prison, jail, or probation terms, some youthful offenders may remain unable to vote because of their inability to satisfy related financial sanctions. In some places, the right to vote is not restored until a convicted person satisfies outstanding fines, court fees, and restitution.⁷¹ But failure to pay is largely driven by indigence, however,

67. See Liz Ryan, *Losing the Right to Vote, Even Before Getting It*, JUV. JUST. INFO. EXCH. (Nov. 3, 2014), <https://jjiie.org/2014/11/03/losing-the-right-to-vote-even-before-getting-it/> [https://perma.cc/YF5Q-QZAE].

68. *Id.* See also Candace Manriquez Wrenn et al., *Voting Rights Advocates Equate Fees to Modern-Day Poll Tax*, MARKETPLACE (July 31, 2019), <https://www.marketplace.org/2019/07/31/voting-rights-advocates-equate-fees-to-modern-day-poll-tax/> [https://perma.cc/YRS6-M6Z9].

69. *Elections and Voting: Frequently Asked Questions*, MISSOURI SECRETARY OF ST., <https://www.sos.mo.gov/elections/goVoteMissouri/votingrights> [https://perma.cc/53ZK-6PUP].

70. See Jeree Michele Thomas & Mel Wilson, *The Color of Youth Transferred to the Adult Criminal Justice System: Policy & Practice Recommendations*, NAT'L ASS'N SOC. WORKERS 1, 14 (2017) (noting that when it comes to treating minors like adults in Missouri for purposes of criminal prosecution, “[r]acial disproportionality remains an ongoing challenge in the state.”).

71. See, e.g., Allyson Fredericksen & Linnea Lassiter, *Disenfranchised by Debt*, ALLIANCE FOR A JUST SOC. (Mar. 2016), <http://allianceforajustsociety.org/wp-content/uploads/2016/03/Disenfranchised-by-Debt-FINAL-3.8.pdf> [https://perma.cc/D57G-9RSU]. Notably, formerly incarcerated citizens in the state of Florida sued to prevent their outstanding fines and fees precluding election participation pursuant to Amendment 4. A judge has ruled in their favor, at least temporarily. Gary Fineout, *Judge Hits Florida Law Limiting Felon Vote in Limited Ruling*, POLITICO

and not willful desire to violate the law by such youth.⁷² The same can hold true for failure to pay child support, another ground that may be used to disqualify young parents from voting.⁷³ As a result, youth—particularly young persons of color—can essentially be disenfranchised based upon their poverty alone.⁷⁴

Even teens involved in minor matters, such as municipal and traffic cases, may wind up avoiding polling places because of their court system involvement. This is because in many localities such low-level cases result in the issuance of arrest or bench warrants for unpaid fines or fees, or failure to appear in court on a payment date.⁷⁵ This practice received national attention in connection with events in Ferguson, Missouri, following the 2014 shooting death of Michael Brown, an unarmed Black teenager killed by white police officer Darren Wilson during an incident that began as a jaywalking matter.⁷⁶

Indeed, when youthful protesters took to the streets of Ferguson, it was not only because of Brown's murder.⁷⁷ As national and international

(Oct. 18, 2019), <https://www.politico.com/states/florida/story/2019/10/18/judge-hits-florida-law-limiting-felon-vote-in-limited-ruling-1225697> [<https://perma.cc/ESV8-RXGU>].

72. See also Tamar Birkhead, *The New Peonage*, 72 WASH. & LEE L. REV. 1595 (2015); Candace Johnson & Mae C. Quinn, *Chaining Kids to the Ever-Turning Wheel: Other Contemporary Costs of Juvenile Court Involvement*, 73 WASH. & LEE L. REV. ONLINE 159 (2016).

73. See *Johnson v. Bredesen*, 624 F.3d 742, 745 (6th Cir. 2010).

74. Karin Martin & Anne Stuhldreher, *These People Have Been Barred from Voting Today Because They're in Debt*, WASHINGTON POST (Nov. 8, 2016), <https://www.washingtonpost.com/posteverything/wp/2016/11/08/they-served-their-time-but-many-ex-offenders-cant-vote-if-they-still-owe-fines/> [<https://perma.cc/3J4E-9QM2>].

75. Radley Balko, *How Municipalities in St. Louis County, MO, Profit from Poverty*, WASH. POST (Sept. 3, 2014), <https://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/> [<https://perma.cc/PJS5-7CG3>].

76. See, e.g., *Don't Shoot*, SBS DATELINE (Aug. 25, 2014), <https://www.sbs.com.au/news/dateline/tvepisode/don-t-shoot> [<https://perma.cc/V37Y-C6KH>] (interviewing author Mae Quinn in connection with the facts around Michael Brown's death—which the Chief of Police initially indicated stemmed from a traffic stop and nothing more).

77. Although a St. Louis County Grand Jury failed to bring any charges against Wilson, many noted at the time that the procedure was tainted. See William Freivogel, *Should There Be New Ferguson Grand Jury? Can There Be?*, ST. LOUIS PUB. RADIO (Jan. 13, 2015), <https://news.stlpublicradio.org/post/should-there-be-new-ferguson-grand-jury-can-there-be#stream/0> [<https://perma.cc/RXD6-2LRX>]. Prosecutor Robert McCulloch provided Wilson with greater protections and process than any accused youth of color in his county, going so far as to have his staff attorneys help present Wilson's defense. Marsha Levick & Mae C. Quinn, *When Will Youth of Color Receive the Same Due Process as Officer Darren Wilson?*, HUFFINGTON POST (Sept. 2, 2014), https://www.huffpost.com/entry/reflections-on-justice-af_b_5748592 [<https://perma.cc/ZD3C-977Z>] (As further described below, McCulloch has since been voted out of office. The newly elected prosecutor—the first Black prosecutor in St. Louis County—fired the line attorneys who oversaw Wilson's grand jury proceeding. Therefore, many are still calling for Wilson's indictment for unjustified homicide given the apparent prosecutorial bias in Wilson's favor. See Owen Daugherty, *Prosecutor in Michael Brown Shooting Case Fired*, THE HILL (Jan. 2, 2019),

news outlets reported, that tragedy served as the last straw for a community where white police officers had long targeted Black residents in traffic and pedestrian stops. This resulted in unpaid municipal fines and fees, followed by arrest warrants for failure to pay.⁷⁸ Shockingly, at the time of Brown's death, the small town of Ferguson had nearly 16,000 outstanding arrest warrants on the books for minor matters—a number that reflected nearly 75% of the town's total population.⁷⁹

Many of those warrants were issued for 16 and 17 year olds with tickets and low-level cases.⁸⁰ Youth with such warrants are less likely to appear in government-monitored settings like school or polling places.⁸¹ Therefore, their right to vote is chilled when police are present at election polling stations. It is more problematic yet when they are located within police stations, a phenomenon that appears to be on the rise.⁸²

Thus, claims that young people do not vote because they are apathetic, or unconcerned about the world around them, fail to appreciate the complexity of the situations they face. This may be why initiatives like the 1990's Rock the Vote, which was rolled out under the banner of

<https://thehill.com/homenews/state-watch/423574-prosector-who-provided-evidence-to-grand-jury-that-didnt-indict-officer> [<https://perma.cc/WC3X-SC4V>]; *Michael Brown's Father Seeks New Investigation of Son's Shooting*, WASH. POST (Aug. 9, 2019), https://www.washingtonpost.com/national/michael-browns-father-seeks-new-investigation-of-sons-shooting/2019/08/09/c333c852-b4d0-11e9-951e-de024209545d_story.html [<https://perma.cc/BD73-REX3>].

78. Blake Ellis & Melanie Hickson, *One Year After: Ferguson is Still Pumping Out Arrest Warrants*, CNN (Aug. 6, 2015), <https://money.cnn.com/2015/08/06/news/ferguson-arrest-warrants/index.html> [<https://perma.cc/DXV6-6GR4>].

79. *ArchCity Defenders: Municipal Courts White Paper*, ARCHCITY DEFENDERS (Nov. 23, 2014), <https://www.archcitydefenders.org/wp-content/uploads/2019/03/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf> [<https://perma.cc/2SJM-DQPR>]. See also *Investigation of the Ferguson Police Department*, U.S. DEP'T OF JUST., C.R. DIV. (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [<https://perma.cc/7DNE-S96A>].

80. See Mae C. Quinn, *In Loco Juvenile Justice, Minor in Munis, Cash from Kids, and Pro Se Adolescent Advocacy—Ferguson and Beyond*, 2015 BYU L. REV. 1247 (2016). See also Mae C. Quinn, *Open Letter to Mayor of Ferguson: Amnesty Would Make Amends*, ST. LOUIS AM. (Sept. 24, 2014), http://www.stlamerican.com/news/columnists/guest_columnists/open-letter-to-mayor-of-ferguson-amnesty-would-make-amends/article_8b705cd2-4414-11e4-b812-5fddef440f5c.html

[<https://perma.cc/QED5-VGSW>] (calling on Ferguson's mayor to grant amnesty for all warrants, fines, and fees for those who were processed by its Municipal Court while under the age of eighteen).

81. John Brecher, *Kids in Court: Is it Time to Raise the Age of Criminal Responsibility?*, NBC NEWS (Jan. 20, 2015), <https://www.nbcnews.com/feature/in-plain-sight/kids-court-it-time-raise-age-criminal-responsibility-n289566> [<https://perma.cc/9KED-7MLE>] (recounting how youth with municipal court warrants often hide out and avoid contact with police at all costs out of fear of incarceration based upon their poverty).

82. Sam Levine, *Georgia City Under Fire for Moving Polling Station to Police Station*, HUFFINGTON POST (Oct. 10, 2019), https://www.huffpost.com/entry/jonesboro-georgia-polling-location_n_5d9e0979e4b06ddf51272f0 [<https://perma.cc/9F2E-WKRG>].

motivating the otherwise unmotivated youth in this country, were not particularly effective in raising youth voting numbers.⁸³ Such efforts do not realistically address the manifold impediments that keep kids under the age of 21—whether college honor students from affluent backgrounds, or impoverished teens with outstanding traffic tickets—from pulling the lever on Election Day. Youth voter turnout is likely to improve if these matters are addressed.

II. (RE)EMERGING POWER OF YOUNG PEOPLE IN THE 21ST CENTURY

The reality is that modern youth from across all races and economic backgrounds very much care about issues impacting their friends, family, community, and futures. Nationwide, young people are demanding greater accountability on the part of the government, reform of broken systems, and a voice in the political process. Reminiscent of the 1960s and 1970s' protest era leading up to the ratification of the 26th Amendment, the first two decades of the 21st century have witnessed countless powerful actions led by and involving youth.

As further described below, from the #BlackLivesMatter uprisings, which took place across the country following events in Ferguson, to the March for Our Lives, organized by students from Parkland, Florida, after a shooter opened fire inside their high school, young people have come together to press for changes in law and societal norms. Many have gone so far as to play leadership roles in candidate campaigns and run for office themselves, sometimes even before legally eligible to vote. Most recently, consistent with this political consciousness, they have called for expanding the concept of youth suffrage to allow teens under the age of 18 to participate in national, state, and local elections.

A. *#ByeBob—#BlackLivesMatter, Ferguson Youth, Uprisings and Uprootings*

There are clear similarities among the youth engaged in the Ferguson uprising and young activists from 50 years before. They took to the streets while chanting “hands up, don’t shoot,” marched carrying banners, and found themselves arrested for their acts of civil disobedience. But youth like Alisha Sonnier, an 18 year old who participated in the nightly protests

83. See Scott Huffmon et al., *Rock & Roll Will Never Die? A discussion of the seeming failure of Rock the Vote, Address Before Annual Meeting of the American Political Science Association (August 28–31, 2003)* (noting one of the largest impediments to youth voting remains early closing dates for registration).

as part of a group called Tribe X, also turned to social media.⁸⁴ They used it to recruit others and shed light on police misconduct through filming.⁸⁵ Some criticized these new young activists as disorganized or even too brazen in their affirmative efforts to document police.⁸⁶ Reverend Al Sharpton apparently chided that such youth would be better off registering to vote than being in the streets.⁸⁷

Today, however, most recognize that Ferguson activists, many under the age of 18, inspired the #BlackLivesMatter movement to take hold nationwide.⁸⁸ This mantra and related organizing helped to shift the conversation about youth of color in America, opening the eyes of many—particularly white Americans—to the challenges and traumas Black and Brown youth face on a daily basis in this country.⁸⁹ All of this happened without any elections taking place. But, in the end, it appears youth helped to deliver the vote for Ferguson too.

In the local Ferguson election immediately following Mike Brown's death, voters turned out at twice the rate they had in years before. This still meant that only 30% of eligible voters participated.⁹⁰ But continued activism around Ferguson—driven to large degree by Black youth, for Black youth—ultimately led to the election of St. Louis County's first

84. Timothy Williams & John Eligon, *The Lives of Ferguson Activists, Five Years Later*, N.Y. TIMES (Aug. 9, 2019), <https://www.nytimes.com/2019/08/09/us/ferguson-activists.html> [<https://perma.cc/4JX8-VEEB>] (describing Sonnier's involvement with Tribe X and later political activism); John Eligon, *Protesters United Against Ferguson Decision, But Challenged in Unity*, N.Y. TIMES (Nov. 28, 2014), <https://www.nytimes.com/2014/11/29/us/protesters-united-against-ferguson-decision-but-challenged-in-building-movement.html> [<https://perma.cc/WXP3-T2KM>] (reporting "die-in" actions of Tribe X under Sonnier's leadership).

85. DeNeen L. Brown, *In Ferguson, Young Demonstrators Are Finding it's Not Their Grandparents' Protest*, WASH. POST (Aug. 21, 2014), https://www.washingtonpost.com/politics/in-ferguson-young-demonstrators-are-finding-its-not-their-grandparents-protest/2014/08/21/95110be0-28a0-11e4-86ca-6f03cbd15c1a_story.html [<https://perma.cc/R7SZ-3MWM>].

86. *Id.*

87. *Id.*

88. Shannon Luibrand, *How a Death in Ferguson Sparked a Movement in America*, CBS NEWS (Aug. 7, 2015), <https://www.cbsnews.com/news/how-the-black-lives-matter-movement-changed-america-one-year-later/> [<https://perma.cc/28B7-GEU7>].

89. See Mae C. Quinn, *Post-Ferguson Social Engineering: Problem-Solving Justice or Just Posturing?*, 59 HOWARD L. REV. 739 (2016) (describing the power of the #BlackLivesMatter movement and how it changed conversations in schools, workplaces, and communities across the country).

90. Aamer Madhani, *Voices: Ferguson Voter Turnout Disheartening*, USA TODAY (Apr. 9, 2015), <https://www.usatoday.com/story/news/2015/04/09/voter-turnout-ferguson-chicago/25527397/> [<https://perma.cc/D9V2-RGE5>].

Black prosecuting attorney, Wesley Bell, who replaced Robert McCulloch.⁹¹

Previously McCulloch had won seven terms, nearly always unopposed during primaries. Yet, Bell, a relatively unknown “Ferguson councilman with no trial experience,” was able to unseat McCulloch during the 2018 Democratic primary with the support of Ferguson activist groups like #WokeVoterSTL and Hands Up United, who helped register young Black voters.⁹² The 2018 primary saw 42% of registered voters come to the polls—an up-tick of 16 points as compared to 2016.⁹³ Bell received 57% of the total vote while McCulloch received only 43%.⁹⁴

B. *Parkland High School Students’ March for Our Lives*

The same year, 17 innocent people lost their lives at Marjory Stoneman Douglas High School in Parkland, Florida.⁹⁵ The tragic February 14, 2018, school shooting ignited activism amongst Parkland High School students. The students made it their mission to empower young people across the country to fight for sensible gun violence prevention policies, stand up to political leaders’ inaction, and continue political protests until changes occurred.⁹⁶

One day after the tragedy, Parkland High School students used their social media platforms to urge the public, especially young people, to

91. Alice Speri, *Five Years After Ferguson, St. Louis County’s New Prosecutor Confronts A Racist Criminal Justice System*, THE INTERCEPT (Jan. 24, 2019), <https://theintercept.com/2019/01/24/wesley-bell-st-louis-prosecutor-ferguson/> [https://perma.cc/H44N-LB3H].

92. *Id.*; see also Kayla Reed on the Unseen Work of Ousting Robert #ByeBob McCulloch, ST. LOUIS AM. (Aug. 16, 2018), http://www.stlamerican.com/news/political_eye/kayla-reed-on-the-unseen-work-of-ousting-robert-byebob/article_f8ef6524-a0fd-11e8-baf0-4f4b68704ee1.html [https://perma.cc/HHZ6-F5PJ]; Frank Leon Roberts, *The Ferguson Effect: Why Wesley Bell’s Primary Victory in St. Louis Matters*, ACLU (Aug. 8, 2018), <https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/ferguson-effect-why-wesley-bells-primary-victory-st> [https://perma.cc/F4ZT-EWQS].

93. Jacqui Germain, *How Brunch Helped Defeat a 7-Term Incumbent*, THE NATION (Aug. 24, 2018), <https://www.thenation.com/article/archive/how-brunch-helped-defeat-a-7-term-incumbent/> [https://perma.cc/7AJ5-6Q6G].

94. Jim Salter, *Prosecutor Tied to 2014 Ferguson Case Loses in Primary Upset*, PHILA. TRIB. (Aug. 10, 2018), https://www.phillytrib.com/commentary/columns/prosecutor-tied-to-ferguson-case-loses-in-primary-upset/article_3345e40c-3b2d-5f6a-86d6-2ca595738ec5.html [https://perma.cc/47PB-678X].

95. See *Florida School Shooting: At least 17 dead*, CNN (Feb. 14, 2018), <https://www.cnn.com/2018/02/14/us/florida-high-school-shooting/index.html> [https://perma.cc/2ZZ3-6JJ7].

96. See *Mission & Story*, MARCH FOR OUR LIVES (2019), <https://marchforourlives.com/mission-story/> [https://perma.cc/BX9G-N6KL].

advocate for stricter gun control legislation.⁹⁷ Using the hashtag slogan “#NeverAgain,” Parkland students called for others to stand with them. Moreover, a few days after the school shooting, Marjory Stoneman Douglas student Emma Gonzalez spoke at a gun control rally in Fort Lauderdale, Florida, calling “B.S.” (“Bullshit”) on President Trump and politicians for accepting money from the National Rifle Association (NRA) and their failure to enact stricter gun control legislation.⁹⁸

The students’ powerful presentations, and extensive use of news and social media platforms, attracted the public’s attention and widespread support from millions, including prominent figures such as Congresswoman Gabrielle Giffords, Oprah Winfrey, Ben and Jerry’s Ice Cream Company, and New England Patriots CEO Robert Kraft.⁹⁹ Less than a month after the Parkland school shooting, SB 7026, known as the Marjory Stoneman Douglas High School Public Safety Act, was enacted addressing gun control, funds, armed school resource officers, and other school safety issues.¹⁰⁰ Thus, although many Parkland High School students were too young to vote, they have become known as the central organizers for some of the most powerful grassroots movements of the 21st century.¹⁰¹

Thereafter, Parkland High School students took their work on the road, leading both the March for Our Lives action and the Road to Change Bus Tour. The former sought to end senseless gun violence, inspire youth activism, and encourage civic engagement by young people.¹⁰² It also inspired more than 800 similar sister marches across the United States and around the globe.¹⁰³ In states like Wisconsin and Massachusetts, young people demanded legislative reform and challenged elected officials’

97. See *Parkland Shooting: Where Gun Control and School Safety Stand Today*, N.Y. TIMES (Feb. 13, 2019), <https://www.nytimes.com/2019/02/13/us/parkland-shooting.html> [https://perma.cc/W2AC-NJXC].

98. See *Emma Gonzalez, student*, AP NEWS (Feb. 11, 2019), <https://www.apnews.com/afs:Content:3296490387> [https://perma.cc/ZX4Z-DMU5].

99. See *March for Our Lives: How Parkland students pulled off a massive national protest in only 5 weeks*, CNN (Mar. 26, 2018), <https://www.cnn.com/2018/03/26/us/march-for-our-lives/index.html> [https://perma.cc/MN2S-9M3B].

100. See *Parkland survivors called for change. Here’s what’s happened in the year since the shooting*, CNN (Feb. 11, 2019), <https://www.cnn.com/2019/02/11/us/parkland-change-gun-control-legislation/index.html> [https://perma.cc/9QNM-NHJQ].

101. See *How Parkland Teens Are Leading the Gun Control Conversation*, TIME (Mar. 22, 2018), <https://time.com/longform/never-again-movement/> [https://perma.cc/F3R9-PVCU].

102. See *MARCH FOR OUR LIVES*, <https://marchforourlives.com/> [https://perma.cc/BX9G-N6KL].

103. See *2018-March For Our Lives-initiators, USA*, KIDSRIGHTS FOUNDATION (2018), <https://kidsrights.org/advocacy/international-childrens-peace-prize/winners/march-for-our-lives/> [https://perma.cc/BDU7-GCAL].

inaction—consistent with the efforts of the Parkland High School students.¹⁰⁴ Parkland High School students also invited younger allies like Namoi Walder, an 11-year-old African American student from Washington, D.C., to speak at the March for Our Lives event. They wanted to lift up the young people “whose stories don’t make the front page” due to age, lack of affluence, or means of empowerment.¹⁰⁵ For their efforts, Parkland High School students received the 2018 Children’s Peace Prize.¹⁰⁶

During the Road to Change bus tour, Parkland High School students visited more than 80 communities in two months to hold voter registration rallies.¹⁰⁷ Here again, even before most of these youth could vote, they were making sure others had access to the polls. The voter registration rallies were held at college dorms and other youth-centered spaces, maximizing the Parkland High School students’ ability to register over 50,000 new voters across the United States, during this tour.¹⁰⁸ On election day, their impact was apparent too. Before the Parkland High School shooting, new voter registration between the ages of 18 to 29 was 26.23% in Florida. After the Parkland High School shooting, youth voter registration between the ages of 18 to 29 increased to 34.22%.¹⁰⁹

The youth activism and deployment of power by Parkland High School students did not stop there. Parkland High School students also raised millions of dollars for their movements, hired a Washington lobbyist, confronted pro-gun politicians on television, and met the President at the White House.¹¹⁰ They further inspired national school walkouts, sit-ins, and other rallies relating to the issue of school safety. To this day, former Parkland High School students, like David Hogg, remain powerful figures on the youth justice and rights fronts—including, as will be further discussed below, working to reduce the voting age in the United

104. See *About Us*, 50 MILES MORE (2019), <https://50milesmore.org/about-us/#50MM-MISSION> [<https://perma.cc/3SC5-B9WU>].

105. See Emanuella Grinberg & Nadeem Muaddi, *How the Parkland students pulled off a massive national protest in only 5 weeks*, CNN (Mar. 26, 2018), <https://www.cnn.com/2018/03/26/us/march-for-our-lives/index.html> [<https://perma.cc/MN2S-9M3B>].

106. *Id.*

107. See *2018-March For Our Lives-initiators*, *supra* note 103.

108. See MARCH FOR OUR LIVES, <https://marchforourlives.com/mission-story> [<https://perma.cc/YDW6-UAVS>].

109. See Tom Bonier, *Analysis: After Parkland Shooting, Youth Voter Registration Surges*, TARGETSMART (July 19, 2018), <https://targetsmart.com/analysis-after-parkland-shooting-youth-voter-registration-surges/> [<https://perma.cc/C5Y6-66YU>].

110. See Glenn Garvin, *In the great gun debate, Parkland changed everything. And maybe nothing*, MIAMI HERALD (Feb. 12, 2019), <https://www.miamiherald.com/news/local/community/broward/article224594280.html> (last visited Apr. 5, 2020).

States to allow even younger teens to participate more directly in the political process.¹¹¹

C. *Young Teens Running For and Holding Office Domestically*

Activism and engagement on the part of those under the age of 18 has taken place beyond Ferguson and Parkland. It also extended far beyond public protest and civil disobedience. In recent years, young teens have actually tried to become official decision-makers, running for political office even while too young to cast their own ballots.

For instance, in 2018, Ethan Sonneborn was just 14 years old when he ran for Governor of the state of Vermont. This was possible because, at the time, the state's constitution only required candidates for governor to live within the state for four or more years.¹¹² Sonneborn's parents signed an acknowledgment form giving him permission to run. Yet, he was not old enough to contribute money towards his campaign due to Federal Election Committee rules.¹¹³ Sonneborn lost the primary but still managed to receive 7% of the vote.¹¹⁴

Kansas teens Jack Bergeson, Joseph Tintera, Tyler Ruzich, and Dominic Scavuzzo similarly ran for state governor while under the age of 18.¹¹⁵ At the time, Kansas, like Vermont, had no age requirements to run for office, only a residency requirement.¹¹⁶ The Kansas teens' political campaigns were inspired by the activism of Parkland students and launched just after the start of the March for Our Lives movement.¹¹⁷ The Kansas teens echoed the sentiments of their colleagues in Parkland—calling for consideration of the viewpoints and concerns of youth in public education and spending.¹¹⁸

111. *See infra* Part IV.

112. *See Vermont Primary: 14-Year-Old Ethan Sonneborn Wins More Than 8 Percent of Votes in Democratic Governor Primary*, NEWSWEEK (Aug. 15, 2018), <https://www.newsweek.com/vermont-primary-election-14-year-old-sonneborn-1073047> [<https://perma.cc/NB7S-KCAH>].

113. *See id.*

114. VERMONT SECRETARY OF ST., OFFICIAL REPORT OF THE CANVASSING COMMITTEE U.S. & VERMONT STATEWIDE OFFICERS (Aug. 14, 2018), <https://sos.vermont.gov/media/rmjjun30/2018augustprimaryfinalcanvass.pdf> [<https://perma.cc/89GA-98BC>].

115. *See* Amir Vera & Andrea Diaz, *Thanks to a loophole in Kansas law, 6 teens are running for governor*, CNN (Feb. 9, 2018), <https://www.cnn.com/2018/02/09/politics/kansas-teens-running-for-governor-trnd/index.html> [<https://perma.cc/AQ4Q-QZPC>] (Bergeson was 16 years old while the rest of the teens were 17 years old).

116. *Id.*

117. *Id.*

118. *See* KANSAS LEGIS. RES. DEP'T, HB 2539 BILLS AND RESOLUTIONS KANSAS STATE LEGISLATURE http://www.kslegislature.org/li_2018/b2017_18/measures/documents/summary_hb_2539_2018.pdf

Although none of the Kansas teens succeeded in their bids to run the state, just a few years earlier, 17-year-old Saira Blair did win the election to represent the 59th district in the West Virginia House of Delegates. In 2014, Blair became the youngest elected official in the United States.¹¹⁹

D. *Going Global—Joining International Movements and Collaborations*

Artificial national boundaries have not limited the activism of youth in the United States either. Their impressive acts of leadership and engagement have extended world-wide. For instance, earlier this year, 16 youth petitioners from 12 different countries, including 14-year-old Alexandria Villaseñor from the United States, presented an official complaint on the climate crisis to the United Nations.¹²⁰ Villaseñor was joined by Greta Thunberg, the 16-year-old Swedish climate activist, and child petitioners from Argentina, Brazil, France, Germany, India, Marshall Islands, Nigeria, Palau, South Africa, Sweden, and Tunisia in this landmark litigation.¹²¹

Specifically, these young activists have asked the United Nations to recognize climate change as a violation of child rights and want five countries—Argentina, Brazil, France, Germany and Turkey—to reduce carbon emissions and their use of fossil fuels.¹²² “It is our duty as children

[<https://perma.cc/2HXT-NFVU>] (Kansas has since changed the law to add an age requirement, which went into effect on January 1, 2019).

119. See Tyler Jenkins, *The Youngest Delegate: Saira Blair of West Virginia*, HARV. KENNEDY SCH. INST. OF POL. (2019), <https://iop.harvard.edu/iop-now/youngest-delegate-saira-blair-west-virginia> [<https://perma.cc/D2TQ-U36G>]. Youth have also run for election locally, seeking school board seats and other important government positions. See, e.g., *Student punished for walkout runs for school board*, CNN (May 9, 2018), <https://www.cnn.com/2018/05/09/health/school-walkout-school-board-trnd/index.html> [<https://perma.cc/S7L8-MZAM>]; see Jack McKinley, *17-Year-Old To Run For Local Political Office*, INKFREE NEWS (Jan. 11, 2016), <http://www.inkfreenews.com/2016/01/11/17-year-old-to-run-for-local-political-office/> [<https://perma.cc/UMM8-RTVZ>]; Fred Klonsky, *Asean Johnson, Chicago 9-Year-Old, Youngest Speaker At March On Washington Anniversary*, HUFFPOST (Aug. 26, 2013), https://www.huffpost.com/entry/asean-johnson-march-on-washington_n_3817494 [<https://perma.cc/SP4F-DREV>]; see also HADIYA FOR DUPAGE (2019), <https://www.hadiyafordupage.com/about> [<https://perma.cc/R7Q2-AF2X>].

120. See Georgina Thompson, *16 children, including Greta Thunberg, file landmark complaint to the United Nations Committee on the Rights of the Child*, UNICEF (Sep. 23, 2019), <https://www.unicef.org/press-releases/16-children-including-greta-thunberg-file-landmark-complaint-united-nations> [<https://perma.cc/HVA2-YNS8>].

121. See *id.*

122. See Karen Savage, *Thunberg, 15 Kids Petition UN to Force Countries to Fight Climate Change*, CLIMATE LIABILITY NEWS (Sep. 23, 2019), <https://www.climate-liabilitynews.org/2019/09/23/greta-thunberg-un-convention-child-rights/> [<https://perma.cc/AB56-GXBP>]. The

to do anything no matter the cost to save our planet and to live in a safer world,” said Raslene Joubali, a 17-year-old petitioner from Tunisia.¹²³ Such sophisticated international activism further illustrates the dedication and aptitude of this age group, particularly in 21st century United States.

III. YOUTH SUFFRAGE’S SECOND WAVE— EXTENDING THE VOTE TO YOUNGER TEENS?

A. *Recent Congressional Efforts to Reduce the Federal Voting Age*

Consistent with this truth, youth activists like David Hogg are also now seeking to reduce the national voting age so that citizens age 16 and older may participate in local, state, and national elections.¹²⁴ Such efforts to further expand the enfranchisement of young people in the United States represent the youth suffrage movement’s second wave. This is a nationwide movement, with politicians of all backgrounds taking notice.

Massachusetts Congresswoman Ayanna Pressley recently noted that, “[f]rom gun violence, to immigration reform, to climate change, to the future of work—our young people are organizing, mobilizing and calling us to action,” and “[t]hey are at the forefront of social and legislative movements and have earned inclusion in our democracy.”¹²⁵ Consistent with these concerns, she proposed legislation to lower the federal voting age from 18 to 16 years old.¹²⁶

Speaker of the House Nancy Pelosi, who declared it is important to capture kids as political actors when they are still in high school, supported Pressley’s efforts—as did Republicans like Texas Congressman Michael Burgess.¹²⁷ While the bill received 126 votes on

application was directed to the U.N.’s Committee of the Rights of the Child, which is further described at *infra* Section C(1).

123. *See id.*

124. *See* 2019 MAYORS NATIONAL YOUTH SUMMIT, U.S. CONF. OF MAYORS (2019), <https://www.usmayors.org/meetings/2019-mayors-national-youth-summit/> [<https://perma.cc/WAW8-JDBQ>].

125. *See* John Nichols, *Let the 16-Year-Olds Who Are Marching for the Planet Vote to Save It*, THE NATION (Mar. 15, 2019), <https://www.thenation.com/article/voting-age-16-climate-strike-green-new-deal-ayanna-pressley/> [<https://perma.cc/8TPU-SYSM>].

126. *See id.*

127. *See* Brian Conner, *Congress Votes on Lowering Voting Age to 16*, NAT’L YOUTH RTS. ASS’N (Mar. 14, 2019), <https://www.youthrights.org/blog/congress-votes-on-lowering-voting-age-to-16/> [<https://perma.cc/3UZV-KTX7>]; *See* Tim Hains, *Pelosi Supports Lowering Voting Age To 16: “Important To Capture Kids When They’re In High School”*, REAL CLEAR POL. (Mar. 14, 2019), https://www.realclearpolitics.com/video/2019/03/14/pelosi_supports_lowering_voting_age_to_16_important_to_capture_kids_when_theyre_in_high_school.html [<https://perma.cc/G2F8-KHT5>].

the House floor on March 5, 2019, that was not enough to send it on the Senate.¹²⁸ However, it seems clear that it is only a matter of time before teens as young as 16 will be voting in all elections in this country.¹²⁹ Not only is such a move supported by the demonstrated capacities of today's modern teens—like those involved in actions around Ferguson, Parkland, and climate change efforts¹³⁰—but it is consistent with emerging local and international standards described below.

B. Direction of Change—Domestic Local Expansion of Youth Suffrage

Maryland was the first state whose localities granted 16 and 17 year olds the right to vote. In 2013, Takoma Park lowered its voting age for local elections.¹³¹ Nick Byron, a local 17-year-old, played a leading role in this effort by advocating before the Takoma Park City Council.¹³² He argued that even younger teens “should be able to vote because they are rooted in their communities. 18 year olds are going to college, while we are living with our parents, taking civics classes, and thinking about the city.”¹³³

Interestingly, in contrast with youth voter turnout after ratification of the 26th Amendment, the Takoma Park measure seemed to provide a powerful shot in the arm for youth voting in the region.¹³⁴ Takoma Park's example, in addition to showing that reducing the voting age is not logistically impossible, caused a ripple effect in other Maryland cities. Hyattsville followed suit in 2015.¹³⁵ Greenbelt became the third city in

128. See Nichols, *supra* note 125.

129. See *Lower the Voting Age for Local Elections*, FAIRVOTE, https://www.fairvote.org/lower_the_voting_age [https://www.fairvote.org/lower_the_voting_age].

130. See Hannah Grabenstein, *Should 16-year-olds be allowed to vote?*, PBS (Apr. 20, 2018), <https://www.pbs.org/newshour/politics/should-16-year-olds-be-allowed-to-vote> [<https://perma.cc/CV9X-UXY3>].

131. See Timothy Male & Rob Richie, *In Takoma Park, starting the voting habit early*, BALTIMORE SUN (Jun. 2, 2013), <https://www.baltimoresun.com/opinion/bs-xpm-2013-06-02-bs-ed-voting-age-20130531-story.html> [<https://perma.cc/AT3Q-MTWG>].

132. See Patricia Hart, *16 and 17-year-old Vote for the First Time in Takoma Park*, PROMOTE OUR VOTE (Nov. 6, 2013), <http://www.promoteourvote.com/blog/archives/11-2013> [<https://perma.cc/N9DN-D4FK>].

133. See *id.*

134. See *id.*

135. See *It's official. Greenbelt, md lowers its local voting age to 16*, VOTE16USA, <https://vote16usa.org/its-official-greenbelt-md-lowers-its-local-voting-age-to-16/> [<https://perma.cc/KP56-CC4G>].

Maryland to lower its voting age to 16.¹³⁶ Kensington is now considering making the same change as its neighbors.¹³⁷

California has also seen expanded youth suffrage. Berkeley, California, granted 16 and 17 year olds the right to vote in school board elections in 2016.¹³⁸ Neighboring areas are looking to introduce this provision in their cities. In San Francisco, a proposal to lower the voting age failed to pass but managed to earn 48% of the vote in 2016.¹³⁹ The Los Angeles Unified School District board voted unanimously “to approve a resolution directing the superintendent to report on the feasibility—including costs—of a 2020 ballot measure that would lower the voting age to 16 in school district elections.”¹⁴⁰ The efforts to encourage younger citizens to vote in California has paid off, with more than 200,000 teenagers preregistered in the state before their 18th birthdays since 2016.¹⁴¹

A proposed amendment to the Oregon Constitution would lower the voting age from 18 to 16.¹⁴² Voters would ultimately need to approve the proposal in the 2020 election if the bill passes.¹⁴³ According to Natalie Khalil, “a high school senior . . . in Oregon who has been organizing for gun law reform, . . . high school students should be able to apply the knowledge they learn in their civics classes.”¹⁴⁴ She continued, “[a]llowing 16 and 17 year olds to vote will ‘create lifelong voters.’”¹⁴⁵

Oregon is already one of several states that allows youth under 18 years of age to preregister to vote, according to the National Conference

136. See authorities cited *supra* note 16.

137. See Michelle Basch, *Effort to lower local voting age to 16 takes next step in Kensington*, WTOP (May 15, 2019), <https://wtop.com/montgomery-county/2019/05/effort-to-lower-local-voting-age-to-16-takes-next-step-in-kensington/> [<https://perma.cc/2RMF-AT4E>].

138. See *Berkeley, California, School Director Election Youth Voting, Measure Y1 (November 2016)*, BALLOTPEdia, [https://ballotpedia.org/Berkeley,_California,_School_Director_Election_Youth_Voting_Measure_Y1_\(November_2016\)](https://ballotpedia.org/Berkeley,_California,_School_Director_Election_Youth_Voting_Measure_Y1_(November_2016)) [<https://perma.cc/8D3T-KQP3>].

139. Michelle Lou & Brandon Griggs, *Oregon may lower the voting age to 16*, CNN (Feb. 19, 2019), <https://www.cnn.com/2019/02/19/politics/oregon-voting-age-16-trnd/index.html> [<https://perma.cc/SC2W-SJ5E>].

140. See Sonali Kohli, *L.A. students are already activists. Now they want to vote at 16*, L.A. TIMES (Apr. 23, 2019), <https://www.latimes.com/local/education/la-me-edu-laused-teen-voting-20190423-story.html> [<https://perma.cc/8UP8-KE73>].

141. See David de la Fuente, *Lower the voting age to 16 for federal elections?: Today’s talker*, USA TODAY (Mar. 18, 2019), <https://www.usatoday.com/story/opinion/2019/03/18/lower-voting-age-16-federal-elections-talker/3201283002/> [<https://perma.cc/K8ML-7BFC>].

142. See Lou & Griggs, *supra* note 139.

143. See *id.*

144. See *id.*

145. See *id.*

of State Legislatures.¹⁴⁶ At least 195,500 youth under 18 preregistered in the state since the program began in 2007.¹⁴⁷ A report from the Center for American Progress notes that at least 18,800 of those pre-registered voters voted in the 2018 midterm elections.¹⁴⁸ “Being young doesn’t mean we can’t make educated decisions,” said Amira Tripp Folsom, a Portland high school junior.¹⁴⁹ “The changes being made to our future should be decided by those actually impacted.”¹⁵⁰

Alaska also permits those under 18 to register anytime “within 90 days before their 18th birthday.”¹⁵¹ Georgia, Iowa, Missouri, and Texas all permit registration of those who are 17 and some months in age.¹⁵² Twenty-six states do not specifically address a registration age but do allow individuals to register “if they will turn 18 by the next election.”¹⁵³ In some places this means a young person can register immediately after one election finishes at the age of 16.¹⁵⁴ Moreover, 22 states already allow those who are 17 but will be 18 by the general election to vote in primaries.¹⁵⁵

C. *International Embrace of Reduced Age of Majority to Vote*

What is taking place on the state and local level in the United States is also in line with the direction of change internationally. Numerous nations across the globe now allow youth under the age of 18 to vote in all elections. Although, many of those countries, unlike the United States, have ratified the United Nations’ Convention of the Rights of the Child. That document provides strong support for extending all human rights to young people, recognizing that youth are not just individuals who will become knowledgeable citizens but that they hold such capacities now.¹⁵⁶

146. See Sarah Zimmerman, *Oregon teens push for lowering voting age to 16*, OREGONIAN (Mar. 27, 2019), <https://www.oregonlive.com/politics/2019/03/oregon-teens-push-for-lowering-voting-age-to-16.html> [<https://perma.cc/447B-ZTZH>].

147. See *id.*

148. See *id.*

149. See *id.*

150. See *id.*

151. See *Preregistration for Young Voters*, NAT’L CONF. ST. LEGIS. (Feb. 12, 2019), <http://www.ncsl.org/research/elections-and-campaigns/preregistration-for-young-voters.aspx> [<https://perma.cc/MJF6-7XZM>].

152. See *id.*

153. See *id.*

154. See *id.*

155. See *Primary Voting at Age 17*, FAIRVOTE, https://www.fairvote.org/primary_voting_at_age_17 [<https://perma.cc/28MM-RCPX>].

156. See, e.g., Mae C. Quinn, *From Turkey Trot to Twitter: Policing Puberty, Purity and Sex Positivity*, 38 N.Y.U. REV. L. & SOC. CHANGE 51, 54, 95–96 (2014) (describing the ways in which

1. United Nations Convention of Rights of the Child—Generally

In 1989, world leaders saw that need and sought a way to fulfill it by creating and “adopting an international legal framework—the U.N. Convention on the Rights of the Child.”¹⁵⁷ This treaty highlights the personhood of children; not just “objects who belong to their parents for whom decisions are made, or adults in training [but r]ather, they are human beings and individuals with their own rights.”¹⁵⁸ The Convention sees “childhood [as] separate from adulthood” and as its own time in which children must be allowed to grow and be given the rights they freely and truly deserve.¹⁵⁹ The Convention encompasses all aspects of a child’s life and recognizes the “importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries.”¹⁶⁰

The Convention is the most widely ratified human rights treaty in history with 196 countries who have ratified it—Somalia and South Sudan were the latest two to join the other countries that have already ratified the treaty. The United States, however, is the only country that is yet to ratify the treaty.¹⁶¹ This is mainly due to the fear that ratifying the convention will give the government even greater power over the affairs of family life. But the Convention extends beyond child/parent relationships and protects children from other dangerous situations or potential risks they may face.¹⁶² But the United States’ reluctance to ratify the Convention is disappointing given that the nation has been “a leader on the world stage in promoting special legal protections for children” since 1948.¹⁶³ The United States also played an important role that same year in drafting “the

the Convention for the Rights of the Child properly conceives of youth as having powers, capacities, and rights in the “here-and-now.”).

157. *What is the Convention on the Rights of the Child*, UNICEF FOR EVERY CHILD, <https://www.unicef.org/child-rights-convention/what-is-the-convention> [https://perma.cc/X25C-KW32].

158. *Id.*

159. *Id.*

160. *Convention on the Rights of the Child*, U.N. HUM. RTS. OFF. OF THE HIGH COMMISSIONER, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [https://perma.cc/2JZE-9PGH].

161. *11. Convention on the Rights of the Child*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en; <https://www.aclu.org/blog/human-rights/treaty-ratification/theres-only-one-country-hasnt-ratified-convention-childrens> [https://perma.cc/TFS9-FF5Z].

162. Lida Minasyan, *The United States Has Not Ratified the UN Convention on the Rights of the Child*, ATLAS CORPS (Sept. 30, 2018), <https://atlascorps.org/the-united-states-has-not-ratified-the-un-convention-on-the-rights-of-the-child/> [https://perma.cc/X5ZC-D64H].

163. Howard Davidson, *Does the U.N Convention on the Rights of the Child Make A Difference?*, 22 MICH. ST. INT’L L. REV. 497, 498 (2014).

first United Nations document that recognized protective rights of children.”¹⁶⁴

A crucial part of the Convention is its emphasis on treating children not as young adults but as human beings with their own sets of rights. Some of those rights include the right to accessible and affordable healthcare, to quality education (free in some instances), to family life, to an adequate standard of living, and the right to be able to express themselves and have their opinions heard.¹⁶⁵ The right to expression and be heard manifests in different forms including freedom of speech, freedom to be able to join whatever political party or organization one wants to (particularly if it aligns with one’s beliefs), freedom of religion, and the right to vote.

In the Convention of the Rights of the Child, Articles 12 and 13 recognize the rights of the child to express their opinions. Specifically, Article 12 of the Convention states:

Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child . . . [f]or this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.¹⁶⁶

Article 13 of the Convention provides that “[t]he child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice”¹⁶⁷ Thus, these articles ensure children have a voice and opportunity to be heard but do not direct a specific means. One way this can happen is through voting.

2. Influence of CRC and International Voters Under 18 Years of Age

The current voting age among most global countries stands at 18 years old. However, the age of the electoral majority has declined over the

164. *Id.* at 499.

165. *What are Children’s Rights?*, CHILD. RTS. ALLIANCE, <https://www.childrensrights.ie/childrens-rights-ireland/childrens-rights-ireland> [<https://perma.cc/PPV4-836R>].

166. *What is the Convention on the Rights of the Child*, *supra* note 157.

167. *Id.*

years across the globe and, presently, 16 year olds in certain parts of the world are allowed to vote in local, state, or national elections. Certain countries such as Austria, Scotland, Germany, and Serbia have already adopted this position¹⁶⁸ with Austria being the first country to lower its voting age to 16 in 2007.¹⁶⁹ Even though some of the allowances place restrictions on which teens can vote and in which elections, those rights are still recognized.¹⁷⁰

a. Austria

One of the major driving forces for the push in lowering the voting age has been efforts to increase youthful engagement in politics and in the process, curb the highly unbalanced effect of the “political influence of older citizens.”¹⁷¹ The first European country to make this bold and much needed move was Austria in 2007 through a constitutional amendment. The change was made in large part “to counterbalance the increasing percentage of voters aged sixty-five and older, whose numbers have been growing due to declining birth rates.”¹⁷² This disproportionality sheds light on fears that the government would not satisfactorily cater to the needs of the younger population because their needs were not adequately represented during election time.¹⁷³ Prior to this noticeable change, Austrian 16 year olds were able to vote in some local elections—a practice adopted by neighboring country, Germany, as well.¹⁷⁴ In 1992, Austria lowered its voting age from 19 to 18 to allow its younger citizen population to vote in all elections. This was soon followed in 2000 by five regions within the country that once again reduced the voting age, this time to 16 years to allow for those populations to vote in local or regional elections.¹⁷⁵

168. *Voting Age Status Report*, NYRA NAT’L YOUTH RTS. ASS’N, <https://www.youthrights.org/issues/voting-age/voting-age-status-report/> [https://perma.cc/PM9M-PQZD].

169. Vivian E. Hamilton, *Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority*, 77 BROOK. L. REV. 1447, 1469 (2012).

170. *Voting Age Status Report*, *supra* note 168.

171. Hamilton, *supra* note 169, at 1465.

172. *Id.* at 1469.

173. *Id.*

174. *Austria, in a first, allows children to vote*, N.Y. TIMES (Sept. 25, 2008), <https://www.nytimes.com/2008/09/25/world/europe/25iht-austria.4.16485539.html> [https://perma.cc/27M5-48UE].

175. Liisa Ansala, *29th Session, Voting at 16—Consequences of youth participation at local and regional level*, CONGRESS OF LOC. AND REGIONAL AUTHORITIES 16 (Oct. 20, 2015), <https://rm.coe.int/090000168071a5ed> [https://perma.cc/7CR5-37P9].

Shortly after the 2006 elections, “the winning SPO-OVP coalition announced in one of its policies that it was going to lower the voting age to 16”¹⁷⁶ in all elections in Austria. When the bill and the constitutional amendment passed, members of the “Lower House of the federal Parliament” and other party members did nothing to oppose it “with four out of five parties explicitly supporting it.”¹⁷⁷ Some of the important initiatives that put the motion into effect included: “the campaign ‘DemokratieInitiative’ (Initiative for Democracy) [which was] launched and organized by the Ministry of Education for the 2008 federal election, [several] regional campaigns, . . . [as well as a] reform of civic and citizenship education in schools.”¹⁷⁸ Various studies show that there is not a major difference between Austrian youth opinions and voting behavior and that of other voting populations. They also conclude voters “below [the age of] 18 are politically mature.”¹⁷⁹

b. Scotland

While Austria allows for 16 and 17 year old minors to vote in national and local elections, Scotland has taken a more gradual approach in trying to achieve what Austria has accomplished. The “Scottish Elections (Reduction of Voting Age) Act of 2015” gave to 16 and 17 year olds the right to vote in Scottish Parliament, local elections, and in the referendum on independence for Scotland in 2014.¹⁸⁰ The Scottish Independence Referendum established a basis for the argument that 16 and 17 year olds can have a say in issues that affect them and the communities in which they live, especially as their voter turnout was higher than their “18 to 34 year old” counterparts who voted in the same election.¹⁸¹ “The turnout of 84.6% was the highest recorded for an election or referendum in the UK since the introduction of universal suffrage [with] 109,593 of [teens under 18 years old] registered and 75% claimed to have voted.”¹⁸² This generated high hopes as 97% of the teens who turned out to vote stated that they would be voting again in future

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.* at 8.

180. *EACEA National Policies Platform*, EUR. COMM’N (May 8, 2019), <https://eacea.ec.europa.eu/national-policies/en/content/youthwiki/52-youth-participation-representative-democracy-united-kingdom-scotland> [<https://perma.cc/4NQC-G7KC>].

181. Charley Jarrett, *Votes for 16 and 17 year olds in Scotland, Wales. . . and overseas?*, ELECTORAL REFORM SOC’Y (Oct. 17, 2018), <https://www.electoral-reform.org.uk/votes-for-16-and-17-year-olds-in-scotland-wales-and-overseas/> [<https://perma.cc/FD3T-M5CN>].

182. Ansala, *supra* note 175, at 123.

elections.¹⁸³ And even Ruth Davidson, a conservative leader in Scotland, joined with others in 2015 Parliament to “unanimously introduce[] the Votes at 16 for all Holyrood and local elections in Scotland.”¹⁸⁴ Teens are engaged in the issues that affect them and are proving that they are more than capable of expressing their views.¹⁸⁵

These events sparked conversations among advocates in surrounding nations such as Wales, whose leaders are now pushing to have the same voting rights extended to 16 and 17 year old teens within their borders.¹⁸⁶ Scottish teens and politicians are likely to face ongoing issues, including efforts by political parties to manipulate teen votes because these leaders only want those votes in order to get re-elected. Young voters will need to prevent this from becoming the norm. Political parties also have a challenge of their own: “to keep young voters engaged and enthused for future participation in political processes, which are less appealing than a referendum on independence.”¹⁸⁷

c. Serbia

Some have argued that lowering the voting age to 16 makes sense since that is the age at which youth can generally hold jobs in the United States.¹⁸⁸ Serbia’s voting policies strictly align with this argument, providing a general minimum voting age of 18 years but allowing an exception for younger teens who are working.¹⁸⁹ And in 2011, Serbia adopted a national Law on Youth which has gone a long way towards advancing youthful political participation.¹⁹⁰

More recently the country convened a conference on the political participation of its youth.¹⁹¹ During this event, about “30 youth representatives and activists from South-East Europe” discussed ways to increase political youth activity and engagement as they explored ways

183. *Id.*

184. Jarrett, *supra* note 181.

185. *Votes at 16*, ELECTORAL REFORM SOC’Y, <https://www.electoral-reform.org.uk/campaigns/votes-at-16/> [<https://perma.cc/A9VK-9HWB>].

186. Jarrett, *supra* note 181.

187. Ansala, *supra* note 175, at 128.

188. Monica Hunter-Hart, *8 Pros & Cons Of Lowering The Voting Age To 16, Like Washington, DC Is Considering*, BUSTLE (Apr. 18, 2018), <https://www.bustle.com/p/8-pros-cons-of-lowering-the-voting-age-to-16-like-washington-dc-is-considering-8823839> [<https://perma.cc/D5FX-S58J>].

189. *Voting Age Status Report*, *supra* note 168.

190. *Id.*

191. *New forms of political participation should be inclusive of all groups of society*, OSCE/ODIHR youth seminar participants, ORG. SECURITY & CO-OPERATION IN EUROPE (June 2, 2015), <https://www.osce.org/odihr/161541> [<https://perma.cc/CL7Z-RLH7>].

and strategies to best achieve this.¹⁹² Leaders have also explored the use of social media in expressing political views.¹⁹³ And in an effort to increase political participation and involvement among the youth in rural areas, organizations such as the Belgrade Fund for Political Excellence (BFPE) are training youth in the countryside to become political and civil society leaders.¹⁹⁴

d. Other International Examples of Expansive Youth Suffrage

Other European regions have extended suffrage to young teens as well. Sixteen year olds can vote in the German states of Brandenburg, Bremen, and Hamburg; the Swiss canton of Glarus; and the semi-autonomous UK territories of the Isle of Man, Jersey, and Guernsey.¹⁹⁵ In some countries 16 year olds can vote if they are employed or married. Hungary offers some insight, wherein someone who gets married at 16 is given all the legal responsibilities of an adult, including the right to vote.¹⁹⁶ Furthermore, British billionaire Richard Branson advocated for lowering the voting age to 16 after Britain's 2016 #Brexit vote (which younger voters overwhelmingly opposed), because young people are more "interested, motivated and informed" than ever before, and often "on the right side of history."¹⁹⁷

Throughout Latin America, 16 and 17 year olds have had the right to vote for many years. "Millions of Brazilian 16 and 17 year olds, from Sao Paulo to the Amazon, turned out to vote" in 2014.¹⁹⁸ Interestingly, Brazilians between 18 and 69 years of age are legally required to vote, yet 16 and 17 years old "make up 2.3% of the Brazilian electorate on average."¹⁹⁹ Similarly, voting in Argentina is optional for those aged 16

192. *Id.*

193. *Youth political participation must prevail*, ORG. SECURITY & CO-OPERATION IN EUROPE (July 24, 2015), <https://www.osce.org/serbia/174441> [https://perma.cc/72T2-V3HP].

194. *Serbian Fund Educates Youth on the Importance of Political Participation*, GERMAN MARSHALL FUND OF THE U.S., <http://www.gmfus.org/initiatives/serbian-fund-educates-youth-importance-political-participation> [https://perma.cc/B2S7-JPGW].

195. See John Nichols, *Lower the Voting Age to 16*, THE NATION (Feb. 23, 2018), <https://www.thenation.com/article/lower-the-voting-age-to-16/> [https://perma.cc/33SG-AVGW].

196. George Arnett, *Votes for 16 and 17-year-olds—where else outside Scotland?*, THE GUARDIAN (Jun. 18, 2015), <https://www.theguardian.com/politics/datablog/2015/jun/18/votes-for-16—and-17-year-olds-where-else-outside-scotland> [https://perma.cc/JAH9-FVDK].

197. *See id.*

198. Mike Macnevin, *Millions of 16 and 17 years olds vote in Brazilian Presidential Election, but no President Elected*, FAIRVOTE (Oct. 23, 2014), <https://www.fairvote.org/brazilian-election-2014> [https://perma.cc/VZ5B-4JHZ].

199. *Id.*

and 17, and obligatory for people aged 18 to 70.²⁰⁰ Finally, Cuba allows all citizens over the age of 16, as long as they are not mentally disabled or imprisoned, to vote in the elections for the “municipal assembly, the provincial assemblies and the national assembly.”²⁰¹

IV. FURTHER SUPPORT FOR THE SECOND WAVE—EVOLVING STANDARDS FOR YOUTH

The arguments noted above—including that today’s 16 and 17 year olds care about the world around them, are politically aware and engaged, offer insights different from older voters that may be useful to our social fabric, have specialized technology know-how that helps inform our world, and do not present an overwhelming logistical challenge as potential voters—are all strong reasons to expand youth suffrage consistent with calls from second-wave activists.²⁰² They are also fairly well rehearsed, harkening back to the first-wave youth suffrage movement.²⁰³ But there are additional reasons that the Second Wave Movement’s demands make a lot of sense which have not previously been discussed in any meaningful way.

A. *Overcoming Systemic Childism in American Law and Life*

As noted previously, the nation’s suffrage story generally pays special attention to categories of persons who were previously excluded. Women and Black Americans, in particular, are properly lifted up in textbooks and law school curricula as persons who were wrongly oppressed and marginalized in our nation’s history by way of exclusionary voting practices and otherwise. As noted, even high school children are taught about the problems of sexism and racism that denied citizens with the right to vote in this country.²⁰⁴ But youth between the ages of 18 and 20 were denied the vote for an even longer period than either Black Americans or women of any race. Yet their experience is generally left

200. See *Argentina voting age lowered from 18 to 16*, BBC NEWS (Nov. 1, 2012), <https://www.bbc.com/news/world-latin-america-20164573> [<https://perma.cc/5AR9-98G9>].

201. See *What Are Voting Rights in Cuba?*, ANYWHERE, <https://www.anywhere.com/cuba/questions/people-economy-government/what-are-voting-rights> [<https://perma.cc/6RRE-MJHY>] (noting the lack of presidential).

202. See, e.g., David Hogg (@davidhogg111), TWITTER (July 30–July 1, 2019), <https://twitter.com/davidhogg111/status/1145537872046374913> [<https://perma.cc/9ZQJ-D7KE>]. See also Quinn, *supra* note 156.

203. See, e.g., Joshua Douglas, *In Defense of Lowering the Voting Age*, 165 U. PA. L. REV. ONLINE 63 (2017). See CULTICE, *supra* note 9.

204. See *supra* note 1 and accompanying text.

out of educational materials about voting rights. And the concept of “childism” is one that is never taught.

Scholar Elisabeth Young-Bruehl is credited with first using the term in her 2012 groundbreaking posthumous text, *CHILDISM: CONFRONTING PREJUDICE AGAINST CHILDREN*. Young-Bruehl persuasively argued that the phenomenon of marginalizing and discounting the insights, experiences, and age-appropriate autonomy of persons under the age of 18 presents its own “ism” that should be taught, understood, and resisted.²⁰⁵ Yet it is a term that is almost never used in law or legal work.²⁰⁶

The infrequency with which legal scholars and texts consider this concept reflects the relative and unfortunate invisibility of children under the age of 18 in our adult-centered legal world. Rethinking voting rights in line with the second-wave movement would allow us to start to disrupt legal and other norms that entirely discount the important contributions of young people in our communities. They should not suffer discrimination relating to citizenship rights because of their age alone.

B. Consistent with the Constitutional Law around Childhood and Culpability

Taking an anti-childist stance or joining with the second-wave youth suffrage movement does not mean that youth never need special treatment under the law. The United States Supreme Court’s decisions determining that youth are “categorically less culpable,” explain that children should not be treated the same as adults in all instances under the law.²⁰⁷ Given their still-developing brains, courts must take care to consider their age in the context of criminal prosecutions and sentencings. As a result, the Court has held teens under 18 may not face execution.²⁰⁸ Nor should they receive a sentence of life without parole, except in the rarest of circumstances where the government has demonstrated that the young person is beyond any possible reform.²⁰⁹

It is important to note that these cases were dealing with state encroachment upon a child’s liberty interest. The Court was seeking to

205. See ELIZABETH YOUNG-BRUEHL, *CHILDISM: CONFRONTING PREJUDICE AGAINST CHILDREN* (Yale U. Press 2012). Young-Bruehl, who died in 2011, lived an extraordinary life and worked throughout her career at the intersections of philosophy, psychology, and women’s history.

206. See, e.g., Quinn, *supra* note 156, at 93 (as one of only four published law review articles available on Westlaw that use the term “childism.”).

207. See, e.g., Mae C. Quinn, *Introduction: Evolving Standards in Juvenile Justice: Gault, Graham and Beyond*, 38 WASH. U. J. L. & POL’Y 1, 12–13 (2012).

208. See *Roper v. Simmons*, 543 U.S. 551, 568 (2005).

209. See *Miller v. Alabama*, 567 U.S. 460, 461 (2012); *Graham v. Florida*, 560 U.S. 48, 74 (2010).

establish the right balance in terms of mode and scope of restriction upon an adolescent's person given the mitigating fact of their not-fully-formed brains. As scholar Kristin Henning has adroitly explained, this raises an entirely different set of considerations than the extent to which young people should be extended citizenship privileges.²¹⁰ Indeed, “[c]ontext matters.”²¹¹ Deciding that a child should not be held accountable to the same degree as an adult for similar conduct in light of their differing levels of development is not inconsistent with allowing a young person to vote for one candidate or another during an election in light of the competencies they currently do demonstrate. Thus, current caselaw regarding child culpability in no way preempts efforts to expand youth suffrage to allow 16 and 17 year olds to participate in elections.

CONCLUSION

This article is the first to offer the first and second-wave framework for understanding the ratification of the 26th Amendment in the 20th century, and 21st century efforts to extend the right to vote to younger teens. It has also offered a counter-account to the long-standing claim that young voters in this country are generally apathetic, unconcerned, or irresponsible. Instead, it has offered additional context for seeing why some currently enfranchised youth may be constructively disenfranchised. It further suggests that recent actions on the part of young people—from Ferguson, to Parkland, to international global warming initiatives, to running for office—demonstrate the tremendous insight, engagement, and capacity of youth who are even younger than eighteen.

Thus, we conclude by supporting those calling for an extension of suffrage to those ages 16 and 17. Not only is it clear that such youth are fully equipped to weigh election options, but the second-wave youth suffrage movement in this country is consistent with the direction of change of voting rights in our localities and in other countries. Nations across the globe, as well as cities within our own, have been allowing 16 and 17 year olds to participate in elections for some time—without any reports of problems logistically or otherwise.

Embracing 21st century second-wave youth suffrage requests would also allow the United States to begin to rethink its relationship with young citizens, and make amends for a history of childism that for too long has allowed for the marginalization and legal erasure of this important part of

210. Kristin Henning, *Juvenile Justice After Graham v. Florida: Keeping Due Process, Autonomy, and Paternalism in Check*, 38 WASH. U. J. L. & POL'Y 17, 45–47 (2012).

211. *Id.* at 45.

our populace. We can take such steps forward without moving backwards in our efforts to protect youth from disproportionate criminal penalties. Both positions are consistent in a world that appreciates context, legal complexity, and the nuance of multifaceted commitments in a constitutional democracy.