

VOTING IN AMERICA: IS IT TIME TO LOWER THE VOTING AGE?

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INTRODUCTION

In the wake of the shooting at Marjory Stoneman Douglas High School, there has been an increase in the amount of teenagers who have become active in the political process.¹ This increase in participation can be seen with the amount of teenagers coming out to gun control rallies across the country and speaking out against gun violence in America.² Many political groups and lawmakers believe that since teenagers are passionate on political issues, such as gun control, their voices should be heard at the ballot box and not limited to simply raising awareness of political issues.³

As a result, there have been renewed calls to lowering the voting age, so that sixteen- and seventeen-year-olds can elect lawmakers who truly reflect their values.⁴ These renewed calls for lowering the voting age have resulted in state law proposals from seven states, including the District of Columbia.⁵ About a third of the states allow for seventeen-year-olds to vote in their primaries, so long as the voter turns eighteen by Election Day.⁶

This article will address how public outcry has changed the voting age in America, starting with the route to the passage of the Twenty-Sixth Amendment to the United States

¹ Asma Khalid, *A New Generation's Political Awakening*, NPR (Apr. 21, 2018), <https://www.npr.org/2018/04/21/604293152/a-new-generations-political-awakening>.

² Sebastian Murdock and Sara Boboltz, *The March For Our Lives Is Proof That Generation Z Can't Be Stopped*, THE HUFFINGTON POST (Mar. 24, 2018), https://www.huffingtonpost.com/entry/march-for-our-lives-2018_us_5ab69787e4b008c9e5f7cf8f.

³ John Nicols, *Lower the Voting Age to 16*, THE NATION (Feb. 23, 2018), <https://www.thenation.com/article/lower-the-voting-age-to-16/>.

⁴ *Id.*

⁵ *Id.*

⁶ Susan Milligan, *States Want Voters to Start Young*, US NEWS & WORLD REPORT (June 4, 2018), <https://www.usnews.com/news/best-states/articles/2018-06-04/states-want-voters-to-start-young>.

Constitution. The article will then examine the current laws that allow for sixteen- and seventeen-year-olds to vote in local and state elections, along with the legislation that some states have proposed that would lower the voting age in those states. Finally, the article will analyze the arguments for and against lowering the voting age by looking at the political and sociological elements of each argument.

I. VOTING AGE MOVEMENTS THROUGH TIME

A. *Voting Rights Act Amendment of 1970 and Oregon v. Mitchell (1970)*

Prior to 1970, the voting age stood at twenty-one.⁷ The public pressure to lower the voting age was ongoing for thirty years until the federal government decided to lower it to eighteen.⁸ The pressure to lower the voting age began in the 1940s when President Franklin Roosevelt lowered the military draft age from twenty-one to eighteen.⁹ Immediately after the draft age was lowered, the movement to lower the voting age revolved around the idea that if you could serve in the military at eighteen, then you should be able to vote.¹⁰ The phrase, “Old enough to fight, old enough to vote,” was created during this time and it would become the slogan of the movement to lower the voting age.¹¹ After World War II, President Dwight Eisenhower and President Lyndon Johnson furthered the cause to lower the voting age by

⁷ Joseph P. Williams, '*Old Enough to Fight, Old Enough to Vote': The 26th Amendment's Mixed Legacy*, US NEWS & WORLD REPORT (July 1, 2016), <https://www.usnews.com/news/articles/2016-07-01/old-enough-to-fight-old-enough-to-vote-the-26th-amendments-mixed-legacy>; See also Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314.

⁸ Williams, *supra* note 7.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

supporting the movement.¹² It was not until the Vietnam War that the push to lower the voting age eventually appealed to federal lawmakers, after they noticed the political activism and civic education among college students.¹³

In 1970, President Richard Nixon signed the Voting Rights Act Amendments of 1970, which included within it an amendment that lowered the voting age from twenty-one to eighteen.¹⁴ President Nixon believed that the inclusion of this amendment to lower the voting age was unconstitutional.¹⁵ Nixon proposed adding an amendment to the United States Constitution to lower the voting age, should the Supreme Court agree with his belief and find the amendment to be unconstitutional.¹⁶ Oregon and Texas agreed with President Nixon's belief that the Voting Rights Act Amendments of 1970 could not constitutionally lower the voting age, and they brought suit against the federal government, claiming that only states had the right to regulate their elections.¹⁷

This case would be argued at the Supreme Court in *Oregon v. Mitchell*, where the Court held in a five to four decision that the federal government could set the voting age for federal elections within a state, but could not do so for state and local elections.¹⁸ Justice Black, on

¹² Annual Message to the Congress on the State of the Union, 1 PUB. PAPERS 22 (Jan 7, 1954); Special Message to the Congress: To Vote at Eighteen — Democracy Fulfilled and Enriched, 1 PUB. PAPERS 751 (June 27, 1968).

¹³ Olivia B. Waxman, *Students Calling for Gun Control Can't Vote Yet. But Age Hasn't Stopped Young Activists in the Past*, TIME (Feb. 22, 2018), <http://time.com/5166976/florida-school-shooting-young-protesters/>.

¹⁴ Presidential Statement on Signing the Voting Rights Act Amendments of 1970, 1 PUB. PAPERS 512–13 (June 22, 1970).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 400 U.S. 112, 117 (1970).

¹⁸ *Id.* at 124.

behalf of the majority, wrote: “Congress has ultimate supervisory power over congressional elections. Similarly, it is the prerogative of Congress to oversee the conduct of presidential and vice-presidential elections and to set the qualifications for voters for electors for those offices . . . On the other hand, the Constitution was also intended to preserve to the States the power that even the Colonies had to establish and maintain their own separate and independent governments, except insofar as the Constitution itself commands otherwise.”¹⁹ He further went on to say, “I would hold that Congress has exceeded its powers in attempting to lower the voting age in state and local elections.”²⁰ Justice Black wrote that the only way to narrow the power a state has over its own elections would be through the addition of a constitutional amendment, since a state’s power to govern itself had been reduced in the past with the addition of the Fourteenth, Fifteenth, Nineteenth, and Twenty-Fourth Amendments to the United States Constitution.²¹ *Oregon v. Mitchell* meant that eighteen- to twenty-year-olds could vote in federal elections, but in order for these voters to be able to vote in state and local elections, a constitutional amendment was required.²² That process would begin immediately after the case was decided.²³

¹⁹ *Id.*

²⁰ *Id.* at 130.

²¹ *Id.* at 125.

²² *Mitchell*, 400 U.S. at 125.

²³ *Id.*

B. Passing the 26th Amendment and Lowering the Voting Age to Eighteen

One month after *Oregon v. Mitchell* was decided, Congress proposed a joint resolution to amend the United States Constitution.²⁴ It passed Congress with an overwhelming majority and was ratified by thirty-eight states in four months, making it the fastest amendment ever ratified.²⁵ President Nixon certified the amendment on July 5, 1971, making it effective immediately.²⁶

The Twenty-Sixth Amendment states: “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age. The Congress shall have power to enforce this article by appropriate legislation.”²⁷ The Senate report on the Twenty-Sixth Amendment, published after the amendment was ratified, stated that there were three specific reasons why the amendment was passed.²⁸ First, younger citizens were mature enough to vote due to the fact that they were better educated than ever before.²⁹ The amount of eighteen- to twenty-one-year-olds who had graduated high school was at eighty percent, which was sixty percent higher than the graduation rate in 1920.³⁰ Second, eighteen- to twenty-one-year-olds had adult responsibilities.³¹ In 1971, 3

²⁴ S.J. Res. 7, 92nd Cong. (1971).

²⁵ *Id.*; Andrew Glass, *The 26th Amendment gains approval*, July 1, 1971, POLITICO (July 1, 2017), <https://www.politico.com/story/2017/07/01/the-26th-amendment-gains-approval-july-1-1971-240006>.

²⁶ Remarks at a Ceremony Marking the Certification of the 26th Amendment to the Constitution , 1 PUB. PAPERS 798–801 (July 5, 1971).

²⁷ U.S. CONST. amend. XXVI, § 1–2.

²⁸ PASSAGE AND RATIFICATION OF THE TWENTY-SIXTH AMENDMENT 1–3 (Comm. Print 1974).

²⁹ *Id.* at 1–2.

³⁰ *Id.* at 2.

³¹ *Id.*

million eighteen- to twenty-one-year-olds were full time employees and paid taxes.³² Moreover, in 1971, twenty-six states allowed eighteen-year-olds to make wills, and in forty-nine states an eighteen-year-olds could be tried as adults in criminal cases.³³ Finally, Congress believed that eighteen- to twenty-one-year-olds would “contribute a great deal to our society.”³⁴ Congress commended eighteen- to twenty-one-year-olds for expressing their voices during the civil rights movement and stated that “our society has so much to gain by bringing the force of their idealism and concern and energy into the constructive mechanism of elective government.”³⁵

The Twenty-Sixth Amendment finally allowed eighteen- to twenty-year-old voters to vote in both state and federal elections, thus achieving the goals of the “old enough to fight, old enough to vote” movement.³⁶ In the aftermath of the passing of the Twenty-Sixth Amendment, there has been little federal interest in lowering the voting age further, and any proposed bills to do so die in committee.³⁷ At the state level, many now allow those under eighteen to register to vote.³⁸ Additionally, eighteen states allow seventeen-year-old voters to vote in primary

³² *Id.*

³³ PASSAGE AND RATIFICATION OF THE TWENTY-SIXTH AMENDMENT at 2.

³⁴ *Id.*

³⁵ *Id.* at 2–3.

³⁶ See U.S. CONST. amend. XXVI, § 1.

³⁷ See H.R.J. Res. 521, 102nd Cong. (1992). This bill was a proposal to add an amendment to the Constitution, thus repealing the 26th Amendment. The proposed amendment would have lowered the voting age to sixteen, but there was no interest in this bill, since it did not make it out of committee.

³⁸ *Preregistration for Young Voters*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Mar. 28, 2018), <http://www.ncsl.org/research/elections-and-campaigns/preregistration-for-young-voters.aspx>. Thirteen states, including the District of Columbia, allow pre-registration at 16. Four states allow for pre-registration at 17 years old. Five states allow for registration of voters who are months away from turning 18.

elections, so long as that voter will be eighteen by the general election.³⁹ Though the legislation to lower the voting age below eighteen has not passed on the federal or state level, many cities are now beginning to pass laws that allow for sixteen- and seventeen-year-olds to vote in local elections, showing that the fight to lower the voting age did not stop at eighteen.⁴⁰

C. Cities: Lower Level Elections, Lower Voting Ages

While no state has lowered its voting age so far, four cities have set their minimum voting age in local elections to sixteen.⁴¹ These cities are Takoma Park, Maryland, Hyattsville, Maryland, Greenbelt, Maryland, and Berkeley, California.⁴² Takoma Park, Hyattsville, and Greenbelt lowered the voting age in local elections through the authority given to them in the Maryland election code.⁴³ Berkeley lowered its voting age through the authority given to it in the Constitution of California.⁴⁴

In 2013, Takoma Park was the first city in America to lower its voting age to sixteen for its local elections.⁴⁵ Based on data gathered thus far, in the 2013, 2014, and 2015 local elections, the turnout amongst sixteen- and seventeen-year-olds was higher than the overall percentage of

³⁹ *17-Year-Olds and Primary Elections*, NATIONAL CONFERENCE OF STATE LEGISLATURES (May 9, 2018), <http://www.ncsl.org/research/elections-and-campaigns/primaries-voting-age.aspx>.

⁴⁰ See TAKOMA PARK, MD., MUN. CHARTER art. VI § 601(a) (2013); HYATTSVILLE, MD., CHARTER art. IV § C4-1(1) (2015); GREENBELT, MD., CHARTER § 15 (2018); BERKELEY, CAL., CHARTER art. III § 5(3)(a) (2016).

⁴¹ *Id.*

⁴² *Id.*

⁴³ MD. CODE ANN., ELEC. LAW § 2-202 (LexisNexis 2017).

⁴⁴ CAL. CONST. art. XI, § 5(a).

⁴⁵ TAKOMA PARK, MD., MUN. CHARTER art. VI § 601(a) (2013).

voters.⁴⁶ When looking at the turnout of sixteen- and seventeen-year-old registered voters, the highest number of sixteen- and seventeen-year-old registered voters actually voting in an election has been 45 percent.⁴⁷ However, only a third of the sixteen- and seventeen-year-old residents of Takoma Park have actually registered to vote.⁴⁸ One thing worth noting is that since the voting age lowered to sixteen in Takoma Park, many politicians have started to reach out directly to this new demographic by advertising at high schools and holding events at them as well.⁴⁹

In 2015, Hyattsville, Maryland became the second city in America to lower its voting age.⁵⁰ Since this change is recent, the only available data is from the 2015 election in Hyattsville; only eleven sixteen- and seventeen-year-old residents registered to vote and four actually voted.⁵¹ The overall turnout for this election was 12.5 percent of registered voters, making the turnout for sixteen- and seventeen-year-olds technically higher than the overall turnout at 36 percent.⁵² Until more data is released, it is difficult to see whether more sixteen- and seventeen-year-old residents are registering and voting in local elections in Hyattsville.

In 2016, Berkeley, California amended its city charter to allow sixteen- and seventeen-year-old residents to vote in school board elections.⁵³ And in February 2018, Greenbelt,

⁴⁶ *Lowering the Voting Age for Local Elections in Takoma Park and Hyattsville, MD, A CASE STUDY* (Generation Citizen/Vote 16 USA, New York, N.Y.), Oct. 2016, at 4.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 5.

⁵⁰ HYATTSVILLE, MD., CHARTER art. IV § C4-1(1) (2015).

⁵¹ *Lowering the Voting Age for Local Elections in Takoma Park and Hyattsville, MD, supra* note 46, at 7.

⁵² *Id.*

⁵³ BERKELEY, CAL., CHARTER art. III § 5(3)(a) (2016).

Maryland lowered its voting age to sixteen for all local elections.⁵⁴ Unfortunately, the data of sixteen- and seventeen-year-old residents who have registered and voted in these two cities is currently unavailable.

II. HITTING A MOVING TARGET: TOWARDS AN EVEN LOWER VOTING AGE?

A. *Proposed Laws Being Presented in State Legislatures*

With the recent trend of many cities being successful in lowering the voting age for local elections, many states are now considering passing legislation which would lower the voting age in its elections.⁵⁵ Within the past three years, New York, Michigan, Arizona, Hawaii, Virginia, Minnesota, California, and the District of Columbia, have seen their legislatures propose legislation which would lower the voting age to either sixteen or seventeen.⁵⁶ Out of the states that have proposed to lower the voting age to either sixteen or seventeen, California's legislation was rejected by the California Assembly; Hawaii's legislation failed to make the ballot, so that voters could approve it; New York, Arizona, Minnesota, and Virginia's legislation all failed to make it out of committee; and Michigan and D.C. could still have its proposals made into law.⁵⁷

In Michigan, an amendment was proposed that might potentially lower the voting age to sixteen, which has been most recently referred to the Elections and Ethics Committee.⁵⁸

⁵⁴ GREENBELT, MD., CHARTER § 15 (2018).

⁵⁵ See S. S06839, 2018 Leg. Sess. (N.Y. 2018); H.J.R. KK, 2018 Leg. Sess. (Mich. 2018); S.C.R. 1022, 53rd Leg., 2nd Reg. Sess. (Ariz. 2018); H.R. 1304, 2015 Leg., 28th Sess. (Haw. 2015); H.R.J. Res. 33, 2018 Leg. Sess. (Va. 2018); S. 3453, 2018 Leg., 90th Sess. (Minn. 2018); Assemb. Const. amend. 10, 2017 Leg. Sess. (Cal. 2017); "Youth Vote Amendment Act of 2018, D.C. Council B. 22-0778, 22nd Council Sess. (D.C. 2018).

⁵⁶ *Id.*

⁵⁷ See State Elections Legislation Database, NATIONAL CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/elections-and-campaigns/elections-legislation-database.aspx> (Scroll down topic list select Voters-Age, then click search.).

⁵⁸ Justin Wise, *Michigan Democrats Propose Lowering Voting Age to 16*, THE HILL (June 14, 2018), <http://thehill.com/homenews/392295-michigan-democrats-propose-changing-vote-age-to-16>; see also Michigan

Michigan's constitution states the age required to vote, and therefore a law cannot simply be passed to lower the voting age; the Michigan constitution would need to be amended.⁵⁹ In order to amend the constitution in Michigan through a proposed amendment, two-thirds of the state senate and state house of representatives need to approve the amendment.⁶⁰ The issue that Michigan faces is that the proposed amendment is being supported on political party lines.⁶¹ The Michigan legislature has a Republican majority and there has been no Republican state senator or state representative who has expressed supporting the proposed amendment.⁶² This makes the passage of the proposed amendment highly unlikely to pass with two-thirds approval from both chambers of the legislature, meaning that the voting age in Michigan will remain eighteen.⁶³

The District of Columbia may be the first "state" to lower its voting age. The majority of D.C. council members have co-sponsored the Youth Vote Amendment Act of 2018, which would lower the voting age in D.C. to sixteen.⁶⁴ Mayor Muriel Bowser will likely approve the

Legislature, Bill History, H.B. 6183 (2018),
[http://www.legislature.mi.gov/\(S\(lzm1eo0j2x0rj0nuq0kxmmwa\)\)/mileg.aspx?page=GetObject&objectName=2018-HB-6183](http://www.legislature.mi.gov/(S(lzm1eo0j2x0rj0nuq0kxmmwa))/mileg.aspx?page=GetObject&objectName=2018-HB-6183).

⁵⁹ MICH. CONST. art. XII, § 1.

⁶⁰ MICH. CONST. art. XXI, § 1.

⁶¹ Wise, *supra* note 58; *Let It Rip Weekend: Social studies Standards; Lowering Voting Age*, FOX 2 DETROIT (June 24, 2018), <http://www.fox2detroit.com/news/let-it-rip/let-it-rip-weekend-social-studies-standards-lowering-voting-age>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Washington Post Editorial Board, *Give a Lower Voting Age a Try*, WASHINGTON POST (Apr. 13, 2018), https://www.washingtonpost.com/opinions/give-a-lower-voting-age-a-try/2018/04/13/d124b0ea-3e82-11e8-8d53-eba0ed2371cc_story.html?noredirect=on&utm_term=.ecfe6e53175. The word "state" is in quotations to show that the District of Columbia is a pseudo-state. Even though the District of Columbia is a federal district, it receives electoral votes in the Electoral College like other states do. See U.S. CONST. amend. XXIII, § 1.

bill if passed by the council, since she has expressed support for it.⁶⁵ However, in D.C., a bill does not become law immediately after approval by the Mayor.⁶⁶ Under the District of Columbia Home Rule Act, when a bill is passed by the D.C. Council, the passed bill must be sent for congressional review to the United States House of Representatives and United States Senate for thirty days, when each chamber is in session, before becoming law.⁶⁷ During those thirty days, if Congress passes a joint resolution against the passed bill, and that joint resolution is signed by the President, then the act does not become law.⁶⁸ If Congress does not act during the thirty days, or fails to pass a joint resolution, then the bill will become law.⁶⁹

Like Michigan, D.C. faces the same problem with partisan politics getting in the way of lowering the voting age.⁷⁰ Republican members of Congress, and even some Democratic members of Congress, have stated that the voting age should remain eighteen.⁷¹ Should the proposed D.C. Council bill be approved, the currently-held Republican Congress may pass a joint resolution against the bill and could even get support across the aisle to pass a resolution.⁷² However, if Congress does not pass a joint resolution, then not only will D.C. be the first “state”

⁶⁵ *Id.*

⁶⁶ D.C. CODE § 1-206.02(c)(1) (1995).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Zaid Jilani, *Despite Surging Youth Activism, Members of Congress are Reluctant to Lower Voting Age*, THE INTERCEPT (Mar. 13, 2018), <https://theintercept.com/2018/03/13/lower-voting-age-to-16-youth-activism/>.

⁷¹ *Id.*

⁷² Jesse Seidman, *D.C. Wants to Give 16 Year Olds the Right to Vote*, VICE NEWS (Apr. 13, 2018), https://news.vice.com/en_us/article/ywxew5/dc-wants-to-give-16-year-olds-the-right-to-vote.

to have a voting age of sixteen, but it would allow around 10,600 sixteen- and seventeen-year-old voters to vote for President.⁷³

Furthermore, if D.C. does become the first “state” to allow sixteen- and seventeen-year-olds to vote in Presidential elections, it would be constitutional for it to do so and not in violation of the Twenty-Sixth Amendment.⁷⁴ According to many legal scholars, the Twenty-Sixth Amendment does not prevent a state from lowering its voting age.⁷⁵ They claim that the point of the Twenty-Sixth Amendment was only to prohibit denial of voting against those eighteen or older and not to require that the minimum age be set at eighteen.⁷⁶ In accordance with these legal opinions, barring any joint resolution by Congress, sixteen- and seventeen-year-old D.C. residents may be able to vote in the 2020 Presidential election and D.C. may begin a trend of

⁷³ Reis Thebault, *Should 16-Year-Olds be Able to Vote? A Majority of the D.C. Council Thinks So*, WASHINGTON POST (June 27, 2018), https://www.washingtonpost.com/local/dc-politics/should-16-year-olds-beable-to-vote-a-majority-of-the-dc-council-thinks-so/2018/06/27/7ce0cbfc-796c-11e8-93cc-6d3beccdd7a3_story.html?utm_term=.70760d91d7e1; See also *Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2017*, U.S. CENSUS BUREAU, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2017_PEPSYASEX&prodType=table (Go to “Geography” and select District of Columbia).

⁷⁴ See Joshua A. Douglas, *In Defense of Lowering the Voting Age*, 165 U. PA. L. REV. 63, 66 (2017); See also Seidman, *supra* note 72; Alex Seitz-Wald, *Washington, D.C., May Let 16 Year Olds Vote for President. Is That a Good Idea?*, NBC NEWS (Apr. 17, 2018), <https://www.nbcnews.com/politics/elections/washington-d-c-may-let-16-year-olds-vote-president-n866481>; 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>; Milligan, *supra* note 6; Aaron C. Davis, *16-Year-Olds in D.C. Could Vote for President in 2016, Under Proposal*, WASHINGTON POST (Nov. 3 2015), https://www.washingtonpost.com/local/dc-politics/16-year-olds-in-dc-could-vote-for-president-in-2016-under-proposal/2015/11/03/3175fede-825d-11e5-8ba6-cec48b74b2a7_story.html?utm_term=.a566aab9d98e (D.C. had tried to lower its voting age in 2015, but was unsuccessful).

⁷⁵ Douglas, *supra* note 74 (noting that “the Twenty-Sixth Amendment sets the voting age at eighteen, but it does not stipulate that eighteen is a floor. Nothing in the language of the Amendment prohibits states or localities from setting a lower voting age.”); Grabenstein, *supra* note 74 (stating “Constitutional law expert Michael Morley said states, for the most part, are empowered to define their own electorates. States have broader power than Congress to set the voting age for state and local elections, though Congress regulates federal offices, he added.”); Davis, *supra* note 74 (stating “Nathaniel Persily, a professor of law at Stanford University, said of the D.C. proposal: “There is no right to vote in the Constitution . . . it doesn’t say you can disenfranchise people who are under 18 . . . the amendment prevents against discrimination, it doesn’t prevent against greater inclusion.”).

⁷⁶ *Id.*

more legislation to lower the voting age in other states in the near future. At the time of publication of this Article, the bill has advanced to the full D.C. City Council for a final vote.⁷⁷

B. Political and Sociological Arguments For/Against Lowering the Voting Age

The debate over lowering the voting age has become a mainstream topic in 2018 and it is mainly due to the political organization and activism of high school students in the aftermath of the Parkland shooting.⁷⁸ Though many Americans disagree over whether the voting age should be lowered, there is a general consensus that there is a need to teach civics to teenagers and educate them on how government works before they reach any voting age.⁷⁹ When looking at the reasons to lower the voting age, or to keep the current voting age at eighteen, the arguments used are mostly centered on how mature a sixteen- or seventeen-year-old truly is.⁸⁰

i. Arguments for Lowering the Voting Age

The arguments to lower the voting age again stem similarly from the reasons why Congress lowered the voting age to eighteen in the 1970s.⁸¹ These are: First, sixteen- and

⁷⁷ Morgan Gstalter, *DC Council to Vote on letting 16 year olds vote*, THE HILL (Nov. 2, 2018), <https://thehill.com/homenews/campaign/414491-dc-council-to-vote-on-letting-16-year-olds-vote> (The Council is expected to take up the bill later this month.); National Desk Staff, *Lawmakers could soon lower the voting age to 16 in Washington, D.C.*, NBC5 (Nov. 2, 2018), <https://www.mynbc5.com/article/dc-lawmaker-proposing-lowering-voting-age-to-16/19757594>.

⁷⁸ Laurence Steinberg, *Why We Should Lower the Voting Age to 16*, N.Y. TIMES (Mar. 12, 2018), <https://www.nytimes.com/2018/03/02/opinion/sunday/voting-age-school-shootings.html>; Washington Post Editorial Board, *supra* note 64; Seitz-Wald, *supra* note 74; Jilani, *supra* note 70; Andrew Solender, *Opinion: Lower the Voting Age*, VASSAR POL. REV. (Mar. 24, 2018), <http://vassarpoliticalreview.com/2018/03/24/lower-the-voting-age/>; Ben Shapiro, *Students' Anti-Gun View*, NAT'L REV. (Feb. 20, 2018), <https://www.nationalreview.com/2018/02/students-anti-gun-views/>.

⁷⁹ *Id.*

⁸⁰ Steinberg, *supra* note 78; David Davenport, *No, We Shouldn't Lower The Voting Age To 16*, FORBES (May 25, 2016), <https://www.forbes.com/sites/daviddavenport/2016/05/25/no-we-shouldnt-lower-the-voting-age-to-16/#5f6e539c531e>.

⁸¹ See Douglas, *supra* note 74, at 66–71; Steinberg, *supra* note 78; Grabenstein, *supra* note 74; Thebault, *supra* note 73; Milligan, *supra* note 6; Jamelle Bouie, *Let the Teens Vote*, SLATE (Apr. 17, 2018), <https://slate.com/news-and-politics/2018/04/states-would-do-well-to-enfranchise-16-year-olds.html>; Zachary Crockett, *The Case for Allowing 16-Year-Olds to Vote*, VOX (Nov. 7, 2016), <https://www.vox.com/policy-and>

seventeen-year-olds are psychologically mature enough to vote; Second, lowering the voting age will help solve the issue of low voter turnout with younger voters; Third, sixteen- and seventeen-year-olds are affected by government policy; and Fourth, other countries have lowered their voting ages with success.⁸²

Supporters of lowering the voting age claim that the voting age should be lowered because sixteen- and seventeen-year-olds have the capacity to vote because they are capable of making rational decisions.⁸³ These supporters cite to psychological and neurological studies that claim that a person's decision making can be summed up into two categories: "hot" and "cold" cognition.⁸⁴ A person uses hot cognition when making decisions in conditions that require quick reactions, intense emotions, or peer pressure.⁸⁵ A person can only make good decisions under these conditions by having self-control, which allows him- or herself to think before he or she acts, control his or her emotions, and resist peer pressure.⁸⁶ A person's ability to use self-control does not fully develop until he or she is around twenty-two years old.⁸⁷ A person uses cold cognition when making informed decisions in situations where he or she can be calm, alone,

politics/2016/11/7/13347080/voting-age-election-16; Laurence Steinberg, *When can you buy a gun, vote or be sentenced to death? Science suggests US should revise legal age limits*, THE CONVERSATION (Mar. 5, 2018), <http://theconversation.com/when-can-you-buy-a-gun-vote-or-be-sentenced-to-death-science-suggests-us-should-revise-legal-age-limits-92328> [hereinafter *Conversation Article*]; Matthew Yglesias, *The Case For Letting Children Vote*, Vox (Nov. 28, 2015), <https://www.vox.com/2015/11/28/9770928/voting-rights-for-kids>.

⁸² *Id.*

⁸³ Douglas, *supra* note 74, at 69–71; Steinberg, *supra* note 78; *Conversation Article*, *supra* note 81.

⁸⁴ Steinberg, *supra* note 78; *Conversation Article*, *supra* note 81.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

given time to deliberate, or can logically reason through facts.⁸⁸ A person's ability to make informed decisions does not become fully developed until he or she is around sixteen years old.⁸⁹

Scientists claim that a sixteen- or seventeen-year-old would use cold cognition when voting.⁹⁰ The reasoning behind this is because an election takes place over months, thus allowing a sixteen- or seventeen-year-old to conduct research and reach his or her own conclusions.⁹¹ Also, a sixteen- or seventeen-year-old voter would have as much time as needed when at a voting booth to mark his or her ballot.⁹² Additionally, supporters aim to dispel the opposition's claim that if the voting age is lowered, then the age should will be lowered to drink, buy cigarettes, view explicit materials, receive the death penalty, give consent, and purchase a firearm.⁹³ Supporters claim that this slippery slope argument is invalid because all those things listed fall under hot cognition, since the current laws are in place to help regulate self-control and disincentivize bad decision making.⁹⁴ Thus, supporters are able to distinguish lowering the voting age from lowering the age for other laws.

The second reason why supporters want to lower the voting age is because sixteen- and seventeen-year-old voters would not only increase the overall younger voting pool, but they would able to get into the habit of voting at an earlier age, thus increasing voter turnout long

⁸⁸ *Id.*

⁸⁹ Steinberg, *supra* note 78; *Conversation Article*, *supra* note 81.

⁹⁰ Douglas, *supra* note 74, at 69–71; Steinberg, *supra* note 78; *Conversation Article*, *supra* note 81.

⁹¹ *Conversation Article*, *supra* note 81.

⁹² *Id.*

⁹³ Steinberg, *supra* note 78.

⁹⁴ *Conversation Article*, *supra* note 81.

term.⁹⁵ When coupled with information on how government functions, it is believed that this will inspire younger voters to show up at the ballot box.⁹⁶ Also, supporters claim that lowering the voting age would help increase voting in households overall, under a “trickle up” theory, which claims that when young voters vote, there is an increased chance that their parents will vote.⁹⁷ Opponents to this theory claim that parents may force their children to vote the same way they do, but supporters argue that this belief is incorrect, citing to the fact that women were not coerced by their husbands to vote the way they did after the passage of the Nineteenth Amendment.⁹⁸

The third reason why supporters want to lower the voting age is because sixteen- and seventeen-year-olds are affected by certain government policies, but do not have a voice in changing it at the ballot box.⁹⁹ Supporters contend that sixteen- and seventeen-year-olds are affected by government policies because they pay income taxes, are able to work without limits on hours, obtain a driver’s license, marry in certain states, and can be tried as adults for certain crimes.¹⁰⁰ This argument is furthered by that fact that these citizens do not have a say in influencing policies such as the national debt, the environment, education, and decisions

⁹⁵ Yglesias, *supra* note 81; Grabenstein, *supra* note 74; Bouie, *supra* note 81; Crockett, *supra* note 81; Milligan, *supra* note 6.

⁹⁶ Crockett, *supra* note 81.

⁹⁷ Thebault, *supra* note 73.

⁹⁸ Eric Zorn, *It’s Only Logical – 16-Year-Olds Should Have the Right to Vote*, Chicago Tribune (Apr. 26, 2018), <http://www.chicagotribune.com/news/opinion/zorn/ct-perspec-zorn-vote-16yearolds-lower-age-20180426-story.html>.

⁹⁹ Grabenstein, *supra* note 74; Crockett, *supra* note 81; Bouie, *supra* note 81; Zorn, *supra* note 98.

¹⁰⁰ Crockett, *supra* note 81; Bouie, *supra* note 81; Zorn, *supra* note 98.

regarding war.¹⁰¹ Moreover, supporters invoke the same arguments that were used to lower the voting age to eighteen by pointing out that sixteen- and seventeen-year-olds are already involved in the political process because they can make contributions to political campaigns, volunteer for a candidate, attend political rallies, and register eligible voters to vote.¹⁰² By drawing parallels to the responsibilities and political activism of students today in the aftermath of the Parkland shooting to the students during the Vietnam War, supporters hope that they will receive a proportionate outcome and lower the voting age.¹⁰³

Finally, the fourth reason why supporters want to lower the voting age is because there are twenty other countries in the world with a voting age lower than eighteen.¹⁰⁴ Supporters point to evidence in countries that lowered the voting age like Austria and Norway resulted in higher voter turnouts in sixteen- and seventeen-year-old voters than eighteen- to twenty-year old-voters.¹⁰⁵ As a result, supporters of lowering the voting age point to these other countries to show that sixteen- and seventeen-year-old voters do show up on election day and are capable of voting.¹⁰⁶

i. *ii. Arguments Against Lowering the Voting Age*

The opponents of lowering the voting age believe that the reasons for lowering the voting age have no parallels to why Congress first lowered the voting age in 1971.¹⁰⁷ Opponents believe

¹⁰¹ Grabenstein, *supra* note 74.

¹⁰² Yglesias, *supra* note 81.

¹⁰³ Grabenstein, *supra* note 74.

¹⁰⁴ Crockett, *supra* note 81; Bouie, *supra* note 81; Steinberg, *supra* note 78.

¹⁰⁵ Crockett, *supra* note 81.

¹⁰⁶ *Id.*

¹⁰⁷ Grabenstein, *supra* note 74.

that the voting age should stay the same for four main reasons: First, sixteen- and seventeen-year-olds do not have the mental capacity to vote; Second, lowering the voting age is only being proposed by Democrats, so that they can win elections; Third, education should take priority before lowering the voting age; and Fourth, potential voter fraud.¹⁰⁸

Opponents do not want the voting age to change because they believe that sixteen- and seventeen-year-olds do not have the mental capacity to vote.¹⁰⁹ Though supporters cite to the fact that voting uses cold cognition, opponents believe that this is not entirely accurate.¹¹⁰ Some studies have stated that emotions can impact the way in which a person votes, because when a person is making an informed decision, he or she uses past emotional responses to shape his or her informed decision, which ultimately impact the choice the person makes when voting.¹¹¹ Though this concept does apply to everyone, opponents use these studies to show how sixteen- and seventeen-year-olds are more susceptible to using past emotional responses when making the decision to vote, because they cannot use self-control properly until age twenty-two.¹¹²

¹⁰⁸ *Id.*

¹⁰⁹ Shapiro, *supra* note 78; Davenport, *supra* note 80; Austin Frank, *We Shouldn't Lower the Voting Age – We Should Raise It*, TODAY IN POLITICS (Feb. 9, 2017), <https://tipolitics.com/we-shouldnt-lower-the-voting-age-we-should-raise-it-579a07c3152b>.

¹¹⁰ Shapiro, *supra* note 78; Davenport, *supra* note 80.

¹¹¹ See Giulia Galla, et al., *Brain Indices of Disagreement With One's Social Values Predict EU Referendum Voting Behavior*, 12 SOCIAL COGNITIVE AND AFFECTIVE NEUROSCIENCE 1758 (Issue 11, 2017) (stating “We therefore demonstrate for the first time that brain activity associated with the fast evaluation of politically charged statements can be predictive of the voting behavior of participants who at the time of testing were sure about their vote intention, and crucially, also in participants who were not sure. This latter finding suggests an intriguing possibility—that despite a verbal report of uncertainty, undecided voters have embryonic preferences that guide their electoral choices.”); Eyal Winter, *Voting is Irrational. Emotions Always Win*, THE GUARDIAN (May 7, 2018), <https://www.theguardian.com/commentisfree/2015/may/07/voting-irrational-emotions-politics-ideology> (stating “In recent years, however, a growing body of evidence has shown that our political behavior is governed more by emotions and less by rationality.”); Kristiina Cooper, *The Psychology of Voting: an Emotional Matter?*, BBC (May 6, 2015), <https://www.bbc.com/news/election-2015-32537661> (stating “Thinking and feeling go hand in hand. In any decision-making — including political decisions — how people feel about the information they're being given is important...Emotions help people make decisions.”).

¹¹² See Shapiro, *supra* note 78; Davenport, *supra* note 80.

Opponents claim that because voting choice can be influenced by emotions, the voting age should not be lowered, but actually raised to twenty-two, when a person does have proper self-control.¹¹³

Additionally, opponents point to how some of the responsibilities that Congress referred to when lower the voting age to eighteen are not applicable to sixteen- and seventeen-year-olds, and in fact, are not even currently applicable to eighteen-year-olds.¹¹⁴ Opponents use the raising of the age to make certain purchases as proof that, as a society, we do not think that sixteen- and seventeen-year-olds have the mental capacity to vote.¹¹⁵ They argue that since the voting age has been lowered to eighteen, the age has been raised to do things such as purchasing a firearm, buying alcohol, and in some states, purchasing cigarettes.¹¹⁶ Since the age is being raised on purchases that eighteen-year-olds could make when the voting age was lowered to eighteen, opponents see the claim that there are parallels to the current movement to lower the voting age and the Vietnam War movement as subpar at best.¹¹⁷

The second reason why opponents are against lowering the voting age is because they view it as a desperate move by Democrats to win more elections.¹¹⁸ Opponents claim that since younger voters vote tend to Democrat, by allowing sixteen- and seventeen-year-olds to vote,

¹¹³ See Davenport, *supra* note 80; Frank, *supra* note 109.

¹¹⁴ Shapiro, *supra* note 78; Davenport, *supra* note 80.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Rush Limbaugh, *And They Say It's Not Political*, THE RUSH LIMBAUGH SHOW (Feb. 20, 2018), <https://www.rushlimbaugh.com/daily/2018/02/20/and-they-say-its-not-political/>; Eric Owens, *Let 16-Year-Olds Vote, Says Professor Who Urged Progressives to Keep Youth Vote Behind Obama*, THE DAILY CALLER (Mar. 10, 2015), <http://dailycaller.com/2015/03/10/let-16-year-olds-vote-says-tufts-professor/>.

Democrats will be able to court this group into giving them more votes in elections.¹¹⁹ Supporters refute this claim by stating that even though in the past presidential election young voters voted for Hillary Clinton, fifty-six to thirty-four percent nationwide, in the states that voted for President Trump, younger voters supported him over Clinton.¹²⁰ However, opponents point to the fact that the percentage of younger voters that voted for Hillary Clinton in states that are considered “swing” states was over ten percent.¹²¹ The poll numbers contribute to Republican suspicions when Democrats propose to lower the voting age, and help explain why the movement to lower the voting age is a partisan issue.

The third reason why opponents believe that the voting age should not be lowered is because educating teenagers on civics and the importance of voting should take priority over lowering the voting age.¹²² Education has not been doing well enough to get current young voters out to vote.¹²³ The Parkland shooting brought up the issue of lowering the voting age, but it did not get more young citizens to register to vote, showing that there is a need to educate teenagers on voting.¹²⁴ Moreover, some states have realized that young voter turnout will not increase by

¹¹⁹ Limbaugh, *supra* note 118; Yamiche Alcindor, *Campaign to Lower Voting Age to 16 in Local Races Ignites a Debate*, N.Y. TIMES (Dec. 9, 2015), <https://www.nytimes.com/2015/12/10/us/politics/campaign-to-lower-voting-age-to-16-in-local-races-ignites-a-debate.html>; See also Shiva Maniam and Samantha Smith, *A Wider Partisan and Ideological Gap Between Younger, Older Generations*, PEW RESEARCH CENTER (Mar. 20, 2017), <http://www.pewresearch.org/fact-tank/2017/03/20/a-wider-partisan-and-ideological-gap-between-younger-older-generations/>.

¹²⁰ Milligan, *supra* note 6.

¹²¹ See *Exit Polls*, CNN (Nov. 15, 2016), <https://www.cnn.com/election/2016/results/exit-polls/ohio/president>.

¹²² Dan Schnur, *Don't Just Lower State's Voting Age; Educate Young Voters*, S.F. CHRONICLE (Mar. 10, 2017), <https://www.sfchronicle.com/news/article/Don-t-just-lower-state-s-voting-age-educate-10994078.php>.

¹²³ *Id.*

¹²⁴ Emily Guskin, *Are Young Voters Going to Sway the Midterms? New Data Shows That's Not Very Likely*, Washington Post (Aug. 1, 2018), https://www.washingtonpost.com/news/the-fix/wp/2018/08/01/are-young-voters-going-to-sway-the-midterms-new-data-show-thats-not-very-likely/?noredirect=on&utm_term=.8600344ccb4a.

lowering the voting age alone.¹²⁵ That is why they have included educational programs in their proposed legislation.¹²⁶ The issue is that it will be hard to know if the education programs are immediately successful because a part of the new electorate did not go through the new programs and still voted. Opponents believe that by implementing a program prior to lowering the voting age and studying its effect on young voters, an informed discussion to lower the voting age should then take place.¹²⁷

Finally, opponents are against states lowering their voting age on the grounds that it would open the door to potential voter fraud.¹²⁸ If a state were to lower its age in state elections only, then it would need to place sixteen- and seventeen-year-olds on a different voter roll so that they could vote on ballots that did not include federal elections.¹²⁹ Opponents claim that if a state were to lower its voting age, then a sixteen- or seventeen-year-old voter could illegally vote in a federal election due to fraud by an individual.¹³⁰ Fraud could occur if a sixteen- or seventeen-year-old voted with a ballot that was meant for a voter who was eighteen or older, due to the state incorrectly placing the voter in the wrong voter roll, or by giving the voter the wrong ballot at the polling place or in the mail.¹³¹ Additionally, there is potential for a sixteen- or seventeen-year-old non-citizen to illegally register to vote, obtain a ballot, and commit voter fraud by

¹²⁵ *Id.*

¹²⁶ See State Elections Legislation Database, *supra* note 57.

¹²⁷ Schnur, *supra* note 121.

¹²⁸ Milligan, *supra* note 6.

¹²⁹ See State Elections Legislation Database, *supra* note 57.

¹³⁰ Milligan, *supra* note 6.

¹³¹ *Id.*

illegally voting in a state election. With non-citizen voting already being an issue in America, opponents believe lowering the voting age would only exacerbate the problem in states.¹³²

CONCLUSION

When it comes to lowering the voting age, there is a growing movement among the public and elected officials to lower the voting age to either sixteen or seventeen. Though the movement is still in its infancy, more legislation has been proposed in 2018 than ever before.¹³³ Still, it remains unclear whether any state will pass legislation or amend its state constitution to lower the voting age anytime soon. The exception to this is Washington, D.C., which seems likely to get its voting age lowered to sixteen in all its elections, absent congressional intervention.¹³⁴ Should D.C. be the first to lower its voting age to sixteen, it would likely be constitutional, and it would test to whether supporters or opponents of lowering the voting age are correct in their arguments. Scientists can study sixteen- and seventeen-year-old voting behavior by looking into possible influences that may have shaped the reasons why they voted for the candidates they selected and determine whether these voters actually have the mental capacity to vote. Additionally, it can be determined if educational programs help increase the young voter turnout.

Ultimately, it is unclear whether it is the time to lower the voting age. This concept is still new and based on responses from elected officials, a majority of them believe the opposition's

¹³² Jesse T. Richman, Gulshan A. Chatta & David C. Earnest, *Do non-citizens vote in U.S. elections?*, 36 ELECTORAL STUDIES 149, 153 (2014) (stating that an estimated 6.4 percent of non-citizens voted in the 2008 election and an estimated 2.2 percent voted in 2010).

¹³³ See State Elections Legislation Database, *supra* note 57.

¹³⁴ See Thebault, *supra* note 73.

points, or just to not care enough to change the voting age.¹³⁵ This was also seen by the rejection of the majority of proposed bills to lower the voting age. If America does lower the voting age, support should first reach the same levels the Vietnam War movement enjoyed. Whether that level of support will be achieved, only time will tell.

¹³⁵

Jilani, *supra* note 70.