Robin Chen <rschanche@gmail.com>

Testimony on Child Voting

Silbaugh, Katharine B <silbaugh@bu.edu> Fri, Jun 23, 2023 at 4:59 PM
To: Robin Chen <rschanche@gmail.com>
Cc: "colleen.bellotti@mahouse.gov" <colleen.bellotti@mahouse.gov>, "Sternman, Mark (SEN)" <Mark.Sternman@masenate.gov>

Thank you for adding Mr. Sternman, and please accept these comments on the proposal. I am more than happy to discuss this issue further.

Best, Kate Silbaugh

Sent from a handheld device

On Jun 23, 2023, at 4:57 PM, Robin Chen <rschanche@gmail.com> wrote:

Thank you for offering your expert testimony, Professor Silbaugh.

Adding Mark Sternman to this email. He has taken over the responsibility of receiving written testimonies for Senate Chair Keenan.

Robin

On Fri, Jun 23, 2023 at 4:50 PM Silbaugh, Katharine B <silbaugh@bu.edu> wrote:

Dear Ms. Bellotti and Ms. Maynard:

Please accept this written testimony on the question of providing the vote to children, on which you held a hearing Wednesday, June 21, 2023. I am Professor of Law at Boston University School of Law. My research includes child welfare law and legal issues surrounding late adolescents. I have published scholarship expressing concerns about the legal consequences of proposals to lower the voting age to 16. One example of my research on the topic, for your consideration, may be found here: Katharine Silbaugh, *More Than the Vote: 16-Year-Old Voting and The Risks of Legal Adulthood*, 100 Boston University Law Rev 1689 (2020) https://www.bu.edu/bulawreview/files/2020/10/SILBAUGH.pdf
I am an elected member of the American Law Institute and an advisor on the ALI's Restatement of the Children and the Law, a multi-year project that will be completed in the fall of 2023. The issues I raise here have not been covered in your public proceeding to date.

Advocates of 16-year-old voting have not grappled with two significant risks to adolescents of their proposal. First, a right to vote entails a corresponding accessibility of voters by campaigns. Campaign speech is highly protected under the First Amendment, and 16-year- old voting invites a more unfettered access to minors by commercial, government, and political interests than current family law and Constitutional law tolerates. Opening 16-year-olds to campaign access undermines a considered legal system of managing the potential exploitation of adolescents. Those legal frameworks protecting minors include direct regulation of entities, such as tobacco companies and military recruiters, for example. It also includes a system that gives parents decision-making responsibility and authority to manage, supervise, and even prohibit contacts with every kind of person interested in communicating with their minor child through the age of 18. Vote 16 would set up a direct conflict between First Amendment protection of campaign speech and the constitutionally recognized right of parents to prevent third parties from contacting their minor children. See, e.g., the attached American Law Institute (ALI) provision upholding parental authority to deny third party contact with a child. This provision reflects a series of cases in the United States Supreme Court interpreting the U.S. Constitution as protective of a parent's right to prevent third parties (such as campaigns) from contact with their child. My above-cited article unpacks the significance of this conflict of two well-established constitutional rights presented by Vote 16.

Second, voting is the most significant civil right. The history of other campaigns to earn the vote, including Woman's Suffrage and 18-year-old voting, suggests that lowering the voting age will lead to a more far-

reaching civil equality, meaning a lower age of majority, regardless of the wishes or protestations of Vote16 advocates. Lowering the voting age will therefore undermine the protective commitments we make to youth in school, in the justice system, and in the child welfare system. The neuropsychological development framework for evaluating 16-year-old voting needs to operate alongside a missing institutional analysis of the age of majority. Vote16 advocates cannot continue to avoid filling out the broader case for a 16-year-old age of majority and reckoning with its inconsistency with current protective family and child welfare law. The history and implications of voting on civil status are elaborated in my above referenced article, *More Than the Vote: 16-Year-Old Voting and The Risks of Legal Adulthood*, 100 Boston University Law Rev 1689 (2020).

The Vote16 movement repeatedly justifies its case with evidence that lifelong voter turnout can be improved by starting younger. Conceding this point, lifelong voter turnout should not be improved at the cost of our ongoing commitment to a youth-protective legal posture. Our frequent failures to fully deliver on our protective commitment to 16 and 17 year olds should not be used to defend vote 16, because it ignores our frequent and significant successes in delivering that protective commitment. Because the agenda of Vote16 is to improve lifelong voter turnout rather than to address the status of adolescents, the movement has not grappled with situating its claim within the legal identity of adolescents broadly. Until Vote16 addresses these issues, state legislatures and local governments should pause their consideration of Vote16 proposals.

In contrast to Vote 16, full child voting, or universal enfranchisement within a proxy system, addresses the concern that children are under-represented in the democratic system and consequently policy is skewed away from their needs. While a full child enfranchisement system needs further development, and many of the above legal concerns would need to be addressed, full enfranchisement eliminates the risk that 16 will become the new age of majority with all of the negative consequences that come with that legal status transition. Vote 16, on the other hand, risks prompting a wholesale re-evaluation of 16 as the age of majority or legal coming of age, which would be a negative outcome from a child welfare perspective.

I encourage you to take the time to consider whether Vote 16 or the child franchise can be consistent with First Amendment law, Constitutional law protecting parental decision-making around 3rd party contact, and the substantial protections associated with 18 as the legal age of majority.

Please feel free to contact me if you have any questions. I also serve as an elected Town Meeting Member in Brookline.

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And Town Meeting Member, Precinct 1, Brookline, MA.

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APPENDIX B

OTHER RELEVANT BLACK-LETTER TEXT

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