Report on Article 1 of STM 2: Lowering Voting Age to 16 in Municipal Elections

The Administration and Finance Subcommittee held a public hearing on Warrant Article 1 of Special Town Meeting 2 on Thursday, October 24th, 2019. In attendance were Dennis Doughty and Neil Gordon for the subcommittee; petitioners and Select Board Members Raul Fernandez and Heather Hamilton; Town Meeting Members Kate Silbaugh (TMM1) and John VanScoyoc (TMM13); and members of the public Mar Norton Cruz, Evelyn Fawcett, Anjali Mitra, Dava Sitkoff, and Robert Sitkoff.

RECOMMENDATION
The Administration and Finance Subcommittee split 1-1 on a recommendation of No Action on Article 1 and, accordingly, has no recommendation to offer.

BACKGROUND
Warrant Article 1 of STM 2 seeks to cause the Select Board to petition the state legislature to allow the Town to lower the voting age to 16 years old in municipal elections. The Select Board does not need Town Meeting’s permission to make this request; however, the Select Board has expressed the “desire to know Town Meeting’s preference before speaking for the entire town.”

Communities across Massachusetts (including, recently, Somerville, Concord, Ashfield, Shelburne, Wendell, and Northampton, as well as efforts by Cambridge, Harwich, and Lowell in prior years) have taken steps towards lowering their voting age. There is a prominent national “VOTE16” movement. At the state level, H.720/S.389 (the “EMPOWER Act”) would give cities and towns the option to lower their voting ages to 16 without the need to file home rule petitions.

Municipal voting is a largely unexercised right in Brookline: average turnout for the most recent 10 years in Brookline’s municipal elections is 16%; the high turnout for that period was 29%.

Analysis from other communities shows that one is more likely to develop a lifelong voting habit if voting begins at 16 than if it begins at 18, although there remains some disagreement around the explanations.

US society is filled with a hodgepodge of age restrictions which reflect a lack of consensus regarding when “maturity” has been reached: access to tobacco or alcohol products, the right to drive, the right to vote, the right to choose an abortion, the right to marry, access to “juvenile” sentencing, the ability to join the military (or be drafted),
and “emancipation” all have age restrictions. Many of these use 18 as the cutoff, but this varies regionally and, in addition, has changed significantly over the years. There are active campaigns to raise the ages of access to tobacco and alcohol, raise the age of emancipation, raise the driving age, and lower the voting age. These campaigns often cite brain development studies as the basis for whatever age is proposed, and science seems to show that the ability to make different types of decisions does vary with maturity (for example, as one matures one tends to become less impulsive, which could have implications for certain types of decision making).

These threshold ages are not strictly independent. When the age of military service was decreased, substantial pressure to lower the voting age and the drinking age ensued. When the voting age dropped, the emancipation age quickly followed.

DISCUSSION

Several Brookline teenagers spoke about their experiences and about the increasing participation of young people in national and international politics, citing in particular Greta Thunberg and the climate strike. Clearly some younger people are motivated to political activism and are capable of responsible action. Many speakers pointed out that if we use the “developing brains are not yet capable of making reasonable decisions” standard, shouldn’t we apply a similar “aging brains” criterion to older voters?

All of the teenagers cited climate change as the existential problem for the younger generation, a problem whose costs they will disproportionately bear but also a problem that they are not politically equipped (yet) to do much about, i.e., vote. The argument goes like this: lowering the voting age to 16 helps them influence Brookline; influencing Brookline influences state politics, which influences national politics, and so on. Dava Sitkoff (a student at the Lawrence School) said “Brookline will be under water. Shouldn’t we have a say in stopping it?” “Lowering the voting age to 16,” said Anjali Mitra (a student at Brookline High School), “allows me to be taken seriously.”

Select Board member (and petitioner) Raul Fernandez talked about the passion exhibited by the high school students who participated in his campaign despite being unable to vote and reminded us of the dynamism of many speeches given at Town Meeting by younger people.

The objections to Article 1 were raised by Kate Silbaugh, who spoke at length at the hearing and whose written remarks are attached to this report. Her concerns stem from her work as a child welfare advocate. The two biggest concerns she presented and which were discussed at length were:

1. The “anchoring effect” that lowering the voting age will likely have on the age of emancipation and therefore the earlier elimination of public welfare benefits available to children (including access to certain criminal justice protections). While there is no direct reason that lowering the voting age should necessarily lead us down that
slippery slope, there is ample practical evidence that it does, including the experience of the 1970s. During the subcommittee discussion the point was raised that although we do see ample evidence of politically adept, thoughtful 16-year-olds at Town Meeting, we aren’t necessarily seeing a representative cross-section of that demographic, which reinforces the idea that broadly lowering the age to accommodate some people may introduce negative consequences for many others.

2. The erosion of the parental ability to control their children’s access to certain forms of speech and outreach. How can a parent stop a canvasser for NETA, for example, from reaching out directly to a potential voter to discuss marijuana legislation, even if the parent is attempting to deal with addiction issues? There will be a first amendment right to campaign minors which will strike head-on with the constitutional right for parents to say “no.” During questioning, we learned that we cannot learn from similar experiences outside of the US because there aren’t any — outside of the US there are quite different constraints on corporate political speech.

Ms. Silbaugh argued that these and other concerns are the result of “adultification,” the projection onto youth of adult-like capacities and corresponding responsibilities, and although she agrees (“I’m going to make their argument for them,” she said) that there is ample evidence that voting participation and voting habits are both strengthened by allowing citizens to vote at younger ages, she believes the negative consequences outweigh the benefits.

The subcommittee was unable to agree. During the discussion it became clear that both sides presented compelling arguments. It’s also clear that the Select Board does not need this warrant article to pass in order to act or to lobby as individuals for the EMPOWER Act.

A motion for NO ACTION on Article 1 was proposed and failed by a vote of 1-1.
Advisory Subcommittee Testimony of Kate Silbaugh, TMM Precinct 1, on STM 1 warrant article aimed at lowering the town voting age to 16.

This is all wrong. I shouldn't be up here. I should be back in school on the other side of the ocean. Yet you all come to us young people for hope? How dare you. You have stolen my dreams and my childhood with your empty words.

--16 year old Greta Thunberg, 2019 UN Climate Action Summit, September 2019

I spent my spring and summer researching the 16-year old voting age for a scholarly article that is currently in press. As a result, I could speak at far too much length about the issue, and want to be sure to make the following 4 points, which I send in advance in the hopes that they will not be lost in my discussion.

1. **Democracy reforms movement:** There is a substantial political movement afoot to lower the voting age to 16; this does not emerge from thin air. It is supported by democratic access organizations that also support democracy reforms familiar from “H.R. 1” in the current Congress, such as a national voter registration campaign, felony re-enfranchisement, election day as a national holiday, and limiting efforts to purge voter roles, for example. Ayanna Presley tried to add 16 year old voting as an amendment, which was voted down, but did garner 125 votes in Congress. Somerville, Northampton, Concord, Ashfield, Shelbourne and Wendell are ready to lower the voting age if they get home rule permission from the State, and the Statehouse is considering the Empower Act, which would allow municipalities to lower the voting age without approval from the State. The democracy reforms movement wants to lower the voting age both in recognition of the political voice of teenagers as expressed through the March for Our Lives, the Youth Climate Action strikes, and Black Lives Matter, and because developing the habit of voting at 16 has been shown to produce lifelong voters better than beginning at 18. I support the other election expansion provisions of H.R. 1 and consider myself a democracy reforms advocate, but I oppose lowering the voting age to 16, because I also consider myself a child welfare advocate.

2. **Child welfare advocates:** The dialogue in the democracy reforms movement is devoid of voices from the child welfare advocacy community. But child welfare advocates are engaged in campaigns across a number of areas of law and policy to raise various ages of civic maturity and emancipation. Examples are plentiful, but a few illustrate this well:

   a. There is a movement to extend juvenile court jurisdiction from 18 to 21, to protect late adolescents from the dire consequences of the adult criminal justice system.
   b. There is a movement to raise the emancipation age back to 21 (it fell from 21 to 18 when the voting age was lowered to 18). An emancipation age of 21 would give children extended access to child support and to foster care.
   c. There is a movement to raise the driving age to 18, because it would dramatically reduce new driver deaths as well as overall accident rates.
   d. There is a movement to raise the marriage age, which varies by state but among the 37 states that have any minimum age at all, the majority of those currently allow marriage at 16.
   e. There is a movement to raise the age of access to tobacco products, from 18 -21, although tobacco products do not pose the same third party harms that are used to justify a 21 drinking age.
   f. Child welfare litigators have been in a multi-case, multi-year effort to press the Supreme Court to set higher ages for when a teenager should receive special sentencing
consideration, including prohibition on death, life without parole, or life in prison with parole.

These efforts respond to well-documented harms associated with “Adultification,” which is the projection on youth of adult-like capacities and corresponding responsibilities. Adultification has been demonstrated to pose significant harms to youth in school discipline, the criminal justice system, and risk of sexual exploitation. That is why child welfare advocates are generally about trying to extend the protections and formal support from government, community, neighborhood, and family to children through the teen years. Advocates for Vote 16 focus on issues around voting, while child welfare advocates focus on the capacities and needs of teenagers more broadly, and the network of protections associated with those needs.

3. **Benchmarking.** *Adultification* is shown to lead to lessening of social and civic support for teenagers, and the political significance of voting carries with it a particularly potent threat of worsening those processes. The history of the varied ages of legal and civic maturity demonstrate that regardless of the intent of reformers, lowering civic ages of maturity spills from one category to the next. This is nowhere more true than with the two most significant markers of civic maturity: military service and the franchise. The age of military service was lowered during WWII not because 18 year olds were deemed mature enough to serve, but because too many 21 year olds were eligible for draft deferments because they had wives and children. The age was lowered to capture a less mature group of men, one that did not yet have those adult commitments. As soon as the military service age was lowered, the movement to lower the voting age lit up: bills were introduced in Congress that term, a constitutional amendment was introduced, both stymied mostly by confusion over federalism issues. In 1971, the 26th amendment lowered the voting age nationwide to 18 as the reinstatement of the draft became a major public policy dispute. The two ages have been remarkably closely aligned in political discourse, and I suppose that could become an issue again were we to encounter a future with 16 year old voting and an active draft.

But the draft, which is in itself and unlikely future event, isn’t the central worry with benchmarking. When the voting age was lowered from 21 to 18, the age of legal emancipation was quickly lowered across the states from 21 to 18. Once emancipated, you are no longer eligible for those child protective functions from foster care and child support to full responsibility for commercial transactions. The real worry is that enfranchised 16 year olds will by accretion lose more protections associated with childhood, whether at school, in the workplace, in the criminal justice system, in the foster care system, and in child support determinations, by those pointing to or otherwise witnessing and digesting their political participation. In these arenas, Adultification has been demonstrated to have a racial bias that puts children of color at significantly higher risk of being treated by the civic world as though they have adult capacity and responsibility.

4. **Protection from Campaigning.** Voting invites the targeting of teenagers by corporate and political interests with “political speech” from which we have typically attempted to protect them. The campaign for a 16-year-old voting age fails to capture the relationship between the disabilities that follow from the legal status of minors, and protection of minors. Child protections and child restrictions are often two sides of exactly the same coin, as 16 year old voting illustrates. If a crop of youth voters emerge, we should expect that population to become the target of campaign efforts from candidates and from issue advocacy organizations. Expect lobbying from tech companies, the tobacco industry, and 2d amendment organizations. If a parent, after struggling to communicate limits, decides to take the extreme step of shutting down a child’s access to 8chan due to concern that a child is showing an excessive interest in guns, or to
prevent a child from attending an ostensible campaign meeting of a group of fellow teens advocating for lowering the cannabis age (while consuming cannabis), those political interests will lose free access to an enfranchised voter. A parent might exercise parental authority in a far more benign manner, as by filling a teenager’s schedule with time-consuming extracurricular activities or health treatments that preclude attendance at issue or candidate campaign events. Either a parent’s constitutionally protected right to make such difficult but protective decisions, or political actors’ first amendment right to campaign, will need to give way. We decide issues around tobacco and cannabis at the town level in Brookline, and in doing so, we manage the influence of corporate lobbyists, while acknowledging their right of political speech. The emerging discourse about 16 year old voting fails entirely to surface the potential conflict with established law governing parental responsibilities and rights to protect teenagers from third parties.

Yet parents do have substantial, constitutionally articulated and protected rights to protect 16-year-olds and to make decisions about who may interact with a 16-year-old. A system that allows 16-year-olds to vote would suffer either because the young voter cannot legally access information her parent chooses to block, or because it would eventually reduce the ability of parents to limit contact between outside adults and their children. Under federal law, a parent has the right to block military recruiters from communicating with her child through the mail, on the phone, or in person, for example, if the parent believes that the child is too immature to evaluate the prospect of enlisting in the military upon turning 18. A parent may home school a child to prevent him from hearing incidental political content that the parent deems problematic. A parent may commit a 16 year old to a wilderness drug treatment program in Utah that cuts that teenager off from the world, including from access to campaigns or absentee ballots. A parent may tell a door to door issue campaigner that they may not contact her child under any circumstances, and may call the police if the campaigner overrides that assertion of parental authority. Either consequence of youth voting — contraction of parental rights or contraction of candidate access to voters — would present serious challenges to the current state of federal Constitutional law and to typical practices of child law and campaign law. Johnny may no longer interact with my child, no matter how sincere and articulate Johnny is about a highly significant local political issue, because I believe, accurately or in error, that Johnny is also providing alcohol to his peers, and I don’t want my child to be one of them. This is well-established law. Until those issues are ironed out, we should not be moving ahead with this reform. More to the point, these issues illustrate why the protective function of childhood cannot be disentangled from the restrictive aspects of childhood.

Speaking of teenagers as actualized near-adults threatens to lead us away from focusing on their needs and our own civic obligation to meet those needs on terms that should continue throughout the teen years. As Greta Thunberg notes, we should not be turning to children to solve our political problems.