

IT TAKES A VILLAGE . . . BUT LET THE TEENAGERS VOTE

(A Response to Kleinfeld and Sachs)

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In their article Give Parents the Vote, Kleinfeld and Sachs argue that we ought to give parents extra votes to cast by proxy on behalf of their minor children. In this response, I argue that their proposal misconceives the nature of voting itself. Unlike a child's personal medical or financial decisions, which we entrust to those most responsible for a child's care, voting is a collective act by which a political community makes collective choices. Each of us is obligated to cast our vote in the way we think best for the whole community. And each voter—whether a parent or a nonparent—is morally and constitutionally entitled to an equal vote. At the same time, it is true that those under age 18 are often not especially well represented in our current system. Empirical evidence suggests that high school students are as able to vote as young adults. So rather than giving extra votes to their parents, I argue that we ought to let teenagers vote.

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Many people living in the United States are not eligible to vote. Most of those ineligible are children. There are about seventy-three million people under age eighteen in the United States.¹ Because of birthright citizenship, almost all of them, over ninety-seven percent according to the Census Bureau, are citizens.² But, citizen or not, they cannot vote. Because of their age, their representation in our democratic system will necessarily be *virtual representation* rather than the actual representation that results from voting and in that way directly helping to choose one's government.

The brute fact of all this virtual representation would not have much troubled the founders and early leaders of the United States, who embraced far higher levels of virtual representation.³ They envisioned, and created by law, an electorate that was far smaller, older, whiter, wealthier, and more male. However, virtual representation sits awkwardly with the modern ideas about democratic self-government that became central pillars of our constitutional order over a period of roughly a century and a half, from the 1820s through the early 1970s. We determined—correctly, and through considerable political struggle over that entire period, including a Civil War—that democracy and the equal protection of the laws require the enfranchisement of far more of the human beings living in the United States than the founders envisioned. We no longer trust that the voters will adequately represent the nonvoters when those nonvoters are women, Black people, those without property, those who cannot pay a poll tax, and even those between the ages of eighteen and twenty.⁴ We concluded,

1 See Table 1.1. *Population by Sex, Age, Nativity, and U.S. Citizenship Status: 2020*, U.S. CENSUS BUREAU, https://www2.census.gov/programs-surveys/demo/tables/foreign-born/2020/cps2020/2020_asec_nativity_table1.xlsx [<https://perma.cc/YC63-SFUG>]. I am using the same 2020 table cited by Kleinfeld and Sachs in their article to which this Essay is a response.

2 *Id.*

3 See Joseph Fishkin, *Taking Virtual Representation Seriously*, 59 WM. & MARY L. REV. 1681, 1682 (2018).

4 See U.S. CONST. amend. XV, § 1 (race); *id.* amend. XIX (sex); *id.* amend. XXIV, § 1 (ability to pay a poll tax); *id.* amend. XXVI, § 1 (age if eighteen or older); Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (also race, poll taxes, language); *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 670 (1966) (poverty); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 631 (1969) (property, not having children in school); ALEXANDER KEYSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES*, at xvi, 87–104, 211–18, 269–73, 277–81 (2000). The *Kramer* case, of particular interest in the context of this Essay, struck down on Equal Protection Clause grounds a restriction on voting in school board elections that allowed people to vote only if they either (a) owned property in the school district or (b) had children in school. *Kramer* comes closer than any other Supreme Court case to reaching the constitutional question of how to assess when treating parents differently from nonparents in terms of voting rights violates equal protection. I will return to this issue in the conclusion of this Essay.

correctly, that all these people need the actual vote. Virtual representation is not enough. Is the enfranchisement of some voters under eighteen the next frontier in this long political struggle? In an era of considerable—and admirable—political engagement among many young people, around issues where many young people believe that we, their elders, are failing them, it is an especially good time to ask that question.⁵ I will argue in the second Part of this Essay that we ought to answer in the affirmative and lower the voting age.

That is not the approach offered by Josh Kleinfeld and Steve Sachs. In their article *Give Parents the Vote*, they propose to give parents an additional vote to cast *on behalf of* each of their children who are under age eighteen.⁶ Their proposal envisions a form of virtual representation that is novel in American history. Instead of being represented virtually through the choices of the voters in their community, which is how nonvoters (including children) have always been and are currently virtually represented in our system, Kleinfeld and Sachs imagine a more targeted, specific, parent-child form of virtual representation.⁷ Kleinfeld and Sachs argue that parents ought to be able to vote on behalf of their children in the same way that parents exercise certain other decisionmaking powers on behalf of their children, including making important medical, financial, and legal decisions.⁸ Parents and other guardians, they argue, act as children's trustees in many contexts. Why not voting?

The Kleinfeld and Sachs proposal is wrongheaded for reasons that cut surprisingly deep into fundamental normative questions about what voting is and what it is for. For that reason, I appreciate the opportunity to write this response. I begin with some points of agreement. Several of the premises of Kleinfeld and Sachs's argument are correct, and their argument is less indefensible than some other proposals now circulating in public debate to give parents extra votes, particularly the proposal offered in 2024 by then-Senator J.D. Vance, which I briefly discuss below. Still, Kleinfeld and Sachs are wrong about the nature of voting itself in ways that lead them to a mistaken conclusion—one incompatible with equal citizenship, and also

5 See *Harvard Youth Poll*, HARV. KENNEDY SCH. INST. OF POL. (Spring 2021), <https://iop.harvard.edu/youth-poll/41st-edition-spring-2021> [<https://perma.cc/RN7C-E2VB>] (finding young Americans significantly more likely to be politically engaged overall than the youth of a decade earlier, and noting an especially large spike in engagement around the topic of climate change).

6 Joshua Kleinfeld & Stephen E. Sachs, *Give Parents the Vote*, 100 NOTRE DAME L. REV. 1201, 1203 (2025).

7 *Id.* at 1204–05.

8 *Id.* at 1219–20.

incompatible with the democratic rights of those too young to vote. I will return to that last topic at the end.

This response proceeds in two parts. In Part I, I argue that voting is less individualistic and more communitarian in nature than Kleinfeld and Sachs acknowledge. It is in this way fundamentally different from the many areas where our law correctly gives parents and other guardians the power to act on behalf of their children. Voting is something that we *necessarily* do collectively, as a political community.

Voting is a civic duty. It is the duty of every citizen in a political community, not only parents, to vote for what is best for the political community in their view, which includes taking into account the interests of the children in the community. When we lose sight of this, and imagine that voting is simply a system for individuals to pursue their own self-interest without regard for the public good, we are in enormous trouble.

Thus the first half of my title: *It takes a village*. Any community has obligations toward its children, and any political community is obligated to act politically in ways that are consistent with those obligations. Parents are equal members of the political community. But they have no special claim to power over setting a community's direction. Democratic principles of equal citizenship require giving each parent and each nonparent the same equal vote.

In Part II, I argue that we would be much better off as a nation—and could better address the most important of the problems Kleinfeld and Sachs identify—if, instead of giving parents more votes to cast on their children's behalf, we simply lowered the voting age. I propose lowering it to fourteen. This would mean allowing high school students to vote. Such a change would be an important and salutary development for civic engagement and the democratic life of the nation. Imagine high schools holding candidate forums; imagine teachers assigning students research and writing work related to an upcoming election in which they all can actually participate. Beyond that, lowering the voting age to fourteen would greatly reduce the most important problem Kleinfeld and Sachs identify in their article, which is that children are a very large group of nonvoters whose virtual representation is (as virtual representation always is) imperfect.⁹ We can do better by giving teenagers the vote.

Most of the time, the teenagers will vote just as their parents would hope. But, dear reader, instances have actually been observed in which teenagers disagree with their parents. It is quite important in precisely those instances to treat teenagers like the individual citizens they are, rather than treating them as second-class citizens whose membership

9 *Id.* at 1203–04.

in the polity runs exclusively through their parents. Thus I argue that when it comes to voting, we need to let teenagers make their own choices.

I. IT TAKES A VILLAGE

Some of the premises of Kleinfeld and Sachs's argument are straightforward and correct. First, children, as they correctly state, are members of the political community.¹⁰ Their interests matter just as much as the interests of adults matter. Although Kleinfeld and Sachs mention this only briefly,¹¹ the most important way the existing American political system takes this point into account—as it should—is by counting children when drawing district lines. We draw districts today based on the principle that each representative should represent an equal number of constituents, and children count fully and equally as constituents.

This means a neighborhood, Familyville, with ten thousand people, half of whom are children, gets the same representation as another neighborhood, Retirementville, with ten thousand people, only two percent of whom are children. If these neighborhoods are in a city where each city council member represents about ten thousand people, then the two neighborhoods will each get the same number of city council members: one. This makes sense, because children, like adults—and possibly even more than adults—need parks and libraries and schools and clean streets and public safety and the various other things we ask government to produce. Any allocation of representation inevitably affects the allocation of public resources.¹² Giving these two neighborhoods the same amount of representation makes it much more likely that the government will give equal consideration to the interests of those living in both neighborhoods, including the children. Retirementville has almost twice as many eligible voters as Familyville, but the neighborhoods contain equal numbers of members of the political community, whose needs and aspirations ought to matter equally to the government. Equal representation for children in

10 *Id.* at 1212–13.

11 *Id.* at 1207 (“[O]ur political system already counts children for purposes of determining each state’s seats in Congress and electoral votes for the President, as well as in drawing legislative district lines.” (emphasis omitted)).

12 *See, e.g.,* Frances E. Lee, *Representation and Public Policy: The Consequences of Senate Apportionment for the Geographic Distribution of Federal Funds*, 60 J. POL. 34, 49–59 (1998) (finding that states with more U.S. Senators per capita also receive more federal funds per capita in a variety of areas, especially transportation and environmental programs).

districting—that is, drawing district lines on the basis of total population—facilitates this.¹³

Second, Kleinfeld and Sachs, as I read them, agree with the basic equal protection idea that no citizen is entitled by virtue of superior knowledge or judgment or perspective to any more votes than any other citizen.¹⁴ In this way, Kleinfeld and Sachs’s proposal differs from the public statements by then-Senator J.D. Vance, making a similar proposal, that have recently drawn considerable public attention. Vance argues that parents have a greater “stake” or “investment in this country” than nonparents and *for that reason* should be granted extra voting power.¹⁵ This is an argument for a form of plural voting, favoring some voters over others because of their better capacity to make sound electoral judgments. John Stuart Mill—in one of the worst ideas he ever put into writing—proposed that university graduates and certain other voters had a “mental superiority” that ought to entitle them to an extra vote.¹⁶ (At the time he was writing, the British political system actually implemented a version of this, by giving certain universities their own representatives in Parliament, chosen by their graduates.¹⁷)

Kleinfeld and Sachs, at least on my reading of their article, agree that plural voting is wrong and that no one is entitled to more votes than anyone else.¹⁸ Equal protection of the laws means all citizens’ votes count equally, whether the citizens are enlightened and farseeing

13 This is why it is important that we allocate representation on the basis of population rather than on the basis of the number of voters. See Joseph Fishkin, *Weightless Votes*, 121 YALE L.J. 1888, 1890–92 (2012).

14 See Kleinfeld & Sachs, *supra* note 6, at 1208, 1245. The limiting case proves the point: we do not disenfranchise adult voters simply because they are below average in mental competence, or even far below average; instead, we draw the line (or at any rate, we ought to draw the line) at the point where a voter becomes unable to formulate a political preference of their own at all. See Joseph Fishkin, *Equal Citizenship and the Individual Right to Vote*, 86 IND. L.J. 1289, 1353–54 (2011).

15 Intercollegiate Studies Institute, *JD Vance on Our Civilizational Crisis*, YOUTUBE, at 17:45, 24:36, 24:06–27:15 (Sept. 7, 2021), <https://youtu.be/jBrEng3xQYo>; Ed Kilgore, *J.D. Vance: How About We Give Parents Extra Votes?*, N.Y. MAG.: INTELLIGENCER (July 26, 2021), <https://nymag.com/intelligencer/2021/07/j-d-vance-maybe-parents-should-get-more-votes.html> [<https://perma.cc/U5LT-PTDU>].

16 JOHN STUART MILL, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 168 (London, Parker, Son & Bourn 1861); see *id.* at 155–80. (Kleinfeld and Sachs cite a different work, but this is Mill’s most fully developed effort to justify this utterly undemocratic scheme.)

17 See Malcolm Tight, *Should the More Highly Educated Get More Votes? Education, Voting and Representation*, 72 BRIT. J. EDUC. STUD. 219, 222–25, 230 (2024) (U.K.). By 1950, when Labour abolished this system, there were seven members of Parliament representing universities. *Id.* at 222. Oddly, Mill doesn’t reference this practice in his argument for plural voting for university graduates, but it accomplishes essentially the same thing. See MILL, *supra* note 16, at 155–80.

18 See, e.g., Kleinfeld & Sachs, *supra* note 6, at 1245.

or confused and myopic.¹⁹ Kleinfeld and Sachs argue that their proposal avoids violating this principle.²⁰ They argue that they are not really giving parents “extra” votes but instead enfranchising children, who are separate, individual members of the polity, and that parents are casting *their children’s* votes by proxy.²¹ Whether this distinction is plausible or not is a question to which I will return below. But I think we agree—as Vance plainly does not—that giving some people more votes than others on the ground that they would make better choices would violate the equal protection of the laws.

Third, most children are too young to make decisions about a variety of important matters, including medical, financial, and legal matters. As Kleinfeld and Sachs correctly argue, there are good reasons to entrust parents and other guardians with the power to make such decisions on their behalf.²² The decisions in each of these spheres are personal rather than public in nature. They need to be decided by someone who is well situated to understand the interests of *this specific child*, since the decisions greatly affect this specific child. Of course, there are various exceptions to the rules allocating such decisions to parents. We have legal processes for temporarily taking away parents’ decisionmaking authority when they make certain choices on their children’s behalf that are objectively dangerous, such as refusing life-saving medical treatment on religious grounds. Similarly, in many states, laws that aim to give parents authority over teenagers’ abortion decisions contain judicial-bypass procedures for a child who might face dangerous repercussions from her parents in seeking an abortion. These are important (but in practice very rare) exceptions to a general rule. Kleinfeld and Sachs ask: Why would this general rule not apply to voting?²³

The answer is that voting is not like these other spheres. It is instructive to examine both why that is the case and why Kleinfeld and Sachs get it wrong.

A child’s medical, financial, and legal decisions are essentially and at their core about the interests of *that child*. To be sure, any important personal decision may reverberate in ways that affect other people. But the whole reason we entrust these medical, financial, and legal decisions to parents is that we believe as a society that parents or other guardians are the ones best situated to assess the best interests of their specific child and make medical, financial, and legal decisions on that

19 See, e.g., *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1969); see also *supra* note 4.

20 Kleinfeld & Sachs, *supra* note 6, at 1243–54.

21 *Id.* at 1208–09, 1212.

22 *Id.* at 1219–22.

23 See *id.* at 1219.

basis. The analogy to voting imagines that voting, too, is a personal right we exercise, essentially and at its core, as a means of safeguarding our own personal interests through the policies that will result from election outcomes. That is where the analogy breaks down.

A. *What Voting Is*

The first sign that voting is different from personal decisions about medical treatment and so on is that voters cannot vote alone. Unlike some other rights with democratic dimensions such as the right to free speech, which any individual can exercise at will at any time (subject to general restrictions as to time, place, or manner), voting is part of a collective process of self-government that a political community necessarily undertakes *together*. In other words, unlike bowling alone, which might be lonely but is still bowling, voting alone is not voting at all. It is the political community, rather than the individual, that undertakes the process of having an election for the collective purpose of self-government. Voting is only possible as a contribution to that collective process. Each of us may stand alone in the voting booth, or alone at home with a mail ballot, but the actual *voting* part occurs when (and because) our vote joins with and is counted with all the others from the relevant political community that is engaged in a collective act of self-government. Leave that part out, and I'm just sitting at home making marks on a piece of paper.

Unlike personal decisions about medical treatment and so on, nobody's individual vote actually decides anything with respect to their interests (or anyone else's). Instead, it is the *aggregation* of votes that decides—and those decisions both originate from and bind the entire political community, not only the individual. This is why Heather Gerken was correct to conceptualize voting as an “aggregate right.”²⁴ To understand most of the stakes and the harms involved in the election process—why it's unfair to have one's vote diluted, or to be stuck in a malapportioned district with five times as many people as the next district down the road—one must conceptualize those harms on an aggregate rather than an individual basis.²⁵ Disenfranchisement is different: it is a personal, individual harm because it offends equal citizenship and equal protection of the laws (just as plural voting does).²⁶ But any interest people might have in the *results* of elections—how our votes are aggregated into outcomes, whether those outcomes are fair, and how those outcomes might affect public policy—is an interest that

24 Heather K. Gerken, *Understanding the Right to an Undiluted Vote*, 114 HARV. L. REV. 1663, 1667 (2001).

25 See *id.* at 1666, 1681.

26 See Fishkin, *supra* note 14, at 1335, 1351.

runs through groups or communities.²⁷ Individuals are affected only because of and through their membership in groups or communities.

To be sure, there is one perspective on voting that resists understanding voting as part of a community's collective process of self-government and insists on defining voting instead as a decisionmaking procedure through which self-interested individuals aggregate their personal preferences into a public choice. This is the analysis of voting offered by rational choice theory (RCT).²⁸ It is a perspective that Kleinfeld and Sachs sometimes seem to embrace in their article. The problem—as several generations of scholars have discovered after attempting to resolve this problem from almost every conceivable angle—is this: the rational-choice, self-interest-maximizing perspective on voting completely fails to describe or account for . . . voting.

Under any plausible set of assumptions, a purely self-interested, rational actor should not vote if they care *only* about how their own individual vote will affect their own interests by altering the chances of different electoral outcomes. (In real elections, voters can see that the chances of their individual vote affecting the outcome are so close to zero that it is irrational to vote if voting requires any investment of time and effort.) The fact that real people do vote undermines core axioms of RCT to such a great extent that voting has long been described within the field as “the paradox that ate rational choice theory.”²⁹

Kleinfeld and Sachs may not see themselves as proponents of any form of RCT, and that is all to the good! But the conceptual problem here is one they share with RCT. Both frame voting as an important, individual choice to be made in *that individual's* best interests because the way each individual casts her vote will ultimately affect her interests. The tight connection between *my own choice* and *my own interests* is the common denominator of all the medical, financial, and legal decisions we entrust to parents and guardians to make on behalf of children. We entrust these decisions to parents on the grounds that the parents know their individual child's best interests, and those interests are exactly what those personal choices are fundamentally about. Kleinfeld and Sachs, along with the rational choice theorists, imagine that voting is like that too. But it is not. Voting is about collective choices that political communities make together about how to govern themselves. People often disagree very strongly about what the best way to govern their community might be. But that does not mean

27 For a more detailed discussion of this distinction, see *id.* at 1305.

28 This literature begins with ANTHONY DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* (1957).

29 Morris P. Fiorina, *Information and Rationality in Elections*, in *INFORMATION AND DEMOCRATIC PROCESSES* 329, 334 (John A. Ferejohn & James H. Kuklinski eds., 1990).

they are using their votes exclusively as a (rather inefficient) individual act to safeguard their own personal interests.

Consider what we know about why people actually vote—the “paradox” that RCT is unable to escape. Some voters vote out of a sense of civic duty—a sense of obligation to community, specifically an obligation to participate in the process of collective self-government on which the community’s future depends. For some voters, their motivation is better described as a sense of obligation to a subgroup within the community, or to a political movement—a group of people with whom one is participating in a collective rather than individual act, by voting together and trying to move the political needle in a shared direction.³⁰ Our disagreements about what is best for the political community are often colored by self-interest, but they are never entirely reducible to self-interest.³¹ Revisionists have attempted in various ways to retroactively integrate all this richness into RCT, sometimes by clumsily tacking a “civic duty” term onto the end of the voter’s ostensible utility function.³² Adding such epicycles tends to highlight rather than address the inadequacy of the underlying model. More promisingly, some theorists make a more decisive break with RCT by modeling voters *not* as individually self-interested actors but instead as group members who understand themselves to be acting collectively.³³

This has important implications for the Kleinfeld and Sachs analysis. Kleinfeld and Sachs conceptualize voting as a procedure through which individuals defend their own “interests.”³⁴ That is a good description of the personal medical, financial, and legal decisions we entrust to parents, but it is a poor description of voting, both in practice and in theory. A parent, by virtue of their relationship with their

30 For an overview of how the revisionist literature attempts to grapple with these points, see Timothy J. Feddersen, *Rational Choice Theory and the Paradox of Not Voting*, J. ECON. PERSPS., Winter 2004, at 99, 100 (discussing “group-based” and “ethical agent” models of turnout), and see also Aaron Edlin, Andrew Gelman & Noah Kaplan, *Voting as a Rational Choice: Why and How People Vote to Improve the Well-Being of Others*, 19 RATIONALITY & SOC’Y 293, 293 (2007).

31 In a classic study, David O. Sears, Richard R. Lau, Tom R. Tyler & Harris M. Allen, Jr., *Self-Interest vs. Symbolic Politics in Policy Attitudes and Presidential Voting*, 74 AM. POL. SCI. REV. 670, 679 (1980), the authors found that voters are voting in terms of their ideas about the collective good—not their ideas about what will most benefit them personally.

32 The classic of this genre is William H. Riker & Peter C. Ordeshook, *A Theory of the Calculus of Voting*, 62 AM. POL. SCI. REV. 25 (1968).

33 See, e.g., Feddersen, *supra* note 30, at 107–09; Edlin et al., *supra* note 30, at 305. A more cynical view is that people vote because they are seeking social approval from their social networks. See, e.g., Samuel Abrams, Torben Iversen & David Soskice, *Informal Social Networks and Rational Voting*, 41 BRIT. J. POL. SCI. 229 (2011) (U.K.). This, too, is a major departure from the focus on an individual’s electoral “interests” that is at the heart of both RCT and the Kleinfeld and Sachs analysis.

34 See Kleinfeld & Sachs, *supra* note 6, at 1212, 1213–16.

individual child, has special knowledge of that child's interests. But do parents as a group deserve special authority over the question of how the community ought to be collectively governed—how resources ought to be allocated not only to their own children but to everyone? That claim begins to sound less like trusteeship and more like plural voting. Once we appreciate the fundamentally communitarian rather than individualistic nature of democratic processes of collective self-government, it begins to seem highly implausible that a parent, because they know one child's interests well, should have any special claim to authority on the question of how government should allocate benefits and burdens to everyone else.

B. *Better Voters?*

There is a version of Kleinfeld and Sachs's argument that would simply embrace this point, abandon the trusteeship analogy, give up on the reliance on the concept of proxy votes for individual children, and just hand the collective "extra" votes of all the children, as a group, to the parents, as a group, perhaps without regard to the exact number of children any particular parent has. (After all, does a single parent of five children plausibly have *three times* as much access to the special knowledge about the best policy choices the community should make as a married parent of two children? This seems hard to defend.) This "version" of Kleinfeld and Sachs, which their article generally endeavors to avoid, unfortunately collapses into the Vance argument, which is the plural voting argument.

Perhaps there are indeed people in a community who are "better" voters than others, in terms of making "good" choices, whether that is because they have children or perhaps because they have a lifetime of experience as a social worker, a teacher, a police officer, a banker, or an entrepreneur—and I leave it to you, dear reader, and your own sociological and political presumptions, which of these experienced professionals you may imagine is positioned to cast the best votes! But really, it doesn't matter. Giving any of these people extra votes on account of the enlightened way in which they will exercise those votes violates fundamental democratic principles that Americans correctly understand in terms of the equal protection of the laws. You get the same one vote whether you are smart or stupid, highly informed or ill-informed, sophisticated or naive. That's democracy. Kleinfeld and Sachs know this. I assume it is a main reason why they framed their proposal in terms of the trusteeship of individual children's votes in the first place, rather than the collective wisdom of the parent class as against the nonparent class. They know the latter formulation might win Vance political applause in some quarters, but its fundamentally

undemocratic character is unlikely to persuade most Americans, or indeed the citizens of any other mature democracy.

The trouble with the individual-trustee formulation Kleinfeld and Sachs advance instead is that it misses the communitarian nature of voting. Everyone in a political community, not only parents, is obligated as a matter of civic duty to take into account the best interests of the community in deciding how to vote. We are all, in that sense, trustees, entrusted with the virtual representation of the nonvoters in our community. Our views of how best to do that will certainly be colored in part by our sense of our own personal interests or the interests of the people we care about (who include, but are definitely not limited to, our children). However, in a world where everyone suddenly concluded that the only basis on which to cast a ballot was private interest, entirely disregarding the duty to act as a trustee of the interests of the community, it is not clear that democracy could continue. If someone flipped a switch and turned all the voters into the sort of pure self-interest maximizers RCT imagines, it is far from clear what form of government would result.

C. *Household vs. Community*

Kleinfeld and Sachs's argument is that we ought to replace one form of virtual representation, which runs through communities, with a different form, which runs exclusively through the household unit. I found this aspect of their argument interesting because, as I have argued elsewhere, part of why it is that geographic, community-based virtual representation (our current system) does a tolerably good job of providing nonvoters with adequate virtual representation is that people who live in a community together tend to share some interests in common.³⁵ Part (but not all) of that is because of the bonds of family, including extended family.³⁶

35 See Fishkin, *supra* note 3, at 1693; Joseph Fishkin, *Representation for Those Who Cannot Vote*, 61 HOUS. L. REV. 755, 770 (2024). Kleinfeld and Sachs suggest that community-based virtual representation operates "much the same way that American colonists were claimed to be virtually represented in Parliament," Kleinfeld & Sachs, *supra* note 6, at 1223, but exactly the opposite is true. The objection to the odious British imperial form of virtual representation was precisely that no members of Parliament were elected from the colonies. See Anthony J. Gaughan, *Voting in Colonial and Revolutionary America*, in THE OXFORD HANDBOOK OF AMERICAN ELECTION LAW 177, 178 (Eugene D. Mazo ed., 2024). What the colonists sought and won in the Revolution was a system of representation on the basis of geographic community. Most Americans after the Revolution still could not vote, but the improvement in the quality of their virtual representation was substantial. *Id.* at 196. The resulting system of geographic representation remains, for reasons discussed in the text and in the sources cited in this note, far more similar in nature to Kleinfeld and Sachs's proposed form of virtual representation than either is to the British imperial version.

36 See Fishkin, *supra* note 3, at 1693; Fishkin, *supra* note 35, at 769–70.

In other words, in my hypothetical example above, an elected representative from Familyville might well be more inclined to argue for more public expenditures on schools than the representative from Retirementville, in part because the voters and nonvoters alike in Familyville are likely to favor more resources for schools, given the nature of their community. Some of that is because lots of voters in Familyville are parents. But even the nonparents in Familyville will have children in their extended families, whose interests come to mind when voting.³⁷ Some voters in Familyville will actually work in the schools. And of course, everyone who lives in a community of this sort, and knows other people in their community, will know lots of families with children, regardless of their own family situation. Kleinfeld and Sachs's proposal cuts out the extended families and community members and reallocates the job of virtually representing children to the parents of those children alone.

In that way, their proposal bears a certain resemblance to a range of contemporary proposals that would reallocate power from communities to households. Think, for instance, of advocates of redirecting school funds and educational authority from public (community) schools to individual parents engaged in homeschooling.³⁸ Or think of contemporary fights over public libraries, in which some parents see the community's grant of authority to a librarian to stock the public library with books for all as a threat to parental authority over which books their individual children will see.³⁹ I am not sure whether

37 The proposition that most Americans live relatively close to extended family may seem quite implausible to peripatetic professionals like academics, but most Americans do not move far from home. See, e.g., Quoc Trung Bui & Claire Cain Miller, *The Typical American Lives Only 18 Miles from Mom*, N.Y. TIMES: THE UPSHOT (Dec. 23, 2015), <https://www.nytimes.com/interactive/2015/12/24/upshot/24up-family.html> [https://perma.cc/4CMX-QL8A].

38 See, e.g., Carmen Nesbitt, *Utah Moves to Dismiss Teacher Lawsuit over \$82M School Voucher Program*, SALT LAKE TRIB. (July 24, 2024, 5:38 PM), <https://www.sltrib.com/news/education/2024/07/24/utah-seeks-dismiss-teacher-unions/> [https://perma.cc/THV3-92KB] (describing a lawsuit challenging the largest school voucher program in the state's history, which provides funds parents can use not only for private schools but for homeschooling); see also Payton May, *Oklahoma to Offer School Choice Tax Credits for Private and Homeschooling Expenses Starting January*, OKLA. CITY FOX 25 (Aug. 9, 2023, 10:21 PM), <https://okcfox.com/news/local/post-89-oklahoma-to-offer-school-choice-tax-credits-for-private-and-homeschooling-expenses-starting-january> [https://perma.cc/QBS4-ZSG3] (stating that “[p]arents will have . . . more power in their kids['] education than ever before in Oklahoma,” according to the school superintendent touting the new program).

39 See, e.g., Tovia Smith, *In the Battle over Books, Who Gets to Decide What's Age-Appropriate at Libraries?*, NPR (Nov. 28, 2023, 5:00 AM ET), <https://www.npr.org/2023/11/28/1214523941/library-books-bans-age-appropriate-movie-ratings> [https://perma.cc/Y3R2-HMLE] (stating that, as the cofounder of the group “Parents Against Bad Books” puts it, “[p]arents are the primary stakeholders for children”).

Kleinfeld and Sachs see their own proposal in these fundamentally anticomunitarian terms, elevating the household over the political community. But that is the nature of the modification they are proposing to our system of virtual representation. It is aligned with a variety of other moves to shift the balance of power and authority toward the household and away from the political community.

The problem with all such proposals is captured well in the first, entirely correct premise of Kleinfeld and Sachs's argument: children are members of the political community *in their own right*.⁴⁰ Their membership does not run exclusively through their families, like a child's quasi-membership in a private club where her parents have paid the membership fee. Each child is a citizen not through her parents but on her own. (And indeed many children are citizens when their parents are not.)

As citizens, children have the right to be treated exactly like any other citizen for purposes of our collective processes of self-government. To the extent that they personally meet the qualifications required for voting, they have the duty to vote. When they do not meet those qualifications, perhaps because they are too young,⁴¹ they are entitled as a matter of equal citizenship to be treated the same as any other nonvoter: to be virtually represented in the same way that any other nonvoter is virtually represented. There is a dignity in this—in being treated exactly the same way as every other citizen—and there is one group in particular for whom that dignity is especially important: teenagers who disagree strongly with their parents about politics. I will return to that group below.

D. *Parent vs. Parent*

I take seriously Kleinfeld and Sachs's contention that children's interests are not currently well represented in our democratic system.⁴² All virtual representation is imperfect. This is a good example of that point. That is why we should endeavor to replace virtual representation with actual representation where possible (which is why I argue below for lowering the voting age). However, because voting is not exclusively about personal interests, but turns instead on competing visions of how the political community ought to be governed, there are substantial reasons to doubt that Kleinfeld and Sachs's proposal would have the practical effects the authors imagine.

40 Kleinfeld & Sachs, *supra* note 6, at 1212–13.

41 To be sure, I suspect that a lot of teenagers *are* in fact ready to participate directly and will argue for that point below. See *infra* Part II.

42 Kleinfeld & Sachs, *supra* note 6, at 1203.

Giving parents votes to exercise on behalf of children empowers not children but parents. Parents will mostly vote, as all voters do, on the basis of their own vision of what is best for the political community as a whole. And arguably, that is what they *should* do as a matter of civic duty. Because we are a profoundly politically polarized country, the differences between different groups of parents will consistently run far deeper than the differences between parents and nonparents. This is especially true in national politics. These days it is likely to be true even in local politics.

The authors' opening example illustrates the point. Kleinfeld and Sachs cite extended COVID school closures in the 2020–2021 school year as a clear case in which the political system overrode the wishes of parents who wanted to return more quickly to school in person.⁴³ But in fact the conflict over school closures was primarily a conflict *among parents*. One group of parents, predominantly white parents, demanded that their children return quickly to school in person; another group of parents, predominantly Black and Hispanic parents, demanded with equal intensity that their children's schooling stay remote.⁴⁴ Regardless of the merits of those positions, it is illustrative that here, on a topic that is as central to children's interests as any imaginable, the conflict was not actually between parents and nonparents but primarily between different demographic and political groups of parents.⁴⁵ This conflict was a microcosm and perhaps also a catalyst of the present wave of highly politicized conflicts over public schools and local school boards around the country, which is once again at its core a conflict *among parents* rather than a conflict between parents and nonparents.⁴⁶

43 See *id.* at 1203, 1207.

44 See, e.g., Bryan Walsh, *The Racial Divide in Returning to the Classroom*, AXIOS (Feb. 6, 2021), <https://www.axios.com/2021/02/06/racial-divide-reopening-schools-coronavirus> [<https://perma.cc/B6VM-4GZ2>] (collecting some survey data sources). The racial divide was so deep that school districts that reopened in person quickly saw more Black and Hispanic parents withdraw their children from the school districts, whereas schools that stayed virtual in fall 2020 saw more white parents withdraw their children. See Micah Y. Baum & Brian A. Jacob, *Racial Differences in Parent Response to COVID Schooling Policies*, PROC. NAT'L ACAD. SCI., Jan. 8, 2024, at 1.

45 See, e.g., Emily M. Farris & Heather Silber Mohamed, *Race and the Rush to Reopen Schools During COVID-19*, 29 J. PUB. MGMT. & SOC. POL'Y 112, 122 (2022) (finding white respondents in a general national survey much more supportive of schools reopening than Black and Latino respondents and finding "virtually no difference" between parents' and nonparents' views on reopening).

46 See, e.g., Hannah Natanson, *Covid Changed Parents' View of Schools—and Ignited the Education Culture Wars*, WASH. POST (Mar. 18, 2023, 6:00 AM EDT), <https://www.washingtonpost.com/education/2023/03/18/pandemic-schools-parental-involvement/> [<https://perma.cc/WR2C-G4SF>].

Another of the authors' main examples is climate change. This is an example of an issue on which opinions are somewhat linked to age: young people are somewhat more concerned about climate change than their parents.⁴⁷ Should we expect that parents would use extra votes to advance their children's views even when the parents disagree with those views? This seems, to put it mildly, unlikely. It is not even clear that parents morally ought to do this. Parents disagree with their children for a reason: they think they have a better and more informed view of the right way to balance the relevant tradeoffs for the benefit of the community as a whole. There is no reason to discount a parent's views of such matters—but at the same time, there is no good reason to give parents' views extra weight. Their views should get precisely as much weight as the views of every other voter in the community—no less, and no more.

The goal of having young people better represented is laudable. There are many ways to achieve this goal, including strategies for increasing the turnout of young people who are already eligible to vote today, whose rates of voting are abysmal.⁴⁸ It would also help to lower the voting age. Let us turn to that topic now.

II. LET THE TEENAGERS VOTE

Every society must decide which forms of adult authority and privilege young people should gain at what ages. This is a parade of muddy, unsatisfying compromises. Because of the great variation in the pace different humans gain different kinds of maturity, what we are doing as a society is leaning very heavily on the (correct) idea that having clear and absolute general rules based on age, even if they're somewhat arbitrary—drive at sixteen, enlist at seventeen, vote at eighteen, drink at twenty-one—is fairer than using standards that would take into account specific facts about a particular young person.

The enormous variation among young people is, however, of some relevance when we make policy about voting and representation. Some young people have no idea what is going on in politics, while others rival the most politically engaged adults. This variation is partly

47 See Alec Tyson, Brian Kennedy & Cary Funk, *Gen Z, Millennials Stand Out for Climate Change Activism, Social Media Engagement with Issue*, PEW RSCH. CTR. (May 26, 2021), <https://www.pewresearch.org/science/2021/05/26/gen-z-millennials-stand-out-for-climate-change-activism-social-media-engagement-with-issue/> [https://perma.cc/G9F3-8MHP].

48 Eighteen- to twenty-nine-year-olds consistently have the lowest turnout of any age group. See William H. Frey, *New Voter Turnout Data from 2022 Shows Some Surprises, Including Lower Turnout for Youth, Women, and Black Americans in Some States*, BROOKINGS INST. (May 18, 2023), <https://www.brookings.edu/articles/new-voter-turnout-data-from-2022-shows-some-surprises-including-lower-turnout-for-youth-women-and-black-americans-in-some-states/> [https://perma.cc/75DD-ZDFS].

endogenous to our rules about who can vote. If sixteen-year-olds could vote, some more of them would be politically engaged than are today. But in any event, at the moment, most of the young people who *are* eligible to vote, do not vote. Those who do vote are by definition a more politically engaged subset of young people. They are people who are demonstrating, by voting, that they care more about politics than many of their peers. I think it is worth listening to these voters—and by extension, those just like them who are or would be ready to be voters at ages younger than eighteen, if our laws allowed.

One of the things I appreciate about Kleinfeld and Sachs's article is the forthrightness with which it acknowledges that it is about virtual representation: the authors' proposal is to trade one form of virtual representation for another. But virtual representation is never as good as actual representation. So perhaps there is a better alternative.

Let us give high-school-aged children actual representation by lowering the voting age to fourteen. The amount of virtual representation in our system will immediately decline by more than twenty percent. Of course, many high school students may choose not to exercise their new political power. But for those who do vote, the available social science suggests that worries about voter competence are unfounded: children in this age range are going to be roughly as knowledgeable and roughly as politically competent as voters who are a few years older.⁴⁹ (Many of the key tools we use in deciding how to vote actually turn out to decline rather than improve with age.⁵⁰) Enfranchising fourteen- to seventeen-year-olds could have an enormous and positive impact on civic education in high school. Candidates would have good reason to stage debates at high schools in front of potentially persuadable voters. Teachers would have good reason to assign students to research and write about the electoral decisions they would be making. Imagine a teacher assigning a student the task of researching a candidate or policy proposal with which the student disagrees and of trying to reconstruct and state the argument the student disagrees with. There is a great deal of potential here for improving the

49 *E.g.*, Daniel Hart & Robert Atkins, *American Sixteen- and Seventeen-Year-Olds Are Ready to Vote*, 633 ANNALS AM. ACAD. POL. & SOC. SCI. 201, 201, 207, 210 (2011) (finding using a survey methodology that sixteen-year-olds, and even fourteen-year-olds, are similar to voters in their twenties in most relevant respects); Valérie-Anne Mahéo & Éric Bélanger, *Lowering the Voting Age to 16? A Comparative Study on the Political Competence and Engagement of Underage and Adult Youth*, 53 CANADIAN J. POL. SCI. 596, 604–07 (2020) (finding no differences between sixteen-year-olds and voters a little older in political knowledge and various other relevant variables); *see generally* LOWERING THE VOTING AGE TO 16: LEARNING FROM REAL EXPERIENCES WORLDWIDE (Jan Eichhorn & Johannes Bergh eds., 2020) (collecting comparative studies).

50 *See, e.g.*, Richard R. Lau & David P. Redlawsk, *Older but Wiser? Effects of Age on Political Cognition*, 70 J. POL. 168 (2008).

practical democratic capacity of the future electorate through civic education of a kind that is more possible during high school than at any other point in our educational system.

Meanwhile, and more to the point, enfranchising fourteen- to seventeen-year-olds would directly address a large piece of the problem that Kleinfeld and Sachs say motivates their argument in the first place. Because children cannot vote, they argue, our political system is less responsive than it ought to be to children's needs and interests.⁵¹ This is a genuine problem. I argued above that there is reason to doubt that giving parents extra proxy votes would do much to address this problem. Parents are voting from *their own* political and ideological vantage point, not their child's. But enfranchising fourteen- to seventeen-year-olds would definitely be a substantial step toward addressing the problem.

Lowering the voting age in this way would also greatly mitigate an important difficulty that arises with Kleinfeld and Sachs's approach, which they discuss briefly: parent-child disagreement. Here I want to view this problem from an individual perspective. In his own response to Kleinfeld and Sachs, Nick Stephanopoulos correctly points out that parents and children disagree quite a lot in the aggregate.⁵² That means that parents casting additional votes would not nudge our politics in the same directions that giving teenagers the vote would. (That is to be expected, in that almost any two groups of people will have different aggregate preferences; parents and children are no exception.) But for my purposes here, let us leave the aggregate aside. When parents and children disagree, it may not matter to them whether their specific disagreements map onto broader political trends.

Not all parents and children who disagree about politics do so because the child is actively repudiating the views of her parent. Sometimes, children misperceive their parents' views; they may not even realize the depth of the gulf between them and their parents.⁵³ (Indeed, scholars have identified a nontrivial group of children who misperceive their parents' views and then *reject* the views they mistakenly believe are their parents' views, which could conceivably lead them back around to agreement with their parents' actual views!⁵⁴) However, sometimes

51 Kleinfeld & Sachs, *supra* note 6, at 1203–04.

52 Nicholas O. Stephanopoulos, *Give Young Adults the Vote*, 100 NOTRE DAME L. REV. 1299, 1318 (2025).

53 See, e.g., Christopher Ojeda & Peter K. Hatemi, *Accounting for the Child in the Transmission of Party Identification*, 80 AM. SOCIO. REV. 1150, 1161 (2015) (finding, using several different major survey data sources, that children often misperceive their parents' politics).

54 See *id.* (finding that more than ten percent of all children in each of their datasets fall into this “misperceive and reject” category).

the child is rejecting the actual views of her parent and doing so with some vehemence.⁵⁵ At a purely individual level, leaving questions of aggregation to one side, sharp-edged disagreement between some parents and some children is inevitable.

Children who disagree vehemently with their parents would be subject, under the Kleinfeld and Sachs proposal, to the unusual democratic indignity of having *their own vote* cast on their behalf by their parent or guardian in support of candidates or causes they abhor. Consider the most politically engaged high school student, who is campaigning for a political cause of some sort and persuading members of her community to vote her way—but who cannot persuade her parents. That much is normal. You can't win 'em all; sometimes you can't win over those closest to you.

Even so, it would be an unusual democratic indignity to be told by the democratic system that *your own vote*, a vote that is your individual democratic birthright, a vote you can never sell or otherwise alienate because it is yours alone, would be cast in direct opposition to all your work and passionate organizing efforts. This is a special problem for the Kleinfeld and Sachs proposal that does not arise under present law, where children are virtually represented by their entire geographic community—the same people a politically engaged teenager would be trying to win over. A teenager in this situation would quite reasonably demand equal citizenship: to be virtually represented in the same way every other non-voting citizen is virtually represented, rather than having her own vote commandeered for a cause she abhors.

This problem for Kleinfeld and Sachs is worth taking seriously. But happily, it can be mitigated. I would urge Kleinfeld and Sachs to demonstrate that they recognize that this problem exists and is worth mitigating by amending their proposal so that, instead of being agnostic on the voting age, they endorse lowering it. This would be compatible with the rest of their argument. It would substantially mitigate the problem of parent-child disagreement. The youngest children are incapable of formulating deeply held political preferences which could be in conflict with those of their parents. The chance of that happening increases with age. Thus, any lowering of the voting age—whether to sixteen, as in most present efforts,⁵⁶ or to fourteen, as I suggest here—would sharply cut down on the problem of parent-child

55 In that same study, this group, which correctly perceived (but rejected) their parents' views, was about a fifth of all children. *Id.*

56 Austria has allowed sixteen-year-olds to vote for all levels of government since 2007. See PAUL SCHMIDT & JOHANNA EDTHOFER, ELCANO ROYAL INST., VOTING AT 16 IN AUSTRIA: A POSSIBLE MODEL FOR THE EU?, at 2 (2018); see generally LOWERING THE VOTING AGE TO 16, *supra* note 49.

disagreement by enfranchising exactly the teenagers most likely to have deeply held views in opposition to their parents' views.

CONCLUSION

The interesting constitutional question Kleinfeld and Sachs's proposal raises is whether parents can be granted the right to cast extra votes on behalf of their children without violating the equal protection of the laws. It is clear, and I think Kleinfeld and Sachs agree, that giving parents extra votes on the grounds that they have a greater "investment in the future" than other voters, by virtue of being parents, would violate the Equal Protection Clause. Such a proposal would fare no better constitutionally than giving extra votes to some voters on the basis of their college degree or profession, as in Mill's original plural voting scheme. Plural voting fails to treat all citizens equally. "One person, one vote" is perhaps a bit of a misnomer, since in actual practice the legal guarantee that phrase describes is about equal representation, not the number of votes each person casts. (There would be no constitutional problem with giving everyone two votes.) But there's a reason that phrase has stuck. It does not treat citizens as equals to give some citizens more votes than others. The question is whether Kleinfeld and Sachs's proposal is sufficiently distinguishable from plural voting that it is compatible with the Constitution.

Kleinfeld and Sachs look at this issue a few ways, mostly imagining vote dilution claims by nonparents.⁵⁷ Those claims are stronger than Kleinfeld and Sachs acknowledge. But the more interesting constitutional claims, and in some ways the more powerful constitutional claims, in my view, would come from teenagers.

A seventeen-year-old may be unable to bring a lawsuit on her own behalf,⁵⁸ but courts are not the only institutions where constitutional arguments can be made. Nothing stops a seventeen-year-old from testifying in front of the legislature on her own behalf that she does not want her vote assigned to her parents, who will cast it in ways antithetical to her values. The argument against such a teenager's claim would have to marshal all the points in Kleinfeld and Sachs's article to the effect that voting is like a medical decision or a financial decision, something where the job of parents is often to override children's preferences in favor of their vital interests.

But voting is not like those things. The vote is the measure of democratic authority and voice a democracy assigns to each citizen so

57 Kleinfeld & Sachs, *supra* note 6, at 1244, 1247–49.

58 To be sure, nothing stops a class of eighteen-year-olds from bringing a legal claim against the state regarding what happened when they were seventeen, but I suspect that courts are not the venue that would best resolve this constitutional dispute anyway.

they can fulfill their individual duty to help make the collective decisions of the community. It cannot be sold or assigned, even to a family member, the way a person might choose to assign their power to make medical, financial, or legal decisions to another.⁵⁹ The vote is different. It is inalienable because it is inherent to individual citizenship.

When a citizen either cannot or does not vote, they are relying on the rest of the political community to virtually represent them. That, too, is an entitlement every citizen has. It is a rarely discussed component of the right to vote itself. Specifically, it is a component of the right *not* to vote. The right not to vote occasionally gets some attention, but here we are talking about a rarely discussed aspect of that right: the right, *if* one does not vote, to be treated equally with all the other citizens who do not vote, rather than suffering the unusual democratic injury of having one's vote reassigned to someone else with whom one vehemently disagrees.

This entitlement is what the hypothetical seventeen-year-old objecting to the assignment of her vote to her parents would be telling legislators they were taking away from her, in a way that fails to treat her as an equal citizen. The relationship between voting and speech is complex, so this analogy is not perfect, but the injury here is something like this: instead of the constitutional silence to which nonvoters are entitled, she is suffering a kind of state-sanctioned democratic ventriloquism, in which her specific voice in the democratic process is being actively used to say something with which she disagrees. (In that way, like a lot of voting claims, this claim stands with one foot on the Equal Protection Clause and the other foot on the First Amendment.)

A skeptical legislator enamored of the Kleinfeld and Sachs plan might respond to this constitutional objection in the following way: Nobody is actually making you say words with which you disagree. Don't look at that extra vote your parents are casting as really *yours* in the same fundamental way that your words, as you testify here before us, are yours. When we assign your vote to your parents, rather than putting words in your mouth, we are just reallocating political power. Basically we're assigning votes by the household and giving your immediate family the same number of votes as some other household down the road with the same number of people but who are all adults.

The problem is that we are not citizens by the household. Our democratic rights do not run through our families. A seventeen-year-old may not have the right to vote under present law. But she nonetheless has some democratic rights of her own. In particular, she has the same right to representation as any other citizen. This includes

59 There are medical, financial, and legal powers of attorney of various kinds in every state. But I cannot opt to give another—even a family member—the power to cast my vote.

(a) the right to virtual representation on the same, equal terms as any other citizen and (b) the right *not* to have her own vote cast in a way she personally abhors. No citizen in a democracy deserves *that*.

We should all be in favor of a robust analysis of all the aggregation questions—the questions of how different election rules reallocate political power. But we need to accept that voting is also something more personal. Teenagers have plenty of good reasons to doubt that society takes their equal citizenship seriously. Let's not give them one more. Instead, even as we maintain our completely sound paternalistic reasons not to let them drink or smoke, let us welcome them as full members of our political community by giving them the ballot.

Our democracy could use their help.