

WHAT IS VOTING FOR?

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Shared ground—much more than we’d expected when Joseph Fishkin and Nicholas Stephanopoulos first agreed to write in response to *Give Parents the Vote*—is the most notable feature of our exchange.¹ Fishkin and Stephanopoulos are two of the most distinguished election law scholars of our generation. They are both to the left of us politically. And our proposed reform, of letting parents vote on behalf of their minor children, is off the beaten track.

But witness the agreement. All four of us agree that the status quo is wrong as a matter of principle and of policy: children are “members of the American political community if anyone is,”² and their lack of representation leaves our political system and policies “observably and significantly distorted.”³ All four of us agree that this distortion is serious enough to warrant changing the law. Stephanopoulos further agrees with us that parent proxy voting is clearly consistent with the

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1 See Joseph Fishkin, *It Takes a Village . . . But Let the Teenagers Vote*, 100 NOTRE DAME L. REV. 1277 (2025) (responding to Joshua Kleinfeld & Stephen E. Sachs, *Give Parents the Vote*, 100 NOTRE DAME L. REV. 1201 (2025)); Nicholas O. Stephanopoulos, *Give Young Adults the Vote*, 100 NOTRE DAME L. REV. 1299 (2025) (same).

2 Kleinfeld & Sachs, *supra* note 1, at 1213, *quoted in* Stephanopoulos, *supra* note 1, at 1303; *accord* Fishkin, *supra* note 1, at 1290 (describing this premise as “entirely correct”).

3 Kleinfeld & Sachs, *supra* note 1, at 1203; *see* Fishkin, *supra* note 1, at 1290 (accepting that “children’s interests are not currently well represented”); Stephanopoulos, *supra* note 1, at 1302 (finding this claim “compelling”).

Constitution and other federal law, and entirely up to the states,⁴ though Fishkin sees the equal protection concerns as more significant.⁵ That's a *lot* of shared ground. What's left to disagree about?

At the surface level, we plainly disagree about policy solutions. Rather than have parents represent their children at the polls, Stephanopoulos would create a system in which all young adults' votes count for more based on how many unrepresented children live nearby—say, in the same census block group.⁶ (For example, in an average district, Stephanopoulos would multiply the vote of every eighteen- to twenty-nine-year-old by 1.7, so that existing young-adult voters “cover” the children under eighteen.⁷) Fishkin would lower the voting age to fourteen but make no further provision for those thirteen years of age or younger.⁸

Beneath these policy disagreements lie deep disagreements of principle, both about the purpose of voting and about the nature of the parent-child relationship. In our view, the chief point of universal suffrage is to protect citizens' *interests*—what's good for them, both materially and morally—as those citizens see their interests. Politics is about tradeoffs, and politicians are buffeted on all sides by demands for different policies. The hard lesson of experience is that there's no way to secure equal consideration of all citizens' interests while counting only some of their votes. Children are citizens too, and leaving this quarter of the citizenry without the vote means leaving their interests uncounted when it matters most.⁹ Yet since children can't vote competently to protect their interests, their proper political representatives are their parents—to whom it falls not only to protect their children's interests, but very often to *define* those interests, even when parents and children disagree.

Fishkin and Stephanopoulos see neither voting nor parenting this way. To Stephanopoulos, representation is designed to protect *preferences*,¹⁰ and that exclusive focus on preferences must hold even for children. If children are too immature to have well-formed political preferences, then the solution is to construct a way to estimate their *future* preferences—hence the scheme for inflating the votes of

4 See Stephanopoulos, *supra* note 1, at 1322–23 (defending his own proposal as on equal footing with ours).

5 See Fishkin, *supra* note 1, at 1296–98.

6 See Stephanopoulos, *supra* note 1, at 1301, 1321. On its description as plural rather than proxy voting, see *infra* text accompanying note 59.

7 See Stephanopoulos, *supra* note 1, at 1321.

8 See Fishkin, *supra* note 1, at 1280, 1293–94.

9 See Kleinfeld & Sachs, *supra* note 1, at 1203, 1212–13.

10 See Stephanopoulos, *supra* note 1, at 1303.

(current) young adults, whose political preferences children are, according to Stephanopoulos's empirics, statistically likely to share when they become young adults themselves. Insofar as parents and their children have different preferences, there's no reason why parents should have any special voice.

To Fishkin, voting isn't about either interests or preferences. It's a communitarian enterprise in which voters express a view of the *public good*, weighing the needs of children along with those of everyone else who can't vote. Every voter takes part in that weighing—and so, again, parents have no special role to play.¹¹

Responding to these views requires some reflection on the nature of voting and parenting both. At root, Stephanopoulos and Fishkin don't think parents are the right people to represent their children politically, and we do. We unpack these theoretical differences as to both voting and parenting in Part I. In Part II, we address Stephanopoulos's and Fishkin's concrete policy proposals.

A last note: While our response below naturally focuses on points of disagreement, as that is the way of these things, that focus shouldn't detract from the crucial fact that all four of us—from different political perspectives—think the status quo tilts politics in ways that hurt children and should be changed. The discussion below also shouldn't detract from our gratitude to these two extraordinary scholars for giving us the benefit of their serious engagement.

I. THEORY

A. *Preferences*

1. Interests and Preferences

In our view, universal suffrage is best understood as an instrument by which to protect citizens' *interests*, as those interests are expressed on the ballot. To use voting that way might at first glance seem strange, in the way that democracy always seems strange. Why let the average Joe decide political questions, when others have better values or more expertise? Why *shouldn't* voting be "the preserve of the wise"?¹² The answer, or at least one answer, is that even if we could decide which citizens were repositories of justice and wisdom, we couldn't depend on them to continue ruling justly and wisely once all power were concentrated in their hands. The experience of our history has been that a select group of voters "*didn't* always weigh others' interests, or

11 See Fishkin, *supra* note 1, at 1280.

12 Kleinfeld & Sachs, *supra* note 1, at 1215.

didn't weigh them enough."¹³ "[T]he premise[] of modern universal suffrage" is "that no one group of citizens can be trusted with the interests of all."¹⁴ Focusing on interests in democratic theory puts the emphasis where it belongs: on the way in which suffrage serves to protect people's welfare and rights.

To say that isn't meant to imply that voters as a matter of course place their pocketbooks above the public good. Our emphasis on interests isn't based on that picture of voters. It's based on a sense that human beings are likely on average—even in their judgments of justice—to see things in ways that are biased by their own circumstances, and that the best way to correct for this, and to make government decisions morally better overall, is to account for the entire political community at the polls. Denying eighteen-year-olds the vote during the Vietnam War, for example, was a problem not because they had special wisdom about the war but because they were being drafted: they had a crucial interest in the matter to which the rest of the electorate might not have been giving sufficient weight, and they were capable of expressing that interest on the ballot.

Should one view such disagreements as conflicts of *preference* rather than of *interest*? That's Stephanopoulos's theoretical move. Neither Cold War doves nor Cold War hawks necessarily knew what was best for the world or for themselves; they each simply *wanted* the draft ended or continued. And in any case elections only tell us about voters' preferences, not their interests: we put candidates in office based on who the voters chose, not who'd actually serve those voters best. To Stephanopoulos, the best that a voting system can do is to achieve "alignment" between "governmental outputs and popular preferences,"¹⁵ so that representation and policy look like what the voters want. By contrast, "interests are much harder to ascertain than preferences"—indeed, so "hopelessly[] difficult" that they might "require omniscience" to ascertain.¹⁶

To us, universal suffrage presupposes that, for competent adults, interests and preferences usually align; in the typical case, there isn't much daylight between Stephanopoulos's views and ours. But we don't think it follows that democratic theory should focus on preferences to the exclusion of interests—putting the measurable in place of the thing worth measuring, in some sense. The focus on interests, and the presupposition that interests and preferences usually align, rests on two ideas.

13 *Id.* at 1214.

14 *Id.* at 1215.

15 Stephanopoulos, *supra* note 1, at 1300.

16 *Id.* at 1315–16.

First, competent adults are often better *judges* of their own political interests than any smaller group to whom we could entrust the decision instead. People's interests are complicated, diverse, and opaque, and the sort of knowledge required to know what's good for another person *in general*, apart from special cases of expertise, is usually unavailable to others. Even in those special cases, moreover, the best experts are rarely the best judges of the limits of their own expertise—and when it comes to political power, those limits are the whole ballgame. That's why democracies have the people at large review the experts' work: unreviewable expertise is a dangerous sort of arrogance, one that courts oppression. Indeed, as a normative matter, we're often required in a democracy to assume that other competent adults' preferences generally reflect their interests. This is a matter of respect for the equality and self-knowledge of our fellow citizens, whose good-faith judgments may differ from ours. Citizens in a democratic society are often entitled to *define* their interests for themselves, not because the truth is a matter for self-definition, but because part of sharing a society with others is recognizing a certain space for them to disagree.

Second, the *concept* of interests is more capacious than it may seem. Those Americans who, say, supported the Vietnam War might not have been acting out of *self-interest* per se; this wasn't a question of dividing pies. But they did have interests at stake: in preventing the spread of communism, in aiding a beleaguered ally against a totalitarian enemy, and in their country being a force for good in the world. Those were real interests, properly thought of as interests, notwithstanding the fact that they sounded on a moral rather than a material plane—and also notwithstanding the fact that, from an omniscient perspective, those Americans who supported the war might have been mistaken as to the empirical facts or the moral ones or both. Just as we couldn't deny the vote to those being drafted, we also couldn't *limit* the vote to those being drafted, as other Americans had interests at stake too. In other words, members of a political community have not only *material* interests but *moral* interests. The latter flow from the fact that part of being human—part of a life well lived, and often a precondition of being one's best self—is the need to live in a moral society. It harms people when their government does evil in their name.

In sum, elections ask voters which candidates they prefer—rather than asking the wise which candidates would serve everyone's interests best—because asking people what they think is the only way to serve voters' interests, material and moral, in a way that's consistent with norms of democratic respect, and without trusting that those with political power will know and care about those without it. Of course, this picture involves a measure of idealization: people do get their interests

wrong sometimes—indeed, often. But competent adults are just as often entitled to have their preferences taken seriously, as the best evidence of their interests. We therefore needn't take issue with Stephanopoulos's focus on preferences, or even his larger theory of alignment, in such a case.

Yet this premise only holds for competent adults, and the entire focus of our inquiry is the mentally incompetent and children. In such cases the premise comes entirely apart: their preferences and interests radically and obviously diverge, and we have no democratic obligation to treat them either as *knowing* their own interests or as being capable of *defining* their own interests. Paternalism is unacceptable toward other competent adults, but it's precisely what's called for when dealing with children.¹⁷ In fact, a striking amount of parenting involves precisely asserting a child's interests over his preferences—whether that's in a restaurant (“No, you can't eat three desserts”), a hospital room (“Yes, you have to get the shot”), or, indeed, a voting booth. That's why, as Stephanopoulos notes, we “almost completely shun” the word “preferences” in favor of “interests”¹⁸ in *Give Parents the Vote*: when the subject is children and the mentally incompetent, it's appropriate to focus on interests instead.

2. Interests and Children

Some children are too young to have political preferences worthy of the name. Others—teenagers in particular—usually do have political preferences, and often these preferences conflict with those of their parents. Do those preferences represent interests that a democratic country is required to respect? While our paper is agnostic about the ideal voting age,¹⁹ we take seriously the position of current law that questions of how to vote aren't ones the typical teenager is equipped to answer—even bright teenagers who might outscore the median fifty-year-old on a civics test.

Voting isn't just a matter of having desires. It isn't even just a matter of knowing what one wants from one's own life—though we often deny to children even those purely self-regarding decisions, if they're significant enough (think of the decisions to drop out of school, get a job, marry, or buy a house). Voting is a decision about how the polity is to be governed, and that requires thinking about

17 One recalls Sidney Morgenbesser's response to B.F. Skinner: “Are you telling me it's wrong to anthropomorphize *people*?” Daniel C. Dennett, *The Evolution of Reasons*, in *CONTEMPORARY PHILOSOPHICAL NATURALISM AND ITS IMPLICATIONS* 47, 61 (Bana Bashour & Hans D. Muller eds., 2014).

18 Stephanopoulos, *supra* note 1, at 1315 (emphasis omitted).

19 See Kleinfeld & Sachs, *supra* note 1, at 1211.

other ways one's society could realistically be: an imaginative exercise that must be anchored by a measure of cultural fluency. Voting is also a matter of choosing means as well as ends, and thus making prudential judgments about what sorts of people or policies will best secure one's desired changes. And voting is a matter of knowing, not just what is good for oneself and others, but what *societal arrangements* would be good for oneself and others.

These aren't the kind of judgments for which teenagers are well suited. They have more to do with experience than bare knowledge. And they're matters of *self in society* rather than *self alone*. They are, in other words, archetypal *adult* judgments. *Contra* Stephanopoulos, teenage preferences really are "less intelligible or worthy of respect" than adult ones in these domains.²⁰ We deny the vote to children under a certain age because they lack the knowledge, maturity, and experience to understand how their society functions, as well as what that way of functioning (as compared to the alternatives) might mean for themselves and others. This isn't to idealize adults, many of whom also lack those insights. But our system rightly worries more about the dangers of denying competent adults the right to vote than about the mistakes that competent adults might make.

In his focus on the political preferences of teenagers, moreover, Stephanopoulos's essay is notable for leaving out questions of adult mental incapacity. A person suffering from severe psychosis might have strong political preferences, yet a state might properly deny the vote to such a person, not because he lacks preferences or the ability to fill out a ballot, but because his preferences diverge dramatically from our best understanding of his interests. (Indeed, if we could never distinguish preferences from interests, we could never diagnose psychosis in the first place.) Such a judgment is inherently dangerous, which is why the standard ought to be exacting. But that doesn't make it less necessary: sometimes the state has to decide whether a person is incapable of governing himself, to the point that it denies him the right to govern others. Yet that such a person can't vote his preferences doesn't mean the electoral system should disregard his interests, so long as there's a guardian who can be trusted to advance them instead.

Of course, most children will eventually become capable adults themselves. Stephanopoulos suggests that we should use proxies to predict, not children's interests, but their *future* preferences, what they *will* want when they're older.²¹ On some issues (say, gay rights),²² today's youngsters might reliably disagree with their parents, and they

20 Stephanopoulos, *supra* note 1, at 1314.

21 See *id.* at 1318–20.

22 See *id.* at 1312.

might stick to these distinct views once they've grown up.²³ On other issues, voters' views do indeed evolve as they age.²⁴ Yet voting involves a judgment *now* about what serves the public's interest; it isn't a guess about what we might come to prefer in the future. (We don't, for example, overweight the votes of the elderly, so as to predict how today's adults might vote when they've gained the wisdom of the years.) We trust competent adults to represent their own interests themselves—something we can't say for children, whose preferences and interests regularly diverge.

3. Interests and Parents

If children's *interests*, rather than their preferences, are what need representing, then parents' claim to represent their children becomes extremely strong. Indeed, parents are already the guardians of their children's interests in almost every other circumstance in which those interests need defending (doctor's offices, school board meetings, etc.).

Policed at the outer boundaries for abuse and neglect, parents already—as a matter of law—decide their children's living situation, schooling, religion, cultural upbringing, and medical care. They can sue on behalf of their children, bind their children to contracts, and in some cases exercise or waive their children's constitutional rights. At the same time, parents are duty bound to provide for children's health, education, and daily needs; they have no right to sever those duties, and they face criminal charges if they fail them. This scale of fiduciary duty and authority is unlike anything else in law.²⁵

As we've emphasized already, in carrying out these duties and exercising this authority, a parent often has to act contrary to a child's preferences. When a parent insists that a child attend religious services, for example, the state doesn't intervene whenever the child expresses a preference not to go—or whenever statistical data suggests that the child might leave the faith after turning eighteen. Or when a parent sues on a child's behalf, objecting to a system of racial assignment to public schools,²⁶ we don't appoint a guardian ad litem to intervene whenever the child is more likely than not to disagree with the

23 See *id.* at 1311–13.

24 See, e.g., Gabriel M. Ahlfeldt, Wolfgang Maennig & Steffen Q. Mueller, *The Generation Gap in Direct Democracy: Age vs. Cohort Effects*, EUR. J. POL. ECON., Mar. 2022, Article 102120, at 7 (Neth.).

25 See generally Kleinfeld & Sachs, *supra* note 1, at 1219–21.

26 See, e.g., *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 713 (2007) (describing the case as brought by a “nonprofit corporation comprising the parents of children who have been or may be denied assignment to their chosen high school . . . because of their race”).

parent's value choices once they're older. In the ordinary course, parents determine what the law deems to be their *child's* position on such issues. Parents *define* their child's interests; they don't just act as their child's obedient agent (or that of any third party). To a substantial extent, that's because no one *else* is competent to determine where a child's true interests lie: a child can't do it for herself, and, barring extreme circumstances, we don't trust anyone else to do it instead. But it's also because of the scale of parental responsibility. Parents are the only people who are capable of deciding and who have their children's whole futures in hand.

All this makes parents the uniquely appropriate representatives for casting a child's vote. Voting on a child's behalf is selecting the kind of world in which that child will grow up. That is precisely the kind of role that parenthood already entails—and that only someone who bears full responsibility for a child should be able to exercise.

Stephanopoulos agrees that “parents are indeed privy to unique information about their children's strengths, weaknesses, histories, and learning styles.”²⁷ Yet he insists that parents are often “*less* informed than many officeholders, bureaucrats, and analysts,” who can assess public policies based on information “that nonparents can easily ascertain.”²⁸ How to balance expertise with popular accountability is a perennial question in representative government, but at the very least parents are the right people to *review* the experts' work on behalf of their children, just as voters review that work in every other area of life (economics, foreign policy, climate science, and so on). If one questions why we should “credit parents' perception of their children's interest in military action to destroy terrorist camps,”²⁹ for example, one might equally ask the same question of why we should credit *voters'* decisions on such issues, or why we should have civilian control of the military in the first place. To the extent that children have an interest in a just, safe, and peaceful world, there's no other group that's better equipped and motivated to protect that interest than their own parents. When it comes to choosing the kind of world in which their children will live, those “changing the next diaper, calming the next tantrum, or paying the next bill”³⁰ are precisely those whose judgment should be sought.

27 Stephanopoulos, *supra* note 1, at 1316.

28 *Id.*

29 *Id.* at 1317.

30 *Id.* at 1318.

B. *The Public Good*

Our differences from Fishkin are yet more fundamental. As he notes, parent proxy voting “cut[s] surprisingly deep into fundamental normative questions about what voting is and what it is for”³¹—a question that receives less scholarly attention from scholars of democracy than it should.³² Fishkin chides us for a vision of voting that’s too “individualistic”³³—too focused on who gets what, whose interests prevail, or which pressures politicians face, rather than on communal conceptions of the public good. Voting, as he sees it, is “communitarian in nature”; it reflects “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.”³⁴ Indeed, it’s a mistake to think of individuals as *having* “interest[s] . . . in the results of elections,” for any such interest runs “through their membership in groups or communities.”³⁵ If the whole community votes (or should vote) for the public good, then children don’t need any special treatment in the political system; instead they’re “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.”³⁶

How fortunate they are! Yet we persist in believing that virtual representation by strangers does harm children as individuals, and not merely because the denial of a ballot might “offend[] equal citizenship

31 Fishkin, *supra* note 1, at 1279.

32 See NICHOLAS WOLTERSTORFF, *An Engagement with Rorty*, in UNDERSTANDING LIBERAL DEMOCRACY: ESSAYS IN POLITICAL PHILOSOPHY 41, 49–50 (Terence Cuneo ed., 2012) (finding “[i]n Rorty, Rawls, Audi, Larmore, and their cohorts . . . an implicit dislike for a procedure that I regard as belonging to the very essence of a democracy, namely, voting,” *id.* at 49); Joshua Kleinfeld, *Manifesto of Democratic Criminal Justice*, 111 NW. U. L. REV. 1367, 1394 (2017) (surveying philosophical “[c]onceptions of government that purport to be conceptions of democracy but cannot account for the absolutely central place of voting in all democracy as such—not a hypothetical consensus or ‘general will’ but the actual rule of an actual majority after a fair vote,” and arguing that such conceptions “have lost sight, not just of a mechanism of democratic governance, but of the popular sovereignty and collective self-determination the mechanism is designed to protect”); cf. PHILIP PETTIT, REPUBLICANISM: A THEORY OF FREEDOM AND GOVERNMENT 202 (1999) (developing a theory of government he calls “republican” but that “breaks with any notion of democracy that would consecrate majority opinion”).

33 Fishkin, *supra* note 1, at 1280.

34 *Id.*

35 *Id.* at 1284–85 (emphasis omitted).

36 *Id.* at 1290. A quibble about virtual representation: As we understand the concept, it doesn’t just mean relying on voters to do what’s best for nonvoters. As we explain in *Give Parents the Vote*, “The idea of virtual representation is that, if *A* and *B* have substantially aligned interests and *A* can vote while *B* can’t, then *B* is virtually represented by *A*.” Kleinfeld & Sachs, *supra* note 1, at 1255. The premise is that *A* and *B* must have aligned interests. Otherwise *A* is no representative of *B* at all.

and equal protection of the laws.”³⁷ Furthermore, there’s nothing inconsistent about the idea that voting serves *both* individual interests and the public good; insisting, as Fishkin does, that we think of voting as *only* about individual interests or *only* about the public good is like insisting that zebras are all white and that the black stripes are just exceptions, or that they’re all black and that the white stripes are just exceptions. Voting does have something to do with clashing moral views of the public good. It also, as a matter of sheer political reality, *does* have something to do with who gets what, whose interests prevail, and what pressures politicians face. And these interests are moral as well as material: children have an interest in a healthy moral environment in which to grow up, and they share everyone’s moral interest in a just and good society. But they need others to defend these interests—and the right people to do so are their parents, and not just strangers.

1. Material Interests

Much of politics has a certain ward-boss quality. Trade-offs have to be made: Will housing policy favor owners or renters? Will police or firefighters get a raise? Voters often tend to prefer arrangements that benefit themselves and those with whom they’re in sympathy, and the strength of these various voting blocs affects what vote-seeking politicians will do. In other words, one of the many purposes of voting is to collectively register each citizen’s claims, such that the aggregation of votes will regularly steer policy to the median voter’s benefit. To point this out isn’t to buy into the formal rational-choice theory of voting that Fishkin ascribes to us,³⁸ or really any grand theory at all; it’s just to observe that the trade-offs-and-compromises aspect of politics is real. This aspect of voting also serves a moral purpose, because states that don’t care when majorities strenuously oppose their policies are often quite unjust. Tyrannical governments routinely abuse their people by serving the few at the expense of the many; one goal of majoritarian voting is to resist that tendency.

Neglect of this trade-offs-and-compromises aspect of democratic politics also leads to utopian patterns of thought, which in turn lead to real suffering for real people. Fishkin writes that individuals lack any “interest . . . in the results of elections” except via “their membership in groups or communities.”³⁹ That just isn’t true. If a district attorney’s election goes the wrong way, each person who now fears or suffers higher crime or unjust prosecution has an individual interest in the

37 Fishkin, *supra* note 1, at 1284.

38 See *id.* at 1285–87.

39 *Id.* at 1284–85 (emphasis omitted).

result. When they vote, their individual interest in lower crime or the better administration of justice quite properly plays a role. Voting needn't be "*exclusively*" designed to "safeguard [one's] own personal interests"⁴⁰ for that to be *one* of the very important things that voting does.

Some history helps the point. Fishkin agrees that "[w]e no longer trust" that other voters' consideration of the public good will adequately protect "women, Black people, those without property, those who cannot pay a poll tax, and even those between the ages of eighteen and twenty."⁴¹ The lesson of history is that public-spiritedness among those who had the right to vote didn't protect those groups that lacked it. But why then is he so sure that childless adults' public-spiritedness will adequately protect children? And back when the franchise was restricted on the basis of race or sex, that was bad *not only* because it sent many citizens a message of exclusion from the political community,⁴² but also because it produced policies that reliably *disserved their interests*.

To rest easy having invoked each citizen's duty "to vote for what is best for the political community"⁴³ radically overestimates people's communitarian impulses, and it flies in the face of historical experience. In fact, the core normative idea that emerges from our history is that—as a matter of justice—citizens have to be in a position politically to represent themselves and the people closest to them. Not only might strangers fail to care about their interests, they also might fail to understand them. The epistemic difficulties of group *A*'s knowing what group *B* needs are overwhelming even in circumstances of utopian compassion. This goes for nonparents and children too. They might not care enough about children; they equally might not understand what children need. A "single parent of five children" may not have more "special knowledge [of] the best policy choices,"⁴⁴ but they do have unique knowledge of *their children*, and they're uniquely well motivated to seek out what's best for them.

Children have all sorts of distinctive material interests at stake in elections. The only way to ensure that politicians value these material interests adequately is for children to be proportionally represented in the voting pool. We therefore disagree with Fishkin not only as a matter of realism but of justice: it is unjust to deprive certain citizens of the

40 *Id.* at 1286 (emphasis added).

41 *Id.* at 1278.

42 *Cf.* Jeremy Waldron, *The Core of the Case Against Judicial Review*, 115 YALE L.J. 1346, 1375 (2006) (summarizing Ronald Dworkin's expressive theory of voting as confirming citizens' "equal membership or standing in the community" but not doing much else).

43 Fishkin, *supra* note 1, at 1280.

44 *Id.* at 1287.

ability to defend themselves from state abuse, or for that matter to require them to depend for their urgent material interests on the kindness of strangers, to whom they have no particular connections of sympathy or understanding. In this context it's baffling to think what Fishkin could mean in saying that children "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."⁴⁵ It's a strange sort of equal citizenship that gives one citizen a vote and the other "equal" citizen no vote, and that reliably leads to bad policy consequences for the unrepresented.

2. Moral Interests

We agree with Fishkin that not all of politics is pure ward-bossery. People's votes reflect their sense of justice and the public good, the kind of society they think is best, and—for parents especially—the kind of society they think is best for children. But this, too, reflects a type of interest: a moral interest in being part of a society that's good and just. As discussed above, part of our individual flourishing consists in being part of collectives that reflect what's valuable, collectives we can see in a positive light and in which we can participate without alienation. And one purpose of voting is to make this possible to the extent it can be in conditions of democratic disagreement. From the ward boss's perspective, it all might be one and the same; politicians face the same sorts of pressures on war and peace that they do on tax loopholes. But universal suffrage lets each citizen pursue these moral interests, as well as more material ones, and to vote the way their own reasons require.

People also have a moral interest in being part of a society that brings out the best in themselves. If it's virtuous not to eat factory-farmed meat, we might find it desirable to be part of a society in which factory-farmed meat isn't widely eaten, so that we're not constantly struggling against the current in order to do the right thing. This is a particularly vivid interest for parents raising children, who often worry about how society might influence them at a formative stage in ways contrary to their long-term moral interests. It's that sort of environmental concern that leads voters to worry about things like high-calorie processed foods, violent or derogatory media, or politicians who coarsen the country's norms.

The hard question about moral interests—maybe the hardest question of all for us, which Fishkin rightly highlights—is whether parent proxy voting is a form of double-counting *parents'* moral interests

45 *Id.* at 1290.

rather than genuinely counting children's moral interests. To Fishkin, "[g]iving parents votes to exercise on behalf of children empowers not children but parents," who "will mostly vote, as all voters do, on the basis of their own vision of what is best."⁴⁶ We suspect that this objection in some form undergirds much of the opposition to parent proxy voting. The idea that parents might vote their children's material interests is intuitively plausible, but young children don't even have moral outlooks on politics to which parents could give voice—and while older children might, it's hard to believe that most parents would vote their teenagers' politics in place of their own. If parents are voting their own moral outlooks—once on behalf of themselves and a second time on behalf of their kids—that's just extra votes for parents . . . right?

We think that *isn't* right, not because it misunderstands voting, but because it misunderstands parenting. The role of a parent isn't just to perceive a child's preexisting moral interests, but also to *define* such interests—and, in doing so, a parent really does act on the child's behalf.

Consider, again, the example of a parent who sues a school district for using a school assignment system that discriminates on the basis of race.⁴⁷ One could easily imagine that the child doesn't understand the lawsuit, that he finds it embarrassing and wishes it would just go away, or that he doesn't want to go to the school at all. But it's a settled matter of law that the parent may bring the lawsuit in her child's name and on her child's behalf.⁴⁸ What makes this possible isn't some interest of the parent's—in obtaining bragging rights over the child's admission to a particular school, say, or even in conquering racial discrimination. The moral interest is *the child's*, which our law takes the parent to be able to define and assert.

Or consider, again, a parent who wants a child to grow up within a certain religious tradition. She can insist not only that her child attend services or Sunday school, but also perhaps that certain government institutions accommodate her child's religious observance⁴⁹—even if the child isn't particularly religious, and even if a sound forecast of the child's future suggests a high probability of his eventually leaving the faith. The right isn't based on the parent's interest in adding a new member to her faith, nor on some proprietary right to prevent others from interfering with her control over her child; the right is the

46 *Id.* at 1291.

47 *See supra* note 26 and accompanying text.

48 *See* FED. R. CIV. P. 17(c)(1)(A).

49 *See generally, e.g.*, Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb-1 to 2000bb-4 (2018).

child's, and it's a right to what the parent has selected as a moral upbringing.

These aren't just bare points of positive law. And they're not meant to advance an authoritarian conception of parenting: indeed, we think one of the most important goals of parenthood is to raise a being capable of freedom.⁵⁰ Rather, these aspects of the law reflect a deep understanding of how childhood and parenthood inevitably work.

A child's most fundamental interest is the interest in *being raised well*, and the root fact of childhood is that children can't define on their own what it means to be raised well. That's not only because they're immature, but because the desirability of being shaped a certain way is something the child, the subject of the shaping, can't decide. It's a problem of self-reflexivity: the very question is whether he should become someone different than he currently is.

So it's just a fact that someone else has to discharge the child's fundamental interest in being raised well. And to discharge that interest *necessarily* entails defining the child's material and moral interests. Someone other than the child has to decide whether the child will grow up to be the best version of himself by having required daily chores, say, or by eating less sugar. We don't give every facet of that decision to parents; we impose some legal protections from neglect or abuse, and we require enough education for children to grow to be free persons in adulthood. But we mostly leave the interest in being raised well up to parents. Partly that's for reasons of history; so we have always done. Partly it's because we seek to avoid the concentrated power that would result from taking that power from parents and giving it to the state. But mainly it's because parents' love for their children is the surest instrument of zeal and knowledge on behalf of those children available in human life. This isn't a dictatorial, proprietary model of parenting, in which parents own their children in fee simple and exercise exacting control over their lives; it simply recognizes that respecting a child's dignity means making choices that will equip the child to be free in adulthood, and often that means limiting some of her choices in childhood. A parent who won't let her child quit a sport or hobby isn't really invading her child's dignity, though she may be overruling her child's preferences, because freedom in adulthood may require enough self-control to persevere in one's goals.

This model has real consequences for voting. The interest in being raised well can't be discharged in a vacuum; the character of society influences the upbringing of children, and some of parents' most urgent *political* demands are demands that society be such as to allow for

50 Kleinfeld & Sachs, *supra* note 1, at 1236.

raising their children well. Partly that's a generic interest in a good and just society, and partly that's a child-specific interest in a society that influences children to be the best version of themselves. So a parent might want—on her child's behalf—that her country be a force for good in the world, that it fight just wars or contribute to just causes, or that it take any number of other moral stands. A parent might also want—on her child's behalf—a country in which tempting or addictive products or services aren't readily available near schools. These are matters of our collective life that are determined through voting, but they're also genuine expressions of a child's fundamental interest in being raised well.

Leaving children unrepresented in politics makes discharging this interest much harder. If two parents have three children to raise, all five members of the family will be affected by society's moral character—and yet they have only two votes to use in the hopes of altering that character. Proxy votes for parents restore the correspondence of interests and votes. True, the children's moral interests are necessarily channeled through their parents, who can't help but approach those interests in terms of their own broader moral outlooks. Those may be the very same outlooks they bring to bear on their own voting. But this isn't double counting, for it's genuinely their children's interests that they seek to discharge. Parents can seek to protect their children morally as well as materially, but to do so, they need the vote.

II. POLICY

Our disagreements at the level of theory lead us to reject both respondents' alternative solutions to representing children. Fishkin would lower the voting age to fourteen to mitigate children's underrepresentation.⁵¹ Stephanopoulos entertains the idea that children as young as thirteen might be able to vote,⁵² but his main proposal is that young adults (under thirty) be given extra votes, in the hopes of modeling children's future preferences.⁵³ Unfortunately, neither alternative really solves the problem of children's representation as well as parent proxy voting, and both of them create more trouble than they're worth.

A. *Lowering the Voting Age*

Start with Fishkin's proposal of lowering the voting age to fourteen. As we note above, our proposal is agnostic on the proper

51 Fishkin, *supra* note 1, at 1280.

52 See Stephanopoulos, *supra* note 1, at 1314.

53 See *id.* at 1301.

voting age: “If the voting age were twelve, there’d be eleven-year-olds who’d have interests, who’d be unrepresented, and whose parents ought to be able to cast their votes.”⁵⁴ And if the political price of parent voting (as part of some compromise package) were a lowering of the voting age, we could imagine saying yes to that deal.

But if it were left up to us, we wouldn’t make the voting age any lower than it is. *First*, as we also note above, we’re skeptical that younger teenagers have the knowledge, maturity, and experience necessary to vote. A voting age is a line drawn across a spectrum; if fourteen-year-old voters aren’t measurably worse at voting than others, then by Fishkin’s own lights the line would be drawn too high and ought to be thirteen instead. In fact, the choice of fourteen rather than ten, eight, six, or zero reflects a sensible hesitance to admit unprepared voters to the polls, but it’s hardly clear that fourteen is the right number. If we don’t think fourteen-year-olds are ready to enlist in the military or to travel on their own abroad, why should we think them ready to cast their own votes on matters of war and foreign policy?

Second, the current voting age of eighteen has something else going for it, namely that it’s increasingly a unified legal marker of full adulthood. Although state law varies around the edges, eighteen marks a threshold after which, in every state and under federal law, one can make one’s own decisions about sex and marriage; going to school or starting work; leaving a parent’s home and authority; handling one’s own legal affairs, medical decisions, and finances; engaging in other civic duties, such as jury service and military service; and being held fully responsible for crimes. Society thus transmits a clear message about when its members pass from childhood to adulthood. There’s value in maintaining the clarity of that message—and in not suggesting that governing one’s fellow citizens requires any less knowledge, maturity, and experience than any of these other pursuits.

Third, letting fourteen-year-olds vote would do nothing for those who lack the vote by reason of mental incapacity. These citizens would still need representation; given their inability to act on their own, the only way to represent them is through proxy representation by their guardians. So why not extend the same regime to unrepresented children as well?

Fourth, a voting age of fourteen might not even do much for children thirteen or younger. Teenagers and infants don’t have much in common, and the former may lack either the desire or the ability to vote in the latter’s interests. A lower voting age would have no effect

54 Kleinfield & Sachs, *supra* note 1, at 1211.

on the calculations that lead politicians to disfavor young children's interests, and it'd retain the injustice of leaving a large group of citizens without the ability to defend their interests at the polls.

Fifth and finally, a younger voting age also raises real worries about the politicization of childhood. Fishkin celebrates the possibility of greater involvement by children in politics; he imagines a teacher "assigning a student the task of researching a candidate or policy proposal with which the student disagrees" before an upcoming election.⁵⁵ Yet that was allowed already; teachers can and do assign such tasks right now, and we don't need to upend our voting system just to change our civics curriculum. Instead, this enthusiasm for letting teenagers vote greatly underestimates the dangers of pointing the two parties' propaganda machines at the nation's eighth graders and high schoolers. We've just seen, in the last election, a frantic and massive outpouring of money and effort among many of the country's most powerful people for the sake of their political causes, in conditions that to the partisans of each side seem more important than virtually anything else on earth, arousing passions that make everything seem justified. Now imagine unleashing those forces on middle and high schoolers: the social media blitz, the big-data surveillance, the targeted advertising, the professional influencers, the peer pressure, the manipulation of teachers and curricula, and so on. Before we lower the voting age, we need to consider the potential ugliness of letting modern political machines go after children.

B. "Votes for Twentysomethings"

Stephanopoulos would solve the problem of children's underrepresentation in a different way: by inflating the voting power of eighteen-through-twentysomethings who live in the children's district. We consider this proposal a nonstarter, for the following reasons.

First, if we found teenagers' political preferences to be meaningful, we'd just *let the teenagers vote*, instead of finding some other group with somewhat similar political preferences and counting extra votes for them instead. The only justification for the current voting age of eighteen is that seventeen-year-olds lack the knowledge, maturity, and experience to form political preferences that meaningfully reflect their interests. (The fact that "fully seventy percent of teenagers want a more activist government, compared to an average of just fifty-one percent across . . . adult cohorts,"⁵⁶ might reflect the triumph of hope over experience.) This problem is in no

55 Fishkin, *supra* note 1, at 1293.

56 Stephanopoulos, *supra* note 1, at 1307.

way solved by taking the teenagers' preferences as given and then allocating more votes to anyone whose preferences resemble theirs. Besides, if teenagers and twentysomethings were to come apart politically, what then? Would we reassign these extra votes from young adults if, in ten years' time, we discovered a better correlation of teenagers' preferences with flautists or undertakers instead?

Second, while Stephanopoulos argues that young adults and teenagers share durable values,⁵⁷ the point (as we argue above) is to protect children's interests, not to reflect their preferences. And it's simply implausible to claim that young adults would be better stewards of children's interests than their parents would. Children have an interest in strong K–12 schools and generous parental leave policies, and parents have good reason to support such things; young adults often don't. Children have an interest in a healthy cultural environment in which to grow up, and parents have good reason to care about that; yet there may be no demographic group in the world less interested in that consideration than the young adults who only recently left the constraints of childhood themselves. And so on.

Third, many of the questions posed in elections are less about values than empirics. Which policies have worked effectively for children, and which have proved more style than substance? Which candidates for school board have been good administrators while in office, and which have been bad ones? There's no reason to think that the college kids down the street are better suited to answer these questions for children than are the children's own parents, who at least have had an incentive to notice such things in the course of childrearing.

Fourth, because Stephanopoulos's proposal is designed to model and predict voting habits at the level of mass statistics—"wholesale" rather than "retail"⁵⁸—its imagination is confined to areas with widely available polling (party identifications, national candidates or issues, etc.). Yet the need for children's representation may be most urgent in school board or town council elections, the sorts of elections that Gallup doesn't poll. Often these elections are nonpartisan or involve multiple candidates from the same party, meaning that we can't model children's preferred candidates simply by knowing their party affiliations. So we have no basis at all to compare the relative preferences of kids and eighteen-year-olds in the races that to kids will matter most.

Fifth, inflating the votes of young adults is really a system of *plural* voting, not *proxy* voting; it multiplies their votes in light of the general

57 See *id.* at 1320.

58 See *id.* at 1301–02.

mass of children living nearby, not on behalf of individual children for whom an individual voter serves as a proxy. This wholesale-not-retail approach doesn't even attempt to provide "distinctive insight" on the needs or circumstances "of any specific children."⁵⁹ Yet voting in our system is a personal action, not a group prediction; we vote (rather than just poll and model) because the goal isn't solely to get our projections right, but to make political power conform to the summed personal choices of particular individuals. Our voting tradition is to accept no substitute for an individual's personal action, no matter how well social scientists might be able to predict that individual's vote. Parent proxy voting preserves the link between individual person and individual vote: while some people vote on behalf of others, these votes are the personal expression of *specific* parents as representatives of *specific* children—their children. Stephanopoulos's proposal severs that link: young adults are just children's statistically most similar parallel. And these theoretical worries have real consequences in practice. For example, much political power is exercised, not on Election Day, but in voters' pressuring their elected officials all the rest of the year. A special-needs child whose parents can cast an extra vote will have that much more influence with the local school board; not so one whose vote is handed off to unknown college kids. (It also bears mention that social scientists can't actually predict votes with anything like the sort of accuracy Stephanopoulos's proposal would require, as the last several elections have shown.)

Sixth, whatever the legal voting age, we should assume that those just above it have the lowest degree of knowledge, maturity, and experience consistent with being trusted to represent their own interests. (Otherwise we should have set the bar lower.) So presumably this is the last group we should empower with extra votes, if there's any way of avoiding it. Yet Stephanopoulos's proposal would make young adults the most powerful voting bloc in America, unbound to any duty or personal relationship to the children whose votes they would wield—a kind of power totally unknown to the American democratic tradition. Under parent proxy voting, by contrast, each individual parent would vote only for his or her own children, often splitting this authority with another parent and constrained by the duties of his or her role.

Seventh and finally, Stephanopoulos's proposal faces real constitutional difficulties. Not only does its plural-voting system raise

59 *Id.* at 1321. Stephanopoulos rejects the "plural voting" label because the number of extra votes is keyed to the number of children nearby, *id.* at 1322–23, but it's hard to describe someone as a proxy voter if there aren't any specific children on whose behalf the proxy serves.

equal protection concerns, but his choice to cap eligibility at twenty-nine years of age⁶⁰—an electoral version of “don’t trust anyone over thirty”—might well infringe the Twenty-Sixth Amendment, which provides that an eighteen-and-over citizen’s right to vote “shall not be denied or abridged . . . on account of age.”⁶¹ If twenty-nine-year-olds can serve as proxies but thirty-year-olds can’t, it seems that the latter would have a strong claim of abridgment.

CONCLUSION

Both authors do us a great favor, not only in the care they take in discussing our article, but in their agreement on how imperfect the status quo truly is for children. Their theoretical critiques help make clear why children’s interests need protecting. And their proposals, perhaps inadvertently, demonstrate how hard it is to address this problem *without* parent proxy voting as a solution. As a result, with gratitude for their work, we leave their essays yet more convinced that parents really do need the vote.

60 *Id.* at 1321.

61 U.S. CONST. amend. XXVI, § 1.

