

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMONWEALTH OF VIRGINIA, STATE)
 OF ILLINOIS, and STATE OF NEVADA,)
)
 Plaintiffs,)
)
 v.)
)
 DAVID S. FERRIERO, in his official capacity)
 as Archivist of the United States,)
)
 Defendant,)
 and)
)
 ALABAMA, LOUISIANA, NEBRASKA,)
 SOUTH DAKOTA, and TENNESSEE,)
)
 Intervenor-Defendants.)

Case No. 1:20-cv-00242

**PLAINTIFF STATES’ STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h), Plaintiff States submit the following statement of material facts as to which there is no genuine dispute. On the basis of these facts, Plaintiff States are entitled to judgment as a matter of law under Federal Rule of Procedure 56.

1. In 1972, Congress proposed adding the following language—known as the Equal Rights Amendment—to the United States Constitution:

“SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.
 “SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
 “SEC. 3. This amendment shall take effect two years after the date of ratification.”

Once Congress voted to propose the Equal Rights Amendment, it was submitted to the States for ratification pursuant to Article V. See Decl. of Michelle S. Kallen (attached to Plaintiff States’ Mot. for Summ. J.) (Kallen Decl.) Ex. 1; see also Answer of Intervenor-Defendants (Dkt. 35) ¶¶ 27–30.

2. Since before 1972, there have been fifty States. Article V's description of "three-fourths of the several States" therefore has meant 38 States.

3. By the end of 1977, 35 States had ratified the Equal Rights Amendment as proposed by Congress: Hawai'i, New Hampshire, Delaware, Iowa, Idaho, Kansas, Nebraska, Texas, Tennessee, Alaska, Rhode Island, New Jersey, Colorado, West Virginia, Wisconsin, New York, Michigan, Maryland, Massachusetts, Kentucky, Pennsylvania, California, Wyoming, South Dakota, Oregon, Minnesota, New Mexico, Vermont, Connecticut, Washington, Maine, Montana, Ohio, North Dakota, and Indiana. See Kallen Decl. Ex. 5 (listing dates of State ratifications); see also Answer of Intervenor-Defendants (Dkt. 35) ¶ 31 (admitting that 35 states had ratified the Equal Rights Amendment by 1978, including Idaho, Kentucky, Nebraska, Tennessee, and South Dakota).

4. In or before 1978, the National Archives and Records Administration received official notice from each of the 35 States that had ratified the Equal Rights Amendment of their State legislature's ratification of the amendment. See Kallen Decl. Ex. 5.

5. In 2017, Nevada ratified the Equal Rights Amendment. See Kallen Decl. Ex. 2.

6. In 2017, the National Archives and Records Administration received official notice of the Nevada legislature's ratification. See Kallen Decl. Ex. 2, 5.

7. In 2018, Illinois ratified the Equal Rights Amendment. See Kallen Decl. Ex. 3.

8. In 2018, the National Archives and Records Administration received official notice of the Illinois legislature's ratification. See Kallen Decl. Ex. 3, 5.

9. On January 8, 2020, the National Archives and Records Administration announced that the Archivist will refuse to publish the Equal Rights Amendment absent a final court order. See Kallen Decl. Ex. 6.

10. On January 27, 2020, Virginia ratified the Equal Rights Amendment. See Kallen Decl. Ex. 4.

11. On or around January 28, 2020, the National Archives and Records Administration received official notice of the Virginia legislature's ratification. See Kallen Decl. Ex. 4, 5.

12. For the only amendment that was adopted between 1985 and 2019, the Archivist caused the amendment to be published (with his certificate) after he received official notice that the proposed amendment had been adopted according to the provisions of the Constitution. In so doing, the Archivist specified that the amendment had become valid as part of the Constitution of the United States. See Kallen Decl. Ex. 7.

13. When Plaintiff States filed their Complaint on January 30, 2020, the Archivist had not published or certified the Equal Rights Amendment. See Kallen Decl. Ex. 5; Answer of Intervenor-Defendants (Dkt. 35) ¶ 62.

14. As of August 19, 2020, the Archivist has not published or certified the Equal Rights Amendment as part of the U.S. Constitution, and he continues to refuse to do so unless directed by a final court order. See Kallen Decl. Ex. 5, 6.

Dated: August 19, 2020

Respectfully submitted,

COMMONWEALTH OF VIRGINIA, STATE OF
ILLINOIS, and STATE OF NEVADA

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CERTIFICATE OF SERVICE

Pursuant to Local Civil Rule 5.4(d), I hereby certify that on August 19, 2020 I will file this document electronically through the Court's CM/ECF system, which will effect service on all counsel who have appeared.

/s/ Michelle S. Kallen

Michelle S. Kallen

*Counsel for Plaintiff
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