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' RESPONSE TO INTERVENORS' STATEMENT OF MATERIAL FACTS

Pursuant to Local Civil Rule 7(h), Plaintiff States submit the following response to Intervenors' Statement of Material Facts (Dkt. 74-1).

PLAINTIFF STATES' RESPONSES

As to all of Intervenors' assertions, Plaintiff States object that Intervenors failed to attach any materials to support the factual positions in their motion and thus have not carried their burden under Federal Rule of Civil Procedure 56 to "cit[e] to particular parts of materials in the record" to show "that a fact cannot be . . . genuinely disputed." Fed. R. Civ. P. 56(c). Because Intervenors did not submit any documents or other materials for the Court's consideration, the Court does not have a record to review in connection with the Intervenors' Motion for Summary Judgment.

As to Intervenors' individual factual positions, Plaintiff States further object and respond below. Intervenors' assertions are reproduced below, with Plaintiff States' response directly after.

1. On March 22, 1972, Congress passed a joint resolution "[p]roposing an amendment to the Constitution of the United States relative to equal rights for men and women." H.R.J. Res. 208, 92d Cong., 1st Sess., 86 Stat. 1523 (1972).

Response: ADMIT.

2. The 1972 amendment is more commonly known as the Equal Rights Amendment, or ERA.

Response: ADMIT.

3. The joint resolution proposing the ERA stated:

> That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:
>
> "ARTICLE —
>
> "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."
>
> 86 Stat. 1523.

Response: ADMIT.

4. The "within seven years" language was added to the ERA because "several influential Members of both Houses objected to its absence."

Response: Paragraph 4 is not relevant to the claim at issue, nor is it necessary to resolve Plaintiff States' entitlement to relief. Subject to that objection, Plaintiff States DENY that "the 'within seven years' language" appears in the Equal Rights Amendment. Further, the cited document, H.R. Rep. 95-1405 (1978), does not support Intervenors' conclusion regarding

legislative history, and the document speaks for itself.

5. Excluding the Twenty-Seventh Amendment, no constitutional amendment has been ratified more than four years after its proposal.

Response: Paragraph 5 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States do not dispute paragraph 5.

6. Excluding the Twenty-Seventh Amendment, the average time between the proposal and ratification of successful constitutional amendments has been one year, eight months, and seven days.

Response: Paragraph 6 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States do not dispute paragraph 6.

7. Starting with the Eighteenth Amendment, every congressional proposal for a new constitutional amendment (except the Nineteenth Amendment and the proposed Child Labor Amendment) has included a seven-year ratification deadline.

Response: Paragraph 7 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States DENY paragraph 7. The Twenty-Seventh Amendment did not include a ratification deadline.

8. The seven-year ratification deadlines for the Twenty-Third, Twenty-Fourth, Twenty-Fifth, and Twenty-Sixth Amendments appeared in the proposing resolutions but not the text of the proposed amendments themselves.

Response: Paragraph 8 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that

objection, Plaintiff States partially ADMIT paragraph 8. Plaintiff States agree that, like the Equal Rights Amendment, the Twenty-Third, Twenty-Fourth, Twenty-Fifth, and Twenty-Sixth Amendments do not include text regarding a timeframe for their ratification.

9. Thirty States referenced the ERA's seven-year ratification deadline in their ratification documents.

Response: Paragraph 9 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Because Intervenors have not provided Plaintiff States or the Court with copies of these 30 States' ratification documents, Plaintiff States can neither admit nor deny the asserted fact. Plaintiff States note that Article V does not authorize States to impose conditions on their ratification of a federal constitutional amendment.

10. Seven years from March 22, 1972 is March 22, 1979.

Response: Paragraph 10 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States do not dispute paragraph 10.

11. Three-fourths of the States (38 States) did not ratify the ERA before March 22, 1979.

Response: Paragraph 11 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to those objections, Plaintiff States ADMIT in part and DENY in part that paragraph 11 is accurate because it is imprecise. See Decl. of Michelle S. Kallen (attached to Plaintiff States' Motion for Summary Judgment) (Kallen Decl.) Ex. 5 (explaining when each of the 38 States ratified the Equal Rights Amendment, many but not all of which occurred before March 22, 1979).

12. By March 22, 1979, thirty States had enacted measures to ratify the ERA and had not enacted measures to rescind their prior ratifications: Alaska, California, Colorado, Connecticut,

Delaware, Hawaii, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon Pennsylvania, Rhode Island, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

Response: Paragraph 12 is only partially relevant to the claim at issue, as purported "measures to rescind" States' "prior ratifications" have no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to those objections, Plaintiff States partially ADMIT paragraph 12. Plaintiff States agree that, as of March 22, 1979, at least 30 States had ratified the Equal Rights Amendment because a total of 35 States had ratified at that time. See Kallen Decl. Ex. 5.

13. By March 22, 1979, five States had enacted measures to rescind their prior ratifications of the ERA: Idaho, Kentucky, Nebraska, South Dakota, and Tennessee.

Response: Paragraph 13 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Intervenors have not provided Plaintiff States or the Court with any materials—let alone admissible evidence—to support paragraph 13. Subject to those objections, Plaintiff States respond as follows: Plaintiff States agree that Idaho, Kentucky, Nebraska, South Dakota, and Tennessee ratified the Equal Rights Amendment, see Kallen Decl. Ex. 5. Plaintiff States also agree that, after each State's ratification, some legislative officials in each of these five states took actions to signal disagreement with their State's prior ratification. The legal and factual circumstances in which these measures were considered and/or adopted have not been described or proven, and if this Court deems States' post-ratification actions relevant, Plaintiff States request the opportunity to pursue discovery on that issue. See Kallen Decl. ¶ 12; see also Fed. R. Civ. P. 56(d).

14. By March 22, 1979, fifteen States had not enacted measures to ratify the ERA:

Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah, and Virginia.

Response: Paragraph 14 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States ADMIT paragraph 14. After March 22, 1979, however, three additional States (Nevada, Illinois, and Virginia) ratified the Equal Rights Amendment. See Kallen Decl. Ex. 2, 3, 4.

15. In October 1978, Congress enacted a joint resolution, stating that the ERA "shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States not later than June 30, 1982." H.R.J. Res. 638, 95th Cong., 2d Sess., 92 Stat. 3799 (1978).

Response: Paragraph 15 is not relevant to the question of whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States ADMIT paragraph 15. Plaintiff States note that the quoted language in a congressional resolution is inconsistent with the U.S. Constitution, which states that an amendment "shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States." U.S. Const. art. V.

16. The 1978 resolution was approved by simple majorities of the House and Senate; it did not obtain two-thirds support in either House.

Response: Paragraph 16 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States do not dispute paragraph 16.

17. In December 1981, a federal district court declared that "Congress' attempted extension of the time for the ratification of the [ERA] was null and void." *Idaho v. Freeman*, 529 F.

Supp. 1107, 1155 (D. Idaho 1981).

Response: Paragraph 17 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Plaintiff States do not dispute that paragraph 17 accurately quotes from the cited decision. But the truth of the statement is a legal conclusion, not a material fact, and the cited decision speaks for itself.

18. The U.S. Supreme Court agreed to review the district court's judgment in *Freeman*. *See Nat'l Org. for Women, Inc. v. Idaho*, 455 U.S. 918 (1982).

Response: Plaintiff States ADMIT that the Supreme Court of the United States stayed the judgment of the district court in the Idaho litigation pending Supreme Court review.

19. On June 30, 1982, the Supreme Court had not yet issued a decision in the *Freeman* litigation.

Response: Plaintiff States do not dispute paragraph 19 but object that it is not material to their claim for relief here.

20. Between March 22, 1979 and June 30, 1982, no additional States ratified the ERA.

Response: Paragraph 20 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States do not dispute paragraph 20.

21. On July 9, 1982, the government submitted a memorandum suggesting mootness in the *Freeman* litigation, urging the Supreme Court to order the case dismissed because "the extended period for ratifying the [Equal Rights] Amendment expired" and so "the Amendment has failed of adoption."

Response: Paragraph 21 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. The evidence on which Intervenors rely to support paragraph 21 has not been provided to the Court or made part of

the record. If this assertion is properly supported, then the document may speak for itself.

22. Other parties objected to the suggestion of mootness, stressing that a mootness ruling "would effectively decide the 'antecedent' issue of whether Congress has plenary power and control over the amending process under Article V and thereby determine many of the other issues and policies presented by this case."

Response: Paragraph 22 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. The evidence on which Intervenors rely to support paragraph 22 has not been provided to the Court or made part of the record. If this assertion is properly supported, then the document may speak for itself.

23. "Upon consideration of the memorandum for the Administrator of General Services suggesting mootness, filed July 9, 1982, and the responses thereto," the Supreme Court "vacated" the district court's judgment and "remanded to that Court with instructions to dismiss the complaints as moot." *Nat'l Org. for Women, Inc. v. Idaho*, 459 U.S. 809 (1982) (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950)).

Response: Paragraph 23 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. The cited decision speaks for itself. Subject to those objections, Plaintiff States partially ADMIT paragraph 23. Plaintiff States agree that the Supreme Court of the United States vacated the judgment of the district court.

24. Reporting on the Supreme Court's decision, a story by United Press International stated that "[t]he Supreme Court today closed the coffin lid on the 10-year-old Equal Rights Amendment, declaring it legally dead."

Response: Paragraph 24 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. The evidence on

which Intervenors rely to support paragraph 24 has not been provided to the Court or made part of the record. Plaintiff States DENY that the Supreme Court has ever declared the Equal Rights Amendment "legally dead." Intervenors' assertion to the contrary is inadmissible hearsay.

25. When it became clear that the ERA would not be ratified by June 30, 1982, "[l]eaders of the fight … officially conceded defeat."

Response: Paragraph 25 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. The evidence on which Intervenors rely to support paragraph 25 has not been provided to the Court or made part of the record. Intervenors' description of the document suggests it is inadmissible hearsay. If the cited news stories in paragraph 25 are considered by the Court, then the Court should also consider other historical sources that dispute this factual assertion.[1] Plaintiff States also note that, even though advocates and activists have continued their efforts to promote sex equality in the United States, there is still much work to be done. See, *e.g.*, Paula England et al., *Progress Toward Gender Equality Has Slowed or Stalled*, 117 Proceedings of the Nat'l Acad. of Sci. 6955, 6990 (2020) ("[T]here has been dramatic progress in movement toward gender equality, but, in recent decades, change has slowed and on some indicators stalled entirely.").

26. ERA proponents announced on July 14, 1982 that they would be reintroducing the ERA in Congress.

Response: Paragraph 26 is not relevant to the claim at issue and has no bearing on whether

[1] See, *e.g.*, Megan Taylor Shockley, *Creating a Progressive Commonwealth: Women Activists, Feminism, and the Politics of Social Change in Virginia, 1970s–2000s* 91 (La. St. U. Press, 2018) (advocates in Virginia waved banners in the 1980s proclaiming "ERA Is Not Dead"); see also Flora Crater, Putting Women in the Constitution, Panel at the National Women's Conference Committee (Nov. 20, 1987) at 31:00, https://www.c-span.org/video/?523-1/putting-women-constitution (urging fellow advocates in 1987 to "continue the fight for the Equal Rights Amendment"); "Laura Carter Callow," Equal Means Equal (last visited Aug. 19, 2020) https://equalmeansequal.org/laura-carter-callow-bio/.

Article V's requirements have been satisfied as to the Equal Rights Amendment. The evidence on which Intervenors rely to support paragraph 26 has not been provided to the Court or made part of the record. If this assertion is properly supported, then the cited document may speak for itself.

27. ERA proponents assumed they had to "reintroduce [the ERA] fresh and begin from square 1 … go[ing] through the different legislatures all over again." 128 Cong. Rec. 14,925 (1982) (Rep. Schroeder); *see id.* at 14,913 (Rep. Frank: "Should the Congress approve the reintroduced ERA, we will have 7 years to win ratification."); *id.* at 15,558 (Sen. Packwood: "Yesterday, the ratification deadline for the equal rights amendment expired. It is unfortunate, indeed tragic, that the deadline passed with us still three States short of the 38 needed to put the equal rights amendment into our Constitution."); *id.* at 14,913-14 (Rep. Ferraro: "July 14 marks the day of the beginning of a new battle for equal rights."); *accord id.* at 15,559-60 (Sen. Tsongas); *id.* at 15,149 (Rep. Lehman); *id.* at 15,195 (Rep. Kastenmeier); *id.* at 15,560 (Sen. Cranston); *id.* at 15,570 (Sen. Kennedy); *id.* at 15,586 (Sen. Biden).

Response: Paragraph 27 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. The evidence on which Intervenors rely to support paragraph 27 has not been provided to the Court or made part of the record. The cited documents speak for themselves and are not sufficient under Rule 56(c) to "establish the absence . . . of a genuine dispute" as to the truth of the factual assertion in paragraph 27, particularly in light of other historical sources to the contrary. See note 1, *supra*.

28. Other than the 1972 proposal, Congress never again proposed the ERA to the States.

Response: Paragraph 28 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States do not dispute paragraph 28.

29. In 1986, in response to a question about the status of the ERA, prominent ERA

supporter Gloria Steinem stated, "Because it was not ratified in the nine years allotted to it, it now has to start the process over again and … be passed by the House and the Senate and go through … all the States' ratification process…. [P]robably something like eight or ten years…."

Response: Paragraph 29 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. The evidence on which Intervenors rely to support paragraph 29 has not been provided to the Court or made part of the record. Intervenors' description of the statement suggests it is inadmissible hearsay.

30. "[F]ollowing the 1992 ratification of the … 27th Amendment to the Constitution," however, "[t]he three-state strategy for ERA ratification was developed."

Response: Paragraph 30 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. The evidence on which Intervenors rely to support paragraph 30 has not been provided to the Court or made part of the record. Intervenors' description of the statement suggests it is inadmissible hearsay.

31. The three-state strategy argued that the ERA proposed by Congress in 1972 could still be added to the Constitution if three more States ratified it.

Response: Paragraph 31 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Intervenors cite no evidence to support paragraph 31.

32. On March 22, 2017, the Nevada legislature enacted Senate Joint Resolution 2, titled "Ratifying the proposed amendment to the Constitution of the United States providing that equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

Response: ADMIT.

33. Nevada enacted Senate Joint Resolution 2 forty-five years after Congress proposed

the ERA to the States.

Response: Paragraph 33 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States do not dispute paragraph 33.

34. On May 30, 2018, the Illinois legislature enacted Senate Joint Resolution Constitutional Amendment No. 4, stating that "the proposed amendment to the Constitution set forth in [H.R.J. Res. 208] is ratified."

Response: ADMIT.

35. Illinois enacted Joint Resolution Constitutional Amendment No. 4 more than forty-six years after Congress proposed the ERA to the States.

Response: Paragraph 35 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States do not dispute paragraph 35.

36. On January 27, 2020, the Virginia legislature enacted House Joint Resolution 1, titled "Ratifying the Equal Rights Amendment to the Constitution of the United States."

Response: ADMIT.

37. Virginia enacted House Resolution 1 nearly forty-eight years after Congress proposed the ERA to the States.

Response: Paragraph 37 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States do not dispute paragraph 37.

38. From 1972 to 2017, the population of the United States grew by more than 100 million people.

Response: Paragraph 38 is not relevant to the claim at issue and has no bearing on whether

Article V's requirements have been satisfied as to the Equal Rights Amendment. The evidence on which Intervenors rely to support paragraph 38 has not been provided to the Court or made part of the record. Subject to those objections, Plaintiffs States do not dispute paragraph 38 for the purpose of this motion.

39. More than half of the Americans alive in 2017 were not alive in 1972.

Response: Paragraph 39 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. The evidence on which Intervenors rely to support paragraph 39 has not been provided to the Court or made part of the record. If this assertion is properly supported, then the cited document may speak for itself.

40. In anticipation of Virginia's purported ratification, Alabama, Louisiana, and South Dakota sued the Archivist in the U.S. District Court for the Northern District of Alabama on December 16, 2019. *See Alabama v. Ferriero*, Doc. 1, No. 7:19-cv-2032-LSC (N.D. Ala. Dec. 16, 2019).

Response: Paragraph 40 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Because this action has not yet proceeded to discovery, Plaintiff States presently are unable to respond to the characterization in paragraph 40 of the motivations of Alabama, Louisiana, and/or South Dakota for initiating a separate action against the Archivist.

41. Days later, the Archivist "requested guidance from the Department of Justice's Office of Legal Counsel on legal issues regarding ratification of the ERA." *Statement on Equal Rights Amendment Debate*, Nat'l Archives (Dec. 19, 2019), bit.ly/3iwxu6t.

Response: Paragraph 41 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. If the Court were to deem it relevant, Plaintiff States request discovery from the Archivist before being required to

respond to the timeframe incorporated into paragraph 41. Subject to those objections, Plaintiff States partially ADMIT paragraph 41. Plaintiff States agree that the Archivist has publicly stated that he requested guidance from OLC with respect to the Equal Rights Amendment. However, the Archivist did so as early as December 2018 (not "[d]ays" after Alabama sued in December 2019, as paragraph 41 asserts). See Kallen Decl. Ex. 9.

42. On January 6, 2020, the Office of Legal Counsel published a formal opinion titled "Ratification of the Equal Rights Amendment," concluding (among other things) that the ERA could not be ratified because its congressional deadline had expired. *Ratification of the Equal Rights Amendment*, 44 Op. OLC (Jan. 6, 2020).

Response: Paragraph 42 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Subject to that objection, Plaintiff States do not dispute paragraph 42.

43. On January 8, 2020, the Archivist released a statement that he "defers to DOJ on this issue and will abide by the OLC opinion."

Response: ADMIT. See Kallen Decl. Ex. 6. Plaintiff States also note that the quotation in paragraph 43 is incomplete. The full sentence reads: "NARA defers to DOJ on this issue and will abide by the OLC opinion, unless otherwise directed by a final court order." *Id.*

44. Alabama, Louisiana, South Dakota, and the Archivist entered a joint stipulation with the federal district court in Alabama, where the States agreed to dismiss their case without prejudice and the Archivist agreed that, "[i]n the event that the Department of Justice ever concludes that the 1972 ERA Resolution is still pending and that the Archivist therefore has authority to certify the ERA's adoption under 1 U.S.C. § 106b, the Archivist will make no certification concerning ratification of the ERA until at least 45 days following the announcement of the Department of Justice's conclusion, absent a court order compelling him to do so sooner."

Alabama v. Ferriero, Doc. 23, No. 7:19-cv-2032- LSC (N.D. Ala. Feb. 27, 2020).

Response: Paragraph 44 is not relevant to the claim at issue and has no bearing on whether Article V's requirements have been satisfied as to the Equal Rights Amendment. Plaintiff States note that the stipulation referenced in paragraph 44 was objected to in the Alabama litigation, and the Court "d[id] not necessarily join or adopt any such stipulations." Order (Dkt. 27) at 2, *Alabama v. Ferriero*, No. 7:19-cv-02032 (N.D. Ala. Mar. 2, 2020).

45. On March 24, 2020, the Archivist published an updated list of the States' ratification actions on the ERA, representing that the ratifications of Illinois, Nevada, and Virginia are invalid because they "occurred after Congress's deadline expired." *Archivist's List* (citing *Ratification of the Equal Rights Amendment*, 44 Op. OLC (Jan. 6, 2020)).

Response: Plaintiff States ADMIT that the Archivist published a list of State's ratifications on the ERA in March 2020, but DENY the remainder of paragraph 45 including Intervenors' characterization of the list and any conclusion that the Plaintiff States' ratifications were invalid. The seven-year timeframe is not included in the operative text of the Equal Rights Amendment and thus does not nullify the Plaintiff States' ratifications. The cited document speaks for itself. See Kallen Decl. Ex. 5.

PLAINTIFF STATES' STATEMENT OF DISPUTED MATERIAL FACTS

In addition to the disputes noted above, Plaintiff States further contend that the following disputed issues of fact preclude summary judgment in favor of Intervenors.[2]

[2] As Plaintiff States explain in their own motion for summary judgment, also filed today, they are entitled to judgment as a matter of law because (among other reasons) Article V does not permit "rescission" of a State's ratification. Accordingly, the Court need not reach Intervenors' motion or the question of what discovery is necessary. To the extent the Court disagrees and holds that States *do* have federal constitutional authority to rescind, Plaintiff States respectfully request an opportunity to conduct discovery, including but not limited to discovery with respect to Intervenor States and non-party States as to the procedures relevant to each State's purported rescission process and the circumstances surrounding each purported rescission of the ERA.

1. The purported rescissions of ratifications of the Equal Rights Amendment were not "validly" adopted. Compare Intervenors' SMF ¶ 13 (citing no evidence regarding the purported rescissions or the circumstances in which they were adopted), with U.S. Const. art. V (describing an amendment as valid "when ratified" by State legislatures, and not considering post-ratification actions).

2. Procedural irregularities with respect to the purported rescissions call the validity of States' measures into question, demonstrating the need for further factual development on this question should the Court reach the issue. See, *e.g.*, Pls.' Mem. in Opp. to Intervenors' Mot. for Summ. J. at 24–25 (describing purported veto of Kentucky's rescission resolution and questionable sunset provision in South Dakota); Kallen Decl. Ex. 8.

3. None of the circumstances surrounding any of the purported rescissions have been described—much less proven—and to the extent relevant under the Court's rulings in this matter, Plaintiff States request the opportunity to pursue discovery as appropriate. See Kallen Decl. ¶ 12; see also Pls.' Resp. ¶ 13; Fed. R. Civ. P. 56(d).

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

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