IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

ALABAMA, LOUISIANA, SOUTH DAKOTA, Plaintiffs, v. DAVID S. FERRIERO, in his official capacity as Archivist of the United States, Defendant.	**COMPLAINT** Civil Action No. _____

The sovereign States of Alabama, Louisiana, and South Dakota bring this action against Defendant for declaratory and injunctive relief, and allege as follows:

INTRODUCTION

1. In 1972, Congress proposed the Equal Rights Amendment (ERA) as an amendment to the United States Constitution. The ERA would have stated that "[e]quality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." As is customary for constitutional amendments, Congress gave the States seven years to ratify the ERA.

2. The ERA fell eight States short of the 38 States needed for ratification (three-fourths of 50). When the congressional deadline expired, only thirty States had ratified the ERA. Fifteen States had not ratified it, and five States had ratified but rescinded their ratifications. Thus, the ERA failed to become part of the Constitution.

3. Recently, however, activists around the country have argued that the ERA can still be ratified. They have developed a so-called "three-state strategy," which contends that the ERA will become law if only three more States ratify it. The activists have persuaded many to go along with their strategy. Trumpeting their logic, Nevada and Illinois purported to "ratify" the ERA in 2017 and 2018, respectively. And many States are currently working to become the third and final "ratifier." Unless another State moves first, Virginia will enact a bill "ratifying" the ERA in January 2020.

4. The three-state strategy is deeply misguided. The ERA cannot be ratified because the congressional deadline for ratification has expired. Even without the deadline, the three-state strategy would fall five States short because Nebraska, Idaho, Tennessee, Kentucky, and South Dakota all rescinded their ratifications. Both the original congressional deadline and the state rescissions are valid and enforceable. As Justice Ginsburg recently stated, "the equal rights amendment" cannot be law unless it is "put back in the political hopper and we[] start[] over again collecting the necessary states to ratify it."

5. Yet the Archivist of the United States—the federal officer who oversees the ratification process, receives States' ratification documents, and makes determinations about the documents' validity—apparently agrees with the three-state strategy. Even though the deadline for ratifying the ERA has expired, the Archivist maintains possession of the States' ratification documents and continues to receive new ratification documents (including from Nevada and Illinois). The Archivist also refuses

to recognize the States' rescissions of their prior ratifications, maintaining possession of their ratification documents and falsely listing them as having ratified the ERA.

6. The Archivist is acting illegally. His actions violate the bedrock rules that the Constitution and Congress have established for ratifying constitutional amendments. As a result, Plaintiffs bring this action for declaratory and injunctive relief.

PARTIES

7. Defendant, David S. Ferriero, is the Archivist of the United States. The Archivist directs and supervises the National Archives and Records Administration and is responsible for administrating the process of ratifying constitutional amendments. *See* 1 U.S.C. §106b. The Archivist is sued in his official capacity.

8. Plaintiffs Alabama and Louisiana have never ratified the ERA. If the ERA is ratified, it would expose Alabama and Louisiana to costly litigation and threaten to invalidate several of their duly enacted laws.

9. Plaintiff South Dakota ratified the ERA in 1973, but rescinded its ratification in 1979. South Dakota rescinded its ratification because it concluded that the ERA was a costly, unwise addition to the Constitution. Despite South Dakota's rescission, the Archivist has not returned its ratification documents and maintains records that falsely indicate South Dakota has ratified the ERA. If South Dakota's rescission is not honored and the ERA is ratified, it would expose South Dakota to costly litigation and threaten to invalidate several of its duly enacted laws.

JURISDICTION & VENUE

10. This Court has subject-matter jurisdiction under 28 U.S.C. §1331 because this case arises under the Constitution and laws of the United States.

11. Venue is proper under 28 U.S.C. §1391(e) because Defendant is an officer of the United States sued in his official capacity, this case does not involve real property, and Plaintiff Alabama "resides" in the Northern District of Alabama.

FACTS

I. The Constitutional Amendment Process

12. Article V of the Constitution establishes the process for proposing and ratifying amendments. Absent a convention, Article V requires amendments to be proposed by a supermajority of Congress and ratified by a supermajority of States:

> The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, 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, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress ….

13. Article V gives both Congress and the States important and distinct roles in the amendment process. *See* The Federalist No. 43 (Hamilton) (explaining that Article V "equally enables the general and the State governments"). This balance was by design, as it makes the amendment process "neither wholly national nor wholly federal." The Federalist No. 39 (Madison). Article V accomplishes this balance by giving Congress

and the States "carefully balanced and approximately equally distributed" powers. *Idaho v. Freeman*, 529 F. Supp. 1107, 1128 (D. Idaho 1981).

14. Congress has the power to control the "mode of ratification." U.S. Const., Art. V; *see United States v. Sprague*, 282 U.S. 716, 732 (1931) ("This Court has repeatedly and consistently declared that the choice of mode rests solely in the discretion of Congress."). This power includes not only the authority to choose the method of ratification (state legislatures versus state conventions), but also the authority to control other "matter[s] of detail" regarding how the States ratify amendments. *Dillon v. Gloss*, 256 U.S. 368, 376 (1921).

15. One of those "matter[s] of detail" is the "period for ratification." *Id.* As the Supreme Court explained in *Dillon*, there is "no doubt" that Congress has the power to set enforceable time limits on the period for ratifying a constitutional amendment. *Id.* Indeed, Congress has repeatedly exercised that power, putting time limits in both the text of proposed amendments (e.g., the Eighteenth, Twentieth, Twenty-First, and Twenty-Second Amendments) and in the proposing resolutions (e.g., the Twenty-Third, Twenty-Fourth, Twenty-Fifth, and Twenty-Sixth Amendments).

16. As for the States, they have the power to determine "when" they have "ratified" an amendment. U.S. Const., Art. V; *see Freeman*, 529 F. Supp. at 1134 (Article V gives the States "exclusive control over the actual process of ratification, or determination of actual consensus."); *Dyer v. Blair*, 390 F. Supp. 1291, 1307 (N.D. Ill. 1975) (Stevens, J.) ("[Article V's] failure to prescribe any particular ratification

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