

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMONWEALTH OF VIRGINIA, STATE)	COMPLAINT
OF ILLINOIS, and STATE OF NEVADA,)	
)	
Plaintiffs,)	
)	
v.)	Case No. _____
)	
DAVID S. FERRIERO, in his official capacity)	
as Archivist of the United States,)	
)	
Defendant.)	

The United States Constitution now declares, once and for all, that equality of rights under the law shall not be denied or abridged on account of sex. For nearly 150 years, our Nation’s foundational document did not acknowledge the existence of women. In 1920, the concept of equality among the sexes appeared in the Constitution for the first time, but was limited to the right to vote. Now—after 231 years and on the centennial of the 19th Amendment—the American people have committed to equality regardless of sex by adopting the Equal Rights Amendment as the 28th Amendment to the U.S. Constitution.

On January 27, 2020, the Commonwealth of Virginia became the 38th State to ratify the Equal Rights Amendment. At that moment, the process set forth in Article V of the U.S. Constitution was complete. Plaintiff States Nevada, Illinois, and Virginia—the three States to most recently ratify—ask this Court for an order: (1) directing the Archivist of the United States to perform his purely ministerial duty under 1 U.S.C. § 106b to “cause the amendment to be published, with his certificate, specifying . . . that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States,” and (2) declaring that the Equal Rights Amendment has become the 28th Amendment to the U.S. Constitution.

After generations of effort, the women of this country are entitled to their rightful place in the Constitution. This Court should compel the Archivist to carry out his statutory duty of recognizing the complete and final adoption of the Equal Rights Amendment.

PARTIES

1. Plaintiff Commonwealth of Virginia is a State of the United States of America.
2. Plaintiff State of Illinois is a State of the United States of America.
3. Plaintiff State of Nevada is a State of the United States of America.
4. Defendant David S. Ferriero is the Archivist of the United States. In that role, he oversees the operations of the National Archives and Records Administration. The Archivist is sued in his official capacity.

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this suit arises under the Constitution and laws of the United States. This Court also has subject-matter jurisdiction under 28 U.S.C. § 1361 because this is an “action in the nature of mandamus to compel” a federal officer “to perform a duty owed to the plaintiff.”

6. Venue is proper under 28 U.S.C. § 1391(e) because the Archivist is sued in his official capacity and, for purposes of that capacity, the Archivist resides in this District.

THE PROCESS FOR AMENDING THE CONSTITUTION

7. Article V of the United States Constitution establishes the process for adopting constitutional amendments. As relevant here, it provides:

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.

8. The Constitution assigns particular tasks to Congress and the States in the amendment process that reflect a careful balance between state and federal power. Congress is given the powers to “propose Amendments to this Constitution” and to select between one of two “Mode[s] of Ratification”—ratification by state legislatures or via state “Conventions.” States, in turn, are given the power to “ratif[y]” the amendments proposed by Congress. In the words of James Madison in *The Federalist* No. 39, the amendment process set forth in the Constitution is “neither wholly federal nor wholly national.”

9. Article V was not merely an afterthought in the creation of the American constitutional scheme. To the contrary, the amendment process generated significant debate among the Framers and was carefully designed to balance the need for stability in our governing document with flexibility to adapt that document as needed. As James Madison explained in *The Federalist* No. 43, Article V’s procedure for making “useful alterations” to the Constitution “guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults.”

HISTORY OF THE EQUAL RIGHTS AMENDMENT

10. Women have been fighting for equality in the United States since the Founding generation. In 1776, Abigail Adams famously told her husband, John, to “Remember the Ladies” when drafting “the new Code of Laws.”

11. The original text of the United States Constitution did not include—or even refer to—women. In fact, the only known use of the pronoun “she” in the Framers’ deliberations appeared in an ultimately rejected clause referring to fugitive slaves.

12. The first women's rights convention was held in Seneca Falls, New York, in 1848.

13. It was not until 1868 that the first federal legislation was introduced proposing equal suffrage for men and women on the basis of citizenship. The resolution was not even debated.

14. After the Civil War, suffragists advocated for universal suffrage and hoped the Reconstruction Amendments would protect women and grant them the right to vote.

15. In March 1913, thousands of women marched in favor of women's suffrage in Washington, D.C., where they were met with bitter resistance and could proceed only with the assistance of the U.S. Army.

16. The House of Representatives eventually passed a resolution guaranteeing women the right to vote in 1918, and President Woodrow Wilson supported the amendment in a presidential address that he delivered on the Senate floor. The resolution, however, failed in the Senate twice. Finally, in 1919, the resolution passed both chambers of Congress, and the proposed women's suffrage amendment was sent to the States for ratification.

17. The 19th Amendment was formally adopted as part of the U.S. Constitution in 1920, upon ratification by the requisite number of States. Even so, some States ratified the amendment decades later. Virginia did not ratify until 1952. Alabama waited until 1953. Louisiana only ratified in 1970. And Mississippi did not ratify the 19th Amendment until 1984.

18. Over time, a patchwork of constitutional and statutory provisions has been found to prohibit discrimination on the basis of sex in certain circumstances. The relevant standards typically call for only intermediate scrutiny of sex-based distinctions. Many of the statutory provisions have been changed, undermined, and even repealed. Until the Equal Rights

Amendment was ratified in 2020, American law did not include a broad and definite prohibition on sex discrimination.

19. The first proposal for an equal rights amendment was drafted by Alice Paul and introduced in Congress in 1923. Initially known as the “Lucretia Mott Amendment,” that proposal was introduced in the House by Representative Daniel Read Anthony of Kansas, a nephew of Susan B. Anthony.

20. Between 1923 and 1946, proposals to amend the Constitution to prohibit discrimination on the basis of sex were taken up by congressional committees more than 30 times.

21. In 1946, an equal rights amendment proposal came to the Senate floor for the first time. Although that proposed amendment received majority support, it failed to achieve the necessary two-thirds majority, by a vote of 39-35.

22. The Senate passed versions of a proposed equal rights amendment in 1950 and 1953, but the House took no action. Although equal rights amendment proposals continued to be introduced in every Congress, none of these proposals received floor consideration in either chamber for more than 15 years.

23. Support for an equal rights amendment was a bipartisan cause. For many years, it was endorsed by both major political parties. In September 1960, then-Vice-President Nixon issued a statement encouraging “widespread support for our [party’s] platform declaration in behalf of an equal rights amendment to our Constitution which would add equality between the sexes to the freedoms and liberties guaranteed to all Americans.”

24. Throughout this period, the precise terms of the proposed amendment continued to evolve. Changes were made to both the language prohibiting discrimination and the

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