

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

DECLARATION OF MICHELLE S. KALLEN

I, Michelle S. Kallen, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am Deputy Solicitor General in the Office of the Virginia Attorney General. I am a member in good standing of the bars of Virginia, the District of Columbia, and California. I am admitted to practice in this Court.

2. I have compiled the information set forth below as well as the attached exhibits through personal knowledge and legislative and executive personnel who have assisted me in gathering this information and these materials. I make this declaration to place certain information and documents before in the Court in connection with the parties’ cross-motions for summary judgment.

3. Attached as Exhibit 1 is a copy of House Joint Resolution 208 from the Second Session of the 92nd Congress of the United States of America, obtained online from the National Archives Catalog on August 5, 2020 at <https://catalog.archives.gov/id/7455549>. The title of the

document in the Catalog is: “Joint Resolution of March 22, 1972, 86 STAT 1523, Proposing an Amendment to the Constitution of the United States Relative to Equal Rights for Men and Women.” The PDF version of the attached document is available (as of August 5, 2020) at <https://catalog.archives.gov/OpaAPI/media/7455549/content/arcmedia/rediscovery/04841-2013.pdf>.

4. Attached as Exhibit 2 is a copy of the letter (and enclosure) transmitted to David Ferriero, Archivist of the United States of America, from Claire J. Clift, Secretary of the Senate of the Legislature of the State of Nevada, dated March 22, 2017, providing “official notice that the Legislature of the State of Nevada . . . ratified the proposed amendment to the Constitution of the United States of America which was proposed by . . . House Joint Resolution No. 208, 92d Cong., 2d Sess., 86 Stat. 1523 (1972), and which is more commonly known as the federal Equal Rights Amendment.” The letter “enclosed a certified and duly authenticated copy of “Senate Joint Resolution No. 2 of the 79th Session of the Legislature of the State of Nevada.” Certified copies of the documents in Exhibit 2 were obtained from the Nevada Legislature through its Legislative Counsel Bureau’s Research Division, which is tasked with maintaining a research library. NEV. R. STAT. § 218F.810(7).

5. Attached as Exhibit 3 is a copy of the letter (and enclosure) transmitted to David Ferriero, Archivist of the United States, from Jesse White, Secretary of State of the State of Illinois, dated June 15, 2018, “forwarding herewith a copy of the Senate Joint Resolution Constitutional Amendment No. 4, which was passed by the Illinois General Assembly on May 30, 2018.” The letter noted that the enclosed document “represents ratification by the State of Illinois of the Equal Rights Amendment as passed by both houses of the 92nd Congress of the United States of America at its Second Session.” The documents in Exhibit 3 were obtained from the Index Department of the Illinois Secretary of State on January 13, 2020.

6. Attached as Exhibit 4 is a copy of the letter (and enclosures) transmitted to David Ferriero, National Archivist, from Susan Clarke Schaar, Clerk of the Senate of Virginia, and Suzette Denslow, Clerk of the Virginia House of Delegates, dated January 27, 2020, noting “Virginia’s ratification of the Equal Rights Amendment to the Constitution of the United States” and “includ[ing] . . . a copy of” Virginia’s ratification documents: House Joint Resolution No. 1 and Senate Joint Resolution No. 1, which were both passed by the Virginia General Assembly on January 27, 2020. The documents in Exhibit 4 were obtained from the Clerk of the Virginia House of Delegates by email on January 27, 2020.

7. Attached as Exhibit 5 is copy of a document entitled “Equal Rights Amendment – Proposed March 22, 1972: List of State Ratification Actions” dated March 24, 2020, obtained online from the U.S. National Archives and Records Administration on August 5, 2020 at <https://www.archives.gov/foia/records-related-equal-rights-amendment>. According to the National Archives website, the attached document is “an updated list of state ratification actions with respect to the Equal Rights Amendment, which was proposed by Congress in 1972.” The PDF version of the attached document is available (as of August 5, 2020) at <https://www.archives.gov/files/foia/pdf/era-list-of-state-ratification-actions-03-24-2020.pdf>.

8. Attached as Exhibit 6 is a copy of “NARA Press Statement on the Equal Rights Amendment,” dated January 8, 2020, obtained online from the U.S. National Archives and Records Administration on August 6, 2020 at <https://www.archives.gov/press/press-releases-4>.

9. Attached as Exhibit 7 is a copy of the Archivist’s Certification of the 27th Amendment, dated May 18, 1992, obtained online from the National Archives Catalog on August 5, 2020 at <https://catalog.archives.gov/id/1512313>. The PDF version of the attached document is available (as of August 5, 2020) at https://catalog.archives.gov/OpaAPI/media/1512313/content/arcmedia/Public_Vaults/09616.pdf.

10. Attached as Exhibit 8 is a copy of a news article from The New York Times published March 21, 1978, entitled “Acting Governor Vetoes Kentucky Rights Reversal.” This document was obtained online from The New York Times on August 5, 2020 at <https://www.nytimes.com/1978/03/21/archives/around-the-nation-acting-governor-vetoes-kentucky-rights-reversal.html>. The PDF version of the attached document is available (as of August 5, 2020) at https://timesmachine.nytimes.com/timesmachine/1978/03/21/110810420.pdf?pdf_redirect=true&ip=0.

11. Attached as Exhibit 9 is a copy of a letter from Gary M. Stern, General Counsel of the National Archives, to Steven A. Engel, Assistant Attorney General at the United States Department of Justice, dated December 12, 2018. This document was obtained online from the U.S. National Archives and Records Administration on August 6, 2020 at <https://www.archives.gov/press/press-releases-4>. The PDF version of the attached document is available (as of August 6, 2020) at <https://www.archives.gov/files/press/press-releases/2020/olc-letter-re-era-ratification-12-12-2018.pdf>.

12. Should the Court conclude that, as a matter of law, States may be able to validly rescind prior ratifications of federal constitutional amendments—and Plaintiff States set forth in their pleading and briefs why the Court should conclude that they cannot, see Pls.’ Mem. in Opp. to Intervenor’s Mot. for Summ. J. (Dkt. 99) at 16–27—Plaintiff States request discovery regarding the circumstances surrounding the purported rescissions relied upon by Intervenor. The record includes no evidence that would permit the Court to evaluate, much less conclusively determine, whether any of the legislatures of the 38 ratifying States properly rescinded their prior ratification in compliance with state and federal law. Accordingly, pursuant to Federal Rule of Civil Procedure 56(d), Plaintiff States request the opportunity to conduct discovery as necessary and appropriate before summary judgment is granted in favor of Intervenor on that basis. Plaintiff States note that

this Court need not answer the question of whether the purported rescissions are valid to rule in favor of the Plaintiff States because, as Plaintiff States argue, the United States Constitution does not permit rescissions of prior ratifications.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on August 19, 2020 in Richmond, Virginia.



Michelle S. Kallen