NO. 20-_____

In the Supreme Court of the United States

EQUAL MEANS EQUAL, THE YELLOW ROSES, AND KATHERINE WEITBRECHT,

Petitioners,

v.

DAVID S. FERRIERO, ARCHIVIST OF THE UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the United States District Court for the District of Massachusetts

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Equal Rights Amendment is now the Twenty-Eighth Amendment to the U.S. Constitution because three-fourths of the States have ratified it?

2. Whether the Archivist of the United States violated his duty under Article V of the Constitution and 1 U.S.C. § 106b by refusing to publish the Equal Rights Amendment after he was notified that three-fourths of the States ratified it?

3. Whether Petitioners have Article III standing?

PARTIES TO THE PROCEEDINGS

Petitioners

- Equal Means Equal
- The Yellow Roses
- Katherine Weitbrecht

Respondent

- David S. Ferriero,
  Archivist of the United States

CORPORATE DISCLOSURE STATEMENT

Petitioners Equal Means Equal and The Yellow Roses have no parent company and no public corporation owns 10% or greater of either.

LIST OF PROCEEDINGS

United States Court of Appeals for the First Circuit

No. 20-1802

Equal Means Equal, The Yellow Roses and Katherine Weitbrecht v. David S. Ferriero, in his Official Capacity as Archivist of the United States

Appeal Docketed: August 21, 2020

United States District Court, District of Massachusetts

Case Number: 20-cv-10015-DJC

Equal Means Equal, The Yellow Roses and Katherine Weitbrecht v. David S. Ferriero, in his Official Capacity as Archivist of the United States

Date of Final Opinion Order Judgment: August 6, 2020

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully seek a writ of certiorari to review the judgment of the United States District Court for the District of Massachusetts.

OPINIONS BELOW

The opinion of the District Court, App., 1a-34a, is unreported, *Equal Means Equal et al. v. Ferriero*, 2020 U.S. Dist. LEXIS 140027.

JURISDICTION AND RULE 11 DECLARATION

The judgment of the District Court was entered on August 6, 2020. An appeal was docketed in the First Circuit Court of Appeals on August 21, 2020, *EME et al. v. Ferriero*, case No. 20-1802. The jurisdiction of this Court is invoked under 28 U.S.C. 2101(e). Under Sup. Ct. R. 11, jurisdiction is proper because, as set forth in more detail below, whether the Equal Rights Amendment ("ERA") is now the Twenty-Eighth Amendment to the U.S. Constitution is of such imperative public importance that deviation from normal appellate practice and an immediate determination from this Court is warranted.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Art. V

Article V of the United States Constitution provides in relevant part, "The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, . . . which 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 . . . " App.35a.

Equal Rights Amendment

The ERA provides that, "Equality of rights shall not be denied or abridged, by the United States or by any States, on account of sex." App.37a-38a.

1 U.S.C. § 106b

"Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States. App.35a-36a.

FACTS AND PRIOR PROCEEDINGS

The ERA provides, "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." H.J. Res. 208, 86 Stat. 1523 (1972). App.37a. When it was sent to the States for ratification in 1972, it included a seven-year ratification deadline in an introductory preamble. As the deadline neared and only 35 of 38 necessary states had ratified, it was extended to 1982, but no additional states ratified. App.44a.

Ten years later, in 1992, the 27th Amendment was ratified, some 203 years after its proposal by Congress. App.44a.

In 2012, Respondent issued an opinion letter stating that he would record States' ERA ratification votes if they occurred after expiration of the challenged deadline and publish the ERA if 38 States voted to ratify. App.154a. In the wake of these events, women's groups and others persisted in their work toward ratification of the ERA, with renewed vigor.

In 2017, Nevada ratified the ERA, followed by Illinois in 2018. App.40a.

Under Article V, a proposed amendment becomes valid the moment the last of three-fourths of the States ratifies it. App.51a.

On January 27, 2020 Virginia became the last of three-fourths of the States to ratify the ERA. App.40a.

Under 1 U.S.C. § 106b, the Respondent is mandated to publish an amendment once he is notified that three-fourths of the states have ratified it, but after

Virginia ratified the ERA, he refused to publish it, and disseminated misinformation about its validity. App.51a.[1]

On January 7, 2020, this action was filed. App.39a.

On January 8, 2020, Respondent released an official statement (backdated to January 6, 2020) declaring that he would not publish the ERA, and that it was not valid, because of the challenged deadline. App.95a-96a.

On March 24, 2020, Respondent recorded Virginia's ratification. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION: EQUAL RIGHTS AMENDMENT, LIST OF STATE RATIFICATION ACTIONS (available at https://www.archives.gov/files/foia/pdf/era-list-of-state-ratification-actions-03-24-2020.pdf).

On April 14, 2020, Respondent filed a Motion to Dismiss under Rules 12(b)(1) and (12(b)(6). App.2a.

On August 6, 2020, the District Court granted Respondent's motion to dismiss under Rule 12(b)(1). App.1a-34a.

On August 13, 2020, Petitioners filed a notice of appeal. The appeal was docketed in the First Circuit on August 21, 2020.

On September 1, 2020, Petitioners sought a stay in the First Circuit pending this Court's consideration of this petition.

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[1] Respondent stated that he "defers to DOJ on this issue," and cited a memorandum from the Office of Legal Counsel ("OLC") at the Department of Justice, which opined that the ERA is not valid because the challenged deadline expired. App.95a–96a; App.97a-153a.

PRELIMINARY STATEMENT

This case asks whether the ERA is now the Twenty-Eighth Amendment to the U.S. Constitution. The answer to that question turns on whether Congress exceeded its Article V powers when it imposed a deadline on the ERA's ratification. App.43a-44a, and whether Respondent acted unlawfully when he violated his mandatory duty of publication set forth in 1 U.S.C. § 106b by refusing to publish the ERA. Under the plain language of Article V, an amendment "shall be valid to all intents and purposes, . . . when ratified by the legislatures of three fourths of the several states." In furtherance of Article V, § 106b requires Respondent to publish an amendment "forthwith" when he receives notice that three-fourths of the States have ratified it, yet when Virginia notified Respondent that it had become the last necessary to ratify, Respondent refused to publish the ERA claiming the deadline for ratification had expired. App.95a-96a; App. 97a-153a. No court has ever ruled that the Archivist has authority to decline to publish an amendment after the last necessary state ratifies it.

Article V sets forth the process by which the Constitution may be amended, and nothing in Article V permits Congress to impose ratification deadlines on the States. While this Court in *Dillon v. Gloss*, 256 U.S. 368 (1921) found implied congressional authority in Article V to set deadlines, *Dillon* is not controlling. This Court's opinion regarding congressional authority to set deadlines was dictum. Further, the deadline at issue in *Dillon* was in the text of the amendment, which afforded the States an opportunity to decide

whether they wanted their Article V powers restricted by a time limit. In a later plurality decision, this Court acknowledged *Dillon*, but nowhere held that extra-textual ratification deadlines are constitutional. *Coleman v. Miller*, 307 U.S. 433 (1939).

This case also asks whether the District Court erred when it dismissed Petitioners' lawsuit on the grounds they lack standing under Article III.

Petitioners adequately demonstrated standing under *Idaho v. Freeman*, 625 F.2d 886, 887 (9th Cir. 1980), because Respondent caused injury to their protectable legal interest in the "continued vitality" of the ERA. While *Freeman* is not a Supreme Court case, the District Court disregarded this Court's implicit approval of *Freeman* in *Nat'l Org. for Women (N.O.W.) v. Idaho*, 459 U.S. 809 (1982) when it granted N.O.W.'s petition for certiorari without questioning whether N.O.W. had standing to file a cert. petition.

The organizational Petitioners also have standing under *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) because they suffered a diversion of resources and frustration of mission in order to address Respondent's actions. App.25a. The District Court ignored key language from *Havens* about Article III injury arising from the impairment of an organization's ability to carry out its mission. *Id.*

REASONS FOR GRANTING THE PETITION

Respondent violated Article V and § 106b and subverted the process by which our nation's foundational document is amended. The District Court ruling thus leaves Respondent's unlawful actions intact, and exposes all persons protected by the ERA to the harmful effects of unequal protection of law.

The District Court's failure to address the merits is inconsequential.[2] Review is warranted not only because the ERA is the most important and fundamental of all women's rights, but also because everyone in America has a right and need to know whether it is now the Twenty-Eighth Amendment to the Constitution.

ARGUMENT

I. THE ERA IS PART OF THE CONSTITUTION BECAUSE THREE-FOURTHS OF THE STATES HAVE RATIFIED IT.

In 1972, the ERA was proposed by Congress and sent to the States for ratification. 86 Stat. 1523 (1972).

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[2] Although the District Court dismissed Petitioners' claims on standing grounds and declined to reach the merits, this Court may review the merits in the first instance. *Glidden v. Zdanok*, 370 U.S. 530 (1962) (Supreme Court will address issues for the first time on appeal when they raise fundamental principles of the structure of the federal government or government officials' rights and duties.).

Under Article V of the U.S. Constitution ("Article V"), when a proposed amendment is "ratified by the legislatures of three fourths of the several states," it "shall be valid to all intents and purposes, as part of this Constitution . . . " U.S. Const art. V; *Dillon v. Gloss*, 256 U.S. 368, 376 (1921) (amendment automatically becomes law when the last of three-fourths of the States ratifies it).

On January 27, 2020, Virginia became the 38th and last necessary State to ratify the ERA. Therefore, the ERA is now the 28th Amendment to the United States Constitution.

II. THE ARCHIVIST'S DUTY TO PUBLISH THE ERA IS MANDATORY, MINISTERIAL, AND NONDISCRETIONARY.

In furtherance of Article V's express purpose of ensuring that amendments become valid the moment the last necessary state ratifies, 1 U.S.C. § 106b requires the Archivist to publish amendments "forthwith" under precisely those conditions:

> Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as part of the Constitution of the United States.

Despite the plain language of Article V and § 106b, Respondent refused to publish the ERA, claiming it is not constitutionally valid. His actions have created nationwide confusion as to whether the ERA has, in fact, been ratified.[3] App.27a.

§ 106b only authorizes the Archivist to "specify" and certify which states have ratified. When three-fourths have done so, he must "forthwith cause the amendment to be published." Under the statute's plain language, Respondent must publish the ERA.[4]

Respondent's duty to publish an amendment is ministerial; it has no effect on an amendment's validity. *Dillon,* 256 U.S. at 376 ("That the [Archivist][5] did not proclaim ratification until January 29, 1919, is not material, for the date of its consummation, and not that on which it is proclaimed, controls."); *see Leser v. Garnett*, 258 U.S. 130, 137 (1922) (Archivist merely "authenticates" a state's documents). The

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[3] That Respondent's actions have caused confusion is not in dispute. On February 11, 2020, Attorneys General from twenty states released a letter expressing confusion as to the ERA's validity. Letter from State Attorneys General to U.S. Congress (February 22, 2020) (available at https://portal.ct.gov/-/media/AG/Press_Releases/2019/2112020-Multistate-LT-to-Congress-re-ERA.pdf?la=en) ("Attorneys General Letter"). Their confusion was obviously caused by Respondent's actions as they declared confidence that the challenged deadline was not valid.

[4] The only duty set forth in § 106b is the duty to publish amendments and certify which states have ratified. Yet Respondent felt compelled to record States' ratification votes, which is not required by § 106b, but not publish amendments.

[5] In *Dillon v. Gloss,* 256 U.S. 368 (1921), reference is made to the Secretary of State, who was responsible for publishing amendments before the Archivist assumed the task.

Archivist has no discretion not to publish. *U.S. ex. Rel. Widenmann v. Colby*, 265 F. Supp. 998, 999 (D.C. Cir. 1920) ("No discretion is lodged in [the Archivist].").

Even if Congress wanted to give the Archivist authority to determine an amendment's constitutionality, it could not do so as the power to say what the law is, and adjudicate constitutionality, rests exclusively with the courts. *City of Boerne v. Flores*, 521 U.S. 507, 524 (1997); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177-78 (1803). Moreover, Congress clearly did not intend by § 106b to give the Archivist such authority. If it had, it would have stated that the Archivist must determine whether an amendment "has been adopted according to the provisions of the Constitution." Instead, Congress inserted a comma after the word "adopted," making clear that the purpose of that phrase is to emphasize that the Archivist's duties, such as acting "forthwith," are constitutionally mandatory. If Congress wanted to give the Archivist authority to "certify" the constitutionality of an amendment, § 106b would state that he must not only "specify" in his "certificate" which of the States have ratified, but also "specify" or "certify" that a proposed amendment is constitutional. Nothing in § 106b or Supreme Court precedent creates such a duty or authority. Unsurprisingly, no Archivist in the past has issued such a "certificate."[6]

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6 When the 27th Amendment was published in 1992, the Archivist did not "certify" its constitutionality, he simply published it. And despite serious doubts about the Amendment's validity in light of the 203-year gap between congressional proposal and state ratification, the Archivist nowhere stated that he, or anyone else, determined the amendment's validity. To the contrary, he merely quoted Article V and § 106b, and specified which

By declining to publish the ERA, Respondent acted unlawfully. He should have published it and allowed objectors to file suit if they chose to do so.

III. THE ERA IS VALID BECAUSE ITS PREAMBULATORY RATIFICATION DEADLINE IS INVALID.

The time period of ratification for the ERA has not passed[7] because there can be no expiration of an invalid ratification deadline.

Article V provides that amendments become law when the last necessary state ratifies. *Dillon*, 256 U.S. at 376. It says nothing about deadlines. And although *Dillon* also provides that Article V implies congressional authority to impose ratification deadlines on

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states ratified.

[7] This Court has never ruled that the time for ratification of the ERA has passed. In *Nat'l Org. for Women v. Idaho*, 459 U.S. 809 (1982), this Court remanded the case with instructions "to dismiss the complaints as moot." The *Idaho* case was before the Court on a petition for certiorari from a district court decision where a judge ruled that Congress had no authority to extend the ERA deadline. *Idaho v. Freeman*, 529 F. Supp. 1107, 1155 (D. Idaho 1981). The federal government and others sought review in this Court. *See, e.g.*, Pet. of Adm'r of Gen. Servs. for Writ of Cert., *Carmen v. Idaho*, No. 81-1313 (U.S. Jan. 22, 1982); Pet. for Writ of Cert., *Nat'l Org. for Women, Inc. v. Idaho*, No. 81-1283 (U.S. Jan. 8, 1982). This Court granted probable certiorari, but the challenged deadline expired on June 30, 1982, before it could hear argument. The government then urged the Court to dismiss the case as moot on the grounds that the ERA had "failed of adoption no matter what the resolution of the legal issues presented." Mem. for Adm'r of Gen. Servs. Suggesting Mootness at 3, *Nat'l Org. for Women, Inc. v. Idaho*, Nos. 81-1282 et al. (U.S. July 9, 1982). The Court dismissed the case, but nowhere adopted the government's language that the case was moot because it "failed of adoption.

the States, that aspect of *Dillon* may be disregarded as dictum as it was not necessary to the Court's holding.

The petitioner in *Dillon* challenged the legitimacy of his punishment for violating the National Prohibition Act because he was arrested before the Secretary of State published the Eighteenth Amendment. The issue before the Court was whether the Eighteenth Amendment became valid on the date the last necessary state ratified it, or on the date when the Secretary of State published it. This Court held that the Eighteenth Amendment became valid when the last state ratified it; thus, petitioner's punishment was lawful. Although there was a general challenge to the constitutionality of the Eighteenth Amendment on the grounds that it had a deadline, the Amendment was ratified before the deadline expired. Thus, it was neither ripe nor relevant to the Court's holding.

Dillon's general language about deadlines should also be disregarded because it is premised on the arcane notion that States must ratify amendments contemporaneously with congressional proposal to ensure national consensus.[8] *Id.* at 375. *Dillon's* require-

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[8] Contemporaneous ratification does not ensure national consensus. The 18th Amendment was ratified contemporaneously with congressional proposal but did not accurately reflect consensus as it was repealed a few years later by the 21st Amendment. And although it took 48 years to ratify the ERA, national polling in 2018 demonstrates clear consensus in support of the ERA. *Suffolk University/USA Poll*, October 2018 (national survey of people in all fifty states found 75% were more likely to vote for a candidate that supports the ERA) (available at https://www.suffolk.edu/media/suffolk/documents/academics/research-at-suffolk/suprc/polls/national/2018/10252018marginals.pdftxt.pdf?la=en&hash=7303DAC9B701D7E65632FEDDF60B260C8 983B994).

ment of contemporaneity as proof of consensus has not withstood the test of time. In 1992, the Archivist published the 27th Amendment,[9] and Congress voted to validate it,[10] some 203 years after its proposal. Neither executive nor legislative branch officials rejected the amendment's constitutionality on the grounds that its ratification was not contemporaneous with its proposal by Congress. Nor did they defer to the *Dillon* Court's dual admonitions that a proposed amendment may not remain "open for all time," *Dillon*, 256 U.S. at 374, and that the 27th Amendment in particular was already too old, in 1921, to ratify. *Id.*, at 375. Either *Dillon* is no longer good law, or the 27th Amendment is not part of the Constitution.[11]

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[9] Notably, the Archivist readily performed his duty to publish the 27th Amendment when the last of three-fourths of the States ratified it, despite the passage of 203 years since congressional proposal. He published the Amendment on May 7, 1992, before the Office of Legal Counsel ("OLC") of the Department of Justice advised him that, "the effective date of the amendment is the date on which it was ratified by the 38th State to do so." Congressional Pay Amendment, *Opinions of the Office of Legal Counsel of the Dep't of Justice*, 16 Op. O.L.C. 85 (May 13, 1992). This 1992 OLC letter *requiring* publication of the 27th Amendment because it was ratified by 38 states stands in stark contrast to the OLC's January 8, 2020 letter. App.97a–153a.

[10] Congress, like the Archivist, has no authority to adjudicate constitutionality, but that is effectively what it did with the 27th Amendment on May 21, 1992. S. Con. Res. 120–102nd Congress (1991–92); H. Con. Res. 120–102nd Congress (1991–92).

[11] That the 27th Amendment was embraced by Congress despite the passage of 203 years from proposal to ratification is reason enough for this Court to invalidate the challenged deadline. Congress' acceptance of the 27th Amendment is effectively a declaration that deadlines do not matter, which contradicts *Dillon*. It also means that Congress sees the uniquely serious nature of

In sum, the challenged deadline is not valid because whether Congress may impose ratification deadlines at all is in doubt and ratification deadlines disrupt the Article V balance of power by "shift[ing] power granted to the States—and the people—to the Congress." Kalfus, M., *Why Time Limits on the Ratification of Constitutional Amendments Violate Article V*, 66 U. CHI. L. REV. 437, 452-53 (1999). The possibility that Congress could deprive the States of an amendment the States demanded was of utmost concern to the framers." *Id.*, (citing Farrand, M., *The Records of the Federal Convention of 1878*, 202-03 (Yale University Press 1911)).[12]

Even if Congress may impose deadlines, it must do so in a constitutional manner, which did not happen with the ERA because the challenged deadline was

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the amendatory process as no different than ordinary lawmaking in that a technicality, such as the absence of a deadline, should control whether an obviously invalid amendment becomes law. The framers were clear that amending the Constitution is not ordinary lawmaking. *Hollingsworth v. Virginia,* 3 U.S. (3 Dall.) 378, 381 (1798) (President has no role in approving a constitutional amendment despite his right to do so in the case of ordinary lawmaking, because the amendment process is "unconnected with the ordinary business of legislation.") Congress' handling of the 27th Amendment has led to constitutionally intolerable results. To protect the integrity of the Constitution this Court should assert its authority as the ultimate arbiter of how Article V works.

[12] The problem is not that short deadlines prevent ratification, because a short deadline can also cause states to ratify by subjecting them to undue pressure, as happened with the 18th Amendment, which was quickly repealed. The point is that deadlines allow the National government to put pressure on the States in ways that undermine the States' autonomy and equal constitutional powers under Article V.

placed in a preambulatory clause rather than in the text of the amendment itself. As such, it violates Article V because Article V only gives Congress authority to propose amendments and determine the mode of ratification.[13] While Congress may include anything it wants in a proposed amendment's text; it may not, under Article V, enact adjunctive laws that affect the Article V balance of powers[14] because the Framers were clear that amendatory powers between the National government and the States should be equally distributed. THE FEDERALIST NO. 43 (Alexander Hamilton) ("Article V equally enables the general and the States governments"); THE FEDERALIST NO. 39 (James Madison) (the balance struck in Article V makes the amendment process "neither wholly national nor wholly federal.") THE FEDERALIST NO. 21 (Alexander Hamilton) (expressing concern about the potentially harmful effects that a strong national government could have on the autonomy of the States). Amendatory powers guaranteed to the States by Article V may not be abridged by language in a preamble because the States do not ratify preambles. If Congress wants to change Article V in a manner that favors the National government, it must comply with the Constitution's rules for changing the Constitution, which are set forth in Article V. In other words, if Congress wants to restrict States' rights under Article V, it must propose

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[13] "Mode" of ratification refers to the choice between ratification and convention. *United States v. Sprague*, 282 U.S. 716, 732–33 (1931) ("the choice of mode rests solely in the discretion of Congress"). It does not give Congress unfettered authority to control all aspects of the ratification process.

[14] *Dillon* provides no such authority as the deadline in that case had been placed in the text of the amendment.

a constitutional amendment to do exactly that, so the States can decide for themselves whether they want the equal nature of their Article V rights to be restricted.

While no court has addressed the significance of placing a deadline in the preamble rather than in the text of an amendment,[15] persuasive legal authority and congressional records strongly suggest that this violates Article V.[16] *See Equal Rights Amendment Extension, Hearings on H.J. Res. 134 Before the Subcomm. On Civ. and Const. Rights of the H. Comm. On the Judiciary*, 95th Cong. 57 (1978) (states were "ratifying the text of the Amendment and not the preliminary language of the resolution").[17] Indeed, when Congress was proposing to add a deadline to the preamble of the 20th Amendment, members objected on the grounds that placing it in the preamble would be "of no avail" as it would not be "part of the proposed constitutional amendment." 75 Cong. Rec.

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[15] In comparable circumstances, courts have declined to enforce language from preambles on the grounds that they "have never been regarded as the source of any substantive power conferred . . . ." *Jacobsen v. Massachusetts*, 197 U.S. 11, 22 (1905); *see District of Columbia v. Heller*, 554 U.S. 570, 578–79 (2008) (apart from "a clarifying function, a prefatory clause does not limit or expand the scope of the operative clause").

[16] Just as Congress cannot simply pass a law abridging the President's presentment powers under Article I, it cannot pass a law abridging the States' amendatory powers under Article V.

[17] *See also* Attorneys General Letter, *supra* n.4 ("Neither the Constitution nor the language of the ERA [] contain a time limit for state ratification . . . [R]ather than including any [deadline] in the ERA's text, Congress relegated a seven-year deadline to the joint resolution that proposed the ERA . . . No court has found that such an external limit is at all binding" on the States).

3856 (1932). Congress thus placed deadlines in the text of the next three amendments. Dellinger, W., *The Legitimacy of Constitutional Change: Rethinking the Amendment Process*, 97 Harv. L. Rev. 386, 408-09 (1983).

If Congress may lawfully impose extra-textual ratification deadlines, there are no restrictions on congressional power under Article V. Such unbridled authority cannot be tolerated under Article V, as the framers were clear that the States' amendatory powers should be equal to those of the National government.

Congress' arbitrary handling of ratification deadlines further supports Petitioners' position. No deadlines were included in any amendments for the first 130 years of our nation. Congress began imposing deadlines relatively recently with the 18th Amendment in 1917, and has done so only a handful of times, without consistency. A deadline was imposed on the 18th but not the 19th Amendment, and when deadlines were imposed, some were placed in the text of the amendment, while others were placed in a preamble. App.50a-51a.

Clearly aware that the States have a right to decide for themselves whether to be subjected to a ratification deadline, Congress placed deadlines in the text of amendments 18, 20, 21, and 22. It was not until 1960 that Congress first placed a deadline in a preamble, claiming a need to "declutter" the text.[18]

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[18] 10 Cong. Rec. 6628 (1955). If placing a deadline in a preamble were truly about decluttering, why would Congress "clutter" the ERA with procedural matters such as delaying the effective date of the amendment for two years after ratification? The States were permitted to vote on the two-year delay, but not whether they should be forced to ratify within seven years.

This began with the 23rd, and continued with the 24th, 25th, and 26th Amendments. App.72a-73a. Then in 1978, effectively conceding that placing deadlines in preambles was constitutionally problematic, Congress placed a deadline in the text and the preamble of a proposed amendment. 92 Stat. 3795 (1978). Stranger still, in 1992, Congress voted to approve the 27th Amendment, and the Archivist published it, some 203 years after congressional proposal, belying the idea that ratification deadlines serve a legitimate constitutional purpose.

Such arbitrary treatment of ratification deadlines reflects a lack of due regard for the solemnity of the amendatory process, and the equal role of the States. It also ignores the importance of ensuring that the Constitution's processes are predictable and consistent. *INS v. Chadha*, 462 U.S. 919, 945 (1983) (discussing the value of "explicit and unambiguous" constitutional provisions).

In the aftermath of Congress' erratic treatment of Article V, Respondent issued a letter in 2012 in which he stated that he was duty-bound to record state ERA ratifications, regardless of the challenged deadline, which is exactly what he did. App.8a. In this same letter, he stated that he would publish the ERA as soon as 38 states ratified it.[19] Notably, Respondent

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[19] *See* App.154a–56a. This letter was issued in response to a question from Congresswoman Carolyn Maloney about the ratification status of the ERA and the role of the Archivist. Respondent replied, "Once NARA receives at least 38 state ratifications of a proposed Constitutional amendment, NARA publishes the Amendment along with a certification of the ratifications and it becomes part of the Constitution." Nowhere did Respondent indicate a concern about the ERA's validity, though he did state "a later recission of a state's ratification is not accepted as valid." *Id.*

made no mention of the circumstances he today claims preclude him from publishing.

Ratification of the 27th Amendment in 1992, alongside Respondent's 2012 letter guaranteeing that he would publish the ERA when the 38th state ratified it, inspired advocates, including EME and The Roses, to devote more resources to advocating for the ERA. No doubt relying on the same factors, States that had not yet ratified determined that the challenged deadline posed no barrier, and in 2017, Nevada ratified (S.J. Res. 2, 79th Leg.) (Nev. 2017), followed by Illinois in 2018 (S.J. Res. Const. Amend. 0004, 100th Gen. Assemb.) (Ill. 2018), and Virginia in 2020. If the challenged deadline were truly a barrier to the ERA's ratification, Respondent would not have issued a contrary opinion letter in 2012, and public officials in three different states would not have wasted public resources enacting a legal nullity.

Moreover, if the challenged deadline is valid, Respondent could not have lawfully recorded the ERA ratification votes of Nevada and Illinois in 2017 and 2018, respectively, as they would have been no more subject to official recording than junk mail.[20] That Respondent recorded their votes without assessing their constitutionality demonstrates Respondent's

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[20] Interestingly, Respondent recorded the ratification votes of Nevada and Illinois when they happened, but he recently added the qualifying statement "ratification actions occurred after Congress's deadline expired." NATIONAL ARCHIVES AND RECORDS ADMINISTRATION: EQUAL RIGHTS AMENDMENT, LIST OF STATE RATIFICATION ACTIONS (available at https://www.archives. gov/files/foia/pdf/era-list-of-state-ratification-actions-03-24-2020.pdf) citing App.97a–153a. Respondent should have similarly published the ERA.

awareness that he likewise has no authority to decline to publish the ERA or determine its constitutionality of the ERA. Because Respondent has no authority to determine whether an amendment is constitutional, it is axiomatic that he has no authority to delegate such authority to the Department of Justice. Yet, on December 12, 2019, Respondent announced that he would not publish the ERA until he received legal advice from the OLC and that he would "abide by the OLC opinion." App.95a-96a. On January 8, 2020, the OLC issued a memorandum opinion declaring the ERA invalid because of the challenged deadline. App.97a-153a. Respondent's unauthorized delegation of non-authority cannot be sustained.

Although several states purport to have rescinded their ERA ratification votes, and may have an interest in this litigation, it is of no moment that none are presently involved because this Court can, if it deems it appropriate, invite them to file briefs to advance their States' interests. *Chadha*, 462 U.S. at 940 (case or controversy existed on the constitutionality of the one-House veto despite agreement of the parties on the issue; court solicited briefs from interested non-parties).

IV. PETITIONERS HAVE STANDING

Standing is established when a plaintiff shows (1) an 'injury-in-fact' that (2) is 'fairly . . . trace[able] to the challenged action of the defendant' and (3) is 'likely . . . [to] be redressed by a favorable decision' in court." *Lujan*, 504 U.S. at 560-61. A plaintiff has suffered an injury-in-fact if she has experienced "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent,

not conjectural or hypothetical." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014). A plaintiff need not allege specific facts to establish injury at the pleading stage. General allegations will suffice, unlike at summary judgment when specific facts are required. *Lujan*, 504 U.S. at 561.

Petitioners also allege procedural injury, where plaintiffs receive "special treatment" and can assert their rights "without meeting all the normal standards for redressability and immediacy." *Lujan* at 572, n.7.

That injury may be widespread and generalized does not defeat standing. *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497, 517, 522 (2007) (rejecting claim that Plaintiff lacked standing on the grounds that the injury alleged caused widespread generalized harms); *see FEC v. Akins*, 524 U.S. 11, 24-25 (1998) (that injury to voting rights was widely shared, and caused injury to the entire class of people did not defeat standing).

A. Injury in Fact

1. Petitioners Have a Protectable Legal Interest in the ERA's Continued Vitality.

Petitioners adequately demonstrated standing under *Idaho v. Freeman*, 625 F.2d 886, 887 (9th Cir. 1980), because they suffered injury to their protectable legal interest in the "continued vitality" of the ERA. The District Court rejected *Freeman* and held it was "not otherwise convinced Plaintiffs' interest in the vitality of the ERA demonstrates an individualized and concrete stake in the outcome here" simply because "the Court does not accept the ruling in *Freeman* as persuasive authority on this issue." App.13a.

In *Freeman*, the National Organization for Women ("N.O.W.") was granted standing on behalf of all women in a case challenging Congress' authority to extend the ERA's initial seven-year ratification deadline, and States' authority to rescind prior ratifications. *Idaho v. Freeman*, 529 F. Supp. 1107, 1155 (D. Idaho 1981). This case involves the same type of women's organization and the same legal controversy.

The District Court in *Freeman* had denied N.O.W. standing, but the Ninth Circuit reversed. *Idaho v. Freeman*, 625 F.2d 886, 887 (9th Cir. 1980). When the case was remanded to the District Court, N.O.W. had full Article III standing.

The District Court here misapplied *Freeman* and ruled that it was unavailing because N.O.W. was not an original party to that case; it became involved in *Freeman* by filing a motion to intervene. The District Court here ruled that *Freeman* is inapt because intervention standing is different than Article III standing. App.13a. While the doctrines of intervention standing and Article III standing are not identical, they do share an element in that both require proof of a protectable legal interest. Thus, just as N.O.W. satisfied the protectable legal interest requirement for intervention standing because it had an interest in the "continued vitality" of the ERA, Petitioners here satisfy the protectable legal interest requirement for Article III standing because they have an identical legal interest in the continued vitality of the ERA.

Once a protectable legal interest is identified, a putative intervenor must show that the parties do not adequately represent that interest, while Article III requires proof of concrete injury. Petitioners

adequately demonstrated concrete injury because Respondent's refusal to publish the ERA, followed by the issuance of an official statement that the ERA is not valid, caused injury to the ERA's continued vitality.

The District Court failed to acknowledge the way Respondent's actions injured the ERA's continued vitality. The Court also ignored important similarities between intervention standing and Article III standing by simply ruling, incorrectly, that *Freeman* was inapt because it was an intervention standing case.

While *Freeman* is not a Supreme Court case, the District Court disregarded this Court's implicit approval of *Freeman* in *Nat'l Org. for Women (N.O.W.) v. Idaho*, 459 U.S. 809 (1982) when it granted N.O.W.'s petition for certiorari without questioning whether N.O.W. had standing to file a cert. petition. Importantly, N.O.W.'s cert. petition focused almost entirely on the proper enforcement of Article V, purported rescissions, and the doctrine of justiciability. It said little about the ERA itself. Pet. for Writ of Cert., *Nat'l Org. for Women, Inc. v. Idaho*, No. 81-1283 (U.S. Jan. 8, 1982). If a women's rights organization has standing to invoke this Court's jurisdiction to address congressional powers under Article V, the constitutionality of purported rescissions, and justiciability as they relate to a ratification deadline's impact on the ERA's vitality, then Petitioners here have standing to address the same issues in this case.[21]

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[21] It should be noted that N.O.W. filed a cert. petition weeks before the parties that brought the suit filed their cert. petition, *see, e.g.*, Pet. of Adm'r of Gen. Servs. for Writ of Cert., *Carmen v. Idaho*, No. 81-1313 (U.S. Jan. 22, 1982), indicating that all agreed N.O.W. had Article III standing because an intervenor would have been unable to file a cert. petition without Article

2. Petitioners Have a Protectable Legal Interest in the Proper Enforcement of § 106b.

Petitioners also have a protectable legal interest in the proper enforcement of § 106b because it "conferred [on them, a] procedural right [designed to] to protect [their] concrete interests." *Spokeo v. Robins*, 136 S.Ct. 1540, 1549 (2015). Even intangible injuries are concrete. *Id.* The District Court erred in ruling that Petitioners did not allege "any concrete interest in tandem with the Archivist's failure." App.32a. Respondent's refusal to publish the ERA clearly violates the procedural provisions of § 106b and injures Petitioners' interest in the "continued vitality of the ERA." *Freeman*, *supra*.

That Respondent did not originally cause women's inequality is of no moment. His refusal to publish the ERA now and his dissemination of misinformation regarding its validity now unlawfully perpetuate the inferior legal status of persons who have long suffered disproportionately high rates of harm because of their inequality.[22] *See Sierra Club v. Marsh*, 872 F.2d 497, 500 (1st Cir. 1985) (injury "consists of the added risk").

III standing. *Diamond v. Charles*, 476 U.S. 54, 68 (1986).

[22] U.N. General Assembly, *In-Depth Study on All Forms of Violence Against Women: Report of the Secretary General*, A/61/122/Add.1 (6 July 2006) (inequality is the root cause of violence against women); U.N. Women, Investing in Gender Equality and Women's Empowerment (Oct. 31, 2010) (available at https://www.endvawnow.org/en/articles/314-investing-in-gender-equality-and-womens-empowerment-.html).

That women suffer harm because they are unequal based on sex is indisputable and intolerable.[23] Petitioners have standing to seek redress on behalf of themselves and all women.[24] *Barrows v. Jackson*, 346 U.S. 249 (1953); *Des Vergnes v. Seekonk Water Dist.,* 601 F.2d 9, 14 (1st Cir. 1979). Petitioners have standing to represent the class of people affected by government-sanctioned discrimination.[25] Inequality injures the underclass in their dignity, autonomy, and humanity,[26] and causes a plethora of other measurable

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[23] The United States is among the top ten most dangerous nations on earth for women, Thomas Reuters Foundation Survey, June 25, 2018 (survey of 550 experts on women's issues) (available at https://news.trust.org/item/20180612421349-9jrem); and is third most dangerous for sexual violence. *Thomson Reuters Foundation Survey*, June 26, 2018 (survey of 550 experts on women's issues) (available at https://news.trust.org/item/20180612134519).

[24] Another lawsuit was filed against the Archivist, after this one was filed, to validate the ERA. App.71a–94a. Three Attorneys General filed the action, but they lack authority to represent the interests of women as a class. *Massachusetts v. Mellon*, 262 U.S. 447, 485–486 (1923) (no state has standing to serve as *parens patriae* of its citizens "as against the Federal Government"). The case *sub judice* is the only one through which women and others protected by the ERA have an adequate voice in the resolution of the ERA's current vitality.

[25] Kreiger, N., *Discrimination and Health Inequities*, 44 INT'L J. HEALTH SERV. (4) 643, 650 (2014).

[26] Jackson, V., *Constitutional Dialogue and Human Dignity: States and Transnational Constitutional Discourse*, 65 MONT. L. REV. 15 (2004); Ho, J., *Finding Out What it Means to Me: The Politics of Respect and Dignity in Sexual Orientation Antidiscrimination*, 2017 UTAH L. REV. 463 (2017) (discussing philosophical and legal foundations of dignity, autonomy, and humanity in American law).

harms.[27] Researchers have even found a specific correlation between higher rates of violence against persons who are not protected under a state's hate crime law, compared to those who are.[28]

Persons subjected to sex inequality also experience harm in the courts when they seek redress of grievances. *Brzonkala v. Virginia Polytechnic Institute and State University*, 132 F.3d 949, 971 (4th Cir. 1997) ("Study after study has concluded that crimes disproportionately affecting women are often treated less seriously than crimes affecting men . . . [T]hese reports provide overwhelming evidence that gender bias permeates the court system and that women are most often its victims."). Indeed, Congress enacted the Violence Against Women Act specifically to confront "existing bias and discrimination in the criminal justice system." H.R. conf. rep. no. 103-711, at 385

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[27] Kreiger, *supra* n.26 (meta-analysis of studies showing discrimination's negative health consequences through multiple pathways); Kreiger, N., et al., *Breast Cancer Estrogen Receptor Status According to Biological Generation: US Black and White Women Born 1915-1979*, 187 AM J. EPIDEMIOL. (5) 960 (2018); Kreiger N., *Methods for the Scientific Study of Discrimination and Health: From Societal Injustice to Embodied Inequality-an Ecosocial Approach,* 102 AM J. PUB. HEALTH (5) 936 (2012); Meyer, I.H., *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 PSYCHOL. BULL. (5) 674 (2003) (LGBTQ+ individuals are exposed to excess stress due to their minority position and . . . this stress causes an excess in mental disorders").

[28] Hatzenbuehler, M. L., et al., *State-Level Polices and Psychiatric Morbidity in Lesbian, Gay, and Bisexual Populations*. 99 AM. J. PUBLIC HEALTH (12) 2275 (2009) (higher rates of psychiatric disorders among LGBTQ+ persons who resided in states that did not extend protections against hate crimes and discrimination based on sexual orientation, compared to states that did).

(1994); *see* Senate Judiciary Committee, *The Response to Rape: Detours on the Road to Equal Justice* (May 1993); *see also* Clarke, J., *Frontiers of Sex Discrimination Law*, 115 Mich. L. Rev. 809, 836 (2017) (citing *Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 736 (2003) for the proposition that discrimination threatens people's ability to "choose a life free of predetermined roles," and "creates a self-fulfilling cycle" that "reinforces their subordinate status").

3. Petitioners Have Demonstrated Organizational Injury.

The organizational Petitioners also have standing under *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) because they suffered injuries in the form of diversion of resources and frustration of their mission in order to identify and counteract Respondent's actions. App.60a-61a. But the District Court misapplied *Havens* and ignored that Petitioners have been unable to carry out their mission or provide ordinary services because they were forced to divert resources to challenge, and educate others about, Respondent's actions. The District Court ignored key language from *Havens* about Article III injury arising from impairment of an organization's ability to carry out its mission, and ruled that Petitioner's injuries "are not distinct from the organization'[s] mere interest in a problem." App. 26a. Hardly a "mere interest in a problem," the organization Equal Means Equal ("EME") was instrumental in ensuring ERA's ratification in Nevada, Illinois, and Virginia. App.59a. Yet the District Court effectively ruled that EME's essential work was no more consequential to the ERA than a person's "interest" in seeing the ERA ratified.

The Court further ruled that Petitioners did nothing more than "advise[ ] others how to comport with the law, or by virtue of its efforts and expenses to change the law." App.29a (citation omitted). This characterization of Petitioners' injuries misstates the record and ignores the nature of the legal interest at stake and how it was injured by Respondent.

This is not a case where an organization diverted resources in order to change the law. It is a case where an organization's primary mission was injured by a single government official's unlawful disregard for his nondiscretionary duty to publish the ERA. Being forced to divert resources in order to address Respondent's violations of Article V and § 106b and protect the vitality of the ERA suffices to establish Article III standing under *Havens*.

B. Equal Means Equal–Organizational Standing

DIVERSION OF RESOURCES

As noted above, Respondent's actions have caused significant confusion regarding the ERA's validity, which in turn has caused government officials and others not to act in accordance with it. This has forced EME to divert resources from its core mission, toward education and advocacy, to identify and counteract Respondent's actions. For example, EME has provided lectures and developed informational materials, and has sent correspondence to government officials around the country, informing them that Respondent's actions are unlawful, and urging them to act in accordance with the ERA.[29]

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[29] Section 3 of the ERA states that it takes effect "two years after the date of ratification." This is to ensure that government officials

1. Frustration of mission

As an organization whose sole purpose is to advocate for sex equality and ratification of the ERA, EME's mission is frustrated by Respondent's actions. His refusal to publish the ERA and dissemination of misinformation about its validity have obstructed EME's ability to carry out its core mission. Put another way, EME cannot advocate for sex equality under the ERA where the Respondent has declared the ERA invalid despite its ratification.

C. Equal Means Equal—Associational Standing

An organization has associational standing to bring suit "solely as the representative of its members . . . [e]ven in the absence of injury to itself." *Warth*, 422 U.S. at 511. Associational standing is particularly apt in matters where, as here, the group seeks only equitable relief, rather than money damages. *International Union, United Automobile, Aerospace and Agricultural Implement Workers v. Brock*, 477 U.S. 274, 290 (1986).

EME represents persons protected by the ERA, and advocates for their equality, and ratification of

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have time to bring laws and policies into compliance with the ERA. 118 Cong. Rec. 9419 (1972) (two-year delay in enforcement of ERA is necessary to give federal and state officials adequate time to repair their laws); Sutherland Statutory Construction, § 33:7 ("purpose of the future effective date is to inform people of the provisions of a [law] before it becomes effective so they may protect their rights and discharge their obligations.") While the ERA is not enforceable until January 27, 2022, it is valid now, and is subject to pre-enforcement lawsuits. *Virginia v. American Booksellers Ass'n, Inc.* 484 U.S. 383 (1988).

the ERA.[30] Donors and supporters choose to become members, and regularly receive information and educational materials. Thus EME has associational standing so long as a.) its members would otherwise have standing to sue in their own right; b.) the interests it seeks to protect are germane to the organization's purpose; and c.) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.[31] *Hunt*, 432 U.S. at 343.

EME'S MEMBERS HAVE STANDING IN THEIR OWN RIGHT

EME's members and supporters include its president, Kamala Lopez, women, and Petitioner Katherine Weitbrecht. For reasons addressed above, including that they have an interest in the ERA's continued vitality, they have standing to sue in their own right. Ms. Weitbrecht asserts additional grounds for individual standing below.

D. The Yellow Roses—Organizational Standing

The Yellow Roses ("Roses") is a Massachusetts-based volunteer student organization, founded in 2016 by a group of middle school girls who were surprised

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[30] Even if EME may be seen as a nontraditional membership organization, it possesses all the indicia of membership because only members of EME may elect/appoint and serve on the Board of the Directors. EME is financed exclusively by members and supporters, and EME clearly "represents the interests of its members and provides the means by which they express their collective views and protect their collective interests." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 345 (1977).

[31] It is not disputed that the interests EME seeks to protect are germane to the organization's purpose, and that participation by an individual member is not required.

to learn that women were not yet equal under the U.S. Constitution. The organization's sole mission is to advocate for and raise public awareness about sex equality and the ERA.

The Roses have engaged in numerous advocacy and educational activities, including circulating a petition in support of the ERA; interviewing and being interviewed by local and national publications; meeting with government officials to advocate for the ERA; collaborating with activists; and teaching young people to be activists in their communities. Like EME, the Roses have suffered a diversion of resources and frustration of mission. Respondent's refusal to publish the ERA and dissemination of misinformation about its validity have obstructed the Roses ability to carry out their core mission because they cannot advocate for sex equality under the ERA where the Respondent has declared the ERA invalid despite its ratification. *Havens*, 455 U.S. at 369.

All Petitioners also assert injury under the First Amendment. While they do not assert a First Amendment claim, their right to seek redress of grievances is guaranteed by the First Amendment, which states, "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances." U.S. Const. amend. I. It is "among the most precious of the liberties safeguarded by the Bill of Rights." *United Mine Workers v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967). Petitioners adequately alleged injury to their First Amendment rights because Respondent's actions have undermined their ability to persuade government officials to act in accordance with the ERA. Ms. Weitbrecht in particular is reluctant to report and seek redress of sex-based

harm because of Respondent's actions. These are First Amendment chilling-effect injuries. *See Professional Real Estate Investors, Inc., v. Columbia Pictures Ind.*, 508 U.S. 49, 55-58 (1993) (citing the *Noerr-Pennington* doctrine and explaining that First Amendment rights include the right to influence a governmental body, which extends to judicial, administrative, and legislative entities, and discussing the importance of anti-SLAPP laws as an important tool to prevent the chilling-effect caused by the abridgement of such rights).

1. Traceability

The "fairly traceable" component of standing examines the causal connection between Respondent's unlawful conduct, and Petitioners' injuries. *Allen v. Wright,* 468 U.S. 737, 753 (1984). Petitioners' complaint is replete with allegations of how and why Respondent caused their injuries.[32] His actions interfered with

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[32] *See e.g.*, App.60a–61a (EME has had to divert resources to educate and inform its members, supporters and the general public about why the ERA is duly ratified despite the Archivist's opinion to the contrary, why the Archivist's view is incorrect as a matter of law, and why government officials should already be taking steps to repair sex discriminatory laws, regulations, and policies"); ("EME has personally witnessed the reluctance on the part of women, attorneys, and other advocates to demand that such repair work begin, because of the Archivist's refusal to record the ERA . . . "); ("[because of Respondent's actions] . . . Government officials are refusing to identify and repair sex discriminatory provisions in laws, regulations, and policies . . . . thus exposing [plaintiffs] to an unnecessary risk of harm . . . "); and App.53a ("women as a class are currently excluded from protection under the state's hate crime statute, which means they are being denied equal protection from sex/gender-based hate crimes, and associated deterrence of gender-based hate crimes.").

the ERA's vitality; injured the organizational petitioners; deterred government officials and others from acting in accordance with the ERA; and exposed Petitioners and all persons protected by the ERA to an increased risk of harm, including sex-based harm. Had the Respondent carried out his statutory duty, these injuries would not have occurred.[33]

That Respondent's actions have caused government officials not to comply with the ERA despite its ratification cannot be denied. Indeed, in connection with a related lawsuit,[34] several Attorneys General who oppose the ERA filed pleadings alleging that if Respondent is ordered to publish the ERA, they will be "forced to spend substantial resources defending their duly enacted laws from this new line of constitutional task." App.72a. If Attorneys General in this country plan to comply with the ERA when Respondent publishes it, it is axiomatic that they are not currently acting in accordance with the ERA because Respondent did not publish it.

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[33] While the failure of government officials to identify and repair sex discriminatory laws and policies could be seen as an additional cause of some injuries, their failure is the direct result of Respondent's actions, as demonstrated by the fact that several Attorneys General are suing Respondent in response to the confusion he created about the ERA's validity. *Virginia et al., v. Ferriero*, 1:20-cv-242-RC (D.D.C. 2020), and many more have expressed similar uncertainty. *See* Attorneys General Letter, *supra* n.4.

[34] The Attorneys Generals' lawsuit makes the same legal arguments that Petitioners make here, but they cannot adequately represent Petitioners interests as they speak only for the interests of their respective states.

2. Redressability

Petitioners' injuries will be redressed by a favorable ruling from this Court because the judicial relief requested will redress Petitioners' injuries. *Id.* In fact, Respondent has explicitly stated that he will publish the ERA if directed to do so by a final court order. App.95a-96a. Thus, the relief requested, if granted, will cause Respondent to reconsider his decision that harmed the Petitioners. App.53a-54a.

V. THE TENTH AMENDMENT PROHIBITS CONGRESS FROM RESTRAINING THE STATES' ARTICLE V POWERS.

Congress may not limit States' rights under Article V. Nor does Article V delegate all amendatory powers to Congress. Rather, it provides that such powers are to be shared equally between the National government and the States. Because the States have been granted powers in Article V, Congress may not deprive them of those powers. *Nat'l League of Cities v. Usery*, 426 U.S. 833, 843 (1976) (Tenth Amendment "expressly declares the constitutional policy that the Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively, in a federal system").

States participate in the ratification process as a "federal" rather than a state law function only in the sense that the amendment process was created by the federal Constitution. That the Constitution is a federal document does not mean the National government may control the rights of the States reserved to them in that federal document. *Gregory v. Ashcroft*, 501 U.S. 452-60 (1991).

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant this petition.

Respectfully submitted,

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