

Zzyym v. Blinkin (formerly Zzyym v. Pompeo, Zzyym v. Tillerson & Zzyym v. Kerry)

A federal discrimination lawsuit was filed against the U.S. State Department on behalf of an intersex client, Dana Zzyym. Dana was denied a U.S. passport because they could not accurately choose either male or female on the passport application form, and the form does not provide any other gender marker designation.

This federal discrimination lawsuit was filed against the U.S. State Department on behalf of an intersex client, Dana Zzyym, denied a U.S. passport because Dana could not accurately choose either male or female on the passport application form, and the form does not provide any other gender marker designation. Though many intersex people identify as male or female, some – like Dana – do not.

Dana, who uses the gender-neutral pronouns “they,” “them” and “their,” was born with ambiguous sex characteristics. Shortly after Dana’s birth, their parents and doctor decided to raise them as a boy. As a result, Dana underwent several irreversible, painful and medically unnecessary surgeries that didn’t work, traumatized Dana and left them with severe scarring. It was only many years later, after serving six years in the U.S. Navy and then attending Colorado State University, where they also worked as a custodian, that Dana began researching the surgeries and came to understand they had been born intersex. Drawing on personal experience, Dana began educating the public about issues facing intersex people. Dana currently serves as associate director for the United States affiliate of the [Organisation Intersex International \(OII-USA\)](#).

As part of their work, Dana was invited to attend the International Intersex Forum in Mexico City in October, 2014, at which time Dana applied for a U.S. passport. The application requires that the applicant select a gender marker of either ‘male’ or ‘female.’ It also requires first-time applicants to submit a birth certificate, which in Dana’s case lists their sex as “unknown.” But, notwithstanding the information on their birth certificate and the fact that Dana’s doctors with the U.S. Department of Veterans Affairs confirm their gender as intersex, Dana’s application for a passport was denied.

In the lawsuit filed in the U.S. District Court for the District of Colorado, Lambda Legal asserts that the U.S. State Department is violating the Due Process and Equal Protection clauses of the U.S. Constitution, as well as the federal Administrative Procedure Act, by denying Dana a passport that accurately reflects their gender. Several countries currently issue passports with gender markers other than “F” (female) or “M” (male), including Australia, India, Malta, Nepal, and New Zealand. Most countries that offer a third gender marker on their passport use the non-specific “X” gender marker because it is recognized by the International Civil Aviation Organisation (ICAO), a United Nations agency that sets forth international travel document standards.

In October, 2015, Lambda Legal filed a lawsuit in the U.S. District Court for the District of Colorado, asserting that the U.S. State Department violated the due process and equal protection components of the Fifth Amendment to the U.S. Constitution, as well as the federal Administrative Procedure Act, by denying Dana a passport that accurately reflects their gender. The Court issued its ruling in favor of Zzyym on November 22, 2016.

Lambda Legal asked a federal court to reopen the case because the U.S. State Department continues to refuse to recognize a gender marker that is neither “M” (male) nor “F” (female). In June 2017, this motion was granted and the case was reopened.