



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

Status: Open

Court: United States Federal Court for the District of Colorado

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.

History

- **October 26, 2015** Lambda Legal files suit.
- **July 20, 2016** Oral argument held before U.S. District Court in Colorado
- **November 22, 2016** Victory! Judge finds State Department violated federal law and orders agency to reconsider its decision.
- **June 27, 2017** In light of the State Department's continuing refusal to recognize an appropriate gender marker, a federal court granted Lambda Legal's motion to reopen the case.
- **May 29, 2018:** Oral argument again held before U.S. District Court in Colorado
- **September 19, 2018:** Victory! Judge finds again that the State Department violated federal law in continuing to deny Dana an accurate passport.
- **February 21, 2019:** Judge denies State Department request to stay his order which prohibited the agency from relying upon its binary-only gender marker policy.
- **May 9, 2019:** Lambda Legal files a brief at the U.S. Court of Appeals for the Tenth Circuit urging the court to uphold the lower court's ruling.

Attorneys

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Clients

Dana Zzyym

Briefs

[Response Brief of Appellee \(5/9/2019\)](#)

[Plaintiff's Opening Brief Following Department's Reconsideration of its Gender Policy \(10/10/2017\)](#)

[Plaintiff's Reply Brief \(6/15/2016\)](#)

[Opening Brief \(4/22/2016\)](#)

Complaints

[Complaint \(10/26/2015\)](#)

Decisions

[Decision \(9/19/2018\)](#)

[Order \(11/22/2016\)](#)

[Opinion of the 10th Circuit Court of Appeals \(\)](#)

Other Legal Documents

[Brief of the National Center for Transgender Equality as Amicus Curiae \(5/15/2019\)](#)

[Brief of Amicus Curiae Intersex & Genderqueer Recognition Project \(5/15/2019\)](#)

[Brief for Amici Curiae interACT, NCLR, et al. \(5/15/2019\)](#)

[Brief of Amici Curiae of Nine States \(5/15/2019\)](#)

[Order Denying Defendant's Motion to Stay \(2/21/2019\)](#)

[Lambda Legal Letter Re: Human Rights Watch interACT Report \(7/25/2017\)](#)

[Supplemental Complaint Exhibit \(7/3/2017\)](#)

[Motion for Leave to file a Supplemental Complaint \(7/3/2017\)](#)

[Motion to Reopen \(6/26/2017\)](#)

[Hearing \(7/27/2016\)](#)

[Exhibit A \(10/26/2015\)](#)

PRESS RELEASES

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BLOG POSTS



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