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The idea that "sex at birth" is straightforward and sufficient to reflect on identity documents is false and misleading. In addition to the erasure of intersex persons, transgender persons, and errors, it is also an overreach of federal power in an area governed by states according to the constitution.

The authority to determine a United States Citizen's "sex at birth" belongs to the several states, according to the Tenth Amendment to the Constitution of the United States. Therefore, in the case of a U.S. Citizen applicant, the State Department must accept the applicant's sex as it appears on the applicant's state-issued birth certificate. The State Department may not second-guess these documents or impose a definition of "sex at birth" using its own rubric. As such, when a U.S. Citizen applies for a passport, the State Department may not request their "sex at birth" under any definition other than the definition used by the State issuing that applicant's birth certificate. Instead, the State Department must plainly request that the applicant's "sex, as it appears on their state-issued birth certificate".