

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:15-cv-02362-RBJ

DANA ALIX ZZYYM,

Plaintiff,

v.

REX W. TILLERSON, in his official capacity as the Secretary of State; and
SHERMAN D. PORTELL, in his official capacity as the Director of the Colorado
Passport Agency for the United States Department of State,

Defendants.

UNOPPOSED MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT

Pursuant to Fed. R. Civ. P. 15(d), Plaintiff Dana Alix Zzyym (“Plaintiff” or “Dana”) moves the Court for leave to file a Supplemental Complaint for Declaratory, Injunctive and Other Relief. As grounds therefor, Plaintiff states as follows:

1. In accordance with D.C.COLO.L.Civ.R.7.1, Plaintiff has conferred with counsel for Defendants Rex W. Tillerson, in his official capacity as the Secretary of State, and Sherman D. Portell, in his official capacity as the Director of the Colorado Passport Agency for the United States Department of State (jointly, “Defendants” or the “State Department”) regarding the relief requested herein. Defendants do not oppose this motion.

2. Fed. R. Civ. P. 15(d) provides that this Court “may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.”

3. A Rule 15(d) motion is “addressed to the sound discretion of the court, and leave to serve a supplemental pleading ‘should be liberally granted unless good reason exists for denying leave.” *Southwest Nurseries, LLC v. Florists Mut. Ins. Inc.*, 266 F.Supp.2d 1253, 1256 (D.Colo. 2003) (quoting *Walker v. UPS, Inc.* 240 F.3d 1268, 1278 (10th Cir. 2001)).

4. A supplemental pleading is “well within the basic aim of the rules to make pleadings a means to achieve an orderly and fair administration of justice.” *Griffin v. Cnty. Sch. Bd.*, 377 U.S. 218, 227 (1964).

5. Plaintiff filed the initial Complaint for Declaratory, Injunctive and Other Relief (“Original Complaint”) in this matter on October 25, 2015. [Dkt. No. 1]

6. After full briefing by the parties and oral argument, the Court issued an Order on November 22, 2016, holding that the administrative record did not demonstrate that Defendants’ “decisionmaking process that resulted in the [binary-only gender] policy in question was rational,” and its “first effort to get over the arbitrary and capricious hump was not convincing.” Accordingly, the Court remanded the matter to the Department of State for reconsideration. [Dkt. No. 55].

7. On May 1, 2017, the Department of State sent a letter to Dana, indicating that after reconsidering its previous decision, the Defendants yet again denied Dana’s passport application (the “May 1, 2017 Denial”). [Dkt. No. 57-1].

8. By this motion, Plaintiff seeks to file a supplemental pleading in order to set out transactions, occurrences, and events that happened after October 25, 2015, as set forth

in the Supplemental Complaint for Declaratory, Injunctive and Other Relief (attached hereto as Exhibit A).

9. For example, but without limitation regarding events occurring after the filing of the Original Complaint, Dana wishes to allege that the May 1, 2017 Denial constitutes final agency action which gives rise to additional legal claims under the Administrative Procedure Act, including constitutional claims for violation of due process and equal protection guaranteed by the Fifth Amendment to the United States Constitution.

10. No good reason exists to deny leave requested by this motion. No prejudice to the Defendants will result from this Court's acceptance of the attached supplemental pleading, because this motion is timely filed less than one week following the Court's Order granting Plaintiff's motion to reopen this previously administratively closed case. [Dkt. No. 58].

11. Leave is also appropriate here because the purpose of Rule 15(d) is to promote as complete an adjudication of the dispute between the parties as possible. See *Rezaq v. Nalley*, 07-CV-02483-LTB-KLM, 2010 WL 965522 (D. Colo. Mar. 15, 2010) (unpublished) (citing 6A Charles A. Wright, et al., Federal Practice & Procedure § 1504 (2d ed. 1990 & Supp.2009)). Efficiency in this litigation will be promoted by this Court's acceptance of the attached supplemental pleading for filing.

WHEREFORE, Plaintiff respectfully requests leave to file the attached Supplemental Complaint for Declaratory, Injunctive and Other Relief.

Respectfully submitted this 3rd day of July 2017.

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