

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN COUNCIL OF THE BLIND, et al.,)	
)	
Plaintiffs,)	
)	CIVIL ACTION NO.
v.)	1:02CV00864 JR
)	
JOHN W. SNOW, Secretary of the Treasury,)	
)	
Defendant.)	
)	

**DEFENDANT'S RENEWED MOTION TO DISMISS
OR FOR SUMMARY JUDGMENT**

The defendant, by his undersigned counsel, hereby moves that this action be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure, and that summary judgment in defendant's favor be granted under Rule 56 of the Federal Rules of Civil Procedure, on the grounds that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law.

The grounds for this motion are more fully set forth in the accompanying Memorandum of Points and Authorities in Support of Defendant's Renewed Motion to Dismiss or for Summary Judgment and Defendant's Statement of Material Facts as to Which There Is No Genuine Issue.

Dated: August 31, 2005

Respectfully submitted,

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INTRODUCTION

The plaintiffs seek declaratory and injunctive relief requiring major changes in the United States currency. Plaintiffs cannot, however, make out a prima facie case under the Rehabilitation Act of 1973, which would require them to demonstrate, among other things, that blind and visually-impaired persons do not have "meaningful access" to the existing currency. See Alexander v. Choate, 469 U.S. 287, 301 (1985). In fact, the individual plaintiffs and the Rule 30(b)(6) designee of the American Council of the Blind ("ACB") have provided deposition testimony and other evidence establishing that they handle currency transactions with very little difficulty, that they use currency with considerable frequency, and that they are almost never defrauded in currency transactions.

Even if plaintiffs could make out a prima facie case, changing the currency as they request would impose an "undue financial and administrative burden" on the government and the public, such that the Rehabilitation Act will not afford the relief they seek. See Southeastern Community College v. Davis, 442 U.S. 397, 410, 412 (1979). The evidence that defendant has provided earlier, regarding the costs and other burdens of changing the currency, is submitted again with this renewed motion. Given that plaintiffs chose not to conduct any depositions during the discovery period and have not designated their own expert witness, that evidence remains unchallenged. As directed by the Court, defendant also submits herewith evidence regarding "expenditures that have been made to modify currency design and production for other purposes" (Memorandum Order, Mar. 31, 2003, docket #14), and those figures show that the costs of plaintiffs' proposed changes vastly exceed the costs of past changes in the currency.

Even if the relevant evidence did not so clearly compel judgment in defendant's favor, plaintiffs' claims would have to be dismissed for lack of subject matter jurisdiction because they

have failed to invoke any viable waiver of sovereign immunity in relation to their claims under the Rehabilitation Act. Plaintiffs invoke federal question jurisdiction and the Rehabilitation Act itself in support of the Court's jurisdiction, but neither of those statutes waives sovereign immunity for a Rehabilitation Act claim against the United States outside its capacity as an employer.

For these reasons, summary judgment should be granted for the defendant, or the case dismissed for lack of subject matter jurisdiction.

PROCEDURAL BACKGROUND

This action was filed in May 2002. The initiative for filing this lawsuit came from the attorney who represents the plaintiffs, not from the ACB or the individual plaintiffs. See Brunson 306-07.¹ The ACB's designee under Rule (3)(b)(6) testified that she suggested the possibility of the lawsuit to other ACB officers, but that counsel for the plaintiffs first brought up the possibility to her. Id.

Conceding that "the form and design of United States currency is solely within the discretion of the Secretary of the Treasury," see Complaint ¶ 22; see also 12 U.S.C. § 418, plaintiffs nevertheless assert that the Rehabilitation Act requires the Secretary to make several changes in the currency to enable blind and visually-impaired persons to distinguish more easily among the various denominations. 29 U.S.C. §§ 791 et seq. Specifically, the complaint seeks —

¹ A citation to "Brunson," Stephens," or "Sheehan," followed by a number, is a reference to that witness's deposition and page number. Copies of the cited pages of plaintiffs' depositions are submitted herewith — Melanie Brunson's excerpts as Exhibit 1, Dr. Otis Stephens's excerpts as Exhibit 2, and Patrick Sheehan's excerpts as Exhibit 3. Deposition exhibits that are cited herein are submitted with the excerpts of that witness's deposition.

a permanent injunction requiring that banknotes be designed to incorporate features which would make them accessible to people with visual disabilities, including but not limited to:

- (1) a low vision feature involving a single denomination numeral which is at least one half the size of banknote height, and is printed with black ink on a white surface so as to increase contrast levels;
- (2) denomination numerals indicated by Braille symbols and raised printing on the banknote itself.
- (3) varying the length, height, and color of banknotes by denomination.

See Complaint at 16-17 (emphasis added); see also id. ¶¶ 4, 6 (noting that "[t]his litigation seeks to compel Defendants to implement the recommendations" of a National Academy of Sciences panel — i.e., to vary banknote size and color by denomination, and to include "a high contrast denomination numeral . . . at least 1/2 the size of banknote height").

Defendant has heretofore filed a motion to dismiss and a motion for summary judgment in this case. The motion to dismiss asserted that the form of United States currency is within the specific, express statutory discretion of the defendant, 12 U.S.C. § 418; Complaint ¶ 22; that the existing currency does not constitute "discrimination" against visually-impaired persons in that such persons have "meaningful access" to use of the currency, see Alexander v. Choate, 469 U.S. 287, 301 (1985); and that plaintiffs have not exhausted the administrative procedures prerequisite to seeking judicial relief. See Darby v. Cisneros, 509 U.S. 137, 144 (1993) (court may impose exhaustion requirement as a matter of "judicial discretion"); 31 C.F.R. §§ 17.101, 17.170 (procedure for Rehabilitation Act claims). Defendant also asserted that the Treasurer of the United States should be dismissed as a defendant herein, and that two of plaintiffs' prayers for relief should be dismissed or stricken — that is, those seeking to require the inclusion of specific

features in a redesign of the currency, and to require inclusion of the one-dollar bill in such a redesign.² On March 31, 2004, the Court denied the motion to dismiss, declining to dismiss this action on any of these bases, or to dismiss or strike either of the prayers for relief covered by the motion, except that the Court dismissed the Treasurer of the United States as a defendant (docket #19).

Defendant's initial motion for summary judgment asserted that the changes in the currency sought by the plaintiffs would impose "undue financial and administrative burdens" on the Bureau of Engraving and Printing, on the Federal Reserve System, and, ultimately, on the public. See Southeastern Community College v. Davis, 442 U.S. 397, 410, 412 (1979). The Court denied that motion on March 31, 2003, finding that the record was inadequate "to determine whether expenditures to accommodate the needs of the blind and visually impaired would be unreasonable," particularly "relative to expenditures that have been made to modify currency design and production for other purposes," and that defendant's evidence on the burdens was "unchallenged" given that discovery had not yet occurred (docket #14).

Subsequently, the parties engaged in discovery for approximately thirteen months. Both sides served and responded to written discovery requests. Defendant also deposed the plaintiffs Dr. Otis Stephens, Patrick Sheehan, and the American Council of the Blind (the latter pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure). The plaintiffs chose not to conduct any depositions.

² Defendant respectfully continues to believe that this action should be dismissed because the form of United States currency is statutorily committed to the discretion of the Secretary of the Treasury. 12 U.S.C. § 418.

STATUTORY AND ADMINISTRATIVE BACKGROUND

Congress is constitutionally empowered "[t]o coin Money [and] regulate the Value thereof." See U.S. Const. art. I, § 8. The country's current monetary system was established by the Federal Reserve Act of 1913. See Act of Dec. 13, 1913, ch. 6, 38 Stat. 251. A portion of section 16 of that enactment, now codified as section 418 of Title 12, governs the production of United States currency:

§ 418. Printing of notes; denomination and form

In order to furnish suitable notes for circulation as Federal reserve notes, the Secretary of the Treasury shall cause plates and dies to be engraved in the best manner to guard against counterfeits and fraudulent alterations, and shall have printed therefrom and numbered such quantities of such notes of the denominations of \$1, \$2, \$5, \$10, \$20, \$50, \$100, \$500, \$1,000, \$5,000, \$10,000 as may be required to supply the Federal Reserve banks. Such notes shall be in form and tenor as directed by the Secretary of the Treasury under the provisions of this chapter and shall bear the distinctive numbers of the several Federal reserve banks through which they are issued.

12 U.S.C. § 418 (emphasis added); see Act of Dec. 13, 1913, ch. 6, § 16, 38 Stat. at 267.³ This section has been amended several times since its initial enactment in 1913. Most recently, Congress amended section 418 to change "the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, cause plates and dies to be engraved," in the first sentence, to "the Secretary of the Treasury shall cause plates and dies to be engraved." See Pub. L. No. 103-325, § 602(g)(3), 108 Stat. 2160, 2293 (1994). The Secretary has delegated the development of currency design and the production of currency to the Bureau of Engraving and

³ The use of the word "tenor" in this provision is apparently an instance of the now-obsolete definition "quality, character, or condition." See, e.g., The Random House College Dictionary 1354 (rev. ed. 1980).

Printing ("Bureau" or "BEP"), a component of the Department of the Treasury. See Declaration of Thomas A. Ferguson ¶ 3 (Exhibit 4 hereto) [hereinafter Ferguson Decl.].⁴

The BEP does not circulate the currency that it produces. Rather, it sells currency to the Federal Reserve System ("Fed"), a federal government entity composed of a Board of Governors and twelve regional Federal Reserve Banks. Id. ¶¶ 10, 11. Banks and other private depository institutions are members of a Federal Reserve Bank. Id. ¶ 10. The Federal Reserve Board orders new currency from the Bureau based on the needs of the Federal Reserve Banks, which correspond to the circulation needs of depository institutions. Id. ¶ 11. The Federal Reserve Banks place currency in circulation by selling currency to depository institutions. Id. ¶¶ 11, 13. The Federal Reserve Banks are also responsible for detecting overly-worn and counterfeit bills and removing them from circulation. Id. ¶ 14; see 31 U.S.C. § 5141 et seq.

The BEP's activities are financed by a revolving fund which is replenished by the sale of the Bureau's products. See Ferguson Decl. ¶ 7. Thus, the Bureau recovers its costs of designing and producing currency by selling currency to the Federal Reserve System. Id. The Fed, in turn, recovers its costs of purchasing and handling currency by selling currency to private depository institutions. Banks and other depository institutions then recover their costs through banking fees, lending rates, and charges for other banking services. Id. ¶ 56.

⁴ The cited declaration was submitted with defendant's earlier motion for summary judgment. The more recent Supplemental Declaration of Thomas A. Ferguson in Support of Defendant's Renewed Motion to Dismiss or for Summary Judgment, which is Exhibit 6 hereto, affirms that the facts stated in the first declaration are still correct.

ARGUMENT

Section 504(a) of the Rehabilitation Act provides in part:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. . . .

29 U.S.C. § 794(a). To establish a prima facie case, under Section 504, for discrimination in a program or activity conducted by an executive agency, the plaintiff must show that he seeks participation or benefits in such a program or activity, that he has a disability under the Act, that he is "otherwise qualified" for the participation or benefits that he seeks, and that he has been denied those benefits, or subjected to discrimination, "solely by reason" of the disability.⁵ See Allison v. Howard Univ., 209 F. Supp. 2d 55, 62-63 (D.D.C. 2002); Stewart v. Rondeau, 940 F. Supp. 7, 8 (D.D.C. 1996). Additionally, where plaintiff seeks accommodation for a disability, the accommodation must be "reasonable." See Alexander v. Choate, 469 U.S. 287, 301 (1985).

In this case, the existing United States currency does not constitute "discrimination" against the blind and visually impaired, in that such persons already have "meaningful access" to the use of the currency. See Alexander, id. Plaintiffs' own testimony establishes that the blind and visually impaired handle currency transactions with very little difficulty, that they use currency with some frequency, and that they are almost never defrauded in currency transactions.

⁵ As stated in our earlier motion to dismiss, defendant does not concede that the production of currency is a "program or activity" to which the Rehabilitation Act applies, but will assume this element solely for purposes of this motion.

Moreover, hand-held electronic devices are available to identify currency, which are considerably less expensive than other assistive devices owned and used by the blind.

Further, requiring the Secretary of the Treasury to change the currency as demanded in plaintiffs' complaint would impose "undue financial and administrative burdens," such that the changes sought would not constitute "reasonable accommodation" under the Rehabilitation Act. See Southeastern Community College v. Davis, 442 U.S. 397, 410, 412 (1979); Alexander, 469 U.S. at 301. Making those changes would, for example, require an initial expenditure exceeding, by 26 to 101 million dollars, the Bureau of Engraving and Printing's entire outlay for producing currency during Fiscal Year 2001. Producing the changed currency would also increase the Bureau's annual production costs by at least 65% to 79%. These costs would, moreover, substantially exceed the expenses of all of the changes actually made to the currency during the last ten years, to improve counterfeit deterrence. The impact on the business sector and the public in general would likely be even greater.

In any event, even if the merits did not so clearly compel judgment for defendant, this action would have to be dismissed for plaintiffs' failure to cite any applicable waiver of sovereign immunity. Another provision in the Rehabilitation Act provides that the "remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance." 29 U.S.C. § 794a(a)(2) (emphasis added). Nothing in the Act, however, waives sovereign immunity to sue the federal government under the other prong of Section 504 — that is, in relation to a "program or activity conducted by [an] Executive agency." 29 U.S.C. § 794(a). Given that plaintiffs rest jurisdiction in this case solely on the Rehabilitation Act and

the federal question statute, 28 U.S.C. § 1331 — which is widely recognized as not waiving sovereign immunity — plaintiffs have not alleged any viable basis for such a waiver in relation to their claims. See Complaint ¶ 9.

Finally, if this case were somehow not disposed of in its entirety on this motion, two of plaintiffs' specific prayers for relief should be dismissed or stricken, as explained below.

I. Blind and Visually-Impaired Persons Have "Meaningful Access" to the Existing Currency, Such that Plaintiffs Cannot Show "Discrimination"

In his original motion to dismiss, defendant argued that the existing currency does not constitute "discrimination" against the visually impaired for purposes of the Rehabilitation Act, 29 U.S.C. § 794(a), in that the currency does not deny them "meaningful access" to participate in currency-based transactions. See Alexander, 469 U.S. at 301. The factual premises of this argument were plaintiffs' own allegations, in the complaint, that they can and do use the existing currency by folding their currency in advance, or by using electronic devices to distinguish among denominations. See Complaint ¶¶ 12-13, 33. Discovery in this case has added immeasurably to the factual foundations of this argument, showing beyond dispute that the blind and visually impaired have more than "meaningful access" to the currency. The blind and visually impaired handle currency transactions with very little difficulty; they use currency with considerable frequency (indeed, one of the plaintiffs, who is legally blind but has some eyesight, can often distinguish bills by looking at them); and they are very seldom defrauded in currency transactions. Factual development in this case also reveals the utility of hand-held electronic devices to identify currency, and establishes that blind and visually-impaired persons purchase

and use a variety of more expensive assistive devices and software, for purposes other than handling currency.

The Rehabilitation Act prohibits "exclud[ing]" disabled persons from "participation" in a covered program, denying them "the benefits of" such a program, or "subject[ing]" them to "discrimination" in such a program. 29 U.S.C. § 794(a). Visually-impaired persons are obviously not "excluded" from participation in currency-based transactions or entirely "denied the benefits" of using currency: by their own allegations, they have means available to identify currency and, thus, to engage in currency-based transactions. See Complaint ¶¶ 12-13, 33. The issue, therefore, is whether the existing U.S. currency subjects the visually impaired to "discrimination" actionable under the Rehabilitation Act. Nothing about the existing currency constitutes intentional discrimination against the visually impaired: the government provides the same currency for all persons; everyone is free to use whatever means they choose to identify the various denominations (short of defacing the bills); and plaintiffs do not allege that the government purposefully seeks to disadvantage the visually impaired in its design of currency.

The Supreme Court established, in Alexander v. Choate, the extent to which the Rehabilitation Act prohibits unintentional — or "disparate impact" — discrimination. Alexander involved a state's decision to reduce, from twenty to fourteen, the number of inpatient hospital days that the state's Medicaid program would provide for each recipient in one year. Plaintiffs alleged that this decision constituted "discrimination" against the disabled in violation of the Rehabilitation Act, because the reduction had a statistically greater impact on disabled persons than on non-disabled persons. 469 U.S. at 289-90. In a unanimous opinion, the Court rejected plaintiffs' contention that the Act prohibits "all action disparately affecting the

handicapped." Id. at 298. "Because the handicapped typically are not similarly situated to the nonhandicapped," the Court explained, such a rule would require a decisionmaker to evaluate the effect of "every proposed action" on the disabled, then to consider "alternatives for achieving the same objectives with less severe disadvantage to the handicapped." Id. This, the Court held, "could lead to a wholly unwieldy administrative and adjudicative burden," which the Act does not require. Id.

In balancing the "objectives" of the Rehabilitation Act and "the desire to keep § 504 within manageable bounds," id. at 299, the Court held that the Act requires only "meaningful access" to the benefits to which it applies, and that an unintentional denial of "meaningful access" would violate the Act. Id. at 301. Turning to the case at hand, the Court held that the reduction in hospital days did not deprive the disabled of meaningful access to Medicaid hospital benefits: "nothing in the record suggest[ed] that the handicapped [would] be unable to benefit meaningfully from the coverage they [would] receive under the 14-day rule," nor was there "any suggestion that the illnesses uniquely associated with the handicapped or occurring with greater frequency among them cannot be effectively treated, at least in part, with fewer than 14 days' coverage." Id. at 302 & n.22 (emphasis added).

The Court rejected, moreover, any suggestion that the state was required to "single out the handicapped for more than 14 days of coverage." Id. at 302 (emphasis in original). "[S]uch a suggestion," said the Court, would "rest on the notion that the benefit provided through state Medicaid programs is the amorphous objective of 'adequate health care.'" Id. at 303. That, however, was not the benefit; "Medicaid programs do not guarantee that each recipient will receive that level of health care precisely tailored to his or her particular needs." Id. (emphasis

added). Section 504, the Court concluded, "seeks to assure evenhanded treatment" of the disabled; it does not "guarantee . . . equal results." Id. at 304 (citations omitted); see Modderno v. King, 82 F.3d 1059, 1060 (D.C. Cir. 1996) (holding that Rehabilitation Act was not violated by \$75,000 lifetime maximum for mental health benefits, but not other benefits, under federally-sponsored health insurance plan).

In light of Alexander and the record in this case, the United States currency under challenge here does not deprive visually-impaired persons of "meaningful access" to participation in currency-based transactions. The testimony of the plaintiffs themselves establishes, first, that they can handle currency transactions, and that they use currency with some frequency. All three of plaintiffs' witnesses (that is, the two individual plaintiffs and the Rule 30(b)(6) designee of plaintiff American Council of the Blind) testified that they fold each denomination of their currency in a different way to distinguish among the denominations. See Brunson 32-33; Stephens 85-89; Sheehan 69-71. Plaintiff Dr. Otis Stephens demonstrated his folding methods during his deposition, and correctly identified a number of his bills based on how they were folded. See Stephens 86-88. Some blind persons also speak the value of each bill when handing currency to a cashier. See Brunson 33; Stephens 90-91. And some blind persons hold onto each bill until the cashier acknowledges the denomination. See Brunson 33; Stephens 91. In addition to using the folding techniques, certain blind (and visually-impaired) persons also carry each denomination in a different location on their person. See Brunson 33; Stephens 90; Sheehan 69-71.

Plaintiffs' witnesses testified, additionally, that they use currency with some frequency. Dr. Stephens purchases goods with currency approximately 70 times every two months; he uses

currency for approximately one-half of the occasions on which he purchases goods or services in a face-to-face transaction. See Stephens 106-107 & Ex. 3. Similarly, Patrick Sheehan purchases goods or services with currency approximately 65 times every two months, Sheehan 93, 95-96 & Ex. 3; like Dr. Stephens, he uses currency for approximately one-half of the occasions on which he purchases goods or services in a face-to-face transaction. See Sheehan 95-97 & Ex. 3. Ms. Melanie Brunson, the ACB's designee under Rule (30)(6), engages in relatively fewer face-to-face transactions, but she uses currency in an even greater proportion of her transactions: she purchases goods with currency approximately 10 times each month, but uses a credit card or debit card approximately once every six months each, and she never uses a check for face-to-face transactions. See Brunson 60-63 & errata sheet. When asked why they did not more often use means of exchange other than currency, Dr. Stephens and Mr. Sheehan explained that it was a matter of convenience: Dr. Stephens "find[s] that currency transactions are easier than going through the credit card routine [and] that the use of currency for small purchases saves time"; Mr. Sheehan "think[s] that smaller purchases [are] more convenient with cash." See Stephens 108; Sheehan 97.

Furthermore, plaintiffs' testimony indicates that some persons with low vision can identify bills by sight. Patrick Sheehan is legally blind but has some vision in one eye, see Sheehan 59 & Ex. 3; he was included as a plaintiff in this case to "represent" the "point of view" of those with low vision. See Sheehan 131-32. He testified that he can "sometimes" tell the denomination of a bill, depending on the ambient lighting and the age of the bill. See Sheehan 40-41, 48-49, 55. In fact, Mr. Sheehan correctly identified four bills — in the four most common denominations — that were shown to him during his deposition. See Sheehan 49-54. He uses

the large numbers on the backs of the \$5, \$10, and \$20 bills to identify them. See Sheehan 41-42, 53. Mr. Sheehan serves as treasurer of his chapter of an ACB affiliate, and, in that position, he handles currency and prepares deposits on his own. See Sheehan 37-41 & Ex. 3.

The testimony of plaintiffs' witnesses also indicates that they are very seldom defrauded in currency transactions. Dr. Otis Stephens, who has been blind his entire adult life, has been defrauded one time in a currency transaction. See Stephens 6-7, 104-105 & Ex. 3. Melanie Brunson, who has been blind her entire life, initially testified that she had been defrauded twice in currency transactions, but her further testimony indicated that both of those incidents were unsuccessful attempts to defraud her. See Brunson 6, 54-57, 208-13. Patrick Sheehan testified that taxi drivers have defrauded him three times in the last 20 years, and that cashiers have defrauded him "maybe about three or four times" during that period. See Sheehan 140 & Ex. 3. Indeed, cashiers seem to be quite solicitous to protect the blind and visually impaired against accidentally paying too much money: "less than half a dozen times," for example, cashiers have told Dr. Stephens that he was offering a larger denomination than he thought he was. See Stephens 112-115.

As if the above were not enough to establish "meaningful access" to the use of currency, a portable assistive device is available to identify currency for the blind and visually impaired. This device, called the "Note Teller 2," sells for about \$270. See Declaration of Julia Wilson ¶ 8 (Exhibit 5 hereto). It measures approximately 6 inches long, 3 inches wide, and 1 inch high at its highest point, and weighs approximately 6.70 ounces. Id. ¶ 2. About two seconds after a bill is inserted, it announces the denomination in a recorded voice. Id. ¶ 4. Testing of the Note Teller 2 indicates that it correctly identifies all modern versions of the \$1, \$5, \$10, and \$20 bills, most of

them in any of the four possible orientations upon insertion. Id. ¶¶ 3, 6 & Table A, Table B. All bills were read correctly in at least two of the four possible orientations. Id. Very significantly, there were no incorrect readings in testing; when the device cannot read a bill correctly, it announces "cannot read." Id.⁶

Moreover, any assertion that the \$270 cost of the Note Teller 2 is unreasonable for an assistive device would be thoroughly rebutted by plaintiffs' own testimony regarding the many (and considerably more expensive) assistive devices that blind and visually-impaired persons already use. All three of plaintiffs' witnesses testified that they own a variety of special assistive devices:

- All three of the witnesses own a "notetaker," which has a Braille keyboard and a storage medium to store what has been typed. A notetaker costs between \$3200 and \$5500, with "refreshable Braille" output that can be read on the device itself. See Brunson 7-9, 49-51; Stephens 102-104; Sheehan 85-87. Other notetakers, with voice-only output, cost approximately \$1800. See Sheehan 84-85, 87.
- Ms. Brunson and Dr. Stephens each owns a Braille printer, which embosses Braille characters on pieces of paper. These cost between \$2000 and \$3000. See Brunson 45-46; Stephens 100-101.
- To convert a typed or printed page to Braille that can be printed on a Braille printer, the page can be scanned and run through "Braille translator" software, which costs

⁶ Additionally, the Bureau of Engraving and Printing is providing financial support toward the development of a smaller, cheaper currency reader. See Supplemental Declaration of Thomas A. Ferguson in Support of Defendant's Renewed Motion to Dismiss or for Summary Judgment ¶ 15 (Exhibit 6 hereto) [hereinafter Suppl. Ferguson Decl.]. This reader is to be pocket-sized and capable of mass production at a target retail price of no more than \$35.00. Id.

approximately \$500 or \$1000. Ms. Brunson owns this software. See Brunson 45-46. Dr. Stephens apparently owns it as well. See Stephens 100.

- Ms. Brunson and Dr. Stephens each owns a "Braille writer," which is like a typewriter in that the user types on a keyboard, and the device makes Braille impressions directly on a piece of paper. A Braille writer costs between \$250 and \$800. See Brunson 48-49; Stephens, 101-102.
- Dr. Stephens has software that can read a document aloud after the document has been scanned. See Stephens 95-96. At least two different versions of such software exist (produced by different companies) — one program called "Arkenstone," which sells for approximately \$1500 (which Dr. Stephens has), and another called "Kurzweil," which sells for approximately \$1200. See Stephens 97-98; Sheehan 81-82. Mr. Sheehan uses the Kurzweil software at work; his wife, who also has low vision, has the Kurzweil software at home. See Sheehan 81-83. (The Kurzweil software can identify the denomination of currency after scanning a bill. See Sheehan 81-82.)
- Mr. Sheehan owns a closed-circuit television set to magnify material for reading; he testified that one could now buy such a unit for approximately \$2100. See Sheehan 87-90 & Ex. 3.

All of the above-described evidence establishes beyond doubt that the blind and visually impaired have "meaningful access" to the use of the United States' existing currency. Their folding methods and other techniques allow them to use currency with ease, and this is reflected in the frequency with which they use currency and their preference for currency over other means of exchange. It is also reflected in the rarity of fraudulent activity on the part of cashiers and

other persons with whom the blind and visually impaired handle currency transactions. The existence of an assistive device for identifying currency — and the fact that plaintiffs own and use other, much more expensive assistive devices — further establishes that no changes in the currency are needed to provide "meaningful access" to the currency for blind and visually-impaired persons.

Thus, the plaintiffs here are seeking, not simply "meaningful access," but optimal access or specially-designed access to the use of currency. The Supreme Court in Alexander, however, rejected a contention that the Rehabilitation Act requires government benefits "precisely tailored" to the needs of disabled persons. 469 U.S. at 303. Like the Medicaid program at issue in Alexander, the existing U.S. currency provides a benefit to all persons, both sighted and visually-impaired. Like the plaintiffs in Alexander, the plaintiffs here contend that the benefit is not sufficient to meet the needs of the visually impaired — that the benefit must be expanded. But the Rehabilitation Act does not require such an expansion, and the evidence in this case shows that the plaintiffs do not need it.

In any event, if the existing currency scheme were held to deprive the blind and visually impaired of "meaningful access" to currency-based transactions, the rationale for the ruling would necessarily extend to a host of other materials and services provided by the federal government. For example, it could be argued that every type of printed material produced by the government — every handbook, manual, and application form — not currently provided in Braille or in some other accessible form deprives the blind and visually impaired of "meaningful access" to the information contained therein. And, to be consistent, the courts would have to hold that the blind and visually impaired are deprived of meaningful access to the use of food

stamps, which, like currency, are provided in different denominations. See, e.g., 7 C.F.R. § 274.10(j). The Rehabilitation Act simply was not intended to mandate such fundamental, far-reaching changes in the provision of universal government services.

II. Changing the Currency as Requested by Plaintiffs Would Impose Undue Burdens and, Thus, Would Not Constitute Reasonable Accommodation

Even if plaintiffs did not already have meaningful access to the existing U.S. currency, their Rehabilitation Act claim should be dismissed because the changes that they seek in the currency are beyond what the Act would require. Under the Act, an agency may be required to make accommodations for a disability, but need only make such accommodations as are "reasonable." See Alexander, 469 U.S. at 301. Moreover, requested accommodations are not "reasonable" if they would entail either "undue financial and administrative burdens" or a "fundamental alteration in the nature of a program." Southeastern Community College v. Davis, 442 U.S. 397, 410, 412 (1979); see School Bd. of Nassau County v. Arline, 480 U.S. 273, 287 n.17 (1987); Barth v. Gelb, 2 F.3d 1180, 1187 (D.C. Cir. 1993). In this case, the accommodations sought by the plaintiffs — extensive changes in United States currency — would impose "undue financial and administrative burdens," and would not, therefore, be reasonable. The changes sought by plaintiffs would require the expenditure of millions of dollars and thousands of man-hours of labor to redesign the currency, replace existing equipment, and produce the changed currency (above the amounts now expended to produce the existing currency). Additional costs would be incurred by the Federal Reserve System to adapt to the new currency. Moreover, expenditures by the private sector to accommodate these changes would rival — and may even exceed — the expenditures incurred by the government in making the changes.

The existing precedent on "reasonable accommodation" applies here only in miniature, for the Rehabilitation Act has never been used in attempting to compel such a vast and expensive undertaking. The Supreme Court long ago established the extent of a defendant's obligation to undertake accommodation in Southeastern Community College v. Davis. In Davis, a licensed practical nurse was denied admission to the school's nursing program because of a severe hearing disability, and the nurse alleged that that denial violated the Rehabilitation Act. The Supreme Court disagreed, rejecting plaintiff's contention that the school should have accommodated her disability by giving her "individual supervision by faculty members whenever she attend[ed] patients directly" and by dispensing with certain course requirements. 442 U.S. at 407-08. Section 504 of the Rehabilitation Act requires "evenhanded treatment" of handicapped persons, but does not require "affirmative efforts to overcome the disabilities caused by handicaps." Id. at 410. Thus, the Court held, a refusal to make "major adjustments" or to undertake "undue financial and administrative burdens" does not constitute "discrimination" under the Act. Id. at 412-13. The Court rejected the accommodations sought by the plaintiff, holding that "[s]uch a fundamental alteration in the nature of a program" is not required. Id. at 410.

The Supreme Court also addressed the reasonableness of requested accommodations in Alexander v. Choate. Alexander involved a state's decision to reduce, from twenty to fourteen, the number of inpatient hospital days that the state's Medicaid program would provide for each recipient in one year. Plaintiffs asserted, among other things, that the imposition of any durational limitation on inpatient coverage violated the Rehabilitation Act. 469 U.S. at 306. "The thrust of this challenge," the Court noted, was that "(1) the effect of such limitations falls most heavily on the handicapped and . . . (2) this harm could be avoided by the choice of other

Medicaid plans that would meet the State's budgetary constraints without disproportionately disadvantaging the handicapped." Id.

The Court rejected this challenge, primarily because of the expense of implementing the decisionmaking implicit in plaintiffs' argument. Specifically, the Court noted that to avoid imposing any durational limitation having an unduly disproportionate impact on the handicapped, a state would need to analyze the effect of every "across-the-board action affecting Medicaid recipients." Id. at 308. Such an analysis "would have to be further broken down by class of handicap," and "the State would then have to balance the harms and benefits to various groups to determine, on balance, the extent to which the action disparately impacts the handicapped." Id. "It should be obvious," said the Court, that the "administrative costs" of carrying out such an accommodation would be "well beyond" what the Rehabilitation Act requires. Id.

The accommodations requested — and held to be unreasonable — in Davis and Alexander are minuscule compared to the sweeping, costly changes in the United States currency sought by the plaintiffs here. As plead in their complaint, the plaintiffs seek —

a permanent injunction requiring that banknotes be designed to incorporate features which would make them accessible to people with visual disabilities, including but not limited to:

- (1) a low vision feature involving a single denomination numeral which is at least one half the size of banknote height, and is printed with black ink on a white surface so as to increase contrast levels;
- (2) denomination numerals indicated by Braille symbols and raised printing on the banknote itself.
- (3) varying the length, height, and color of banknotes by denomination.

See Complaint at 16-17 (emphasis added).⁷ Implementing these changes — particularly the production of notes in various sizes — would impose substantial financial and administrative burdens on the Bureau of Engraving and Printing in at least the following areas: research and consultation; planning the redesign of the currency; plate engraving and manufacture; purchasing and installing additional equipment; producing the new currency; public education; and replacing worn currency. See Ferguson Decl. ¶ 21.

Any redesign of the currency requires thorough research, consultation, and planning. Consultation must occur with other federal entities, such as the Secret Service and the Federal Reserve Board, and with interested members of the public. Id. ¶ 23. In relation to the redesign sought by the plaintiffs, considerable research and planning would be required to determine the appropriate sizes of the bills and to create a new, different design for each denomination. Id. ¶¶ 24-25. Implementing the Braille symbols and raised numerals requested by the plaintiffs would substantially complicate and lengthen this process. Id. ¶ 25. These initial tasks would take approximately three to six years and cost between one and two million dollars. Id. ¶ 26.

After designing the new currency, the Bureau would have to engrave new templates and manufacture new printing plates. A template would have to be engraved, by hand, for each denomination. Id. ¶ 27. Approximately half of the BEP's 455 plates would have to be replaced (given that the one-dollar bill, which, by statute, cannot be changed, accounts for about half of the Bureau's production). Id. ¶¶ 5, 28. This task would take approximately five to seven years —

⁷ Plaintiffs seem to have abandoned their request for Braille symbols on the currency; indeed, plaintiffs' attorney indicated during one of the depositions that he was unaware of any mention of Braille markings in the complaint. See Brunson 276. In any event, plaintiffs' own testimony indicates that imprinting Braille on currency would not be a practical means of making currency more accessible to the blind and visually impaired. See infra text at 24-25.

after completion of the research and design phase — and cost between 3 and 4 million dollars.

Id. ¶ 29.

The most costly impacts of implementing plaintiffs' redesign of the currency would occur in purchasing, installing, and operating additional equipment. The Bureau uses separate machinery to perform intaglio printing on the currency, to perform offset printing of new security features, to inspect the printed bills, and to add identifying marks (serial numbers, etc.) and package the completed bills. Id. ¶¶ 30-39. The Bureau's existing equipment is designed to accommodate the size of the existing printing plates, on which thirty-two bills are printed. Producing larger bills would entail printing fewer bills on each plate, thus requiring additional printing runs to maintain current production levels.⁸ Id. ¶¶ 31, 33. To perform those additional printing runs, the Bureau would have to acquire at least four additional intaglio presses and two additional offset presses. Id. ¶¶ 32, 34. The cost of these machines would be between 46 and 61 million dollars. Id.

As part of the production process, the Bureau uses automated equipment that inspects the bills in order to ensure accurate and uniform output. Changing the size of the currency, and producing different denominations in different sizes, would require not only changing the physical dimensions of the currency-handling portions of those machines, but also changing the software that governs the inspection process. Id. ¶ 35. Additionally, varying the sizes of the denominations would eliminate the ability to use the same inspection machines for all

⁸ Printing fewer bills on each plate would be much cheaper than varying the size of the printing plates by denomination, because the latter alternative would entail replacing half of the Bureau's existing presses to accommodate different-size plates, rather than only acquiring a few additional presses to perform additional printing runs. See Ferguson Decl. ¶ 31.

denominations; this loss of flexibility would require adding inspection capacity in order to maintain current production levels. Id. ¶ 36. Based on all of these considerations, implementing plaintiffs' currency redesign would require the Bureau to design, purchase, and install at least two new pieces of inspection equipment, at a total cost of between 16 and 21 million dollars. Id. ¶ 37.

After inspection, the printed sheets of currency run through another machine to print the serial numbers and other identifying marks, cut the sheets into individual bills, and package the completed currency. Id. ¶ 38. Producing bills of different sizes would require designing and purchasing new equipment (and new software) to perform these tasks. Id. ¶ 39. As with the inspection step, too, eliminating the flexibility of using every machine for every denomination would require increased capacity to maintain current production levels. Id. Thus, the Bureau would have to design, purchase, and install twenty new pieces of equipment for these tasks, at a total cost of between 100 and 130 million dollars. Id.

Acquiring all of this new equipment would, of course, involve preparing equipment specifications and requests for proposals, evaluating contract offers, and otherwise working with contractors. Id. ¶¶ 40-44. These procurement tasks would consume approximately 7,000 man-hours, over a period of several years, to acquire all of the above-described equipment. Id. ¶ 44. The Bureau would have to expend between 9 and 12 million dollars, in addition to the above-stated direct acquisition costs, to award and administer the contracts and prepare its work space for replacement and additional equipment. Id.

In addition to the costs of acquiring new equipment, implementing the redesign sought by the plaintiffs would increase the yearly cost of producing United States currency. More distinc-

tive currency-grade paper and more ink would be needed. Id. ¶ 45. Other production expenses would also increase, such as maintenance costs for the new equipment described above and additional man-hours for BEP's existing employees involved in production. Id. These increased production costs — the paper, the ink, and the other expenses — would total between 36 and 45 million dollars per year.⁹ Id. Additionally, new employees would be needed to operate the new equipment — a total of approximately 246 full-time equivalents, or another 15 to 20 million dollars per year. Id. ¶ 46.

Another very significant increase in yearly expenses would be the increased cost of replacing worn currency. Approximately 95% of the BEP's yearly production is attributable to the need to replace worn currency removed from circulation by the Federal Reserve System. Id. ¶ 15. Including the embossed numeral and the Braille symbol requested by the plaintiffs would cause the currency to wear out much faster, because the ink of the embossed numeral would rub off during circulation and the raised dots of the Braille symbol would wear away faster than the surrounding paper, rendering those features useless for blind persons. Id. ¶ 49; Supplemental Declaration of Thomas A. Ferguson in Support of Defendant's Renewed Motion to Dismiss or for Summary Judgment ¶ 9 (Exhibit 6 hereto) [hereinafter Suppl. Ferguson Decl.]. Braille, for

⁹ These figures do not include certain additional costs that the Bureau has not estimated, due to technical uncertainties and challenges, such as the costs of equipment for adding a Braille symbol, and the likely increased costs of packaging, handling, and storage due to variations in the thickness of each bill because of the addition of those features. See Ferguson Decl. ¶ 47. Although the Bureau has, in response to an interrogatory by the plaintiffs, provided an estimate of the costs to emboss a denomination numeral on each bill, see Suppl. Ferguson Decl. ¶ 9, those costs are omitted, for the sake of simplicity, from the expenses described in this memorandum. The Bureau's estimate of the costs of embossing a denomination numeral cannot simply be added to the estimated costs, provided earlier, for making the changes requested by the plaintiffs, because some of the former would be subsumed within the latter. See id. ¶ 8.

example, must be written on "heavy," "very thick" paper to "hold the dots" and to avoid being "rubbed out easily." See Brunson 63; Stephens 24-25, 118. If Braille were imprinted on "thin paper of the type common to printed books," the Braille "would not withstand the pressure of use," and "very quickly the dots . . . would be rubbed out." See Stephens 118. Even with the heavy paper on which Braille is normally printed, the dots sometimes become so worn as to be difficult or impossible to read. See Stephens 120. Thus, plaintiff Otis Stephens testified, "I'm not at all sure that trying to superimpose a braille symbol on the currency would actually work because of this thinness of the paper problem." See Stephens 144. Similarly, during internal discussions regarding the filing of this lawsuit and the drafting of the complaint, the then-president of ACB observed that "Braille markings and raised print [on currency would] wear down over time and become relatively indistinguishable from the texture of the note paper." See Brunson 274-280 & Ex. 16 (emphasis added).

Until the means of implementing an embossed numeral and/or a Braille symbol were determined and tested, it would be difficult to know precisely how much their inclusion would decrease the useful life of each bill. The Bureau believes, however, that including such features would reduce the life of each bill by at least fifty percent. See Ferguson Decl. ¶ 50. Assuming an even more conservative estimate of a forty percent reduction in the life of each bill — which is, perhaps, much too conservative in light of plaintiffs' own testimony — the increased production volume caused by including an embossed numeral and a Braille symbol on each bill (other than the \$1 bill) would increase the overall costs of producing the country's currency by between 92 and 109 million dollars per year. Id. ¶ 51.

Lastly, to introduce drastic changes in the currency such as those sought by the plaintiffs, the Bureau would have to undertake an extensive public-education campaign. Given that United States currency is widely used throughout the world, a worldwide public education campaign would be needed to familiarize users with the new currency and to advance public acceptance of the currency. Id. ¶ 48. An additional effort would be needed to prepare blind and visually-impaired persons to recognize and use the redesigned currency. For the 1996 redesign, which involved enlargement of the portrait and the addition of a watermark and a security thread, the Bureau expended approximately 50 million dollars on public education. Id. For the much more extensive changes requested by the plaintiffs here, the Bureau would have to spend between 70 and 90 million dollars on public education. Id.

In summary, implementing the currency redesign sought by the plaintiffs would require an extensive effort of several years' duration, affecting every BEP employee to one degree or another. Id. ¶¶ 26, 29, 43, 44, 53. Initial expenses attributable to the redesign (research, consultation, and redesign; engraving and manufacturing new printing plates; purchasing and installing new equipment; and public education) would amount to between 245 and 320 million dollars. Id. ¶ 53. This amount would exceed, by 26 to 101 million dollars, the Bureau's entire expenditure in producing currency during Fiscal Year 2001. Id. ¶ 6. Increased annual production costs due to the redesign would total between 143 and 174 million dollars — not counting the increased cost of producing each denomination in a different color and including a Braille symbol on each bill, nor the cost of increasing the Bureau's production capacity to meet the increased demand due to the shorter life of the redesigned notes. Id. ¶¶ 52, 55. Thus, plaintiffs'

redesign of the currency would increase the Bureau's annual cost of producing currency by at least 65% to 79%. Id. ¶ 52.¹⁰

The costs of implementing the changes sought here would also greatly exceed the costs of recent changes in the currency to improve counterfeit deterrence.¹¹ The Bureau of Engraving and Printing has engaged, or is engaging, in a "1996 redesign" and a "2004 redesign" of the currency. See Suppl. Ferguson Decl. ¶ 3. The 1996 redesign required an initial expenditure of approximately \$33.8 million for redesign, plate engraving, new equipment, etc., and it increased the Bureau's annual operating costs by about \$31.1 million. Id. ¶ 5. The 2004 redesign has required an initial outlay of approximately \$113 million, and has so far increased the Bureau's annual operating costs by about \$25.8 million. Id. ¶ 7. Obviously, therefore, making the changes sought in plaintiffs' complaint would be substantially more burdensome than all of the changes made in the currency during the last ten years — whose primary purpose has been to obey the Bureau's statutory mandate to produce currency "in the best manner to guard against counterfeits and fraudulent alterations." See 12 U.S.C. § 418.¹²

¹⁰ Indeed, the Bureau's recent experience with the 2004 redesign of the currency, described in the text immediately below, indicates that certain of these estimates, provided for purposes of this case in 2002, were overly conservative and considerably underestimated. See Suppl. Ferguson Decl. ¶ 2.

¹¹ These figures are included in accordance with the Court's finding, in its order denying defendant's earlier summary judgment motion, that the record lacked evidence regarding "expenditures that have been made to modify currency design and production for other purposes." See Memorandum Order, Mar. 31, 2003 (docket #14).

¹² The costs of the redesign sought by the plaintiffs, summarized in the immediately preceding paragraph, are given in 2002 dollars, whereas the costs of the 1996 and 2004 redesigns are given as of the year in which each expenditure was incurred (thus, for example, expenditures incurred for the 1996 redesign in 1999 are given in 1999 dollars, and expenditures incurred for
(continued...)

Given this monumental impact on its operations, the currency redesign sought by the plaintiffs would clearly impose "undue financial and administrative burdens" on the Bureau of Engraving and Printing, and a refusal to undertake this task is well within the Secretary of the Treasury's statutory discretion. Davis, 442 U.S. at 412; 12 U.S.C. § 418. The burdens described above far exceed the course adjustments held unreasonable in Davis and the analysis of Medicaid program changes held unduly burdensome in Alexander. 442 U.S. at 407-08, 412; 469 U.S. at 308.

Furthermore, plaintiffs' proposed redesign of the currency would have very substantial impacts on other persons and entities — specifically, the Federal Reserve System and the entire American public. The Fed, which issues and circulates the currency, is responsible for identifying worn and counterfeit bills and removing them from circulation. See Ferguson Decl. ¶ 54. Because these tasks are performed automatically by machinery, the issuance of redesigned bills in different sizes would require the Fed, at the very least, to adjust its equipment; at worst, the Fed would have to replace its equipment, if the largest redesigned bill exceeded the size parameters of its existing equipment. Id. The Bureau's costs of implementing plaintiffs' redesign would also fall upon the Fed, which would be responsible for reimbursing those costs. See 31 U.S.C. § 5143. Further, the Fed's ongoing costs of acquiring new currency from the Bureau would increase because of the reduction in the useful life of the redesigned bills, given the

¹²(...continued)

the 2004 redesign in 2005 are given in 2005 dollars). See Suppl. Ferguson Decl. ¶¶ 5, 7. Given that some costs of the 1996 and 2004 redesigns were incurred before 2002 and some were incurred after 2002, see id., inflation should have no significant overall effect on this comparison.

inclusion of the raised numeral and Braille symbol requested by the plaintiffs. See Ferguson Decl. ¶¶ 13, 49-51, 55.

The impact on the American public might well dwarf the impact on the BEP and the Federal Reserve System. Plaintiffs' proposed redesign would affect American individuals and businesses in countless ways. For example, automated teller machines and vending machines would have to be replaced or modified to accommodate bills of different sizes. Id. ¶ 57. Indeed, during an internal discussion regarding the filing of this lawsuit and the drafting of the complaint, a member of ACB's Advocacy Services Committee — which approved the filing of the complaint and reviewed its text before filing — opined that making each denomination a different size "really does pose an undue burden on business." See Brunson 91, 104-05, 228-29, 234-37 & Ex. 11. The life of every member of the public would be affected by plaintiffs' changes in the currency, such as in the need to adjust to the new currency and even to purchase new wallets. And, as noted already, all of the costs of the redesign, from the Bureau's initial and increased production costs to the Fed's increased costs and the costs of replacing or modifying business equipment, would ultimately be borne by the public, in higher banking fees, higher lending rates, and higher retail prices. See Ferguson Decl. ¶¶ 22, 56.

III. Plaintiffs Fail to Invoke any Waiver of Sovereign Immunity Applicable to Their Claims

Aside from defendant's unassailable position on the merits, this action should be dismissed for plaintiffs' failure to invoke any applicable statutory waiver of sovereign immunity. The United States as sovereign is immune from suit unless that immunity has been waived. See United States v. Mitchell, 445 U.S. 535, 538 (1980). Such a waiver must be "unequivocally

expressed in statutory text," and "will be strictly construed, in terms of its scope, in favor of the sovereign." Lane v. Peña, 518 U.S. 187, 192 (1996); see Department of the Army v. Blue Fox, Inc., 525 U.S. 255, 261 (1999). The plaintiff bears the burden of establishing that an applicable waiver of sovereign immunity has occurred, and must plead the basis for such a waiver in his complaint. See Holloman v. Watt, 708 F.2d 1399, 1401 (9th Cir. 1983) ("The party who sues the United States bears the burden of pointing to . . . an unequivocal waiver of immunity."); Uberoi v. EEOC, 180 F. Supp. 2d 42, 45 (D.D.C. 2001) ("[A]ny party bringing an action against the United States has the burden of alleging that the government has waived its immunity with regard to the claim at issue."). If sovereign immunity has not been waived, the court lacks subject matter jurisdiction. See FDIC v. Meyer, 510 U.S. 471, 475 (1994).

Plaintiffs in this case invoke only two statutes as bases for the Court's jurisdiction in this action: 28 U.S.C. § 1331 — the federal question statute — and "Section 504 of the Rehabilitation Act, 29 U.S.C. § 794." See Complaint ¶ 9. It is well-settled that the federal question statute does not waive sovereign immunity. See, e.g., Swan v. Clinton, 100 F.3d 973, 981 (D.C. Cir. 1996). Nor, as shown below, does the Rehabilitation Act waive sovereign immunity for actions against federal entities under section 504.

As initially enacted in 1973, Section 504 only prohibited discrimination in programs or activities "receiving Federal financial assistance." 29 U.S.C. § 794(a). In 1978, the statute was amended to prohibit discrimination, additionally, in federal programs or activities; the statute now reads:

No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving

Federal financial assistance or under any program or activity conducted by any Executive agency

Id. (emphasis added). When it inserted the language regarding federal programs and activities, Congress also added a provision stating that the "remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance." 29 U.S.C. § 794a(a)(2) (emphasis added). Neither in 1978 nor at any time since then, however, has the Rehabilitation Act stated what remedies, if any, are available to persons seeking relief under Section 504 in relation to "any program or activity conducted by [an] Executive agency."

Given the lack of any provision regarding remedies that can apply to this case, the Rehabilitation Act does not waive sovereign immunity for plaintiffs' claims under Section 504. In Lane v. Peña, the enrollment of a cadet at the Merchant Marine Academy had been terminated because his diabetes made him ineligible for a commission. 518 U.S. 187 (1996). Alleging that his termination violated the Rehabilitation Act, the cadet sought compensatory damages, along with other relief. Plaintiff asserted that 29 U.S.C. § 794a(a)(2) — quoted immediately above — waived sovereign immunity for damages, but the Supreme Court rejected that contention. A waiver of sovereign immunity, the Court held, "must extend unambiguously" to the plaintiff's claim, and the Rehabilitation Act's provision of remedies "for violations of § 504(a) . . . 'by any recipient of Federal assistance or Federal provider of such assistance' . . . makes no mention whatsoever of 'program[s] or activit[ies] conducted by any Executive agency.'" Id. at 192. The Court also rejected a contention that the Department of Transportation was a "Federal provider" within the meaning of section 794a(a)(2):

The Department of Transportation, whatever its other activities, is not a "Federal provider" of financial assistance with respect to the Merchant Marine Academy . . . Lane argues that [the statute's] reference to "Federal provider[s]" is not limited . . . to the funding activities of those providers, but instead reaches "any act" of an agency that serves as a "Federal provider" in any context. . . . In light of our established practice of construing waivers of sovereign immunity narrowly in favor of the sovereign, however, we decline Lane's invitation to read the statutory language so broadly.

Id. at 194-95 (emphasis in original).¹³

Moreover, the First Circuit has squarely held that Section 504 does not itself allow a plaintiff to sue the federal government in relation to a federal program or activity. In Cousins v. Secretary of U.S. Dep't of Transp., the plaintiff challenged, under Section 504, the Department of Transportation's hearing standards for commercial truck drivers. 880 F.2d 603 (1st Cir. 1989) (en banc). The First Circuit first observed, in an en banc decision by then-Judge Breyer, that the Rehabilitation Act expressly provides for suits against "any recipient of Federal assistance or Federal provider of such assistance" (in Section 504) and for "actions against the federal government as an employer" (in Section 501). Id. at 605 (emphasis added). The court held, however, that "even though § 504's substantive standard applies . . . to 'any program or activity conducted by any Executive agency' . . . the Act is silent about whether and how a person injured by the government as regulator is to enforce the Act against the government." Id. (emphasis in original). The court rejected plaintiff's contention that he could sue the government directly under Section 504 pursuant to an implied private right of action theory. Id. at 605-07 ("Congress

¹³ The fact that defendants in Lane chose not to dispute the propriety of injunctive relief, see 518 U.S. at 190, does not foreclose asserting, in this case or in any other, that the Rehabilitation Act does not waive sovereign immunity for injunctive relief or any other type of relief. See Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 183 (1979) ("Questions which 'merely lurk in the record' . . . are not resolved, and no resolution of them may be inferred.")

has not said or suggested, anywhere in the Rehabilitation Act or its legislative history, that the Act was meant to give rise to a right of action against the government as a regulator . . ."). Rather, the court concluded, only the Administrative Procedure Act — not the Rehabilitation Act itself — provides such a right of action. Id. 605-09.¹⁴

In short, neither the Rehabilitation Act nor the federal question statute waives sovereign immunity for plaintiffs' claims in this case, and the complaint does not refer to any other applicable statutory basis for such a waiver.

IV. Two of Plaintiffs' Prayers for Relief Must Be Dismissed or Stricken

If this entire case were not dismissed or disposed of on summary judgment, two of plaintiffs' prayers for relief would have to be dismissed or stricken. See generally Crawford v. Bell, 599 F.2d 890, 893 (9th Cir. 1979) (upholding dismissal of certain prayers for relief but not others); Fed. R. Civ. P. 12(f) (motion to strike). First, their request for an order requiring the inclusion of certain specific features in a redesign of the currency must be dismissed because the specifics of any redesign required by the Rehabilitation Act would be within the sole discretion of the Secretary of the Treasury. Second, plaintiffs' request for an order requiring a redesign of the one-dollar bill should be dismissed because Congress has expressly and specifically prohibited redesign of the one-dollar bill. These arguments, which defendant made in his motion to dismiss in May 2003, are further bolstered now by testimony from plaintiffs' own witnesses,

¹⁴ Cousins is instructive in relation to whether the Rehabilitation Act constitutes a waiver of sovereign immunity in cases of this nature, notwithstanding that the court characterized the question before it as whether a private right of action exists rather than whether immunity has been waived. If there is no explicit waiver of sovereign immunity, then it would be futile to consider whether a private right action exists.

and by Congress's repetition, during each of the intervening three fiscal years, of the prohibition against redesigning the one-dollar bill.

A. The Specific Nature of Any Redesign Would Be Within the Sole Discretion of the Secretary of the Treasury

In their prayers for relief, plaintiffs seek not only "a permanent injunction prohibiting Defendant[] from continuing to manufacture banknotes in the present manner," but also —

a permanent injunction requiring that banknotes be designed to incorporate features which would make them accessible to people with visual disabilities, including but not limited to:

- (1) a low vision feature involving a single denomination numeral which is at least one half the size of banknote height, and is printed with black ink on a white surface so as to increase contrast levels;
- (2) denomination numerals indicated by Braille symbols and raised printing on the banknote itself.
- (3) varying the length, height, and color of banknotes by denomination.

See Complaint at 16-17 (emphasis added). Further emphasizing that they seek to compel specific changes, plaintiffs list certain recommendations allegedly made in a study by the National Academy of Sciences in 1995 — that is, varying banknote size and color by denomination, and including "a high contrast denomination numeral . . . at least 1/2 the size of banknote height" — then assert that "[t]his litigation seeks to compel Defendants to implement [those] recommendations." Id. ¶¶ 4, 6. In other words, plaintiffs ask the Court not only to enjoin continuing issuance of the currency as presently designed, but also to order the inclusion of certain specific features in the new currency. To some extent, therefore, plaintiffs are asking the Court to participate in the redesign of the currency.

As plaintiffs acknowledge, however, the design of United States currency is, pursuant to the Federal Reserve Act, "solely within the discretion of the Secretary of the Treasury." *Id.* ¶ 22; 12 U.S.C. § 418 (Federal reserve notes "shall be in form and tenor as directed by the Secretary"). Indeed, the testimony of plaintiffs' own witnesses is to the same effect, even to the point of apparently eschewing the complaint's prayer for the inclusion of specific design features. The American Council of the Blind itself testified, through its Rule 30(b)(6) designee, that the complaint "doesn't necessarily [seek to] require that [all of the changes that it lists] be done," and that, "ultimately, it's the government's job to figure out exactly how the currency should be changed." *See* Brunson 181. Similarly, plaintiff Patrick Sheehan testified: "I think that ACB, to prescribe a solution [regarding the currency] would not be appropriate for the organization, because first of all, we're not experts in currency design particularly." *See* Sheehan 45-46. For all of these reasons, assuming the existing United States currency were somehow found to violate the Rehabilitation Act (and that this Court had jurisdiction), the Court could only enter declaratory judgment to that effect and enjoin the violation. The Court should not order the inclusion of any specific features in a redesign of the currency, and plaintiffs' prayer for relief to that effect must be dismissed.

B. Congress Specifically and Expressly Prohibits Any Redesign of the One-Dollar Bill

Another of plaintiffs' prayers for relief seeks "a permanent injunction mandating that the \$1 banknote be redesigned to incorporate new low vision features as mandated by Congress." *See* Complaint at 17. However, the current-year appropriations act for the Department of the Treasury provides that "[n]one of the funds appropriated [therein] or otherwise available to the

Department of the Treasury or the Bureau of Engraving and Printing may be used to redesign the \$1 Federal Reserve note." See Pub. L. No. 108-447, § 214, 118 Stat. 2809, 3241 (2004) ("for the fiscal year ending September 30, 2005"). Identical language has appeared in at least the five immediately preceding appropriations acts — and in the three such acts that have been passed since defendant filed his original motion to dismiss in this action. See Pub. L. No. 108-199, § 214, 118 Stat. 3, 320 (2004); Pub. L. No. 108-7, § 117, 117 Stat. 11, 439 (2003); Pub. L. No. 107-67, § 117, 115 Stat. 514, 525 (2001); Pub. L. No. 106-554, § 117, 114 Stat. 2763 (2000); Pub. L. No. 106-58, § 117, 113 Stat. 430, 441 (1999).¹⁵ Therefore, even if the existing currency were found to violate the Rehabilitation Act as a general matter, this specific, repeatedly-reenacted prohibition would easily override, in relation to the one-dollar bill, the more general anti-discrimination provisions of the Rehabilitation Act. See Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384 (1992) ("[I]t is a commonplace of statutory construction that the specific governs the general."); Busic v. United States, 446 U.S. 398, 406 (1980) ("[A] more specific statute will be given precedence over a more general one, regardless of their temporal sequence.").

Plaintiffs not only fail to recognize that the prohibition in the current appropriations act forecloses redesigning the one-dollar bill; they also contend that a statement in a 1999 congressional committee report actually requires redesigning the one-dollar note. See Complaint ¶ 45. In that report, the conferees on an earlier appropriations bill wrote that they were "concerned about the cost associated with producing special anti-counterfeiting properties for the estimated

¹⁵ The same language also appears in the appropriation bill for Fiscal Year 2006, which is currently pending in Congress. See H.R. 3058, 109th Cong. § 213 (2005); see also S. Rep. No. 109-109 (2005).

6 billion circulating \$1 Federal Reserve Notes," but that they "believe[d] it [was] important to update the currency, such as making minor modifications to assist the visually impaired." H.R. Conf. Rep. No. 105-789, at 76 (1998), reprinted in 144 Cong. Rec. H9870, H9890 (daily ed. Oct. 7, 1998). Thus, the conferees purported to "direct the Department of the Treasury and the Bureau of Engraving and Printing . . . to only make minor design enhancements to the \$1 note for the visually impaired and elderly population, provided it has no effect on the use of \$1 Federal Reserve Notes with existing bill accepting machinery." Id.

This statement cannot, however, be read as requiring the redesign that plaintiffs seek. First, a statement in a committee report is not legislation; such a statement cannot, itself, establish a legal mandate. See Lincoln v. Vigil, 508 U.S. 182, 192 (1993) ("indicia in committee reports and other legislative history as to how . . . funds should or are expected to be spent do not establish any legal requirements on the agency") (internal quotation marks omitted); American Hospital Ass'n v. NLRB, 499 U.S. 606, 616 (1991) (statements in committee reports do not have "the force of law"). Second, the bill to which this conference report relates (which did not, in any event, become law) contains no language regarding a redesign of the currency. See H.R. Conf. Rep. No. 105-789, at 1-62 (setting forth text of H.R. 4104), reprinted in 144 Cong. Rec. at H9871-H9886. Moreover, no legislative enactment during that fiscal year, or since, has required any redesign of currency for the visually impaired. See Pub. L. No. 105-277, 112 Stat. 2681 (1998) (FY 1999 appropriations act). Third, even if the bill to which the above-quoted conference report relates had required the Secretary of the Treasury to redesign the one-dollar bill for the visually impaired, it would have been overridden by the intervening appropriations acts,

which have consistently forbidden any redesign regardless of its purpose. See Clarke v. United States, 915 F.2d 699, 701 (D.C. Cir. 1990) (one appropriations act "superseded" by next act).

CONCLUSION

Accordingly, defendant's renewed motion to dismiss or for summary judgment should be granted, and this action dismissed with prejudice.

If this entire action were not dismissed or disposed of on summary judgment, the Court should (1) dismiss or strike the prayer for relief in which plaintiffs seek the inclusion of specific features in a redesign of the currency; and (2) dismiss or strike the prayer for relief in which plaintiffs seek a redesign of the one-dollar bill.

Dated: August 31, 2005

Respectfully submitted,

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COUNSEL FOR DEFENDANT

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN COUNCIL OF THE BLIND, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 JOHN W. SNOW, Secretary of the Treasury,)
)
 Defendant.)

CIVIL ACTION NO.
1:02CV00864 JR

DEFENDANT'S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7(h), the defendant, by his undersigned counsel, submits the following statement of material facts as to which there is no genuine issue, in relation to his renewed motion for summary judgment:

The Bureau of Engraving and Printing

1. The Secretary of the Treasury has delegated the design development and the production of Federal Reserve Notes, our national currency, to the Bureau of Engraving and Printing ("Bureau" or "BEP"), which is solely responsible for these tasks. See Declaration of Thomas A. Ferguson ¶ 3 [hereinafter Ferguson Decl.].

2. The Bureau produces approximately 36 million Federal Reserve Notes each day, five days per week. Billions of notes are produced each year. Id. ¶ 5.

3. The BEP produced just over 7 billion Federal Reserve Notes in Fiscal Year 2001, 9 billion in 2000, and 11.4 billion in 1999. Of the 7,004,800,000 notes produced in 2001, the Bureau produced 4,748,800,000 one-dollar bills, 915,200,000 five-dollar bills, 652,800,000

ten-dollar bills, 486,400,000 twenty-dollar bills, and 201,600,000 one-hundred-dollar bills. Id.
¶ 5.

4. Over the years, about one-half of the Bureau's production consists of one-dollar bills.
Id. ¶ 5.

5. During Fiscal Year 2001, the BEP expended approximately \$219,240,000 in producing
currency. Additionally, \$29,000,000 was spent on capital investments, and \$9 million on
research and development. Id. ¶ 6.

6. Bureau operations are financed by a revolving fund established in 1950 pursuant to
Public Law 81-656. The revolving fund is reimbursed for all direct and indirect costs of
operations, through the sales of Bureau products. Id. ¶ 7.

7. In 1977, Congress expanded the Bureau's revolving fund to allow the Bureau to
include, in the prices charged for its products, amounts sufficient to fund capital investments. Id.
¶ 7.

8. All of the Bureau's costs of designing and producing Federal Reserve Notes are
covered by the revolving fund. Id. ¶ 7.

9. The design of U.S. currency occurs at a BEP facility in Washington, D.C., and
production occurs at BEP facilities in Washington, D.C., and Fort Worth, Texas. Id. ¶ 4.

The Federal Reserve System

10. The Federal Reserve System ("FRS" or "System") consists of the Board of Governors,
an agency of the federal government composed of members appointed by the President, which
oversees the activities of the Federal Reserve Banks; twelve regional Federal Reserve Banks,

which act collectively as our nation's central bank; and membership in the System for private commercial banks. Id. ¶ 10.

11. The Federal Reserve Board, rather than the BEP, issues Federal Reserve Notes to the Federal Reserve Banks. The Federal Reserve Banks, in turn, distribute Federal Reserve Notes to the public through the nation's depository institutions. Id. ¶ 11.

12. The Federal Reserve System purchases Federal Reserve Notes from the BEP at cost of production. The Federal Reserve Banks sell the notes to depository institutions at face value. Id. ¶ 13.

13. The Federal Reserve System detects worn and counterfeit Federal Reserve Notes and withdraws them from circulation. The FRS destroys worn notes, and forwards counterfeit notes to the United States Secret Service within the Department of the Treasury. Id. ¶ 14.

14. Approximately 95% of the Federal Reserve Notes produced by the BEP are used to replace notes withdrawn from circulation. The Federal Reserve Banks withdraw almost 34 million Federal Reserve Notes each day. Id. ¶ 15.

15. In Fiscal Year 2001, the Federal Reserve Banks withdrew and destroyed 7,727,626,921 Federal Reserve Notes (8,510 tons), with a face value in excess of \$86 billion. Id. ¶ 15.

16. When a new currency design is placed in circulation, the FRS begins the withdrawal and destruction of the old design currency. Id. ¶ 15.

Past Currency Modifications and Their Costs

17. During the last decade, the Bureau has conducted two major redesigns of the currency, primarily to incorporate technological advances in preventing counterfeiting and

fraudulent alteration. These are known as the "1996 redesign" and the "2004 redesign," although some denominations, during the course of each redesign, were first issued before or after the year stated. See Supplemental Declaration of Thomas A. Ferguson in Support of Defendant's Renewed Motion to Dismiss or for Summary Judgment ¶ 3 [hereinafter Suppl. Ferguson Decl.].

18. The 1996 redesign involved the \$5, \$10, \$20, \$50, and \$100 notes. This redesign included the use of a watermark portrait on each note, an embedded security thread, microprinted words, and color-shifting ink. The 1996 redesign also included (1) a large denomination numeral on a solid, unprinted background, to facilitate recognition by persons with low vision, and (2) a print feature detectable only under infrared illumination, with a distinct pattern for each denomination, to facilitate the development of a new hand-held currency reader for the blind. Id. ¶ 4.

19. The approximate costs of the 1996 redesign were as follows:

Research, consultation, and redesign	\$ 1,527,259
Plate engraving and manufacture	\$ 4,500,000
Purchasing and installing additional equipment	
Inspection equipment	\$ 1,119,622
In-house contract expenses	\$ 195,000
Site preparation	\$ 90,000
Public education	\$ 26,342,198
Total initial costs	\$ 33,774,079
Increased production costs	\$ 31,148,771 (per year)
New personnel costs	\$ 0 (zero)

Replacing prematurely worn currency	\$ 0 (zero)
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Total increased annual costs	\$ 31,148,771
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Id. ¶ 5.

20. Expenditures for the 1996 redesign were made over a period of eight years, from 1992 through 2000. The figures stated in the immediately preceding paragraph are given as of the year in which each expenditure was incurred; thus, for example, expenditures incurred in 1999 are given in 1999 dollars. Id. ¶ 5.

21. The 2004 redesign involves the \$10, \$20, \$50, and \$100 notes. The redesigned \$20 and \$50 notes have been issued, and the \$10 note is scheduled to be issued in early 2006. Issuance of the redesigned \$100 note has not yet been scheduled. This redesign includes more microprinting, small yellow denomination numerals on the back of each note, and greater complexity, in addition to incorporating the watermark, security thread, and color-shifting ink of the earlier design. The 2004 redesign also includes background color differences unique for each denomination, to facilitate distinguishing among the denominations. Id. ¶ 6.

22. The approximate costs of the 2004 redesign have been as follows, as of July 31, 2005:

Research, consultation, and redesign	\$ 13,175,357
Plate engraving and manufacture	\$ 5,000,000
Purchasing and installing additional equipment	
Six Simultan offset presses	\$ 38,094,701
In-house contract expenses	\$ 275,000
Site preparation	\$ 6,100,000
Public education	\$ 50,392,147

Total initial costs	\$ 113,037,205
Increased production costs	\$ 18,834,068 (per year)
New personnel costs	\$ 6,948,245 (per year)
Replacing prematurely worn currency	\$ 0 (zero)
Total increased annual costs	\$ 25,782,313

Id. ¶ 7.

23. Expenditures for the 2004 redesign began in 2000, and are ongoing. The figures stated in the immediately preceding paragraph are given as of the year in which each expenditure was incurred; thus, for example, expenditures incurred in 2005 are given in 2005 dollars. Given that the implementation of the 2004 redesign is ongoing, the above figures include certain expenditures incurred in relation to all denominations included in the redesign, but do not include certain other, future expenditures specific to the \$10 and \$100 denominations. Id. ¶ 7.

Changes Sought in the Complaint: Ramifications for BEP

24. Implementing the currency redesign sought in the complaint in this action would entail financial and administrative burdens in the following areas: research and consultation; planning the redesign; plate engraving and manufacture; purchasing and installing additional equipment; producing the currency; public education; and replacing worn currency. See Ferguson Decl. ¶ 21.

25. All of the costs of implementing the changes sought in plaintiffs' complaint would be passed to the Federal Reserve System, which, in turn, would pass those costs to its member banks and other private financial institutions. Banks and other financial institutions would then recover those costs from their commercial and individual customers. Id. ¶ 22.

A. Research, consultation, and redesign

26. The introduction of redesigned banknotes requires time for consultation with interested entities, including the U.S. Secret Service, the Federal Reserve Board, and the Department of the Treasury. Id. ¶ 23.

27. Implementing the currency redesign sought in the complaint would involve consultation with external focus groups. Id. ¶ 23.

28. The size of each denomination would be a key issue to be determined in implementing the currency redesign sought in plaintiffs' complaint. After determining the size of each denomination, the process of designing each denomination would begin. Id. ¶ 24.

29. Designing different sizes of currency would significantly complicate and lengthen the redesign process, given that the use of different sizes would prevent applying the same design decisions to all denominations. Id. ¶ 25.

30. The redesign process would also be complicated and lengthened by the need to determine how to implement the Braille symbols and the raised printing sought in the complaint. Id. ¶ 25.

31. These initial tasks in implementing the redesign sought in the complaint — that is, from size determination to finalizing the design — would take approximately three to six years. Research, consultation, and design would cost between one and two million dollars. Id. ¶ 26.

B. Plate engraving and manufacture

32. Producing redesigned Federal Reserve Notes requires engraving and manufacturing new printing plates. A template of the plates for each denomination is engraved by hand, and metallic printing plates are manufactured based on the hand-engraved templates. BEP employees

engrave the templates by hand, and the plates are manufactured in-house by BEP's craftsmen. Id. ¶ 27.

33. The Bureau has approximately 455 printing plates that are presently used in the production of currency. Implementing the redesign sought in the complaint would require replacing approximately one-half of the Bureau's existing currency plates (given that the one-dollar bill, which would not be changed, accounts for approximately half of the Bureau's production). Id. ¶ 28.

34. The engraving and manufacture of new printing plates for the redesign sought in the complaint — from the start of engraving experimental designs to the delivery of all new plates necessary to produce the current numbers of each denomination — would take approximately five to seven years. Engraving and manufacturing the new plates would cost between 3 and 4 million dollars. Id. ¶ 29.

C. Purchasing and installing additional equipment

35. The Bureau uses equipment to produce, inspect, and package currency at its production facilities. To implement the currency redesign sought in the complaint, the Bureau would have to acquire additional production equipment, and would have to replace half of its inspection equipment and half of its packaging equipment. Id. ¶ 30.

36. The Bureau's existing production equipment is designed to accommodate the size of the existing printing plates, which currently print 32 notes per sheet of currency paper. Id. ¶ 31.

37. In order to avoid the need to replace at least half of the Bureau's existing production equipment (which would entail designing, purchasing, and installing all new equipment), the

printing plates for the redesigned currency would have to be the same size as the plates now in use. Id. ¶ 31.

38. Because the newly-designed bills would be larger than the existing bills, fewer bills would fit on each printing plate, requiring additional printing runs to maintain current production levels. Id. ¶ 31.

39. In order to perform additional printing runs, the Bureau would have to acquire additional production equipment to implement the redesign sought in the complaint. Id. ¶ 31.

40. To implement the currency redesign sought here, the Bureau's facility at Washington, D.C., would have to procure at least two additional intaglio presses, and the Fort Worth facility would have to procure at least two additional intaglio presses. The cost of acquiring those four additional intaglio presses would be between 30 and 40 million dollars. Id. ¶ 32.

41. Adding the new anti-counterfeiting features to the most recent design of the currency requires running each sheet of currency through an additional (offset) printing process, using new, sheet-fed equipment which the Bureau has already acquired. Id. ¶ 33.

42. The redesign sought in plaintiffs' complaint would entail printing fewer bills on each sheet, thus increasing the need for the new offset printing equipment in order to maintain current production levels. Id. ¶ 33.

43. To implement the redesign requested in the complaint, both the Washington, D.C., facility and the Fort Worth facility would each have to procure one additional offset printing press to add the new anti-counterfeiting features to the redesigned bills. The cost of acquiring those two additional offset presses would be between 16 and 21 million dollars. Id. ¶ 34.

44. As part of the production process, the Bureau uses equipment to inspect the bills in order to ensure accurate and uniform output. This equipment examines each bill automatically, using software written for the Bureau by a federal contractor. Id. ¶ 35.

45. Changing the size of the currency, and producing different denominations in different sizes, would require not only changing the physical dimensions of the currency-handling portions of the inspection equipment, but also changing the software that governs the inspection process. Id. ¶ 35.

46. Varying the sizes of the denominations would eliminate the ability to use the same inspection machines for all denominations. This loss of flexibility would require adding inspection capacity in order to maintain current production levels. Id. ¶ 36.

47. To implement the currency redesign sought in the complaint, the Bureau would have to design, purchase, and install at least one new piece of inspection equipment for its Washington, D.C., facility and at least one new piece of inspection equipment for its Fort Worth facility. The cost of acquiring those two additional inspection machines would be between 16 and 21 million dollars. Id. ¶ 37.

48. After inspection, the bills run through another printing process to add the serial numbers and other identifying marks. The same machines that print serial numbers and identifying marks then cut and package the currency, because security and accountability considerations dictate that the bills be packaged in numerical sequence. Id. ¶ 38. Producing bills of different sizes would require designing and purchasing new equipment (and new software) to add serial numbers and identifying marks and to cut and package the currency. Id. ¶ 39.

49. Eliminating the flexibility of using every machine for every denomination, to perform the tasks described in the immediately preceding paragraph, would require increased capability to maintain current production levels, and replacing existing equipment with more flexible equipment. Id. ¶ 39.

50. To implement the currency redesign requested in the complaint, the Bureau would have to design, purchase, and install ten new pieces of equipment, at each of its production facilities, to print serial numbers and identifying marks and to cut and package the currency. The cost of acquiring those twenty new pieces of equipment would be between 100 and 130 million dollars. Id. ¶ 39.

51. In addition to the above-stated figures for purchasing additional equipment, acquiring the necessary equipment would entail significant contracting costs. The Bureau would have to undertake a lengthy procurement process for each type of redesigned equipment needed to implement the currency redesign sought in plaintiffs' complaint. Approximately 22 BEP employees, devoting approximately 7,000 man-hours, would be required for this entire process. Id. ¶¶ 40- 44.

52. Designing new equipment to produce the redesigned currency would cost between 162 and 212 million dollars in contractor payments. Additionally, the Bureau would expend between \$1.4 and 2 million in-house to award and administer contracts for the new equipment. A further expenditure of between \$7.6 and 10 million could be expected for site preparation for the new and additional equipment. Id. ¶ 44.

D. Production of the currency

53. Producing notes of different (and larger) sizes, in different colors, with an embossed numeral and a Braille symbol, would entail costs that are not incurred in producing the existing currency. Id. ¶ 45.

54. Producing larger bills would require more of the specialized inks used in producing currency. Id. ¶ 45.

55. Producing the redesigned currency would mean purchasing more of the distinctive paper used for United States currency, both because larger bills would require more paper and because more of each sheet would be discarded in the production process (given that the size of each sheet of paper would remain the same, to avoid the need to replace approximately half of the Bureau's existing production machinery). Id. ¶ 45.

56. Other production expenses would also increase due to the currency redesign requested in the complaint, such as maintenance costs for the new equipment described above, additional man-hours for BEP's existing employees involved in production, and depreciation on the new equipment. Id. ¶ 45.

57. The above-described increases in production costs would total between 36 and 45 million dollars per year, at least. Id. ¶ 45.

58. The need to acquire additional equipment would also give rise to a need for additional personnel to operate the new equipment. For the new intaglio printing equipment, approximately 30 additional plate printers and 15 non-craft personnel would have to be recruited and hired. For the new offset presses, approximately 22 additional offset pressmen and 11 non-craft personnel would have to be recruited and hired. For the new currency inspection equipment, approximately

23 bookbinders and 8 non-craft personnel would have to be recruited and hired. For the new numbering and packaging equipment, approximately 14 offset pressmen, 73 bookbinders, and 50 non-craft personnel would have to be recruited and hired. Id. ¶ 46.

59. In summary, to operate the new equipment needed for the currency redesign sought in plaintiffs' complaint, the Bureau would have to recruit and hire approximately 30 plate printers, 36 offset pressmen, 96 bookbinders and 84 non-craft personnel — for a total of 246 full-time equivalents at a total cost of approximately 15 to 20 million dollars per year. Id. ¶ 46.

60. The above figures do not include certain other increases in the cost of production due to the redesign requested in the complaint. For example, including a Braille symbol on each bill would require newly-designed equipment to imprint a Braille symbol on currency paper. Embossing a denomination numeral and adding a Braille symbol could result in additional, as-yet unknown packaging, handling, and storage expenses given that the embossed area, the Braille symbol, or both would increase the thickness of the note in that location. Id. ¶ 47; Suppl. Ferguson Decl. ¶ 9.

E. Public education

61. An extensive public education campaign would be required to advance public acceptance of the redesigned currency. See Ferguson Decl. ¶ 48.

62. The extensive, worldwide public education necessitated by the change in sizes and other new features sought in the complaint would cost between 70 and 90 million dollars. Id. ¶ 48.

F. Replacing worn currency

63. Two of the changes sought in the complaint — the printing of a "raised" (i.e., embossed) denomination numeral and the inclusion of a Braille symbol on each note — would cause the new currency to wear out faster than the existing currency. The additional ink on the embossed numeral would rub off, and the raised dots comprising the Braille symbol would wear away faster than the surrounding paper. Additional wear would result from daily handling as well as machine processing at banks and in vending machines. Id. ¶ 49; Suppl. Ferguson Decl. ¶ 9.

64. A Federal Reserve Note of the redesign sought in plaintiffs' complaint would no longer be fit for circulation — and would have to be withdrawn and replaced — when the embossed numeral or the Braille symbol had become sufficiently worn that a blind person could no longer recognize either of those features. See Ferguson Decl. ¶ 49.

65. Currently, on average, a five-dollar bill is withdrawn after approximately two years in circulation, a ten-dollar bill is withdrawn after approximately three years in circulation, a twenty-dollar bill is withdrawn after approximately four years in circulation, and both a fifty-dollar bill and a one-hundred dollar bill are withdrawn after approximately nine years in circulation. Id. ¶ 50.

66. Braille must be written on heavy, very thick paper in order to hold the dots and to avoid their being rubbed out easily. See Brunson 63; Stephens 24-25, 118.¹

¹ A citation to "Brunson," "Stephens," or "Sheehan," followed by a number, is a reference to that witness's deposition and page number.

67. If Braille were imprinted on thin paper of the type common to printed books, the Braille would not withstand the pressure of use, and very quickly the dots would be rubbed out. See Stephens 118.

68. Even with the heavy paper on which Braille is normally printed, the dots sometimes become so worn as to be difficult or impossible to read. See Stephens 120.

69. According to one of the plaintiffs, superimposing a braille symbol on the currency may not actually work because of the thinness of the paper. See Stephens 144.

70. According to the then-president of ACB, "Braille markings and raised print [on currency would] wear down over time and become relatively indistinguishable from the texture of the note paper." See Brunson 274-280 & Ex. 16 (emphasis added).

71. The inclusion of an embossed numeral and a Braille symbol would reduce the useful (that is, blind-readable) life of each bill by at least forty percent. Id. ¶¶ 50, 51.

72. Based on the currency needs of the Federal Reserve System during Fiscal Year 2001, the increased production volume caused by including an embossed numeral and a Braille symbol on each bill (other than the \$1 bill) would increase by between 92 and 109 million dollars per year the overall costs of producing the country's currency. Id. ¶ 51.

G. Summary

73. The following table summarizes some of the costs, described above, of the currency changes sought in plaintiffs' complaint:

Research, consultation, and redesign	\$1-2 million
Plate engraving and manufacture	\$3-4 million
Purchasing and installing additional equipment	

Intaglio presses	\$30-40 million
Offset presses	\$16-21 million
Inspection equipment	\$16-21 million
Numbering, cutting, and packaging equipment	\$100-130 million
In-house contract expenses	\$1.4-2 million
Site preparation	\$7.6-10 million
Public education	\$70-90 million
Total initial costs	\$245 - 320 million
Production costs	\$36-45 million (per year)
New personnel costs	\$15-20 million (per year)
Replacing prematurely worn currency	\$92-109 million (per year)
Total increase in annual costs	\$143 - 174 million

Id. ¶ 52.

74. The above table does not include potential costs that are not estimated above, such as the increased cost of printing each denomination in a different color, and the additional production, equipment, and material costs of including a Braille symbol. Id. ¶ 52.

Individual Costs of Certain Changes Sought or Suggested by the Plaintiffs

75. Stated below are the costs of certain specific changes in the currency, requested by the plaintiffs during discovery in this action. All of these figures are given in 2005 dollars. See Suppl. Ferguson Decl. ¶ 8.

A. Embossing a denomination numeral

76. Initial capital costs to include an embossed numeral on each note would be roughly \$45,500,000, and additional annual operating costs would be approximately \$16,000,000. Id. ¶ 9.

B. Perforating or punching a hole

77. Perforating or punching a hole in each note would require an initial cost of approximately \$75,000,000 for capital outlay for equipment, plus approximately \$9,000,000 in additional annual production costs. The area of the note containing the perforations or holes would provide a weak point that could lead to degradation or tearing, thus shortening the average life for each note. Since the production of currency is primarily for replacement of worn notes removed from circulation, any shortening in the useful life of the notes would result in a reciprocal increase in production. While the percent of reduction in the useful life of a banknote with perforations or holes cannot be determined, if that reduction were significant, the corresponding requirement for increased production could well exceed the production capacity of the Bureau of Engraving and Printing's existing facilities, requiring the Bureau to incur additional costs (which could be significant) to increase its production capacity. Id. ¶ 10.

C. Including a large denomination numeral

78. Initial costs to design and engrave printing plates with a large denomination numeral which is at least 60 percent of the current note would be approximately \$4,500,000, and increased annual production costs would be approximately \$400,000. This increased annual production cost is attributable to increased spoilage from set-off, which occurs when ink from an

area of high ink concentration, such as the enlarged numeral, sloughs off onto the front of the next sheet of paper. Id. ¶ 11.

D. Printing a different background color on each denomination

79. Assuming a change in background color only, without any significant redesign, the cost for capital outlay for equipment and site preparation to print a different predominant background color on each denomination would be approximately \$48,000,000, while the estimated annual increase in production costs would be \$20,000,000, primarily for labor. Id. ¶ 12.

E. Placing a different geometric shape on each denomination

80. Printing a geometric shape, different for each denomination, on each note, would require a one-time cost of approximately \$4,500,000 to design, engrave, and manufacture new plates. Id. ¶ 13.

F. Including a foil feature perceptible to touch

81. Incorporating a foil feature that is perceptible to the touch on the surface of the currency would require an estimated capital outlay of \$45,000,000 for machines, plus an estimated \$6,500,000 for site preparation, spare parts, and training at both the Washington, D.C., and Fort Worth, Texas, facilities. Additional annual operating costs would include approximately \$14,800,000 for additional staffing and approximately \$520,000 for additional material due to spoilage. Including such a feature would also require incurring additional expenses to purchase the foil itself. Id. ¶ 14.

Ramifications of the Requested Changes for the Federal Reserve System

82. In addition to the above-described burdens on the Bureau of Engraving and Printing, the currency changes sought in plaintiffs' complaint would impose very significant burdens on the Federal Reserve System. See Ferguson Decl. ¶ 54.

83. The Federal Reserve System's tasks of circulating new and fit Federal Reserve Notes, withdrawing worn notes, and identifying counterfeit notes are performed automatically, using sophisticated processing and authentication systems. Id. ¶ 54.

84. The redesign of the currency sought in the complaint would, at the very least, require the FRS to adjust its equipment and sensors to recognize the new features of the redesigned Federal Reserve Notes. Id. ¶ 54.

85. The FRS would be required to purchase new equipment to perform these tasks on notes of different sizes (rather than only to adjust its equipment and sensors), if the largest redesigned bill exceeded the size parameters of existing equipment. Id. ¶ 54.

86. Because the one-dollar note would be the smallest in size, it is likely that the redesign sought in the complaint would require the FRS to purchase completely new equipment. Id. ¶ 54.

87. The FRS's cost of purchasing new Federal Reserve Notes from the BEP would increase as a result of any decrease in the useful life of Federal Reserve Notes due to the addition of the Braille symbol and raised numeral requested by the plaintiffs. Id. ¶ 55.

88. The FRS's currency-related costs are passed to its member depository institutions. Those institutions, in turn, pass those costs to their customers. Thus, the increased costs to the FRS that would result from implementing the redesign sought in the complaint, including the cost of replacing or modifying equipment and increased orders for new notes due to decreased

usable life of the notes, would be borne by the public through increased bank fees, lending rates, and cost of services. Id. ¶ 56.

Ramifications of the Requested Changes for the Private Sector

89. The currency redesign sought in plaintiffs' complaint would impose significant burdens on the private sector. Id. ¶ 57.

90. A change in the size of the currency would require replacing or altering automated teller machines and automatic vending machines. Id. ¶ 57.

91. The changes required by the currency redesign sought in the complaint would require thousands of hours of design, planning, and labor, and millions of dollars in labor and equipment. Id. ¶ 57.

92. According to a member of ACB's Advocacy Services Committee — which approved the filing of the complaint and reviewed its text before filing — making each denomination a different size "really does pose an undue burden on business." See Brunson 91, 104-05, 228-29, 234-37 & Ex. 11.

Use of Currency by the Blind and Visually Impaired

93. Plaintiff Dr. Otis Stephens is totally blind and has been totally blind during his entire life except for a small amount of peripheral vision that he had as a small child. See Stephens 6-7.

94. Melanie Brunson, the designee of the American Council of the Blind in this case under Rule 12(b)(6) of the Federal Rules of Civil Procedure, is totally blind and has been totally blind during her entire life. See Brunson 6.

95. Plaintiff Patrick Sheehan is legally blind but has some vision in one eye. See Sheehan 59 & Ex. 3. Mr. Sheehan was included as a plaintiff in this case to represent the point of view of

those with low vision. See Sheehan 131-32.

96. All three of plaintiffs' witnesses — Dr. Otis Stephens, Melanie Brunson, and Patrick Sheehan — fold each denomination of their currency in a different way to distinguish among the denominations. See Brunson 32-33; Stephens 85-89; Sheehan 69-71.

97. Otis Stephens demonstrated his methods for folding currency during his deposition, and correctly identified a number of his bills based on how they were folded. See Stephens 86-88.

98. Some blind persons speak the value of each bill when handing currency to a cashier. See Brunson 33; Stephens 90-91.

99. Some blind persons hold onto each bill until the cashier acknowledges the denomination. See Brunson 33; Stephens 91.

100. In addition to folding their currency, certain blind (and visually-impaired) persons also carry each denomination in a different location on their person. See Brunson 33; Stephens 90; Sheehan 69-71.

101. Otis Stephens purchases goods with currency approximately 70 times every two months, and he uses currency for approximately one-half of the occasions on which he purchases goods or services in a face-to-face transaction. See Stephens 106-107 & Ex. 3.

102. Patrick Sheehan purchases goods or services with currency approximately 65 times every two months, and he uses currency for approximately one-half of the occasions on which he purchases goods or services in a face-to-face transaction. See Sheehan 95-97 & Ex. 3.

103. Melanie Brunson purchases goods with currency approximately 10 times each month. She uses a credit card or debit card approximately once every six months each, and she

never uses a check for face-to-face transactions. See Brunson 60-63 & errata sheet.

104. Otis Stephens finds that currency transactions are easier than going through the credit card routine and that the use of currency for small purchases saves time. See Stephens 108.

105. Patrick Sheehan thinks that smaller purchases are more convenient with cash. See Sheehan 97.

106. Patrick Sheehan can sometimes tell the denomination of a bill by sight, depending on the ambient lighting and the age of the bill. See Sheehan 40-41, 48-49, 55.

107. Patrick Sheehan correctly identified four bills — a \$1 bill, a \$5 bill, a \$10 bill, and a \$20 bill — that were shown to him during his deposition. See Sheehan 49-54.

108. When Patrick Sheehan is able to identify a \$5, \$10, or \$20 bill by sight, he uses the large numbers on the back of each bill to do so. See Sheehan 41-42, 53.

109. Patrick Sheehan serves as treasurer of his chapter of an ACB affiliate, and, in that position, he handles currency and prepares deposits on his own. See Sheehan 37-41 & Ex. 3.

110. Otis Stephens has been defrauded one time in currency transactions, during his lifetime. See Stephens 104-105 & Ex. 3.

111. "[L]ess than half a dozen times," cashiers have told Otis Stephens that he was offering a larger denomination than he thought he was. See Stephens 112-115.

112. Melanie Brunson initially testified that she had been defrauded twice in currency transactions, during her lifetime, but her further testimony indicated that both of those incidents were unsuccessful attempts to defraud her. See Brunson 54-57, 208-13.

113. Patrick Sheehan has been defrauded approximately six or seven times during the last

20 years — three times by taxi drivers, and "maybe about three or four times" by cashiers. See Sheehan 140 & Ex. 3.

114. Some blind and visually-impaired persons use and own a variety of devices to assist them in reading and writing, some of which cost more than \$270. See Brunson 7-9, 45-46, 48-51; Stephens 95-98, 100-104; Sheehan 81-89 & Ex. 3.

115. Otis Stephens, Melanie Brunson, and Patrick Sheehan each owns a "notetaker," which has a Braille keyboard and a storage medium to store what has been typed. A notetaker costs between \$3200 and \$5500, with "refreshable Braille" output that can be read on the device itself. See Brunson 7-9, 49-51; Stephens 102-104; Sheehan 85-87. Other notetakers, with voice-only output, cost approximately \$1800. See Sheehan 84-85, 87.

116. Otis Stephens and Melanie Brunson each owns a Braille printer, which embosses Braille characters on pieces of paper. These cost between \$2000 and \$3000. See Brunson 45-46; Stephens 100-101.

117. To convert a typed or printed page to Braille that can be printed on a Braille printer, the page can be scanned and run through "Braille translator" software, which costs approximately \$500 or \$1000. Melanie Brunson owns this software. See Brunson 45-46.

118. Otis Stephens and Melanie Brunson each owns a "Braille writer," which is like a typewriter in that the user types on a keyboard, and the device makes Braille impressions directly on a piece of paper. A Braille writer costs between \$250 and \$800. See Brunson 48-49; Stephens 101-102.

119. Otis Stephens has software that can read a document aloud after the document has been scanned. See Stephens 95-96. At least two different versions of such software exist

(produced by different companies) — one program called "Arkenstone," which sells for approximately \$1500 (which Dr. Stephens has), and another called "Kurzweil," which sells for approximately \$1200. See Stephens 97-98; Sheehan 81-82.

120. Patrick Sheehan uses the Kurzweil software at work; his wife, who also has low vision, has the Kurzweil software at home. See Sheehan 81-83.

121. Patrick Sheehan owns a closed-circuit television set to magnify material for reading; one could now buy such a unit for approximately \$2100. See Sheehan 87-90 & Ex. 3.

Hand-Held Currency Readers

122. A portable assistive device is available to identify currency for the blind and visually impaired. This device, called the "Note Teller 2," sells for about \$270. See Declaration of Julia Wilson ¶ 8.

123. The Note Teller 2 measures approximately 6 inches long, 3 inches wide, and 1 inch high at its highest point, and weighs approximately 6.70 ounces. Id. ¶ 2.

124. About two seconds after a bill is inserted into the Note Teller 2, the device announces the denomination in a recorded voice. Id. ¶ 4.

125. Testing of the Note Teller 2 indicates that it correctly identifies all modern versions of the \$1, \$5, \$10, and \$20 bills, most of them in any of the four possible orientations upon insertion. Id. ¶¶ 3, 6 & Table A, Table B. All bills were read correctly in at least two of the four possible orientations. Id. There were no incorrect readings in testing; when the device cannot read a bill correctly, it announces "cannot read." Id.

126. The Bureau of Engraving and Printing is promoting the development of a smaller, lower-priced reader. To that end, the Bureau solicited proposals in May 2004 for the

development of a pocket-size currency reader with a design capable of profitable mass production at a target retail price of \$35.00 or less. An award under this solicitation was made in September 2004, to Mnemonics, Inc., of Mt. Laurel, New Jersey. Pursuant to the solicitation, BEP will pay up to \$50,000 toward development of the reader. A working prototype is due under this contract on September 30, 2005. Mnemonics, Inc., has committed to produce the reader that is developed under the solicitation, and must, pursuant to the terms of the solicitation, begin marketing the device within three years after BEP accepts the prototype. See Suppl. Ferguson Decl. ¶ 15.

What This Lawsuit Seeks

127. According to the American Council of the Blind, through its Rule 30(b)(6) designee, the complaint in this action "doesn't necessarily [seek to] require that [all of the changes that it lists] be done," and, "ultimately, it's the government's job to figure out exactly how the currency should be changed." See Brunson 181.

128. According to Patrick Sheehan, for "ACB, to prescribe a solution [regarding the currency] would not be appropriate for the organization, because first of all, we're not experts in currency design particularly." See Sheehan 45-46.

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Respectfully submitted,

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