UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN COUNCIL OF THE BLIND, *et al.*, Plaintiffs, v. JACOB J. LEW, *Secretary of the Treasury*, Defendant.	Civil Action No. 02-CV-00864 (BAH) Chief Judge Beryl A. Howell

ORDER

The plaintiffs have moved, for the second time, to modify this Court's Order of October 3, 2008. Pl.'s Mot. to Modify the Court's Injunctive Order Dated October 3, 2008 ("Pl.'s Mot."), ECF No. 142; *see also* Pl.'s Motion to Amend Order and Response to Defendant's Supp. Status Report, ECF No. 113. In that order, this Court mandated that the defendant must "take such steps as may be required to provide meaningful access to United States currency for blind and other visually impaired persons . . . in connection with each denomination of currency, not later than the date when a redesign of that denomination is next approved by the Secretary of the Treasury . . . ." Order, October 3, 2008, ECF No. 96. When this Order was entered, the specific language now challenged by the plaintiffs was based on a draft of a remedial order proposed by the defendant, but the plaintiffs raised no objection to this particular provision, nor did they suggest a specific timeframe be designated. *See* Pl.'s Response to Def.'s Mem. of Points and Authorities Regarding Final Judgment, ECF No. 89.

Nonetheless, plaintiffs now urge the Court to modify this provision of the Order, which expressly eschewed setting a specific deadline, and instead set a hard "deadline of December 31, 2020 by which date the Secretary must provide meaningful access to the $10 bill." Pl.'s Mem. Supp. Mot. to Modify The Court's Injunctive Order Dated October 3, 2008 ("Pl.'s Mem."), ECF No. 142, at 2, 36. Plaintiffs argue this modification is warranted because the October 3, 2008 Order "was issued

in light of the Secretary's goal to redesign each denomination of currency every seven to ten years" and the Secretary "has now furnished a new estimated date of 2026 to redesign the $10 note, and has not provided any estimated dates for redesign of the remaining denominations." *Id.* at 1. For the reasons stated below, this motion is denied.

Rule 60(b) of the Federal Rules of Civil Procedure circumscribes a court's ability to modify a final judgment unless, for example, "applying [the order] prospectively is no longer equitable," FED. R. CIV. P. 60(b)(5), or "for any other reason that justifies relief," provided the movant shows the presence of "extraordinary circumstances," FED. R. CIV. P. 60(b)(6).[1] Parties seeking modification under Rule 60(b)(5) must show that "'a significant change either in factual conditions or in law' renders continued enforcement [of a final judgment] 'detrimental to the public interest.'" *Horne v. Flores*, 557 U.S. 433, 447 (2009) (quoting *Rufo* v. *Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 384 (1992)). "The party seeking relief bears the burden of establishing that changed circumstances warrant relief." *Id.* Rule 60(b)(6) sets a higher standard for modifying or vacating a final judgment, and this Circuit has "cautioned that it 'should be only sparingly used.'" *Twelve John Does v. D.C.*, 841 F.2d 1133, 1140 (D.C. Cir. 1988) (quoting *Good Luck Nursing Home, Inc. v. Harris*, 636 F.2d 572, 577 (D.C. Cir. 1980)).

In the October 3, 2008 Order, this Court did not set a specific deadline for compliance with Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; instead, the Court paired the development of

[1] Plaintiffs also argue this Court may rely on its "inherent authority" to modify a final judgment. Pl.'s Mem. at 5-7. Defendant responds vigorously that courts lack "inherent" powers to modify final orders, as opposed to an order "before final judgment in a civil case," Def.'s Opp'n Pl.'s Mot. to Modify the Court's Injunctive Order Dated October 3, 2008, ECF No. 148, at 13 (quoting *Dietz v. Bouldin*, 136 S. Ct. 1885, 1888 (2016) (emphasis omitted)), or a "consent decree where necessary to reflect the parties mutual intent," *id.* "Th[is] Court, however, need not decide this thorny issue because, whichever standard applies," *Cook v. Billington*, No. CIV.A. 82-0400(GK), 2003 WL 24868169, at *3 (D.D.C. Sept. 8, 2003), "the D.C. Circuit [has] explained that '[a]s a practical matter, it makes little difference whether the district court [resolves a motion to modify a consent order] under Rule 60 or under its equitable authority as the standard for each is substantially the same.'" *N.Y. v. Microsoft Corp.*, 531 F. Supp. 2d 141, 169 (D.D.C. 2008) (quoting *Pigford v. Johanns*, 416 F.3d 12, 16 (D.C. Cir. 2005)).

features to improve meaningful access to currency with the ongoing, and statutorily required, redesigns of currency to combat counterfeiting. *See* 12 U.S.C. § 418 (requiring the Secretary of the Treasury to design currency "in the best manner to guard against counterfeits and fraudulent alterations"). Nonetheless, the plaintiffs would now upset the balance struck in the order by using the delay in releasing redesigned currency, arguing the "magnitude of the delays in this case clearly constitutes a changed circumstance warranting modification." Pl.'s Mem. at 12.

The Court is cognizant of the fact that these delays postpone the implementation of some features that will improve access to currency for the blind or visually impaired, but the delays are not so "significant" that they render the October 3, 2008 order "detrimental to the public interest" such that this Court is empowered to modify the October 3, 2008 Order under Rule 60(b)(5). *See Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. at 384. Nor are the delays "extraordinary circumstances" that would justify a modification under the higher standard of Rule 60(b)(6). *See Twelve John Does v. DC.*, 841 F.2d at 1140. ("It is clear . . . that a more compelling showing of inequity or hardship is necessary to warrant relief under subsection (6) than under subsection (5)."). The Court also observes that since the Order, substantial progress has been made in improving access to currency for the blind and visually impaired. The Secretary has most recently reported that the Bureau of Engraving and Printing ("BEP"), a component of the Department of the Treasury, has made progress in designing currency which would include a "raised tactile feature to each Federal Reserve note" and the BEP was continuing its efforts of "adding large, high-contrast numerals and different colors to each denomination that it may lawfully redesign." Def.'s Sixteenth Status Report, ECF No. 151, at 1. Further, the Department has implemented a currency reader distribution program and "[a]s of September 9, 2016," the Department reports it has "distributed more than 43,800 readers." *Id.*

The Court recognizes that this progress is not as significant as a released redesigned note, but decoupling improvements for the blind and visually impaired—such as tactile features—from the

continuing efforts by BEP to redesign currency to combat counterfeiting, could create unnecessarily duplicative work and potentially increase costs for both the government and the private sector. *See, e.g.*, Def.'s Opp'n, Attach. 1, ECF No. 148-1 (Decl. of Associate Director, BEP, explaining that redesigning "each denomination twice in the near future . . . once to incorporate [tactile features] and again to incorporate new visual designs and enhanced security features to continue to minimize counterfeiting – would both substantially increase private sector costs and create a very real risk of confusion for both businesses and the broader public"). Thus, plaintiffs' proposed modification might turn out to be *more* detrimental to the public interest than the current order in effect.

For the foregoing reasons, it is hereby **ORDERED** that plaintiff's Motion to Modify the Court's Injunctive Order Dated October 3, 2008 is **DENIED**, without prejudice.

SO ORDERED.

DATED: January 6, 2017

Digitally signed by Hon. Beryl A. Howell, U.S. District Court Judge
DN: cn=Hon. Beryl A. Howell, U.S. District Court Judge, o=U.S. District Court for the District of Columbia, ou, email=Howell_Chambers@dcd.uscourts.gov, c=US
Date: 2017.01.06 17:45:51 -05'00'

BERYL A. HOWELL
Chief Judge