

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN COUNCIL OF THE BLIND, :
et al., :
 :
 Plaintiffs, :
 :
 v. : Civil Action No. 02-0864 (JR)
 :
 PAUL H. O'NEILL, Secretary of :
 the Treasury, *et al.*, :
 :
 Defendants. :

MEMORANDUM ORDER

Plaintiffs are a number of visually impaired and blind individuals and the American Council for the Blind, an organization that advocates for the blind and visually impaired. Their submission is that the Department of Treasury's failure to design and issue paper currency that is readily distinguishable to blind and visually impaired individuals violates Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. They seek a declaratory judgment to that effect, and they seek an order requiring the defendants to implement specific design changes to U.S. currency, such as different sizes, colors, and/or the addition of Braille or other tactile cues. The defendants move for summary judgment.

Defendants assert that the plaintiffs cannot prevail as a matter of law, because the Rehabilitation Act does not require an accommodation that imposes "undue financial or administrative burdens." Alexander v. Choate, 469 U.S. 287, 298-99 (1985); Southeastern Cmty College v. Davis, 442 U.S. 397, 412 (1979). That assertion may turn out to be correct, given the Bureau of

Engraving and Printing Director's estimate that it would cost \$143-174 million a year to design and produce paper money with different sizes for different denominations, Ferguson Decl. at ¶ 17, but the present record does not provide a standard of comparison to determine whether expenditures to accommodate the needs of the blind and visually impaired would be unreasonable relative to expenditures that have been made to modify currency design and production for other purposes. Mr. Ferguson's declaration, moreover, is unchallenged because there has been no discovery yet in this case.

Defendants also assert that the Secretary is vested with unreviewable discretion concerning the design of currency by 12 U.S.C. § 418, but they have not supported that argument. Nor, indeed, has either side addressed the issue of whether Section 504's prohibition of discrimination or exclusion from "any program or activity conducted by any Executive agency" applies to the design and production of currency in the first place.

The motion for summary judgment [#8] is **denied**. The Clerk is directed to set a status conference.

JAMES ROBERTSON
United States District Judge