

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

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

**PLAINTIFFS RESPONSE TO DEFENDANT'S MEMORANDUM OF
POINTS AND AUTHORITIES REGARDING FINAL JUDGMENT**

During the status conference on September 4, 2008, the Court advised that plaintiffs could respond to the defendant's memorandum pertaining to the appropriateness of injunctive relief in this case. Plaintiffs respond as follows:

**I. An Injunction Is Appropriate As Defendant Is Not Taking
Appropriate Corrective Action**

Defendant states that it is inappropriate to award injunctive relief because the Court should assume that the Secretary is already taking corrective action. Docket # 88, Def. Mem. at pp. 1-5. Plaintiffs wish this were true. However, it is not true for the reasons stated in the sealed

memorandum furnished to the Court on September 15, 2008. See Docket No. 86.

That Plaintiffs have suffered irreparable injury cannot be disputed. Irreparable injury is experienced whenever a blind or visually impaired person hands over the wrong denomination, or receives incorrect change. Irreparable injury is also suffered by virtue of the fact that blind and other visually impaired persons are completely dependent “*upon the kindness of strangers*” whenever they use currency. Am. Council of the Blind v. Paulson, 463 F. Supp. 2d 51, 59 (D.D.C. 2006).

Moreover, the government’s assertion that a mandatory injunction is inappropriate because there are no clearly non-discretionary duties to enforce is without merit. As noted in Wilbur v. U.S. ex rel. Kadrie, 281 U.S. 206, 218 (1930) mandamus may be “[e]mployed to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way...”. See also Work v. United States, 267 U.S. 175, 184 (1925).

The mandamus statute has been employed to compel officials to perform their statutory and regulatory duties, without directing them as to the manner of performance. See Pennsylvania by Sheppard v. Nat'l Ass'n of Flood Insurers, 520 F.2d 11, 27 (3rd Cir. 1975) (mandamus used to compel

Secretary to enforce provisions of a statute which requires an element of discretion. The court noted that mandamus “*may issue to require the exercise of permissible discretion, although the manner in which the discretionary act is to be performed is not to be directed by the court*” (internal quotations omitted); Workman v. Mitchell, 502 F.2d 1201 (9th Cir, 1974) (mandamus available to compel prison officials to comply with their constitutional duties in administering discipline, even if the precise contours of those duties are not prescribed); Carpet, Linoleum & Resilient Tile Layers, etc. v. Brown, 656 F.2d 564, 566 (10th Cir. 1981) (mandamus employed to require adherence to statutory duties which are generally left to the agency’s discretion when there exists “*standards delimiting the scope or manner in which such discretion can be exercised*”, quoting Davis Associates, Inc. v. Secretary, Department of Housing and Urban Development, 498 F.2d 385, 389 & n.5 (1st Cir. 1974)); Naporano Metal & Iron Co. v. Secretary of Labor, 529 F.2d 537, 542 (3rd Cir. 1976) (mandamus may be employed even when the performance of an act is committed to agency discretion).

Plaintiff’s proposed order seeks to compel the Treasury to adhere to its obligations under Section 504, without attempting to direct the manner of performance. In effect, plaintiffs proposed order would remand the matter back to the Secretary to implement an appropriate accommodation in

accordance with the regulations contained in 31 C.F.R. Part 17. These regulations merit special deference, as they were mandated by statute, and the responsible congressional committees and the Congress itself endorsed them in their final form. 29 U.S.C. § 794(a); Conrail v. Darrone, 465 U.S. 624, 634 (1984).¹

The broad and flexible nature of the district court's equitable powers has long been recognized. Brown v. Board of Educ., 349 U.S. 294, 300 (1955). This is especially true when a significant public interest is involved in the litigation, Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946), or when responsible officials default on their obligation to furnish an acceptable corrective action plan. See Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 16 (1971) (noting the broad authority of the district courts to fashion remedies in school desegregation cases when the local authorities default in their obligation to proffer an acceptable remedy).

The Secretary in this case has defaulted on his obligation to submit an acceptable corrective action plan for the reasons stated in the sealed memorandum furnished with this Court. See Docket No. 86. The Declaration provided by the BEP Director dated August 28, 2009 was also

¹ These Treasury regulations are an adaptation of and virtually identical to the prototype coordination regulations established by the Department of Justice. See 56 FR 40781, August 16, 1991.

deficient in that it did not contain any time frames for coming into compliance with Section 504. See Declaration filed August 29, 2008, Document # 80-1; See also Transcript of Status Conference at 5-6 (Sept. 4, 2008).

The Secretary's long record of inaction provides little assurance that prompt remedial action will be taken to rectify the ongoing discrimination which must be remedied in this case. As such, this Court is well within its equitable powers to order injunctive relief.

II. The First Paragraph of Plaintiffs Proposed Order Requiring the Secretary to Take Corrective Action Without Unreasonable Delay Is an Appropriate Exercise of Injunctive Relief

Defendant further objects to the first paragraph of the order proposed by plaintiff on September 15, 2008, which would require that the Secretary "*without unreasonable delay take such measures as are required to bring currency into compliance with Section 504 of the Rehabilitation Act.*" The Secretary asserts that this provision would require redesign of the currency itself, as opposed to furnishing external note tellers. Def. mem. at 7.

The order proposed by plaintiff would not absolutely preclude the use of external note tellers. However, the Secretary should be cognizant of the prohibition against providing "*different or separate [s]ervices to individuals with handicaps ... than is provided to others unless such action is necessary*

to provide qualified individuals with handicaps with [s]ervices that are as effective as those provided to others.” 31 C.F.R. ¶17.130(b)(1)(iv).²

Plaintiffs have expressed throughout this litigation serious reservations concerning the practicality, reliability, and effectiveness of electronic readers. Plaintiffs believe that these devices also have the negative effect of segregating blind persons from the mainstream by virtue of being required to use an external device to denominate currency. This is not consistent with the overall purpose of Section 504, which is to promote the integration of disabled persons into society. 29 U.S.C. §701(b)(1).

Plaintiffs are apprehensive that the Secretary will use court mandated time frames as a justification for a remedy which is based on external note tellers. Redesigning the currency may require more time than would the furnishing of external note tellers. However, it is worth spending the extra time to achieve a result which is consistent with the purposes of the statute. The ACB does not believe that furnishing external note tellers would represent an acceptable conclusion to this litigation, merely because such an

² The Secretary should also be mindful of the fact that the vast majority of the world’s currencies incorporate features which permit blind and other visually impaired persons to distinguish between denominations. Am. Council of the Blind v. Paulson, 525 F.3d 1256, 1262 (D.C. Cir. 2008). It is simply inconceivable that the United States cannot do the same.

accommodation could be implemented more expeditiously than redesigning the currency itself.

III. The Remaining Provisions of the Order Proposed By Plaintiffs Are Unobjectionable

Defendant objects to ¶ 5 of plaintiffs proposed order, which would require a determination by either the Secretary or the Deputy Secretary to exempt a redesign from the order when required to combat an “*immediate*” counterfeiting threat. Defendant asserts that requiring a determination by the Secretary or Deputy Secretary “*would require an additional administrative step and thus more time.*” Def. Mem. at p. 11. However, defendant states in the preceding sentence that as a “*redesign of currency requires some time ... it makes little sense to speak of an "immediate" redesign.*” Id. If there is no such a thing as an “*immediate redesign*”, then we do not perceive the basis for defendant’s objection to requiring a determination by the Secretary or Deputy Secretary. Plaintiffs also believe that the determination referred to in ¶ 5 should be filed with the Court, and have no objection if this filing were made in camera or under seal when necessary.³

³ Defendant also objects to the use of the word “*scheduled*” in paragraph 2 of Plaintiffs proposed order filed on September 15, 2008. Def. Mem. at pp. 10-11. Defendant is correct in stating that major redesigns are not on any “*precise schedule.*” Nonetheless, beginning in the late 1980’s, the Treasury established a strategy to redesign U.S. currency every 7 to 10 years. See attached Testimony of Larry R. Felix, Director Bureau of Engraving and

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

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

EXHIBIT

**TESTIMONY OF LARRY R. FELIX, DIRECTOR BUREAU OF
ENGRAVING AND PRINTING, BEFORE THE HOUSE
FINANCIAL SERVICES SUBCOMMITTEE, JULY 30, 2008**

TESTIMONY OF LARRY R. FELIX, DIRECTOR
BUREAU OF ENGRAVING AND PRINTING
UNITED STATES DEPARTMENT OF THE TREASURY

BEFORE THE HOUSE FINANCIAL SERVICES SUBCOMMITTEE ON DOMESTIC
AND INTERNATIONAL MONETARY POLICY, TRADE AND TECHNOLOGY

To be submitted for the record

July 30, 2008

Chairman Gutierrez, ranking member Paul and members of the subcommittee: Thank you for holding this hearing and inviting me to testify. I appreciate the opportunity to discuss the operations of the Bureau of Engraving and Printing (BEP) and expand upon our efforts to study, test and implement measures to help those who are blind and visually impaired more readily identify paper currency denominations.

MISSION AND OVERVIEW OF THE BUREAU OF ENGRAVING AND PRINTING

The BEP is the security printer for the United States. While our primary product is Federal Reserve banknotes, we also produce other security documents on behalf of Federal agencies. The Bureau produces billions of Federal Reserve notes and other products such as passport documents each year.

Financed through an industrial revolving fund; the BEP does not receive annual appropriations from the Congress. Instead, our customers reimburse the Bureau for the products we produce. By far, our largest client is the Federal Reserve System. This year

alone, the BEP will manufacture over 7 billion Federal Reserve notes. The Bureau works very closely with our primary customer, the Federal Reserve System, to ensure that the U.S. paper currency program meets rigorous quality, cost and design specifications.

The Bureau operates from two locations – the Washington, D.C. headquarters facility located at 14th and C Streets, S.W. and the Western Currency Facility in Forth Worth, Texas. The BEP's workforce numbers just over 2,000 and all employees are career civil servants.

THE U.S. CURRENCY PROGRAM – A SHARED RESPONSIBILITY

The currency program of the United States is a shared responsibility that demands high levels of cooperation and coordination between several Federal agencies. The Department of the Treasury, the Bureau of Engraving and Printing, the Federal Reserve System and the United States Secret Service perform key and unique functions that contribute to the production and issuance of counterfeit-deterrent banknotes that are routinely accepted and used in commerce.

The Congress has authorized the Secretary of the Treasury to establish the design of U.S. currency and manage its manufacture, although most technical and day-to-day currency-related duties are delegated to the Bureau of Engraving and Printing. The Federal Reserve System is responsible for managing the flow of Federal Reserve notes through the commercial banking system and the United States Secret Service is the law

enforcement agency charged with monitoring and investigating counterfeiting activities. The Department of the Treasury and the BEP work in close partnership with the Federal Reserve System and the United States Secret Service to ensure that the design and production of U.S. currency meets the needs of our customers and helps to earn the public acceptance and use of Federal Reserve notes.

The U.S. banknote program is enormously important to our Nation. The Dollar is widely recognized as the predominant global currency and routine and widespread use and acceptance of Federal Reserve notes helps to maintain confidence in our Country's economic and monetary systems. According to the Federal government's report, *U.S. Currency and Coin Outstanding and in Circulation*, U.S. notes with a total estimated value of \$779 billion are circulating worldwide, roughly two-thirds of this money is held outside the borders of the United States. The management of this portfolio of circulating currency generates significant interest earnings for the government. As the issuer of U.S. currency, the Federal Reserve, as required by law, holds collateral in the form of Treasury Securities for the value of U.S. currency in circulation. The Federal Reserve deposits the net earnings from its portfolio of Treasury securities into the General Fund of the Treasury. In 2007, the Federal Reserve System returned \$34.4 billion to the U.S. Treasury.

U.S. CURRENCY REDESIGN PROGRAMS – 1929 to 2008

The U.S. government initiates a redesign of currency notes in order to stay ahead of evolving technologies that enable counterfeiting. Since counterfeiting techniques remained “traditional” for the better part of the previous century (counterfeit plate-making, use of high quality inks and use of standard printing press technology) the appearance and dimensions of U.S. currency remained unchanged from 1929 until the mid-1990s. During this period Federal Reserve notes resembled the design and size of the current \$1 and \$2 note.

Because the size of U.S. currency has remained constant since 1929, entire industries and product lines have been developed and built to facilitate the production, handling and use of our banknotes. These products include many of the Bureau’s printing presses, inspection devices and note finishing and packaging equipment; sophisticated, high-end cash handling machinery, inspection devices and automated vaults utilized by the Federal Reserve System and commercial banks; currency accepting machinery employed by the private sector; Automated Teller Machines; portable currency reading devices; cash register drawers; and even the basic size and composition of our wallets.

Due to the emergence of sophisticated and personal reprographic and digital technologies, in the late 1980s the government established a strategy to redesign U.S. currency every 7 to 10 years in order to maintain an edge over counterfeiters. This new policy led to the introduction of the New Currency Design series in 1996. The New

Currency Design or “large portrait” design was followed in 2002 by the introduction of the NexGen series, the current currency note design that utilizes distinct background colors. Since 2003, the Federal Reserve has issued the \$5, \$10, \$20 and \$50 notes, with a new \$100 note to follow next. The government has no intention of redesigning the \$1 and \$2 note, as they are rarely targets of counterfeiters.

REDESIGN OF U.S. CURRENCY – MEASURES TO ASSIST THE BLIND

The government has used the recent design changes of U.S. currency as an opportunity to study, test and implement features to better assist those who are blind and visually impaired to more readily identify paper currency denominations. For example, in 1983 the Bureau commissioned a study to research design features that would assist the blind and visually impaired community to distinguish U.S. currency denominations. In accordance with the 1983 report’s recommendations, the Bureau procured equipment and undertook several initiatives to incorporate machine-readable features in U.S. currency.

Later, in 1995, the National Research Council (NRC), through its National Materials Advisory Board, completed a study that assessed and recommended features for people who are blind and visually impaired to recognize and denominate U.S. currency. This study recommended four modifications to banknotes – including different size banknotes, large high-contrast numerals, differing predominant colors for each denomination, and overt features that could lead to the development of effective, low-cost devices for examining banknotes.

Since the 1995 study, the Bureau has begun to incorporate each of the NRC recommendations, except for different size banknotes, into U.S. currency. Beginning with the Series 1996 New Currency Design notes (with the exception of the \$100 note) an enlarged, high-contrast numeral was incorporated into the design on the reverse of the \$5, \$10, \$20 and \$50 notes to aid in distinguishing denominations.

After procuring new offset printing equipment, in 2003 the Bureau began adding color to newly designed banknotes (NexGen series). Most recently, the Series 2006 \$5 note, which was issued on March 13, 2008, has a much larger, easy-to-read number "5" in the lower right corner on the back of the bill, which is printed in high-contrast purple ink. This enlarged numeral feature will be included on the back, lower right corner of future designs of \$100 notes as well. Some blind-advocacy experts have estimated that this large, high-contrast numeral will enable 50 percent of all legally blind Americans to denominate the new \$5 note.

Starting with the Series 1999 banknotes, a machine-readable feature was incorporated into the currency to facilitate the development and use of hand-held scanning devices to identify currency denominations. This feature now enables the use of small, portable readers that assist those who are blind and visually impaired to identify currency. These assistive devices are currently available and cost around \$270. With the support and encouragement of the House Committee on Financial Services, the Bureau inspired private sector development of a lower-cost, portable currency reading device. We are optimistic that such a device will be available for sale in the near future.

NEXT STEPS TO ASSIST THOSE WHO ARE BLIND AND VISUALLY IMPAIRED

The BEP is committed to finding solutions that will assist individuals who are blind and visually impaired more effectively denominate currency. Even before the recent decision by the United States Court of Appeals, the Bureau awarded a contract to conduct a comprehensive study of the issue. Through the study and on its own, the BEP is including the American Council of the Blind (ACB), the National Federation of the Blind (NFB) and the National Council on Disability (NCD) in the effort to find solutions. The BEP and its contractor have already met with the ACB and NFB to represent consumer interests and have also met with the NCD – the independent federal agency tasked with making recommendations to Congress and the President on changes to disability policy. All of these entities have provided valuable input.

The study is intended to further advance the government's understanding of the issues and review all possible options to help people who are blind and visually impaired. The comprehensive, three-phase study will examine the use of paper currency by the blind and visually impaired populations of the United States and the possible alternatives to improve their experience. The study will solicit input from a number of interested parties, employ surveys and use focus groups to fully study and evaluate the issue. The Bureau intends to use the data, research and analysis from the study to evaluate potential measures to improve the ability of those who are blind and visually impaired to identify currency denominations.

This three phase study is intended to: 1) identify the characteristics of the blind and visually impaired Americans and their projected trends and needs for U.S. banknote identification; 2) examine the technical and practical feasibility of technological solutions and currency design changes that could assist people who are blind and visually impaired. This will include a review of the effectiveness of the feature, the ability to manufacture the feature, and other operational, timing and security considerations relating to any proposal deemed feasible; and, 3) provide an economic analysis of the design changes identified. The economic analysis will examine the societal cost to the public and private sectors and consider the effectiveness of these solutions relative to their cost.

The Department of the Treasury and the BEP are sensitive to the national currency needs of all Americans, including those who are blind and visually impaired. Changes to U.S. currency can have broad consequences on all currency users and potential solutions to assist the blind and visually impaired must be thoroughly evaluated prior to reaching any final decisions. The Department and the Bureau, in coordination with our Federal partners and the blind and visually impaired community, will continue to search for creative and practical solutions in this area.

Mr. Chairman, this concludes my prepared remarks and I am happy to answer your questions.