UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN COUNCIL OF THE BLIND, et al.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NO.
v.	)	1:02CV00864 JR
	)	
PAUL H. O'NEILL, Secretary of the Treasury, et al.,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' MOTION TO DISMISS

The defendants, by their undersigned counsel, hereby move that this action be dismissed under Rule 12 of the Federal Rules of Civil Procedure, on the grounds that plaintiffs have failed to state a claim upon which relief can be granted and have not exhausted the administrative procedures prerequisite to seeking judicial relief.

Defendants also move, alternatively, that two of plaintiffs' prayers for relief be dismissed, and that the Treasurer of the United States be dismissed as a defendant.

The grounds for this motion are more fully set forth in the accompanying Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss.

Dated: May 28, 2003

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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TABLE OF CONTENTS

INTRODUCTION

By statute, the "form and tenor" of United States Federal Reserve notes "shall be . . . as directed by the Secretary of the Treasury," and the Secretary is charged with designing currency "in the best manner to guard against counterfeits and fraudulent alterations." 12 U.S.C. § 418. Therefore, as the plaintiffs concede, "the form and design of United States currency is solely within the discretion of the Secretary," subject only to statutory requirements regarding the denominations to be produced, the use of a specific printing process, the printing of a distinctive letter and serial number on each bill, and the inclusion of the motto "In God We Trust" and of the portrait and name of a deceased person. See Complaint ¶ 22; see also 12 U.S.C. §§ 413, 418; 31 U.S.C. § 5114. This discretion, moreover, is crucial to the Secretary's ability to choose the design elements that best guard against successful counterfeiting. Notwithstanding the Secretary's broad discretion regarding the "form and design" of the currency, plaintiffs assert that section 504 of the Rehabilitation Act of 1973 requires the Secretary to make various changes in the currency to enable blind and visually-impaired persons to distinguish more easily among the various denominations. 29 U.S.C. § 794; see Complaint ¶¶ 1, 9, 17.

Plaintiffs' aim may be an appropriate subject for public policy discussion. Cf. Modderno v. King, 82 F.3d 1059, 1060 (D.C. Cir. 1996), cert. denied, 519 U.S. 1094 (1997) ("Whatever the merit of these broader arguments, we must leave them for resolution in other spheres, such as the political branches of government . . . ."). As a legal matter, however, there is no basis for a court to order the Secretary to change the currency. First, the statute that specifically governs the design and production of the currency, referred to above, necessarily limits the Rehabilitation Act's more general provisions regarding discrimination against persons with disabilities. Second, even if the Secretary's express statutory discretion were subject to a general anti-discrimination

statute, the existing currency would not violate the Rehabilitation Act: The currency does not constitute unlawful "discrimination" against the blind and visually-impaired, in that such persons already have "meaningful access" to currency-based economic transactions. See Alexander v. Choate, 469 U.S. 287, 301 (1985). And third, plaintiffs have not exhausted the administrative procedures prerequisite to seeking the judicial relief requested here. For each of these reasons, therefore, this action should be dismissed.[1]

Assuming dismissal of this entire action were, for some reason, deemed inappropriate, two of plaintiffs' individual prayers for relief should be dismissed — that is, their request for an order that certain specific features be included in any redesigned currency, and their request for an order requiring a redesign of the one-dollar bill. See Complaint at 16-17. Assuming the existing currency were found to violate the Rehabilitation Act, the details of a redesign of the currency would be within the sole discretion of the Secretary of the Treasury. Further, even if the existing currency were found to violate the Act, a specific legislative provision expressly prohibiting any redesign of the one-dollar bill would foreclose including that denomination in an injunction. Lastly, one of the two defendants named in this action — the Treasurer of the United States — should be dismissed because the Treasurer has no role in the design or production of currency.

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[1] Defendants also maintain that making the changes sought by the plaintiffs would impose "undue financial and administrative burdens" on the federal government and on the private sector, such that the Rehabilitation Act does not require them. See Southeastern Community College v. Davis, 442 U.S. 397, 412 (1979). Defendants have submitted a motion for summary judgment on this basis, which the Court has denied for lack of an adequate factual record. Should this present motion to dismiss be denied, defendants contemplate renewing their motion for summary judgment on the "undue burden" issue, after appropriate factual development.

ARGUMENT

I. The Form of United States Currency Is Within the Specific, Express Statutory Discretion of the Secretary and Thus Cannot Be Subject to the Rehabilitation Act

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; see also 31 U.S.C. § 321(a)(4) (authority of Secretary of the Treasury includes "engrav[ing] and print[ing] currency"); id. §§ 5114-5115 (Secretary's production of currency). The primary consideration in the Secretary's design of currency is the security of the notes — that is, protection against counterfeiting. See 12 U.S.C. § 418 ("the Secretary of the Treasury shall cause plates and dies to be engraved in the best manner to guard against counterfeits and fraudulent alterations"); 31 U.S.C. § 5114(a) ("Engraving and printing shall be carried out within the Department of the Treasury if the Secretary decides the engraving and printing can be carried out as cheaply, perfectly, and safely as outside the Department.").

The underlined language in section 418, quoted above, indicates that the "form and tenor" of the currency are committed to the Secretary's discretion, and that the Secretary is responsible for designing currency "in the best manner" to guard against counterfeiting.[2] Indeed, the plaintiffs themselves recognize and concede that section 418 places the "form and design" of the currency "solely within the discretion of the Secretary." See Complaint ¶ 22. That discretion is limited only by statutes which control the denominations of currency that may be produced; mandate the use of a specific printing process; and require that each bill bear a distinctive letter and serial number, the portrait and name of a deceased person, and the motto "In God We Trust." 12 U.S.C. §§ 413, 418; 31 U.S.C. § 5114. The Secretary has delegated the development of currency design and the production of currency to the Bureau of Engraving and Printing, a component of the Department of the Treasury.

Section 418 has been amended several times since its initial enactment in 1913. Most recently, Congress amended the statute 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 recent amendment reaffirms Congress's intent that the Secretary exercise direct discretion over the form of the currency. See Consolidated Rail Corp. v. United States, 896 F.2d 574, 579 (D.C. Cir. 1990) (amendment bolsters conclusion that Congress is aware of statute and intends adherence to its plain language); accord Oviawe v. INS, 853 F.2d 1428, 1433 (7th Cir. 1988).

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

A fundamental principle of statutory construction is that "a more specific statute will be given precedence over a more general one, regardless of their temporal sequence." Busic v. United States, 446 U.S. 398, 406 (1980); 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."). For example, in Farmer v. Employment Security Commission, a group of temporary farm workers alleged that defendants had discriminated against them on the basis of familial status in the provision of housing, in violation of the Fair Housing Act of 1968. 4 F.3d 1274 (4th Cir. 1993). "The defendants answered that the Immigration Reform and Control Act of 1986 ["IRCA"], 8 U.S.C. § 1188(c)(4), which requires agricultural employers to provide family housing to foreign workers only where such is the prevailing practice in the relevant area or occupation, exclusively defines their responsibilities with respect to the provision of free housing." 4 F.3d at 1275. The defendants offered housing to temporary farm workers but not to their family members, having concluded that this was the prevailing practice in the relevant area. Id. at 1277.

The court saw the case as turning on whether the Fair Housing Act overrides the IRCA provision "as the controlling expression of agricultural employers' duty to provide family housing to temporary workers," rejecting plaintiffs' contention that the two statutes should be read "in tandem." Id. at 1275, 1282-83. In deciding which statute "must prevail," id. at 1283, the court employed the "basic principle of statutory construction that when two statutes are in conflict, a specific statute closely applicable to the substance of the controversy at hand controls over a more generalized provision." Id. at 1284. Therefore, since the IRCA provision was "an extremely narrow provision addressing whether growers . . . are required to provide housing,"

whereas the Fair Housing Act section was "a very broad provision covering all housing," the former must "control[] over" the latter. Id.

Similarly, in Stewart v. Smith, a federal statute — 5 U.S.C. § 3307(d) — authorized federal law enforcement agencies to set maximum ages for appointment to certain positions. 673 F.2d 485, 487-88 (D.C. Cir. 1982). The Bureau of Prisons set a maximum age, pursuant to section 3307(d), for employees in its correctional institutions. Id. at 488-89. The plaintiff, whose inquiry about a job was rejected based on the maximum-age policy, alleged that the policy violated the Age Discrimination in Employment Act ("ADEA"), which required that "federal personnel actions 'be made free from any discrimination based on age'" unless age was a "bona fide occupational qualification" for the position. Id. at 489-90; see 29 U.S.C. § 633a(a), (b).

In resolving the conflict between these two statutes, the D.C. Circuit rejected plaintiff's assertion that any maximum age chosen under section 3007 had to comply with the ADEA's "bona fide occupational qualification" requirement. 673 F.2d at 490-91 & n.26. Rather than "superimpos[ing] ADEA standards on agency discretion under section 3307(d)," the court saw the case as a conflict between the "general" anti-discrimination language of the ADEA and the "specific" authorization of section 3307(d). Id. at 492. Where such a conflict exists, the courts "cannot ignore evidence that Congress intended to address a specific situation through special legislation." Id. Thus, said the court, the specific statute (section 3307(d)) should be "read independently" from the more general command of the ADEA, so that the former is an "exception" to the latter. Id. at 492, 494; accord Strawberry v. Albright 111 F.3d 943 (D.C. Cir. 1997) (per curiam) (conflict between ADEA and mandatory retirement age set forth in the Foreign Service Act of 1980), cert. denied, 522 U.S. 1147 (1998); Smith v. Christian, 763 F.2d 1322

(11th Cir. 1985) (conflict between Rehabilitation Act and Navy's statutory authority to set physical standards for reserve officer applicants).

Finally, the Tenth Circuit employed a similar approach, under similar circumstances, in Knutzen v. Eben Ezer Lutheran Housing Center, 815 F.2d 1343 (10th Cir. 1987). There, a federal statute — section 202 of the Housing Act of 1959, 12 U.S.C. § 1701q — provided funding to meet the housing needs of "the elderly, the physically handicapped, the chronically mentally ill and the developmentally disabled." 815 F.2d at 1347. The statute gave a recipient of this funding "the choice to benefit one group, but not the other, if it so desire[d]." Id. at 1349. Using these funds, the defendants established housing for the elderly and the "mobility impaired," but categorically excluded from their project "the mentally impaired and developmentally disabled." Id. at 1345. Plaintiffs, a group of mentally impaired and developmentally disabled persons, alleged that the exclusion violated section 504 of the Rehabilitation Act, 29 U.S.C. § 794. 815 F.2d at 1345.

The court in Knutsen rejected this contention, holding that plaintiffs' argument would "require[] the Court to use a general civil rights statute, § 504, to revoke or repeal § 202, a much more specific statute." Id. at 1353 (internal quotation marks omitted). That result, the court noted, would violate "the well-settled rule of statutory construction that a general statute will not be construed so as to repeal or revoke another more particular statute, regardless of the priority of enactment, absent express language by Congress stating its intent to revoke or repeal that statute." Id. (quoting Brecker v. Queens B'nai B'rith Housing Devel. Fund Co., 607 F. Supp. 428, 436 (E.D.N.Y. 1985), aff'd, 798 F.2d 52 (2d Cir. 1986)). The court held, therefore, that defen-

dants' exclusion of the plaintiffs from their federally-funded housing did not violate the Rehabilitation Act.

Under these precedents, the Secretary of the Treasury's explicit discretion under the Federal Reserve Act to determine the form of the currency, "in the best manner to guard against counterfeits and fraudulent alterations," overrides the general anti-discrimination provisions of the Rehabilitation Act. See Complaint ¶ 22; 12 U.S.C. § 418. Just as the statute in Farmer allowed employers to refuse to provide family housing upon determining that it was not the prevailing practice in the area, just as the statute in Stewart gave federal agencies discretion to adopt maximum ages for certain positions, and just as the federal funding scheme in Knutsen allowed recipients to choose whom to serve, the Federal Reserve Act gives the Secretary discretion in designing United States currency. Therefore, just as the Rehabilitation Act, the Age Discrimination in Employment Act, and the Fair Housing Act had to yield in Knutsen, Stewart, and Farmer, the "general" language of the Rehabilitation Act must yield to the "more specific" discretionary language of the Federal Reserve Act. See Stewart, 673 F.2d at 492. Indeed, the preeminence of the discretion conferred in the Federal Reserve Act is infinitely clearer than in the statutes involved in these earlier cases, because the Secretary's discretion in this case involves a crucial matter of national economic security: guarding against counterfeiting of the currency. On this ground alone, the Federal Reserve Act compels judgment in favor of the defendants, without even reaching the question of whether the Rehabilitation Act requires changing the currency to accommodate the visually impaired.

II. The Existing Currency Does Not Constitute "Discrimination" Against Visually-Impaired Persons

Even if the Federal Reserve Act did not override the Rehabilitation Act in relation to the design and production of U.S. currency, the Act would not require changing the currency for visually-impaired persons. 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). As explained below, the existing currency does not constitute "discrimination" against the visually-impaired for purposes of the Rehabilitation Act, in that the currency does not deny them "meaningful access" to participation in currency-based economic transactions. See Alexander v. Choate, 469 U.S. 287, 301 (1985). For this additional reason, then, this action should be dismissed.[3]

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

[3] The Court's order denying defendants' motion for summary judgment in this action inquired whether the production of currency is a "program or activity" to which the Rehabilitation Act applies. Without conceding that it is, defendants have chosen not to seek dismissal on that basis, given uncertainties regarding the law on that subject and the potential ramifications, in other contexts, of making an argument to the contrary.

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 a denial of "meaningful access" — albeit unintentional — 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), cert. denied, 519 U.S. 1094 (1997).

In light of Alexander, the United States currency under challenge here does not deprive visually-impaired persons of "meaningful access" to participation in currency-based transactions. Plaintiffs do not contend that visually-impaired persons cannot already participate in currency-

based transactions; indeed, the plaintiffs themselves explain that such persons can and do use the existing currency by folding their currency in advance or relying on increasingly common and less expensive electronic devices to distinguish among denominations. See Complaint ¶¶ 12-13, 33. Thus, the plaintiffs are seeking, not simply "meaningful access," but optimal access or specially-designed access to the use of currency. The Court in Alexander, however, rejected the contention that the Rehabilitation Act requires government benefits "precisely tailored" to the needs of disabled persons. Id. 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 this expansion.

Some appellate court decisions since Alexander have reached the opposite conclusion under superficially similar — but ultimately distinguishable — facts. For example, in Crowder v. Kitagawa, the Ninth Circuit held that the Rehabilitation Act prohibited applying to guide dogs used by visually-impaired persons a Hawaii statute requiring that all carnivorous animals brought into the State be held in quarantine for 120 days to ensure the absence of rabies. 81 F.3d 1480 (9th Cir. 1996).[4] The court based its holding on the burden imposed on the visually-impaired. Id. at 1484-85. Similarly, in Randolph v. Rodgers, the Eighth Circuit held that a hearing-impaired inmate at a state prison was denied "meaningful access" to prison disciplinary proceed-

[4] The plaintiffs in Crowder relied on the Americans with Disabilities Act rather than the Rehabilitation Act. Nevertheless, precedent under either of these statutes is generally understood as applying to both of them. See LaCorte v. O'Neill, 139 F. Supp. 2d 45, 47 (D.D.C. 2001) ("The standards for determining a violation [of the Rehabilitation Act] are the same as those applied under the Americans with Disabilities Act.").

ings by defendants' refusal to provide a sign-language interpreter during such proceedings. 170 F.3d 850 (8th Cir. 1999).

These decisions, however, are easily reconciled with Alexander. In both Crowder and Randolph, the defendants had imposed, upon their own initiative, a governmental barrier or burden. That is, the state in Crowder had imposed the quarantine, and the prison in Randolph had imposed disciplinary proceedings. For example, the Ninth Circuit's fundamental objection to the quarantine was that "its enforcement burdens visually-impaired persons in a manner different and greater than it burdens others." 81 F.3d at 1484. Without those government-imposed barriers or burdens, the plaintiffs in Crowder and Randolph would not have needed the accommodations that they sought. In Alexander, by contrast, the government itself was providing a benefit (rather than imposing a burden), and the plaintiffs contended that the refusal to extend the benefit had a disproportionate adverse impact on the disabled. Thus, the differing conclusions make perfect sense: Although a government should be able to control the nature and quantity of the benefits that it provides, government-imposed barriers or burdens should, in most circumstances, have an equal effect on the disabled and the non-disabled.[5]

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[5] Nor is the Second Circuit's decision in Rothschild v. Grottenthaler, 907 F.2d 286 (2d Cir. 1990), applicable here. In that case, the court held that the Rehabilitation Act required a school district to provide a sign-language interpreter for the deaf parents of non-hearing impaired students at certain school-initiated activities. That accommodation is not, however, analogous to the changes in the currency sought by the plaintiffs here; the defendants in Rothschild were required merely to provide interpreters for the plaintiffs, not to change the activities in question in ways that would have affected every participant. In any event, the court's rationale in Rothschild was based entirely on rejecting defendants' assertion that the parents were not "otherwise qualified" for the school activities. Id. at 290-93. Since the defendants had not made a "meaningful access" argument, the court did not analyze that issue. Indeed, the decision does not even discuss, in any significant sense, the Supreme Court's opinion in Alexander until turning to the reasonableness of the accommodation requested by the plaintiffs. Id. at 292-93. But cf. id. at

(continued...)

This distinction reinforces the conclusion that the U.S. currency under challenge here does not deprive visually-impaired persons of meaningful access to currency-based transactions. The provision of currency is a governmental benefit provided equally to all persons. The plaintiffs seek a change or extension of that benefit, and contend that defendants' refusal to make the change has a disproportionate impact on the blind and visually-impaired. That is precisely the allegation in Alexander. This case does not, in contrast, involve any barrier or burden imposed by the government in the first instance. Here, there is no governmental quarantine of the plaintiffs' means of using currency, and no disciplinary proceedings instituted by the defendants — nor any comparable governmentally-imposed barrier or burden.

Finally, 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. The Rehabilitation Act simply was not intended to mandate such fundamental, far-reaching changes in the provision of universal government services.

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[5](...continued)
291 (quoting Alexander earlier, regarding the relevance of federal agency regulations on the meaning of "otherwise qualified").

III. Plaintiffs Have Not Exhausted the Administrative Procedures Prerequisite to Seeking Judicial Relief

Even if the government's design and production of currency were subject to the Rehabilitation Act, and even if plaintiffs were held to have stated a cognizable claim, plaintiffs' complaint would have to be dismissed because they have not sought administrative relief beforehand. Where a statute does not expressly require exhausting administrative procedures before filing suit against a federal agency, the court may impose an exhaustion requirement as a matter of "judicial discretion."[6] See Darby v. Cisneros, 509 U.S. 137, 144 (1993). Requiring exhaustion gives the agency "an opportunity to exercise its discretion and expertise on the matter and to make a factual record to support its decision"; it also "allows the top managers of an agency to correct mistakes made at lower levels and thereby obviates unnecessary judicial review." See Oglesby v. U.S. Dep't of Army, 920 F.2d 57, 61 (D.C. Cir. 1990) (citing McKart v. United States, 395 U.S. 185, 194 (1969)); see also Leonard v. McKenzie, 869 F.2d 1558, 1563 (D.C. Cir. 1989) ("Two concerns, among others, informing the exhaustion doctrine are fairness to the agency and the orderliness of administrative practice and procedure . . . ."). Thus, in this Circuit, "[e]xhaustion of administrative remedies is generally required." Oglesby, 920 F.2d at 61.

This rule has been applied in several cases involving challenges to federal agency action under the Rehabilitation Act. In Poynter v. United States, for example, plaintiffs asserted that the Rehabilitation Act required the United States Postal Service to make a certain post office accessible by wheelchair. 55 F. Supp. 2d 558 (W.D. La. 1999). Defendant asserted that the claim

[6] Exhaustion is statutorily required for actions under section 501 of the Rehabilitation Act (federal "[e]mployment of individuals with disabilities"), but not for actions under section 504 ("[n]ondiscrimination under Federal grants and programs"). 29 U.S.C. §§ 791, 794, 794a; see also 42 U.S.C. § 2000e-16(c).

should be dismissed for failure to exhaust administrative remedies, and the court agreed. Id. at 562-64. The court found support for this conclusion in "[p]rudential concerns of promoting judicial efficiency and respect for administrative agency authority." Id. at 563. "[E]xhaustion of administrative remedies under the Rehabilitation Act," the court pointed out, "conserv[es] scarce judicial resources and giv[es] the administrative agency a chance to discover and correct its own errors." Id. Similarly, the court in Isle Royale Boaters Association v. Norton held that administrative remedies must be exhausted before claiming that the National Park Service's plan for managing a certain facility violates the Rehabilitation Act. 154 F. Supp. 2d 1098, 1134 (W.D. Mich. 2001).

In relation to this case, the Secretary of the Treasury's regulations for implementing the Rehabilitation Act provide an administrative procedure for resolving alleged violations of the Act. 31 C.F.R. §§ 17.101, 17.170. The regulations provide that "[a]ny person who believes that he or she has been subjected to discrimination prohibited by [the Act] may . . . file a complaint" with the Department of the Treasury. Id. § 17.170(d)(1). The regulations also make specific provision for class-wide complaints: "Any person who believes that any specific class of persons has been subjected to discrimination prohibited by [the Act] and who is a member of that class or the authorized representative of a member of that class may file a complaint." Id.[7]

"The agency shall accept and investigate all complete complaints over which it has jurisdiction." Id. § 17.170(d)(2). "Agency employees are required to cooperate in the investigation and attempted resolution of complaints." Id. § 17.170(g)(2). The Department must notify

[7] "[C]omplaints must be filed within 180 days of the alleged act of discrimination," but "[t]he agency may extend this time period for good cause." 31 C.F.R. § 17.170(d)(3).

the complainant of the results of its investigation within 180 days, unless the Assistant Secretary for Departmental Finance and Management finds good cause to extend that period. Id. § 17.170(g)(1), (k). The regulations also provide for an appeal, resulting in a "final agency decision which may include appropriate corrective action to be taken by the agency." Id. § 17.170(h), (i). The agency must notify the complainant of the results of the appeal within 30 days, unless good cause is found to extend that period. Id. § 17.170(j), (k).

Under the judicial precedent cited above, plaintiffs in this case should be required to exhaust these administrative procedures before making the present claims in court. The chief rationales for judicially-imposed exhaustion — allowing the agency "an opportunity to exercise its discretion and expertise on the matter and to make a factual record to support its decision," Oglesby, 920 F.2d at 61 — are especially applicable here, given that the subject matter of the complaint is uniquely within the expertise of the agency. Indeed, an administrative complaint in this matter might have resulted in a "factual record" that would have prevented the evidentiary deficiency cited by the Court in denying defendants' initial motion for summary judgment. Id. "[F]airness to the agency and the orderliness of administrative practice and procedure" are also particularly relevant considerations here, given that the relief sought would have enormous fiscal and policy ramifications. Leonard, 869 F.2d at 1563. In short, this is a particularly appropriate case in which to apply the rule that "[e]xhaustion of administrative remedies is generally required." Oglesby, 920 F.2d at 61.

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

If this entire case were not dismissed on any of the three grounds stated above, two of plaintiffs' prayers for relief would have to be dismissed for other reasons. See generally Crawford v. Bell, 599 F.2d 890, 893 (9th Cir. 1979) (upholding dismissal of certain prayers for relief but not others). 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 must be dismissed because Congress has expressly and specifically prohibited redesign of the one-dollar bill.[8]

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 Defendants 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. 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

[8] In the alternative to dismissal, defendants request that these prayers be stricken from the complaint. See Fed. R. Civ. P. 12(f).

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"). Moreover, as noted above, this discretion is needed to enable the Secretary to carry out his responsibility to "guard against counterfeits and fraudulent alterations." Id. Thus, assuming the existing United States currency were somehow found to violate the Rehabilitation Act, this 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. 108-7, § 117, 117 Stat. 11, 439 (2003). Identical language has appeared in the three immediately preceding appropriations acts. See 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). Therefore, even if the existing currency

were found to violate the Rehabilitation Act as a general matter, this specific, recently-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.").

The 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. In that report, the conferees on an appropriations bill wrote that they were "concerned about the cost associated with producing special anti-counterfeiting properties for the estimated 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 current appropriations act, which forbids 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). Fourth and finally, even if a prior appropriations act were not overridden by the current act, the 1999 act could not require a redesign of the one-dollar bill now, because an appropriations act expires at the end of the fiscal year to which it relates. See Massachusetts v. Nuclear Regulatory Comm'n, 924 F.2d 311, 324 (D.C. Cir.), cert. denied, 502 U.S. 899 (1991).

V. The Treasurer of the United States Should Be Dismissed as a Defendant

In addition to the Secretary of the Treasury, who is responsible for the design and production of United States currency, the plaintiffs have named as a defendant the Treasurer of the United States. The Treasurer is basically the government's cashier, serving as the custodian

of funds received and held in the United States Treasury. See, e.g., 2 U.S.C. § 158; 12 U.S.C. §§ 1439a, 1712, 1755(d); 16 U.S.C. § 3172(b); 28 U.S.C. § 2041; 33 U.S.C. § 944(a); 40 U.S.C. § 174j-4. The Treasurer is not, however, involved in the design or production of currency. See 12 U.S.C. § 418; 31 U.S.C. § 5114.[9] In any event, an order solely against the Secretary would provide the relief sought by the plaintiffs — assuming such relief can be afforded under the Rehabilitation Act at all. Therefore, the Treasurer of the United States should be dismissed as a defendant.

CONCLUSION

Accordingly, this action should be dismissed with prejudice in its entirety.

If this entire action is not dismissed or disposed of on summary judgment, the Court should (1) dismiss the prayer for relief in which plaintiffs seek the inclusion of specific features in a redesign of the currency; (2) dismiss the prayer for relief in which plaintiffs seek a redesign of the one-dollar bill; and (3) dismiss the Treasurer of the United States as a defendant herein.

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Respectfully submitted,

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[9] The administrative reporting scheme alleged in paragraph 15 of the Complaint is no longer in effect. See 67 Fed. Reg. 44,261 (July 1, 2002).

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