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.	)	
	)	

REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

By statute, the "form and tenor" of United States Federal Reserve Notes "shall be . . . as directed by the Secretary of the Treasury." 12 U.S.C. § 418. Plaintiffs' complaint acknowledges, as they must, 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. Thus, the plaintiffs now contradict themselves by asserting, in response to defendants' motion for summary judgment, that this very principle is "simply not supported by the applicable legal authority." See Reply Memorandum in Opposition to Defendant's Motion for Summary Judgment at 1 [hereinafter Pls' Opp.].

Nevertheless, plaintiffs' extensive argument that the Secretary's discretion is subject to the Rehabilitation Act is irrelevant here. See id. at 1-4. Defendants do not contend — and their opening brief did not argue — that the statute conferring that discretion entirely precludes reviewing the design of currency under the Rehabilitation Act. Cf. id. at 3. Rather, that statutory conferral of discretion evidences a congressional intent that must guide and color the consideration of plaintiffs' claims under the Rehabilitation Act.

Under Supreme Court precedent, the Rehabilitation Act does not require any accommodation that would impose "undue financial and administrative burdens." Southeastern Community College v. Davis, 442 U.S. 397, 412 (1979); see Alexander v. Choate, 469 U.S. 287, 301 (1985). The gravamen of defendants' motion for summary judgment is that the changes in the currency sought here would impose undue burdens on the Bureau of Engraving and Printing, to which the Secretary of the Treasury has delegated the development of currency design and the production of currency; on the entire banking and commercial sector, which would have to replace or modify automated teller machines, vending machines, and other currency-handling

equipment; on the Federal Reserve System, which circulates the currency and removes worn and counterfeit notes from circulation; and on the public as a whole. The fact that the "form and design" of currency are statutorily committed to the sole discretion of the Secretary raises the bar of reasonableness in relation to any accommodation under the Rehabilitation Act, and counsels strongly against any court order requiring a redesign of the currency.

Even if summary judgment of this entire action were 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 redesign of the one-dollar bill. See Complaint at 16-17.

ARGUMENT

Summary judgment must be entered for a party who shows that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c). Supreme Court decisions establish that summary judgment is to be viewed favorably: "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986).

Thus, in opposing a motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." See Fed. R. Civ. P. 56(e). Similarly, the Supreme Court has held, "the mere existence of some alleged factual dispute . . . will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986) (emphasis

in original). In addressing what makes a dispute "genuine," the Court has said that the non-moving party must present "sufficient evidence" favoring his view of the facts "for a jury to return a verdict" for him. Id. at 249. "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Id. at 249-50 (citations omitted); see Fitzpatrick v. Catholic Bishop, 916 F.2d 1254, 1256 (7th Cir. 1990) ("The days are gone, if they ever existed, when the nonmoving party could sit back and simply poke holes in the moving party's summary judgment motion."), cert. denied, 473 U.S. 923 (1985). Finally, a dispute as to an issue of law cannot preclude summary judgment.

Under this precedent, there is no genuine dispute as to any material fact in this case, and the defendants are entitled to judgment as a matter of law.

I. The Rehabilitation Act Does Not Require the Sweeping Changes Sought by the Plaintiffs

Plaintiffs seek sweeping changes in the United States currency. Specifically, they seek an order, under the Rehabilitation Act, requiring (1) that each denomination have a different length, height, and color from all others, (2) that a "raised" (i.e., embossed) denomination numeral and a Braille symbol be included on each note, and (3) that a denomination numeral at least one-half the height of the note, printed in black ink "on a white surface," be included on each note. See Complaint at 16-17. As defendants have shown in their opening memorandum, implementing these changes would require an extensive effort of several years' duration, affecting, to one degree or another, every employee of the Bureau of Engraving and Printing ("BEP" or "Bureau"). See Declaration of Thomas A. Ferguson ¶¶ 26, 29, 43, 44, 53 [hereinafter Ferguson Decl.].

The extent of the changes sought and the overall burden of implementing them — both financial and administrative — are reflected in the financial costs. Specifically, the initial expenses attributable to plaintiffs' 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. ¶ 52. Increased annual production costs due to the redesign would total between 143 and 174 million dollars — not counting the increased cost of including an embossed numeral and 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, whose extent is unknown at this time. Id. ¶¶ 52, 55.[1] This proposed redesign of the currency would also have very substantial impacts on other persons and entities — specifically, the Federal Reserve System and the entire American public. Id. ¶¶ 54-57.

Given this monumental impact on the BEP's operations and the associated burdens on other persons and entities, the currency redesign sought by the plaintiffs would clearly impose "undue financial and administrative burdens" for purposes of the Rehabilitation Act, 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 and in defendants' opening memorandum far exceed the proposed accommodations held unreasonable in

[1] It is not correct, as plaintiffs assert, that the administrative and financial burdens of implementing their changes could be reduced by combining their redesign with the now-pending 2003 security updates. See Pls' Opp. at 8. Even if this Court were to grant judgment for plaintiffs (presumably after the discovery that they seek and after they had actually moved for summary judgment), and even if defendants were to decide not to appeal that ruling, the planning for plaintiffs' redesign could not conclude in time for the redesign to occur simultaneously with the 2003 updates.

Southeastern Community College v. Davis and Alexander v. Choate. 442 U.S. at 407-08, 412; 469 U.S. at 308. Summary judgment should, therefore, be entered for the defendants.

Plaintiffs make six arguments in attempting to avoid this conclusion: first, that defendants cannot rely on the Supreme Court's decisions in Davis or Alexander because the facts presented there are not analogous to those in this case, see Pls' Opp. at 7; second, that defendants' declaration addresses only the burden of varying the sizes of the denominations, and "offers no support" regarding the burden of implementing the other elements of plaintiffs' proposed redesign, id. at 4-5; third, that defendants' declarant does not state the "source" of his cost estimates, id. at 5; fourth, that plaintiffs' redesign would be less burdensome than defendants assert because higher denominations could be smaller than the one dollar bill, id. at 5-6; fifth, that defendants cannot rely on the costs of plaintiffs' redesign because such costs would ultimately be borne by "commercial banks" rather than by the government, id. at 7; and sixth, that "any increased costs in manufacturing paper currency would be minuscule when compared to the overall size of the U.S. commercial banking system." Id. at 8. None of these arguments, either singly or in concert, constitutes a basis for denying defendants' motion for summary judgment. None of them, significantly, raises a genuine issue of any material fact.

1. The Applicability of Davis and Alexander

Plaintiffs' assertion regarding the applicability of Davis and Alexander needs little response. The rules set forth in those decisions regarding the extent of the need to accommodate and what constitutes reasonable accommodation obviously apply (and have been applied by lower courts) in every kind of setting where a plaintiff seeks accommodation under the Rehabilitation Act. Moreover, even the specific facts and reasoning of Davis and Alexander

make those decisions much more instructive here than the plaintiffs are willing to admit. In Davis, the plaintiff sought changes in the defendant's program to enable her to secure the benefits of that program, just as the plaintiffs here seek changes in the currency to enable them to use the currency more easily. The Supreme Court held, however, that the Rehabilitation Act requires "evenhanded treatment" of handicapped persons — which the currency produced by the defendants already provides — but does not require "affirmative efforts to overcome the disabilities caused by handicaps" — which plaintiffs seek in the major currency redesign requested here. 442 U.S. at 410.

Moreover, like the plaintiffs here, the plaintiffs in Alexander asserted that the burden of the challenged government action "[fell] most heavily on the handicapped," and that that burden could be avoided by choosing a course that "would meet the [government's] budgetary constraints without disproportionately disadvantaging the handicapped." 469 U.S. at 306. The Court ruled in defendants' favor largely because of the administrative and fiscal consequences of the accommodation sought, as defendants contend this Court should do here. Id. at 308. In one sense, nevertheless, the plaintiffs are correct that this case differs from Davis and Alexander: the burdens of the accommodations sought here far exceed, both qualitatively and quantitatively, anything imagined in those cases.

2. The Comprehensiveness of Defendants' Evidence

Plaintiffs also incorrectly characterize the breadth of defendants' declaration. In addition to describing the administrative and fiscal burdens of varying the size of each denomination, the declaration describes, as much as possible at this point, the burdens of implementing plaintiffs' other proposed changes. For example, the initial, overall tasks required to make all of plaintiffs'

changes are described in detail. See Ferguson Decl. ¶¶ 23-29, 48. Those tasks — regarding research, consultation, redesign, plate engraving and manufacture, and public education — apply to all elements of plaintiffs' proposed redesign.

Moreover, the declaration describes in detail the effect, on the life expectancy of the redesigned bills and on the resulting costs of replacing worn currency, of the Braille symbol and the embossed numeral sought by the plaintiffs. Id. ¶¶ 49-51. That the declarant was not able to estimate the cost of producing the Braille symbol and the embossed numeral, or the cost of other challenges related to their inclusion — given uncertainties as to how those elements could be implemented, see id. ¶ 47 — does not undermine the conclusion that the task would be unduly burdensome. Even in absence of evidence regarding the specific amount of those additional costs, the evidence already presented regarding the burdens of implementing the changes sought by the plaintiffs is more than adequate to establish that that task would be unduly burdensome. Indeed, defendants' very inability to estimate some of the associated costs reflects the difficulty and expense of implementing plaintiffs' changes, due merely to the need to determine how to implement those changes.

3. The "Source" of Defendants' Cost Estimates

The "source" of defendants' cost estimates is obvious and irrefutable: The Bureau of Engraving and Printing ("Bureau" or "BEP") is solely responsible for developing and producing U.S. currency. Id. ¶ 3. The BEP has extensive experience in planning and carrying out changes in the currency, and in handling the costs of implementing changes and producing currency. Indeed, the Bureau carried out an extensive redesign of the currency in 1996. Id. ¶ 9. Even the

plaintiffs concede the Bureau of Engraving and Printing's "expertise" regarding the cost of producing currency. See Pls' Opp. at 10.

Moreover, the fact that the figures stated in defendants' declaration are estimates does not undermine their reliability. The declaration states unequivocally that "the Bureau is more than reasonably certain that [each element of] expense would at least equal the low end of the range given." See Ferguson Decl. ¶ 18. Contrary to plaintiffs' assertion, defendants' fifty-eight paragraph, nineteen-page declaration is far from "conclusory." See Pls' Opp. at 10. A conclusory declaration on this subject would baldly assert that the cost of implementing plaintiffs' changes would total at least X number of dollars, without further explanation, rather than carefully and thoroughly describing each task involved and the cost of each separate task. Indeed, the fact that defendants' declaration gives a range of figures for each element of cost, rather than purporting to state each and every cost with impossible precision, illustrates the care with which the Bureau has examined the burden of plaintiffs' proposal. Defendants need not produce every document and every calculation on which their reasonable estimates are based, and the plaintiffs, in opposing summary judgment, cannot rely on a general allegation that defendants' evidence is incomplete. See Fed. R. Civ. P. 56(e) ("an adverse party may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial").

4. Relative Sizes of One Dollar Bills and Other Denominations

Plaintiffs also seek to undermine one of the assumptions used in defendants' cost estimates: that is, that the lowest denomination (the one-dollar bill) would be the smallest in size. That assumption is based on the potential for an exercise of fraud upon a blind person: "If

another, higher denomination were smaller in size than the one-dollar bill, an unscrupulous merchant or other person could, theoretically, cut a one-dollar bill down to the size of the other denomination, and pass it to a blind person as the higher denomination." See Ferguson Decl. ¶ 20. In attempting to controvert this assumption, plaintiffs either misunderstand or deliberately misrepresent the concern expressed by defendants. See Pls' Opp. at 6. The concern is not that "an unscrupulous vendor could fold a $1.00 bill" to the size of a higher denomination — which, as plaintiffs assert, "[a] blind person could easily detect," id. — but rather that a merchant could cut a one-dollar bill to the size of a larger denomination — which would be impossible for a blind person to detect.[2]

In any event, as stated in defendants' declaration, "making another denomination smaller than the one-dollar bill would not significantly affect the cost estimates" for implementing plaintiffs' changes. See Ferguson Decl. ¶ 20. Plaintiffs contend that producing smaller bills would "use less paper, less ink, and would [enable the Bureau] to produce more of the higher denomination notes in the same area of paper." See Pls' Opp. at 6. Much of the fiscal burden of plaintiffs' redesign, however, would be attributable not to the mere increased cost of paper and ink — although that is a factor — but to the switch from producing bills of one size, in essentially the same design, to producing bills of different sizes with the other features sought by the plaintiffs. Moreover, even if the one-dollar denomination were not the smallest bill — which, as explained above, it should be — plaintiffs cannot rationally contend that all of the redesigned bills should or would be smaller than the current one-dollar bill; at some point, a bill

[2] Plaintiffs' attempted analogy to metal coinage does not work. See Pls' Opp. at 6. A merchant could not cut a nickel to the size of a dime using a pair of scissors.

would become too small for convenient public use. Thus, some denominations, at least, would be larger than the existing currency.

5. Ultimate Placement of the Burdens

The BEP's ability to pass to other entities the costs of any redesign of the currency does not preclude defendants from relying on those costs in seeking to avoid a court order compelling the redesign. First, the same argument could be made in relation to any governmental defendant whose expenses are covered by industry fees or other non-general revenue funds. That argument, if accepted, would eliminate the "undue burden" defense for the United States Postal Service and many other governmental defendants in Rehabilitation Act cases. Moreover, the Secretary of the Treasury, a defendant here, has a legitimate interest in protecting the banking sector, the commercial sector, and the American people from an adverse judgment that could have significant macroeconomic consequences.

In any event, the fiscal impact would be only one consequence of a judgment for the plaintiffs. For example, creating and implementing the redesign sought here would occupy scores of BEP employees for a number of years, distracting them from other important tasks in relation to the development and production of currency, including, for some employees, further advances against counterfeiting. See Ferguson Decl. ¶¶ 9, 26, 29, 40, 44. Similarly, plaintiffs' redesign would pose a host of collateral challenges for the BEP, such as the need to find space for additional equipment. The Bureau would bear these and other non-financial burdens both initially and ultimately.

6. Size of "the U.S. Commercial Banking System"

"[T]he overall size of the U.S. commercial banking system" cannot mark the bounds of reasonable accommodation in relation to the design of currency. Contra Pls' Opp. at 8. First, this argument is analogous to an assertion that the size of a federal agency's tax base should justify the imposition of enormous burdens in accommodating the handicapped. As other courts have held, accepting that assertion would suck the "reasonableness" out of "reasonable accommodation." See Borkowski v. Valley Cent. School Dist., 63 F.3d 131, 139 (2d Cir. 1995) ("[W]here the employer is a government entity, Congress could not have intended the only limit on the employer's duty to make reasonable accommodation to be the full extent of the tax base on which the government entity could draw."); see also Vande Zande v. Wisconsin Dept. of Admin., 44 F.3d 538, 543 (7th Cir. 1995) ("If the nation's employers have potentially unlimited financial obligations to 43 million disabled persons, the Americans with Disabilities Act will have imposed an indirect tax potentially greater than the national debt. We do not find an intention to bring about such a radical result in either the language of the Act or its history."). If the size of the banking system were determinative here, then almost no burden would be too great.

Moreover, the very fact that plaintiffs refer to the size of our national banking system in attempting to justify the accommodations that they seek illustrates the inappropriateness of judicial relief here. If the size of the nation's entire banking system is relevant to the reasonableness of the accommodations sought, then the proposed accommodation is, ipso facto, not "reasonable" under the Rehabilitation Act. Whether this country should undertake changes in its currency so sweeping as to affect its entire commercial and banking system should be determined, not by the courts, but by the legislative and administrative processes responsible for

determining national policy.[3] This is especially true where the task in question — the design of our national currency — is statutorily committed to the discretion of a specific federal official. The Rehabilitation Act simply was not intended as a vehicle for major social reform affecting the daily life of every American.

II. Plaintiffs Have Not Justified Their Request for Discovery

In addition to opposing defendants' motion for summary judgment on its merits, plaintiffs ask the Court to "defer any ruling" on the motion so that plaintiffs can "conduct such discovery as may be required." See Pls' Opp. at 10. The plaintiffs have not, however, satisfied the procedural or substantive requirements for securing a continuance of the pending motion.

As a preliminary matter, the Federal Rules of Civil Procedure provide that a motion for summary judgment may be continued for discovery if "it appear[s] from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition." See Fed. R. Civ. P. 56(f). The first shortcoming in plaintiffs' request, therefore, is that it is not supported by an affidavit. Nor would presenting an affidavit be an empty formality here: Such an affidavit could (and should) state, for example, what efforts counsel has made to secure whatever facts are allegedly needed to oppose defendants' motion.[4]

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[3] In the same class is plaintiffs' argument that the United States should change its currency for visually-impaired persons because other countries have done so. See Pls' Opp. at 6. Such a development might be relevant to a policy decision, but it is not relevant to the reasonableness of judicial relief under the Rehabilitation Act. In any event, factors that do not exist in relation to the currency of other countries may affect that decision in relation the United States currency. For example, given that the U.S. dollar is the currency of choice in many foreign and international transactions, United States currency is subject to a much higher rate of wear, and demands more careful and thorough design study, than the currency of other countries.

[4] Similarly, Plaintiff's Response to Defendant's Rule 7.1 Statement of Material Facts Not (continued...)

More importantly, plaintiffs have not made the substantive showing necessary to justify a continuance for discovery. A party seeking such a continuance must —

> file an affidavit explaining (1) what facts are sought and how they are to be obtained, (2) how those facts are reasonably expected to create a genuine issue of material fact, (3) what effort the affiant has made to obtain them, and (4) why the affiant was unsuccessful in those efforts.

Hudson River Clearwater v. Department of the Navy, 891 F.2d 414, 422 (2d Cir.1989), quoted in Jarvis v. Technical Land, Inc., 175 B.R. 792, 796 (D.D.C. 1994); accord Ned Chartering & Trading, Inc. v. Republic of Pakistan, 294 F.3d 148, 152 (D.C. Cir. 2002) (approving district court's requirement that non-moving party "demonstrate how the further discovery [it] request[ed] would produce any issues of material fact"); Carpenter v. Federal Nat'l Mortgage Ass'n, 174 F.3d 231, 237 (D.C. Cir.) (requiring that party requesting discovery "indicate what facts she intended to discover that would create a triable issue and why she could not produce them in opposition to the motion"), cert. denied, 528 U.S. 876 (1999); Strang v. U.S. Arms Control & Disarmament Agency, 864 F.2d 859, 861 (D.C. Cir. 1989) ("Without some reason to question the veracity of [affidavits submitted by the movant], Strang's desire to 'test and elaborate' affiants' testimony falls short; her plea is too vague to require the district court to defer or deny dispositive action.").

In this case, plaintiffs' "vague" plea is that they need to conduct "such discovery as may be required" to "ascertain the reliability" of defendants' evidence. See Pls' Opp. at 10; Strang, 864 F.2d at 861. Aside from a general assertion that defendants did not submit "documentation"

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[4](...continued)
in Dispute is inconsistent with the Local Rules, in that it does not "include references to the parts of the record relied on to support the statement." See Local Rule 7.1(h).

for the costs described in their declaration, plaintiffs give no reason to "question the veracity" of the declaration itself. See Pls' Opp. at 10; Strang, 864 F.2d at 861. Nor do they state "what facts" they expect to obtain in discovery or how those facts would defeat summary judgment. See Hudson River Clearwater, 891 F.2d at 422. Rule 56(f) "does not condone a fishing expedition" through defendants' files simply to search for any document that might possibly undermine the evidence already submitted by the defendants. See Gardner v. Howard, 109 F.3d 427, 431 (8th Cir. 1997).

Furthermore, plaintiffs' only purported justification for their failure to produce any facts in opposing defendants' motion for summary judgment is that defendants' statements regarding the costs of implementing the changes sought here "lie exclusively within the knowledge of the BEP." See Pls' Opp. at 10. But plaintiffs present no support for that assertion, such as by stating "what effort" they have made (if any) to secure testimony from outside the federal government, or why they have been "unsuccessful" in any such effort. See Hudson River Clearwater, 891 F.2d at 422. Plaintiffs cannot expect the defendants to do their "homework" for them.

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

Aside from the merits of defendants' motion for summary judgment, two of plaintiffs' prayers for relief should be dismissed or stricken from the complaint: specifically, an order requiring the inclusion of certain specific features in a redesign of the currency would be precluded by the Federal Reserve Act, under which the specifics of any redesign would be within the sole discretion of the Secretary of the Treasury; and an order requiring a redesign of the one-dollar bill would be precluded by an express legislative prohibition against redesigning the one-

dollar bill. See Complaint at 16-17. See generally Crawford v. Bell, 599 F.2d 890, 893 (9th Cir. 1979) (upholding dismissal of certain prayers for relief but not others).[5]

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

Plaintiffs' prayers for relief, if granted as now pled, would necessarily involve this Court in redesigning the currency. For example, their request for a "denomination numeral . . . printed with black ink on a white surface" would presumably require the Court to determine whether the proposed background for such numeral were sufficiently "white" to make the bills "accessible to people with visual disabilities," as requested by the plaintiffs. See Complaint at 16-17. Similarly, the Court would presumably be required to determine or approve the precise height of the "raised printing" sought by the plaintiffs. Id. at 17.

It is not true, as plaintiffs assert, that the authority "to review the Secretary's design of paper currency under the Rehabilitation Act . . . necessarily [entails] the authority to review the specifics of any such redesign . . . ." See Pls' Opp. at 3. Although defendants do not argue that review under the Rehabilitation Act is altogether precluded by the Secretary's statutory discretion regarding the design of currency, requiring the Secretary to submit the details of a proposed redesign to the Court for formal approval would eliminate that discretion entirely. The Court's role here, should the existing currency be found to violate the Rehabilitation Act, would be to

[5] Plaintiffs have not responded to a third non-dispositive argument included in defendants' motion for summary judgment: that is, that the Treasurer of the United States should be dismissed as a defendant herein because she has no role in the design or production of currency. In absence of any opposition from the plaintiffs, this aspect of defendants' motion must be granted.

enter judgment to that effect and to leave the redesign up to the official upon whom Congress has conferred that task.

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

Nowhere is plaintiffs' refusal to acknowledge the weight of authority against them more evident than in their insistence that the defendants can (and must!) be required to redesign the one-dollar bill. Plaintiffs' only response on this issue is to repeat language from a 1999 congressional committee report. See Complaint ¶ 45; Pls' Opp. at 8-9; see also H.R. Conf. Rep. No. 105-789, at 76 (1998), reprinted in 144 Cong. Rec. H9870, H9890 (daily ed. Oct. 7, 1998). Since that language has never been enacted as legislation, however, it was merely precatory at best.

More importantly, plaintiffs ignore the positive prohibition, in current and past appropriations acts for the Department of the Treasury, against using any federal funds to "redesign the $1 Federal Reserve note." See Pub. L. No. 107-67, § 117, 115 Stat. 514, 525 (2001). Plaintiffs do not (and could not) attack the validity of that prohibition, which would prevent including the one-dollar bill in any redesign of the currency pursuant to any adverse judgment in this action.

CONCLUSION

Accordingly, defendants' motion for summary judgment should be granted, and this action dismissed with prejudice.

If this entire action were not 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.

Dated: November 12, 2002

Respectfully submitted,

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