



Access to Paper Currency by Visually Impaired Individuals: *The American Council of the Blind v. Paulson*

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Summary

In May 2008, the United States Court of Appeals for the District of Columbia issued a decision in *The American Council of the Blind v. Paulson*. The court held that under Section 504 of the Rehabilitation Act of 1973, the U.S. Department of the Treasury discriminates against blind and visually impaired individuals through the issuance of currency in denominations which are not readily distinguishable by touch. The Department of the Treasury did not file an appeal of the decision, and the case was remanded to the United States District Court for the District of Columbia to address the American Council of the Blind's request for injunctive relief. An injunction order was granted by the district court on October 3, 2008. A January 7, 2010, audit report from the Treasury addresses this issue, stating that changes to currency must be finished by the date when a redesign is next approved by the Secretary. This report discusses the court of appeals' decision and factors and viewpoints by affected parties that may have implications for a proposed remedy.

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Background

Section 504 of the Rehabilitation Act of 1973¹ prohibits discrimination against an otherwise qualified individual with a disability solely by reason of disability in any program or activity receiving federal financial assistance or under any program or activity conducted by an executive agency or the U.S. Postal Service.² The stated purpose of the Rehabilitation Act is to ensure that individuals with disabilities can be independent and fully participate in society.³ The act seeks empowerment of individuals with disabilities by maximizing “employment, economic self-sufficiency, independence, and inclusion and integration into society, through ... the guarantee of equal opportunity.”⁴ The Department of the Treasury, however, is not required to take actions that would result in a fundamental alteration of a program or in undue financial and administrative burdens in order to comply with the act.⁵

A 1995 National Research Council study concluded that an important aspect of an individual’s ability to fully participate in society is “being able to conveniently and confidentially exchange currency in everyday transactions, as when using public transportation or making purchases.”⁶ However, “U.S. citizens with low vision experience a uniquely difficult task in that U.S. banknotes are remarkably uniform in size, color, and general design.”⁷ This difficulty affects more than 3.7 million Americans who are visually impaired and more than 200,000 who have no vision, according to a 1995 estimate.⁸

Although the Supreme Court has required any interpretation of Section 504 to give effect to the statutory objectives of ensuring the independence and full participation of individuals with disabilities within society, the Court has also established a countervailing interest in keeping Section 504 within manageable bounds.⁹ For example, in *Alexander v. Choate*, the Court held that Section 504 did not require a state to go so far as to alter its definition of the Medicaid benefit because individuals with disabilities have greater medical needs. The Court in *Choate* observed that Section 504 requires even-handed treatment and an opportunity for individuals with disabilities to participate and benefit from programs receiving federal funds. “The Act does not, however, guarantee the handicapped equal results from the provision of state Medicaid, even assuming some measure of equality of health could be constructed.”¹⁰ Similarly, other federal and

¹ 29 U.S.C. §794.

² For a discussion of Section 504 of the Rehabilitation Act of 1973, see CRS Report RL34041, *Section 504 of the Rehabilitation Act of 1973: Prohibiting Discrimination Against Individuals with Disabilities in Programs or Activities Receiving Federal Assistance*, by Nancy Lee Jones.

³ 29 U.S.C. §701(b)(1).

⁴ 29 U.S.C. §701(b)(1).

⁵ 31 C.F.R. §17.150(a)(2).

⁶ Finding from a report issued by the National Research Council of the National Academy of Sciences. The report was commissioned by the Bureau of Engraving and Printing, to which the Secretary of the Treasury has delegated his responsibilities for currency. See COMM. ON CURRENCY FEATURES USABLE BY THE VISUALLY IMPAIRED, NAT’L RESEARCH COUNCIL, CURRENCY FEATURES FOR VISUALLY IMPAIRED PEOPLE 1 (Nat’l Acad. Of Sciences 1995). Accessed at <http://books.nap.edu/openbook.php?isbn=0309051940>.

⁷ *Id.*

⁸ *Id.*

⁹ *Alexander v. Choate*, 469 U.S. 287, 299 (1985).

¹⁰ *Id.* at 304.

state court decisions have held that violations to Section 504 would not be present when the remedy would result in an undue burden.¹¹

American Council of the Blind v. Paulson

Overview

In 2002, the American Council of the Blind, along with two individuals with visual impairments (collectively “the Council”), filed suit against the Secretary of the Treasury of the United States. The Council alleged that U.S. paper currency violates Section 504 of the Rehabilitation Act. It sought declaratory and injunctive relief to prohibit the Secretary from continuing to manufacture notes greater than \$1 in their present format and to require the Secretary to create and implement a corrective action plan.¹² The Secretary responded by denying the allegation of a violation and defended the Treasury’s practices, claiming that adherence with the Council’s recommendations would be unduly burdensome. The district court held that the Secretary was in violation of the act. However, the court, while acknowledging the Secretary’s violation, withheld from electing the appropriate alternative or design change to bring the Secretary within compliance. Instead, it ordered a status conference with both parties for the purpose of discussing any remedy. In May 2008, the United States Court of Appeals for the District of Columbia, in a 2-1 split decision, upheld the district court’s ruling.¹³

The U.S. court of appeals held that the Secretary’s “failure to design, produce and issue paper currency that is readily distinguishable to blind and visually impaired individuals” violates Section 504.¹⁴ The court reasoned that the Council had established that individuals with visual impairments lack meaningful access to currency and that the Council had provided facially reasonable methods for currency redesign which would provide meaningful access to those populations.¹⁵ The court concluded that the Secretary of the Treasury did not demonstrate that implementation of every method proposed by the Council would result in an undue burden for the Treasury.¹⁶

The court came to its decision by assessing the four necessary criteria used to determine whether a program or agency is in violation of Section 504.¹⁷ The four criteria plaintiffs must establish are

¹¹ See *Wood v. Omaha School District*, 985 F. 2d 437(8th Cir. 1993); *Strathie v. Dept. of Transportation*, 716 F.2d 227 (3d Cir. 1983); *Boelman v. Manson Bank*, 522 N.W.2d 73 (Iowa 1994).

¹² Congress has prohibited the Treasury from redesigning the \$1 bill. See Consolidated Appropriations Act, 2008, P.L. 110-161, sec.6, div. D, tit. I, § 113, 121 Stat. 1844, 1978 (2007).

¹³ The dissenting judge opined that this case was not yet ripe to be heard by the court of appeals since a final judgment with an appropriate remedy had not been determined by the lower court. *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1274 (D.D.C. 2008).

¹⁴ *Id.* at 1256.

¹⁵ The Council identified a variety of accommodations “relating to the color, size, and shape of paper currency as well as the addition of a durable tactile feature, such as embossed dots, foil, micro-perf, and raised intaglio printing...” *Id.* at 1261. The court held that the accommodations are facially reasonable since other countries have adopted them; the Secretary did not suggest how each was not feasible; and, the costs of some are of similar magnitude to the costs of current redesigns. See *Id.* at 1259.

¹⁶ *Id.* at 1271.

¹⁷ *Id.* at 1266.

(1) they are disabled within the meaning of the Rehabilitation Act; (2) they are otherwise qualified; (3) the program or activity in question is carried out by a federal executive agency or with federal funds; and (4) they were excluded from, denied the benefit of, or subject to discrimination under the program or activity.

Three of the four elements were self-evident in this case,¹⁸ and the Secretary focused his arguments on the remaining element of exclusion, denial of benefits, or discrimination under the program. The Secretary maintained that individuals with visual impairments have meaningful access to currency as required by Section 504, and therefore there is no exclusion, denial of benefits, or discrimination present. He further asserted an affirmative defense, stating that if discrimination were found, accommodating the visually impaired in the manners suggested by the Council would impose an undue burden on the Treasury.¹⁹

The Lack of Meaningful Access

The first part of the Secretary's argument, that visually impaired individuals already enjoy meaningful access to currency, is complicated by the lack of legal precedence to establish a definition of "meaningful access."²⁰ Here, the court determined that a lack of meaningful access is likely to exist where plaintiffs can identify obstacles impeding access.²¹ The Council sought to remove an obstacle that visually impaired individuals confront in using paper currency for everyday transactions. The Secretary argued that individuals with visual impairments have removed any obstacles through coping mechanisms, which provide them with all the access required by Section 504. These mechanisms include asking sighted persons for assistance during a transaction, using a portable electronic reader to identify bills, or by keeping differing denominations folded in distinct ways so that each could be distinguishable by touch. Another mechanism mentioned was through cashless payment, such as with credit and/or debit cards, so that the blind could still enjoy autonomy in sales transactions without being hindered by uniform bills.

The appellate court affirmed the district court's finding that these coping mechanisms were not adequate because it reasoned that no meaningful access exists if an individual with a visual impairment cannot accurately identify money without assistance.²² The court likened the

¹⁸ The three elements are considered to be self-evident because (1) Section 504 defines an individual with a disability as "any individual who ... has a physical ... impairment which substantially limits one or more of the individual's major life activities." The term *physical impairment* includes visual impairments. (2) An individual with a visual impairment is able to meet the currency program's requirement of being a purchaser, "in spite of his handicap." See *Davis*, 442 U.S. at 406. (3) The court stated that it has tended to give "program or activity" an expansive meaning. *Am. Council of the Blind*, 525 F.3d at 1266 n. 13.

¹⁹ Permitted as an affirmative defense under 31 C.F.R. §17.150 (a)(2).

²⁰ See *Am. Council of the Blind v. Paulson*, 463 F. Supp.2d 51 (D.D.C. 2006); *Am. Council of the Blind*, 525 F.3d at 1267.

²¹ *Id.* Alternatively, meaningful access is not likely to exist where the plaintiffs want to expand or alter the scope of the program. *Id.*

²² The Secretary challenged this holding on appeal, claiming that the district court did not have a legal basis for concluding that the identification must occur without assistance. The court held that government-provided interpretive services (such as portable currency readers) might be sufficient as meaningful access, but there are no such affordable, accurate interpretive services currently available. The assistance instantly available is either through the "kindness of strangers" or expensive, unreliable equipment, neither of which provide proper access. *Am. Council of the Blind*, 525 F.3d at 1270-71.

Secretary's arguments regarding coping mechanisms to "contending that merely because the mobility impaired may be able either to rely on the assistance of strangers or to crawl on all fours in navigating architectural obstacles, ... they are not denied meaningful access to public buildings."²³ The use of the electronic reader was rejected as a means of meaningful access since the reader costs \$270 and is not always accurate.²⁴ Bills folded according to denomination can help an individual distinguish between them through touch at the time of the transaction, but the method still requires a sighted person's confirmation of the bill's value before it can be folded appropriately. Even cashless methods could similarly require a sighted person's assurance that the receipt bears the correct charge.²⁵ Furthermore, the court concluded that utilizing these mechanisms might allow individuals with visual impairments to make purchases, but they would still deny them access to entry-level jobs that require even minimal cash transactions.²⁶

The Secretary Does Not Bear an Undue Burden

Under Section 504, a program or activity is not obligated to accommodate an individual with a disability when the means required for accommodation would be unduly burdensome.²⁷ The test to determine if something is unduly burdensome is one that requires a comparison of the resources of the defendant to the cost of the accommodations that are required for compliance with Section 504.²⁸ Here, the Secretary argued that the district court erred when it categorically denied that compliance with the Council's recommendations would not constitute an undue burden for the Treasury.²⁹ In particular, the Secretary contended that the most expensive accommodation should have constituted an undue burden. The court rejected this claim, stating that "liability under Section 504 requires only that the *least* burdensome accommodation not be unduly burdensome."³⁰ The court found that the Secretary did not demonstrate why each of the facially reasonable accommodations offered by the Council would be burdensome; he had only attempted to demonstrate why the accommodations as a whole would be burdensome.³¹ Applying that standard, the appellate court held that the district court was correct in its ruling: the accommodations could be categorically accepted as not constituting an undue burden since the least burdensome accommodations were not unduly burdensome.

In reaching its conclusion, the court relied in part on the practice of currency systems worldwide. The Secretary did not address why any of the accommodations practiced in the 180 other countries that issue paper currency were infeasible in the United States.³² The court also placed

²³ *Id.* at 1269.

²⁴ Even if the electronic readers were accurate, they would still not suffice as meaningful access because of their cost. The ability of an individual to spend money on aides in order to fully participate in society does not overcome lack of access. *See Rothschild v. Grotenthaler*, 907 F.2d 286, 291 (2d Cir. 1990).

²⁵ *Am. Council of the Blind*, 525 F.3d at 1270.

²⁶ *Id.*

²⁷ *See* cases cited *supra* note 12.

²⁸ *Id.* at 1271 n. 18.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² In the district court, the Secretary argued that the Council's recommendations would make it more difficult for the Treasury to prevent counterfeiting. The court held that contention to be unsupported by evidence and that other countries have used these same recommendations in order to combat counterfeiting. *Am. Council of the Blind v. Paulson*, 463 F. Supp. 2d 51, 60 (D.D.C. 2008).

emphasis on the lack of accurate evidence regarding the burden of cost. The Secretary provided figures for the redesign of all currency, including \$1 bills, which would not be included in the proposed alteration remedy.³³ Since \$1 bills account for nearly half the bills that are printed,³⁴ the costs offered as being associated with redesign were found to be inflated.³⁵ Also, the Secretary had suggested that the shorter life span of the redesigned bills would increase costs, yet he failed to provide statistically significant data on this issue.³⁶ Finally, the court ruled that the similarity between the costs of some of the proposed accommodations, by the Secretary's own estimates, and the costs of recent paper currency redesigns (to prevent counterfeiting) provided support for financial feasibility.³⁷

The Secretary further contended that altering the size of U.S. currency would place an undue burden on third parties, such as vending machines, cash processors, change machines, and cash registers. The court rejected the Secretary's argument on two grounds: that the effect of the remedy on third parties is usually not considered, and that the Secretary failed to demonstrate the severity of the burden that each redesign would place on the third parties.³⁸

Recent Developments

The Secretary did not appeal the court of appeals decision, and the case was remanded to the United States District Court for the District of Columbia to address the American Council of the Blind's request for injunctive relief.³⁹ An injunction order was granted by the district court on October 3, 2008.⁴⁰

A January 7, 2010, audit report from the Treasury states that changes to currency to provide meaningful access must "be completed in connection with each denomination of currency ... not later than the date when a redesign is next approved by the Secretary."⁴¹ "The cost of implementing these changes will be incorporated into future currency redesign costs."⁴²

³³ *Am. Council of the Blind*, 525 F.3d at 1271.

³⁴ *Id.*

³⁵ *Id.* Among the estimates offered by the Secretary were, "Including a numeral on each denomination at least sixty percent (60%) of current note height would cost approximately \$4.5 million and increase the annual cost of currency production by up to \$400,000. Addition of a durable tactile feature would cost between \$45 million and \$75 million and increase the annual cost of currency production by between \$9 million and \$18 million. Adopting different sizes for each denomination could cost in excess of \$200 million." *Id.* at 1263-64 (citations omitted).

³⁶ *Id.* at 1271.

³⁷ *Id.* at 1259. "The cost of the 1996 redesign was approximately \$34 million and increased the annual cost of producing currency by over \$31 million. The cost for the 2004 redesign was over \$113 million and increased the annual cost of producing currency by more than \$25 million." *Id.* at 1272.

³⁸ *Id.* at 1272-73.

³⁹ *Am. Council of the Blind*, 525 F.3d at 1274. On July 30, 2008, the House Subcommittee on Domestic and International Monetary Policy, Trade, and Technology held a hearing on this issue. See Examining Issues Related to Tactilely Distinguishable Currency, http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr073008.shtml.

⁴⁰ *American Council of the Blind v. Paulson*, 581 F.Supp.2d 1 (D.D.C. 2008).

⁴¹ Office of Inspector General, Department of the Treasury, *Audit of the Department of the Treasury's Special-Purpose Financial Statements for Fiscal Years 2009 and 2008* (January 7, 2010), Section II, GF006-FR Notes Report, page 65, available at <http://www.treas.gov/inspector-general/audit-reports/2010/oig10029.pdf>.

⁴² *Id.*

Implications for a Legal Remedy

This section considers several potential issues that might arise in designing an appropriate remedy to bring the Secretary into compliance with the court of appeals decision, which would likely be affected by the conflicting points of view within the community of individuals with visual impairments.⁴³

The district court held that, “any solution that accommodates some, but not all, individuals with impaired vision is, at best, a half measure.”⁴⁴ The solutions suggested by the Council included a wide range of options. The spectrum of individuals affected by uniform currency likewise spans a wide range, from individuals with low vision to those with no vision. Among the causes of visual impairments, two also correlate with decreased tactile ability.⁴⁵ The correlation between visual impairments and tactile function presents a more complex issue regarding an adequate remedy to accommodate all individuals with impaired vision. If the Secretary is charged with redesigning currency so that individuals with visual impairments, including the sub-population with decreased tactile function, can gain meaningful access to it, more than subtle tactile features would have to be incorporated. It is unclear whether the more involved remedies (such as alterations in size and shape) will pass the test of undue burden, since none of the proposed remedies was specifically analyzed using that test.

The adequacy of the remedy may be questioned even further publicly since not all advocates for the visually impaired agree that there is a lack of meaningful access. During the appeal, the Secretary had the support of the National Federation of the Blind (the “Federation”), which filed an amicus brief asserting that the blind currently have meaningful access to currency. With 50,000 members, the Federation is the largest organization representing blind and visually impaired individuals.⁴⁶ The Federation’s position is that the cost involved in changing U.S. currency is not worth the “convenience” that would result from the redesign.⁴⁷ Furthermore, the Federation claims that the implication in the ruling that the blind are not capable of managing cash

⁴³ See generally Lauren French LaRochelle, Note, *Dollars and Sense: Designing a Reasonable Accommodation under Section 504 of the Rehabilitation Act*, 69 OHIO ST. L.J. 525 (2008) (discussing the history and respective views of the National Federation of the Blind and the American Council of the Blind).

⁴⁴ *Am. Council of the Blind*, 463 F. Supp. 2d at 59 n. 9. The statement was responding to the suggestion of adopting measures that would only provide meaningful access to individuals with low vision. On appeal, the Secretary challenged that holding, claiming that the district court had impermissibly curtailed the Secretary’s discretion. The appellate court rejected that contention stating that the district court expressly acknowledged the Secretary’s discretion in its ruling. Furthermore, the appellate court held that since the Secretary did not demonstrate that accommodating individuals with no vision would present a uniquely undue burden, accommodating only those with low vision would not be sufficient to bring him into compliance of Section 504. *Am. Council of the Blind*, 525 F.3d at 1273.

⁴⁵ Diabetic retinopathy and age-related macular degeneration are among the four leading causes of low or no vision. The basis of those impairments, diabetes and advanced age, can also lead to decreased tactile function. See *Vision Problems in the U.S.* (National Eye Institute, National Institutes of Health, Bethesda, MD), 2002, at 1. Available at <http://www.nei.nih.gov/eyedata/pdf/VPUS.pdf>; Stevens, J., Foulke, E., Patterson, M.Q. *Tactile Acuity, Aging, and Braille Reading in Long-Term Blindness*. *Journal of Experimental Psychology: Applied*. Vol. 2, No. 2, 91-106 (1996).

⁴⁶ The American Council of the Blind reports its membership at 20,000. See *Associations Unlimited*(Gale) at http://galenet.galegroup.com/servlet/AU?locID=loc_main for both figures.

⁴⁷ See Marc Maurer, *Is the Failure to Produce Tactile Currency Really a Matter of Discrimination?* *Braille Monitor*, February 2007, Vol. 50 No. 2. <http://www.nfb.org/images/nfb/publications/bm/bm07/bm0702/bm070202.htm>.

transactions will negatively prejudice the public's opinion regarding the capabilities of the blind in America.⁴⁸

Conversely, the court's decision is viewed optimistically by the American Council of the Blind. Mitch Pomerantz, its president, states that, "This is a tremendous victory for the [American Council of the Blind] and for every blind and visually impaired person living in the United States today and in the future. We hope that the Treasury Department will now sit down with us to come up with a mutually satisfactory way of making our currency accessible." The American Foundation for the Blind (AFB) has similarly lauded the ruling. "This is an important victory for people who are blind and visually impaired," said the Director of Public Policy for AFB. "We applaud the American Council of the Blind for championing this issue, and look forward to the day when people with vision loss have as reliable access to paper money as everyone else."⁴⁹

In conclusion, despite the court of appeals holding in *Paulson*, many issues regarding an appropriate remedy to address discriminatory elements of U.S. currency remain unresolved.

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⁴⁸ The President of the Federation stated, "We felt that this kind of presentation would lead to the assertion that blind people were incapable of participation in commerce without substantial alteration of the documents or papers involved in financial transactions." *Id.*

⁴⁹ The range of supporters of this decision include the American Association of People with Disabilities and OurMoneyToo.org, a small advocacy organization dedicated to raising awareness regarding currency discrimination against individuals with visual impairments. See <http://www.aapd-dc.org/News/courtdecisions/061129acb.htm> and <http://www.ourmoneytoo.org>.