

# respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

## Do Civil Unions Infringe on Religious Freedom?

by Barbara Sheehan

**Iowa and Vermont are the latest states to allow same-sex couples to legally marry, joining Massachusetts and Connecticut. Other states are considering the issue as well, and still others, including New Jersey, offer gay couples the option of civil unions, which grants the rights and responsibilities of marriage without the name.**

While gay rights activists may be gaining ground in obtaining marriage rights for same-sex couples, the gay couples themselves are still facing discrimination. One such case occurred in New Jersey in 2006. When the Garden State began allowing civil unions, two gay women, Harriet Bernstein and Luisa Paster, approached the Ocean Grove Camp Meeting Association (OGCMA) about conducting their civil union ceremony at the Association's Boardwalk Pavilion.

At the time, the pavilion was regularly being rented out for nuptials of **heterosexual** couples. Because Bernstein and Paster are gay, they were turned away on the grounds that their civil union ceremony would violate the Methodist beliefs and teachings of OGCMA. Bernstein and Paster filed a complaint of discrimination with the New Jersey Division on Civil Rights, setting off a legal firestorm that questioned how far a church group can go in asserting its First Amendment right to free exercise of religion.

### So what's the beef?

According to Rev. Scott Hoffman, chief administrative officer of OGCMA, the association was founded some 140 years ago for the express purpose of creating a place for "spiritual birth, growth and renewal" on the Jersey shore. In accordance with a charter granted by the state in the 1870s, the land owned by the Camp Meeting Association encompasses a one-square-mile section of Neptune Township, including the beach and boardwalk. While all facets of the public, including [>continued on page 2](#)

## Court Rules U.S. Currency Discriminates Against Visually Impaired

by Phyllis Raybin Emert

**Chances are when you pay cash for a purchase, you don't need to think twice about it. You just look at the bills in your wallet, select the appropriate one and make sure to get the correct change back. For a blind person, however, it's not that simple. To the blind or visually impaired, a \$100 bill feels the same as a \$10 bill, and when paying cash, they often have to rely on the kindness of the cashier or other customers to tell the bills apart.**

A federal appeals court panel ruled in May 2008 that the U.S. discriminates against the blind and visually impaired because all paper money is the same size and too difficult to tell apart. The ruling upheld a 2006 decision by the Federal District Court in Washington, DC. The Treasury Department must now comply with this decision by redesigning or differentiating paper currency so the value of the bills can [>continued on page 4](#)

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## Marriage *continued from page 1*

the gay community, use the property Rev. Hoffman said the land is dedicated to the worship of Jesus Christ.

It is this focus on religion that resulted in the denial of the gay couple's request to use the pavilion for their civil union ceremony. Rev. Hoffman said that in accordance with the Methodist Book of Discipline, no properties of the association are to be used for civil unions.

Located on the boardwalk in Ocean Grove, the pavilion, with its open-air sides and contemporary architectural style, bears little resemblance to what many may envision as a traditional church. Still, Rev. Hoffman said worship services are conducted there virtually every day in the summer from Memorial Day to Labor Day and he counts it as one of the main places where the group holds worship events. Because of this, he said the Association had to "graciously" deny the request of Bernstein and Paster to use the outdoor pavilion for their ceremony.

### Is it a 'church?'

If in fact the pavilion were clearly a "church" in the traditional sense, then OGCMA would have had more solid legal footing to deny the couple's request. Freedom of religion protects the clergy's right to decline conducting ceremonies that conflict with their deeply held religious teachings and beliefs.

On the other hand, public places by definition are open to all members of society. In accordance with the public accommodation provisions of the New Jersey Law Against Discrimination, it is unlawful for a public facility to subject people to differential treatment based on race, religion, sexual orientation, and the like.

### Discrimination charged

Taking a stance that the Boardwalk Pavilion is in fact a public facility, the couple stayed committed to their cause and pursued the discrimination complaint with the Division on Civil Rights.



"We are not publicity seekers," Paster told *The Asbury Park Press*. "We really did not want to stick our necks out but we could not let this injustice ride..."

The gay couple and those who support them point to a couple of key factors as evidence that the pavilion is indeed a structure for public use — or at least it was at the time. First, at the time the two women approached OGCMA about their civil union ceremony, the pavilion was being rented out to other couples for their heterosexual wedding ceremonies. Second, the pavilion was receiving tax-exempt status through a New Jersey program known as Green Acres. This program is designed to motivate non-profit organizations to allow public use of their private conservation or recreation lands.

Since the controversy over the pavilion erupted, both of these facts have changed. The Association no longer rents the pavilion out for weddings of any kind and it has been denied its tax exemption status for the pavilion.

### What's happening with the case now?

After Bernstein and Paster filed their complaint with the Division on Civil Rights, the OGCMA filed suit in federal court, claiming that the investigation violated its First Amendment right to free speech, free association and free exercise of religion. The attempt to stop the Division on Civil Rights from looking into the

matter was unsuccessful, and a year-long investigation ensued.

The investigation concluded last December with a ruling that Paster and Bernstein had “probable cause” to charge OGCMA with discriminating against them in refusing to rent the pavilion. The Division also found, however, that another lesbian couple who had filed a complaint similar to Bernstein and Paster’s did not have probable cause because they approached OGCMA after it had stopped renting the pavilion altogether.

While the Division’s finding was a victory for Bernstein and Paster, it was only one step in the process. Essentially, the finding means that there is enough evidence for the case to now go forward for a hearing before an administrative law judge. As for the other couple, their case would end unless there was an appeal within 45 days.

### What about the couples?

Although the legal questions surrounding this case continue, the partnerships of both couples that filed the discrimination complaints have been affirmed. Rev. Hoffman noted that both couples had ceremonies on the boardwalk

in Ocean Grove — an option that he said was open to them from the beginning. As with many legal challenges, however, the matters being considered in this case extend beyond the individuals who raised them. And the case has ignited some basic questions about where religious freedom ends and discrimination begins.

New Jersey lawyer Eugene McDonald said that where the pavilion is concerned, it really comes down to the fact that OGCMA was given government money through the tax exemption status. Because of this, he asserted that the association essentially forfeited its right to control access to the pavilion based on religious principles.

This is in contrast, he noted, to groups like the Boy Scouts or the Catholic Church — two organizations that have continually opted not to accept government money. If you want to make your own rules, McDonald said, you cannot accept government funding.

According to a *Washington Post* article, legal experts claim religious groups could find their tax exemption status lost, as in OGCMA’s case, if they do not support gay rights. To prove their point, legal scholars cite the decision in the Bob Jones University case where the university lost its tax exemption because of its ban on interracial dating and

marriage. The University claimed these practices were against the religious beliefs and teachings of the school.

Jonathan Turley, a legal professor at George Washington University, supports gay marriage, but told *The Washington Post* that the Bob Jones ruling “puts us

on a slippery slope that inevitably takes us to the point where we punish religious groups because of their religious views.”

### A matter of respect

As communities everywhere struggle to find common ground on this issue, tensions surrounding the pavilion controversy linger in Ocean Grove. Through it all, Rev. Hoffman asserts that the gay community has always been and still is welcome to participate in everything OGCMA does, with the exception of performing civil union ceremonies in the pavilion. From a freedom of religion standpoint, Rev. Hoffman said it would be devastating to have to do something that is against their religious principles.

“We have respect for the gay community and we would ask for respect in return,” Rev. Hoffman said. “There has to be respect in both directions.”

Elizabeth attorney Felice T. Londa, who is herself a partner in a civil union, says that no one has suggested that a church that is opposed to same-sex partnerships be required to perform a civil union ceremony. Like others who have sided with the lesbian couples, she does not equate the pavilion to a church and said the real message in this is equality.

“You may not agree...but you have to respect,” Londa said. “And that’s what this is all about.”

If the latest legal trends prevail, religious groups may face an uphill battle. A National Public Radio article about the Camp Meeting Association controversy stated, “as states have legalized same-sex partnerships, the rights of gay couples have consistently trumped the rights of religious groups.” ■



## U.S. Currency *continued from page 1*

be distinguished from each other by size or touch.

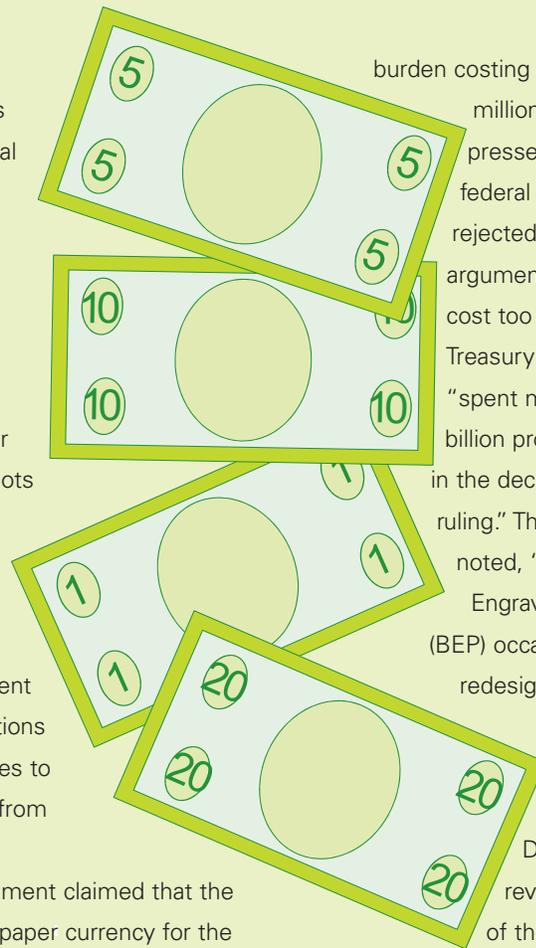
The American Council of the Blind brought the lawsuit challenging the configuration of currency in 2002. In the initial 2006 ruling in *American Council for the Blind v. Paulson*, Judge James Robertson declared “the Treasury Department’s failure to design, produce and issue paper currency that is readily distinguishable to blind and visually impaired individuals violates Section 504 of The Rehabilitation Act of 1973.” Section 504 states that no disabled or handicapped individual should “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.”

In his **majority opinion**, Judge James Robertson wrote, “Of the more than 180 countries that issue paper

currency only the United States prints bills that are identical in size and color in all their denominations.” In Great Britain, for example, each bill value has a specific size. Canada’s paper money has raised dots at the corners depending on its value so it is easily identifiable. Other countries use different shapes or combinations of raised dots or lines to distinguish one bill from another.

The U.S. government claimed that the decision to change paper currency for the blind and disabled would create a financial

burden costing more than \$200 million for new printing presses and plates. The federal appeals court rejected the government’s argument that it could cost too much since the Treasury Department “spent more than \$4 billion producing currency in the decade before [the] ruling.” The court also noted, “the Bureau of Engraving and Printing (BEP) occasionally redesigned currency to thwart counterfeiters.” The Treasury Department is reviewing the ruling of the court. In the meantime, the BEP



## Waging Individual Battles

All across the country the disabled fight personal battles of discrimination every day. Most of these battles don’t make news headlines. Here are two stories that did.

### Fighting to fight fires

Isaac Feliciano, of Paterson, always wanted to be a firefighter, even though he lost part of his left leg to gangrene after he contracted meningitis at the age of six. That didn’t stop him from playing high school football and baseball and competing in the Paralympics with a titanium carbon fiber limb. Feliciano passed the written firefighter exam and finished in the top 20 percent for the physical test, in which he pulled a fire hose and carried a dummy up a dozen flights of stairs while wearing a 75-pound vest. He also passed a stress test and a psychological evaluation.

In April 2006, Paterson’s medical consultant declared that Feliciano wasn’t capable of becoming a firefighter because he only had one leg, so the city denied his application. With the help of a lawyer, Feliciano appealed to the independent five-member state

Merit System Board, part of the Department of Personnel. In March 2007, the state board overturned the city of Paterson’s decision to deny employment. They ordered that Feliciano be allowed to enter firefighter training because he was “functioning at a high level of physical activity consistent with the needs of the job.” On June 29, 2007, Isaac Feliciano successfully graduated from the Passaic County Public Safety Academy in Wayne and is now a Paterson firefighter.

### Fastest man on no legs

Another story that made international headlines was of 21-year-old Oscar Pistorius, a sprinter from South Africa who had both his legs amputated when he was a baby. Pistorius was born with no calf or anklebones, but with the help of carbon-fiber j-shaped artificial blades that are attached below the knee, he can run nearly as fast as the best runners in the world. He is a Paralympic champion and the world record holder in the 100, 200 and 400-meter amputee races.

Pistorius wanted to compete in the Olympic trials and win a spot on the South African Olympic team at the 2008 Beijing

commissioned a three-phase study to look at the needs of the blind and visually impaired. The study includes the feasibility of changing U.S. currency design and the economic implications of such a change. The results of the government study will be released in 2009.

### Impact on vending machines

In testimony before the House of Representatives Financial Services Committee, Richard Geerdes, president and chief executive officer of the National Automatic Merchandising Association (NAMA) stated that a change to U.S. currency “would have a substantial impact on the vending industry” in America. There are approximately seven million vending machine bill acceptors in use, and changes in the size of paper currency would require retooling and software upgrades in each of these machines at a cost of as much as \$400 per machine or \$2.8 billion.

Geerdes noted “the costs to the U.S. vending industry...would be staggering.” He suggested replacing many dollar bills with dollar coins, such as the Susan B. Anthony dollar coin of 1979, the Sacagawea golden dollar coin of 2000 and the presidential dollar coin program, which will be distributed up to 2016. The savings in using dollar coins over dollar bills (about \$522 million yearly) would enable the government to provide the blind and visually impaired with pocket size hand-held scanners that can read the value of the bill out loud.

### Legislation in Congress

In April 2007, Representative Pete Stark of California introduced the Catherine Skivers Currency for All Act in the U.S. House of Representatives. The Act would have required “production of federal reserve notes in a manner which enables an individual who is blind to

determine the denomination of each such note.” Essentially, Congressman Stark proposed distinctive changes to bills \$50 and less by trimming one to four corners of each bill.

The Act, which was named after a former president of the California Council of the Blind, was supported by the Lighthouse for the Blind and Visually Impaired, whose executive director, Anita Aaron told *The San Francisco Chronicle*, “It’s all about choice. Allowing people to independently identify what currency they have without using other technology would serve the largest numbers of people.”

One of the original plaintiffs in *American Council for the Blind v. Paulson*, Professor Otis Stephens, a professor at the University of Tennessee, told *The New York Times*, “I cannot emphasize enough the feelings of insecurity and vulnerability which I >continued on page 8

Olympics. According to *The New York Times*, “At least three disabled athletes have competed in the Summer Olympics: George Eyser, an American, won a gold medal in gymnastics while competing on a wooden leg at the 1904 Games in St. Louis; Neroli Fairhall, a paraplegic from New Zealand, competed in archery in the 1984 Olympics in Los Angeles; and Marla Runyan, a legally blind runner from the U.S., competed in the 1500 meters at the 2000 Olympics in Sydney.” These athletes, however, had disabilities that did not directly affect the events in which they participated. The gymnast and archer relied on their arm strength, while the runner’s natural legs were not affected by her blindness.

Pistorius’ dream of competing in the Olympics raised the question of whether his prosthetic legs would give him an unfair advantage over the other athletes by making him taller and giving him a longer stride. Pistorius is nearly 6 feet 2 inches while wearing the artificial limbs. Professor Peter Bruggemann, the director of the Institute of Biomechanics at the German Sports University in Cologne, tested Pistorius and six able-bodied 400-meter athletes at the request of the International Association of Athletics Federation (IAAF) in late 2007. Professor Bruggemann

told the *Times of London*, “[Pistorius] has a considerable advantage compared with athletes without prosthetic limbs who have undergone the same tests...The prosthetics return 90 percent of the impact energy, compared to the 60 percent of the human foot.” There are also disadvantages to Pistorius, however. The high-tech blades can slide on a wet surface and balance is hard to maintain and particularly difficult when turning corners. If Pistorius fell during a race, he could risk injury to himself and other competitors.

In January 2008, the IAAF banned Pistorius from competing in the summer Olympic games. Pistorius appealed to the Court of Arbitration for Sport (CAS) and on May 16, 2008, the decision by the IAAF was overturned, with the CAS ruling he could compete against able-bodied athletes. In July, Pistorius attempted to win a spot on the South African Olympic track team. He finished his 400-meter heat in 47.78 seconds, a little over two seconds above the qualifying time, so he did not make the team. Never discouraged, Pistorius is setting his sights on the 2012 Olympic games in London.

—Phyllis Raybin Emert

# Are Anti-Noose Laws Necessary?

by Cheryl Baisden

**In the fall of 2006, a series of incidents took place in a small Louisiana town, touching off legislation across the country that specifically made exhibiting a noose in some states a hate crime, punishable by imprisonment, fines, and/or community service.**

Defined as an action intended to hurt or intimidate someone because of their race, ethnicity, national origin, religion, disability, and in some states sexual orientation, hate crimes can involve physical violence or acts that can be interpreted as threatening. While actions like painting a Nazi swastika on the property of someone who is Jewish, or hanging a noose (a symbol of lynching) in a location as a threat to African-Americans, often can be prosecuted under state and federal hate crimes laws, several states, including Connecticut, New York, Michigan and Louisiana, have decided separate legislation related to noose displays is necessary.

The push to enact noose laws across the nation was sparked by a series of incidents that began in the small, mostly white town of Jena, Louisiana, in September 2006. During an outdoor school program, a black student asked permission to sit under what was known as the "white tree" instead of in the bleachers. The following day, three white students hung nooses in the tree. Although the principal proposed expelling the students, the board of education and superintendent overruled the recommendation and imposed a three-day suspension.

In reference to the noose incident, Superintendent Roy Breithaupt told *The Chicago Tribune*, "Adolescents play pranks.

I don't think it was a threat against anybody."

U.S. Attorney Donald Washington disagreed, noting that FBI investigators and federal examiners found that hanging the nooses "had all the markings of a hate crime." The teenagers could not be prosecuted, however, because only adults can be charged under the federal hate crimes statute.

For months following the noose incident racial tensions flared in Jena, and in December 2006, several black students assaulted a white classmate, ultimately knocking him unconscious. Dubbed the Jena 6, the attackers were arrested and originally charged with attempted second-degree murder. In September 2007, as the first hearings were set to begin, an estimated 20,000 people gathered to march in protest of the way local authorities handled the noose incident and the subsequent assault. The charges against the Jena 6 were later reduced, and so far only one of the students has been sentenced after pleading guilty to a lesser juvenile charge of second-degree battery.

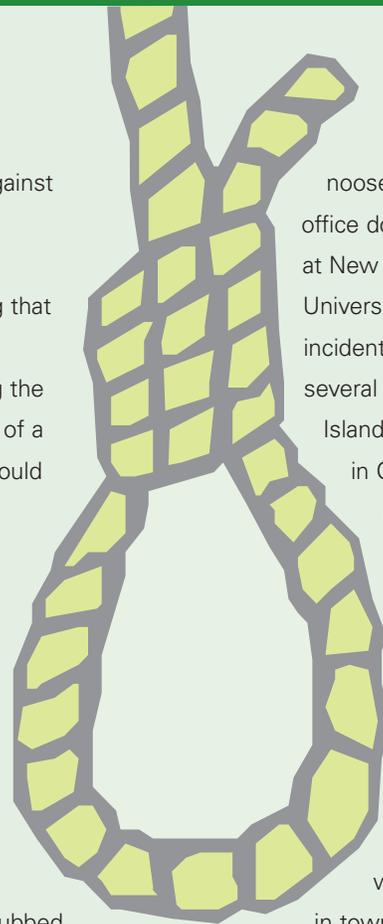
## Copycat cases

After the incident in Louisiana received national attention, reports of noose displays began popping up across the country. In the nine months following the Louisiana rally, the Southern Poverty Law Center, which tracks and studies hate crimes, received reports of approximately 80 noose incidents compared to about a dozen in a normal year. In one incident, a

noose was placed on the office door of a black professor at New York's Columbia University. In another New York incident nooses showed up in several locations on Long Island. Here in New Jersey, in October 2007, three nooses were found hanging in the aisle of a Home Depot in Passaic. Probably the most blatant noose incident occurred the day after the protest march in Jena, when a white man was arrested in town for repeatedly driving

past a crowd of protesters with nooses hanging from the back of his pickup truck. Police found an unloaded rifle and brass knuckles in the truck of Jeremiah Munsen, who pled guilty to a hate crime for using nooses as threats. He was sentenced to four months in jail and 125 hours of community service, but he could have received a maximum sentence of a year in prison and a fine of up to \$100,000.

"It is a violation of federal law to intimidate, oppress, injure or threaten people because of their race and because those people are exercising and enjoying rights guaranteed and protected by law and the Constitution of the United States," stated U.S. Attorney Donald Washington in an April 2008 press release. "Our civil rights laws protect the civil rights of all Americans, and they remind us that we are all members of one particular race — the human race."



## The right to free expression

Enforcing legislation like anti-noose and hate crime laws can be tricky, since the First Amendment to the U.S. Constitution guarantees *all* citizens the right to freely express their thoughts, even if their opinions are unpleasant to others. The exception to this freedom involves protecting the safety of the public, explained New Brunswick attorney Jay Wegodski, a constitutional lawyer. For instance, a person does not have the right to yell “fire” in a crowded theater, incite people to riot or threaten someone’s safety.

“In the case of a noose being hung in a public place or on someone’s property, that obviously could be viewed as a threat, or an assault, so it would not necessarily be a protected First Amendment right,” Wegodski said. “What matters in determining whether expression should be protected by the Constitution is what the **intent** of that expression is. For example, burning an American flag can be a way for someone to voice their dissatisfaction with the government, while burning a cross on a black family’s lawn would be clearly viewed as a threat.”

## Relying on *Virginia v. Black*

According to the First Amendment Center, a **nonpartisan** organization that provides education to the public regarding First Amendment issues, the legality of anti-noose laws relies heavily on the U.S. Supreme Court’s decision in the 2003 case of *Virginia v. Black*, which dealt with cross-burning. With its ruling in *Virginia v. Black*, the high court **upheld** Virginia’s cross-burning law,

which stated, “It shall be unlawful for any person or persons, with the intent of intimidating any person or group of persons, to burn, or cause to be burned, a cross on the property of another, a highway or other public place.”

The Court’s majority opinion, written by Justice Sandra Day O’Connor, stated, “when a cross burning is directed at a particular person not affiliated with the Klan, the burning cross often serves as a message of intimidation, designed to inspire in the victim a fear of bodily harm. Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm.”

Keeping the First Amendment issue in mind and the Court’s decision in *Virginia v. Black*, the anti-noose laws that have been adopted by various states spell out that there must be an *intent to intimidate* for a noose display to qualify as a violation.

Connecticut’s law, for example, specifically allows nooses “in a

Halloween display or a theatrical production,” but takes a strong stand against nooses being used for intimidation. “Connecticut simply will not tolerate bigotry or racism,” said Governor M. Jodi Rell in a statement when signing the bill into law in May 2008. “Let this bill send that message loud and clear. Using a noose — a symbol of the racially motivated lynchings during the late 19th and first half of the 20th century — to intimidate anyone because of their race or any other characteristic is a repugnant and cowardly act.”

Under New York State’s anti-noose legislation, which was also passed in May 2008, even drawing a noose can be a violation of the law if the intent is to intimidate. California is the latest state to push for an anti-noose law. Introduced in March 2009, the California bill would provide a one-year jail sentence and a \$5,000 fine for offenders who use the hanging of a noose as an act of intimidation.

Although New Jersey has not considered legislation that would specifically make displaying a noose a hate crime, depending on where, how and why a noose is being displayed, the state’s hate crimes statute could be applied, noted Wegodski. “Legislation dealing specifically with nooses or any other racially charged symbol isn’t really necessary,” he said. “For the states that have passed these laws, it is simply a way to make the constitutional issues a little clearer.” ■



**heterosexual** — a person who romantically desires a person of the opposite sex. **intent** — a state of mind or desire to bring about a certain result. **majority opinion** — a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues. **nonpartisan** — not adhering to any established political group or party. **upheld** — supported; kept the same.

## U.S. Currency *continued from page 5*

experience whenever I engage in currency transactions, due to my inability to distinguish between denominations.”

In June 2007, the Catherine Skivers Currency for All Act was referred to the House subcommittee on Domestic and International Monetary Policy, Trade and Technology where it died in committee.

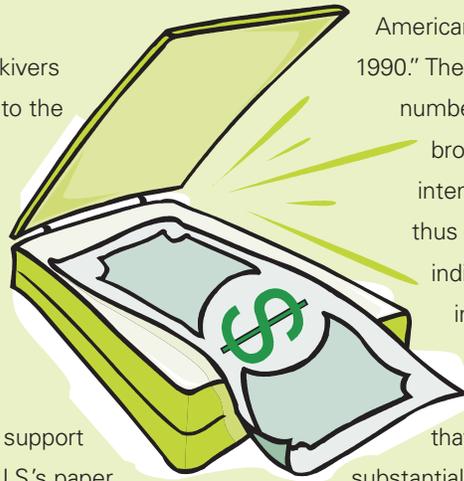
### Not all united

While many advocacy groups support legislation that would revise the U.S.’s paper currency and are encouraged by the May 2008 ruling, some do not. A spokesman for the National Federation of the Blind told *The San Francisco Chronicle* that it doesn’t believe U.S. currency discriminates against blind people and would rather focus on creating jobs for the blind, claiming the unemployment rate for the blind and visually impaired is at 70 percent.

“The ruling will do nothing to alleviate that situation,” federation president Dr. Marc Maurer told *The San Francisco Chronicle*. “In fact, it seriously endangers the ability of the blind to get jobs and participate fully in society. It argues that the blind cannot handle currency or documents in the workplace and that virtually everything must be modified for the use of the blind.”

### ADA Amendments of 2008

Legislation was passed in 2008 that created greater protections for the disabled. The U.S. House of Representatives and the U.S. Senate passed the ADA Amendments Act of 2008 (ADAAA), which broadens the definition of disability under the Americans with Disabilities Act of 1990 (ADA). Signed into law by President Bush on September 25, 2008, the ADAAA took effect on January 1, 2009. The new Act protects more people with disabilities, and overrules several past U.S. Supreme Court decisions that were too strict and limiting.



The purpose of the Act was “to restore the intent and protections of the Americans with Disabilities Act of 1990.” The bill stated that the courts in a number of cases “have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect.” As a result, “lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities.” According to Congress, the standard definition of disability had been set too high and eliminated benefits for people who should be covered.

The new law applies only to businesses with over 15 employees and broadly interprets the definition of disability, extending benefits to a wider range of people. An article in the *Idaho Business Review, Boise* stated, “employers can no longer take into account mitigating measures like medication in determining whether an employee is disabled.” Under the old law, if medicine improved or controlled the impairment, an employee would not have been considered disabled.

Attorney Bonny G. Rafel of Livingston focuses on helping the disabled obtain income replacement benefits from employers and insurers. Rafel stated, “I think the ADA Amendments Act of 2008 can help many Americans who suffer from illnesses whose effects on a person’s life were under appreciated. Individuals with cancer, diabetes and other illnesses suffer from symptoms that challenge their abilities just the same as more mainstream, recognized disabling conditions.” She continued, “The fact that medication is available to treat an illness does not eradicate the impairing symptoms. Fair and equal treatment of all employees in the workplace, and making reasonable accommodations in recognition of disabilities is paramount.” Rafel added, “Employers may have to revisit their employee handbooks to create new regulations recognizing these changes.” ■