the reproductive and hemic systems. 45 CFR 84.3(j)(2)(i) (1985). The AIDS virus does far more than "affect" the hemic system. It destroys essential white blood cells (T-lymphocytes or T-helper cells), which are the primary agents for repelling infection. "Specifically, the disease destroys, and generates qualitative abnormalities, in the victim's T-helper/inducer cells, which enable other components of the immune system to function." *Ray* v. *School District of DeSoto County,* 666 F. Supp. 1524, 1529 (M.D.Fla. 1987). As the AIDS virus multiplies, the T-helper cells are killed. Further, it is testing of blood which is the method by which HIV infection is ascertained. Blood is tested to ascertain whether antibodies to defend against HIV have been produced and are present in the bloodstream. Presence of the antibodies is treated as the best proxy for presence of the viral infection itself. Thus, there is from HIV infection alone, a clear "physical impairment" to at least one major bodily system.

Moreover, this impairment does substantially limit what is indisputably a major life activity—procreation and childbirth. For both men and women, HIV information means that one should not engage in sexual intercourse without use of a condom. Thus, in order to protect one's partner from a risk of infection, the man or woman who is infected with the AIDS virus—even if entirely asymptomatic—must essentially forego procreation. For women who are infected with the AIDS virus and already pregnant, the risk of transmitting the virus to their newborn child may well mean that many women will decide to obtain abortions.

The second category of Rehabilitation Act definition which covers asymptomatic HIV-infected persons is the one referring to those who are "regarded" as having a physical impairment which limits a major life activity. From the outset, Congress has intended this part of the definition to include those persons who were treated by others as being handicapped, even if they in fact had no limiting physical impairment. The recent decision of the United States Supreme Court in *School Board of Nassau County* v. *Arline,* 107 S. Ct. 1123 (1987), correctly held that "an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment * * * Few aspects of a handicap give rise to the same level of public fear and misapprehension as contagiousness * * * The Act is carefully structured to replace such reflexive reactions to actual or perceived handicaps with actions based on reasoned and medically sound judgments." *Id.* at 1130 (emphasis added).

Under this part of the definition of handicapped individual, the act makes clear that even if a particular physical condition did not substantially limit one's activities, the attitudes of others toward the condition could constitute the limitation. Again, the agency regulations spell this out in their definition of the phrase, "is regarded as having an impairment." 45 CFR 84.3(j)(2)(iv) (1985). Housing, like employment, is an essential component of life. Thus, baseless fears that HIV-infected persons would transmit the AIDS virus to those living with or near them would have the effect of limiting those infected persons' abilities to obtain housing and thus care for themselves.

I should point out that the "regarded as" provision adds the class of persons who do not actually have the infection, but may be perceived as having the infection. This would include an individual who simply went in for HIV-testing or an individual who was asked by an employer or landlord to undergo HIV-testing because the person was suspected of being infected—a request which, as the committee report accompanying this bill points out, would not be valid.

It is important that Congress take this step of extending protection against housing discrimination to all HIV-infected persons, and I am pleased that this bill will have that effect. This bill represents a historic step forward and I urge my colleagues to pass it without any weakening amendments.

Mr. FRANK. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, the gentleman is explaining it exactly right. I would just reemphasize for the Members that they have already voted for precisely the position that is in this bill if they voted for the Grove City bill because in the Grove City bill this formulation that is being protected against discrimination unless a person is a direct threat within the President's bill. It was in the bill that the House committee had, it was in the alternative of the gentleman from Wisconsin [Mr. SENSENBRENNER], so all three were for that.

Mr. WAXMAN. Mr. Chairman, I urge our position on this amendment.

Mr. OWENS of New York. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from New York.

Mr. OWENS of New York. Mr. Chairman, I want to associate myself with the remarks of the gentleman. Section 504 of the Rehabilitation Act of 1973 thoroughly covers this case, and we should not try to fix something that is not broken. It has been in existence for 10 years, and we should let that section rule in this case.

Mr. Chairman, I rise in strong support of the Fair Housing Amendments Act—H.R. 1158—as one more critical step in the great stride toward freedom for Americans with disabilities.

The Supreme Court of the United States has quoted with approval the statement of Representative Vanik that society's treatment of people with disabilities constitutes one of our Nation's "shameful oversights" that has caused individuals with disabilities to be "shunted aside, hidden, and ignored" *Alexander* v. *Choate,* 105 S.Ct. 712, 718; 1985. H.R. 1158 begins to address and correct such a shameful oversight in our laws prohibiting discrimination in housing. To the types of housing discrimination prohibited under the Fair Housing Act, H.R. 1158 adds prohibitions of discrimination on the basis of a person's handicap.

It is unfortunate and unacceptable that people with disabilities encounter pervasive discrimination when they seek to obtain suitable housing. Ignorance, misperceptions, and outright prejudice cause some providers of housing to refuse to rent or sell their housing units to individuals with disabilities; an article in Perspectives: The Civil Rights Quarterly documented the following examples of such discrimination:

In a western city, a landlord refused to rent an apartment to a blind professional woman. How could he be sure she wouldn't start a fire trying to cook herself a meal, he asked?

In another major city, a man confined to a wheelchair was prohibited from renting a second-floor apartment because the elevator would have been his only exit, violating a city fire ordinance.

One suburban man, diagnosed a schizophrenic, received heavy medication causing severe relaxation of his facial muscles. His landlord, saying that he bothered other tenants, evicted the man from his apartment.

(Mike Jackman, "Enabling the Disabled: Paternalism is Enemy No. 1", Perspectives (Winter-Spring 1983) p. 23, 24).

In other instances, barriers built into the architecture—stairs, narrow doorways, inaccessible bathrooms, and so forth—prevent persons with disabilities from obtaining access to housing that would otherwise be suitable. This bill, for the first time, makes such discrimination on the basis of handicap an unlawful interference with the right of all Americans to Fair Housing.

Section 5(b)(h) of H.R. 1158 provides a definition of the term "handicap," based upon the language of existing statutes and court decisions addressing discrimination on the basis of handicap. Pursuant to this definition, a person has a "handicap" if any of the following three circumstances occur: First, the person has "a physical or mental impairment which substantially limits one or more of such person's major life activities;" second, the person has "a record of having such an impairment;" or third, the person is "regarded as having such an impairment." This three-pronged definition is drawn directly from the definition of individuals with handicaps under title V of the Rehabilitation Act of 1973, which includes section 504—the nondiscrimination provision covering Federal agency activities and programs that receive Federal financial assistance. The Rehabilitation Act definition

has been implemented and explained in Department of Justice coordinating regulations, 28 CFR Part 41, originally issued by the Department of Health, Education, and Welfare in 1977; in regulations issued by numerous individual Federal agencies to cover the programs and activities they conduct, and those conducted by recipients of Federal grants of those agencies; and in some court decisions, for example, *School Board of Nassau County v. Arline*, 107 S.Ct. 1123; 1987. The prior history of interpretation and application will enlighten the application of the identical terms in the H.R. 1158 definition. The definition of "handicap" presented in section (b)(h) neither expands nor restricts the current interpretation of "individuals with handicaps" as it is used in section 504. All of the physical or mental impairments that constitute handicaps under section 504 will also constitute handicaps under this bill. While it is not possible to devise a comprehensive list of all the types of impairments included, it is clear that the term encompasses such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, autism, AIDS and infection with the AIDS virus, cancer, heart diseases, diabetes, mental retardation, and emotional illness.

It is important to underscore that this definition clearly intends to include persons with AIDS and all who are infected with the HIV virus, whether or not they show symptoms of the disease. Various classifications and terminology have been used, but individuals are included if they have AIDS, AIDS-related-complex, or seropositivity, whether they have symptoms of the disease or are asymptomatic. The definition is intended to reflect a developing consensus in case law and administrative interpretations that all who test positive for the AIDS virus have a "handicap" and are within the scope of protection afforded by such laws against discrimination on the basis of handicap. Such coverage of AIDS is consistent with the observation of the Supreme Court in School Board of Nassau County versus Arline, that "society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment. Few aspects of a handicap give rise to the same level of public fear and misapprehension as contagiousness." 107 S.Ct. at p. 1129. The need for Federal statutory protection prohibiting discrimination against AIDS-infected people in housing is one of the explicit recommendations in the recently issued report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic.

The bill was amended in the committee to exclude "current illegal use of or addiction to a controlled substance; as defined in section 102 of the Controlled Substances Act, 21 U.S.C. Sec. 802. This amendment provides that individuals who are currently using or are currently addicted to illegal drugs are not protected as handicapped individuals under this bill.

The second and third prongs of the definition of "handicap" in section 5(b)(h), relating, respectively, to having "a record of having such an impairment" and "being regarded as having such an impairment," are intended to make the prohibitions of discrimination applicable to individuals who, although they do not have a physical or mental impairment included in subsection (1) of the definition, either have a record—whether accurate or not—of having once had such an impairment or who are denied a housing opportunity because they are treated as if they had such a physical or mental impairment even though they actually have no impairment or have a physical or mental impairment that does not meet the criteria of subsection (1). These subsections address situations in which discrimination occurs because a housing provider mistakenly assumes that an individual has a particular impairment, is erroneously told that such an impairment exists, or overreacts to a minor impairment or a person's history of prior impairment.

Section 6 (a) and (b) of H.R. 1158 add provisions dealing with discrimination on the basis of handicap to the list of discriminatory housing practices contained in the act. Pursuant to these amendments, it will be unlawful to discriminate in sale or rental, or to otherwise prevent an individual from obtaining a dwelling, because of a handicap of: The potential buyer or renter, a prospective tenant or resident, or any associates of the buyer or renter.

Section 6(f)(2) establishes a prohibition against discrimination in the terms, conditions, or privileges of a sale or rental; and against discrimination in the provision of services or facilities associated with a dwelling. These would prohibit unequal treatment or denials of services because of an individual's handicap, and would guarantee that a person will not be discriminatorily barred from access to such things as clubhouse and recreation facilities, parking privileges, cleaning and janitorial services, and other facilities, uses of premises, benefits, and privileges made available to other tenants, residents, and owners. To eliminate such discrimination, modifications of such terms, conditions, privileges, services, or facilities will be required to bring them into compliance with the requirements of this section.

These general prohibitions of discrimination on the basis of handicap contained in subsections (f)(1) and (f)(2) are supplemented by some more specific requirements set out in section 6(f)(3)—a provision regarding occupant-funded modifications, a provision regarding "reasonable accommodations," and a provision regarding accessibility features in future housing construction. Pursuant to subsection (A), it is an unlawful act of discrimination to refuse to permit a person with a disability to make reasonable modifications of premises if necessary for that person's full enjoyment. Such modifications are but a minor inconvenience to housing providers, but operate as a substantial and discriminatory barrier to safety and full enjoyment for the person with a disability.

Subsection (B) makes it an unlawful act of discrimination to refuse to make reasonable accommodations in rules, policies, practices, or services if necessary to permit a person with a handicap equal opportunity to use and enjoy a dwelling. The term "reasonable accommodation" is drawn from existing regulations and case law dealing with discrimination on the basis of handicap. A discriminatory rule, policy, practice, or service is not defensible simply because "That's the way we've always done it;" appropriate modifications must be made. The term "reasonable" has been interpreted to mean that feasible, practicable modifications are called for, but that extreme, infeasible modifications are not required. Such reasonable accommodations may require the changing of a rule, policy, or practice, or the modification of the manner of location in which services are provided if necessary to permit a person with a disability an equal opportunity to use and enjoy a dwelling.

Subsection (C) places some minimum requirements regarding accessibility upon "covered multifamily dwellings" designed and constructed for first occupancy more than 30 months after the date of enactment of the act. The term "covered multifamily dwellings" refers to all dwellings in buildings of two or more units that have elevators, and ground floor dwellings in buildings of two or more units that do not have elevators. This definition clearly does not require the application of accessibility features to second, third, and higher floor "walk-up" apartments.

Physical barriers are one of the most serious forms of discrimination facing citizens with disabilities. Today, in 1988, after State and local codes calling for accessible construction have been around for years in various jurisdictions, after many years of experience with the American National Standard for Buildings and Facilities—"Providing Accessibility and Usability for Physically Handicapped People," ANSI A117.1, after numerous National Barriers Awareness Days, after decades of calls from disability and elderly groups for accessibility requirements, after numerous articles in architecture and design journals regarding accessibility, the continuing failure to design and build housing having accessibility features and instead persisting in the erection of barriers to substantial segments of our society is closely akin to intentional, malicious discrimination.

H.R. 1158 applies significant but relatively modest standards regarding accessibility in new housing construction. Many State and local building codes, the Uniform Federal accessibility Standards, and the ANSI standard, A117.1-1986, provide accessibility standards that are quite specific, comprehensive, and detailed. H.R. 1158 does not go as far as these; it seeks to assure only that certain basic, uniform features of adaptable design are incorporated in new multifamily housing construction. The requirements are that on the ground floor of nonelevator buildings and on all floors served by elevators dwellings must be designed and constructed to include the following features: First, accessibility and usability by persons with disabilities of public use and common use portions; second, that all doors to and in such dwellings are sufficiently wide to allow passage of wheelchairs; and third, that premises contain certain specified features of adaptive design; that is, an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms that permit an individual in a wheelchair to maneuver about the space. The

features of adaptive design were negotiated with the input of the housing industry, and are intended to further the goal of establishing minimal standards to eliminate discriminatory barriers to persons with disabilities, with an incidental side benefit of fostering uniformity in the housing industry. These basic features of adaptability are so essential for the equal access of persons with disabilities, and are so easy to incorporate in housing design and construction, that failure to comply with them constitutes an unlawful act of discrimination. Compliance with these minimum standards will eliminate a great deal of the barriers which discriminate against persons with disabilities in their attempts to obtain equal housing opportunities.

The leisurely, often half-hearted pace with which our Nation has sought to promote not just equal access to housing but equal opportunity in all realms of life for persons with disabilities is inexcusable and must cease. In the words of Dr. Martin Luther King, Jr., "We have come to the day when a piece of freedom is not enough for us as human beings nor for the Nation of which we are part. We have been given pieces, but unlike bread, a slice of which does diminish hunger, a piece of liberty no longer suffices . . . Freedom is one thing—you have it all, or you are not free". It is long past time to make real the promise of equal opportunity for all Americans with disabilities—not in pieces, but in its totality. H.R. 1558 is one more crucial element in our Nation's pursuit of that goal.

Mr. HENRY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me say that as one of those who was in the district minority in opposing the Grove City remedy which passed this body several weeks ago, one of the reasons in which I did so was for my concern that religious institutions in particular be allowed to make behavorial judgments and some of the concerns that some of us felt were valid. I continue to be of the belief that at some point along the line we are going to have to address some of these problems through some revision in the Rehabilitation Act in section 504 and likewise in the title IX provisions and others in which religious principles and behavorial issues relative to questions of religious predisposition are in fact under the Constitution legitimate bases for discrimination in the sense of judgments appropriate to the conduct of a religious body as a religious body.

However, Mr. Chairman, I must say that I have very, very serious reservations and must speak out against the amendment of the gentleman from California [Mr. DANNEMEYER]. The whole issue of contagious disease, first of all, is overly broad. We are not talking here just about alcoholism, or drug abuse or, in fact, acquired immune deficiency syndrome, but measles, the common cold, influenza. When does the list stop? Who is accountable for making these judgments? What are the liabilities associated with the realtor, or agent or landlord in making these kinds of judgments?

The intent perhaps, even if overly broad, is commendable, but the language is very common, very slippery, and dangerous and overly broad.

Finally, just by way of brief closing, let me say that it is very difficult, particularly for some of us who in terms of our personal belief systems approach these questions of such emotional difficulty from a very conservative, personal perspective in terms of what we would want for ourselves or want for others in our society. But all individuals enjoy protection under our Constitution, and that protection ought to be reflected in the laws that we pass in this body.

Mr. Chairman, the difficulty is, of course, that in certain areas we have sought not only to protect classes against discrimination, but in fact to affirmatively promote certain classes and certain instances in order to render some degree of equity in accord to past injustice. That in fact is what part of the problem is and the struggle over the definition of "handicapped." To what extent are we seeking promoting protections, as it were, for people as opposed to simply honoring protections afforded to all individuals under this Constitution? That is where the area of debate more rightly belongs on this issue of handicapped in order to get the separate and full and careful consideration in a different kind of environment and clearly more clearly crafted language.

Mr. Chairman, for that reason I would urge my colleagues to vote against the language of the gentleman from California [Mr. DANNEMEYER].

Mr. SENSENBRENNER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment of the gentleman from California [Mr. DANNEMEYER], and I think the gentleman from Michigan [Mr. HENRY] is abundantly clear that the Dannemeyer amendment is overly broad.

I can see a hypothetical situation where you have a black family where one of the children has a common cold, and the common cold is a contagious disease just as much as spinal meningitis and measles, and mumps and AIDS, and the realtor discriminates in the sale or rental of the housing to that family. A charge is brought by the Secretary of HUD against the realtor for discrimination; one, because the family was black; and two, because the family had children.

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If this amendment were in there, they could say, "Well, I have a defense." There was one member of the family who had a contagious disease.

The way this amendment is drafted, it says that any infectious, contagious or communicable disease, whether or not such disease causes a physical or mental impairment during the period of contagion. I think that would be a defense. Even though the obvious common cold was not the reason for the discrimination, there was discrimination based upon one or more of the protected classes.

So I would hope the the Dannemeyer amendment would be voted down. I do intend to support the Burton amendment. The Burton amendment is more narrowly drawn, but the Dannemeyer amendment leaves a loophole that anybody who is guilty of kind of discrimination can drive a truck through and probably get off the hook.

Mr. MILLER of Washington. Mr. Chairman, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Washington.

Mr. MILLER of Washington. Mr. Chairman, I rise in opposition to the amendment, and I rise in support of the Fair Housing Amendments Act of 1988. I believe that this act is important because it extends nondiscrimination protection in the private housing market to persons with handicaps, including people who use wheelchairs, people who have diseases such as cerebral palsy, and people with AIDS and other infectious or contagious diseases.

The Judiciary Committee added an amendment to this legislation which states that the protections afforded under this act are not afforded to those handicapped persons whose tenancy would pose a direct threat to the health, safety, or tenancy of other people. This same standard applies to handicapped persons in section 504 of the Rehabilitation Act of 1973, most recently reaffirmed in the Civil Rights Restoration Act.

What this bill does, quite simply, is provide that housing opportunities may be limited only by medically justifiable health dangers, not by prejudice or groundless fear. In the case of AIDS, overwhelming medical evidence shows that the infection cannot be transmitted by casual contact. Thus, there is no reason to exclude people with infectious diseases, including AIDS, from the Fair Housing Amendments Act.

To my mind, there is no difference between denying housing to AIDS victims because of ignorant fears and denying housing to black or Jewish Americans because of ignorant prejudice.

I urge my colleagues to support this bill and oppose any amendments which would dilute this needed protection.

The CHAIRMAN pro tempore (Mr. OLIN). The question is on the amendment offered by the gentleman from California [Mr. DANNEMEYER] to the amendment offered by the gentleman from Indiana [Mr. BURTON].

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. DANNEMEYER. Mr. Chairman, I demand a recorded vote, and pending