Case No. 04-1397

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JOHN COUTURE
Plaintiff-Appellant,

v.

BONFILS MEMORIAL BLOOD CENTER
Defendant-Appellee.

On Appeal from the United States District Court
For the District of Colorado
The Honorable Robert E. Blackburn, District Judge
D.C. No. 02-RB-2319

BRIEF OF THE AMERICAN ACADEMY OF HIV MEDICINE, INTERNATIONAL ASSOCIATION OF PHYSICIANS IN AIDS CARE, NATIONAL ASSOCIATION OF PEOPLE WITH AIDS, WESTERN COLORADO AIDS PROJECT, AND WOMEN'S LIGHTHOUSE PROJECT AS *AMICI CURIAE* IN SUPPORT OF THE PLAINTIFF-APPELLANT SUPPORTING REVERSAL

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I. INTRODUCTION AND STATEMENT OF INTERESTS OF AMICI

This appeal addresses whether Appellant John Couture is protected as a person with a disability under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, *et seq.* Mr. Couture is infected with the human immunodeficiency virus ("HIV") and asserts that the ADA prohibits discrimination against him on the basis of his HIV status. Mr. Couture presented evidence in the district court that his major life activities of procreation and sexual activity have been substantially limited by HIV disease, and that Appellee Bonfils Memorial Blood Center regarded him as being substantially limited in the major life activity of work.

Amici include the American Academy of HIV Medicine, International Association of Physicians in AIDS Care, National Association of People with AIDS, Western Colorado AIDS Project and the Women's Lighthouse Project. These organizations of medical professionals and service providers work closely with HIV-positive individuals on a daily basis in Colorado and throughout the country. *Amici* collectively represent and treat hundreds of thousands of individuals throughout the United States and worldwide who are infected with HIV. Based on their experience and knowledge about the course, effects and treatment of HIV disease, *amici* understand that HIV invariably substantially limits the major life activities of those living with the disease and that people with HIV commonly are regarded as substantially limited as well. For these reasons, *amici* urge this Court to conclude that Mr. Couture, like all individuals living with HIV, is a person with a disability who is entitled to protection under the ADA. *Amici* submit this brief pursuant to Federal

Rule of Appellate Procedure 29.

II. THE TEXT AND LEGISLATIVE HISTORY OF THE ADA ESTABLISH THAT THE ACT PROVIDES BROAD PROTECTIONS TO PEOPLE WITH HIV.

Congress expressly intended the ADA to provide broad protection against discrimination to people with disabilities, including people with HIV. The stated purpose of the law is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). The ADA defines "disability" as:

> (A) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual;
> (B) a record of such an impairment; or
> (C) being regarded as having such an impairment.

42 U.S.C. § 12102(2). A plaintiff may gain protection from the ADA through any of these three routes. *Peters v. City of Mauston*, 311 F.3d 835, 844 (7th Cir. 2002).

Congress drew the ADA's "disability" definition almost verbatim from the definition of the term "handicapped individual" in the Rehabilitation Act Amendments of 1974, 29 U.S.C. §§ 701, *et seq.* Significantly, prior to the enactment of the ADA in 1990, "[e]very agency to consider the issue" and "[e]very court which addressed the issue" had concluded that "asymptomatic HIV infection satisfied the Rehabilitation Act's definition of a handicap." *Bragdon v. Abbott*, 524 U.S. 624, 642-44, 118 S. Ct. 2196, 2207-08 (1998). Accordingly, Congress was fully aware at the time of the ADA's passage that people with HIV were considered protected under its chosen definition of "disability."

As the Supreme Court noted in *Bragdon v. Abbott*, the ADA "should be construed in

light of this unwavering line of administrative and judicial interpretation." 524 U.S. at 645, 118 S. Ct. at 2208. Indeed, "[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well." *Id.* at 645, 118 S. Ct. at 2208. Because judicial and administrative precedent prior to the passage of the ADA were so "uniform," holding that individuals with HIV are disabled constitutes "the most faithful way to effect the congressional design." *Id.* at 645.

Moreover, throughout the legislative process that culminated in the ADA's passage, members of both houses, including both supporters and opponents of the legislation, repeatedly expressed their understanding that the ADA would protect people with HIV.[1] In short, Congress designed the ADA to protect people with HIV against discrimination. The

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[1] See, e.g., H.R. Rep. No. 101-485, pt. 2, at 52 (1990) ("[A] person infected with the Human Immunodeficiency Virus is covered under the first prong of the definition of the term 'disability' because of a substantial limitation to procreation and intimate sexual relationships"); S. Rep. No. 101-116, at 22 (1990) (stating same); 135 Cong. Rec. S10768 (daily ed. Sept. 7, 1989) ("[W]e have pointed out very clearly, if you are asymptomatic and HIV positive, you are protected; if you have full-blown AIDS, you are also protected.") (statement of Sen. Kennedy); 135 Cong. Rec. S10766 (daily ed. Sept. 7, 1989) ("[T]hose who are HIV positive . . . are covered") (statement of Senator Helms); 135 Cong. Rec. S10768 (daily ed. Sept. 7, 1989) ("I am talking about those who are HIV positive. You include them as handicapped . . . .") (statement of Sen. Helms); 136 Cong. Rec. H2422 (daily ed. May 17, 1990) ("[If the ADA] is adopted, every HIV carrier in the country immediately comes within the definition of a disabled person") (statement of Rep. Dannemeyer); 136 Cong. Rec. S9545 (daily ed. July 11, 1990) ("I call on the Congress to get on with the job of passing a law–as embodied in the Americans with Disabilities Act–that prohibits discrimination against those with HIV and AIDS.") (statement of President Bush).

broad language of the statute effectuates that intent, and this Court should not abandon this clear directive.

III. HIV INFECTION IS A DISABILITY.

Courts engage in a three step analysis in determining whether a particular plaintiff is actually disabled under the ADA. First, the court must consider whether the plaintiff's condition is a "physical or mental impairment." *Bragdon*, 524 U.S. at 632, 118 S. Ct. at 2202. The Supreme Court specifically has held that HIV is a physical impairment "from the moment of infection," regardless of the severity of a particular individual's HIV-related symptoms. *Id.* at 637, 118 S. Ct. at 2204. Second, the court must "identify the life activity" which may be limited by the plaintiff's impairment and "determine whether it constitutes a major life activity under the ADA." *Id.* at 631, 118 S. Ct. at 2202. A life activity is "major" if it has "comparative importance" or "significance," even if it does not have "a public, economic, or daily character." *Id.* at 638-39, 118 S. Ct. at 2205-06. Finally, the court must consider "whether the impairment substantially limited the major life activity." *Id.* at 631, 118 S. Ct. at 2202 Notably, the ADA "addresses substantial limitations on major life activities, not utter inabilities." *Id.* at 641, 118 S. Ct. at 2206. When an impairment imposes significant limitations on an individual, the individual may be disabled "even if the difficulties are not insurmountable." *Id.*

As a general matter, the evaluation of whether a given individual is "disabled" should be made on an individualized basis. *See Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 483, 119 S. Ct. 2139, 2147 (1999). Nonetheless, some impairments, such as blindness and

paraplegia, "may invariably cause a substantial limitation of a major life activity." *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 566, 119 S. Ct. 2162, 2169 (1999). *Amici* respectfully suggest that HIV is one such impairment.

A. The Supreme Court's Ruling in *Bragdon* and Subsequent Federal Court Decisions Compel the Conclusion That HIV Infection Is a Disability in All Cases.

In *Bragdon*, *supra*, the Supreme Court held that an HIV-positive woman was disabled under the ADA because she was substantially limited in the major life activity of reproduction. Although the Court declared it unnecessary to decide whether HIV is a disability in every case, the Court's analysis of the administrative and judicial interpretation of the Rehabilitation Act and the ADA's legislative history clearly dictate the conclusion that HIV infection is always a disability. *See Bragdon,* 524 U.S. at 641-42, 118 S. Ct. at 2206-07. Indeed, in reaching its conclusion, the Court declared that it was "draw[ing] guidance" from the Equal Employment Opportunity Commission's "categorical" conclusion that "impairments . . . such as HIV infection[] are inherently substantially limiting," and the similar opinions of the Departments of Justice and Transportation. 524 U.S. at 647, 118 S. Ct. at 2209, *quoting* 29 C.F.R. pt. 1630, App., p. 350 (1997).

In the six years since the Supreme Court decided *Bragdon*, numerous federal courts throughout the country have echoed the Court's conclusion that HIV is a disability. *See, e.g., Doe v. County of Centre*, 242 F.3d 437 (3d Cir. 2001); *Doe v. Mut. of Omaha Ins. Co.*, 179 F.3d 557 (7th Cir. 1999); *Rivera v. Heyman*, 157 F.3d 101 (2d Cir. 1998); *Doe v. Div. of Youth & Family Servs.*, 148 F. Supp. 2d 462 (D.N.J. 2001); *Patient v.*

Corbin, 37 F. Supp. 2d 433 (E.D. Va. 1998). This Court should follow the well-considered opinions of these sister courts.

B. HIV Substantially Limits Major Life Activities of Every Infected Person.

HIV infection is a disability because HIV disease substantially limits major life activities in every case. Indeed, the Supreme Court recognized as much in *Bragdon*. Although the *Bragdon* Court confined its holding to HIV's effects on reproduction because of the way the case had been argued below, the Court noted that HIV's "effect on major life activities of many sorts might have been relevant to our inquiry." 524 U.S. at 637, 118 S. Ct. at 2204-05. In some cases, HIV substantially limits life itself, 524 U.S. at 656, 118 S. Ct. at 2213-14 (Ginsburg, J., concurring), and the disease always significantly affects the way in which life is lived. Every person with HIV, whatever his or her particular symptoms and course of treatment, must face the physical and psychological vicissitudes of an infectious disease that has the potential to systematically destroy the body's immune system as well as the societal stigma that unfortunately accompanies a diagnosis of HIV in today's society.

As discussed below, HIV imposes a number of physical, psychological and social burdens that substantially limit many major life activities, including but not confined to the limitations discussed below. Because HIV is a highly variable disease that affects each individual differently, not every person with HIV experiences all of the limitations mentioned here.

1. HIV Disease Often Substantially Limits Physical Activities and the Ability to Maintain Physical Health and Care for Oneself.

Perhaps most obviously, the physical effects of HIV disease and its medications substantially limit the ability of many individuals to engage in major life activities like eating, sleeping, working, caring for themselves, interacting with others, and maintaining their health.[2] As the Supreme Court observed in *Bragdon*, people living with HIV commonly experience "fever, weight loss, fatigue, lesions, nausea, and diarrhea," even during the "asymptomatic" stage of the disease. 524 U.S. at 635-36, 118 S. Ct. at 2204. If untreated, HIV disease progression leads to worsening immune deficiency, making the infected individual vulnerable to opportunistic infections that may limit such basic life activities as breathing and walking. *See*, *e.g.*, *May v. Sheahan*, 1999 WL 543187 (N.D. Ill. July 21, 1999) (HIV-positive plaintiff alleging substantial limitation in ability to walk).

Since 1996, healthcare providers have treated HIV-positive patients with a combination of anti-viral medications that powerfully and effectively suppress HIV and fight immune compromise in many HIV-positive individuals. As a result of this therapy, commonly known as "highly active antiretroviral therapy" or "HAART," the death rate from HIV disease in the United States has dropped and many HIV-positive individuals have been

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[2]HIV infection also carries an enormous psychological burden, both because of the nature of the disease and because of society's reaction to it. Addressing the psychological impact of the disease is critical, and mental health may even affect the state of the immune system. *See* John G. Bartlett & Ann K. Finkbeiner, *The Guide to Living with HIV Infection Developed at the Johns Hopkins AIDS Clinic* 12, 145 (4th ed. 1998).

able to maintain stronger immune health.[3] Although HAART has helped to prolong many lives, it has not been universally effective and has proved difficult to tolerate, for many, and sometimes independently disabling. Some individuals do not respond to certain combinations of medications, others are hampered in their daily activities by oppressive side effects, and still others are unable to adhere to the restrictive schedules that the medications mandate. Furthermore, HIV's resistance to medication is a growing danger. As a result, even with medications potentially available, physical symptoms of HIV disease and common side effects from its medications continue to substantially limit many people living with the disease in a wide variety of ways.[4]

Mr. Couture's testimony in this case exemplifies the varied ways in which the physical effects and stresses associated with HIV disease can substantially limit basic life activities.[5] Since he contracted HIV, Mr. Couture has experienced a sleep disorder that

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[3]*See* U.S. Department of Health and Human Services, *Guidelines for the Use of Antiretroviral Agents in HIV-1-Infected Adults and Adolescents* (Oct. 29, 2004), available at http://aidsinfo.nih.gov/guidelines (hereinafter "HHS Guidelines").

[4]Even though medications potentially are available to many individuals with HIV, widespread insurance practices make it difficult or impossible for people with HIV to obtain private non-group health insurance. This further substantially limits the ability of people with HIV to care for themselves. *See* L.O. Gostin, *The AIDS Pandemic: Complacency, Injustice, and Unfulfilled Expectations*, 52-53 University of North Carolina Press (2004).

[5]In the lower court, Appellee argued that Mr. Couture was not disabled because he was capable of running and because he had written on a form that he was not disabled. Neither of these arguments merit serious consideration. *See Bragdon, supra* (HIV-positive plaintiff disabled under ADA regardless of physical abilities); *Cleveland v. Policy Mgmt. Sys., Corp.,* 526 U.S. 795, 119 S. Ct. 1597 (1999) (acknowledging that the term "disability" may have different meanings depending on factual context).

causes insomnia and fatigue that "pretty much affects [his] entire life. . . ." *See* Appellant's Appendix ("Aplt. App.") at 285. Mr. Couture's sleep disorder is exacerbated by the gastrointestinal distress and diarrhea that he suffers as a result of HIV disease and/or his HIV medications, causing him to wake during the night to use the bathroom, or if he does not make it to the bathroom in time, to wake up to change his bedding, after which he has great difficulty returning to sleep. *See id*. at 285-86. Because of these physical symptoms, Mr. Couture testified that although "[he] can do a job, it takes pretty much all [of his] energy." *See* Aplt. App. at 285.

Mr. Couture's experience is common. Diarrhea, nausea, fatigue and sleeplessness are routine symptoms of HIV disease as well as side effects of antiretroviral medications, and they can make virtually every life activity more difficult. Fatigue and insomnia hinder an individual's ability to sleep, interact with others on a basic level and complete simple tasks at work or at home. *See Pack v. Kmart Corp.*, 166 F.3d 1300, 1305 (10th Cir. 1999) (sleep is a major life activity); *Rotter v. Brinker Rest. Corp.*, 1999 WL 1132982 *3 (N.D. Ill. Dec. 10, 1999) (HIV-related "fatigue, night sweats and an inability to sleep" may support finding of disability under ADA). At the same time, persistent diarrhea may substantially limit an individual's ability to complete routine tasks because of the need for constant, prompt access to a bathroom. Diarrhea may substantially limit the ability to eat, digest food, control one's bowels and interact with others by participating in social or recreational activities. *See County of Centre*, 242 F.3d at 447 (HIV substantially limits the major life activity of digestion); *Workman v. Frito-Lay, Inc.*, 165 F.3d 460, 467 (6th

Cir. 1999) (waste elimination – i.e., controlling one's bowels – can be a major life activity); *Lawson v. CSX Transp., Inc.*, 245 F.3d 916, 923-24 (7th Cir. 2001) (plaintiff was substantially limited in the major life activity of eating because of restrictive treatment regimen). Persistent nausea similarly can interfere with daily activities like eating and sleeping, as well as the ability to care for oneself by maintaining adequate nutrition and medication adherence. *See Hernandez v. Prudential Ins. Co.*, 977 F. Supp. 1160, 1164-65 (M.D. Fla. 1997) (plaintiff with HIV substantially limited in major life activity of caring for himself).

Additionally, negative side effects of medication can themselves result in substantial limitations. *See Sutton*, 527 U.S. at 484, 119 S. Ct. at 2147. Most of the current antiretroviral medications prescribed to suppress HIV can cause side effects that range from unpleasant to dangerous. Patients taking HAART may experience nausea, vomiting, severe diarrhea, malaise and fatigue, rashes, joint and muscle pain, or insomnia.[6] Additionally, some HIV medications can lead to metabolic changes associated with heart disease, increased incidence of depression and psychiatric illness, peripheral neuropathy, lactic acidosis, lipid disorders, pancreatitis and anemia.[7] While side effects may be insignificant or non-existent for some individuals, they can be serious and even intolerable in others.

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[6]Christiane Schieferstein, *Side Effects*, *in* HIV Medicine (Hoffman & Kamps, eds., Flying Publisher 2003), available at www.hivmedicine.com/textbook/haart/nw1.htm.

[7]*See* HHS Guidelines, available at http://aidsinfo.nih.gov/guidelines.

2. HIV Infection Substantially Limits the Ability to Procreate and Engage in Sexual Relationships.

As the Supreme Court stated in *Bragdon*, people with HIV are substantially limited in the major life activity of reproduction because of the risks associated with unprotected sex. *See Bragdon*, 524 U.S. at 639, 118 S. Ct. at 2205-06. In the present appeal, the evidence establishes that Mr. Couture, like other individuals with HIV, is substantially limited in the ability to reproduce. *See* Aplt. App. at 292-94. This limitation has significant effects on Mr. Couture, who testified that he has considered having biological children but that, due to his HIV status, he is "unable to to have children in the future." *See* Aplt. App. at 286.

HIV also substantially limits non-procreative sex. *See Bragdon,* 524 U.S. at 643, 118 S. Ct. at 2207-08. Several courts have recognized that maintaining sexual relationships is a major life activity under the ADA. *See*, *e.g.*, *McAlindin v. County of San Diego*, 192 F.3d 1226, 1234 (9th Cir.1999); *Keller v. Bd. of Educ. of Albuquerque*, 182 F. Supp. 2d 1148, 1156 (D.N.M. 2001) (plaintiff whose medication caused pain during intercourse and loss of libido was disabled "on the basis of the substantial limitation of her sex life"). Because HIV can be transmitted through unprotected sex, HIV-positive individuals commonly face substantial limitations in their sexually intimate relationships. Moreover, HIV-positive individuals often feel guilty and fearful of infecting their spouse or partner even when practicing "safer sex." Bartlett & Finkbeiner, *supra.* at 122. In this case, the evidence suggests that, like many people with HIV, Mr. Couture "is unable to engage in

normal sexual relationships, even with condom use, because of partner fears." *See* Aplt. App. at 290.

Furthermore, as the Supreme Court observed in *Bragdon*, "[t]he laws of some States . . . forbid persons infected with HIV to have sex with others, regardless of consent." 524 U.S. at 641, 118 S. Ct. at 2206. A number of states, including states in this Circuit, have similar statutes, which impose unique and troubling limitations on the ability of HIV-positive individuals to maintain sexually intimate relationships. *See*, *e.g.*, Okla. Stat. Ann. tit. 21 § 1192.1 (2004).

3. HIV Infection May Substantially Limit the Ability to Form and Maintain Intimate Relationships.

In many cases, HIV infection also hinders the ability of individuals to form and maintain non-sexual intimate relationships with family members, spouses, life partners and friends. People living with HIV often find themselves cut off from family and friends as a result of overwhelming and pervasive societal stigma. *See Doe v. Coughlin*, 697 F. Supp. 1234, 1237 (N.D.N.Y. 1988) (people living with AIDS may be abandoned by family members). The understandable concern of many persons living with HIV with "managing [the] potential discovery [of one's HIV infection] and orchestrating its disclosure to companions, family, friends and relevant others" can be a substantial hurdle to intimacy. Angelo A. Alonzo & Nancy R. Reynolds, *Stigma, HIV and AIDS: An Exploration and Elaboration of a Stigma Trajectory*, 41 Soc. Sci. Med. 303, 308 (1995). *See also Doe v. City of New York*, 15 F.3d 264, 267 (2d Cir. 1994) ("[a]n individual revealing that she is

HIV seropositive potentially exposes herself not to understanding or compassion but to discrimination and intolerance"). For this reason, many individuals disclose their HIV status to only a select few family members or friends. In this case, Mr. Couture's HIV diagnosis has negatively impacted "his ability to form and maintain interpersonal skills and relationships because people have such negative perceptions of persons with HIV." *See* Aplt. App. at 290. Although many HIV-positive individuals succeed in creating and maintaining supportive romantic relationships, having HIV can make this endeavor substantially more difficult.

IV. HIV-POSITIVE INDIVIDUALS OFTEN ARE "REGARDED AS" DISABLED.

In addition to protecting individuals who are disabled, the ADA protects those who are "regarded as" disabled by employers and others. 42 U.S.C. § 12102(2); *see also Sutton*, 527 U.S. at 478, 119 S. Ct. 2144. By enacting the ADA, "Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment." *Doebele v. Sprint/United Mgmt. Co.*, 342 F.3d 1117, 1133 (10th Cir. 2003) (quoting *Sutton*, 527 U.S. at 489, 119 S. Ct. at 2150). The ADA's "regarded as" provision specifically protects those who have been discriminated against on the basis of such "myths, fears and stereotypes." 29 C.F.R. § 1630.2(l). *See also Sch. Bd. of Nassau County v. Arline*, 480 U.S. 273, 284, 107 S. Ct. 1123, 1129 (1987). The need for this protection is obvious. Conditions like HIV frequently inspire unfounded fear and irrational prejudices. The ADA guarantees that individuals living with such impairments have the opportunity to excel unencumbered by

stereotypes and fears harbored by employers or customers.

In light of these broad purposes, the ADA recognizes that a plaintiff may be "regarded as" disabled in any of three ways. The Supreme Court has noted that a person is regarded as disabled where: "(1) a covered entity mistakenly believes that [the] person has a physical impairment that substantially limits one or more major life activities, or (2) a covered entity mistakenly believes that an actual, nonlimiting impairment substantially limits one or more major life activities." *Sutton*, 527 U.S. at 489, 119 S. Ct. 2149-50. The Code of Federal Regulations adds that an individual is "regarded as" disabled if he has "a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment." 29 C.F.R. § 1630.2(l). In other words, an employee is protected under the ADA if the employer believes the employee has a substantially limiting impairment that the employee does not have, if the employer believes the employee has a substantially limiting impairment when the impairment actually is not so limiting, or if the employer or others give effect to unfounded fears and stereotypes in a way that substantially limits the employee.

It would be difficult to imagine a medical condition more subject to "myths, fears and stereotypes" than HIV infection. Courts and experts have long recognized that HIV disease is the source of rampant fear, misunderstanding, and stigma. As discussed above, HIV infection has been stigmatized to the point that even the disclosure of HIV-related information can be very dangerous. *See Doe v. S.E. Pa. Transp. Auth.,* 72 F.3d 1133, 1140 (3d Cir. 1995) (stigma, harassment, and discrimination can result from revealing an

individual's HIV status). *See also Borquez v. Ozer*, 923 P.2d 166, 173 (Colo. Ct. App. 1995) (recognizing that disclosure of HIV status is "highly objectionable" because "strong stigma still attaches to both homosexuality and AIDS"), *rev'd on other grounds,* 940 P.2d 371 (Col. 1997). It is beyond dispute that HIV-related stigma continues to be prevalent and well documented in the United States.[8] Indeed, "no physical problem has created greater public fear and misapprehension than AIDS." *Doe v. Dolton Elementary Sch. Dist. No. 148*, 694 F. Supp. 440, 444 (N.D. Ill. 1988). The fears and stereotypes surrounding HIV are so extreme and entrenched that HIV-positive individuals regularly are "regarded as" being substantially limited in major life activities.

Accordingly, a number of courts have concluded that HIV-positive plaintiffs are protected by federal law because they are "regarded as" disabled. *See*, *e.g.*, *Cain v. Hyatt*, 734 F. Supp. 671, 680 (E.D. Pa. 1990) (people with HIV are disabled because "they are widely stereotyped as indelibly miasmic, untouchable, physically and morally polluted. These and related prejudices substantially curtail [their] major life activities."); *Support Ministries for Persons with AIDS, Inc. v. Vill. of Waterford*, 808 F. Supp. 120, 132 (N.D.N.Y. 1992); *Baxter v. City of Bellville*, 720 F. Supp. 720, 729-730 (S.D. Ill. 1989). Most recently, in *Roe v. Village of Westmont*, 2003 WL 444508 (N.D. Ill. Feb. 24, 2003),

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[8] *See*, *generally*, D.A. Lentine, et al., *HIV-Related Knowledge and Stigma – United States, 2000*, 49 U.S. Dep't of Health and Hum. Servs. Morbidity and Mortality Wkly. Rep. 1062 (2000); Gregory M. Herek, et al., *HIV-Related Stigma and Knowledge in the United States: Prevalence and Trends, 1991-1999*, 92 Am. J. Pub. Health 371 (2002); Gregory M. Herek & John P. Capitanio, *AIDS Stigma and Sexual Prejudice*, 42 Am. Behav. Scientist 1126 (1999).

the district court concluded that an employer's rejection of an HIV-positive police officer "precisely because of his HIV-positive condition . . . would quite clearly seem to bring the third statutory alternative ('regarded as having such an impairment') into play."

Appellees in the instant case clearly regarded Mr. Couture as substantially limited in his ability to work. They regarded Mr. Couture as being incapable of interacting with patients while handling sharps, thus disqualifying him from a broad range of jobs including nearly all healthcare careers. Aplt. App. at 156, 203, 208, 234. *See* 29 C.F.R. § 1630.2(j)(3)(i) (substantial limitation in working requires significant restrictions in ability to perform a class of jobs or a broad range of jobs in various classes). Moreover, by removing Mr. Couture from contact with patients without legitimate scientific basis, Appellees gave effect to fears, stereotypes and stigma surrounding HIV and even admitted that the latter was the most important reason why they had removed him from the job. Aplt. App. at 159. This type of prejudicial treatment is precisely what the ADA was created to combat. Mr. Couture, like other individuals with HIV, not only was disabled, but was also regarded as such by his employer. Accordingly, he is entitled to protection under the ADA.

V. CONCLUSION

For the foregoing reasons, *Amici* urge this Court to conclude that Appellant John Couture is a person with a disability protected by the Americans with Disabilities Act.

Respectfully submitted this ___ day of January, 2005.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief is proportionally spaced and contains 4,492 words, in compliance with Fed. R. App. P. 32(a)(7)(B). In making this statement, the undersigned relied on the word count of WordPerfect 9, the word processing program used to prepare this brief, excluding the Table of Contents, Table of Authorities, and certifications of counsel.

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CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that all required privacy redactions have been made and, with the exception of those redactions, every document submitted in Digital Form or scanned PDF format is an exact copy of the written document filed with the Clerk.

Additionally, I hereby certify that the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Norton AntiVirus, Program Version 8.1.0.825, most recently updated January 6, 2004 and, according to the program, are free of viruses.

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CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of January, 2005, I sent two true and accurate copies and one CD-ROM containing PDF files of the Motion of The American Academy of HIV Medicine, et al. for Leave to File Brief as Amici Curiae and the Brief of The American Academy of HIV Medicine, et al. as Amici Curiae in Support of the Plaintiff-Appellant via DHL overnight delivery service to the following:

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