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**TESTIMONY REGARDING SENATE BILL NO. 236
TO THE ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**By
James J. Vilt, Esq.
of the
Nevada Disability Advocacy & Law Center
April 30, 2003**

This testimony is submitted on behalf of Nevada Disability Advocacy & Law Center (NDALC), Nevada's federally mandated, governor designated protection and advocacy system for individuals with disabilities. See the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. §10801 et seq); the Developmental Disabilities Assistance and Bill of Rights Act of 1975 (42 U.S.C. §6041 et seq); and the Protection and Advocacy for Individual Rights Program of the Rehabilitation Act of 1973 (29 U.S.C. §794e).

Under both the Fair Housing Act and the Americans with Disabilities Act, a disability is essentially defined as a physical or mental impairment which substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. It is well settled that zoning or land use decisions that exclude or otherwise discriminate against individuals with disabilities, or those with a specific type of disability, are prohibited.

It is likewise settled that, while disability does not include the current and illegal use of a controlled substance, drug addiction and alcoholism are disabilities under the federal Fair Housing Act. See 24 CFR §100.201. Indeed, the U.S. House of Representatives recognized that "individuals who have a record of drug use or addiction but who are not currently using illegal drugs would continue to be protected if they fall under the definition of [disability] . . . like any other person with a disability such as cancer. H.R. Rep. No. 711, 100th Cong., 2d. Sess. 22 (1988).

Senate Bill No. 236, therefore, appears to blatantly violate, among other laws, the Fair Housing Act insofar as it clearly prohibits housing for persons with a particular disability from locating in a particular area while imposing no such restrictions on other groups.

The federal Fair Housing Act affords no protection to individuals with or without disabilities who present a direct threat to the persons or property of others. However, the determination whether someone poses a direct threat must be made on an individualized basis and cannot be based upon general assumptions or speculation about the nature of a disability.

While there may be some existing halfway houses for recovering drug and alcohol abusers that are a source of concern for the community, NDALC would submit that SB 236 is not the appropriate means by which to deal with those facilities. Regardless of its intent, SB 236 serves to perpetuate impermissible stereotypes about people with disabilities that federal laws are meant to bar.

ASSEMBLY GOVERNMENT AFFAIRS

DATE: 4/30/03 ROOM: 3143 EXHIBIT 0, 1071

SUBMITTED BY: James Vilt