

**testimony****LATE**

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**From:** David Callies [dcallies@hawaii.edu]  
**Sent:** Monday, March 31, 2008 4:59 PM  
**To:** testimony  
**Cc:** Avi Soifer; Sen. Les Ihara, Jr.  
**Subject:** SCR 202 before the Committees on Human Services/Public Housing, Intergovernmental/Military Affairs, and Education  
**Attachments:** Brief bio.doc

To the Honorable Chairs of the Committees on Human Services and Public Housing, Intergovernmental and Military Affairs, and Education:

I am pleased to submit this written testimony in support of SCR 202 Requesting the William S. Richardson School of Law to Conduct a Study on Legislative Solutions to Address the Impact of Adult Neighborhood Residential Care Home Facilities (ARCH) in Residential Neighborhoods. The problem arises when such facilities, almost certainly helpful and useful in themselves in addressing the needs of our elder citizens, cluster together in residential neighborhoods, substantially changing the residential character of such neighborhoods. However, the potential application of certain federal laws make the regulation of such facilities difficult. After discussions with Senator Ihara, Vice Chair of the Senate Committee on Human Services and Public Housing, I have agreed to supervise law student research on the subject of such regulation to see if an acceptable solution is possible and viable. I teach in the areas of real property, land use and state and local government law, and so am familiar with the legal framework in which such state regulation might fit.

Thank you for the opportunity to present this written testimony. I regret that commitments at the law school on the afternoon of April 1st prevent me from presenting this testimony in person.

Respectfully yours,  
David L. Callies, FAICP, ACREL  
Benjamin A. Kudo Professor of Law  
William S. Richardson School of Law  
The University of Hawaii at Manoa

## DAVID L. CALLIES

### BIOGRAPHICAL DATA

David L. Callies is Benjamin A. Kudo professor of law at the University of Hawaii's William S. Richardson School of Law where he teaches land use, state and local government and real property. Prior to coming to Hawaii he practiced local government and land use law with the firm of Ross & Hardies of Chicago during which time he also taught as an adjunct professor at the University of Wisconsin-Milwaukee's School of Architecture and Urban Planning and served as an Assistant State's Attorney. He is a graduate of DePauw University, the University of Michigan Law School (J.D.) and the University of Nottingham (LL.M.), and a past foreign fellow and present life member of Clare Hall, Cambridge University.

He is past chair of the Real Property and Financial Services Section of the Hawaii State Bar Association; past chair of the American Bar Association Section of State and Local Government Law and the recipient of its Lifetime Achievement Award in 2006; past chair, section of state and local government law, the American Association of Law Schools; past chair, Academics Forum, and member of Council, Asia Pacific Forum, of the International Bar Association; a member of the American Law Institute (ALI); a Member of the College of Fellows of the American Institute of Certified Planners (FAICP), a member of the American College of Real Estate Lawyers (ACREL) and co-editor of the annual Land Use and Environmental Law Review (with Dan Tarlock). He is also a board member of the Rocky Mountain Land Use Institute in Denver, the Institute for Local Government Studies in Dallas, the Holy Nativity School in Honolulu, and the Social Science Association of Honolulu.

Among his seventeen books are Bargaining for Development: A Handbook on Development Agreements, Annexation Agreements, Land Development Conditions and Vested Rights (with Curtin and Tappendorf) (ELI, 2003); Taking Land: Compulsory Purchase and Land Use Regulation in the Asia-Pacific (with Kotaka) (U.H. Press, 2002, republished in Japanese, 2007), Property and the Public Interest (with Hylton, Mandelker and Franzese) (Lexis Law Publishing, 2d ed., 2003); Preserving Paradise: Why Regulation Won't Work (Univ. of Hawaii Press, 1994); Regulating Paradise: Land Use Controls In Hawaii (Univ. of Hawaii Press, 1984), and (with Robert Freilich and Tom Roberts), Cases and Materials on Land Use (Thomson-West, 4th ed., 2004). His book, Land Use Controls in the United States is recently published in Kyoto (in Japanese and Shanghai (in Chinese)). His latest book (with coauthors) The Role of Customary Law in Sustainable Development was published by Cambridge University Press in 2006. He has delivered endowed lectures at Albany Law School and at John Marshall Law School (Chicago) and is a regular lecturer at the annual conferences of the American Planning Association, the Rocky Mountain Land Use Institute, the Institute on Planning, Zoning and Eminent Domain, and the ALI-ABA Inverse Condemnation Program. His most recent (of over 75) article was written by request for the Asia Pacific Law Journal of Hong Kong City University for a special 2007 edition commemorating the 10<sup>th</sup> anniversary of Hong Kong's establishment as a special administrative region of the People's Republic of China, entitled *Takings, Physical and Regulatory* and addressing the recent use of U.S. property law precedents by Hong Kong's highest court.

He is presently revising his casebooks on real property and on land use, and his treatise on Hawaii land use law.

Fax: 586-6659

March 31, 2008

**COMMITTEES: HSP/IGM/EDU**  
**DATE: Tuesday, April 1, 2008**  
**TIME: 1:15 p.m.**  
**ROOM: 016**

**LATE**

Dear Senators,

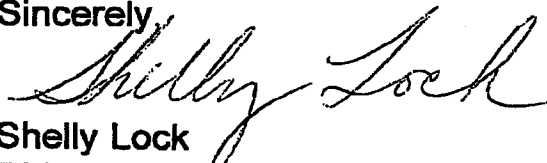
I urge you to support SCR 202 and SR 116 requiring a study to be done on Adult Residential Care Homes (ARCH) by the Richardson School of Law.

I am very supportive of finding alternative ways to help care for our senior citizens as they begin to require assistance, however I do believe that residents have a right to expect that the state will guide the process of licensing care facilities with much better oversight.

This need not be an "either/or" situation; both the safety of patients in ARCH homes and the interests of long time residents should be considered in the licensing process. I have lived on Limu Place with my family for some forty years, and care very much about my neighborhood.

Now is the time to implement a reasonable plan for the future. Please support SCR 202 and SR 116 so that we can consider the overall impact of ARCH facilities and prevent unintended consequences down the line.

Sincerely,



Shelly Lock  
5331 Limu Place  
Honolulu, Hawaii 96821

MARCH 31, 2008

COMMITTEES: HSP/IGM/EDU  
TUESDAY, APRIL 1, 2008  
1:15 P.M.  
ROOM 116

**LATE**

C/O SENATE SERGEANT-AT-ARMS  
FAX (808) 586-6659

SENATORS, COMMITTEE MEMBERS:

RE: SCR202 AND SR116;

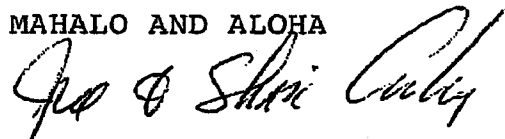
SOMEWHERE BETWEEN HRS VOL.2 46-4D AND C & C HONOLULU CONDITIONAL USE PERMIT, MINOR AND MAJOR, LIES THE NEIGHBORHOOD. THESE PEOPLE, MYSELF INCLUDED, HAVE ZERO INPUT HAS TO WHAT TRANSPIRES NEXT DOOR TO THEM. SHOULD A COMMERCIAL ENTERPRISE BE PLACED IN THE CENTER OF A RESIDENTIALLY ZONED AREA ?. I DON'T THINK SO.

WE RECOGNIZE THE NEED FOR CARE FOR THE ELDERLY, BUT, THE CONCERNS OF THE NEIGHBORHOOD DIRECTLY INVOLVED MUST BE ADDRESSED.

MY WIFE AND I HAVE LIVED ON EAST HIND DR. IN AINA HAINA FOR 38 YEARS. FIRST AT 236 E. HIND DR. AND NOW AT 227 E. HIND DR. NOW, DIRECTLY ADJACENT TO OUR HOME, 5304 LIMU PLACE, IS A PROPOSED ARCH 11. WE BELIEVE IT WILL EFFECT OUR LIFE STYLE, OUR RETIREMENT, AND LAST BUT NOT LEAST, THE VALUE OF OUR HOME.

PLEASE GIVE THESE RESOS: YOUR UTMOST CONSIDERATION.

MAHALO AND ALOHA



JOE AND SHARI ANTHONY  
227 E. HIND DR.  
HONOLULU, HI. 96821

March 31, 2008

**Committees: HSP/IGM/EDU**  
**Date: Tuesday, April 1, 2008**  
**Time: 1:15 p.m.**  
**Room: 016**  
**Resolutions: SCR 202 and SR 116**

**LATE**

Dear Senators,

I urge you to support SCR 202 and SR 116 requesting a study of ARCH facilities to be conducted by the Richardson School of Law. While I respect the need to find alternative ways to care for our elders and the general concept of ARCH care facilities in our communities as a solution to this issue, we must be sure we have a long-term vision in mind as we license these homes.

I feel that it is inappropriate to allow an ARCH II facility (6 or more patients) to be built in most residential neighborhoods. This can create issues with parking, traffic and safety, in addition to changing the character of the community. ARCH II facilities do not require the home-owners to live on the premises and so their investment in the neighborhood will necessarily be different than that of someone who resides there (as in the ARCH I). Further, ARCH II facilities appear to be driven by an investment mind set as these are necessarily more commercial by nature.

We have had many issues to date with a homeowner of a proposed ARCH II on Limu Place and the neglect of the property and disregard for neighbors. (Vector Control has been called in twice on a rat problem and gross pool neglect to the degree that mosquito larvae were thriving.)

I believe that both our elderly population and residential communities would be well-served by an unbiased study of the issue. As we move forward we need to be better prepared and more informed as we plan the future and licensing of ARCH facilities. In this way we can hope to avoid unintended consequences and bring about harmonious solutions.

I respectfully urge you to support SCR 202 and SR 116. Thank you for this opportunity to offer testimony.

Sincerely,

Susan Killeen  
5325 Limu Place  
Honolulu, HI 96821  
808-373-2288

# HAWAII COALITION OF CAREGIVERS

P.O. Box 2441, Honolulu, Hawai'i 96804

# LATE

March 27, 2008

## MEMBERS 2007-08

### **Maria Etrata**

Founder and President  
*The Primary Care  
Providers*

### **Myriam Tabaniag**

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*Alliance of Residential Care  
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### **Esther Pascual**

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*United Group of Home  
Operators*

### **Lani Akee**

President  
*Adult Foster Home  
Association of Hawaii*

### **Fred Dagdag**

*Alliance of Residential Care  
Administrators - Maui  
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*Alliance of Residential Care  
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*Adult Foster Home  
Association of Hawaii - Big  
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### **Belma Baris**

State Liaison  
*Alliance of Residential Care  
Administrators - Kauai  
Chapter*

### **Mila Medallon**

*Advisor*

### **Bryan P. Andaya** ✓

*Advisor*

Testimony in **Strong Opposition to SCR 202/SR 116** – HSP/EDU – April 1, 2008, 1:15 p.m., Rm. 016

Dear Honorable Senators:

The Hawaii Coalition of Caregivers (HCCG) **strongly opposes SCR 202/SR 116** requesting the University of Hawaii Law School to conduct a study on the impact of Adult Residential Care Homes (ARCH) on the surrounding neighborhoods.

Respectfully, HCCG questions the motives behind this resolution. As evidenced by the tone and text, SCR202 assumes ARCHs have a negative effect on the neighborhoods in which they are located. Specifically, SCR202 presupposes ARCHs "increase traffic, noise, and other concerns." These assumptions are simply false.

Residents of ARCHs do not own cars and are unable to drive. They do not commute to or from work or school. In fact, one of the sad realities of residents of ARCHs is that they are immobile and, with few exceptions, leave their residence only to get medical treatment or when their caregivers have the time to take them on outings.

Most residents of ARCHs become members of their caregivers' family. Although ARCHs are in fact businesses, their mission is to incorporate their residents into their homes and their communities. ARCHs provide a much-needed service, especially with the aging demographic of Hawaii's population.

Hawaii already has the ignoble distinction as being one of the few states in America with an insufficient number of elderly care facilities, especially home and community based options that preserve the dignity of elderly people by integrating them into a home and community setting as opposed to an institution. Limiting the number of or imposing additional restrictions/requirements for care homes in residential areas will exacerbate this problem.

Indeed, this resolution involves a dispute between a few care homes and their neighbors. The concerns expressed by this bill are limited to particular neighborhoods in East Honolulu. The solution to this dispute between neighbors need not and should not adversely affect the entire State.

Many communities have embraced care homes and the presence of *kupuna*. Even in communities where the proponents of this bill live, the opinion of neighbors is not uniformly against care homes. In fact, we would venture to submit that the proponents of this bill constitute a small minority of residents.

Disputes between neighbors will occur regardless of this bill. Problems cited by proponents like increased traffic, noise, and lack of parking cannot be attributed to care homes. These problems reflect general trends in any modern urban area. Certainly, if particular care homes are in fact bad neighbors, they should be held accountable, but the entire industry along with the *kupuna* it serves should not be dragged down. Bad neighbors are everywhere, but not all care homes are bad neighbors.

For the reasons discussed above, HCCG respectfully **opposes** SCR202/SR116.

Very truly yours,

The Hawaii Coalition of Caregivers (HCCG)

By: Bryan P. Andaya

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#### About HCCG

HCCG consists primarily of four organizations working in collaboration towards the common mission of uniting the home and community based care giving industry to improve the quality of care provided to elderly and developmentally disabled clients in various home and community based programs, as well as to improve the state of the industry. HCCG members include: The Alliance of Residential Care Administrators (ARCA), the Preferred Care Providers (TPCP), the United Group of Home Administrators (UGHO), and the Adult Foster Home Association of Hawaii (AFHA). Together, members of the four organizations have a membership of almost 1,500 and comprise about 90% of the home and community-based care givers in the State of Hawaii.