

# SCR181

**Measure Title:** REQUESTING THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS TO CONVENE A MORTGAGE FORECLOSURE FRAUD TASK FORCE TO DEVELOP RECOMMENDATIONS TO IMPROVE MORTGAGE FRAUD PROTECTIONS FOR CONSUMERS.

**Report Title:** Foreclosure Fraud Task Force

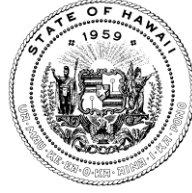
**Description:**

**Companion:**

**Package:** None

**Current Referral:** CPH, JDC

**Introducer(s):** GABBARD, S. Chang, Dela Cruz, Ihara, K. Kahele, Kidani, Kim, Moriwaki, Ruderman



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce, Consumer Protection, and Health  
Monday, March 25, 2019  
10:30 a.m.  
State Capitol, Conference Room 229**

**On the following measure:  
S.C.R. 181, REQUESTING THE DIRECTOR OF COMMERCE AND CONSUMER  
AFFAIRS TO CONVENE A MORTGAGE FORECLOSURE TASK FORCE TO  
DEVELOP RECOMMENDATIONS TO IMPROVE MORTGAGE FRAUD  
PROTECTIONS FOR CONSUMERS**

Chair Baker and Members of the Committee:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department offers comments on this concurrent resolution.

The purpose of this concurrent resolution is to request the Director of Commerce and Consumer Affairs to convene a mortgage foreclosure fraud task force to develop recommendations to improve fraud protections.

The Department believes it may be unnecessary to implement another mortgage foreclosure task force at this time.

The number of foreclosure-related complaints submitted to the OCP has declined precipitously during the past few years. Since a high of 31 complaints in 2015, only one complaint has been submitted this year. This strongly indicates that many of the poor

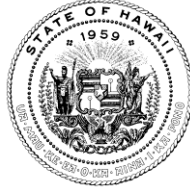
operational practices that existed during the height of the foreclosure crisis have been rectified.

The historic settlement reached in 2015 between the states, the federal government, and major loan servicers is the most significant reason for the improvement of servicing standards. As part of that settlement, the servicers were required to implement the first-ever national reforms to servicing standards, including having a single point of contact for borrowers, implementing appropriate standards for executing documents in foreclosure cases, ending improper fees, and ending dual-track foreclosures.

In instances where homeowners believe they are not being treated fairly, the State remains strongly committed to addressing their concerns, whether by contacting a borrower's lender or servicer or by prosecuting people for mortgage rescue fraud.

In view of this, the Department believes that unless the previous intuitional irregularities return, convening a task force may be premature.

Thank you for the opportunity to testify on this bill.



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LIEUTENANT GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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**Testimony of the Department of Commerce and Consumer Affairs**

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**On the following measure:  
S.C.R. 181, REQUESTING THE DIRECTOR OF COMMERCE AND CONSUMER  
AFFAIRS TO CONVENE A MORTGAGE FORECLOSURE FRAUD TASK FORCE TO  
DEVELOP RECOMMENDATIONS TO IMPROVE MORTGAGE FRAUD  
PROTECTIONS FOR CONSUMERS**

Chair Baker and Members of the Committee:

My name is Iris Ikeda, and I am the Commissioner of Financial Institutions for the Department of Commerce and Consumer Affairs' Division of Financial Institutions (DFI). The DFI offers comments on this concurrent resolution.

The DFI believes it may be unnecessary to implement another mortgage foreclosure fraud task force at this time, as mortgage fraud protections for consumers already exist in Hawaii Revised Statutes (HRS) chapter 454M and through DFI regulation.

The chart below shows the declining number of foreclosures in Hawaii.

Calendar year	Number of foreclosures	Dollar value of foreclosures
2018	1,488	\$509,372,600
2017	1,564	\$557,001,608

Calendar year	Number of foreclosures	Dollar value of foreclosures
2016	1,694	\$545,622,842
2015	1,581	\$567,734,424
2014	1,364	\$417,992,132
2013	1,685	\$632,471,142

Since 2011, laws have been enacted and rules promulgated to provide more consumer protection from fraudulent and abusive acts. In particular, the mortgage servicing law, HRS chapter 454M, already addresses some of the items identified in the resolution, such as:

- **Dual track foreclosure.** HRS sections 454M-5.5(k) and 454M-6(k) provide that the mortgage servicer shall avoid taking steps to foreclose or to refer a borrower to foreclosure if the borrower has requested and is being considered for a loss mitigation option or if the borrower is in a trial or permanent loan modification and is not more than 30 days in default under the loan modification agreement.
- **Single point of contact.** HRS section 454M-6(b)(2) provides that it is a violation of this law to violate the agreement with a governmental agency or the 2012 National Mortgage Settlement. This provision has been added to many enforcement orders issued by the DFI since 2012.
- **Robosigning and other violations of notarial law.** HRS section 454M-6(b)(2) provides that it is a violation of this law to violate the agreement with a governmental agency or the 2012 National Mortgage Settlement.
- **Adequacy of time period provided to homeowners to cure any default or alleged default.** HRS section 454M-5.5 provides various time periods to cure defaults, depending on the type of loss mitigation available to an individual consumer.
- **Violations of due process from a mortgagee's failure to provide timely and adequate information to homeowners subject to foreclosure.** HRS sections 454M-5(k) and (l), HRS.

- **Adequacy of tools to prosecute mortgage fraud.** HRS section 454M-6 provides that it is violation to engage in a fraud in connection with the servicing, purchase or sale of any mortgage loan, or to obtain property by fraud or misrepresentation. The DFI can take regulatory action, including ordering restitution to consumers as previously done in the 2012 National Mortgage Settlement, and other settlements since then, most recently, the 2017 PHH mortgage settlement.
- **Adequacy of tools to prosecute mortgage fraud.** If enacted, HB989, SD1, Relating to Mortgage Servicers will allow the DFI to order a cease and desist for companies that may be harming consumers or for unlicensed mortgage servicing activity.

Thank you for the opportunity to testify on this resolution.

# HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

March 25, 2019

Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair  
and members of the Senate Committee on Commerce, Consumer Protection, and Health  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **S.C.R. 181 (Requesting the Director of Commerce and Consumer Affairs to Convene a Mortgage Foreclosure Fraud Task Force to Develop Recommendations to Improve Mortgage Fraud Protections for Consumers)**  
**Hearing Date/Time: Monday, March 25, 2019, 10:30 a.m.**

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA **opposes** this Resolution.

This Resolution requests the Director of the Department of Commerce and Consumer Affairs to convene a mortgage foreclosure fraud task force to develop recommendations to improve mortgage fraud protections for consumers.

This Resolution is not needed. Much has changed to make this Resolution unnecessary and moot since the last time there was a Hawaii mortgage foreclosure task force.

In 2010 during the foreclosure crisis, the Hawaii Mortgage Foreclosure Task Force was created by Act 162 “*to conduct an extensive analysis of all factors affecting mortgage foreclosures in the state and to recommend appropriate legislation.*” The HFSA was one of the members of the Task Force and I served as Vice Chair and Acting Chair of the Task Force. The Task Force existed from 2010 to 2012 and submitted annual reports and recommendations for the 2011 and 2012 legislative sessions.

Following the issuance of the Mortgage Foreclosure Task Force reports, Hawaii’s foreclosure law (Hawaii Revised Statutes Chapter 667) was amended by Act 48 (2011) and Act 182 (2012). The mortgage foreclosure statute was further amended by Act 37 (2014).

Hawaii’s Mortgage Rescue Fraud Prevention Act, HRS Chapter 480E, was amended by Act 183 (2012), Act 26 (2014), and Act 142 (2016).

Hawaii’s Mortgage Servicers law, HRS Chapter 454M, was amended by Act 48 (2011), Act 245 (2012), Act 92 (2013), Act 62 (2015), Act 122 (2016), and Act 46 (2017).

The federal Consumer Financial Protection Bureau released its Mortgage Servicing Rules on January 17, 2013 (effective January 10, 2014), and amended them in August 2016 (effective October 19, 2017 and April 19, 2018). These national standards implement amendments to Regulation Z of the Truth in Lending Act, and Regulation X of the Real Estate Settlement Procedures Act. Among other things, the Rules address mortgage loan servicers’ obligations to provide information about mortgage loss mitigation options to delinquent borrowers; to establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions; and to evaluate borrowers’ applications for available loss mitigation options. These Rules contain provisions relating to

Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair  
and members of the Senate Committee on Commerce, Consumer Protection, and Health  
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mortgage servicers' obligation to provide disclosures to borrowers in connection with transfers of mortgage servicing, and mortgage servicers' obligation to manage escrow accounts.

The President signed into law a permanent extension of the federal "Protecting Tenants at Foreclosure Act" on May 24, 2018. The Act, which earlier expired at the end of 2014, enables renters whose homes were in foreclosure to remain in their homes for at least 90 days or for the term of their lease, whichever is greater.

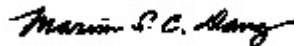
In Hawaii, accordingly to a March 13, 2019 *Honolulu Star-Advertiser* article titled "Hawaii Foreclosure Cases Fall For Fifth Year In Row", foreclosure lawsuits peaked in 2013 at 3,430. The filings dropped year over year in 2014, 2015, 2016, 2017, and 2018. The filings in 2018 totaled 1,261. The article also noted that "Hawaii foreclosure data before 2013 is problematic to compare because of repeated changes made to state foreclosure law."

We incorporate by reference the points raised in the testimonies **opposing** this Resolution by the Hawaii Bankers Association and the Mortgage Bankers Association of Hawaii.

This Resolution is unnecessary and moot.

**Accordingly, we ask that your Committee "hold" this Resolution and not pass it.**

Thank you for considering our testimony.



MARVIN S.C. DANG  
Attorney for Hawaii Financial Services Association

(MSCD/hfsa)





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Testimony to the Senate Committee on Commerce, Consumer Protection, & Health  
Monday, March 23, 2018, 10:30 am  
Hawaii State Capitol, Room 229

In Opposition to SCR 181, REQUESTING THE DIRECTOR OF COMMERCE AND  
CONSUMER AFFAIRS TO CONVENE A MORTGAGE FORECLOSURE FRAUD TASK  
FORCE TO DEVELOP RECOMMENDATIONS TO IMPROVE MORTGAGE FRAUD  
PROTECTIONS FOR CONSUMERS

To: The Honorable Rosalyn Baker, Chair  
The Honorable Stanley Chang, Vice-Chair  
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 51 Hawaii credit unions, representing over 800,000 credit union members across the state. We offer the following testimony in opposition to SCR 181.

This resolution requests that the Director of the Department of Commerce and Consumer Affairs convene a mortgage foreclosure task force. This task force is unnecessary, mainly because foreclosures are currently low. In 2010, the Mortgage Foreclosure Task Force was created by Act 162, which resulted in Act 48, a major overhaul of the foreclosure system in Hawaii.

Also in 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) to address issues related to the servicing of loans during the last recession. The Consumer Financial Protection Bureau (CFPB) issued rules in January 2013 which took effect in January 1, 2014 to implement Dodd-Frank Act amendments.

Since many reforms were passed both locally and federally throughout the past few years following the last recession, foreclosures continue to be very low among local banks and credit unions in Hawaii. As such, we contend that another foreclosure task force is extremely unnecessary.

Thank you for the opportunity to provide testimony in opposition.

Presentation To The  
Committee on Commerce, Consumer Protection and Health  
March 25, 2019 at 10:30 AM  
State Capitol Conference Room 229

**Testimony in Opposition to Senate Concurrent Resolution 181**

TO: The Honorable Rosalyn H. Baker, Chair, Committee on Commerce, Consumer Protection and Health  
The Honorable Stanley Chang, Vice Chair Committee on Commerce, Consumer Protection and Health  
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eight banks with headquarters in Hawai`i and three banks from the continent with branches in Hawai`i.

HBA opposes this resolution as unnecessary because to paraphrase Bob Dylan, the times they have changed. We are long past the Great Recession and the legal and regulatory landscape on mortgage foreclosures has changed, rendering the resolution non-contextual. The Consumer Financial Protection Bureau, created by the Dodd-Frank Act signed by President Obama on July 21, 2010 has addressed most of the topics listed in the resolution, as well as measures enacted by this Legislature. Not only has the Consumer Financial Protection Bureau adopted servicing rules but has implemented the provisions in the Dodd-Frank Act mandating that lenders only make mortgage loans where the borrowers can demonstrate the ability to repay the mortgage loan.

It is to be noted that the number of foreclosures peaked in 2013 and has steadily declined since. The sequential percentage declines, starting in 2014 to 2018, has been 39%, 12%, 5%, 16%, and 14%, consecutively.

I will quickly examine some of the areas the task force would be asked to examine.

3(A) focuses on dual track foreclosures but that is already prohibited by the Consumer Financial Protection Bureau servicing rules which requires that any foreclosure process go into hiatus during a loan mitigation process.

3(B) seeks examination of a single point of contact but the Consumer Financial Protection Bureau has already addressed that issue in its servicing rules by requiring a single point of contact.

3(C) on protecting tenant's rights was addressed at the federal level in 2009 when President Obama signed the Protecting Tenant's Rights at Foreclosure Act and which law was extended on June 23, 2018.

As to 3(D) on publication of public sales for foreclosures, that is covered by requirements to publish a notice in a newspaper or online.

On 3(E) or robo-signing, that has been addressed by enforcement actions on the federal and state level. On the federal level, the Consumer Financial Protection Bureau has initiated enforcement actions successfully. On the state level, Attorney Generals in such states as New York, Colorado, Minnesota, West Virginia, and Texas have filed enforcement actions on robo-signing.

As to 3(H), both the Consumer Financial Protection Bureau and HUD have rules requiring notice of transfer of servicing. The servicing rules of the Consumer Financial Protection Bureau requires good faith efforts to establish live contact with the borrower and to continue such contact. It is common practice for lenders to send a demand letter or computer-generated notice of default.

As to 3(I) on adequacy of tools to prosecute mortgage fraud, that has been done at the federal and state levels, including by the Consumer Financial Protection Bureau and State Attorney Generals and in addition there are local prosecutors, the Office of the Consumer Protector, and the Federal Trade Commission.

The Dodd-Frank Act empowers the Consumer Financial Protection Bureau to take action against those that engage in any unfair, deceptive or abusive act or practice (UDAAP). However, enforcement action is not limited to the Consumer Financial Protection Bureau. The Dodd-Frank Act empowers State Attorney Generals to enforce federal consumer laws, including UDAAP laws and that has been done by some State Attorney Generals.

As to deficiency judgments, Hawaii law does not allow for deficiency judgments after a non-judicial foreclosure proceeding. Eliminating deficiency judgments may seem like a break for the borrower but it may result in a tax liability to the borrower.

Thank you for the opportunity to submit this testimony on SCR 181 and please let us know if we can provide further information.

Neal K. Okabayashi  
524-5161



*Mortgage Bankers Association of Hawaii*  
*P.O. Box 4129, Honolulu, Hawaii 96812*

March 23, 2019

The Honorable Rosalyn H. Baker, Chair,  
The Honorable Stanley Chang, Vice Chair  
Members of the Senate Committee on Commerce, Consumer Protection and  
Health

Hearing Date: March 25, 2019

Hearing Time: 10:30am

Hearing Place: State Capitol, Room 229

Re: Senate Concurrent Resolution 181

I am Victor Brock, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate and service, or support the origination and servicing, of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation or rules, it is related only to mortgage lending and servicing.

The MBAH agrees that many homeowners lost their home in the last recession. However, in 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) to address issues related to the servicing of real estate secured loans during the last recession. The Consumer Financial Protection Bureau (CFPB) issued rules in January 2013 which took effect in January 1, 2014 to implement these Dodd-Frank Act amendments.

Many of the examine areas listed in section three of the Senate Concurrent Resolution has been addressed by the CFPB as well as Federal and State enforcement actions in the aftermath of the recession:

3A: Dual track foreclosures are prohibited by the CFPB rules.

3B: A single point of contact is a requirement of the CFPB rules.

3C: Tenants rights in the cases where the home is being foreclosed on is covered in the Protecting Tenants at Foreclosure Act which became law in May 2018.

3D: Publication of notices of public sales of foreclosed properties is required by Hawaii State foreclosure laws.

3E: Enforcement actions have been taken against lenders who engaged in robo-signing activities in federal and state levels.

3F: The CFPB rules prohibits a servicer from filing a foreclosure action if a homeowner is less than 120 days past due. This provides adequate time for a homeowner to contact the servicer to work out the delinquency or cure the default. The CFPB rules also require a servicer to offer loss mitigation options to a homeowner during the foreclosure process up to 38 days before a foreclosure sale.

3H: The CFPB rules requires the servicer to provide timely and adequate information to homeowners subject to foreclosure. It requires a servicer to establish live contact by the 36<sup>th</sup> day of delinquency to provide the delinquent homeowner with loss mitigation options. By the 45<sup>th</sup> day of delinquency, a written notification with information about loss mitigation options is required to be provided to the delinquent homeowner. Housing and Urban Development (HUD) as well as the Government Sponsored Entities, Fannie Mae and Freddie Mac, requires various notices to delinquent homeowners such as a demand letter prior to foreclosure.

3I: Mortgage fraud has been address at both the federal and state levels with prosecution.

3J: Deficiency judgments are already prohibited in non-judicial foreclosures. Prohibiting deficiency judgments in judicial foreclosures, short sales and deed-in-lieus may result in the homeowner paying additional taxes as this is treated as a forgiveness of debt and income according to IRS rules. Prohibiting deficiency judgements may also result in more stringent underwriting rules whereby decreasing the availability of credit to consumers.

In summary, the MBAH strongly opposes SCR No. 181 as foreclosures are at all-time lows in the state of Hawaii and is not an issue plaguing Hawaii consumers. In addition, the examine areas have been addressed by the CFPB rules, federal and state laws, and enforcement actions at both the federal and state levels.

Thank you for the opportunity to present this testimony.

VICTOR BROCK  
Mortgage Bankers Association of Hawaii

**SCR-181**

Submitted on: 3/24/2019 8:59:20 PM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Scott Foster	Testifying for Hawaii Advocates For Consumer Rights	Support	No

Comments:

**SCR-181**

Submitted on: 3/22/2019 2:50:01 AM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dale	Individual	Support	No

Comments:

Aloha:

Am in full Support of SCR181. Our 'regulators' In the federal sector failed to protect consumers from illegal schemes which cost many people their home and bankrupted scores. This travesty has been covered in national news, for years, and yet no solid action was taken to 'make whole' the victims. Justice is overdue. Department of Commerce and Consumer Affairs must be authorized, and funded, to get a Task Force established to scope this raft of consumer scandals and move the pendulum towards prosecution of perpetrators, and, indemnification of victims.

The 'Banksters' must be punished.

Please pass SCR181.

Respectfully, Dale A. Head. Sunnymakaha@yahoo.com. (808) 228-8508 Text or Cell

**SCR-181**

Submitted on: 3/22/2019 9:03:37 AM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lila Mower	Individual	Support	No

Comments:



**SCR-181**

Submitted on: 3/22/2019 9:32:22 AM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leimomi Khan	Individual	Support	No

Comments:

**SCR-181**

Submitted on: 3/22/2019 11:06:04 AM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marcia Kimura	Individual	Support	No

## Comments:

I am in favor of the study, but would also like a study of fraudulent practices of condominium association boards who wrongfully foreclose on owners who are accused of covenant violations.

Lourdes Scheibert  
920 Ward Avenue #6D  
Honolulu, Hawaii 96814

March 22, 2019

SCR 181: Requesting The Director Of Commerce And Consumer Affairs To Convene A Mortgage Foreclosure Fraud Task Force To Develop Recommendations To Improve Mortgage Fraud Protections For Consumers.

To: Committee on Commerce, Consumer Protection, and Health

Senator Rosalyn Baker, Chair  
Senator Stanley Chang, Vice Chair

I support SCR 181, because of the experience a family member who suffered the lost of her condominium along with many others. She was part of the group of Associations in the article in Civil Beat Ian Lind: Why Condo Associations Are Sweating After A Judges's Ruling.

She discovered her property was owned by her Association when opening the City & County property tax notice annual mailing naming her Association listed on her deed. When calling the Resident Manager she was told notice was placed in the newspaper section on foreclosures.

Prior to the foreclosure, she and other owners of her Association complained about a second assessment of \$15K on the same swimming pool repair. After her complaints and prior to the non judicial foreclosure, she received a number of fines for House Rules Violations resulting in, I believe bullying, harassment and retaliation. The attorney's fees, fines, penalties, interest and the assessment ballooned to \$43K. Our group of condominium HUI participants advocated for ACT 195 changes to priority of payments and for the rights of the owners for "due process". This ACT 195 should not be made to sunset in 2020.

She brought the City & County Property Tax notice to her bank. The bank officer said that he was very sorry for her loss and it would be best for her to stop payments on her mortgage so that the Bank can sue the Association to get their property back. He continued to say that she could sue the Association but that would become very expensive. If she lost, she would be liable for the Association's legal fees and her legal fees. What resulted, the bank sued the Association and got their property back. In this case, the power of sale language on her mortgage contract gave the Bank the legal right to get the property back. Her Association bought her unit for \$1.00. One

dollar, a shame to acquire a property valued much more than the \$15K assessment. The other attorney's fees, House Rules Violations fines, penalties and interest compounded and added to the \$15K assessment. Then the priority of payments paid the non-essential fees first before the monthly maintenance fees collected for the maintenance of the building's structure placing her account in arrears every month thereafter.

A payment plan was set up after court proceedings of which she still pays monthly in cash the \$43K. No checks. CASH to the Association's attorney. To add to insult, losing her property, she still suffers today in a payment plan in CASH.

I believe part of this study should include the management methodology of an Association Board of Directors assigning all duties described in a property's Declaration, By-Laws and House Rules to the Management Companies. In particular, the Management Company assignment of the authority for the maintenance/repair/replacement of the common area and limited common area. When assigning all duties to the Management Company, in my opinion, creates a dual governing structure. This assignment, I believe created the poor communication between the elected Board and the owners because owners look towards their Board for leadership. (In my case the majority board directors did not interfere with the property manager's decision and it became abusive) This management contract with the Association in my experiences and under my observation for the last 10 years created a confusing leadership whether the property manager was in control or the volunteer directors. Volunteer directors in-between board meetings are told by management to wear their owner's hat. At board meetings volunteer directors wear their directors hat. The property manager is charged with managing the daily duties and overseeing the Association's employees. Some condo owners report at their annual owners meeting are the Associations attorney and/or a Parliamentarian. When an owner asks a question directed to the President, the attorney answers. Why would a volunteer director learn about their project documents when they have a "crutch" to depend on to make their decisions. Volunteer directors are not mandated to learn about condominium self-governance. Often times these directors don't even read their project documents. Ultimately, the directors are responsible but, oh wait, they are volunteers and not experts therefore not responsible. So who is responsible in this management methodology?

The point to this story, the Board should have scheduled a meeting for Q & A for the owners and to disclose information for the second assessment on the same repair. It could have prevented this tragedy. Disclose, disclose, disclose. Instead SB551 SD1 HD1 is working thru the current legislation session that: Provides an explicit grant of power of sale to associations for the purposes of enforcing association liens under the power of sale procedures in state foreclosure law.

If SB551 SD1 HD1 becomes law, SCR 181 without a doubt should be convened to place safety legislation to Association's non judicial foreclosure providing an owner their "due process" and other remedies. Perhaps, before an Association forecloses meet with the owner in Executive session, face to face, and disclose the process of non judicial foreclosure. Tell the owner, the Association is getting ownership of your property for a **\$1.00**.

I believe the root to miscommunications between the Association board of directors and the owners is caused by assigning all of the duties to the management company with the explicit language of the authority for the maintenance, repair and replacement of the common area and limited common area. Further, most volunteer directors are not educated in their project documents or HRS 514B to be knowledgeable to ask educated questions of their property manager or the Association's attorney.

The attorneys and the management companies should share the blame for this tragedy because they are the expert opinion advising the board to quick non judicial foreclosure. Why? Because the volunteer director decided that this was the best business decision. These directors don't know any better because they are not the experts on mortgage foreclosure laws.

Thank-you,  
Lourdes Scheibert  
Condo Owner

**SCR-181**

Submitted on: 3/22/2019 2:21:49 PM

Testimony for CPH on 3/25/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Laura Cristo	Individual	Support	Yes

Comments:

***Aloha!***

**My name is Laura Cristo and I am a victim of Mortgage Fraud and Forced Placed Insurance by Ocwen Servicing and Deutsche Bank. I bought my condo back in 2004 . I never stop sending my mortgage payments as well as double proof of insurance for my condo always by return receipt through the mail. In 2015 , Ocwen sent me back 4 of my mortgage payments uncashed placing me in default for foreclosure and saying that they bought insurance for my condo for \$4,500 when I already have insurance and it cost \$470.00 . I requested them to send me proof of a canceled policy ( since the amount was ridiculously high) and they NEVER did; instead they said they bought a second insurance for another \$4,500 which again it was NOT needed , so I had to hire an attorney to fight for these two FRAUDS committed against me, and my property. It's been 4 years fighting and still I'm in limbo; just suffering the consequences of WRONGFUL people . Therefore; I absolutely support SCR181. PLEASE HELP! There's many people like me going through this Hell. I really appreciate it.**

**SCR-181**

Submitted on: 3/22/2019 10:29:06 PM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
david st john	Individual	Support	No

Comments:

Dear Senator Baker, Senator Chang, and Comittee Members:

3/23/19

Hawai'i nei has a problem. We see in the news and in our neighborhoods the rampant fraud that plagues families. Let's fix this starting with a task force. We strongly support SCR181!!!

David and Jackie St John

(stjohnd001@hawaii.rr.com)

**SCR-181**

Submitted on: 3/22/2019 10:51:33 PM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Enid Hall	Individual	Support	No

Comments:

I strongly support SCR181. The SCR181 is needed and is long overdue. Too many people have suffered unjustly because of Foreclosure Fraud. We must stop this from going any further...stop Foreclosure Fraud Now.

Please help.

Sincerely,

Enid Hall

enid.hall@yahoo.comf



**SCR-181**

Submitted on: 3/23/2019 12:54:48 AM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Deborah Ramirez	Individual	Support	Yes

Comments:

3/23/19

RE: FRAUD PROTECTION FOR CONSUMERS TASK FORCE

I fiercely support SCR181.

A journalist at Bloomberg recommended I contact state agencies about the number and types of foreclosures (Defaults, Walkaways, Frauds, Voids, etc.) in Hawaii since the Financial Crisis.

I emailed the BoC. He thoughtfully replied, "Hawaii indexes foreclosure as only one category." He mentioned Hawaii Bankers' Association and Mortgage Bankers' Association of Hawaii for statistics on foreclosures. (They never returned my emails or phone calls.)

My concern is and has been...who's keeping track of the critical data? An extensive Internet search shows no specific data for the continued foreclosure crisis in Hawaii. How can we improve without true identifiers of the mortgage-backed securities fraudulent foreclosures versus actual mortgage foreclosures? These very different products and processes should have been remedied long ago.

These laws for foreclosure fraud (nondisclosure, predatory lending, unsafe and unsound mortgage services and foreclosure practices, dual tracking, forced-placed insurance, securitization, and the somewhat enforced HRS 667) need a backbone and some champions.

We need a task force, yesterday. The Kealohas, Deutsche Bank, MERS, some HOAs, the SEC, Ponzi schemes, rigged ratings systems, Securitization, the recordation of forged and fraudulent documents, Master Loan Servicers, unsanctioned violations of HRS 667, and apathy are a sample of what is destroying our trust and our Regular and Land Court Systems. (With thousands of clouded titles who will want to buy here anyway?) Hawaii is at Code Red.

During my ten-year sojourn through Fraud, (yes, now it has become a place) I began to believe, law is not just, it's just law. How do we, the people of Hawai'i, reinstate integrity to a place that was once full of aloha?

If we had a group of honest visionaries, lead by the survivors of fraudulent foreclosure, Hawaii could do what it was taught to do by its ancestors ... listen.

Senators, I thank and appreciate you. Malama pono.

Aloha,

Deb Ramirez

#SupportSCR181

**SCR-181**

Submitted on: 3/23/2019 1:01:01 AM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joseph Hall	Individual	Support	No

## Comments:

I strongly support SCR181 because of those "AMERICANS" that have suffered a great financial loss, a few I know personally others I know of.

I believe that justice will be served in the near future and those corrupt bankers and their side kicks will no longer be able to hide in their rabbit holes no matter how deep.

Sincerely,

Joseph Hall

joseph31989@hotmail.com

**SCR-181**

Submitted on: 3/23/2019 10:33:41 AM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Frank	Individual	Support	No

Comments:

Foreclosure laws in Hawai`i need to be strengthened to better protect law-abiding citizens who consistently pay their mortgages but, through no fault of their own, are often, unknowingly, subject to foreclosure fraud and thus, face losing their homes.

Laws for foreclosure fraud such as nondisclosure; predatory lending; unsafe and unsound mortgage services and foreclosure practices; dual tracking, and forced-placed insurance are just a few examples of how large financial institutions try to take advantage of the average homeowner.

Hawai`i needs to aggressively move towards protecting its citizens from such practices and supporting this resolution would be a solid step in that direction.

**SCR-181**

Submitted on: 3/23/2019 12:16:52 PM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lara	Individual	Support	No

Comments:

March 24, 2019

I strongly support SCR181 – A Foreclosure Fraud Task Force

As a former psychiatric nurse, I have witnessed the tragic effects of daily psychological stress on naturally happy and stable individuals. Long-term Fraud and Foreclosure manifest in myriad maladies. People suffer while awake and even at sleep. It's the State of Hawaii's responsibility to take care of its own and not allow health and welfare to deteriorate just to satisfy the greed an ocean away.

Thank you,

LT

**SCR-181**

Submitted on: 3/23/2019 1:36:20 PM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dennis & Lana	Individual	Support	No

## Comments:

I strongly support SCR181 because I feel that it will help those who have been affected by housing fraud. I know at least two families personally that have lost their house or are in the process of losing their home because they have no laws that protected their rights.

Mahalo for your time and consideration,

Illana & Dennis Wright

**SCR-181**

Submitted on: 3/23/2019 2:24:57 PM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
javier nevares	Individual	Support	No

Comments:

**Aloha:**

My name is Javier Nevares and I'm a victim of Mortgage Fraud and Forced Placed Insurance Fraud. I never stop paying a single month of my mortgage since 2004 when I bought the condo and Ocwen Servicing in 2015 decided to send me back 4 of my checks uncashed and placed me in default with no reason whatsoever and not only that; they said they bought a \$4,500 insurance for my condo when I've been sending all this years proof of insurance ( by the way it only cost \$470.00) and I requested them to send proof that they did buy insurance by sending to me a cancelled policy and they never did; instead I received a letter saying that ther purchase another insurance for \$4,500 ; so I had to hire an attorney to help me with Fraud committed by Deutsche Bank and Ocwen Servicing and deal with it. It's been really hard to see how my wife's health has deteriorating because of all this nightmare. Help! Please! There's a lot of people out there going through the same . I kindly appreciate your time .

# VIRGINIA PARSONS

TELEPHONE: 1-808-870-8992

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Virginia@deadlyclear.com

*P.O. Box 53  
Hana, Hawaii 96713*

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4575 HANA HWY.  
HANA, HAWAII 96713

March 23, 2019

Thank you, Hawaii Legislators, for the opportunity to voice support for SCR181. In 2010/2011 Hawaii was leading the country in foreclosure reform. I'd like to believe that our state motto, "Ua Mau ke Ea o ka 'Āina i ka Pono;" native Hawaiian translating as "The life of the land is perpetuated in righteousness," had a lot to do with this.

As we move into the 2<sup>nd</sup> decade of securitization foreclosures, the Hawaii appellate courts are realizing that the securitization process, much like the documents used in foreclosures and those filed in our own Bureau of Conveyances, are clouding titles and any rights to foreclosure. [\*Bank of America, N.A. v. Reyes-Toledo\*](#) (Haw. Feb. 28, 2017) is a leading Hawaii case where the Hawaii Supreme Court held that in order for summary judgment to be granted in favor of a foreclosing mortgagee in a Hawaii judicial foreclosure action, the foreclosing mortgagee must prove that the plaintiff who initiated the action (which might be different than the current foreclosing mortgagee) had standing to foreclose at the time the foreclosure complaint was filed.

The issue facing legislators goes much deeper than the right to foreclose on a **traditional** mortgage. The underlying elephant in the room is whether these nouveau transactions were or are actually "traditional" mortgages as designed by our Hawaii statutes, or are they actually "securities transactions" with no disclosure to the homeowners as mandated by SEC Rules [Rule 10b-5]?

Research indicates that the properties and the borrower were "securitized" by the Fannie Mae computer software 1003 application process. It is a USPTO patented process that takes the application information and transfers it to the investment banks to put into REMIC trusts. This data is what is securitized, not the eye candy Note and Mortgage documents. However, there is no disclosure to the borrower that the application data was to be disclosed to Wall Street investment banks or slated for a scheme to treat properties and borrower data like stock certificates. This certainly was not the homeowner intended "traditional" mortgage process.

Making matters worse, behind the securitization curtain is another process called "rehypothecation" wherein banks among themselves distorted the legal principles of *nemo dat* and allowed pledging, repledging, hypothecating, or the rehypothecation of these property assets that they did not clearly own outright. These banks allowed others to "re-use" the assets as if it were a liquid commodity without regard for the title held in the name of the homeowner. This process was perpetuated by numerous patents that were essentially designed for foreclosure and stripping the land from the rightful owners under false [fraudulent] documents and testimony(s) before the courts.



Several university law professors have written about rehypothecation. [IT'S 3:00 p.m., DO YOU KNOW WHERE YOUR COLLATERAL IS?](#) Written by Christian A. Johnson, Assistant Professor of Law, Loyola University Chicago School of Law. B.A.; MPrA, Utah; J.D., Columbia, 1990. The opening statement is quite telling:

- *“A borrower would probably be alarmed to learn that its lender had an unrestricted right to use and sell the collateral that the borrower had pledged to secure its borrowings. Borrowers typically believe that a lender should safeguard and protect collateral pledged to it, not use the collateral for its own gain. Yet in the derivatives market, it has become increasingly common for secured parties to insist upon such unrestricted use of pledged collateral.”*

Knowing what we know today – how can we call these transactions “traditional” mortgages?

They are anything BUT traditional. We are looking square in the face of securities transactions which fall under Article 9 of Hawaii’s Uniform Commercial Code and a blend of Article 8. The lack of disclosure should alarm you because disclosure is paramount under the Securities & Exchange Commission Rules. Hawaii homeowners have unwittingly participated in a Wall Street scheme by issuing their property and personal data into UNREGULATED DERIVATIVES that now pose a debt into the trillion\$ of dollars.

With this information, allow me to dispel the first myth – **Hawaii homeowners did not borrow “more than they could afford.”** Hawaii homeowners were sold debt based upon inflated appraisals and as the bubble credit began to freeze, homeowners were smeared. Nearly every pension fund lawsuit alleges that the appraisals were inflated. If it is true for investors – it is certainly a fact for homeowners. Even the lender sales pitches were patented. Pretender lenders encouraged homeowners to use their equity and then would find appraisers willing to jack-up the appraisals to meet the amount the bank had pre-qualified the borrower to use. The fact that USPTO patents [that underwrite the entire securitization to foreclosure process] are for new innovations supports the stance that these are NOT “traditional” mortgages. Why would patents be needed for standard traditional mortgages and foreclosures?

Moreover, there is a Fannie Mae patent that states the value of the property was secondary to the borrower’s willingness to pay. Presume you are told your property is worth \$1 million as presented by appraisal – and the financial product LIBOR/ARM gives you a payment based on a 40-year amortization for the next 3 years. The payment is workable with your income. You are promised a refinance with low interest rate if you make all your payments on time for the next 2-3 years. The economy collapses, your lender is bankrupt and no banks are refinancing because they know the appraisals were inflated. Did you borrow more than you could afford? Or were you sold into a scheme to drain your equity?

LIBOR is the other culprit Hawaii needs to address because there are numerous documents/transactions using LIBOR to factor the alleged amount owed in the foreclosure process and filed in the BOC. LIBOR, much like HAMP, was another scheme created to enhance the banks’ position. While HAMP foamed the runaway for the banks, LIBOR was an elusive means of financial manipulation. **LIBOR, the benchmark underpinning more than \$350 trillion of financial products, will be phased out by the end of 2021**, as U.K. regulators and banks look to replace the scandal-tarred indicator with a more reliable system. How will this affect existing Hawaii land-related documents containing the LIBOR rate scheme?

Finally, given the information provided herein, I respectfully ask that the lower foreclosure court judges be re-examined. Most are average attorneys that have no added education in securities law other than

they may have highly invested stock portfolios. In one case, I have read the transcript where the Circuit Court judge refused to have securitization discussed in his court room. He forbid the homeowner to discuss it, although he acknowledged that the homeowner knew more than he did about the subject. Looking at judicial financial disclosure statements also needs to be a priority of the legislature when it comes to due process and appearances of impropriety in the selection of foreclosure judges.

Investments in certain mutual funds, for example PIMCO, have over the years been highly invested in Mortgage Backed Securities (MBS). Owning "preferred" shares, unlike common stock, is like betting against the homeowner. How do you make life changing decisions when it could ultimately affect your own retirement and stock portfolio?

I believe our legislature is on the right path, but I also believe our time is limited. The rising national debt is anything but sustainable. Many homeowners sit in limbo where they may have won their appeal but the banks have failed to withdraw the fraudulent documents from the BOC and reinstate the borrower on his Deed. Homeowners need to be able to submit a simplistic form and certified court decisions in order to clean up their titles. Another economic crash or financial reset will make land matters all the more complicated. The state needs to clean up the fraudulent and outdated land/title documents that linger, many of which from dead banks.

If there are any questions or documents needed to support the testimony herein, please contact me for more information. Again, thank you for the opportunity to provide testimony.

Aloha,



Virginia Parsons  
PH (808) 870-8992

***"Our courts should not be collection agencies for crooks." — John Waihee, Governor of Hawaii, 1986-1994.***

*GENERAL NOTICE: I am a foreclosure defense paralegal. I am not an attorney. Nothing in this letter of testimony should be construed as legal advice. All research available upon request.*

**SCR-181**

Submitted on: 3/23/2019 4:00:53 PM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Zachary Sainz	Individual	Support	No

Comments:

Dear Senator Roz Baker and Senator Stanley Chang:

Aloha, I'm Zack, a 27 year-old cinematographer working in NYC. I work with amazing crews to capture and record seconds and even decades of the stories, real and make believe, of people I admire.

I work really hard and it's crazy cold here in the city, but now, my life is really great. I go back home to Waianae as often as I can to recharge and relax with friends and family.

So, I write to you today because my home was stolen too—too many were stolen. From my bedroom in Ma'ili I can see Lahelahe Point, my Kamehameha Schools Cross Country banner, dried leis from milestones throughout my life, dog hair across my floor, and in my closet—clothes that all refer to place (a Honolulu Marathon t-shirt, a tie for the Speech & Debate championship in Alabama, prom shoes that I wore to the Sophomore Banquet in Kalihi).

What is that worth? To me, everything.

As a young adult in an ancient world, I must ask why in America, where we can have anything we want, some people want and take what doesn't belong them? Where are our gatekeepers? Where are our protectors? Who will stand up to those who will steal our childhood and our future?

I stand up for all those who have become the beneficiaries of fraud. Who will stand with me? My mom tells me Senator Mike Gabbard has been one such Warrior. Mahalo to Uncle Gabbard. Now, who else will stand with us?

Ku Kanaka! I mua.

With all my ancestors, we collectively support SCR181.

Aloha,

Zack Sainz

**SCR-181**

Submitted on: 3/23/2019 4:29:53 PM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
RJ Mendoza-Nadal	Individual	Support	No

Comments:

Aloha Madam Chair Baker and members of the committee,

My name is RJ Mendoza-Nadal and I would like to respectfully submit my testimony in support of this resolution.

Having lived in Hawaii during the subprime mortgage crisis, I witnessed first hand the reality of struggling to keep a roof over my family's heads while watching extended family, friends and neighbors succumb to circumstances that we can now look back as predatory by the mortgage industry. I am encouraging the passage of this resolution due to the fact that predatory practices have disproportionately affected native Hawaiians and Pacific Islanders in Hawaii. While I no longer live primarily in Hawaii, I maintain an interest in Hilo where I eventually plan to return for retirement.

I distinctly recall Senator Baker's outstanding advocacy in 2009-2010 for HB 444, where she tirelessly stood firm in fairness for Hawaii's LGBTQ community and am still grateful for her support. I ask that this resolution- which will help countless families in Hawaii maintain their homes and dignity be supported as it is those on the margins that most need your kokua.

Mahalo for the opportunity to testify.

RJ Mendoza-Nadal

**SCR-181**

Submitted on: 3/23/2019 5:21:52 PM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
V Winterowd	Individual	Support	No

Comments:

I support SCR181.

I am in support of a Task Force being developed to protect Home Owners in Hawaii because I have heard from 2 Hawaii Home Owners cries of fraud and not feeling like they have a voice to be heard when they call for help. They have been helpless victims and this is not right to be happening to Americans in America. Something needs to be done so people can feel safe and not be robbed by greedy orgnaizations.

**SCR-181**

Submitted on: 3/23/2019 5:37:45 PM

Testimony for CPH on 3/25/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
KWinterowd	Individual	Support	No

Comments:

I have never experienced morgage fraud but I do know families who have lost their homes or are in danger of losing thier homes because of mortgage fraud.

Yes, I am in support of SCR181 to protect home owners from mortgage fraud.

**SCR-181**

Submitted on: 3/23/2019 11:10:58 PM

Testimony for CPH on 3/25/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Janice	Individual	Support	No

Comments:

TESTIMONY IN SUPPORT OF SCR181

Foreclosure Fraud Task Force

Senator L. Baker & Senator S. Chang:

Foreclosure benefits banks and investors. Do you know what foreclosure fraud does to CHILDREN?

I'm a teacher. Many of my students are English Language Learners. How many immigrant families have had their futures sold down the river because they didn't understand their mortgage? Native English speakers don't even understand "Securitization Speak" or Legalese.

When my kids come to school in dirty clothes, quiet, withdrawn, hungry, and scared I make sure they get services, food, and talk to them about "Home". We have too many homeless students and families who have lost their homes. Kids don't bounce back easily from this. Before Sheriffs are allowed to displace a family, he, lawyers, and judges must know without a shadow of doubt that the foreclosures are real. They must be Legal from start to finish! No fraud at all in that complicated mess of modern mortgages otherwise that mortgage is fraudulent too.

Learn about the investors. Do they know that their payday can result in the eviction of children? They should! Investors and bankers have bet against children. Shame on them. Shame on anyone who knows about fraud and does nothing!

Hawaii has a responsibility to make the state safe for children. Let bankers and investors wipe away their tears and listen to them cry for one school year. If that doesn't rehabilitate Wall Street nothing will.



I support SCR181. Stop locking kids out of their houses just so some fat cats get fatter.

Learn about the children!

Sincerely,

Ms. Janice 3/23/19