

## GRANDPARENTS AND ACCESSORY DWELLING UNITS: PRESERVING INTIMACY AND INDEPENDENCE

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*The accessory dwelling unit (ADU) can potentially provide solutions to several social problems because the ADU enables elderly parents to live in their own homes yet remain within close reach of their children. It provides more affordable housing options to the elderly as well as makes it possible for the elderly's adult children to receive childcare, good advice, and love from their parents without the inconvenience of sharing their homes. In this Article, Professor Margaret Brinig, from both a legal and a public policy perspective, explores the potential of the ADU as a zoning device. The author also examines empirically the likely and actual effects of the ADU on grandparents and grandchildren.*

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Solutions to several social problems apparently intersect when elderly parents can live in their own homes but remain within close reach of their children. The accessory dwelling unit (ADU), called the second unit or granny flat, at once provides urban infill and a less expensive housing option for the elderly or others of modest means. Families with children can take advantage of the child care, good advice, and love provided by their parents without suffering the inconvenience of sharing homes with them. The elderly living within close reach can remain independent and, at the same time, fulfill valuable functions once again for their now adult children. This article surveys the potential of the ADU as a zoning device, not only from a legal and public policy perspective, but also from an empirical examination of the likely and actual effects on grandparents and grandchildren.

Cities around the United States (and, to varying degrees, in Canada, Britain, and Australia) today confront a problem that people did not envision twenty or even ten years ago when municipalities heavily favored single-family residences<sup>1</sup> and were permitted to exclude other forms under what is known as Euclidean zoning.<sup>2</sup> Currently, the issue of whether to allow owners in single family-zoned neighborhoods to build living spaces that might house elderly relatives or their caregivers is being hotly contested in New York,<sup>3</sup> Chicago,<sup>4</sup> and San Diego<sup>5</sup> and made recent news in Ft. Worth<sup>6</sup> and Arling-

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1. See, e.g., Richard H. Chused, *Euclid's Historical Imagery*, 51 CASE W. L. REV. 597, 601-602 (2001). Beginning with the Progressive Era, proponents of zoning were "positive environmentalists" who firmly believed that "changing surroundings would change behavior." *Id.* They believed that single-land-use patterns were not only superior to the mixed-land-use patterns characterizing urban communities, but that they would foster a physically and morally healthier citizenry. *Id.* And, importantly, they believed that exclusively single-family residential zones were the best incubators of good citizens. *Id.* As a practical political matter, these arguments were bolstered by homeowners' desires to protect their property values from incursions by "lesser" land uses, such as apartments and stores. *Id.*

2. *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926) (defining "Euclidian Zoning" term).

3. See, e.g., *Here comes Granny (flats)*, EDGE NYC, Apr. 5, 2010, <http://www.edgenewyork.com/index.php?ch=&sc=&sc3=&id=104072>.

4. See, e.g., *Draft Language for Allowing Coach Houses in Chicago*, METRO. PLANNING COMM'N, May 13, 2003, <http://www.metroplanning.org/news-events/article/5569>.

5. See, e.g., *Planning Commission Unanimously Approves "Granny Flats" But Are "Granny Flats" Just Code For Condos and Mini-Dorms*, SAN DIEGO READER, May 25, 2011, available at <http://www.sandiegoreader.com/weblogs/ive-got-issues/2011/may/25/planning-commission-unanimously-approves-granny-fl/>.

ton, Virginia.<sup>7</sup> The legislative responses have varied from wholesale acceptance, subsidies, loans,<sup>8</sup> and waiving of permit fees<sup>9</sup> to grudging and cabined acceptance or even outright prohibition.<sup>10</sup>

While other ongoing work asks the question of why the issue has become contested,<sup>11</sup> why we see the wide variety of responses (even in a single state),<sup>12</sup> and what interest groups are behind proponents and opponents,<sup>13</sup> this Article considers the family connection with alternative dwelling units (ADUs). Does living near but not with their children solve a particular problem for many elderly citizens, or does living in this form of housing reduce their well-being? Even assuming grandparents are better off, what about their children and grandchildren?

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6. Anthony Spangler, *Council Briefs*, FORT WORTH STAR-TELEGRAM, Oct. 3, 2007, at B11 (Metro) (“The council voted unanimously to withdraw a proposal that would have created a new zoning classification tailored to single-family homes that have stand-alone or garage apartments—commonly called “granny flats” or mother-in-law cottages . . .”). The Fairmount neighborhood sought the zoning classification to prevent duplexes while allowing the long-term use of granny flats. *Id.* But most Fort Worth neighborhood associations opposed the proposal. *Id.* Instead, city planning officials will use historic guidelines to control the use of the secondary dwellings. *Id.* See also *Regular City Council Meeting March 7, 2006*, CITY OF FORT WORTH, [http://fortworthtexas.gov/uploadedFiles/City\\_Secretary/City\\_Council/Minutes/mar0706.pdf](http://fortworthtexas.gov/uploadedFiles/City_Secretary/City_Council/Minutes/mar0706.pdf) (concerning, in part, zc-06-011, an amendment to the Comprehensive Zoning Ordinance of the City of Fort Worth proposing the addition of ADUs as a residential use, setting standards for ADUs, and defining ADUs).

7. *Arlington County Board approves accessory dwellings*, ARLINGTON CNTY., <http://web.archive.org/web/20081003065115/http://www.arlingtonva.us/Departments/CPHD/housing/hpp/page61595.aspx#ad> (July 19, 2008). The ordinance is ARLINGTON, VA., ZONING ORD. § 12.8 (2014).

8. See, e.g., FLA. STAT. § 163.31771 (2014); VT. STAT. ANN. tit. 24, §§ 4412, 4382 (2014).

9. See, e.g., LA HABRA, CAL. MUN. CODE, §§ 18.24.030(f), 18.12.150 (2014).

10. See, e.g., OXNARD, CAL., MUN. CODE § 34-36.5 (no need for second units since there is a rental glut); PARAMOUNT, CAL. MUN. CODE § 44-1 (2014) (defining “accessory living quarters” as used exclusively for “the family or of persons employed on the premises, or for the temporary use of guests of the occupants . . . Such quarters shall have no kitchen facilities and shall not be rented or otherwise used as a separate dwelling unit. The term “accessory living quarters” includes “guest house.”); SAN DIEGO, CAL. MUN. CODE § 141.0306(e) (2000) (no kitchens permitted); SANTA MARIA, CAL. MUN. CODE tit. 1, ch. 12-104 (2014) (“Second units,” as defined at Government Code Section 65852.2(d), “are not permitted within any of the residential zoning districts of the City.”)

11. Margaret F. Brinig & Nicole Stelle Garnett, *A Room of One’s Own? Accessory Dwelling Unit Reforms and Local Parochialism*, 45 URB. LAW. 519 (2013).

12. *Id.*

13. *What are the barriers to ADU development?*, ACCESSORY DWELLINGS, <http://accessorydwellings.org/2014/08/21/what-are-the-barriers-to-adu-development/> (last visited Nov. 10, 2014).

Grandparents very much want to be involved with their grandchildren. We know this not only because they say so, but also because all states have some form of visitation statute—such as Iowa.<sup>14</sup> We see the desire to be or remain involved in the number of grandparents who are actually raising their progeny, particularly among African-American and Hispanic families.<sup>15</sup> Most law students have read the Supreme Court case of *Troxel v. Granville*,<sup>16</sup> which produced a host of amicus briefs including several from groups associated with grandparents.<sup>17</sup> But grandparents could (and do) maintain contact through holiday dinners, vacations, phone calls and appearance at important functions like graduations and by helping out when new siblings are born or parents take trips.<sup>18</sup> All of these suggest at least some intimacy between the generations. While this is not necessarily the focus here, the “sandwich generation” of adult children has attracted increasing attention in academic and popular literature.<sup>19</sup> Taking care of both minor children and elderly parents undoubtedly adds stress.<sup>20</sup> Of course, the adult children may benefit from the babysitting

14. See, e.g., CAL. FAM. CODE § 3104 (2013); IOWA CODE § 600C.1 (2001). The Iowa visitation statute has undergone significant revision and a series of Iowa Supreme Court challenges since *Troxel*. See, e.g., *Spiker v. Spiker*, 708 N.W.2d 347 (Iowa 2006); *Lamberts v. Lillig*, 670 N.W.2d 129 (Iowa 2003); *In re Marriage of Howard*, 661 N.W.2d 183 (Iowa 2003); *Santi v. Santi*, 633 N.W.2d 312 (Iowa 2001).

15. See, e.g., Jill M. Downie et al., *Children Living with Their Grandparents: Resilience and Wellbeing*, 19 INTL. J. SOC. WELFARE 19: 8, 8–22 (2010); see generally TAVIA SIMMONS & JANE LAWLER DYE, U.S. CENSUS BUREAU, GRANDPARENTS LIVING WITH GRANDCHILDREN: 2000 (2003), available at <http://www.census.gov/prod/2003pubs/c2kbr-31.pdf> (discussing these roles based on the SIPP, the Survey of Income and Program Participation).

16. *Troxel v. Granville*, 530 U.S. 57, 57 (2000).

17. Brief Of Amici Curiae Of Grandparents United For Children's Rights, Inc.; Brief Amici Curiae Of AARP And Generations United In Support Of Petitioners; Brief For The Grandparent Caregiver Law Center Of The Brookdale Center On Aging As Amici Curiae In Support Of Petitioners, *Troxel v. Granville*, 530 U.S. 57, 57 (2000).

18. For a review of the dynamics between adult child, siblings and elderly parents, with some attention paid to rituals, see Margaret F. Brinig, *The Family Franchise: Elderly Parents and their Adult Siblings*, 1996 UTAH L. REV. 393 [hereinafter *Brinig-The Family Franchise*].

19. See Charles R. Pierret, *The 'Sandwich Generation': Women Caring for Parents and Children*, MONTHLY LAB. REV. 3 (Sept. 2006), available at [www.bls.gov/opub/mlr/2006/09/art1full.pdf](http://www.bls.gov/opub/mlr/2006/09/art1full.pdf); see generally *The Sandwich Generation* (CBS Evening News television broadcast May 8, 2006), available at [http://www.cbsnews.com/2100-18563\\_162-1600179.html](http://www.cbsnews.com/2100-18563_162-1600179.html).

20. Ben Schlesinger, *The 'Sandwich Generation': Middle-Aged Families Under Stress*, 37 CANADA'S MENTAL HEALTH 11 (1989); Larissa I. Kemenmick, *Women of the "Sandwich" Generation and Multiple Roles: The Case of Russian Immigrants of the 1990s in Israel*, 40 SEX ROLES 347, 350 (1999); Lesley D. Riley & Christopher "Pokey" Bowen, *The Sandwich Generation: Challenges and Coping Strategies of Multigeneration-*

or other household services an elder performs or from whatever financial contribution the elder makes.

At the same time, grandparents want to be involved with their grandchildren and they also want to continue to live in their current homes as long as possible.<sup>21</sup> In 2000, the American Association of Retired Persons (AARP) surveyed 2,000 aging adults on a number of housing topics.<sup>22</sup> In this survey, they were asked whether they agreed with the statement "What I'd really like to do is to remain in my current residence for as long as possible."<sup>23</sup> Seventy-one percent of the respondents strongly agreed with the statement, with an additional twelve percent somewhat agreeing. But staying in one's home may well be impossible or impracticable, depending upon the senior's mental and physical state, the ability to accommodate increasing disability,<sup>24</sup> isolation and consequent loneliness, safety from accident and crime, and matters of finance.<sup>25</sup>

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*al Families*, 13 FAM. J. 52, 52 (2005). The U.S. Administration on Aging established a resource to compensate caregivers, and some states do so through provision of respite care and other services. In California, the In-Home Supportive Services Initiatives, CAL. WELFARE CODE § 12300 (West 2012), provide over \$500 million each year. Katie Wise, *Caring for our Parents in an Aging World: Sharing Public and Private Responsibility for the Elderly*, 5 LEGIS. & PUB. POL'Y 563, 589 (2002) (citations omitted). For a discussion of the stress involved and more citations, see *Caregivers at Risk: A Public Health Concern*, Caregiving in California: Issue Paper # 1, FAM. CAREGIVER ALLIANCE NAT'L CTR. ON CAREGIVING, [http://listserv.caregiver.org/caregiver/jsp/content\\_node.jsp?nodeid=1962](http://listserv.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=1962). For a piece discussing the complexity of the relationships in Western Europe, see generally Jenny de Jong Gierveld, Pearl A. Dykstra and Niels Schenk, *Living Arrangements, International Support Types And Older Adult Loneliness In Eastern And Western Europe*, 27 DEMOGRAPHIC RES. 167 (2012).

21. See, e.g., GERALD FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS 158 (1990). As Frug noted:

Most people over sixty-five would prefer to stay in their neighborhoods as long as they can, but a single-family house and a car-centered environment makes it hard for them to do so....Yet zoning laws that require single-family residences prohibit many plausible alternatives: sharing the house with non-family members; reconstructing the house to install a separate apartment for the elderly resident and then selling or renting the rest of it; building an elder cottage behind the single-family house and transferring the house itself to friends or relatives.

*Id.* at 158.

22. Ada-Helen Bayer, *Fixing to Stay: A National Survey on Housing and Home Modification Issues* 1 (2000), available at [http://assets.aarp.org/rgcenter/il/home\\_mod.pdf](http://assets.aarp.org/rgcenter/il/home_mod.pdf) (surveying persons age 45 or older).

23. *Id.*

24. *Id.*

25. Crime victimization and fear of crime seem particularly salient to the elderly. See, e.g., *Strategy: Crime Protection Services for the Elderly*, NAT'L CRIME PREVENTION COUNCIL available at <http://www.ncpc.org/topics/violent-crime->

The sociology behind the issue involves the role of the aging in Western culture as well as more recent demographic and economic trends.<sup>26</sup> Historically, aged parents were sources of oral tradition and inspired awe because they had beaten the odds of early death.<sup>27</sup> At a later time (and in some East Asian cultures),<sup>28</sup> aged parents were the property holders who were granted family headship while they lived, with the younger generation only assuming that power as the landowner died.<sup>29</sup> Since industrialization, in the West, the elderly have been increasingly less valued economically, particularly with Social Security to fall back on<sup>30</sup> and because, with so many living to advanced ages, they have become more likely to become dependent because of senility (and dementia).<sup>31</sup> Still, the young-elderly, those between sixty and seventy-five years old, are a politically powerful group—they still control many assets and wield enormous financial power (despite investment losses in the recent recession; see Figure 1).<sup>32</sup> For example, in California, while some elderly (nearly 16%) live below the poverty line, nearly 18% enjoy incomes of more than \$100,000 a year.<sup>33</sup> With demographic changes, an increasing number

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and-personal-safety/strategies/strategy-crime-prevention-services-for-the-elderly. For one study on victims and perpetrators, see Victoria B. Titterington & Napoleon Renes, *Elder Homicide in Urban America: An Exploratory Analysis of Chicago, Houston and Miami*, 6 S.W. J. CRIM. JUST. 228, 229 (2010).

26. See, e.g., RICHARD A. POSNER, *AGING AND OLD AGE* 202-31 (1996).

27. *Id.*

28. But see Tu Hua, *When Filial Piety's the Law*, N.Y. TIMES, July 7, 2013, <http://www.nytimes.com/2013/07/08/opinion/-yu-when-filial-piety-is-the-law.html> (reporting that the revised Protection of the Rights and Interests of Elderly People statute requires that “[f]amily members living apart from the elderly should frequently visit and send greetings to the elderly persons.”).

29. See, e.g., Brinig-*The Family Franchise*, *supra* note 18; John H. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission*, 86 MICH. L. REV. 722, 722 (1988).

30. See generally Margaret F. Brinig, *Finite Horizons: The American Family*, 2 INT'L J. CHILD. RTS. 293 (1994).

31. The Alzheimer's Association estimates that one in eight people over age sixty-five and nearly half of people over eighty-five have Alzheimer's disease. ALZHEIMER'S ASS'N, *ALZHEIMER'S DISEASE FACTS AND FIGURES 12* (2011) available at [http://www.alz.org/downloads/Facts\\_Figures\\_2011.pdf](http://www.alz.org/downloads/Facts_Figures_2011.pdf) (citing Julie A Schneider et al., *Mixed brain pathologies account for most dementia cases in community-dwelling older persons*, 69 NEUROLOGY 2197, 2197 (2007)).

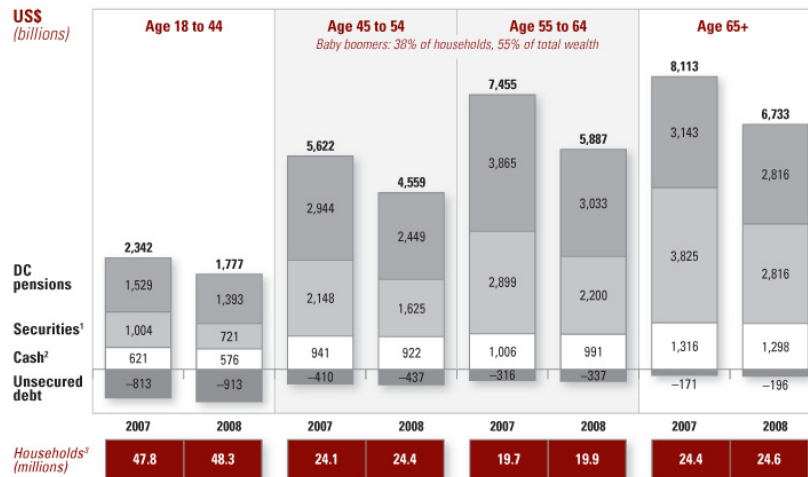
32. A.T. Kearney, *A Whole Lot Less Wealthy*, EXECUTIVE AGENDA 36, 43 (2009) available at <http://www.atkearney.com/documents/10192122e0b165-e127-4749-ab79-85b7d2037529>, at 43 (See Figure 5).

33. CAL. DEP'T OF AGING, *CALIFORNIA STATE PLAN ON AGING 2009-2013* 13 (2009), available at [http://www.aging.ca.gov/aboutcda/docs/California\\_State\\_Plan\\_on\\_Aging\\_AoA\\_2009-2013\\_06-30-2009.pdf](http://www.aging.ca.gov/aboutcda/docs/California_State_Plan_on_Aging_AoA_2009-2013_06-30-2009.pdf) (See Figure 4).

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of grandparents (mostly grandmothers) live with their grandchildren.<sup>34</sup>

FIGURE 1: UNITED STATES: TOTAL LIQUID ASSETS BY AGE GROUP AND YEAR



<sup>1</sup> The net including capital losses, new capital flows and intra-asset capital flows.

<sup>2</sup> Cash is generated from existing assets including land and buildings, labor and other productive assets. In addition, it can be generated through other contractual obligations, including annuities and defined benefit pension payouts.

<sup>3</sup> Assumes annual household growth rate of 0.5%

Source: A.T. Kearney analysis

Grandparents also increasingly provide childcare to their grandchildren as more and more parents of young children remain in the workforce.<sup>35</sup>

When asked, most older adults would prefer to “age in place.”<sup>36</sup> That is, they would choose not to move to retirement havens,

34. SIMMONS & DYE, *supra* note 15; Bonita F. Bowers & Barbara J. Myers, *Grandmothers Providing Care for Grandchildren: Consequences of Various Levels of Caregiving*, 48 FAM. RELATIONS 303 (1999).

35. See, e.g., Lina Guzman, *Grandma and Grandpa Taking Care of the Kids: Patterns of Involvement*, RESEARCH BRIEFS (Child Trends, Washington, D.C.), July 2004, at 3 (showing evidence from the National Survey of Families and Households that approximately 49% of grandparents were providing at least some childcare for their very young grandchildren (under five years old)). See also SIMMONS & DYE, *supra* note 15. See generally ANDREW J. CHERLIN & FRANK FURSTENBURG, *THE NEW AMERICAN GRANDPARENT: A PLACE IN THE FAMILY, A LIFE APART* (Harvard University Press 1992) (3.6% live with grandchildren). New Census data indicates that about 21% of preschoolers were primarily cared for by grandparents. LYNDIA LAUGHLIN, HOUSEHOLD ECON. STUDIES, WHO’S MINDING THE KIDS?, Hol. 2A, available at <http://www.census.gov/hhes/childcare/data/sipp/2010/tables.html>.

elder communities, and certainly not to nursing homes.<sup>37</sup> As long as they are able, they would like to remain in familiar surroundings with their longtime neighbors and cherished possessions.<sup>38</sup> This is closely associated with the elderly's desire to maintain independence with its associated trappings—the driver's license,<sup>39</sup> the set of keys, the small patch of land in which to garden. But the housing in which they live may not be suited for one with reduced mobility and may be too expensive (and wasteful) to maintain. While the fluid labor force in the United States has encouraged movement of the workforce away from the communities in which they grew up, many aging parents, and their adult children, would like to be near one another.<sup>40</sup>

Children see the advantages of being able to rely on their parents for childcare as well as to serve their parents by being available to help out with the heavy lifting, home maintenance, and other similar tasks. In financially difficult times, they may see the "home place" as a living situation more desirable than anything they could afford.<sup>41</sup>

At the same time, the older generation may want to spend time with their grandchildren,<sup>42</sup> be able to trust in a family member to help

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36. The most often cited source for this is a survey done by the AARP. RODNEY L. COBB & SCOTT DVORAK, AARP PUB. POL'Y INST., ACCESSORY DWELLING UNITS: MODEL STATE ACT AND LOCAL ORDINANCES 9 (2000) available at [http://assets.aarp.org/rgcenter/consume/d17158\\_dwell.pdf](http://assets.aarp.org/rgcenter/consume/d17158_dwell.pdf) (demonstrating that surveys consistently reveal that over eighty percent would like to age in place). See generally K. Lawler, *Aging in Place: Coordinating Housing and Health Care Provision for America's Growing Elderly Population* (Joint Ctr. for Hous. Studies and Neighborhood Reinvestment Corp., Working Paper W01-13, 2011), available at [www.jchs.harvard.edu/sites/jchs.harvard.edu/files/lawler\\_w01-13.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/lawler_w01-13.pdf).

37. This is not simply an American phenomenon. See, e.g., Stephen Lunn, *In-Care Age on the Rise as More Resist Moving*, THE AUSTRALIAN, Aug. 31, 2011, available at <http://www.theaustralian.com.au/national-affairs/health/in-care-age-on-the-rise-as-more-resist-moving/story-fn59nokw-1226125911217>.

38. For a recent example, see John Christoffersen, *Man tries to evict 98-year-old mom from home*, SOUTH BEND TRIB., Feb. 18, 2012, at A7. The quotation from this New Haven mother was "I don't feel very good about it . . . I want to stay right here in my own home."

39. See, e.g., Margaret F. Brinig et al., *The Public Choice of Driving Competence Regulations*, 21 NOTRE DAME J. OF L. ETHICS & PUB. POL'Y 405, 405 (2007).

40. See Yin Zhang, Michal Engelman & Emily M. Agree, *Moving Considerations: A Longitudinal Analysis of Parent-Child Residential Proximity for Older Americans*, 35 RES. ON AGING, no. 6, 2012, available at <http://roa.sagepub.com/content/early/2012/09/04/0164027512457787>.

41. See, e.g., KIM PARKER, PEW RES. CTR., THE BOOMERANG GENERATION: FEELING OK ABOUT LIVING WITH MOM AND DAD (2012), available at <http://www.pewsocialtrends.org/2012/03/15/the-boomerang-generation/>.

42. See, e.g., David Heintz, *Elderly parents increasingly moving in with their children*, QUAD CITY TIMES, Apr. 4, 2009, [http://qctimes.com/news/local/elderly-parents-increasingly-moving-in-with-their-children/article\\_5a35b7c0-217e-11de-](http://qctimes.com/news/local/elderly-parents-increasingly-moving-in-with-their-children/article_5a35b7c0-217e-11de-)



out and provide security (from crime and fraud as well as in medical emergencies),<sup>43</sup> help out in concrete ways through provision of a place to live (if better off than their children), or be helped (by renting to wealthier children). While each situation is unique, most elder-child dyads would not prefer to live in the same household, with some space protecting the dignity and privacy of both the elderly parents and the younger families.<sup>44</sup>

The questions my latest research investigates include whether it is possible to reconcile these two desires for independence and intimacy (factually and legally), whether in fact the stated desires map to improved well-being for the elderly (as well as their grandchildren), and, in parallel work, why some jurisdictions are much more willing to embrace the concept that seems to be a solution.

This well-being question could be easily answered if there was comparative data showing outcomes from grandparents living in ADUs versus those who do not. Unfortunately, such data does not exist. However, there are large, nationally representative, longitudinal datasets that reflect health quality when an elderly person lives in close proximity to, as opposed to with, adult children.<sup>45</sup> On the child's side, there is high quality data reflecting outcomes for children raised by or living with grandparents, as well as for those experiencing day-care or lesser involvement from grandparents.<sup>46</sup> We turn now to these approximations of what happens when grandmothers live in ADUs.<sup>47</sup>

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ba4b-001cc4c03286.html (highlighting stories of two women who live in apartments in the children's homes). One son is quoted as follows: "What made it work was the design of the house. She's still living independently. We don't necessarily see her every day." *Id.* For a more academic view, see Kao-Lee Liaw & William H. Frey, *Location of adult children as an attraction for black and white elderly primary migrants in the United States*, 34 ENV. & PLANNING A191, A195 (2002). A large number of young-old migrants moved in order to facilitate the exchange of services with their adult children. For those moving to Arizona, 31% indicated that they were moving to be nearer their children, and 54% indicated they were nearer to at least one child than at the time of retirement. *Id.* at A195.

43. For application to a type of ADU with medical fittings, see Susan Seliger, *In the Backyard, Grandma's New Apartment*, N.Y. TIMES, May 1, 2012, available at <http://newoldage.blogs.nytimes.com/2012/05/01>.

44. See, e.g., Haya El Nasser, *'Granny flats' finding a home in tight market*, USA TODAY, Jan. 5, 2004, [http://usatoday30.usatoday.com/news/nation/2004-01-05\\_granny-flats\\_x.htm](http://usatoday30.usatoday.com/news/nation/2004-01-05_granny-flats_x.htm).

45. Zhang, *supra* note 40.

46. Paul Scommegna, *More U.S. Children Raised by Grandparents*, POPULATION REFERENCE BUREAU (Mar. 2012), <http://www.prb.org/publications/Articles/2012/US-children-grandparents.aspx>.

47. The work I have done personally is confined to grandmothers, who are much more likely to be living in ADUs because they outlive their husbands and

One of my early findings is that living with one's children, while historically and internationally frequent, signals a decline in life quality for contemporary American elderly. Thus, in a binary logistic regression based on the National Longitudinal Study of Aging,<sup>48</sup> the elderly people in the sample were nearly twenty-eight percent more likely to die by the end of data collection if they lived with their adult children.<sup>49</sup> They were also less likely to have good mental states.<sup>50</sup>

TABLE 1: MORTALITY IN THE LSOA II

Variable	Coefficient (standard error)
Age	.101 (.006)***
Sex (M=1, F=0)	-.721 (.070)***
Health status t (1994) (1=poor, . . . 5=excellent)	-.450 (.029)***
Live with spouse t <sub>1</sub>	-.165 (.080)**
Live with third party t <sub>1</sub>	-.426 (.426)
Live with child t <sub>1</sub>	.278 (.095)**

*Continued on next page*

are much more likely to care for their grandchildren during the day or as substitutes for parents.

48. The 1994-2000 Second Longitudinal Study of Aging (LSOA II) is a portion of a collaborative project of National Center for Health Statistics (NCHS) and the National Institute on Aging (NIA). It is a multi-cohort study of persons seventy years of age and over designed primarily to measure changes in the health, functional status, living arrangements, and health services utilization of two cohorts of Americans as they move into and through the oldest ages. To determine death, I matched the publically available survey with the 1984-2002 LSOA II Linked Mortality File and the (restricted) National Death Index [on file with author]. *The Second Longitudinal Study of Aging (LSOA II)*, CTRS. FOR DISEASE AND CONTROL, <http://www.cdc.gov/nchs/lsoa.htm> (last visited Nov. 10, 2014).

49. \*\*\*  $p < .01$ , \*\*  $p < .05$ .  $R^2$  for equation predicting likelihood of death before 2009 was .132;  $N = 9447$  [on file with author].

50. In a linear regression, with .14 for its total  $R^2$ , and using sex, owned home, age, family income, health status in 1994, if the respondent lived with son or daughter in 1994, cognition decreased more than 3%. The coefficient was 1.015, and was significant at  $p < .001$ . Results are available on request [on file with author].

Table 1 Continued

Live within 8 minutes of child t <sub>1</sub>	-.174 (.105)*
Family income	-.068 (.017)***
Respondent is Black	-.075 (.107)
Respondent is Hispanic	-.201 (.165)
Constant	-5.793 (.471)***

While *living* with one's adult children seems to be negatively related to an elder's health based on those statistics, so does *raising* one's grandchildren when the parents are not able to care for them.<sup>51</sup> Sociologists have documented that the elderly raising their grandchildren complain about increased depression and lack of preventive health care.<sup>52</sup> On the other side of the equation, children raised by grandparents do worse than those raised by their mothers.<sup>53</sup> The solution proposed by the AARP,<sup>54</sup> urban planners,<sup>55</sup> and the New Urbanist move-

51. Mary Elizabeth Hughes et al., *All in the Family: The Impact of Caring for Grandchildren on Grandparents' Health*, 62 J. GERONTOLOGY: B PSYCHOL. SOC. SCI. S108, S108 (2007). See generally Ye Luo et al., *Grandparents Providing Care to Grandchildren: A Population-Based Study of Continuity and Change* 1, 20 J. FAM. ISS. (2012).

52. Lindsey A. Baker & Merrill Silverstein, *Preventive Health Behaviors Among Grandmothers Raising Grandchildren*, 63 J. GERONTOLOGY: B PSYCHOL. SOC. SCI. S304, S306 (2008).

53. Of course, this could be because of the situation preventing the parent from raising them, as well as the socioeconomic conditions of the grandparents and children. For a few such studies, see Bowers & Myers, *supra* note 34; Jill M. Downie et al., *Children Living With Their Grandparents: Resilience And Wellbeing*, 19 INTL. J. SOC. WELFARE 8 (2010). See generally Jeanne L. Thomas, Len Sperry & M. Sue Yarbrough, *Grandparents as Parents: Research Findings and Policy Recommendations*, 31 CHILD PSYCHIATRY & HUM. DEV. 3 (2000) (providing an overview of pertinent literature).

54. RODNEY L. COBB & SCOTT DVORAK, AARP PUB. POL'Y INST., ACCESSORY DWELLING UNITS: MODEL STATE ACT AND LOCAL ORDINANCES 9 (2000), available at [http://assets.aarp.org/rgcenter/consume/d17158\\_dwell.pdf](http://assets.aarp.org/rgcenter/consume/d17158_dwell.pdf).

55. Nancy J. Chapman & Deborah A. Howe, *Accessory Apartments: Are They a Realistic Alternative for Ageing in Place?*, 16 HOUS. STUD. 637, 637 (2001); U.S. DEP'T OF HOUS. AND URB. DEV., ACCESSORY DWELLING UNITS CASE STUDY (2008), available at <http://www.huduser.org/portal/publications/adu.pdf>; see also ROBERT NEUWIRTH & RACHANA SHETH, N.Y. PRATT CTR. FOR CMTY. DEV. & CHHAYA CMTY. DEV. CORP, NEW YORK'S HOUSING UNDERGROUND: A REFUGE AND RESOURCE (2008), [http://prattcenter.net/sites/default/files/housing\\_underground\\_0.pdf](http://prattcenter.net/sites/default/files/housing_underground_0.pdf); N.Y. IMMIGRANT HOUS. COOP., ACCESSORY DWELLING UNITS IN NEW YORK CITY: MOVING TO SOLUTIONS 15 (2010); Vicki Been, Benjamin Gross, & John Infranca, *Responding to Changing Households: Regulatory Challenges to Micro. Units and Accessory Dwelling Units* (NYU Furman Center, Working Paper, 2014). See also KAREN CHAPPLE ET AL., CTR. FOR CMTY. INNOVATION, YES IN MY

ment<sup>56</sup> includes what is called the ADU, also referred to as the “granny flat” or “in-law suite.”<sup>57</sup>

For an example of an ordinance regulating the ADU, consider the Iowa City Municipal Code, which allows, with permit, one accessory unit on most single-family designated lots so long as either it or the principal dwelling is occupied by the owner, there is an additional parking space, and the space meets general zoning requirements.<sup>58</sup> In Canada, subsidies for building ADUs are provided under the Mortgage and Housing program, Residential Rehabilitation Assistance Program (RRAP)—that range from \$24,000 to \$36,000.<sup>59</sup> In Australia, what this article calls ADUs are named “dual occupancy dwellings,” and have received increasing favor as a solution to the problem posed here.<sup>60</sup> In Britain, the current dispute is whether to remove the council tax from ADUs.<sup>61</sup>

While living with one’s adult children seems to signal a decline in health, living close to, but not with, one’s children, *positively* affects

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BACKYARD: MOBILIZING THE MARKET FOR SECONDARY UNITS, 16 (Univ. of Cal.-Berkeley, 2012), available at <http://communityinnovation.berkeley.edu/reports/secondary-units.pdf>.

56. The new urbanists are a loosely affiliated group of architects and urban planners who have, over the past couple of decades, mounted a remarkably successful campaign against traditional zoning practices—including, but not limited to, the exclusion of accessory dwelling units from single-family-residential zones. For a New Urbanist publication supporting ADUs, see *Granny Flats Add Flexibility and Affordability*, 6 NEW URBAN NEWS 8 (2001), available at [www.newurbannews.com/accessory](http://www.newurbannews.com/accessory). See also Karen Chapple et al., *supra* note 55. For the writings of a frustrated advocate, see Maurizio Antonietti, in *The Difficult History of Ancillary Units: The Obstacles and Potential Opportunities to Increase the Heterogeneity of Neighborhoods and the Flexibility of Households in the United States*, 22 J. HOUS. ELDERLY 368, 369 & n.4 (2008).

57. Sandy Keenan, *Grandma Never Had It So Good*, N.Y. TIMES, May 8, 2014, <http://www.nytimes.com/2014/05/08/garden/grandma-never-had-it-so-good.html>

58. IOWA CITY MUN. CODE § 14-4C-2 (2005). This ordinance is comparable to many in California. See SANTA CRUZ, CAL. MUN. CODE § 24.12.120 (2014).

59. *Secondary/Garden Suite, Residential Rehabilitation Assistance Program*, CAN. MORTG. AND HOUS. CORP., available at [http://www.cmhc-schl.gc.ca/en/ab/hopr/fias/hopr/fias\\_010.cfm](http://www.cmhc-schl.gc.ca/en/ab/hopr/fias/hopr/fias_010.cfm). Rationale and description can be found at Anne Milan & Brian Hamm, *Across the Generations: Grandparents and Grandchildren*, CANADIAN SOCIAL TRENDS (2003).

60. *Disabled Access in Dual Occupancy Housing Australia*, DISABLED WORLD, Jan. 3, 2009, <http://www.disable-world.com/diability/accessibility/homes/dual-occupancy-australia.php>.

61. See, e.g., Chris Richards, ‘Granny flat’ tax break considered as government looks at plan to scrap council tax for live-in annexes, DAILY MAIL, June 2, 2012, <http://www.dailymail.co.uk/news/article-2153614/Granny-flat-tax-break-considered-government-looks-plan-scrap-council-tax-live-annexes.html#ixzz1wqcw7D6H>.

the elderly person's health and longevity.<sup>62</sup> (See Table I, with the negative and statistically significant coefficient for Living within 8 minutes of one's children in the equation, which overall predicts death by 2009.) Their cognition improves as well.<sup>63</sup> Similarly, while raising one's grandchildren affects the elderly negatively—though other factors are unquestionably at work here—babysitting for them turns out to be positive, or at least no worse, for both sides (see Tables 2-4, below).<sup>64</sup> Day care by grandmothers results in fewer household accidents than even day care by fathers,<sup>65</sup> and driving with grandparents results in fewer injuries than even driving with parents.<sup>66</sup> In addition, there are what the *Troxel* lower court opinion reports as the “commonsensical” notion that grandparents are good for children.<sup>67</sup> There

62. *Infra* Table 1.

63. I have not reproduced the complete results, but would gladly supply them. The  $R^2$  for an equation predicting cognition (a combination of memory recall, knowing the meaning of words like “scissors” and “cactus,” and being aware of the date, day of the week, and vice president) in Wave 2 of the LSOA was .136, with other significant coefficients Age, Family Income, Sex, Living in One's Own Home, Health Status in 1994. The coefficient for living within 8 minutes of the child in 1994 was .546. It was significant at .09.

64. Hughes et al., *supra* note 51, at S113-14 (2007) (discussing the impact on grandparents' health in terms of depression, self-reported health, chronic conditions, and functional limitations); David Bishai et al., *Risk Factors for Unintentional Injuries in Children: Are Grandparents Protective*, 122 PEDIATRICS e980, e980 (2007) (discussing the impact on visits to doctors and emergency rooms). A important work on this topic is Jay Belsky et al., *Are There Long-Term Effects of Early Child Care?*, 78 CHILD DEV. 681 (2007). A number of British studies focus on academic outcomes for children of different kinds of day care. Most find that children cared for regularly by grandparents have higher vocabulary scores, though they also tend to have greater behavior problems once they enter school (compared to children cared for solely by their mothers). See, e.g., Emma Fergusson et al., *Which children receive grandparental care and what effect does it have?* 49 J. CHILD PSYCHOL. & PSYCHIATRY 161, 161 (2008); Kirstine Hansen & Denise Hawkes, *Early Childcare and Child Development*, 38 J. SOC. POL'Y 211, 212 (2009); Kathy Silva et al., *Effects of early child-care on cognition, language, and task-related behaviors at 18 months: An English study*, 29 BRITISH J. OF DEVELOP. PSYCH. 18, 18 (2011).

65. Bishai et al., *supra* note 64.

66. Fred M. Henretig et al., *Grandparents Driving Grandchildren: An Evaluation of Child Passenger Safety and Injuries*, 128 PEDIATRICS 289, 293 (2011).

67. *Troxel v. Granville*, 530 U.S. 57, 69 (2000). The court therefore set the presumption in favor of grandparent visitation over the parent's objection, which the Supreme Court overturned. See generally Donald B. Conroy & Charles J. Fahey, *Christian Perspective on the Role of Grandparents*, in GRANDPARENTHOOD 195 (Vern. L. Bengston & Joan F. Robertson eds., 1985); Thomas E. Denham & Craig W. Smith, *The Influence of Grandparents on Grandchildren: A Review of the Literature and Resources*, 38 FAM. REL. 345 (1989); Julia Griggs et al., *“They've Always Been There for Me”: Grandparental Involvement and Child Well-Being*, 24 CHILD. & SOC. 200 (2010); Colleen L. Johnson, *Grandparenting Options in Divorcing Families: An Anthropological Perspective*, in GRANDPARENTHOOD 86 (Vern. L. Bengston & Joan F. Robertson eds., 1985).

are intergenerational implications of the relationship as well.<sup>68</sup> The pattern set as one is raised has implications for what the adult does with one's own grandchildren.<sup>69</sup> This will become increasingly important if the Social Security system falters in future years.

TABLE 2: DESCRIPTIVE STATISTICS- CAREGIVING  
(HEALTH AND RETIREMENT STUDY, 1998-2002)

Provided babysitting less than 50 hours per year	.00	6232	99.8%
	1.00	10	.2%
	Total	6242	100.0%
Went from providing less than 50 hours to providing more than 50 hours per year	.00	6229	99.8%
	1.00	13	.2%
	Total	6242	100.0%
Continued providing babysitting 50 hours per year or more	.00	5947	95.3%
	1.00	295	4.7%
	Total	6242	100.0%
Stopped providing babysitting 50 hours per year or more	.00	6204	99.4%
	1.00	38	.6%
	Total	6242	100.0%
Began multigenerational household	.00	6100	97.7%
	1.00	142	2.3%
	Total	6242	100.0%
Continued multigenerational household	.00	5531	88.6%
	1.00	711	11.4%
	Total	6242	100.0%
Stopped multigenerational household	.00	5678	91.0%
	1.00	564	9.0%
	Total	6242	100.0%
Began skipped-generation household	.00	6216	99.6%
	1.00	26	.4%
	Total	6242	100.0%
Continued skipped-generation household	.00	6129	98.2%
	1.00	113	1.8%
	Total	6242	100.0%
Stopped skipped-generation household	.00	6218	99.6%
	1.00	24	.4%
	Total	6242	100.0%
Moved from babysitting to multi- or skipped- or multi- to skipped-generation household	.00	6084	97.5%
	1.00	158	2.5%
	Total	6242	100.0%
Moved from multi- or skipped- to babysitting or skipped- to multi-generation household	.00	6165	98.8%
	1.00	77	1.2%
	Total	6242	100.0%

68. See Brinig-*The Family Franchise*, *supra* note 18.

69. Valarie King & Glen H. Elder, Jr., *The Legacy of Grandparenting: Childhood Experiences with Grandparents and Current Involvement with Grandchildren*, 59 J. MARR. & FAM. 848, 849 (1997).

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TABLE 3. DESCRIPTION OF CONTINUOUS VARIABLES- HEALTH AND RETIREMENT STUDY (2002).

Covariate	N	Minimum	Maximum	Mean	Std. Deviation
Black	12088	.00	1.00	.1262	.33213
Hispanic - Combined	12088	0	1	.06	.246
Age in current series	12088	51.00	82.00	65.8477	7.91663
Now married	12088	.00	1.00	.5365	.49869
Count of co-residents under 18 (only reported in 2000)	12088	0	5	.09	.423
Respondent's education (years)	12088	0	17	12.11	2.814
Log total income	12088	1.39	14.21	10.3050	.93084
Log total assets	12088	.69	17.51	11.6497	1.84981
Worked part time	12088	.00	1.00	.0762	.26531
Not working (retired or out of labor force)	12088	.00	1.00	.6078	.48826
Interval (1= 1998 to 2000, 2=2000 to 2002)	12088	1.00	2.00	1.4996	.50002
Weight (person-level analysis weight)	12088	453	16153	3304.30	1681.346

TABLE 4. COEFFICIENTS FROM REGRESSIONS OF MEMORY AND DEATH ON GRANDCHILD CARE STATUS AND CHANGE, COVARIATES, AND PRIOR HEALTH, 1998-2002 HEALTH AND RETIREMENT STUDY, GRANDMOTHERS<sup>70</sup>

Variable	Memory <sup>71</sup>			Death in Interval <sup>72</sup>	
	I	II	III	I	II
Grandchild care status					
Grandparents, no care	-1.626	-1.054	-.270	-21.801	-20.676
Started babysitting	-.938	-.160	.213	-21.618	-20.288
Continued babysitting	-1.111***	-.105	-.042	-21.688	-20.140
Stopped babysitting	-.598	.450	.044	-21.673	-20.165
Started multigenerational household	-.549	-.363	-.209	-1.124***	.710***
Continued multigenerational household	.050	.031	.110	.711***	.357***
Stopped multigenerational household	.112	.213	.329*	.149***	.898***
Started skipped-generation household	-1.188	-1.159	-.673	-21.872	-23.199

In sum, just looking from the family law and family studies viewpoints, the ADU movement seems like a great thing. It seems

70. This model was closely drawn from Hughes et al., *supra* note 45. While the dependent variables are different, it uses the same dataset (the Health and Retirement Study), described *id.* at S110. The sample I drew was for grandparents only, so the sample sizes are slightly smaller. Empirical methods are the same. (That is, movements in and out of various child care arrangements during the two, two-year periods were used, with the dependent variables measured at the end of each period. Because both of the observations came from the same person, generalized linear models were used to control for the obvious correlation. The continuous variables (other than race and education) were measured as of the first year in each series. Samples were weighted to reflect proportions in the nation.) Similar models can be used for the dependent variable of "died before 2008," though it does not make as much sense to use the intervals 1998-2000 and 2000-2002 for this. Total cognition is available only for some years in the study, so the intervals cannot be used.

71. This variable is calculated within the study, see F. Thomas Juster & Richard Suzman, *An Overview of the Health and Retirement Study*, 30 J. HUM. RES. S7, S29 (1995) and reflects the total of a number of items—counting backwards, immediate and delayed word recall, serial 7s, and certain word meanings. Gwenneth G. Fisher et al., *The Health and Retirement Study: Imputation of Cognitive Measures, 1992-2010 Early Release*, available at <http://hrsonline.isr.umich.edu/modules/meta/xyear/cogimp/desc/COGIMPdd.pdf>. The values ranged between 0 to 20, with a mean of 10.52 and standard deviation of 3.47.

72. This was a binary variable (0 or 1), reflecting whether the respondent died between 1998 and 2000 for interval 1, or 2000 and 2002 for interval 2. A total of 37 grandmothers died during these two intervals, or .3 percent.



likely to ease the pressure on adult children that may tragically end in elder abuse.<sup>73</sup> It also may relieve the family conflicts and strain on public resources that have caused many states to eliminate filial responsibility laws.<sup>74</sup>

ADUs are not always restricted by ordinance to occupancy by multiple generations in the same family or their caregivers,<sup>75</sup> and the discussion of this paper justifies these but not other possible uses. Accessory dwellings may provide affordable options for many persons of modest means, including immigrants and may rejuvenate sparsely settled urban centers. While this non-family type of ADU use has many desirable social and economic characteristics, it has met with significant opposition in such places as New York City,<sup>76</sup> Chicago, Fort

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73. For some earlier work analyzing domestic elder abuse laws, see generally Margaret F. Brinig et al., *The Public Choice of Elder Abuse Law*, 33 J. LEG. STUDS. 517 (2004) (explaining these laws are not sought by the “young-old,” though touted by the AARP); Margaret Brinig et al., *Lawmaking by Public Welfare Professionals*, 5 WHITTIER J. OF CHILD & FAM. ADVOC. 57 (2006) (discussing conflict of roles for social workers asked to investigate both child and domestic elder abuse).

74. For a list of these statutes, see Michael Lundberg, *Our Parents’ Keepers: The Current Status of American Filial Responsibility Laws*, 11 J. L. & FAM. STUD. 533, 535 (2009) (claiming that, while these used to be ubiquitous, today only twenty-eight states retain their laws, and a number do not enforce them). For a general discussion of various rationales for the laws, see Wise, *supra* note 20, at 567-72 (2002) (suggesting that these include honor and gratitude; indebtedness and reciprocity; public cost containment; and romanticized notions of family caregiving).

75. In fact, case law in California suggests that such restrictions under California’s permissive legislation are unconstitutional. *Coal. Advocating Legal Hous. Options v. City of Santa Monica*, 105 Cal. Rptr. 2d 802, 802 (Cal. Ct. App. 2001). *But see* SANTA MONICA, CA., MUN. CODE § 9.04.13.040(1) (2013):

OCCUPANCY AND SALE LIMITATIONS. The owner of record of the parcel shall reside on the parcel on which the second unit is located, in either the main dwelling unit or the second unit. The second unit shall be intended and used for occupancy as a residential dwelling unit by the resident property owner, a dependent of the resident property owner or a care giver of either the resident property owner or a dependent of the resident property owner. The use permit shall be valid only if and for so long as these conditions are maintained. The second unit is not intended for, and shall not be offered for, sale separately from the main dwelling unit.

76. The New York Attorney General’s Office pamphlet on elder housing options has this cautionary sidebar regarding accessory apartments and elder cottages:

Check Zoning Requirements! Both Accessory Apartments and Elder Cottages require structural changes which must comply with zoning and building regulations in your municipality. Before you proceed with either of these options, find out if what you want is allowed and how it should be built to conform to your community’s requirements.

N.Y. STATE OFFICE OF THE ATTORNEY GENERAL, A HOUSING GUIDE FOR SENIOR CITIZENS 10 (2011), available at [http://www.ag.ny.gov/sites/default/files/pdfs/publications/Housing\\_Guide\\_for\\_Seniors\\_2011.pdf](http://www.ag.ny.gov/sites/default/files/pdfs/publications/Housing_Guide_for_Seniors_2011.pdf).

Worth, and San Diego.<sup>77</sup> Other current work investigates the great variety of responses by the 150 California municipalities with over 50,000 population to strong support on the state level.<sup>78</sup>

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77. Adrian Florido, *Hey! Now Grandma Can Move In!*, VOICE OF SAN DIEGO, May 23, 2011, <http://voiceofsandiego.org/2011/05/23/hey-now-grandma-can-move-in>; Katy Hirst, *East Fort Worth residents fight proposed low-income housing complex*, STAR-TELEGRAM, Oct. 7, 2013, <http://www.star-telegram.com/2013/10/06/5224880/east-fort-worth-residents-fight.html>; Madhu Krishnamurthy, *Cary affordable housing project moves ahead despite opposition*, DAILY HERALD, Sept. 25, 2014, <http://www.dailyherald.com/article/20140925/news/140928997>.

78. See generally Brinig & Garnett, *supra* note 11.