

**JOURNAL**  
**of the**  
**SENATE OF THE**  
**TWENTY - FIFTH LEGISLATURE**  
**of the**  
**STATE OF HAWAII**

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**Second Special Session of 2010**

**Convened Wednesday, September 1, 2010**

**Adjourned Thursday, September 2, 2010**

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**THE  
TWENTY-FIFTH LEGISLATURE  
STATE OF HAWAII  
SECOND SPECIAL SESSION OF 2010  
JOURNAL OF THE SENATE**

**FIRST DAY**

**Wednesday, September 1, 2010**

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Special Session of 2010, was called to order at 10:04 a.m., by Senator Colleen Hanabusa, President of the Senate, in accordance with the following Proclamation, which was read by the Clerk and placed on file:

"September 1, 2010

PROCLAMATION

I, Colleen Hanabusa, President of the Senate of the Twenty-Fifth Legislature of the State of Hawai'i, pursuant to the power vested in me by Section 10, Article III of the Constitution of the State of Hawai'i, and at the written request of two-thirds of the members to which the Senate is entitled, do hereby convene the Senate in Special Session for the purpose of carrying out its responsibility established by Section 3, Article VI of the Constitution of the State of Hawai'i for a period of two (2) days commencing on Wednesday, September 1, 2010, at 10 o'clock a.m.

/s/ Colleen Hanabusa  
Colleen Hanabusa  
President of the Senate"

The Divine Blessing was invoked by Mr. Kamakana Kaimulua, Office of the Honorable Jill N. Tokuda, Hawai'i State Senate, after which the Roll was called showing all Senators present with the exception of Senators Hee and Ihara who were excused and Senators Bunda and Hooser who resigned from the State Senate on July 16, 2010.

At this time, Senator Hemmings introduced Circuit Court Judge Michael Town to the members of the Senate. Judge Town was accompanied by his wife Bonnie; daughter Mia; his son Gaylord and wife Wandee and granddaughter Ella Blue; Chief of Staff Jennifer Aki; Chief Clerk Alden Kau; and law clerks John Luna and Aaron Wills.

At 10:12 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:16 a.m.

**MESSAGE FROM THE GOVERNOR**

The following message from the Governor (Gov. Msg. No. 1) was read by the Clerk and disposed of as follows:

Gov. Msg. No. 1, submitting for consideration and consent, the nomination of MARK E. RECKTENWALD to the office of Chief Justice of the Supreme Court of the State of Hawaii, was referred to the Committee on Judiciary and Government Operations.

**JUDICIARY COMMUNICATION**

The following communication from the Judiciary (Jud. Com. No. 1) was read by the Clerk and disposed of as follows:

Jud. Com. No. 1, submitting for consideration and confirmation, the nomination of BLAINE J. KOBAYASHI to the District Court of the Second Circuit, for a term of six years, was referred to the Committee on Judiciary and Government Operations.

**STANDING COMMITTEE REPORTS**

On motion by Senator Sakamoto, seconded by Senator Slom and carried unanimously, the Clerk was authorized to receive standing committee reports on Gov. Msg. No. 1 and Jud. Com. No. 1. In consequence thereof, and subsequent to its recessing at 10:18 a.m., the Senate took the following action:

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 1) recommending that the Senate consent to the nomination of BLAINE J. KOBAYASHI to the District Court of the Second Circuit, State of Hawaii, in accordance with Jud. Com. No. 1.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1 and Jud. Com. No. 1 was deferred until Thursday, September 2, 2010.

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 2) recommending that the Senate consent to the nomination of MARK E. RECKTENWALD to the office of Chief Justice, Supreme Court, State of Hawaii, in accordance with Gov. Msg. No. 1.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 2 and Gov. Msg. No. 1 was deferred until Thursday, September 2, 2010.

**ADJOURNMENT**

At 1:18 p.m., the Senate adjourned until 11:00 a.m., Thursday, September 2, 2010.

## SECOND DAY

**Thursday, September 2, 2010**

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Second Special Session of 2010, convened at 11:02 a.m. with the President in the Chair.

The Divine Blessing was invoked by Suzanne Marinelli, Legislative Reference Bureau Public Access Room, after which the Roll was called showing all Senators present with the exception of Senator Ihara who was excused and Senators Bunda and Hooser who resigned from the State Senate on July 16, 2010.

The President announced that she had read and approved the Journal of the First Day.

**ORDER OF THE DAY**

**ADVISE AND CONSENT**

Stand. Com. Rep. No. 1 (Jud. Com. No. 1):

Senator Taniguchi moved that Stand. Com. Rep. No. 1 be received and placed on file, seconded by Senator Takamine and carried.

Senator Taniguchi then moved that the Senate consent to the nomination of BLAINE J. KOBAYASHI to the District Court of the Second Circuit, State of Hawaii, for a term of six years, seconded by Senator Takamine.

Senator Taniguchi rose to speak in support of the nominee as follows:

"Madam President, your Committee on Judiciary and Government Operations heard from Mr. Kobayashi, and we are convinced that he will serve well in his capacity as District Judge. Testimony received was overwhelmingly in support of Mr. Kobayashi. We also received information from the Hawai'i State Bar Association that Mr. Kobayashi is qualified to serve as Judge of the District Court. For these reasons, I'm asking my colleagues to support the consent of Mr. Kobayashi as Judge of the District Court of the Second Circuit. Thank you."

Senator Slom rose to speak in support of the nominee as follows:

"I think that in addition to his scholarly pursuits and the rating by the Bar Association, Mr. Kobayashi has been very active in the community. He has been a leader in judicial reform. I think he will serve us well. He understands quite clearly the idea of public service. So, I urge a unanimous confirmation vote. Thank you."

Senator Baker rose to speak in support of the nominee as follows:

"Madam President, I rise in support of Judicial Communication #1, the nomination of Blaine J. Kobayashi, to the District Court of the Second Circuit, which is Maui County.

"I believe Mr. Kobayashi is eminently qualified to serve the people of this state as a judge. His breadth of legal knowledge and professional experience which includes a background in both criminal and civil law make him uniquely qualified to sit on the many different calendars that the District Court encompasses. In addition, he has the temperament and integrity that is required of someone on the bench.

"Mr. Kobayashi enjoys an excellent reputation in the Maui legal community for his legal intelligence, competency and ethics. One of his former colleagues at the Office of Corporation Counsel for the County of Maui noted that Mr. Kobayashi is the "consummate professional. He is honest,

forthright, and diligent. He is always well-prepared, and as a result, he uses court time efficiently." Additionally, Blaine's associates have described him as both genuine and respectful and I trust that he will treat all who come before him with equal respect and dignity.

"From the testimony it is clear to me that he truly embodies the integrity, intelligence and work ethic that are befitting of a Judge. I strongly believe that Mr. Kobayashi will provide the well-balanced judicial temperament that the Maui community needs. In my view, our community will be well-served with him on the District Court bench. I am pleased to support his confirmation and ask my colleagues to join me. Mahalo."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 1 (Ihara).

At this time, Senator Taniguchi introduced Judge Kobayashi to the members of the Senate. Judge Kobayashi was accompanied by his fiancée Nicole Higa; daughter Kiara and son Colton; parents James and Lillian Kobayashi; and friends including Zach and Joan Kobayashi, Hikeshi and Alice Kobayashi; Leo and Archie Ikehara; and retired Kauai Mayor Kusaka and son Colin.

At 11:14 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:19 a.m.

Stand. Com. Rep. No. 2 (Gov. Msg. No. 1):

Senator Sakamoto moved that Stand. Com. Rep. No. 1 be received and placed on file, seconded by Senator Slom and carried.

Senator Taniguchi then moved that the Senate consent to the nomination of MARK E. RECKENTWALD to the office of Chief Justice, Supreme Court, State of Hawaii, for a term of ten years, seconded by Senator Takamine.

Senator Taniguchi rose to speak in support of the nominee as follows:

"Your Committee on Judiciary and Government Operations heard from Justice Recktenwald, and we were assured from him and numerous testifiers that he will serve well in his capacity as Chief Justice. Testimony received was overwhelmingly in support of Justice Recktenwald, including the Attorney General, the State Public Defender, and the Office of Prosecuting Attorney for the City and County of Honolulu. We also received information from the Hawai'i State Bar Association that Justice Recktenwald is qualified to serve as Chief Justice.

"I will be supporting Justice Recktenwald's confirmation for a number of reasons. First, he has said that if he becomes Chief Justice, he will appoint district court judges who are representative of our community, and he will continue to invite public input before making his selections. He also indicated that he would like to continue the electronic filing process that has already begun. Justice Recktenwald has also indicated he will strive to improve the Judiciary's efficiency, while at the same time providing greater transparency. We are entrusting Justice Recktenwald with a great responsibility, and I'm convinced he can do the job.

"For these reasons, I'm asking my colleagues to support the consent of Justice Mark Recktenwald as Chief Justice of the Supreme Court of the State of Hawai'i."

Senator Slom rose to speak in support of the nominee as follows:

“What could we ask of Mark Recktenwald that has not been asked in previous hearings? What could he tell us that he would do that he hasn’t done; first, in the U.S. Attorney’s office, then as the head of the struggling Department of Commerce and Consumer Affairs, next on to the Intermediate Court of Appeals, and now currently on the Supreme Court of the State of Hawai‘i.

“You can look at the measure of a man from his educational background, and it’s superior; from his experience, and it’s superior; from his writing ability, and it’s superior. But more importantly than all of that is his relationship with other individuals; and as was said by the Judiciary Chairman, he had unanimous support for this position. And among those that came to testify were people that had come up against him or who he had ruled against in a court of law, but they still have respect for this man because of his fairness, because of his equality. And so, you’ve had individuals that have known him from the legal profession, the business profession, and also from the community, where he is a leader, he is a volunteer. He’s outstanding.

“I think that the nomination of Judge Recktenwald at this time represents the right man at the right time for the right job. We know that he will not disappoint us. We know that he will do exactly what he has said he will do because we have a long and distinguished career track record to view that by. I think that we can safely say that Judge Recktenwald as Chief Justice will be a beacon for true judicial reform in the State of Hawai‘i. And as he also stated, his passion is for expansion of alternative dispute resolution, something that will touch everyone in the community, will make justice access more easily accessible to more people, and to bring more fairness and equity to our state.

“So, I wholeheartedly endorse the confirmation of Mr. Recktenwald, and urge my colleagues to give unanimous support. And, as a special favor to the good senator from Kahului, Madam President, I will not ask for or seek a Roll Call vote. Thank you.”

Senator English rose to speak in support of the nominee as follows:

“Members, today is a very momentous occasion because we are confirming the appointment of the head of another branch of government, and the last time this happened was probably 17 or 18 years ago. I want us to pause for a moment and consider that.

“The invocation this morning talked about the three branches of government and how important each one is to the other. I think that with Mark’s leadership and his ability to bring people together, we will see a strong Judiciary and we’ll see one that is very receptive to the innovation of our times. As Senator Taniguchi pointed out, he is very open to electronic filing, but I think there is a lot more in the future that will come. I wanted us just to reflect on this, that we are all very, very privileged to be a part of appointing the head of an entire branch of government—the Judiciary.

“I want to extend my support to Mr. Recktenwald. My support comes from my working relationship with him; and you know, it’s a great man, a great person can change their mind, and this is what I’ve seen in Mr. Recktenwald. In issues that we have had in the past when he was DCCA director, after listening to everything, he said, ‘Okay, I can change my mind.’ That is a mark of a great person.

“So, members, just pause for a second; think about the momentous occasion that this is, and when we vote, know that

we have confirmed the head of the Judiciary for the State of Hawai‘i. Thank you.”

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 22. Noes, None. Excused, 1 (Ihara).

At this time, Senator Taniguchi introduced Chief Justice Mark E. Recktenwald to the members of the Senate. Justice Recktenwald was accompanied by daughter Sarah and other family members including Joseph Mahoe, Alvin Aki, and Momi and Osgar Kahn. Unfortunately, Justice Recktenwald’s wife Gailynn was teaching and his sons Andrew and Trevor were on mainland and unable to attend.

At 11:28 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:38 a.m.

#### SENATE RESOLUTION

The following resolution (S.R. No. 1) was read by the Clerk and disposed of as follows:

S.R. No. 1 “SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SECOND DAY OF THE SECOND SPECIAL SESSION OF 2010,” was offered by Senators Sakamoto, Hemmings.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, S.R. No. 1 was adopted.

At this time, Senator Slom rose and said:

“Well I gave up my right to roll call, but I’m not giving up my right to announcement. Thank you Madam Chair. Just wanted to remind everybody today that 5:00 p.m. today the University of Hawai‘i Warriors will take the field. Go Warriors! Go Bows! Now Madam Chairman, they said the Warriors are 21 point underdogs, well I’ve been a 24 point underdog in this body so I know what that is. Go Warriors! Go Bows!

#### ADJOURNMENT

Senator Sakamoto moved that the Senate of the Twenty-Fifth Legislature of the State of Hawai‘i, Second Special Session of 2010, adjourn Sine Die, seconded by Senator Slom and carried.

At 11:40 a.m., the President rapped her gavel and declared the Senate of the Twenty-Fifth Legislature of the State of Hawai‘i, Second Special Session of 2010, adjourned Sine Die.

## STANDING COMMITTEE REPORTS

**SCRep. 1            Judiciary and Government Operations on Jud. Com. No. 1**

Recommending that the Senate consent to the nomination to the following:

DISTRICT COURT OF THE SECOND CIRCUIT, STATE OF HAWAII

J.C. No. 1            BLAINE J. KOBAYASHI, for a term to expire in six years.

Testimony in support of the appointee was submitted by twenty-seven individuals, including members of the community, attorneys, and clients. Comments were submitted by the Board of Directors of the Hawaii State Bar Association.

Written testimony presented to your Committee may be reviewed on the Legislature's website.

The Hawaii State Bar Association Board of Directors (HSBA Board) found the appointee to be qualified for the position of District Court Judge of the Second Circuit, based upon a modified version of the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. These Guidelines include the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, public service, collegiality, and writing ability. The HSBA Board rating system includes the categories of "qualified" and "not qualified."

Blaine J. Kobayashi received his Bachelor of Arts degree in Communications, with academic distinction, from University of Hawaii at Manoa and his Juris Doctor degree from the University of Oregon School of Law, where he served as an Associate Editor on the Oregon Law Review. From 2003 to the present, Mr. Kobayashi has been in private practice as a partner with the law firm of Carlsmith Ball LLP in Maui County, concentrating his practice in land use, litigation, and administrative law. From 2000 to 2003, Mr. Kobayashi served as a Deputy Corporation Counsel with the County of Maui, representing the county in litigation involving employment and labor law, personal injury, contracts, tax appeals, and union grievances. From 1996 to 2000, he served as Deputy County Attorney in the office of the County Attorney in Kauai County, where he represented the county in litigation involving personal injury, workers' compensation, contracts, labor law, tax appeals, and administrative law. From 1991 to 1996, Mr. Kobayashi served as a Deputy Prosecuting Attorney on Kauai, where he obtained extensive bench and trial experience in the District, Family, and Circuit Courts. As a Deputy Prosecuting Attorney, he handled cases involving felony family abuse, sexual abuse, and other violent crimes.

Mr. Kobayashi has also served his community by acting as a volunteer arbitrator with the Court Annexed Arbitration Program, as a member (and former President) of the Maui County Bar Association, and as a member of the Board of Directors of Maui Economic Opportunity, Inc., a non-profit corporation that provides assistance to people in the community in need. He has also served on the Iao Intermediate School Renaissance Board and as President of the Waihee School Parent Teacher Association. He also served as a volunteer basketball coach for the Maui Youth Basketball League.

Testimony in support of Mr. Kobayashi's appointment commended his intelligence, good judgment, excellent communication skills, and his knack of explaining complicated legal and factual issues without being condescending so that his audience fully understands those issues. Testimony indicated that he has an excellent judicial temperament, and is honest, forthright, calm, and civil. Testimony received by your Committee reflected that he is both genuine and respectful and has the ability and fortitude to handle the most complex cases. His clients also praised his tremendous sense of fairness, integrity, and common sense in his representation of their interests. Overall, he has an excellent reputation in the Maui legal community for his legal intelligence, competency, and ethics, and your Committee believes that the breadth of Mr. Kobayashi's legal experience will be a great asset to him as a District Court judge.

Your Committee finds that, based on the testimony submitted on his behalf, Blaine J. Kobayashi has the experience, temperament, judiciousness, and other competencies to be a District Court judge, and has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for a District Court judge.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the appointee, has found the appointee to be qualified for the position to which appointed and recommends that the Senate consent to the appointment.

Signed by the Chair on behalf of the Committee.

Ayes, 5. Noes, none. Excused, none.

**SCRep. 2            Judiciary and Government Operations on Gov. Msg. No. 1**

Recommending that the Senate not consent to the nomination to the following:

CHIEF JUSTICE, SUPREME COURT, STATE OF HAWAII

G.M. No. 1            MARK E. RECKTENWALD, for a term to expire in ten years.

Testimony in support of the appointee was submitted by the Senior Policy Advisor to the Governor; Representative Robert N. Herkes, Representative Chris Lee, and Representative Blake K. Oshiro, State House of Representatives; the State Attorney General; the State Public Defender; the Director, Department of Human Services; the Acting Director, Department of Commerce and Consumer Affairs; the Director, Department of Human Resources Development; one private organization; and fifty-six individuals. Testimony in opposition to the appointment was submitted by one individual. Comments were submitted by the Board of Directors of the Hawaii State Bar Association and one individual. The appointee also submitted a statement.

Written testimony presented to your Committee may be reviewed on the Legislature's website.

The Hawaii State Bar Association Board of Directors (HSBA Board) found the appointee to be qualified for the position of Chief Justice of the Hawaii Supreme Court, based upon a modified version of the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. These Guidelines include the following criteria: integrity, legal knowledge and

ability, professional experience, judicial temperament, diligence, financial responsibility, public service, collegiality, and writing ability. The HSBA Board rating system includes the categories of “qualified” and “not qualified.”

Mark E. Recktenwald received his “artium baccalaureus” (Bachelor of Arts) degree, magna cum laude with the highest honors, in anthropology from Harvard College and his Juris Doctor degree, with honors, from the University of Chicago Law School, where he was a member of the Order of the Coif legal honor society and a Comment Editor of the University of Chicago Law Review. He was admitted to the Hawaii Bar in 1986 and clerked for Chief United States District Judge Harold M. Fong for one year. Between 1988 and 1991, Justice Recktenwald worked at the law firm of Goodsell, Anderson, Quinn & Stifel as a litigation associate. He then went to work at the United States Attorney’s Office in Honolulu as a prosecutor in the criminal division from 1991 to 1997. In 1997, Justice Recktenwald became a partner in the law firm of Marr Jones & Wang, specializing in labor and employment litigation. In 1999, Justice Recktenwald went back to the United States Attorney’s Office in Honolulu as an Assistant United States Attorney and served in both the civil and criminal divisions of that office until 2003. During that time, he prosecuted wildlife crimes, fraud on financial institutions, tax fraud, investment scams, and other fraud cases. In the civil division, Justice Recktenwald handled cases in which the government sought and negotiated settlements for a number of health care fraud cases. Justice Recktenwald was appointed the Director of Commerce and Consumer Affairs (DCCA) in 2003 and stayed in that position until his appointment to the position of Chief Judge of the Intermediate Court of Appeals (ICA) in 2007. In 2009, he was elevated to his present position of Associate Justice of the Hawaii Supreme Court.

Justice Recktenwald has also been active in the community. Among other things, he is on the Board of Directors of the Hawaii Chapter of the American Judicature Society. He has also served as a judge in the High School Mock Trial Tournament and as a guest speaker for Volunteer Legal Services Hawaii’s annual volunteer recognition luncheon. He was also a trustee of Le Jardin Academy, a private, non-profit school.

The role of the Chief Justice of the Hawaii Supreme Court is a special one, requiring not only exceptional legal skills, but also administrative and leadership qualities that are necessary to head one of the three co-equal branches of state government. It is when all three branches of government are strong and capable that our state government is able to perform at its peak and serve its people well. Your Committee is mindful of its substantial responsibility in ensuring that a candidate for this important position amply demonstrates not only superior legal abilities, but also the ability to lead and administer the Judiciary effectively and dynamically. It is within this context that your Committee reviewed the testimony and evaluated Justice Recktenwald’s qualifications for the position of Chief Justice.

Testimony in support of the appointee praised his intelligence, integrity, fairness, sound judgment, and high ethical standards. Justice Recktenwald has a reputation in the community as a courteous, humble, even-tempered, and hard-working person who is generous with his time and appreciation for others and is easy to work with. Former colleagues submitted testimony telling of his patience in taking the time to teach others, his compassion for his clients and others involved in the litigation process, and his work ethic which assured that anything he was responsible for was done thoroughly and completely. Testifiers also commended his intelligence, analytical skills, preparation and attention to detail, and thorough understanding of the law. He is committed to excellence and inspires others to do so as well.

Testimony reflects that his opinions, both on the ICA and as an Associate Justice of the Supreme Court, have been scholarly, fair, respectful of opposing viewpoints, clear, and concise. While some testifiers indicated that they did not always agree with the results reached by Justice Recktenwald in specific cases, it was evident to them that he had carefully considered the arguments of the parties and that the resulting decision was intellectually honest, fair, and well-reasoned. Testifiers praised his broad legal background, stating that experience in such diverse areas as criminal matters and civil litigation with the United States Attorney’s Office and in private practice, have given him a firm legal foundation to deal with the scope of appeals that are handled by the appellate courts.

Many testifiers also praised Justice Recktenwald’s administrative and leadership qualities, referring to his able and exceptional management and leadership of the DCCA. Testimony characterized the DCCA as the best run executive department in the State, and attributed this characterization to Justice Recktenwald’s leadership. Justice Recktenwald significantly improved the efficiency of the DCCA by eliminating backlogs, removing unnecessary impediments to public access, and cultivating community outreach. These achievements were accomplished by working with DCCA staff, allowing change and efficiency to work from inside the organization and not from the top down. In his statement to your Committee, Justice Recktenwald explained that it is important to work with employees to effectuate improvements within an organization. Employees may be concerned about change and support for employees is critical in order for them to thrive within a changing work environment. By ensuring that employees are involved in the improvements, the employees take ownership of the changes and end up being the biggest proponents of increased efficiency. Your Committee is hopeful that as Chief Justice, Justice Recktenwald will continue to bring these same management skills and respect for employees to the Judiciary.

Given the significant impact of the economy on the Judiciary’s budget, your Committee also closely questioned Justice Recktenwald regarding his ability to advocate for the Judiciary in the legislative budget process, to ensure that budgetary considerations would not result in a degradation of justice. Based upon his responses and other testimony submitted to your Committee, your Committee believes that Justice Recktenwald possesses the requisite abilities, as well as the vision, foresight, and leadership to head one of the three co-equal branches of state government.

Your Committee also notes that one individual submitted testimony in opposition to the appointment, expressing concern over Justice Recktenwald’s decisions in several recent cases and her perception that Justice Recktenwald has a limiting view of the Hawaii State Constitution and constitutional rights, which may result in a trend towards constricting these constitutional rights. Justice Recktenwald testified that, indeed, he does recognize and embrace the range of protections available under the Hawaii State Constitution, which is wider than the protections available under the United States Constitution. Accordingly, your Committee believes that Justice Recktenwald is mindful of the unique nature of Hawaii constitutional law and that fears of Justice Recktenwald’s taking the Supreme Court in a completely new direction are unfounded.

Your Committee believes that a new Chief Justice must bring to bear all of his or her individual strengths in furthering the mission of the Judiciary. However, substantial course changes may be detrimental to the stability of that branch of government by reversing

gains already achieved. This is particularly the case when the prior executive, Chief Justice Ronald T.Y. Moon, has performed so commendably in that role and helmed the Judiciary so expertly. As such, your Committee is encouraged that, in Justice Recktenwald's written statement and in his oral comments during the hearing, Justice Recktenwald discussed several areas in which he would continue projects instituted or traditions kept by Chief Justice Moon. These include the online legal document filing system instituted under Chief Justice Moon, the jurisprudence noted above regarding expanded rights under the Hawaii Constitution continued and nurtured by Chief Justice Moon, and the tradition of obtaining comments from the public regarding district court judges kept by Chief Justice Moon. As stated in Justice Recktenwald's statement to your Committee, "Chief Justice Moon has left a sound foundation for the new chief justice to build upon, and there are many opportunities to find ways to be more efficient and effective in fulfilling our mission: to provide equal justice for all who come before the courts, and to do so in a manner that is fair, prompt, respectful and transparent." By recommending that the Senate consent to this appointment, your Committee is entrusting the Judiciary to the hands of Justice Recktenwald and is hopeful that, should he be confirmed by the Senate, he will build upon this foundation and will continue to seek guidance and input from the community in his decision making.

Your Committee finds that, based on the testimony submitted on his behalf, Mark E. Recktenwald has the experience, temperament, judiciousness, and other competencies to be the Chief Justice of the Hawaii Supreme Court, and has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for the Chief Justice of the Hawaii Supreme Court.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the appointee, has found the appointee to be qualified for the position to which appointed and recommends that the Senate consent to the appointment.

Signed by the Chair on behalf of the Committee.

Ayes, 5. Noes, none. Excused, none.



| NUMBER AND TITLE  | Offered | Referred | Report of Committee | Adoption |
|---|---------|----------|---------------------|----------|
| S.R. No. 1 AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SECOND DAY OF THE FIRST SPECIAL SESSION OF 2010. | 3       |          |                     | 3        |