

JOURNAL
of the
SENATE OF THE
THIRTY - FIRST LEGISLATURE
of the
STATE OF HAWAI‘I

Second Special Session of 2021

Convened Wednesday, July 28, 2021
Adjourned Friday, August 27, 2021

CERTIFICATE

We hereby certify that the minutes for each day's session as appears in this Senate Journal are true and correct and that a copy is on file in the Archives of the State of Hawai'i.



President of the Senate



Clerk of the Senate

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THE
THIRTY-FIRST LEGISLATURE
STATE OF HAWAII
SECOND SPECIAL SESSION OF 2021
JOURNAL OF THE SENATE

FIRST DAY

Wednesday, July 28, 2021

The Senate of the Thirty-First Legislature of the State of Hawai'i, Second Special Session of 2021, was called to order at 10:23 a.m., by Senator Ronald D. Kouchi, President of the Senate, in accordance with the following Proclamation, which was read by the Clerk and was placed on file:

“Proclamation

July 27, 2021

I, Ronald D. Kouchi, President of the Senate of the Thirty-First 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 as sought in the petition at 10:00 a.m. on Wednesday, July 28, 2021, in the State Capitol Senate Chambers, for the purpose of carrying out its responsibilities established by Section 3, Article VI of the Constitution of the State of Hawai'i.

/s/ Ronald D. Kouchi
RONALD D. KOUCHI
President of the Hawai'i State Senate”

At this time, the President made the following announcement:

“Before we proceed further, I would also like to note for the record that the ongoing COVID-19 pandemic qualifies as a ‘catastrophic disaster’ as defined in Senate Rule 38.5 and there is ‘good cause’ for authorizing Senate members to continue participating in any meeting of members via virtual attendance as set forth in Senate Rule 38.5 for the duration of this Special Session.”

The Roll was then called showing all Senators present, with Senators Chang, Dela Cruz, Gabbard, Ihara, Kim, Misalucha, Shimabukuro, and Wakai present and participating via videoconference, and with the exception of Senators Keith-Agaran, Lee, and San Buenaventura who were excused.

MESSAGE FROM THE GOVERNOR

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

Gov. Msg. No. 1, submitting for consideration and confirmation, the appointment of DANIEL M. GLUCK as Associate Judge of the Intermediate Court of Appeals, for a term of ten years, was referred to the Committee on Judiciary.

JUDICIARY COMMUNICATION

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

Jud. Com. No. 1, submitting for consideration and confirmation, the appointment of LESLEY N. MALOIAN to

the District Family Court of the First Circuit, for a term of six years, was referred to the Committee on Judiciary.

At this time, Senator Rhoads announced that the Committee on Judiciary would be holding a decision-making meeting on Gov. Msg. No. 1 and Jud. Com. No. 1 at 10:30 a.m.

Senator Keohokalole rose to speak on a point of personal privilege as follows:

“I’d like to request that the Senate conclude our session today on a rising vote and observe a moment of silence in honor and memory of a friend to many of us, a former colleague, and a neighbor and mentor, Senator Bob Nakata.”

The Chair then made the following announcement:

“The deadline to file standing committee reports on Gov. Msg. No. 1 and Jud. Com. No. 1 is 4:30 p.m. this afternoon.”

STANDING COMMITTEE REPORTS

On motion by Senator DeCoite, seconded by Senator Fevella 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 10:28 a.m., on a rising vote, observing a moment of silence in memory of Senator Robert Nakata, the Senate took the following actions:

Senator Rhoads, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 1) recommending that the Senate consent to the appointment of LESLEY N. MALOIAN to the District Family Court of the First Circuit, 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, July 29, 2021.

Senator Rhoads, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 2) recommending that the Senate not consent to the appointment of DANIEL M. GLUCK as Associate Judge of the Intermediate Court of Appeals, 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, July 29, 2021.

ADJOURNMENT

At 4:30 p.m., the Senate adjourned until 11:00 a.m., Thursday, July 29, 2021.

SECOND DAY

Thursday, July 29, 2021

The Senate of the Thirty-First Legislature of the State of Hawai'i, Second Special Session of 2021, convened at 11:23 a.m. with the President in the Chair.

The Roll was called showing all Senators present, with Senators Chang, Dela Cruz, Gabbard, Ihara, Kidani, and Riviere present and participating via videoconference, and with the exception of Senators San Buenaventura and Shimabukuro who were excused.

The President announced that he 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 Rhoads moved that Stand. Com. Rep. No. 1 be received and placed on file, seconded by Senator Keohokalole and carried.

Senator Rhoads then moved that the Senate consent to the appointment of LESLEY N. MALOIAN to the District Family Court of the First Circuit, for a term of six years, seconded by Senator Keohokalole.

Senator Rhoads rose to speak in support of Jud. Com. No. 1 as follows:

"Lesley Maloian has devoted 18 years to the Office of the Public Defender in the Honolulu office. She's conducted over 70 criminal trials, including bench and jury trials. As a senior attorney, she conducts training sessions for other attorneys on legal writing, motions practice, and trial skills. Prior to her time at the public defender, she worked on the civil side for two years as an associate at a small firm, representing clients in family court cases, including divorce, restraining orders, alimony and child support, and paternity.

"Before moving to Hawai'i, Ms. Maloian was a deputy public guardian in Chicago, where she handled daily bench trials, administrative hearings, and criminal proceedings, and an administrative hearing officer with Chicago's Department of Buildings. Ms. Maloian graduated from Valparaiso University of Law in Indiana, and was admitted to the Hawai'i State Bar in 2002. She earned a bachelor's degree from City University of New York Baruch College.

"The testimony submitted was overwhelmingly in support of Ms. Maloian's appointment to the district family court. In particular, testifiers noted her dedication and legal acumen.

"After having reviewed the testimony and other materials submitted on this appointment and having examined the appointee in a hearing, your Judiciary committee finds that Lesley N. Maloian is well-qualified to serve as a district family court judge of the First Circuit, and recommends that the Senate consent to the appointment."

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

Ayes, 23. Noes, none. Excused, 2 (San Buenaventura, Shimabukuro).

At this time, Senator Rhoads introduced Judge Lesley N. Maloian, who wished to acknowledge the support of her husband and her children.

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

The Senate reconvened at 11:31 a.m.

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

The Chair announced:

"The recommendation of the Committee on Judiciary on Governor's Message No. 1 is that the Senate not consent to the appointment of Daniel M. Gluck to the Intermediate Court of Appeals. Members, pursuant to Senate Rule 37, the final question on appointments made by the governor must be stated in the affirmative. Therefore, the Chair will first entertain a motion to file Standing Committee Report No. 2, then we will move on to the final vote on this matter."

Senator Rhoads moved that Stand. Com. Rep. No. 2 be received and placed on file, seconded by Senator Keohokalole and carried.

The Chair stated:

"Members, as stated previously, pursuant to Senate Rule 37, the final question on appointments made by the governor must be stated in the affirmative. Therefore, those casting an 'Aye' vote will be voting to consent, and those casting 'No' votes will be voting to reject the appointment. The Chair will now entertain a motion to consent to the appointment of Mr. Gluck."

Senator Rhoads moved that the Senate consent to the appointment of DANIEL M. GLUCK as Associate Judge of the Intermediate Court of Appeals, for a term of 10 years, in accordance with Gov. Msg. No. 1, seconded by Senator Keohokalole.

Senator Rhoads rose to speak on a point of personal privilege as follows:

"As all the members of this chamber are aware, Mr. Gluck has offered to withdraw his name as a nominee for the Intermediate Court of Appeals. The only reason we're going forward with the vote today is because the constitution requires that the governor make his nomination before a certain time, and that time has already passed, and if he withdraws the nomination at this point, he will have considered to have not done his constitutional duty, and the result would be that he, the governor, would not be able to make the second pick if Mr. Gluck is defeated on the floor today. So, in light of his offer to defer and the pro forma nature of this vote at this point, I would ask that my statement in support of his nomination just be entered into the record. Mahalo."

The Chair having so ordered, Senator Rhoads's additional remarks read as follows:

"Governor Ige selected Daniel Gluck to fill the vacancy on the Intermediate Court of Appeals. Mr. Gluck is currently Executive Director and General Counsel of our State's Ethics Commission. He started his post-law school legal career right here in Honolulu as a law clerk to then-Justice James Duffy, in 2003. After two years at the State Supreme Court, he spent a year as law clerk on the federal bench with U.S. District Court Judge Michael Seabright.

"Mr. Gluck next spent a year in private practice at the law firm of Alston Hunt Floyd & Ing, handling litigation primarily in federal court, before moving to the State chapter of the ACLU where he was first Senior Staff Attorney and then Legal Director. At the ACLU, Mr. Gluck investigated and litigated civil rights cases with a focus on constitutional law matters.

“Mr. Gluck was selected as the Executive Director and General Counsel of the Ethics Commission in 2016. As Director and Counsel, he oversees the agency’s operations which includes providing numerous informal opinions and guidance to state employees and engaging in contested case hearings and other enforcement efforts to ensure compliance with the law. He also taught civil rights seminars as an adjunct professor at the University of Hawai‘i William S. Richardson School of Law.

“Mr. Gluck received his undergraduate degree from Cornell University and his J.D. from Harvard. At Harvard he was president of the Harvard Legal Aid Bureau which represented indigent clients in housing, government benefits, and family law matters.

“After having reviewed the testimony and other materials submitted on this appointment and having examined the appointee in a hearing, I concluded that he is qualified to serve as an Associate Justice of the Supreme Court of the State of Hawai‘i. He has broad experience including in the courtroom. There are many types of legal experience and he more than makes up for any courtroom deficiencies with his varied and well-regarded legal skills.

“One of the criticisms raised during the hearing on Tuesday is that appointing Mr. Gluck to the ICA would not advance the goal of diversity in the Judiciary. I understand the concern and I think questions of the system are better dealt with systematically. That is one of the reasons the Judiciary Committee and the full Senate passed out House Concurrent Resolution 5 during the regular 2021 session. It establishes a committee to develop standards for evaluating potential judges and to look at recruiting practices to draw in a more diverse pool of recruits and to recruit better candidates. Hopefully this will result in more objective standards being utilized when choosing judges.

“Finally, as someone whose first job in Hawaii was as a summer clerk for the ICA, I have a good sense of what skills you need to be a successful ICA judge. Primarily you need to be able to digest an enormous amount of briefing material and apply the law to the facts. I am confident Mr. Gluck will do this exceptionally well if given the opportunity.
Mahalo.”

The Chair stated:

“I would just add one additional comment to the great explanation by Senator Rhoads. When the governor fails to meet his requirement to place a name in, then a withdrawal would result in the Judicial Selection Commission making that appointment, and the governor still would like to reserve the right that’s afforded to him to make the next selection, and that’s why we’re voting on this nomination.”

Senator Kim rose to speak on a point of personal privilege as follows:

“I would like to insert some comments into the Journal if I may, please; thank you. And I just want to say that I want to thank all the men and women who had the courage to testify on Tuesday’s confirmation hearing. We always encourage people to testify at these hearings if they have concerns, and, normally, they do not for fear of retaliation. Instead, they do it anonymously, but, of course, on Tuesday it was different, and I just want to say that in my 21 years here in the Senate, I’ve not witnessed the kind of passion and moving testimony of so many women and men in opposition of this judicial nominee, and so they did ignore the risk—they stuck their necks out, and we did hear them loud and clear, so thank you very much.”

The Chair having so ordered, Senator Kim’s additional remarks read as follows:

“I take this opportunity to speak to the Senate’s confirmation responsibility entrusted to us by the State Constitution.

“The Senate’s advise and consent role is rooted in the concept of ‘checks and balances’ between the three branches of government.

“I want to thank all the women and men who had the courage to testify at the committee’s confirmation hearing on Tuesday. We always encourage people to testify at confirmation hearing when they have concerns and normally they do not due to fear of retaliation. Instead, they do it anonymously. But Tuesday was different.

“In my 21 years in the Senate, I have not witnessed the passionate and moving testimony of so many women and men in opposition of a judicial nominee. They ignored the risks, stuck their necks out to voice their opposition. I want them to know that I heard them loud and clear.

“One of the many women who testified before the Judiciary Committee at the confirmation hearing on Tuesday said it best. ‘The standard of review is not niceties or liberalisms; we are here to ensure that the public trust is not further eroded by the actions of a few. That there is still some assemblance of checks, balances and true accountability in the selection of appellent judges.’ ‘It is gut check time. We are at the crossroads of humanity and we have tough choices to make.’

“Mr. President, this is a defining moment for true efforts towards achieving diversity.

“Mahalo.”

Senator Keohokalole rose to speak on a point of personal privilege as follows:

“I also would like the Journal to reflect an acknowledgement from the nominee that the concerns that were brought up by the members of the public and by the members of this body were significant and impactful to the communities which we represent. For what it’s worth, I do think that the Journal should reflect his offer to withdraw, and, as a result, I think what could have been perhaps further contentious dialogue on this matter will be cut short, and we can move forward with allowing the governor to proceed with another selection of a qualified individual to serve on the ICA. Thank you.”

Senator Lee rose to speak on a point of personal privilege as follows:

“I’d just like to ask to insert comments just reflecting that, given we voted in committee, that this vote here today, given the candidate’s withdrawal, does not reflect the merits but rather the circumstance. Thank you.”

The Chair having so ordered, Senator Lee’s additional remarks read as follows:

“Thank you Mr. President,

“By everyone’s account, Mr. Gluck is well recognized and commended in our community as an attorney and leader fighting for equal rights for women, minorities, and the homeless. He has a long history of working to right racial, social, and economic injustice, and has spoken truth to power holding the Governor and legislators accountable as the chief of the State Ethics Commission. He has openly and loudly acknowledged that injustice persists in Hawaii’s criminal justice system and that, among other things, this injustice has contributed to Native Hawaiians being disproportionately imprisoned at rates far higher than other demographics. Most of all, he has committed to working to right this and other injustice

within the confines of the law as this position may appropriately allow. He is a superb legal mind with an outstanding temperament and experience that raises the bar amongst nominees for this position.

“While the vote in the Judiciary committee on this nominee was split nearly evenly and Mr. Gluck certainly had support amongst many, he has withdrawn his nomination to be considered today. So let it be shown that the vote we take now, to which we are procedurally bound by law despite the nominee’s withdrawal, reflects the withdrawal of the nominee’s candidacy and not a vote on the merits of the individual or his ability. I voted to support Mr. Gluck’s nomination in committee and believe he would make an excellent appellate court judge, but like many others, I am now forced by procedure to vote against the Governor’s nomination here on the floor to properly reflect that the nomination has been withdrawn.

“As Mr. Gluck may no longer be considered, let us hope the next person to be nominated for this position has the wealth of experience Mr. Gluck may have offered the people of this state, and most importantly demonstrates as strong and uncompromising a commitment to right generations of systemic injustice harming Native Hawaiians and others in our criminal justice system.”

Senator Moriwiki rose to speak on a point of personal privilege as follows:

“I, too, would like to support and appreciate the candidates going through this very harrowing process. I have written remarks that I’d like to put in the Journal, please.”

The Chair having so ordered, Senator Moriwiki’s additional remarks read as follows:

“I rise in support of GM No. 1 appointing Dan Gluck as appellate judge to the Intermediate Court of Appeals (ICA).

“Mahalo to those who remind us of barriers our Aloha State still needs to address. Other candidates on the Judicial Selection Commission’s short list may be as qualified as Dan Gluck, but we don’t have their resumes and couldn’t interview them. One hopes the governor did as we did with Mr. Gluck – reviewed the backgrounds and interviewed them as to their qualifications to serve as an appellate judge.

“We should have diversity in the highest levels of our judiciary. I believe we do. Currently, the five ICA judges consist of 3 women and 2 men with the chief judge a woman. The five-member supreme court has two women. Half of the top two courts are women – 5 out of 10.

“The constitution provides no specific qualifications for an appellate judge. When I was Human Resources department director, I would ask what the job entailed and what competencies were required. I also clerked for a Hawaii Supreme Court justice and was later Judiciary’s administrative director of courts, giving me some experience with appellate versus trial courts.

“The appellate judge conscientiously studies the applicable laws and reads reams of documents the appellant sends on appeal. As former supreme court justice Levinson said, ‘The appellate judge must have the capacity to identify and to know where to find the law that dispositively governs and determines the correct outcome of the ... dispute, understanding the law holistically.’ The appellate judge must also be a team player and adroit negotiator, tireless because their caseloads are immense and incessant, and intensely oriented to paper and reading. This position is not advocacy that takes a lot of cases. It’s not a trial judge’s search for truth in his or her own court subject to appeals.

“In his experience, among others, Mr. Gluck clerked for a trial judge and for a supreme court justice. He drafted opinions and memoranda in over 50 appellate cases. Importantly, in his trial experience he represented the unserved and underserved regardless of gender, ethnicity or income – prisoners, homeless, female student athletes, medical marijuana patients, immigrants and protected Native Hawaiian burial practices. At the Ethics Commission, he took cases to court or helped render Commission decisions addressing ethical questions and writing clear decisions to guide our actions. He has worked in the public service in Hawaii, his permanent home since coming here 18 years ago.

“Most persuasive to me was his conduct during the committee hearing. He was calm, focused, professional, unflappable, and respectful even when faced with uncomfortable questioning. He showed the judicial temperament we seek in all judges: level-headed, serious, precise and courteous.

“I believe our duty is to evaluate the Governor’s appointment to determine whether Dan Gluck is qualified to serve as an ICA judge. I believe Dan Gluck is qualified. In the words of the very Reverend Dr. Martin Luther King, Jr.: ‘I look to the day when people will not be judged by the color of their skin but the content of their character.’”

Senator Gabbard requested that remarks in support of Gov. Msg. No. 1 be entered into the Journal, and the Chair so ordered.

The Chair having so ordered, Senator Gabbard’s remarks read as follows:

“Aloha and mahalo, Mr. President. I rise and speak in support of Mr. Gluck’s nomination to the Intermediate Court of Appeals. I will make my remarks brief. Some food for thought before you vote today.

“I have two quotes I would like to share this morning about concerns expressed regarding Mr. Gluck’s serving on the ICA. The first quote is regarding Mr. Gluck’s lack of trial experience. Former ICA judge, Dan Foley, wrote recently, and I quote, ‘One of Hawai’i’s finest Supreme Court justices, Edward Nakamura, had no trial experience when appointed to the Court. It is a legitimate issue but not necessarily a deal breaker.’

“The second quote is regarding the diversity issue that came up repeatedly in public testimony and in the Judiciary Committee hearing yesterday. It is from one of my mentors, Dr. Martin Luther King Jr., who said, ‘I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.’

“Colleagues, I do not know Mr. Gluck personally. But, I do know that he has served our State and our people well, and I know that he will continue to do so as an Associate Judge on the Intermediate Court of Appeals.

“For these reasons, I will be voting aye and encourage you to do the same. Mahalo.”

The Chair then made the following comments:

“I’d like to say to Daniel Gluck: Thank you for the professional way in which he presented himself during the hearing. I’d like to thank the Judiciary chair and the committee. This was a difficult task, but everybody did their job to the best of their ability, and there are challenges in the democratic process sometimes, but that is because we encourage people to speak their mind and dissenting opinions are welcomed and not rejected. I will say this has been a difficult process, but a vote needs to be taken.”

The motion was put by the Chair and failed to carry on the following showing of Ayes and Noes:

Ayes, 6. Noes, 17 (Acasio, Baker, DeCoite, Dela Cruz, Fevella, Inouye, Kanuha, Keith-Agaran, Keohokalole, Kidani, Kim, Kouchi, Lee, Misalucha, Nishihara, Riviere, Wakai). Excused, 2 (San Buenaventura, Shimabukuro).

At 11:40 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:52 a.m.

SENATE RESOLUTION

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

S.R. No. 1 "SENATE RESOLUTION RELATING TO THE RECESS OF THE SENATE OF THE THIRTY-FIRST LEGISLATURE, SECOND SPECIAL SESSION OF 2021."

Offered by: Senator Kanuha.

Senator DeCoite moved that Senate Resolution No. 1 be adopted, seconded by Senator Fevella.

The Chair then stated:

"It's been moved and seconded. Is there any discussion?"

"For the purpose of those watching at home, had Dan Gluck been confirmed, we would have adjourned the Second Special Session until we needed to come back, perhaps in October, for some additional judicial nominees. However, the governor now has the clock running to submit a new name, so we are unable to conclude this. The resolution simply states that, subject to the call of the President, we will reconvene once we get a new name and work with Senator Rhoads, the Judiciary committee chair, to get a schedule where the members are going to be available to interview, meet, have a committee meeting, and ultimately have a floor session for the confirmation."

On motion by Senator DeCoite and seconded by Senator Fevella and carried, S.R. No. 1, entitled: "SENATE RESOLUTION RELATING TO THE RECESS OF THE SENATE OF THE THIRTY-FIRST LEGISLATURE, SECOND SESSION OF 2021," was adopted.

ADJOURNMENT

At 11:54 a.m., the Senate adjourned until, pursuant to S.R. No. 1, Relating to the Recess of the Senate of the Thirty-First Legislature, Second Special Session of 2021, a date and time declared by the President of the Senate.

THIRD DAY

Thursday, August 26, 2021

Pursuant to Senate Resolution No. 1 and the August 13, 2021, memorandum issued by the President of the Senate to reconvene the Second Special Session of 2021, the Senate of the Thirty-First Legislature of the State of Hawai'i, Second Special Session of 2021, convened at 10:01 a.m. with the President in the Chair.

The Roll was called showing all Senators present, with Senators Chang, DeCoite, Gabbard, Inouye, Keith-Agaran, Kidani, Lee, Misalucha, Rhoads, Riviere, Shimabukuro, Taniguchi, and Wakai present and participating via videoconference, and with the exception of Senators Acasio, Dela Cruz, Ihara, Moriwaki, and San Buenaventura who were excused.

The President announced that he had read and approved the Journal of the Second Day.

MESSAGE FROM THE GOVERNOR

The following message from the Governor (Gov. Msg. No. 2) was read by the Clerk and was disposed of as follows:

Gov. Msg. No. 2, submitting for consideration and confirmation, the appointment of SONJA M. P. MCCULLEN as Associate Judge of the Intermediate Court of Appeals, for a term of ten years, was referred to the Committee on Judiciary.

At this time, Senator Rhoads announced that the Committee on Judiciary would be holding a decision-making meeting on Gov. Msg. No. 2 at 10:30 a.m.

Senator Baker rose to speak on a point of personal privilege as follows:

“Mr. President and colleagues, as you are undoubtedly aware, the person who occupies a very prestigious position in our state, the district health officer and assigned to Maui, has made some alarming and outrageous statements in the press and apparently, in practice, harming potentially the lives of our citizens, our most vulnerable people who may, because he has an MD behind his name, take what he says as gospel. He believes—and he said it publicly—that two types of drugs that are not approved for human consumption, not approved to fight COVID-19, should be taken internally or intravenously. He has violated the very oath that he should have taken when he got his degree. He definitely is violating the trust of everyone who might think, because he is the district health officer of Maui, that he knows what he’s talking about.

“I call on the director of Health, the governor of the State of Hawai'i to immediately terminate this individual from his position and make sure that he cannot represent the Department of Health or the State of Hawai'i in any medical dealing. I have also asked the Board of Medicine, which provides licenses, is part of the Department of Commerce and Consumer Affairs that provides licensing for medical doctors, for dentists, for APRNs, for all sorts of other professions, to review his status and to determine whether they can revoke his license. It's serious, Mr. President and colleagues, and I appreciate the support that you have shown me in trying to make sure that we have the most effective and efficacious treatments that our people need and deserve, but they don't need to be treated by quacks. Mahalo.”

The Chair then made the following announcement:

“The deadline to file the standing committee report on Gov. Msg. No. 2 is 4:30 p.m. this afternoon.”

STANDING COMMITTEE REPORT

On motion by Senator Kanuha, seconded by Senator Fevella and carried unanimously, the Clerk was authorized to receive the standing committee report on Gov. Msg. No. 2. In consequence thereof, and subsequent to its recessing at 10:06 a.m., the Senate took the following actions:

Senator Rhoads, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 3) recommending that the Senate consent to the appointment of SONJA M.P. MCCULLEN as Associate Judge of the Intermediate Court of Appeals, in accordance with Gov. Msg. No. 2.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3 and Gov. Msg. No. 2 was deferred until Friday, August 27, 2021.

ADJOURNMENT

At 4:30 p.m., the Senate adjourned until 11:00 a.m., Friday, August 27, 2021.

FOURTH DAY

Friday, August 27, 2021

The Senate of the Thirty-First Legislature of the State of Hawai'i, Second Special Session of 2021, convened at 11:04 a.m. with the President in the Chair.

The Roll was called showing all Senators present, with Senators Acasio, Chang, DeCoite, Dela Cruz, Fevella, Gabbard, Ihara, Inouye, Keith-Agaran, Keohokalole, Kidani, Kim, Lee, Rhoads, Riviere, San Buenaventura, Shimabukuro, and Wakai present and participating via videoconference, and with the exception of Senator Moriwaki who was excused.

The President announced that he had read and approved the Journal of the Third Day.

**ORDER OF THE DAY
ADVISE AND CONSENT**

Stand. Com. Rep. No. 3 (Gov. Msg. No. 2):

Senator Rhoads moved that Stand. Com. Rep. No. 3 be received and placed on file, seconded by Senator Keohokalole and carried.

Senator Rhoads then moved that the Senate consent to the appointment of SONJA M.P. MCCULLEN as Associate Judge of the Intermediate Court of Appeals, for a term of 10 years, in accordance with Gov. Msg. No. 2, seconded by Senator Keohokalole.

Senator Rhoads spoke in support of Gov. Msg. No. 2 as follows:

“Sonja M.P. McCullen is an experienced deputy prosecuting attorney for the Honolulu prosecutor’s office, where she has focused on appellate work. Ms. McCullen started her legal career as a law clerk to Associate Justice Paula Nakayama. She next gained experience working in a variety of legal settings, including as a staff attorney for the United Public Workers and an investigator with the Crime Victim Compensation Commission. The majority of her legal career has been with the Appellate Division of the Honolulu prosecutor’s office—more than 11 years. She counts more than 171 briefs submitted to the court she is being considered for, the Intermediate Court of Appeals, and she has made 20 oral arguments before the Hawai’i Supreme Court.

“Ms. McCullen is a graduate of the University of Hawai’i at Mānoa, where she received her undergraduate degree and a professional diploma in secondary education. After teaching for five years, she returned to university to obtain her law degree at Richardson School of Law.

“All of the testimony submitted was in support of Ms. McCullen’s appointment to the Intermediate Court of Appeals, and testifiers commended her knowledge of the law and industrious work ethic.

“After having reviewed the testimony and other materials submitted on her appointment and having examined the appointee in a hearing, your Judiciary committee finds that Ms. McCullen is well-qualified to serve as an associate judge of the Intermediate Court of Appeals, and recommends that the Senate consent to the appointment. Mahalo.”

At 11:08 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:09 a.m.

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

Ayes, 24. Noes, none. Excused, 1 (Moriwaki).

At this time, Senator Rhoads introduced Judge Sonja M.P. McCullen.

MISCELLANEOUS BUSINESS

SENATE RESOLUTION

The following resolution (S.R. No. 2) was read by the Clerk and was disposed of as follows:

S.R. No. 2 “SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THE SENATE ON THIS FINAL DAY OF THE SECOND SPECIAL SESSION OF 2021.”

Offered by: Senators Kanuha, Fevella.

On motion by Senator Kanuha, seconded by Senator Fevella and carried, S.R. No. 2 was adopted.

At this time, Senator Dela Cruz spoke on a point of personal privilege as follows:

“I would like to insert comments to clarify remarks I made on Tuesday, April 27, Day 54 of the 2021 legislative session, on House Bill 200, C.D. 1. I’m requesting for these comments to be inserted so that the Journal accurately reflects items that were included in the final version of the executive budget bill. Thank you.”

The Chair having so ordered, Senator Dela Cruz’s additional remarks read as follows:

“I’d like to begin by thanking the Ways and Means vice chair, the senator from Central Maui; the Finance chair and Finance vice chair; Senate and House leadership; and the Senate and House subject-matter chairs for their blood and courageous leadership in addressing our state’s extreme fiscal challenges.

“House Bill 200 is the culmination of many hours of dedication and diligent efforts by Hawai’i’s legislative body to identify opportunities for strategic additions, restorations, restructuring, reductions, and cuts across all 20 state departments. We believe that we have an executive budget that creates a leaner, more effective state government; addresses the needs of our most vulnerable residents; and stabilizes essential services and programs as we make our way out of the fiscal storm of 2020. The House and Senate approached the conference draft with the intent to address the biennium budget with fiscal responsibility and restraint. House Bill 200 shores up our current state obligations while ensuring a solid financial future in the case the state is faced with another unforeseen economic upheaval.

“The House and Senate had the daunting task of balancing the state budget with the inclusion of the \$1.6 billion allocated to the state through the American Rescue Plan Act of 2021, also referred to as ARPA. With limited guidance from the Department of Budget and Finance and the federal government, determining the most appropriate use of the money was very difficult. The maintenance of effort requirement presented the greatest challenge while drafting a balanced budget. Your conference committee worked diligently to meet the proportional maintenance of effort funding requirements established under ARPA. We are proud to present a budget that meets the maintenance of effort requirement, thus ensuring the state’s \$1.6 billion ARPA allocation.

“The legislative draft of the state budget includes funding for supporting programs and services for agriculture resource management; funding to support our state museums, ‘Iolani Palace and Bishop Museum, and allocating ARPA funds to the Hawai‘i Tourism Authority to help sustain our visitor industry and economy; supporting Hawai‘i’s learners and education systems by adding funding for alternative learning, and trauma informed care services,. For higher education, funding was added for the Promise Program. Funds were restored for special education, libraries, instructional support, school support, school community services, and charter schools. Funding to protect our natural resources were also restored: the Water and Land Development Division and the Native Resources and Fire Protection Program—, as well as the Conservation and Resources Enforcement Division. Supporting the health and well-being of Hawai‘i’s families by providing funding for critical human services, such as the General Assistance program, homeless services, Preschool Open Doors, Medicaid payments, the state Rental Supplement Program, and in-community youth programs, as well as funding for critical programs such as Crime Victim Compensation program, Career Criminal Victim Witness Program, and the Sex Abuse Treatment Center.

“It is also important to the committee to continuously evaluate the structure of government and identify efficiencies and reduce duplication. Where applicable, government agencies should be working with each other to provide services to our residents. With that in mind, and incorporating each department’s executive budget request, the budget reduced vacant positions; changed means of financing for certain programs; restructured, eliminated, or consolidated departments and programs to align with the state’s goals and priorities. The conference draft includes consolidating the Land Use Commission, the Office of Environmental Quality Control, and the Office of Planning into a new budget program titled Office of Planning and Sustainable Development. The draft transfers permanent positions from the Department of Labor and Industrial Relations Research & Statistics Office to the Department of Business, Economic Development, and Tourism’s Economic Planning and Research to consolidate research and statistics functions. It also transfers permanent and temporary positions from the Hawai‘i Tourism Authority Tourism Research Office to DBEDT to consolidate research functions; creates new program IDs; and transfers personnel and funds to the Hawaii Army and Hawaii Air National Guard and Hawaii Emergency Management Agency; transfers the Department of Education’s Office of Information Technology Services from state administration to school support; creates new program IDs and transfers UH Cancer Center from UH Mānoa to UH Cancer Center; transfers and consolidates permanent positions, federal funds, and general funds from the Workforce Development Council to the Workforce Development Division to retain the positions while consolidating the duties into a single office; converts positions and programs funded by the Agricultural Development and Food Security Special Fund and the Agricultural Loan Reserve Fund to general funds; and, to hold the ADC accountable, converts temporary positions in from the Agricultural Development Revolving Fund to general fund.

“I really want to thank the leadership; I want to thank the members, and I want to thank the Finance chair for all of your hard work and many, many hours. This has probably been the most challenging session with the limited timeframe, with the amount of limitations, with the amount of restrictions, with the economic challenges, and if it wasn’t for all of your hard work, I don’t think we could do this, and we did it together, so thank you.”

The Chair then made the following announcement:

“Our vaccination policy takes effect on September 1st, which is coming up, so if you have not yet turned your appropriate paperwork in to the Clerk, please make sure that you have that turned in prior to September 1st.”

ADJOURNMENT

Senator Kanuha moved that the Senate of the Thirty-First Legislature of the State of Hawai‘i, Second Special Session of 2021, adjourn Sine Die, seconded by Senator Fevella and carried.

At 11:12 a.m., the President rapped his gavel and declared the Senate of the Thirty-First Legislature of the State of Hawai‘i, Second Special Session of 2021, adjourned Sine Die.

STANDING COMMITTEE REPORTS

SCRep. 1 Judiciary on Jud. Com. No. 1

Recommending that the Senate consent to the appointment of the following:

DISTRICT FAMILY COURT OF THE FIRST CIRCUIT

J.C. No. 1 LESLEY N. MALOIAN, for a term to expire in 6 years

Your Committee reviewed the personal history, resume, and statement submitted by Lesley N. Maloian for nomination to the District Family Court of the First Circuit, State of Hawaii.

Your Committee received testimony in support of the appointment of Lesley N. Maloian from the Office of the Public Defender, NAACP, Honorable Sandra A. Simms-retired, and thirty-six individuals. Your Committee received testimony in opposition to the appointment of Lesley N. Maloian from LEIRA Organics. Your Committee received comments on the appointment of Lesley N. Maloian from the Hawaii State Bar Association.

The Hawaii State Bar Association Board of Directors found the appointee to be qualified for the position of District Family Court Judge of the First Circuit based on established criteria for determining the qualifications of judicial appointments generally using the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. Specifically, the Board uses the following criteria in its deliberations: integrity and diligence, legal knowledge and ability, professional experience, judicial temperament, financial responsibility, public service, health, and ability to perform the responsibilities and duties required of the position for which the applicant has been appointed. The Board's rating system includes the categories of "qualified" and "not qualified".

Ms. Maloian received her Bachelor of Arts degree from CUNY Baruch College and graduated Magna Cum Laude. She later received her Doctor of Jurisprudence from Valparaiso University, where she was a member of the moot court team and President of the Black Lawyers Association. During law school, she was a law clerk in the Department of Law for the city of Gary, Indiana.

Since 2003, Ms. Maloian has served as a Deputy Public Defender in the Office of the Public Defender in Honolulu, where she is a senior level trial attorney representing indigent clients in the First Circuit Criminal Court System. Prior to taking that position, she was an associate in the Law Office of Ellen Politano, where she represented clients in Family Court in matters including divorce, restraining orders, alimony and child support, and paternity. Ms. Maloian also previously worked as a Deputy Public Guardian in the Cook County Office of the Public Guardian and as an Administrative Hearing Officer in the City of Chicago Department of Buildings.

Ms. Maloian has been licensed to practice law in the State of Hawaii since 2002, and has been involved in the legal community throughout her career. She has been a volunteer judge for High School Mock Trial Competitions for the Young Lawyers Division of the Hawaii State Bar Association and a Volunteer Guardian Ad Litem for the Hawai'i State Judiciary. In addition, she is a member of the National Association of Counsel for Children.

Testimony submitted in support of Ms. Maloian's appointment commends her deep legal expertise, extensive trial experience, and commitment to fairness and justice. Numerous testifiers also praised her integrity, as well as her strong leadership skills and professional temperament.

Your Committee finds that, based on the testimony submitted on her behalf, responses to questions asked by the members of your Committee, and your Committee's review of information about her and her qualifications, Lesley N. Maloian has the experience, temperament, and other competencies to be a District Family Court Judge of the First Circuit, and she has the legal expertise, integrity, and demeanor to fully and faithfully discharge the duties associated with that judicial office.

As affirmed by the record of votes of the members of your Committee on Judiciary 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, 7. Noes, none. Excused, none.

SCRep. 2 (Majority) Judiciary on Gov. Msg. No. 1

Recommending that the Senate not consent to the appointment of the following:

ASSOCIATE JUDGE OF THE INTERMEDIATE COURT OF APPEALS

G.M. No. 1 DANIEL M. GLUCK, for a term to expire in 10 years

Your Committee reviewed the personal history, resume, and statement submitted by Daniel M. Gluck for service on the Intermediate Court of Appeals as Associate Judge.

Your Committee received testimony in support of the appointment of Daniel M. Gluck from the Hawai'i Coalition for Immigrant Rights; Domestic Violence Action Center; Honorable Steven H. Levinson-retired; Honorable James Duffy, Jr.-retired; Honorable J. Michael Seabright; and seventy-four individuals. Your Committee received testimony in opposition to the appointment of Daniel M. Gluck from the Sierra Club of Hawaii, Ka Lāhui Hawai'i Kōmike Kalai'āina, Native Hawaiian Bar Association, Council for Native Hawaiian Advancement, Executive Committee of the Hawaiian Affairs Caucus of the Democratic Party of Hawai'i, Ke One O Kākuhihewa, Filipino Law Students Association, Hawai'i Filipino Lawyers Association, Association of Hawaiian Civic Clubs, LEIRA Organics, one member of the Maui County Council, one member of the Kaua'i County Council, and one hundred thirty-three individuals. Your Committee received comments on the appointment of Daniel M. Gluck from the Hawaii State Bar Association, Hawai'i County Committee on the Status of Women, Honorable Susan Oki Mollway, and three individuals.

The Hawaii State Bar Association Board of Directors found the appointee to be qualified for the position of Associate Judge of the Intermediate Court of Appeals based on established criteria for determining the qualifications of judicial appointments generally using the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. Specifically, the Board uses the following criteria in its deliberations: integrity and diligence, legal knowledge and ability, professional experience, judicial temperament, financial responsibility, public service, health, and ability to perform the responsibilities and duties required of the position for which the applicant has been appointed. The Board's rating system includes the categories of "qualified" and "not qualified".

Mr. Gluck received his Bachelor of Science degree in Industrial and Labor Relations from Cornell University, where he was a Merrill Presidential Scholar and a member of the Cornell Tradition Fellowship. He later received his Doctor of Jurisprudence from Harvard Law School. At the outset of his legal career, he worked as a Law Clerk to Associate Justice James E. Duffy, Jr., of the Supreme Court of the State of Hawai'i, and subsequently clerked for United States District Court Judge J. Michael Seabright.

Since 2016, Mr. Gluck has served as the Executive Director and General Counsel of the Hawai'i State Ethics Commission. In that capacity, he has overseen all operations of the agency. Prior to taking that position, he worked with the American Civil Liberties Union of Hawaii as Legal Director from 2014 to 2016 and Senior Staff Attorney from 2007 to 2014.

Testimony in favor of Mr. Gluck's appointment focused on the candidate's broad legal expertise and his ability to be an effective judge on the Intermediate Court of Appeals. Testimony in opposition highlighted his inexperience in courtroom work compared to other candidates reviewed by the Governor. Many of those in opposition also noted that consenting to his appointment would not advance the goal of diversifying the Judiciary.

Based on the testimony submitted in support of his appointment, responses to questions asked by the members of your Committee, and your Committee's review of information about him and his qualifications, it was the recommendation of the Chair of your Committee to consent to the appointment of Mr. Gluck; however, a vote to adopt the Chair's recommendation failed. Subsequently, the Vice Chair of your Committee made a motion that your Committee recommend not to consent to the appointment of Mr. Gluck. This vote received four ayes and three nays; nevertheless, the appointment will move to the Senate floor for consideration by the full Senate pursuant to Rule 37 of the Rules of the Hawaii State Senate.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the appointee, recommends that the Senate not consent to the appointment.

Signed by the Chair on behalf of the Committee.

Ayes, 4. Noes, 3 (Gabbard, Lee, Rhoads). Excused, none.

SCRep. 3 Judiciary on Gov. Msg. No. 2

Recommending that the Senate consent to the appointment of the following:

ASSOCIATE JUDGE OF THE INTERMEDIATE COURT OF APPEALS

G.M. No. 2 SONJA M.P. MCCULLEN, for a term to expire in 10 years

Your Committee reviewed the personal history, resume, and statement submitted by Sonja M.P. McCullen for service on the Intermediate Court of Appeals as Associate Judge.

Your Committee received testimony in support of the appointment of Sonja M.P. McCullen from the Prosecuting Attorney for the Department of the Prosecuting Attorney of the City and County of Honolulu, Native Hawaiian Bar Association, Sierra Club of Hawai'i, Filipino Law Students Association, Council for Native Hawaiian Advancement, Hawaii Women Lawyers, Ka Lāhui Hawai'i Kōmike Kalai'āina, one member of the Kauai County Council, one member of the Maui County Council, and fifty-two individuals. Your Committee received comments on the appointment of Sonja M.P. McCullen from the Hawaii State Bar Association.

The Hawaii State Bar Association Board of Directors found the appointee to be qualified for the position of Associate Judge of the Intermediate Court of Appeals based on established criteria for determining the qualifications of judicial appointments generally using the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. Specifically, the Board uses the following criteria in its deliberations: integrity and diligence, legal knowledge and ability, professional experience, judicial temperament, financial responsibility, public service, health, and ability to perform the responsibilities and duties required of the position for which the applicant has been appointed. The Board's rating system includes the categories of "qualified" and "not qualified".

Ms. McCullen received her Bachelor of Arts degree in Liberal Studies and Hawaiian Studies, and subsequently her Professional Diploma in Secondary Education, from the University of Hawai'i at Mānoa. She received her Juris Doctor degree from the University of Hawai'i at Mānoa William S. Richardson School of Law, where she tutored law students and performed tax preparation services pro bono. At the outset of her legal career, she worked as a Law Clerk to Associate Justice Paula A. Nakayama of the Supreme Court of the State of Hawai'i.

Ms. McCullen has served as a Deputy Prosecuting Attorney in the Appellate Division of the Department of the Prosecuting Attorney of the City and County of Honolulu since 2011, where she has submitted over one hundred seventy-one briefs to the Hawai'i State Intermediate Court of Appeals and participated in twenty oral arguments before the Supreme Court of the State of Hawai'i. Your Committee inquired about any involvement in alleged criminal activities or federal investigation of criminal activity at the Department and Ms. McCullen answered in the negative. Your Committee confirmed with appropriate authorities that she was not under investigation and had not been questioned in connection with recent and ongoing investigations involving the Department.

Ms. McCullen has been active in the community throughout her legal career. She participated in the Junior Judges Program at Queen Ka'ahumanu Elementary School and has done extensive volunteer work with Paepae o He'eia to restore the He'eia Fishpond. Additionally, she participates regularly in various school activities at Waolani Judd Nazarene School as a volunteer.

Testimony submitted in support of Ms. McCullen's appointment commends her deep knowledge of the law and outstanding work ethic. Her diligence and high ethical standard of conduct in over a decade of intense appellate practice was acknowledged by numerous testifiers. Finally, Ms. McCullen has established a strong reputation for her legal expertise, commitment to justice and integrity, and has been praised for her outstanding professional conduct.

Your Committee finds that, based on the testimony submitted in support of her appointment, responses to questions asked by the members of your Committee, and your Committee's review of information about her and her qualifications, Sonja M.P. McCullen has the experience, temperament, and other competencies to be an Associate Judge of the Intermediate Court of Appeals, and possesses the legal expertise, integrity, and demeanor to fully and faithfully discharge the duties associated with that judicial office.

As affirmed by the record of votes of the members of your Committee on Judiciary 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 Majority Leader on behalf of the Committee.
Ayes, 7. Noes, none. Excused, none.

NUMBER AND TITLE	Offered	Referred	Report of Committee	Adoption
S.R. No. 1 RELATING TO THE RECESS OF THE SENATE OF THE THIRTY-FIRST LEGISLATURE, SECOND SPECIAL SESSION OF 2021.	5			5
S.R. No. 2 AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THE SENATE ON THIS FINAL DAY OF THE SECOND SPECIAL SESSION OF 2021.	7			7