STAND. COM. REP. NO. **1D**

Honolulu, Hawaii MAR 04 2021

RE: S.B. No. 639 S.D. 1

Honorable Ronald D. Kouchi President of the Senate Thirty-First State Legislature Regular Session of 2021 State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 639 entitled:

"A BILL FOR AN ACT RELATING TO COURTS OF APPEAL,"

begs leave to report as follows:

The purpose and intent of this measure is to prohibit courts of appeal from affirming, modifying, reversing, or vacating a matter on grounds other than those raised by the parties to the proceeding unless the parties are provided the opportunity to brief the court and present oral argument on the matter.

Your Committee received testimony in support of this measure from one individual. Your Committee received testimony in opposition to this measure from the Judiciary. Your Committee received comments on this measure from the Department of the Attorney General.

Your Committee finds that when a court decides a case on grounds not raised by the parties, it departs from the principle of party presentation and risks abusing its discretion. Your Committee further finds that on multiple occasions, the Hawaii Supreme Court has reiterated a party's right to discuss and explore its rights, claims, and defenses through a colloquy. Your Committee additionally finds that although remedies exist for *sua sponte* decisions that do constitute an abuse of discretion, a



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better course of action is to prohibit an appellate court from rendering *sua sponte* decisions unless the parties have been heard.

Your Committee has amended this measure by allowing courts of appeal to affirm, modify, reverse, or vacate a matter based on an issue not raised by a party, if the parties have been provided the opportunity to brief the court on the matter.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 639, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 639, S.D. 1, and be placed on the calendar for Third Reading.

> Respectfully submitted on behalf of the members of the Committee on Judiciary,

KARL RHOADS, Chair



The Senate Thirty-First Legislature State of Hawaiʻi

Record of Votes Committee on Judiciary JDC

Bill / Resolution No.:*	Committee Referral:			Date:	
58639	JDC			2 12	21
The Committee is reconsidering its previous decision on this measure.					
If so, then the previous decision was to:					
The Recommendation is:					
Pass, unamended X Pass, with amendments Hold Recommit 2312 2311 2310 2313					
Members		Ауе	Aye (WR)	Nay	Excused
RHOADS, Karl (C)		~			
KEOHOKALOLE, Jarrett (VC)		\checkmark			
ACASIO, Laura			\checkmark		
GABBARD, Mike		\checkmark			
KIM, Donna Mercado		V			
LEE, Chris		V			
FEVELLA, Kurt		V			
TOTAL		6	1	0	0
Recommendation:					
		Not Adopted			
Chair's or Designee's Signature:					
Distribution: Original File with Committee Re	Yellow eport Clerk's Office		Pink Goldenrod Drafting Agency Committee File Copy		

*Only <u>one</u> measure per Record of Votes