

STAND. COM. REP. NO. 701

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



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



