

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO COURTS OF APPEAL.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In one of her last published decisions, Justice  
2 Ruth Bader Ginsburg wrote that a court abuses its discretion  
3 when it departs from the principle of party presentation and  
4 decides a case on grounds not raised by the parties. *United*  
5 *States v. Sineneng-Smith*, 140 S. Ct. 1575 (2020). Justice  
6 Ginsburg explained that the American legal system follows the  
7 principle of party presentation:

8           [I]n both civil and criminal cases, in the first  
9 instance and on appeal ..., we rely on the parties to  
10 frame the issues for decision and assign to courts the  
11 role of neutral arbiter of matters the parties  
12 present.

13 *Id.* at 1579. This is because the American legal system "is  
14 designed around the premise that [parties represented by  
15 competent counsel] know what is best for them, and are  
16 responsible for advancing the facts and argument entitling them  
17 to relief." *Id.* (alteration in original).



1 Justice Ginsburg elaborated that:

2 [C]ourts are essentially passive instruments of  
3 government. They do not, or should not, sally forth  
4 each day looking for wrongs to right. [They] wait for  
5 cases to come to [them], and when [cases arise,  
6 courts] normally decide only questions presented by  
7 the parties.

8 *Id.* (alteration in original) (internal quotation marks and  
9 citation omitted).

10 Justice Ginsburg's decision comports with United States  
11 Supreme Court precedent stating that decisions reached without  
12 full briefing or argument have less precedential value and  
13 should be given less deference. For example, the Court has  
14 recognized that it has been "less constrained to follow  
15 precedent where, as here, the opinion was rendered without full  
16 briefing and argument." *Hohn v. United States*, 524 U.S. 236,  
17 251 (1998).

18 The United States Supreme Court has also stated that  
19 "somewhat less deference [is owed] to a decision that was  
20 rendered without benefit of a full airing of all the relevant  
21 considerations. That is the premise of the canon of



1 interpretation that language in a decision not necessary to the  
2 holding may be accorded less weight in subsequent cases."  
3 *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 709 n.6 (1978)  
4 (Powell, J., concurring).

5 Furthermore, "[s]ound judicial decisionmaking requires both  
6 a vigorous prosecution and a vigorous defense of the issues in  
7 dispute, and a constitutional rule announced *sua sponte* is  
8 entitled to less deference than one addressed on full briefing  
9 and argument." *Church of the Lukumi Babalu Aye, Inc. v. City of*  
10 *Hialeah*, 508 U.S. 520, 572 (1993) (Souter, J., concurring)  
11 (internal quotation marks and citation omitted). Additionally,  
12 the Court has stated that "a rule of law unnecessary to the  
13 outcome of the case, especially one not put into play by the  
14 parties, approaches without more the sort of dicta ... which may  
15 be followed if sufficiently persuasive but are not controlling."  
16 *Id.* at 572-573 (quotation marks omitted).

17 *Sua sponte* decisions that result from disregard of the  
18 principle of party presentation violate due process. In those  
19 situations, the court substituted itself as a party and denied  
20 the parties the opportunity to litigate their own cases. Due  
21 process is especially violated when an appellate court makes a



1 sua sponte decision that alters the remedy sought by the  
2 parties.

3 For example, in *Cox v. Cox*, 138 Haw. 476 (2016), a majority  
4 of the Hawaii supreme court sua sponte invalidated a family  
5 court rule to deny the prevailing party an award of attorneys'  
6 fees and costs. No one in the litigation requested that the  
7 rule be invalidated. Nor did the supreme court provide the  
8 parties with an opportunity to address the issue.

9 Again, in *State v. Chang*, 144 Haw. 535 (2019), a majority  
10 of the Hawaii supreme court vacated a conviction when the court  
11 unilaterally held that a motion to suppress may not be  
12 consolidated with a trial even when the parties consent to such  
13 an action. In making its decision, the majority overruled  
14 forty-year-old precedent. At no time did the majority afford  
15 the parties an opportunity to address the issue.

16 Denying a party the opportunity to present its own case is  
17 analogous to denying a party from engaging in a meaningful  
18 colloquy with a judge. On multiple occasions, the Hawaii  
19 Supreme Court has reiterated a party's right to discuss and  
20 explore its rights, claims, and defenses through a colloquy.  
21 *State v. Wilson*, 144 Haw. 454 (2019) (colloquy required before a



1 trial court accepts a stipulation to an element of a charged  
2 offense); *State v. Eduwensuyi*, 141 Haw. 328 (2018) (colloquy  
3 required to discuss right to testify); *State v. Ui*, 142 Haw. 287  
4 (2018) (colloquy required to discuss party's waiver of right to  
5 have State prove all elements of a charge); *State v. Kaulia*, 128  
6 Haw. 479 (2013) (colloquy required when defendant intends to  
7 leave courtroom during trial).

8       There are potential remedies that may prevent rash  
9 decisions. A party may be permitted to appeal the *sua sponte*  
10 decision to another court or an aggrieved party may be permitted  
11 to seek a recovery for any damages it may have incurred as a  
12 result of the decision.

13       The legislature finds that the better course of action is  
14 to simply prohibit an appellate court from rendering *sua sponte*  
15 decisions unless the parties have been heard. An appellate  
16 court must require supplemental briefing and hold oral argument.  
17 This alternative will ensure due process and permit the parties,  
18 rather than the appellate court, to litigate their own case.

19       The purpose of this Act is to prohibit the courts of appeal  
20 from affirming, modifying, reversing, or vacating a matter on  
21 grounds other than those raised by the parties to the



1 proceeding, unless the parties are provided the opportunity to  
2 brief the court and present oral argument on the issue.

3 SECTION 2. Chapter 602, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By adding a new section to part I to be appropriately  
6 designated and to read:

7 "§602- Sua sponte decisions. The supreme court, when  
8 acting on a matter on appeal, shall not affirm, modify, reverse,  
9 or vacate a matter on grounds other than those raised by the  
10 parties to the proceeding, unless the parties are provided the  
11 opportunity to brief the court and present oral argument on the  
12 matter."

13 2. By adding a new section to part II to be appropriately  
14 designated and to read:

15 "§602- Sua sponte decisions. The intermediate  
16 appellate court shall not affirm, modify, reverse, or vacate a  
17 matter on grounds other than those raised by the parties to the  
18 proceeding, unless the parties are provided the opportunity to  
19 brief the court and present oral argument on the matter."

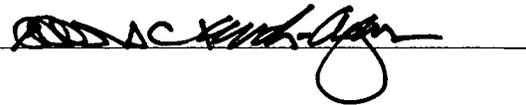


# S.B. NO. 639

1 SECTION 3. New statutory material is underscored.

2 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 



# S.B. NO. 639

**Report Title:**

Courts of Appeal; Sua Sponte Decisions

**Description:**

Prohibits 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.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

