

JAN 20 2023

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 instance
9 and on appeal . . . , we rely on the parties to frame the
10 issues for decision and assign to courts the role of
11 neutral arbiter of matters the parties present.
12 *Id.* at 1579 (internal quotation marks and citation omitted).
13 This is because the American legal system "is designed around
14 the premise that [parties represented by competent counsel] know
15 what is best for them, and are responsible for advancing the
16 facts and argument entitling them to relief." *Id.* (alteration
17 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, courts]
6 normally decide only questions presented by the parties.

7 *Id.* (alteration in original) (internal quotation marks and
8 citations omitted).

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

17 Justice Lewis Franklin Powell Jr. has also stated that
18 "somewhat less deference [is owed] to a decision that was
19 rendered without benefit of a full airing of all the relevant
20 considerations. That is the premise of the canon of
21 interpretation that language in a decision not necessary to the



1 holding may be accorded less weight in subsequent cases."
2 *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 709 n.6 (1978)
3 (Powell, J., concurring).

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

16 *Sua sponte* decisions that result from disregard of the
17 principle of party presentation violate due process. In those
18 situations, the court substituted itself as a party and denied
19 the parties the opportunity to litigate their own cases. Due
20 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 *sua sponte*. At no time did the
15 majority afford 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 with defendant



1 required before a trial court accepts a stipulation to an
2 element of a charged offense); *State v. Eduwensuyi*, 141 Haw. 328
3 (2018) (colloquy advising a defendant of the constitutional
4 right to testify required before defendant's waiver thereof);
5 *State v. Ui*, 142 Haw. 287 (2018) (colloquy required before a
6 court accepts a defendant's waiver of right to have State prove
7 all elements of a charge beyond reasonable doubt); *State v.*
8 *Kaulia*, 128 Haw. 479 (2013) (colloquy advising the defendant of
9 the legal consequences of a courtroom departure required where
10 the defendant announces an intention to leave during trial).

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

16 The legislature finds that the better course of action is
17 to simply prohibit an appellate court from rendering *sua sponte*
18 decisions unless the parties have been heard. This alternative
19 will ensure due process and permit the parties, rather than the
20 appellate court, to litigate their own case.



1 The purpose of this Act is to prohibit the courts of appeal
2 from affirming, modifying, reversing, or vacating a matter on
3 grounds other than those raised by the parties to the
4 proceeding, unless the parties are provided the opportunity to
5 brief the court.

6 SECTION 2. Chapter 602, Hawaii Revised Statutes, is
7 amended as follows:

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

10 "§602- Sua sponte decisions. The supreme court, when
11 acting on a matter on appeal, shall not affirm, modify, reverse,
12 or vacate a matter on grounds other than those raised by the
13 parties to the proceeding, unless the parties are provided the
14 opportunity to brief the court. If the court fails to afford
15 that opportunity for the parties to submit supplemental
16 briefing, a rehearing shall be ordered upon timely petition of
17 any party."

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

20 "§602- Sua sponte decisions. The intermediate appellate
21 court shall not affirm, modify, reverse, or vacate a matter on

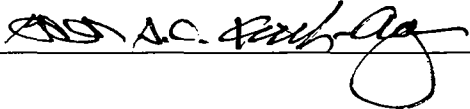


1 grounds other than those raised by the parties to the
2 proceeding, unless the parties are provided the opportunity to
3 brief the court. If the court fails to afford that opportunity
4 for the parties to submit supplemental briefing, a rehearing
5 shall be ordered upon timely petition of any party."

6 SECTION 3. New statutory material is underscored.

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

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INTRODUCED BY: ~~SEN. A.C. FARR~~ 



S.B. NO. 1072

Report Title:

Courts of Appeal; Sua Sponte Decisions; Opportunity for Parties to Brief the Court; Rehearing Upon Petition

Description:

Prohibits the State's Supreme Court and Intermediate Appellate Court 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. Requires a rehearing upon timely petition of any party, if the courts fail to afford the opportunity for parties to submit supplemental briefing.

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

