

Debate Participation

Amsterdam v. KITV 4 (David Alan Ezra, D. Haw. 1:10-cv-253) and Moseley v. Hawaii (Susan Oki Mollway, D. Haw. 1:10-cv-255)

Two minor candidates for a special congressional election filed pro se emergency actions in the federal court to compel their inclusion in separate televised candidate forums. The district judges denied the plaintiffs relief on the papers.

Subject: Campaign activities. *Topics:* News media; campaign materials; pro se party.

At 8:45 a.m. on May 3, 2010, the day of a televised debate for a special congressional election in Hawaii, candidate Karl F. Moseley filed a pro se federal action challenging his exclusion from the debate.¹ Moseley styled the action as an ex parte petition for a writ of mandate.²

The May 22 special election was called to fill a vacancy created by Neil Abercrombie's resigning as Honolulu's representative in Congress to make a successful run for governor.³

On the day that the action was filed, Judge Susan Oki Mollway construed the petition as a complaint and motion for a temporary restraining order, which she denied.⁴ Because of the press of time, she ruled without a proceeding.⁵ Moseley did not "clearly identify any basis for requiring the sponsors and broadcasters of tonight's congressional debate to include every candidate for office, as opposed to having only the three candidates furthest ahead in the polls."⁶ Judge Mollway also struck the petition for failure to present "a short and plain statement" of his claims, as required by Federal Rule of Civil Procedure 8, and granted Moseley leave to file a proper amended complaint.⁷

At 2:10 p.m., Moseley filed a notice of appeal.⁸ Moseley also faxed to the court of appeals a handwritten writ request.⁹ The court of appeals denied

1. Petition, *Moseley v. Hawaii*, No. 1:10-cv-255 (D. Haw. May 3, 2010), D.E. 1.

2. *Id.*

3. See *Abercrombie Sets February 28 as Resignation Date*, Honolulu Advertiser, Jan. 4, 2010; Derrick DePledge, *Abercrombie Wins All but 1 District*, Honolulu Star-Advertiser, Nov. 4, 2010.

Abercrombie's reelection was thwarted by David Ige's victory in the August 10, 2014, Democratic primary election. See Ian Lovett, *Hawaiian Governor Loses Primary by Wide Margin; Senate Race Is Undecided*, N.Y. Times, Aug. 11, 2014, at A9; Sean Sullivan, *Abercrombie Loses Democratic Primary in Hawaii*, Wash. Post, Aug. 11, 2014, at A2.

4. Opinion at 2, *Moseley*, No. 1:10-cv-255 (D. Haw. May 3, 2010), D.E. 8, 2010 WL 1783570; see *Bid to Halt Debates Refused*, Honolulu Advertiser, May 4, 2010.

Tim Reagan interviewed Judge Mollway for this report by telephone on January 23, 2013.

5. Interview with Hon. Susan Oki Mollway, Jan. 23, 2013.

6. Opinion, *supra* note 4, at 4.

7. *Id.* at 2, 5-7; see Fed. R. Civ. P. 8(a)(1) (2010).

8. Notice of Appeal, *Moseley*, No. 1:10-cv-255 (D. Haw. May 3, 2010), D.E. 9.

9. Petition, *In re Moseley*, No. 10-71427 (9th Cir. May 3, 2010).

Moseley mandamus relief that day.¹⁰ On May 11, Moseley filed in the district court a request for dismissal of the appeal,¹¹ and the court of appeals granted the dismissal on June 7.¹²

On May 6, another candidate, Kaui Jochanan Amsterdam, called the court to say that his April 30 pro se motion for injunctive relief¹³ was intended as a motion for a temporary restraining order requiring his participation in a televised candidate forum to be held on May 7.¹⁴ On May 7, Judge David Alan Ezra directed the defendant television station to respond by noon.¹⁵ As did Judge Mollway, Judge Ezra ruled without the need for a proceeding.¹⁶ He denied Amsterdam relief, because legal precedents did not require television stations to include minor candidates in programs of this type.¹⁷ On August 31, Judge Ezra granted the television station's motion to dismiss the case.¹⁸

In the election, Amsterdam came in ninth out of 14 candidates, with 170 votes, or less than 0.1%, and Moseley came in last, with 80 votes or less than 0.05%.¹⁹

10. Order, *id.* (May 3), *cert. denied*, 562 U.S. 1028 (2010).

11. Request for Dismissal, *Moseley*, No. 1:10-cv-255 (D. Haw. May 3, 2010), D.E. 15.

12. Order, *Moseley v. Hawaii*, No. 10-16039 (9th Cir. June 7, 2010).

13. Injunction Motion, *Amsterdam v. KITV 4*, No. 1:10-cv-253 (D. Haw. Apr. 30, 2010), D.E. 4; *see* Complaint, *id.* (Apr. 30, 2010), D.E. 1; *see also Bid to Halt Debates Refused*, *supra* note 4.

14. Opinion at 1, *Amsterdam*, No. 1:10-cv-253 (D. Haw. May 7, 2010), D.E. 8 [hereinafter May 7, 2010, *Amsterdam* Opinion].

15. *Id.* at 1.

Tim Reagan interviewed Judge Ezra for this report by telephone on February 25, 2013.

16. Interview with Hon. David Alan Ezra, Feb. 25, 2013.

17. May 7, 2010, *Amsterdam* Opinion, *supra* note 14, at 2–5.

18. Opinion, *Amsterdam*, No. 1:10-cv-253 (D. Haw. Aug. 31, 2010), D.E. 18, 2010 WL 3489358.

19. Hawaii Office of Elections, Elections Results, 2010 Special Vacancy Election—U.S. House of Representatives, District 1 (May 22, 2010), files.hawaii.gov/elections/files/results/2010/special/special2010-summary.pdf.