

## Hawaii District Court Rejects Candidate's Request to Digital Media and Data Privacy Law Blog

on 05.13.2010

Posted in First Amendment

The U.S. District Court for District of Hawaii issued an order on May 7, 2010, denying a federal candidate's request to be included in a televised debate among the candidates for a seat in the U.S. House of Representatives. The order is available [here](#).

Fourteen candidates are in the race to fill a vacant seat in the House. Television station KITV, Honolulu, Hawaii, in partnership with the League of Women Voters, chose three candidates to participate in the televised debate on May 7. One of the candidates who was not selected to participate filed a lawsuit against the station and sought a temporary restraining order (TRO) from the court to stop the debate from happening. The candidate generally argued in his TRO motion that the station had deprived him of his right to freedom of speech under the First and Fourteenth Amendments.

Candidate debates on TV or radio are generally governed by the Communications Act of 1934, as amended, and FCC regulations that implement that statute. The district court denied the Hawaii candidate's request to stop the debate, first, because the governing statute, Section 315 of the Communications Act, does not recognize a private right of action to bring a lawsuit against a broadcaster related to a debate. The law instead requires a candidate to file a complaint with the FCC, which has jurisdiction over broadcast debates.

The court also denied the request because it found there was no "state action" in the case – that is, no deprivation of a constitutional right by a government body or actor – because KITV is a privately owned company.

The court compared the case to *Arkansas Educational Television Commission v. Forbes*, 523 U.S. 666 (1998), in which the Supreme Court ruled that a televised candidate debate was a "nonpublic forum" from which a broadcaster was entitled to exclude a candidate on a reasonable, viewpoint neutral basis in the exercise of its journalistic discretion. (The Hawaii case is otherwise distinguishable because, in the *AETC* case, the television station was government-owned.)

The court found that the Hawaii TV station selected participants in the debate on a candidate-by-candidate basis and based its decision in part on each candidate's degree of public support. The station did not take the candidates' viewpoints into account in making its selections. According to the court, "the current record supports the finding that Plaintiff was excluded not because of his

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viewpoint, but because he had not generated appreciable public interest.” With that finding, the court held the candidate was not likely to succeed on the merits of the case, so the issuance of a TRO to stop the debate was not justified.