

## [Donald Trump May Declare Presidential Candidacy on The Apprentice - FCC Legal Issues?](#)

by [David Oxenford](#)

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This past week's political news seemed to be all about Donald Trump and his possible run for the Presidency - and his plans to announce his intent to run on the season finale of *The Apprentice*. When, a week ago, [we wrote about the President declaring his candidacy](#), there was little interest in our post, and there seemed to be little news attention in general to that announcement. But when Donald Trump started making noise about his possible Presidential run, and his plans to announce his intent on the season finale of *The Apprentice* in May, our phones started ringing, asking how can he do that? My partner **David Silverman** was [quoted in a Huffington Post article](#), while my analysis was [misunderstood in a Hollywood Reporter legal blog](#) (see why I was misunderstood below). But the question remains - can Trump continue on *The Apprentice* while signaling his interest in running for President?

In fact, there is no FCC rule that prohibits a broadcaster from giving airtime to a political candidate on any kind of program, as long as they are willing to provide equal time to opposing candidates. There may be other legal issues involved in giving time to a candidate as it may in effect be a deemed a campaign contribution to the candidate (an issue apparently for PACs as well, as explained by that legal scholar Steven Colbert, [here](#)), but the FCC's equal time rules don't prohibit the appearance of a candidate on an entertainment program, they only demand that the stations that broadcast the program give equal amounts of time to opposing candidates who ask for it - if the opponents ask for it within 7 days of the candidate's appearance. And that is often the first issue - will the opposing candidate ask for it? None of the Republicans asked when cable networks continued to run episodes of *Law and Order* featuring Fred Thompson, even after Thompson declared his candidacy for the Republican nomination. Nor did other candidates request time after there was a parade of candidate appearances on *Saturday Night Live* during the last election (see [our post on this pattern of candidates passing on their equal time rights](#)). But would a Trump declaration of a candidacy on *The Apprentice* even face that minimal risk? Probably not.

For a broadcasters to be forced to honor a request for equal opportunities (or equal time as many call it), there must be a "**legally qualified candidate**" to make the request. We'll look at that issue in a moment. But even more fundamentally, there must be a **legally qualified candidate** who makes the appearance that triggers the requests for equal opportunity. And, right now, Trump is not a legally qualified candidate, and one wonders whether he ever will be. Years ago,

when **Howard Stern** was the King of New York radio, he for weeks claimed that he was running for Governor of New York - and started aggressively campaigning for the job on his morning radio show. Why did the opposing candidates (who were at the time, I believe, Mario Cuomo and George Pataki), not get equal time on the radio stations on which the Stern program was broadcast? Because he never became a legally qualified candidate. He talked on and on about running but, when the time came to file the necessary papers to qualify for a place on the ballot, he passed, and dropped his campaign. That same thing seemed to happen with that aforementioned legal scholar, Mr. Colbert, and his intent to run in the South Carolina presidential primary in 2008 (see our post [here](#)).

In addition to Trump not being a legally qualified candidate, there may well be no other candidates yet ready to claim any equal opportunity rights, as there currently are no other declared candidates, who have filed papers with the FEC declaring their candidacy, to qualify as official candidates. There has been lots of discussion about exploratory campaign committees - but few if any real candidates. What about the President you might ask? Good question - but right now, we are, at most, in the run up to the primaries - not to the general election. In the primaries, Mr Trump (who has indicated interest in running for the Republican nomination) would be opposed only by Republicans - not by the President. So only the Republican candidates could request equal time during the primary season.

And even if some candidate officially declares between now and the last episode of *The Apprentice*, there still might not be an obligation. Again, we are focused on equal time to candidates before a particular election. And right now there is not a single election looming - but instead a series of primaries, each with their own filing dates and qualification requirements. In fact, with many of the "primaries" actually being in the form of caucuses (which *are* subject to political rules), there might not even be formal, legal ways to register for a "place on the ballot" so to speak. So it may come down to a subjective decision as to whether a candidate has done enough in a state to be considered a bona fide candidate. While, once a Presidential candidate becomes legally qualified in 10 states, FCC rules deem him qualified for purposes of equal time, reasonable access and lowest unit rates, there is not much law on how a candidate gets to be qualified in some of these states - and it is likely the simple declaration that "I'm running" doesn't do it. Usually some form of petition and filing fee may be necessary - which may or may not be accomplished at the same time as the declaration of candidacy. If there are no formal papers to be filed, an active election effort in the state would be required to establish a candidacy - and it's unlikely that any quasi-candidate has done enough in any state (or certainly in 10 states) to meet that standard.

And what did the *Hollywood Reporter* blog get wrong? They quoted me as saying that there were no cases deciding that a candidate appearance in an entertainment program triggered equal opportunities, when there have been such cases. In fact, the FCC tried to change the rules to

eliminate the need to offer equal time in such situations, soon after stations were forced to stop running *Bedtime for Bonzo* during the Reagan campaigns. But the FCC backed down from that change when faced with a challenge filed in the Court of Appeals arguing that **Section 315 of the Communications Act** exempted from equal opportunities only very specific classes of broadcast programs (essentially **news and news interview programs**, an exemption that we've written much about, see, for instance, our post [here](#)), and entertainment programs were not among the exemptions. So obviously there are cases that hold that candidate appearances in entertainment programs are covered by equal opportunities (including cases about comedian Pat Paulsen, who also became a legally qualified candidate, and the movie *Storm Warning* starring Ronald Reagan). Perhaps they confused it with another issue which does remain unresolved - which [we also wrote about in connection with the Fred Thompson/Law and Order situation](#), whether cable television networks are covered by the rule, or only local origination by particular cable systems (certain FCC officials had said, at the time of the Fred Thompson situation, that the FCC was ready to extend the rule to cable networks, but no formal ruling to that effect has been issued).

All in all, the Donald appears to be able to go on making all the noise that he wants about running for President - perhaps in hope that it will not be just the Gary Busey fans who'll be watching the final episode of the *Apprentice*, but the political junkies as well. Anything to drive ratings or the birth of the next political superstar? Here, the old maxim "stay tuned" is quite appropriate.

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