

# “I Won’t Back Down,” or Will I?: The Law and Politics Surrounding Presidential Candidates’ Unauthorized Use of Copyrighted Songs

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In 2000, George W. Bush used multiple songs while running for president, including Tom Petty’s “I Won’t Back Down” (Boucher 2000). In the song, Petty explains how he will not be defeated by various obstacles. The song’s hook, which is the same as the title, presented Bush as someone who would stand up for his principles, so playing the song initially seemed advantageous to the campaign. But Bush overlooked the following: Petty held differing political beliefs from the presidential candidate, and Bush had not secured permission to use the song from Petty, the copyright holder. Consequently, Petty sent Bush a cease and desist letter. With this bad publicity and the threat of a lawsuit looming, the Bush campaign did “back down” and stopped using the song (MTV News 2000).

Many presidential candidates have become embroiled in public controversies for appropriating songs without permission. Below we briefly review the history of presidential campaign music, demonstrating that candidates play songs as an important way to express political messages and have altered the way they use music in response to technological and legal changes. Subsequently, we explore how some modern candidates have encountered difficulties by playing songs without legal permission and why this phenomenon is now more common. Finally, we explain how candidates who use music without permission often cause damaging media battles or legal disputes, ultimately defeating the purpose of using the music.

## A BRIEF HISTORY OF CAMPAIGN MUSIC AND MUSIC COPYRIGHT LAW

Three things are certain regarding the use of music in presidential elections: (1) presidential candidates have long used campaign music; (2) expansions of the right to vote affect the songs that campaigns play; and (3) technology changes how campaigns use music.

Political scientists have long held that the proximate goal of politicians is to win elections (Mayhew 1974), and music helps reinforce campaign messages toward this effort. Presidential candidates since George Washington have used songs, but music reached its watershed moment in 1840 when

William Harrison’s campaign used multiple songs, including the notable “Tippecanoe and Tyler Too.” Set to the popular tune “Little Pigs,” the song praised Harrison and his running mate John Tyler as champions of the people, while demeaning incumbent President Martin Van Buren, who was diminutively called “Little Van.” At the time, Helen Johnson wrote in *The North American Review* that the song “sang Harrison into the presidency” (Johnson 1884).

“Tippecanoe and Tyler Too” had a profound effect because recent Jacksonian reforms had drastically decreased voting qualifications. In the 1830s, the elimination of property qualifications produced near universal suffrage among white men, which expanded the national electorate by 60% in four years (Holt 1992). The voting public included many new voters who were undereducated and/or illiterate, so campaigns had to find new ways to spread their messages (Wilentz 2005). Using music was an effective method to do this, and songs like “Tippecanoe and Tyler Too” remained a vital part of presidential elections for the remainder of the 1800s. In addition, advancements in printing press technology during the 1830s made it much easier and cheaper to print songbooks (Copeland 2010), allowing presidential campaigns to distribute music much more efficiently.

There are no known campaign music lawsuits during this time, due to the slow development of copyright law. The Constitution empowers Congress to authorize copyrights, and the first Congress did so, but the law applied only to books, maps, and charts and was limited to a term of 14–28 years. When music was given copyright protection in 1831, it was for 28 years only and extended merely to music publication, not performance. Additionally, it was limited to publications by American composers (US Copyright Office n.d.), rejecting from protection all British music, which included many popular songs. Music publishers of the period typically used British songs specifically to avoid copyright issues (Crawford 2001), so campaigns often did the same.

Furthermore, only the tunes themselves were being extracted at this time. In the 1800s, campaign songwriters were not concerned with preexisting lyrics but the popularity of the music. Many popular tunes had been frequently repurposed.

Thus, a tune did not necessarily have a "standard" set of lyrics, but was often well-liked because of the music (Crawford 2001). Campaign songwriters were composing text to the entirety of an existing popular tune to spread information about their candidates to rally-goers and beyond. The tune was the catalyst for those attending rallies to promote the candidate later by continuing to sing the song after they left campaign events (Schoening and Kasper 2012).

In 1897, music was given copyright protection from unauthorized public performance (US Copyright Office n.d.). Campaigns were also beginning to use original compositions written in the modern styles, so they did not run afoul of these

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new copyright regulations. Even when campaigns in the mid-1900s began using altered versions of existing songs, such as John Kennedy's modified use of "High Hopes" in 1960 or Lyndon Johnson's modified use of "Hello, Dolly!" into "Hello, Lyndon" in 1964, these customized versions were typically written by the original composers. Thus, infringement was not a problem for these campaigns, as they had the support of the copyright holders/songwriters (Frank 1980).

The duration of copyrights was extended continually during the 1900s. By 1909, copyright protections for printing and live music performance could last up to 56 years. And in 1972 protections against unlawful playing of musical recordings were imposed (US Copyright Office n.d.). Today, copyright protection is greater than at any time previously: it exists in all formats for 95 years after publication or 70 years after the death of the work's author (US Copyright Office 2012).

In the late 1900s, presidential candidates began using pre-existing pop songs. Ronald Reagan played Lee Greenwood's "God Bless the U.S.A." as the anthem of his 1984 reelection bid. This appropriated a popular country song and one that, although not written for the campaign, expressed patriotic themes. In 1992, Bill Clinton continued this trend by using Fleetwood Mac's "Don't Stop (Thinking About Tomorrow)," a once-popular song with a hook expressing Clinton's message of hope for the future (Safire 2008; Perlstein 2008). Technology again played a role in these campaigns' musical decisions, as candidates were trying to attach themselves to well-liked celebrities whose popularity was increased by television appearances.

Contemporary candidates have followed the lead of Reagan and Clinton by using preexisting songs. The greater use of popular music by today's presidential campaigns reflects strategies of 1960s and 1970s social movements, which incorporated rock-and-roll artists who used songs to help unify people for social change (Hurst 2008). Indeed, the Civil Rights Movement, the Anti-Vietnam War Movement, and the Women's Liberation Movement generated popular music to draw emotional appeal to their respective causes; for example, Joan Baez, Country Joe and the Fish, and Neil Young were musicians who were at the heart of the anti-war movement.

After the voting age was lowered to 18, the use of preexisting songs became the musical strategy of choice to attract younger voters (Schoening and Kasper 2012). Furthermore, since music has greater copyright protection today, campaigns often prefer to use existing lyrics than to repurpose old tunes with new lyrics: if a song has copyright protection, a different songwriter will be reluctant to craft new lyrics for the campaign due to fear of being sued.

Much like changes to electoral laws have affected candidate behavior (Gross and Goidel 2003; Witko 2005), changes in technology and copyright laws have made playing popular songs more common in recent presidential elections.

Overall, music allows politicians to communicate messages to voters while receiving less media scrutiny. Playing music is like appearing on entertainment-oriented talk shows: it is an alternative method for a candidate to express messages in a way more likely to be found agreeable by voters (Baum 2005). In this vein, candidates play music not just to energize a crowd but also to inform voters that they stand for various issues. For instance, in 2012 Democratic President Barack Obama frequently played Bruce Springsteen's "We Take Care of Our Own" and Republican nominee Mitt Romney's main campaign song was Kid Rock's "Born Free." These song choices reflect the modern Democratic Party's focus on equality and fairness as well as the contemporary GOP's emphasis on liberty, especially after the rise of the Tea Party (Silver 2014). Finally, presidential candidates also play popular music to achieve an emotional response among listeners that may make them more predisposed to think of the candidate favorably. Indeed, music has a great ability to affect us emotionally from a very young age (Mithen 2006).

#### **CAMPAIGN MUSIC AND COPYRIGHT DISPUTES**

Using preexisting music has benefits but sometimes garners the scorn of the original artists. Given the way that campaign music has recently evolved, the unauthorized playing of music has become more of a political and legal problem for presidential candidates. According to the American Society of Composers, Authors, and Publishers, "[i]t has become increasingly significant for political candidates...to conduct their campaigns within the copyright law. Recent controversy over unauthorized music use has created unwanted negative publicity for candidates" (ASCAP n.d.).

The earliest case of a copyright holder threatening legal action against a presidential candidate for claimed unauthorized song usage occurred in 1964. Broadway producer David Merrick allowed Lyndon Johnson to modify his song "Hello, Dolly!" to "Hello, Lyndon!" for use at the 1964 Democratic National Convention. However, when Republican nominee Barry Goldwater tried to also capitalize on the musical's success by parodying the song as "Hello, Barry," Merrick threatened suit, creating negative publicity for Goldwater

and causing him to stop using the song (Kissel 1993). There are rare allegations of campaign copyright infringement over the next 35 years, including George H.W. Bush's use of Bobby McFerrin's popular song, "Don't Worry, Be Happy," without permission in 1988 and Bob Dole's modification of the Sam and Dave song "Soul Man" into "Dole Man" in 1988 (Bronson 2003; Newman 1996a; Newman 1996b). In both instances, similar to Merrick's reaction to Goldwater, Bush and Dole received letters from the copyright holders asking them to stop using the song.

In 2000, the number of preexisting campaign songs proliferated, so it is no surprise that it is the first year when there are multiple cases of artists claiming unauthorized use of their music. In addition to Petty's "I Won't Back Down," George W. Bush used Sting's "Brand New Day" (presumably to send the message that his presidency would be markedly different from Bill Clinton's) until the liberal artist disapproved and asked the campaign to stop. After Bush played John Mellencamp's upbeat song "R.O.C.K. in the U.S.A." without consent, Mellencamp asked Bush to stop before stating to the media, "[t]hey said OK, and then used it anyway...What am I going to do? Am I going to sue the guy – that seems a little silly." Using multiple songs was easier because the Bush campaign burned music onto a rally CD (Tapper 2000). Thus, technological advancements allowed campaigns to make use of music in innovative ways; in this case, it also made it easier for campaigns to, intentionally or inadvertently, ignore copyright law.

In 2004 there was only one documented case of claimed copyright violation: George W. Bush used Orleans's "Still the One" without permission of the copyright holders, Orleans vocalist/songwriter John Hall and his wife, Johanna Hall

order (Schreiber 2015). The Foo Fighters' Dave Grohl went so far as to accuse McCain of showing "such little respect for... intellectual property" (Michaels 2008). Furthermore, after McCain used Jackson Browne's "Running on Empty" in an advertisement, the singer filed a lawsuit against McCain and the Republican Party. The case settled out of court, with Browne being paid an undisclosed amount of money (Jones 2009). Overall, these incidents and their reactions resulted in repeated instances of negative press coverage for McCain in 2008.

While the history of unauthorized song use appears skewed towards Republicans, they are not the only ones who have come under fire by musical artists. In 2008, Barack Obama played recordings of "Hold On, I'm Comin,'" by Sam and Dave at his rallies; those in attendance sometimes changed the lyrics to "hold on, Obama's comin'" in place of the originals (Davis 2011), a throwback to the style of older campaigns that repurposed lyrics to include the candidate's name. Sam Moore objected, sending a statement to Obama asking him to refrain from playing the song (Friedman 2008).

Moore's objection to Obama's use of "Hold On, I'm Comin'" appears to be the only documented case of a music copyright holder issuing a complaint to a Democratic presidential candidate; all other documented cases in presidential campaigns to date have been against Republicans (Schreiber 2015). Why the imbalance? Pop/rock musicians are more likely to be liberal, just as country artists are more likely to be conservative (Willman 2005). With candidates targeting their song selections, at least partially, on youth voters, a population that has long had a tendency to be more liberal, pop/rock music has been favored by both parties (Beck 1984;

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(Devenish 2004). By 2008, the unauthorized use of campaign music reached new heights, however. While vying for the Republican nomination, Mike Huckabee played Boston's "More Than a Feeling." Tom Scholz, Boston founder and songwriter, wrote a cease and desist letter to Huckabee, asking him to stop using the song without permission because, according to Scholz, Huckabee "is the polar opposite of most everything BOSTON stands for" (Greene 2008).

The 2008 Republican presidential nominee, John McCain, allegedly made several unauthorized music usages while playing songs at his rallies. He played Mellencamp's "Our Country" and "Pink Houses;" ABBA's "Take a Chance on Me;" the *Rocky* theme song, "Gonna Fly Now;" Orleans's "Still the One;" Van Halen's "Right Now;" and the Foo Fighters' "My Hero." In each case, the copyright holder and/or artist publicly complained or had a lawyer send McCain a cease and desist

Kulp 2007). In addition, Republican candidates tend to shift to the political center during the general election campaign (Hummel 2010), and using more pop/rock music is in line with this strategy. While there may be more cases of Democrats using music without permission, those artists are less likely to publicly complain because they are more apt to agree with these candidates politically (Currans-Sheehan 2009). As noted above, in American politics currently the main political value of Republicans is liberty and the main political values of Democrats are equality and fairness, meaning that artists whose songs represent these respective values are more likely to allow candidates espousing those values to use their songs. Given the political leanings of musical artists, this makes it more difficult for Republicans than Democrats to find musical artists outside of the country genre who will grant permission to use their music.

The 2012 election cycle saw a continuation of multiple campaigns playing unauthorized music. There were fewer documented unauthorized instances than in 2008, perhaps due to the cases that year where artists sued, or seriously threatened to sue, over the unauthorized playing of their songs. Michelle Bachmann's campaign, trying to portray a positive image of the candidate, played Petty's "American Girl" and Katrina and the Waves' "Walking on Sunshine." Each artist objected and had their attorneys contact the Bachmann campaign. Survivor songwriter Frankie Sullivan sued Newt Gingrich for the unauthorized use of the *Rocky III* theme, "Eye of the Tiger." Gingrich's unauthorized use of The Heavy's "How You Like Me Now?" led the band to issue a cease and desist order and a profanity-laced complaint online (Schreiber 2015).

The Republican presidential nominee in 2012, Mitt Romney, allegedly engaged in some unauthorized use of Al Green's "Let's Stay Together." After President Obama publicly sang a

for the Republic nomination in June 2015 entering to Neil Young's "Rockin' in the Free World." Young objected, alleging that "Donald Trump was not authorized to use 'Rockin' in the Free World' in his presidential candidacy announcement" (Keith 2015).

#### CONCLUSIONS: AVOIDING OVERREACH AND POSITIVELY MEETING THE VOTERS WHERE THEY ARE

Like the ABBA song states, candidates can "take a chance" by using music without permission. If the song is popular and catchy, an objection from an artist/copyright holder may be muted by the positive effects on rally crowds. But given the potential for lawsuit and negative press, it is typically unadvisable for a candidate to play music without permission. Doing so risks garbling the message meant for casual voters and jeopardizes drawing the attention of swing voters in a negative way.

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few bars from the song, the Romney campaign used the audio recording in a web advertisement. With Obama singing the line "I'm so in love with you," the video depicted headlines about the president allegedly helping campaign donors while in office, insinuating that the President was "in love" with big money donors. The music publisher BMG claimed that the song was played without permission and had the advertisement removed. A spokesperson for the Romney campaign then responded that "[o]ur use was 100% proper, under fair use, and we plan to defend ourselves." The Romney campaign essentially claimed it offered a critical critique of President Obama's singing. Within days, the advertisement was back online (L. Johnson 2012).

Later in 2012, a rally for Republican vice presidential candidate Paul Ryan played Twisted Sister's "We're Not Gonna Take It," attempting to tell voters who were displeased with President Obama's policies that the proper course of action was to vote for Romney/Ryan. Twister Sister singer Dee Snider decried this, stating, "I emphatically denounce Paul Ryan's use of my band Twisted Sister's song...There is almost nothing he stands for that I agree with except the use of the P90X." This prompted Ryan to stop playing the song and issue a fitting response: "We're Not Gonna Play It Anymore" (B. Johnson 2012).

Finally, the first alleged examples of unauthorized music use in the 2016 presidential race have begun. When Wisconsin Governor Scott Walker spoke at the 2015 Iowa Freedom Summit, he walked on stage to the Dropkick Murphys' "I'm Shipping Up to Boston," a song with a driving beat. Almost immediately, the liberal-leaning band tweeted to Walker, "please stop using our music in any way...we literally hate you!!!" (Idazi 2015). Donald Trump announced his candidacy

One alternative for candidates is to simply choose another song. Presidential candidates today frequently use multiple songs and are accustomed to moving from one song to another over the course of the campaign (Schoening and Kasper 2012). It is relatively easy to select one of the many thousands of existing songs to express any conceivable campaign message. For both Republican and Democratic candidates, there will be a significant number of artists who have released songs consistent with the candidates' messages and in which copyright permission can be secured. It may not be the exact song a campaign wants, but choosing a similar song with copyright permission is much safer politically and legally. For example, Bill Clinton's excellent use of Fleetwood Mac's "Don't Stop" would have been a poor song choice if Clinton had used it without permission and became embroiled in a media war or a protracted legal battle with the band. A candidate can also involve artists who already support his or her campaign. By including a musician like Bruce Springsteen, who has lent his popularity and music to Democratic candidates in recent elections (Cowie and Boehm 2006), a candidate secures the actual endorsement of the candidate. Furthermore, if the musician agrees to play/sing at the candidate's rally, it is more newsworthy and draws to the rally people who otherwise might not get involved in the campaign. This benefit does not exist when a campaign uses prerecorded music.

To avoid copyright problems a candidate can also ask the artist to write/rewrite a song for the campaign. This tactic was used by McCain in 2008, when John Rich recorded "Raisin' McCain" and Hank Williams, Jr. performed "McCain-Palin Tradition." These songs combined celebrity power with lyrics meaningful to the campaign, focusing on the more conservative values espoused by the McCain/Palin campaign. And in

the case of “McCain-Palin Tradition,” the song was a rewrite of Williams’s “Family Tradition,” an already popular tune (Mass 2008; Eilperin 2008).

Another tactic used by recent candidates is to publicly announce their song playlists. President Obama did this in 2008 by listing some songs on his iPod (*Rolling Stone* 2008). In 2012, Obama released a playlist of 28 songs on Spotify, an online music service that streams songs to website members (Gilbert 2012); these songs largely reinforced the President’s more equality-based political values and advocated staying the course with the incumbent. Challenger Mitt Romney followed suit and released a Spotify playlist of his own 19 songs (Edwards-Levy 2012), by mostly country and older rock-and-roll artists singing about issues related to freedom and making changes. In anticipation of her 2016 presidential run, Hillary Clinton released a Spotify playlist of 14 songs (Diaz 2015), which, unsurprisingly, also were largely in line with traditional Democratic Party values. This approach expresses campaign messages in a different way while securing an implied endorsement without running the dangers of actually playing an unauthorized song. In addition, the variety of songs on such a playlist ensures that there is something for every listener.

Ultimately, musicians believe that their political views, reputations, livelihoods, and intellectual property rights matter and are worth protecting. Thus, politicians should carefully choose how to evoke musical messages and imply musicians’ endorsements. Presidential candidates in 2016 and beyond need to respect musicians’ financial and political motivations when playing their music. As such, candidates would be advised to secure copyright and artist permissions. Changes to copyright law and technology have created opportunities for candidates, but they have also led to limitations that should be properly observed. By following this advice, presidential candidates won’t have to “back down” due to an artist’s subsequent cease and desist letter or negative press release. ■

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