

Guidelines for State and Local League Debates, Including “Empty Chair” Debates, and Other Non-debate Candidate Appearances

Candidate debates and other appearances are regulated by federal, state, and local election and tax laws and regulations. These rules and regulations may differ depending on an organization’s designation as a 501(c)(3) or 501(c)(4) by the IRS. League-sponsored events are governed still further by the League’s own nonpartisan policy. Although legal challenges are infrequent, candidate appearances are high-stakes campaign activities, and candidates who believe they have been hurt politically by an event may challenge event sponsors under these laws.

NOTE: The following should not be construed as legal advice. State and local Leagues should consult their own tax and election law counsel to ensure that their plans are in accord with all applicable laws and regulations. Suggested resources for additional information include: Federal Elections Commission (www.fec.gov); Internal Revenue Service (www.irs.gov); Federal Communications Commission (www.fcc.gov); and your state’s chief elections official (e.g. Secretary of State, State Board of Elections or Attorney General).

The League Framework

The League of Women Voters shall not support or oppose any political party or candidate. All Leagues bear the responsibility of safeguarding this nonpartisan policy and the organization’s nonpartisan reputation.

Leagues designated as 501(c)(4) by the IRS do not collect tax-deductible contributions, whereas Leagues designated as 501(c)(3) by the IRS collect tax-deductible contributions. 501(c)(4) Leagues that use funds from their sister 501(c)(3) League must abide by 501(c)(3) rules. Whether acting as a 501(c)(3) or as a 501(c)(4) organization, each League will want to sponsor and conduct debates in such a way as to avoid creating the impression that it favors one candidate over another.

It is recommended that Leagues utilize a traceable form of mail delivery (e.g. USPS delivered, signed mail receipt or email returned mail receipt) to correspondence with the candidates regarding the “ground rules” for participating in the debate and the actual invitation to participate in the debate.

The Federal Regulatory Framework

Key elements of the regulatory framework include the following:

The **Federal Election Commission** (FEC) regulates the conduct of corporate, labor and nonprofit organizations — including both 501(c)(3) and 501(c)(4) organizations — in **federal** elections. FEC regulations define a debate as an event that:

- includes at least two candidates: candidates must be selected based on pre-established objective criteria (primary debates may be restricted to one particular party but for general election debates, political party may not be the sole objective criterion);
- is staged in a way that does not promote or advance one candidate over another; and
- allows the candidates to appear concurrently, in face-to-face confrontations, with opportunities to respond to each other.

If a League debate does not include at least 2 candidates for the same federal office, the debate would be considered an in-kind campaign contribution to the candidate attending the debate. An exception to this, when the debate is sponsored by and held at an educational institution, is discussed below. All Leagues are by law banned from making federal campaign contributions.

The **Federal Communications Commission** (FCC) regulates radio and television broadcasters and cablecasters. Under its regulations, a broadcaster that permits a candidate for any public office — **federal, state or local** — to use its facilities must provide all other legally qualified candidates for the same office with equal opportunities for use.

A broadcast debate must comply with the following FCC requirements.

- The decision to cover the debate must be based on a good faith judgment of its newsworthiness (and not on a desire to promote or disadvantage a particular candidate).
- The debate must not be edited and must be broadcast in its entirety, either live or reasonably soon after it takes place.
- The debate must include at least two candidates.

Internal Revenue Service (IRS) rules provide that 501(c)(3) organizations "may not participate or intervene, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office." This prohibition applies to campaigns for public office at all levels — **federal, state, and local**. A violation of IRS rules could jeopardize the tax-exempt status of the 501(c)(3) organization responsible.

If the debate is organized by a 501(c)(4) and does not qualify as nonpartisan, the c4 would not jeopardize its tax status or be penalized because "partisan" political activities are allowed under IRS rules provided such activity does not constitute the organization's primary activity. However, while this may be legal under IRS rules, it bears repeating that it is not allowed under FEC rules for federal candidates, and it is not recommended at any level, and a partisan event would be in violation of the League's nonpartisan policy.

A 501(c)(3) organization may sponsor nonpartisan voter education projects, such as debates, provided certain rules are followed. The guiding principle for such debates is that there be fair and impartial treatment of all candidates, with nothing that promotes or advances one candidate over another.

The State and Local Regulatory Framework

In addition to the federal framework, state and local laws also apply to debates. It is critical to review any applicable state and local election and tax laws annually. Leagues will want to investigate such things as what constitutes an in-kind contribution, whether in-kind contributions are allowed, and if so, are there contribution limits, and what, if any, disclosure requirements exist. Good state resources are your state's chief elections official (e.g. Secretary of State, State Board of Elections) or Attorney General. As previously stated, state and local Leagues should consult their own tax and election law counsel to ensure that their debate plans are in accord with all applicable laws and regulations.

"Empty Chair" Debates

It sometimes happens that only one candidate in a contested election accepts a debate invitation or that a candidate cancels a debate appearance after agreeing to participate, leaving the debate with only one participant — often called an "empty chair" debate. If only one candidate accepts the invitation, the debate should be canceled. While cancellation is also the most prudent course of action when a candidate fails to appear at the event or backs out shortly before the debate, Leagues may need to consider whether and how to proceed should they find themselves in an empty chair debate situation.

FCC regulations would preclude any *broadcast coverage* of such an event for any public office — federal, state, or local. Unless the event is sponsored by and organized at an educational institution, FEC regulations would consider an empty chair debate an in-kind campaign contribution and therefore a banned political activity. There are no specific guidelines from the IRS pertaining to the ability of nonprofit organizations to sponsor an empty chair debate. A *facts and circumstances test* would be applied to any complaint filed against a League that hosted an "empty chair" event. Inasmuch as an empty chair debate, by giving one candidate a forum to talk to voters all by him/her/themself, bestows a real benefit on that candidate, there is a risk to any League that hosting such a debate would run afoul of state and/or IRS rules as well as the League's nonpartisan policy.

The degree of risk and the options available to Leagues vary depending on the office being sought by the candidates and the IRS designation of the sponsoring organization:

- For debates involving candidates for **federal** office, FEC rules are particularly significant. To meet the FEC definition of a debate and thereby avoid being categorized as an illegal contribution to a federal candidate, **the event must include at least two candidates**. This rule applies to debates sponsored by both 501(c)(3) and 501(c)(4) organizations. **No League should host an empty chair debate in connection with a federal office**. FEC rules do allow educational institutions (e.g., a university) to sponsor "candidate appearances" that also involve

members of the public so cosponsoring debates for federal offices with an educational institution would give the League more latitude in dealing with an empty chair situation.

FEC Rules – at Educational Institutions Only

Any candidate appearance (in a non-debate format) to which the general public is invited and that is sponsored by a tax-exempt corporation must be held at a tax-exempt school, college or university. The educational institution may make its facilities available for a candidate appearance under the following circumstances.

- Academic/nonpartisan educational event: at a discount or at no cost, facilities may be made available to groups associated with the school who invite candidates to address students, faculty, the academic community, and the general public. Event organizers must make a reasonable effort to ensure that the appearance is:
 - Not a campaign appearance/event: instead communications are made in an academic setting (speeches, question and answer sessions); and
 - Does not expressly advocate the success or defeat of any clearly identified candidate or candidates of a clearly identified political party.
- For debates sponsored by **501(c)(3) and 501(c)(4) organizations** for candidates for **federal, state or local** office, IRS rules are critical. Although empty chair debates are not expressly prohibited by the IRS, the agency might well consider such an event to be an improper electioneering activity by a 501(c)(3) or an allowed partisan activity by a 501(c)(4).

Again, it is critical that Leagues review any applicable state and local election and tax laws and consult their own tax and election law counsel to ensure that their debate plans are in accord with all applicable laws and regulations annually.

Leagues can reduce that risk by observing the following guidelines:

--- League boards should adopt, or review and affirm their debate policies annually, well in advance of the intended debate. These should include provisions about empty chair debates, including what the League will do if a candidate chooses not to accept the League's invitation to debate or cancels after accepting the invitation.

--- Empty chair debate policies should be uniformly followed for all debates planned within an election year.

--- League sponsorship of the debate, the issuance of invitations, candidate responses and what steps the Leagues will follow if a candidate chooses not to accept the League's invitation to debate or cancels after accepting the invitation should be announced via press releases and posted on your website.

--- An empty chair debate should not be conducted if all but one candidate decline the League's invitation to participate in a debate. It would be very risky for the League to sponsor the debate, knowing from the start that there will be only one participant.

--- While not recommended, an empty chair debate could be considered only if one or more candidates pull out of a scheduled debate after agreeing to participate, and rescheduling is not feasible. A League could also choose to cancel the debate in this situation.

--- The closer to the scheduled debate that the candidate cancels his/her/their appearance, the stronger the arguments that going forward with the debate is not a partisan political activity.

--- If the candidate cancels well enough in advance of the debate to allow the sponsoring League to make other arrangements without charge or penalty, the League should make some effort to see if the debate can be rescheduled.

--- In announcing that a candidate has canceled his/her/their participation in a debate, the League should present the factual reasons given by the candidate, if any, without any editorial comment and state that moving forward with the event does not imply endorsement of the participating candidate. If no reason is given by the candidate, the League should simply state that it was contacted by the candidate or his/her/their campaign and told that the candidate would not be able to appear at the debate; the League can also state that the candidate provided no reason for canceling his/her/their participation.

--- To maintain a clear record, the League should correspond **in writing** with candidates concerning invitations to appear at debates, attempts to accommodate each candidate's schedule, confirmation of scheduled debate appearances, confirmation of the cancellation of a debate appearance and attempts, if any, to reschedule a canceled appearance.

--- In conducting any empty chair debate, the League should maintain, to the extent practicable, the debate format. The League must prevent the debate from turning into a candidate appearance that has the look, feel and content of a campaign rally for the only candidate attending the debate. The moderator and other panelists, therefore, should ask nonpartisan questions, the length of the candidate's response should be limited, and if possible, the moderator and other panelists should act as devil's advocate, asking probing questions and follow-up questions.

- IRS rules are more liberal for debates sponsored by **501(c)(4) organizations**, but the League nonpartisanship policy still applies. A League acting as a 501(c)(4) organization could sponsor a **state or local** candidate event involving only one candidate. In considering such an option, the League would want to ensure that

--- the event would not violate any state or local election laws;

--- no tax-deductible funds would be used for the event; and

--- the event would not damage the League's nonpartisan reputation by creating the impression that the League favored one candidate over another.

Guidance related to the use of candidate debate and forum content can be found [here](#).