

## FAQ'S: LEAGUE CANDIDATE FORUMS AND DEBATES

<https://www.lwv.org/league-management/elections-tools/faqs-candidate-forums-debates>

### INTRODUCTION

In carrying out our mission of encouraging informed and active participation in government, the League of Women Voters continues to be key sponsors of candidate debates and forums. This Frequently Asked Questions (FAQ) is meant to be a quick resource on some of the main questions asked by Leagues. This FAQ should not be construed as legal advice. 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.

Finally, the public holds the League in high regard for our work on debates, so it is important to follow best practices to ensure a fair and well executed debate or forum. This respected tradition also offers state and local Leagues wonderful opportunities to be visible with the public and to help strengthen the organization through inviting new members to join and developing new leaders.

### BEST PRACTICES

The following represent a short check list of best practices League should follow when hosting or sponsoring a candidate debate or forum.

- Annually review and adopt your League's criteria for candidate participation in debates. Do this well in advance of when you intend to invite candidates to participate, so there can be NO charge of setting criteria that could be construed to purposely include or exclude any candidate.
- Procure a law firm or lawyer who can offer pro-bono legal advice in case it is needed before, during or after your debates.
- Designate someone in your League (on board or off board) to be the debate manager. No matter how large or small the debate project, it is important for someone to be in charge and to communicate with the board on various logistics.
- Know the federal, state and local laws that may govern or have an impact on holding a debate or forum!
- Make sure you are maximizing visibility and organizational growth opportunities (new leadership development, membership recruitment, etc.) affiliated with conducting candidate debates or forums.

### What is the difference between a candidate debate and a candidate forum?

**A. Debate:** The Federal Election Commission (FEC) defines a debate as an event that

- includes at least two candidates;
- 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.

**B. Non-Debate Candidate Appearances (Candidate Forums, Speeches)**

Other formats outside those described above are considered "Non-debate Candidate Appearances" defined as a place, meeting or medium where ideas and views on a particular issue are exchanged. Both may be considered contributions subject to campaign finance limitations or as illegal corporate contributions to a federal candidate if your League does not adhere to all FEC, FCC and IRS guidelines when hosting activities for federal level candidates.

### Where can I find information about "state rules" for local/state races?

Check with your Secretary of State, State Board of Elections or Attorney General.

## **CANDIDATES**

Note: Federal Level Races – *While this guidance for Leagues applies to the Presidential level as well, for “Federal Level” we will focus only on the U.S. House and U.S. Senate, because all outreach to Presidential candidates must go through the LWVUS Board.*

### **What if a candidate is unopposed?**

1. Federal Level Races – A debate may NOT be held.
2. Both the Federal Election Commission (FEC) and Federal Communication Commission (FCC) rules define a debate as more than one candidate. If an unopposed candidate was to appear at an LWV candidate forum, it could be interpreted as a contribution to that candidate and jeopardize the League's 501(c) (3) status and nonpartisanship reputation. FCC regulations also preclude broadcast coverage of only one candidate. Instead, unopposed candidates might be invited to meet and greet attendees at the end of another candidate forum and/or contribute a statement to your Voters' Guide.
3. State and Local Level Races – recommend that a debate NOT be held.
4. State and local laws may have implications for this practice and should be checked as well. Instead, unopposed candidates might be invited to meet and greet attendees at the end of another candidate forum and/or contribute a statement to your Voters' Guide.

### **If one candidate is late for the debate can we start?**

1. Federal Level Races – A debate should not start if only one candidate is present: There is no guarantee that the “late” candidate will ever arrive.
2. It can be held for a "reasonable amount" of time if one candidate is late and should NOT start until there are at least two candidates. The moderator can explain without bias that the debate is delayed awaiting the arrival of the other candidate. To begin with only one candidate would provide that candidate extra exposure and could be interpreted by the public as bias and by the FEC as a campaign contribution. If the debate includes candidates running for several different offices, the debate might begin with races for other offices and a deviation from the listed program announced.
3. State and Local Level Races – the same advice applies at the local and state level.

### **What if one candidate cancels because of an emergency?**

1. Federal Level Races- A debate must be canceled if only one candidate remains. If more than one candidate is present the debate can proceed.
2. The moderator announces that a candidate has canceled his/her participation in a debate and presents any factual reasons given by the candidate without editorial comment. For example, the League might simply state that it was contacted by the candidate or his/her campaign and told the candidate would not be able to appear at the debate and no reasons were given for canceling his/her participation. If the debate must be canceled and the candidate who canceled provided a statement, the moderator may read statements on behalf of both candidates. Attempts can be made to reschedule the debate. It is the League's responsibility to prevent a debate from turning into a solo candidate appearance that has the look, feel and content of a campaign rally for the only remaining candidate as well as assuring that all regulations are followed and the League's nonpartisan reputation is upheld.
3. Reminder: For Federal races (U.S. House, U.S. Senate) an empty chair debate (where only one candidate is present) can NOT be held as it can be considered an “in-kind” contribution or providing “something of value” to a federal candidate by the Federal Elections Commission (FEC) and thus subject to the contributions or expenditures limitations, reporting requirements and prohibitions of federal election laws.
4. State and Local Level Races – If only one candidate remains it is recommended that the debate not proceed, but be rescheduled. If more than one candidate is present, the debate can proceed.
5. Check your state and local election regulations to understand what they allow and what they prohibit. While not encouraged, if allowed by state law an empty chair debate could be conducted only if one or more candidates pull out of a scheduled debate after agreeing to participate, and rescheduling is not feasible. In conducting any empty chair debate, the League should maintain, to the extent practicable, the debate format. 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 ask probing questions and follow-up questions.

### **If an empty chair debate is not permitted, how can the League defuse an angry audience and candidates?**

1. Federal Level Races – Sometimes charges of unfairness may be leveled at League's process by disappointed candidates or audience members. Sometimes charges are part of a candidate's overall strategy. Be mentally prepared for criticism and calmly explain the federal regulations that do not permit an empty chair debate as well as League's high standards for candidate debates and nonpartisan reputation. Educate the public and your members about the reasons for not holding an empty chair debate through a letter to the editor and an article in your VOTER.
2. State and Local Level Races – the same advice applies at the local and state level. Be mentally prepared for criticism and calmly explain the state or local regulations that do not permit an empty chair debate as well as League's high standards for candidate debates and nonpartisan reputation.

### **Can a surrogate stand in for a candidate?**

1. Federal Level Races – NO, surrogates may not stand in for a candidate in a debate. If surrogates are involved, the activity no longer constitutes a debate. Again, for Federal races an empty chair debate (where only one candidate is present) can NOT be held as it can be considered an "in-kind" contribution or providing "something of value" to a federal candidate by the Federal Elections Commission (FEC) and thus subject to the contributions or expenditures limitations, reporting requirements and prohibitions of federal election laws.
2. State and Local Level Races – It is not recommended that substitutes stand in for candidates. The public does not hire surrogates through their votes. While a stand-in might be excellent at public speaking or debating, he/she cannot be held accountable as the elected official.

### **What if a candidate refuses to debate when there are only two candidates?**

1. Federal Level Races– A debate may NOT be held.
2. If either the incumbent or challenger refuses to debate, enlist the assistance of the media to publish news articles and editorials to urge the reluctant candidate to appear. Have your League President submit a strong letter to the editor stating candidates are expected to participate and if they do not, they are denying the community an opportunity for public education about them and the issues.
3. State and Local Level Races – recommend that a debate NOT be held.
4. However, just as in the above advice, Leagues should decide if there are ways within the community, through the media, coalition partners or others, to encourage that a debate go forward and urge the reluctant candidate to appear.

## **ADMINISTRATION**

### **Can funds for a candidate debate come from a 501c4 or must they all be from a 501c3?**

1. Federal Level Races - Either operating funds 501(c)(4) or tax-deductible funds 501(c)(3) monies may be used, but all expenditures must comply with IRS and other federal regulatory mandates. Leagues are encouraged to have their 501(c)(4) (operating entities) host the debate, so there are no limitations on asking audience members to join the League. However, as it is an educational event, 501 (c)(3) (Education Fund) resources should be used to cover expenses. A simple agreement between your operating and educational entities can be made. Candidate debates offer an opportunity for Leagues to use their Ed Fund monies and solicit tax-exempt donations from local businesses and donors. For more information on this topic check the LWVUS Web site Members section—Education Fund Information, Best Practices and Procedures for the Treasurer and Money Matters.
2. State and Local Level Races - the same advice applies at the local and state level. Make sure to check state laws as well.

### **Can we hold our candidate debate/forums at retirement home auditoriums?**

1. Federal Level Races  
**A. Debates:** Best practices suggest public (government or school) or in-studio television facilities be used. If there is good public access, a candidate debate may be held at a retirement home or a public community facility.  
**B. Non-Debate Candidate Appearances:** The Federal Elections Commission (FEC) mandates that ALL non-debate candidate events and appearances, e.g. scheduled public appearances of candidates or a "meet and greet", MUST be held at a tax-exempt school, college or university.
2. State and Local Races – State and local regulations should be checked, but the best practice of holding the event in a location that is accessible to the public should be kept in mind.

### **Can a League work with their local government channel to air a debate?**

1. Federal Level Races - Yes. You might also want to partner with a local radio station to tape and replay the debate, or record the audio of the debate and do a pod cast on your web site. A media department of a local college may be able to provide your League technical assistance. Newspapers need content for their web site and might pod cast or web cast a debate for you as well as advertise it in the newspaper. A local TV station might partner with you by taping the debate and putting it up on their web site even if they didn't broadcast it.
2. State and Local Level Races - the same advice applies at the local and state level.

### **What criteria should be used for candidate participation?**

1. Federal Level Races - Criteria are a critical component of debate planning and should be established early in an election cycle, well before any candidates are invited. They should be nonpartisan, fair and applied objectively. Some examples of criteria to consider include constitutional eligibility to be on the ballot, a public announcement of candidacy, clear evidence of a campaign; a level of support as reflected in polling data or eligibility for public funding.
2. State and Local Level Races - the same advice applies at the local and state level.
3. Some examples of criteria to consider include constitutional eligibility to be on the ballot, a public announcement of candidacy, clear evidence of a campaign; a level of support as reflected in polling data (less likely for a local race but applicable for state contests) or eligibility for public funding.

### **What information should be in a letter of invitation?**

1. Federal Level Races - A letter needs to include criteria for participation, debate rules, release policy and waiver for League distribution of debate content, acknowledgment that debate content is the property of LWV and that permission must be sought to rebroadcast the debate in its entirety or to print excerpts. Candidates must agree that he/she will not use any portion of the debate in a political advertisement.
2. State and Local Level Races - the same advice applies at the local and state level

### **Do we really need pro bono legal advice? Insurance?**

1. Federal Level Races -Advice from LWVUS/EF is not legal opinion. As you plan for a candidate debate, securing the pro bono services of a lawyer is strongly encouraged. Check your League's insurance policy to be sure coverage is adequate or that a co-sponsor or the facility where the event is being held has sufficient coverage.
2. State and Local Level Races - the same advice applies at the local and state level

### **Are there guidelines for co-sponsors?**

1. Federal Level Races - Leagues should participate in events only if the sponsoring groups have made and will make no endorsement during the entire election cycle. At the very least, Leagues should obtain in writing each of the co-sponsoring groups agreement that, if they are going to make an endorsement, they will not do so before the debate. In deciding how to work with such groups, a League needs to consider carefully how its participation might affect its nonpartisan status or the public's perception of the League's nonpartisanship. The board must make sure that the ground rules are set to ensure that the activity is conducted in a strictly nonpartisan manner in keeping with League policy.

2. Leagues often work with the media to obtain the broadest possible coverage. Guidelines with media outlets broadcasting events should include a statement that any use of debate tapes requires the express written approval of the League; and the League will only allow audio/video to be broadcast in its entirety, except by the media reporting on the event (s).
3. State and Local Level Races - the same advice applies at the local and state level

## **FORMATS**

*Note: Format advice applies to Federal, State and Local level races, so will not be broken out separately in this section.*

### **How should candidate speaking order or party order be determined?**

Place all names within a container and draw one at a time. Use a separate draw of names for opening and closing statements.

### **What about timing?**

Decisions about how much time to allot for response, rebuttal or cross talk should be thoughtfully considered and often are based on amount of overall time allotted for the debate and the number of candidates participating. Consider varying response times to suit questions. Ground rules for timing should be agreed upon before the debate. Generally, a candidate will be allowed to finish a sentence, once started. Use an unobtrusive method, such as cards or lights, to alert candidates that most of their or all of their time has been used.

### **What methods can be used to obtain candidate questions? How do we screen or should we?**

Ask your members, ask debate attendees to submit questions, check LWV Web site for suggested national debate and voter guide questions. Best practices utilize a League member committee of three to combine similar submitted questions and omit those that are personal or offensive.

## **BLOGS, CELLPHONES AND FORUM FOOTAGE**

### **What can we do to ensure that parts of our candidate debate are not captured on cell phones and broadcast in some way?**

1. Federal Level Races - Announce at the beginning of the debate that cell phones should be turned off as a matter of courtesy and that unauthorized videos are not allowed because the FCC requires that a debate must not be edited and must be broadcast in its entirety, either live or reasonably soon after it takes place. Realistically, there is no way to guarantee that someone won't capture some video or audio without our knowledge so a disclaimer should also be put in the guidelines for the debate. The League wants to ensure that information is not manipulated to create false or misleading impressions; no candidate should be allowed to use or edit the footage for campaign purposes.
2. State and Local Level Races - the same advice applies at the local and state level, but you should also check state and local laws.

### **Are we obligated to give a tape or DVD of a candidate debate to anyone?**

1. Federal Level Races - All candidates must be advised of League's release policy in the letter of invitation. Any use of the tapes requires the approval of the LWV with the caveat that it must only be broadcast in its entirety. A League is not obligated to give a DVD of the debate to anyone. The content of that debate belongs to the League. Once a tape of a candidate's debate is released to someone else, control is lost and there is no way of stopping anyone editing and using it for negative ads, etc.
2. State and Local Level Races - the same advice applies at the local and state level

### **An individual has offered to put our candidate debate on YouTube? Should we accept?**

1. Federal Level Races - Even though it seems a good offer to put a debate on YouTube for wider distribution, the same problems could arise as listed above especially if you do not know the individual making the offer. Typically YouTube content can be put up only in 20 minute increments which violates the mandate that video must be broadcast in its entirety. Best practices urge Leagues to put debate content on their League Web site and actively pursue hotlinks from other Web sites to drive traffic to it.

Your League could consider videotaping a short introduction or welcome to the debate to be posted on YouTube and direct people to the debate on your League's Web site.

2. State and Local Level Races - the same advice applies at the local and state level and state and local laws should be reviewed. More and more local Leagues are posting their debates and forums on YouTube - working to maintain the integrity of broadcasting the event in its entirety, some Leagues have begun to share events in 20 minute segments – labeled segment 1 of 2, segment 2 of 2, etc. so the public is aware that the full viewing is possible.

#### **What can be posted on our League Web site?**

1. Federal Level Races - Footage from your candidate debate belongs to your League and can be posted in written form, streaming audio/video or in large print. Give your Web site address at the debate, include in press releases and ask reporters covering the item to include it.
2. State and Local Level Races - the same advice applies at the local and state level

#### **After the debate, a candidate used a clip from the debate in his/her campaign materials? What do we do?**

1. Federal Level Races - All candidates must be advised in the invitation letter about the use of debate recordings and sign a release form. An invitation letter states a League's mandates. Audio or video may be streamed on League Web sites. Any other use of the tapes requires the express written approval of League. Audio and video must be broadcast in its entirety except by media reporting on events.
2. State and Local Level Races - the same advice applies at the local and state level