

Candidate Forums, Empty Chairs and Equal Opportunities to Participate

In today's political world, gamesmanship when it comes to debates, forums and other public appearances is a growing strategy. Will candidates debate? Will they appear? Public appearances are carefully managed so that their opponent does not get an advantage or air/print coverage. That often leads to candidate's not responding, changing their RSVP, no shows, and last-minute cancellations. Worse, it leaves an organization and its partners without the ability to craft a firm plan or having to make last-minute decisions that disappoint and frustrate voters. It also leaves broadcasters who are recording or airing an event without a program because of an "empty chair."



Defining Empty Chair:



- ★ note that the words debate and forum mean the same thing in this context
- ★ occurs when only one candidate in a contested race accepts a debate invitation or if a candidate cancels a debate appearance after agreeing to participate, leaving the debate with only one candidate and an "empty chair."

National and State LWV Policies:

- ★ If only one candidate accepts the invitation, it is the policy of LWVMN to cancel the debate. (LWVMN Candidate Forum Guidelines, 5th Ed., p.15)
- ★ 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 or backs out shortly before the debate, Leagues may need to consider whether and how to proceed. — LWVUS EF 03-05, Affirmed October 2011. <http://www.lwv.org/content/guidelines-state-and-local-leagues-including-%E2%80%9Cempty-chair%E2%80%9D-debates-ef-03-05>
- ★ 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 campaign contribution, the event *must* include two candidates. <http://www.lwv.org/content/guidelines-state-and-local-leagues-including-%E2%80%9Cempty-chair%E2%80%9D-debates-ef-03-05>

★ For debates sponsored by 501(c)3 organizations, IRS rules regarding candidates for state and local office are critical. Although empty chair debates are not expressly outlawed by the IRS, the agency might consider such an event to be an improper electioneering activity. For this reason, LWVMN *strongly urges* local LWVs not to hold empty chair debates. (LWVMN Candidate Forum Guidelines, 5th Ed., p.15)



★ There are no specific guidelines from the Federal Elections Commission (FEC) or the IRS pertaining to the ability of nonprofit organizations to sponsor an empty chair debate. <http://www.lwv.org/content/guidelines-state-and-local-leagues-including-%E2%80%9Cempty-chair%E2%80%9D-debates-ef-03-05>

★ LWVUS goes on to write:

- ✓ 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.
- ✓ the closer to the scheduled debate that the candidate cancels 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 LWV to make other arrangements without charge or penalty, the LWV *should* make some effort to see if the debate can be rescheduled. <http://www.lwv.org/content/guidelines-state-and-local-leagues-including-%E2%80%9Cempty-chair%E2%80%9D-debates-ef-03-05>)

★ LWVUS also recommends that each local LWV adopt a policy about empty chair de-



bates well in advance of scheduling any events.

What the IRS Says:

- ★ When a candidate is invited to speak at an organization event in their capacity as a political candidate, factors in determining whether the organization participated or intervened in a political event include the following:
 - ✓ whether the organization provides an equal opportunity to participate to political candidates seeking the same office
 - ✓ whether the organization indicates any support or opposition to the candidate
 - ✓ whether any political fundraising occurs
- ★ When an organization invites several candidates for the same office to speak at a public forum, factors in determining whether the forum results in political campaign intervention include the following:

- ✓ Whether questions for the candidates are prepared and presented by an independent nonpartisan panel,
- ✓ Whether the topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public,
- ✓ Whether each candidate is given an equal opportunity to present his or her view on each of the issues discussed,
- ✓ Whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and
- ✓ Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

The above is a cursory review, for details, visit http://www.irs.gov/irb/2007-25_IRB/ar09.html#d0e265.



Crafting an Empty Chair Policy

Before crafting an Empty Chair Policy, let's also consider the political reality:

- ✓ Allowing any one candidate to control whether any one organization/s (including LWV) can host a debate/forum, does not serve the voters' interests.
- ✓ Media outlets plan their programming based on their partnerships with LWVs. A last-minute cancelation creates programming holes for them and makes the LWV look like an unreliable partner.
- ✓ Candidates can and do play games about their appearances and participation. They want to know if their competitor is appearing before making a decision. Keep in mind that LWV and your Local LWV exist in part to provide voters with information. Who does your Board want in a position of authority about your forums?

Example of a local LWV Empty Chair Policy:

- ★ If an invited candidate is unable or unwilling to appear on the day of the scheduled event, the forum will still be held. The remaining candidate(s) will have an opportunity to express their positions on issues in their opening and closing statements and in response to questions submitted by the audience. Unopposed candidates may appear alone.
- ★ LWV of Local City will announce to the audience the candidates who are unable to or choose not to appear.
- ★ No substitutes or stand-ins for the candidates will be allowed. Under extraordinary circumstances, the moderator may read a statement from a candidate.
- ★ The local LWV communicated this policy to candidates with this paragraph in their invitation letter:

We hope that all of you will take this opportunity for voters to get to know you and to state your views on issues. In order to respect the time and interests of voters and candidates who attend, even if only one of the candidates in a contested race is in attendance, each candidate present will be allowed to present her/his views to voters. This new policy was adopted by the LWV of Local City Board in May, 2014, in response to voters' concerns and an updated understanding of IRS rules. We will conduct the forum in a manner that is neutral to the absent candidate.

★ The local LWV communicated this policy change to voters and the media by writing a press release announcing their forums and including these paragraphs:

"This year," Smith continued, "we're making a policy change that responds to voters' concerns about our policy for canceling forums when an opponent in a two-candidate race is unable or unwilling to be present. We will now hold the announced forum. The candidate in attendance will have an opportunity to express their positions on issues in their opening and closing statements and in response to questions submitted by the audience."

Smith further explained, "We feel this policy change respects the time and interests of voters and candidates in attendance, and we will conduct the forum in a manner that is neutral to the absent candidate. Candidates will be notified of this absentee policy in their invitation to the forum."

Options for avoiding an empty chair situation:

- ★ Make efforts to secure a date acceptable to both candidates.
- ★ Consult various public calendars for regular school board, city council, county commission meetings before scheduling.
- ★ Choose an event format such as "meet the candidate night" to avoid formal Q&A.
- ★ Encourage candidates to attend without revealing what their opponent is doing. (see Negotiating with Candidates)
- ★ Use media attention and press releases to apply pressure on candidates by including in a press release a comment that, "All four candidates for School Board have been invited. Candidates Ann, Barb and Cathy have confirmed their participation. Candidate Debbie has not responded to LWV emails and phone calls.
- ★ Ask your co-sponsor to contact a non-responding candidate.

