

## IT'S THE MOST EXPRESSIVE TIME OF THE YEAR: POLITICS, THE ELECTION SEASON AND THE TAX-EXEMPT ORGANIZATION

*Following the pastor's anti-war sermon, an Episcopal Church in Los Angeles receives a demand letter from the IRS requesting documents including church publications and copies of previous sermons.*

*A pro-life group reorganizes following a complaint to the IRS about its voters' guide for those of the faith.*

*A civil rights organization receives an audit letter after its leader gives a speech critical of the Bush administration.*

So what do a civil rights group, a pro-life association and an Episcopal church all have in common? More importantly, why is the IRS so interested in what their members and leaders are talking about? They are all non-profits organized under section 501(c)3 of the Internal Revenue Code and their penchant for political expression has piqued the interest of the Internal Revenue Service. The government limits the extent to which 501(c)3 organizations can engage in the political process.

So, here are some Q&As to help us understand the limits as they apply to 501(c)3 institutions and why Westmont handbooks include this policy:

**As an academic institution Westmont College maintains a non-partisan position and ensures the freedom of faculty and staff as citizens to engage in political speech and activities so far as they are able to do so consistent with their obligations as college employees. However, when speaking or acting as private citizens faculty and staff must avoid creating the impression they are doing so for the college.<sup>1</sup>**

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**1. *I thought the role of the IRS was just to assess and collect income taxes. What does it have to do with political expression?***

Like thousands of nonprofit organizations of its type, Westmont is organized under Section 501(c)3 of the Internal Revenue Code which exempts it from the requirement to pay federal income tax. In exchange for this benefit, Westmont agrees to forgo engaging in certain political activity called "campaign intervention."

**2. *What is campaign intervention?***

Generally, campaign intervention is any activity that supports or opposes a candidate's election to public office at a local, state or federal level. Tax exempt organizations must also refrain from making partisan statements at official functions or in official publications and from using college funds or other resources to facilitate any of the activities described above.

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<sup>1</sup> Employee Handbook section 2.13. Also see Faculty Handbook section 7.5.

### ***3. Why is the IRS limiting our right to engage in the political process?***

Let's be clear. Your individual rights to express opinions, partisan or otherwise, are in no way restricted by the college's 501(c)3 status. It is the college in its official capacity, by way of employees presenting their opinions as the opinion of the college, that gives rise to a challenge to our tax-exempt status.

Why? The federal government does not want to give the appearance of extending financial support to a particular party or candidate for office (that would fly in the face of that "government for the people and by the people" thing). A tax exemption to organizations engaging in campaign intervention or other partisan activity would provide indirect governmental financial support to whatever party or candidate that organization happened to support.

### ***4. Does this mean the college can't express support for a particular candidate?***

Yes, that's what it means. While the leaders of a 501(c)3 organization may express official opinions on matters of public concern that have political implications, they may not do so in a way that indicates the college's endorsement of or opposition to a particular candidate or a party that is aligned with that public concern.

### ***5. So what constitutes a matter of public concern?***

#### **Campaign Intervention vs. Issue Advocacy:**

The law is not intended to prevent "issue advocacy." That is to say, on matters affecting the health and welfare of society at large or a particular community (i.e., a matter of public concern) a 501(c)3 may take a position that opposes or advocates a particular viewpoint without jeopardizing tax-exempt status. In an exciting election season, critical issues are hotly debated among candidates and to some extent, the division created is the stuff upon which political platforms are built. A 501(c)3 must focus on the issues themselves and not the division among candidates. Here's an example:

*Councilwoman Schultz and college officials oppose ballot measure Z. A "yes vote" on this measure would have a negative impact on the college's ability to expand the campus. When you vote, remember the college's plans for developing the campus and remember the councilwoman that would support that effort.*

While there isn't an explicit "vote for Schultz" statement, the implications are clear. The statement would most likely be seen as impermissible campaign intervention and not acceptable issue advocacy.

### ***6. So we can't officially say, "Vote for Candidate X." What can we do?***

There are some political activities that Westmont may officially engage in and/or endorse, like the following:

- We can invite a candidate running for public office to campus so long as
  - o We ensure an equal opportunity exists for opposing candidates for the same office;
  - o We do not encourage voting in a particular way; and
  - o We do not engage in fundraising during the time of the candidate's visit.
- We can conduct nonpartisan, unbiased voter registration activities encouraging the community to register and vote.
- We can produce and/or distribute a nonpartisan, unbiased voter guide which describes the issues and gives information about candidates.

**7. *What about students, can they engage in partisan political activity?***

Yes, so long as that activity is not given the institutional endorsement or support. For example, the Young Democrats may use Founders Room for a meeting so long as they follow the same protocol that any other student group would follow in using the space or any other college resource. The college should not advertise, invite, or otherwise provide support for the function, in order to avoid the appearance of impermissible campaign intervention.

Also note that the college's policy with regard to speakers on issues of controversy/debate (candidates running for the same office are in this category) is to grant equal time and access to those of opposing views. So, while a student or student group might invite a candidate for office to speak on campus, good faith effort should be made to invite other candidates running for the same office.

**8. *So, what; we can't talk about politics?***

Then what in the world are we going to talk about from January to November of 2008? The prohibition on campaign intervention does not forbid expression of political expression. So, by all means, express and debate away! It makes for engaging and interesting dialogue and provides us with the opportunity to model to our students the ability to engage in debate and still like each other in the process.

**9. *What about on the internet, can we post an opinion page?***

The standards for paper publications apply equally to internet publications. Therefore, expressions and statements on partisan matters and candidate endorsement or opposition should be limited to individual opinions and not presented as official "college positions." The college may host voter education web pages. Tax exempt status is not jeopardized so long as such pages are careful to give unbiased, factual information on all candidates running for office with no indication that one candidate is favored over others.

Individual employees may choose to have personal web pages where they can freely post their opinions about candidates running for office or solicit donations for their picks. Using personal resources and email addresses in this way keeps it clear that the activity is the individual's and not attributable to the institution. "But wait," you say, "I only have one email address for all purposes and that is my work address." Fair enough. How about a second address? Have you any *idea* how easy it is to get an AOL, Yahoo, gmail or Hotmail account...for free? It will be one of the least difficult tasks you ever perform in life.

You're not convinced that getting a second, private email address will be the easiest thing you've ever done in your life. OK. Then let's remember this about using your Westmont address when engaging in partisan communications:

- Find a way to indicate that the opinions expressed are yours and not those of the college. You might even want to use that very language.
- Do you have a signature block that references your title and the college's name? Remove it. Doing so takes away any semblance of college endorsement of the candidate you endorse or for whom you are soliciting donations.

That's the election season skinny. It's the *most* expressive time of the year . . . there'll be babies for kissing, opinions for hissing, new cabinets to cheer (or fear). . . It's the *most* expressive time of the year!

**10. *I still have some questions, who can I contact?***

What, the song at the end didn't clear it all up for you? Fine, call or email Toya Cooper, College Counsel: ext. 6832/ ([tcooper@westmont.edu](mailto:tcooper@westmont.edu))