

The Church and the 2016 Election:

Politics, Your Church, and the Law

Presented by:

Priester Law Firm, PLLC

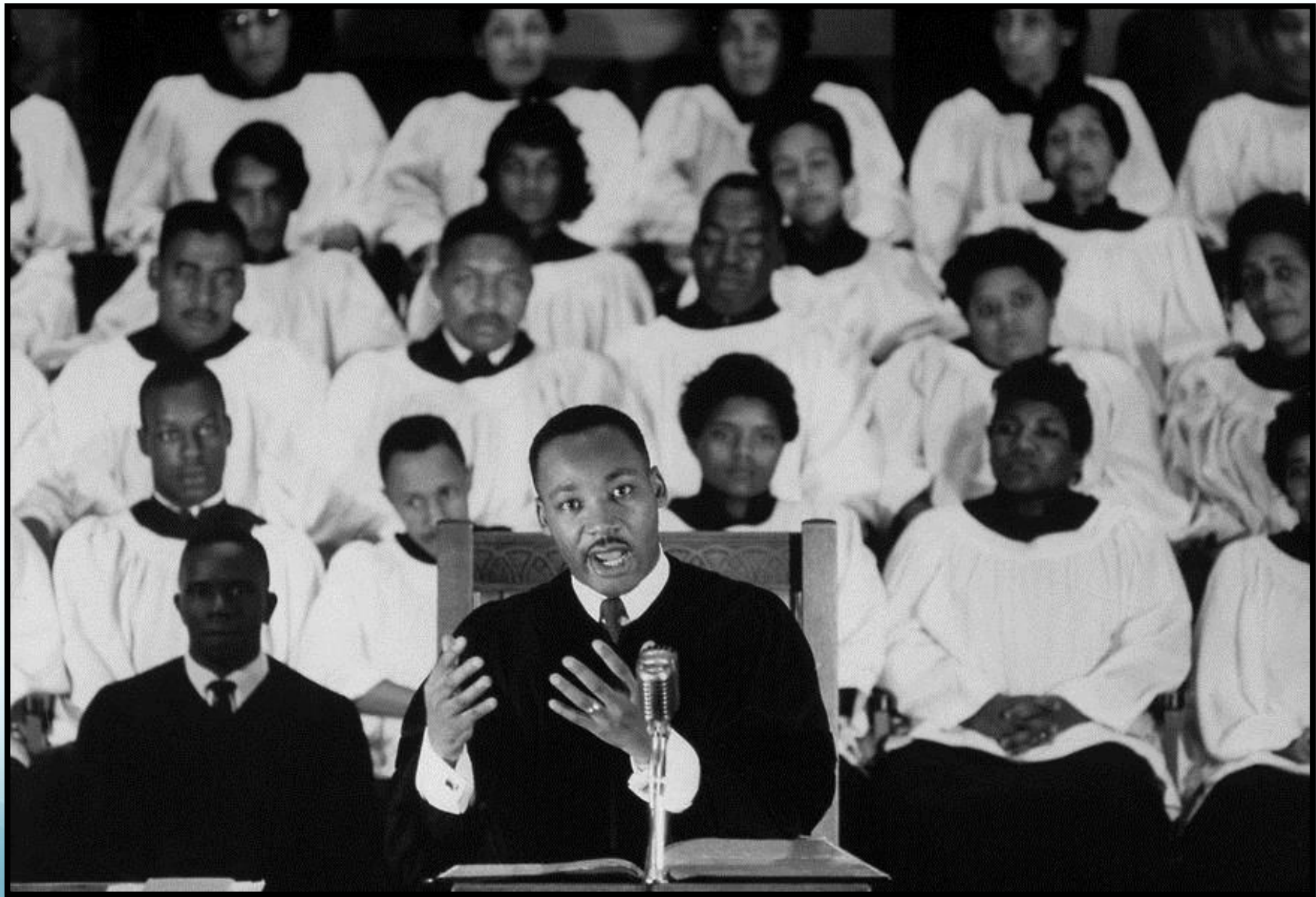
Attorney E. Charlene Stimley Priester

5375 Executive Place, Jackson, MS 39206

ecpriester@priesterlawfirm.com

(601) 353-2460 Telephone

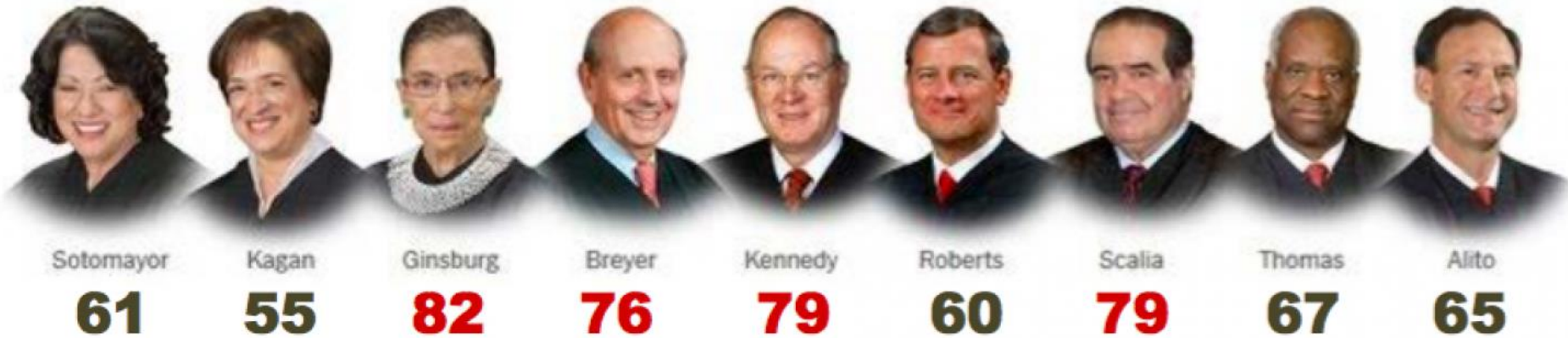
Our Church Has Always
Played a Role . . .





What's at Stake in 2016?

- The next president is likely to appoint 1 to 4 new members of the Supreme Court.



- The Fate of the Affordable Care Act
- War on Terrorism/Iran
- House and Senate Elections in Congress
- Climate Change
- Gun Control

Are there restrictions on my church's participation in politics?

- The Internal Revenue Code prohibits intervention in political campaigns by organizations that are exempt from paying federal income tax under section of 501(c)(3) of the tax code.
- Churches are automatically considered to be exempt under the tax code even if they do not apply for tax-exempt status.
- The restriction on political activity is one of the conditions for keeping your tax-exempt status.

Are there restrictions other than from the IRS?

- **State & Local Laws** – talk to a local attorney to make sure that you do not violate any state or local tax laws or ordinances.
- **The Federal Election Campaign Act** - Federal campaign finance law prohibits certain people and organizations from making contributions to campaigns and limits the amount of money that may be contributed. For both IRS and Federal Election Campaign Act law reasons, churches should not donate to campaigns nor should they donate to PACs.

Key Restrictions:

- Direct political campaign intervention
- Making of statements in any format (oral, written, social media, web, etc.) supporting or opposing any candidate, political party or political action committee (“PAC”);
- Creating a PAC;
- Rating candidates;
- Providing or soliciting financial support (including loans or loan guarantees) or in-kind support for any candidate, political party or PAC.
- Indirect political campaign intervention of a sort that reflects bias for or against any candidate, political party or PAC, such as distributing biased voter education materials or conducting a biased candidate forum or voter registration drive.

May candidates appear in pulpits during worship services?

It Depends on the Circumstances. . .

PROHIBITED:

- The clergy member endorses the candidate or takes up a collection for the candidate's benefit,
- The clergy member invites only one candidate for a particular office to address the congregation;
- There are other demonstrations of approval for the candidate or his campaign for office.

ALLOWED:

- All candidates for a particular office are given equal opportunity to address the congregation,
- no collections are taken for any candidate and there are no demonstrations of approval or disapproval of any candidate

IN SUM: it is permissible for a church to invite all candidates for a particular office to address its congregation, one each on successive Sundays, as part of its regular worship services, provided that each candidate is given an equal opportunity to address and field questions on a wide variety of questions from the congregation, and the introduction of each candidate includes no editorial comment or indication of approval or disapproval

Can Campaigns use a room at the church for an event?

- YES
- A church may allow a campaign to use/rent a room for an event at the church **if the room is regularly made available for noncommercial purposes, without regard to political affiliation.**
- Any nominal rental fee is not considered a contribution.

Can a church publish a voter guide?

NOT IF IT ENDORSES SPECIFIC CANDIDATES!

Catholic Answers, a religious nonprofit organization published a voter guide on its website as well as a series of newsletters arguing that Sen. John Kerry (then the presumptive Democratic candidate for president) should not receive Communion in Roman Catholic churches.

The IRS determined that the organization had engaged in improper electioneering. The organization sued. The IRS then refunded the tax, but the organization continued its legal challenge and sought to have the restriction declared unconstitutional. The U.S. Court of Appeals for the 9th Circuit held that the lawsuit was moot because the tax had been refunded and declined to consider the constitutional challenge. Catholic Answers sought review of that decision in the Supreme Court, but the high court declined to review the decision.

Catholic Answers, Inc. et. al. v. United States, No. 09-56926, slip op. (9th Cir. July 22, 2011), *cert. denied* 132 S. Ct. 1143 (Jan. 23, 2012).

May a church make a contribution to a candidate committee, political party committee or political action committee(PAC)?

No!

May a church contribute to a ballot measure committee (committees supporting or opposing ballot initiatives or referenda)?

- Yes, a section 501(c)(3) organization may make a contribution to a ballot measure committee (committees supporting or opposing ballot initiatives or referenda),
- If it does, it must include such contributions in its lobbying calculations for purposes of determining whether a substantial part of its activities consist of attempting to influence legislation.

Can we Talk About Political Issues at Church?

- YES! But with limitations. . .
- For an issue discussion to violate the political campaign intervention prohibition, it must contain some reasonably overt indication of support for or opposition to a particular candidate.
- A communication is particularly at risk of violating the political campaign intervention prohibition if it makes reference to candidates or voting in a specific upcoming election.
- The IRS has identified the following factors as relevant when determining whether an advocacy communication constitutes political campaign intervention: (a) whether the communication identifies one or more candidates for a public office; (b) whether the communication expresses approval or disapproval of one or more candidates' positions and/or actions; (c) whether the communication is delivered close in time to an election; (d) whether the statement makes reference to voting or an election; (e) whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office; (f) whether the communication is part of an ongoing series of communications on the same issue that are independent of the timing of any election; and (g) whether the timing of the communication and identification of the candidate are related to a non-electoral event, such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

Other Ways a Church Can Participate in Politics

- Churches may hold a voter registration drive or get out the vote efforts so long as they do not endorse voting for a specific candidate.
- The use of personal influence by the minister. Ministers, may speak their minds as long as it's clearly separate from the pulpit and not speaking for their church.
- The formation of issue coalitions with churches and community organizations.
- Creating pressure groups that lobby government institutions and leaders on behalf of minority communities.
- Establish a related, separately incorporated organization under section 501(c)(4)* of the Internal Revenue Code and that the separate organization could express opinions about candidates and even establish a PAC through which political contributions might be made. Of course, no tax-deductible church funds could be used to support the political activities of the section 501(c)(4) organization or its PAC.

* Section 501(c)(4) organizations are exempt from taxation, but contributions to them are not deductible.