

RPOF CHARTERED REPUBLICAN CLUB DO'S & DON'TS

Important Points:

- Republican Clubs (Clubs) are clubs that have been chartered by the RPOF, with the approval of the County REC under Rule 1 of the *RPOF Party Rules of Procedure*.
- Clubs are not specifically recognized under the Florida Election Code (Chapters 97-106, Florida Statutes).
- A Republican Club, operating as a true club, is also not considered a political party executive committee, a state political committee, or a federal political committee under state or federal campaign finance law. A Club is a tax-exempt political organization under Section 527 of the federal tax code. Clubs are also reminded to seek guidance from a tax professional to ensure they follow and comply with any applicable requirements of federal tax law.
- Clubs are also not subject to any reporting obligations required of those entities, *unless* a Club engages in behavior that would classify it as such.
- Under state law, a Club may raise and spend funds to conduct activities, however, generally if it accepts contributions or make expenditures in an aggregate amount in excess of \$500 in a calendar year for the purpose of supporting or opposing candidates or making contributions to state or local candidates or political parties, it must register as a Florida political committee within 10 days.
- Under federal law, a Club may raise and spend funds to conduct activities, however, if it raises or spends more than \$1,000 in contributions or expenditures during a calendar year it must register as a federal political committee (PAC) with the Federal Election Commission (FEC) within 10 days.
- In order to avoid having to register as a political committee and file regular campaign finance reports, it is important that a Club understands what activities trigger registration at both the state and federal levels.

Florida Campaign Finance Law

A Republican Club will generally want to operate in a way that makes it avoid having to register as a state political committee (PC) and subjecting itself to reporting requirements under Florida law. To do so, a Republican Club needs to understand how to *avoid* qualifying as a state PC.

A “political committee” is defined in Florida law as:

1. A combination of two or more individuals, or a **person** other than an individual, that, **in an aggregate amount in excess of \$500** during **a single calendar year**:
 - a. **Accept contributions for the purpose of making contributions** to any candidate, political committee, affiliated party committee, or political party;
 - b. **Accept contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue**;
 - c. **Make expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue**; or
 - d. **Make contributions to a common fund**, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party.
2. The sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.

§ 106.011(16), Fla. Stat. (emphasis added).

Relevant Definitions:

- A “person” is defined as “an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity. The term includes a political party, affiliated party committee, or political committee.” § 106.011(14), Fla. Stat.

- A “contribution” includes “anything of value” “made for the purpose of influencing the results of an election or making an electioneering communication.” § 106.011(5), Fla. Stat.
- An “expenditure” includes “anything of value made for the purpose of influencing the results of an election or making an electioneering communication.” § 106.011(10), Fla. Stat.
- An “election” means “a primary election, special primary election, general election, special election, or municipal election held in this state for the purpose of nominating or electing candidates to public office, choosing delegates to the national nominating conventions of political parties, selecting a member of a political party executive committee, or submitting an issue to the electors for their approval or rejection.” § 106.011(7), Fla. Stat.
- Express advocacy is a communication that contains express “magic words” of advocacy, such as “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for Congress,” “vote against,” “defeat,” “oppose,” and “reject.” *Div. Elec. Op.* 14-03 (June 25, 2014); *Buckley v. Valeo*, 424 U.S. 1 (1976).

The Florida Division of Elections has advised that “[w]hether donations received by a political club and payments by the club are made ‘for the purpose of influencing’ a Florida election will often be a question of fact that depends on the specific circumstances under which the donations and payments are being accepted and made.” *See Div. Elec. Op.* 14-03 (June 25, 2014).

Although Clubs may raise and spend funds to conduct activities, they may not receive contributions in excess of \$500 in a calendar year for the purpose of supporting or opposing candidates or contributing to political parties. If they choose to do so, they meet the definition of a state PC and are required to register as such and comply with the monthly reporting requirements.

A Club operating as a state or federal political committee (without registering) is also no longer operating as a Club, and is violating its charter with the RPOF. The RPOF Chairman, in consultation with the applicable county REC officials, may revoke a general club charter for good cause shown, which includes failure to comply with RPOF Rule 1 and/or state and federal campaign finance law.

If a Club exceeds the \$500 threshold under Florida law qualifying it as a state PC, it will need to register as a PC and file a Statement of Organization (Form DS-

DE 5) within 10 days after it receives contributions or makes expenditures in excess of \$500 or seeks the signatures of registered voters in support of an initiative. A state PC supporting or opposing statewide, legislative, multicounty candidates and/or issues must file with the Division of Elections. If the PC is only supporting or opposing countywide or less than county candidates or issues (except municipal) it must file with the county supervisor of elections. If the PC is supporting or opposing only municipal candidates and/or issues it must file with the municipal clerk. If a Club exceeds the \$500 threshold within 10 days of any election, it must immediately file a Statement of Organization. § 106.03(1)(a), Fla. Stat.

After a state PC has filed its Statement of Organization, it must begin filing monthly reports detailing its campaign finance activities (contributions and expenditures) and weekly reports beginning the 60th day before a primary election. Even if the state PC has *no* activity in a given reporting period, it still must file a “waiver” report showing that it had no activity. A state PC is subject to automatic fines for not filing or late-filing its reports.

Federal Campaign Finance Law

The Federal Election Campaign Act of 1971, as amended, (the “Act”) and FEC regulations, with certain exceptions, defines a “political committee” in part as “any **club**, association, or other group of persons **that receives contributions or makes expenditures, either of which aggregate over \$1,000 during a calendar year.**” *See* 2 U.S.C. 431(4)(A); 11 CFR 100.5(a) (emphasis added). Under the Act and Commission regulations, federal political committees are subject to certain registration and reporting requirements, as well as limitations and prohibitions on contributions received and made, and on expenditures made.

Important Points:

- Under federal law, a Club must register as a federal political committee (PAC) with the Federal Election Commission (FEC) within 10 days of raising or spending more than \$1,000 in contributions or expenditures during a calendar year.
- A Club registers as a federal PAC by filing a Statement of Organization (FEC Form 1) with the FEC. The Statement of Organization collects basic information including the PAC’s full name, address, and treasurer.

- Any kind of contribution to a federal candidate—including gifts of money, in-kinds, loans, and extensions of credit count towards the \$1,000 threshold. So do contributions to nonconnected PACs and corporations’ separate segregated funds, as well as transfers to national party committees or state party committees.
- A “contribution” under federal campaign finance law is a “gift, subscription, loan, advance or deposit of money or **anything of value** given to influence a federal election; or the payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose. 11 CFR 100.52(a) and 100.54. (emphasis added).
- An “expenditure” under federal campaign finance law is a “purchase, payment, distribution, loan, advance, deposit, or gift of money or **anything of value**, made for the purpose of influencing a federal election.” 11 CFR 100.111 and 100.112 (emphasis added).
- The \$1,000 threshold on contributions and expenditures are separate thresholds that apply to all contributions and expenditures made in a calendar year. They are aggregate thresholds, meaning that contributions made to several federal candidates will be viewed collectively to determine whether the \$1,000 threshold has been crossed.
- Because of the minimal thresholds, a Club can have very little meaningful impact on a federal election without triggering a requirement to register as a federal political committee.
- Due to the complex reporting and compliance requirements under federal law, Clubs are *strongly* advised to consult with counsel and a campaign compliance consultant prior to registering as a federal political committee or engaging in any activities that influence a federal election.

As the FEC has stated previously, “[a]ny funds that are ‘contributions’ by operation of section 100.57 are contributions for purposes of the ‘political committee’ definition in 2 U.S.C. 431(4)(A) and 11 CFR 100.5(a)” *Political Committee Status Final Rules*, 69 Fed. Reg. at 68058. Once a club receives over \$1,000 in contributions, or makes over \$1,000 in expenditures, it will satisfy the statutory definition of a federal “political committee,” *see* 2 U.S.C. 433.

§ 100.5 Political committee (52 U.S.C. 30101(4), (5), and (6)).

Political committee means any group meeting one of the following conditions:

(a) Except as provided in 11 CFR 100.5 (b), (c) and (d), any committee, club, association, or other group of persons **which receives contributions aggregating in excess of \$1,000 or which makes expenditures aggregating in excess of \$1,000 during a calendar year is a political committee.**

(b) Any separate segregated fund established under 52 U.S.C. 30118(b)(2)(C) is a political committee.

(c) Any local committee of a political party is a political committee if: it receives contributions aggregating in excess of \$5,000 during a calendar year; it makes payments exempted from the definition of contribution, under 11 CFR 100.80, 100.87, and 100.89 and expenditure, under 11 CFR 100.140, 100.147, and 100.149, which payments aggregate in excess of \$5,000 during a calendar year; or it makes contributions aggregating in excess of \$1,000 or makes expenditures aggregating in excess of \$1,000 during a calendar year.

(d) An individual's principal campaign committee or authorized committee(s) becomes a political committee(s) when that individual becomes a candidate pursuant to 11 CFR 100.3.

(emphasis added).

The U.S. Supreme Court has held that, “[t]o fulfill the purposes of the Act,” and to avoid “reach[ing] groups engaged purely in issue discussion,” only organizations whose major purpose is campaign activity can be considered political committees under the Act. *See e.g., Buckley v. Valeo*, 424 U.S. 1, 79; *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

An organization’s “major purpose” may be established through its own public statements. *See e.g., FEC v. Malenick*, 310 F. Supp. 2d 230, 234-36 (D.D.C. 2004) (finding the organization evidenced its “major purpose” through its own materials which stated the organization’s goal of supporting the election of Republican Party candidates for Federal office and through efforts to get prospective donors to consider supporting Federal candidates); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996) (finding that the “organization’s [major] purpose may be

evidenced by its public statements of its purpose or by other means. . . .”). A Club may establish its “major purpose” in its adopted bylaws or constitution.

FAQs for Chartered Republican Clubs

1. Can a Republican Club solicit contributions or make expenditures for the purpose of influencing Florida elections?

Yes. However, accepting contributions for the purpose of making contributions to any candidate, political committee, or affiliated party committee, or political party or to expressly advocate the election or defeat of a candidate or the passage or defeat of an issue **in excess of \$500 during a single calendar year** would require the Club to register as a Florida PC.

Further, making any expenditure that expressly advocates the election or defeat of a candidate or the passage or defeat of an issue or making contributions to a common fund from which contributions are made to any candidate, political committee, affiliated party committee, or political party in excess of \$500 during a single calendar year would also require the Club to register as a Florida PC. *See* §106.011(16)(a), Fla. Stat.

2. Can a chartered Republican Club use the logo, abbreviation, or symbol of the RPOF?

Yes, as long as a Club is using the logo, abbreviation, or symbol in conjunction with authorized activities under RPOF Rule 1. For example, a Club could use a Republican symbol for a meeting flier, but it may not use the RPOF logo in conjunction with fundraising activities or campaign activities that are not authorized under state or federal law.

3. Can a Republican Club engage in voter registration or GOTV activities?

Individual members of a Republican Club are permitted to volunteer and assist with voter registration and GOTV activities. However, Republican Clubs generally are not permitted to engage in such activity that would exceed the state or federal thresholds or use funds that are impermissible for such activities.

4. Can a Republican Club invite Republican speakers to come to a meeting to discuss political topics?

Yes. However, a Republican Club may not invite a non-Republican to be a guest speaker at an official meeting or function without the prior approval of the REC Chairman.

5. Can a Republican Club create a candidate slate card that is distributed to voters?

Yes. However, a Club may not spend in excess of \$500 in a calendar year to expressly advocate the election or defeat of a state candidate without registering as a state political committee and may not spend in excess of \$1,000 (of federally permissible dollars) in a calendar year to influence a federal election. Because there are many legal requirements associated with slate cards, it is *strongly* recommended that all slate cards be done through the county REC or the RPOF or the Club should seek advice from legal counsel.

6. Can a Republican Club adopt its own bylaws separate from the REC and RPOF?

Yes. Any bylaws adopted must be consistent with state or federal law, the RPOF Constitution, RPOF Party Rules of Procedure, and the RPOF County Model Constitution.

7. Can a Republican Club endorse one Republican candidate over another?

No. A Republican Club may not participate in intra-party differences, nor may it, in its official capacity as a Republican Club support the nomination of one Republican candidate over another unless the Republican Party has voted to endorse that candidate under RPOF Rule 8.

8. Can a Republican Club contribute state money to a REC or RPOF?

Yes. However, a Club may not accept contributions in an aggregate amount in excess of \$500 during a calendar year for the purpose of making contributions to a political party unless it registers as a state PC. This is an aggregate requirement with the other monetary limits under section 106.011(16)(a), Florida Statutes.

The Florida Division of Elections has advised that “[w]hether donations received by a political club and payments by the club are made ‘for the purpose of influencing’ a Florida election will often be a question of fact that depends on the specific circumstances under which the donations and payments are being accepted and made.” *See Div. Elec. Op.* 14-03 (June 25, 2014).

9. Can a Republican Club help a REC with its state fundraising activities?

Yes. However, a Club may not engage in fundraising activities that causes it to exceed the aggregate \$500 threshold limit without registering as a state PC.

10. Can individual Club members assist the REC in fundraising or lend their individual names to the REC’s fundraising efforts?

Yes. Individual Club members, not acting on behalf of the Club, may hold a fundraiser and serve as honorary hosts and assist the REC in raising funds without any limits.

11. Can a Republican Club open a campaign office of its own?

A Republican Club may open an office. However, if it opens up a “campaign” office a Club is likely to exceed the state or federal threshold limits requiring it to register as a state PC or federal PAC. In order to avoid registering, a Club should be careful to avoid conducting campaign or election activities out of a Club office.

It is *strongly* recommended that individual Club members, not acting on behalf of the Club, conduct all campaign activities through the REC or the RPOF.

12. Can a Republican Club charter be revoked?

Yes. The Chairman of the RPOF, in consultation with the applicable county REC Chairman, SCM, and SCW, may revoke any general charter for good cause shown. Failure to comply with the requirements of RPOF Rule 1, including failure of a Republican Club to conduct its affairs in compliance with applicable state and federal election and campaign finance laws, constitutes good cause.

13. If a Republican Club charter is revoked or not renewed, is the Republican Club required to return its funds to the REC or the RPOF?

No. A Republican Club charter in a nutshell simply authorizes a Club to use the “Republican” name, in accordance with the requirements in RPOF Rule 1. Once a Club is no longer chartered, the RPOF does not have jurisdiction over the Club, its funds, activities, or members.

14. What ways can a Republican Club raise and spend money?

A Republican Club may raise money for meeting/event expenses and general Republican policy outreach. A Republican Club cannot raise and spend money above the threshold limits without registering as a state PC or a federal PAC as applicable.

15. If a Republican Club wishes to establish a state PC or federal PAC does it need to fill out other charter information for approval by the REC officials?

No. However, a Republican club may not use the “Republican” name as part of its state PC or federal PAC without receiving prior written approval from the RPOF. If approval is granted, the state PC or federal PAC is subject to the same charter requirements as a “Republican Club” under RPOF Rule 1.

16. Is a PC or PAC established by a Republican Club independent of the REC?
State PCs and federal PACs are separate and distinct entities. The PC or PAC will be an entity that is independent of the Club to a certain degree and independent of the REC and RPOF. Each entity should have their own governance and bank account.

17. Can a state PC give money to state candidates?

Yes. A state PC can give to state candidates but must abide by all applicable state contribution limits and reporting requirements.

18. Can a state PC give money to federal candidates or make other expenditures in connection with a federal election?

No. A state PC is prohibited from soliciting contributions or making expenditures in connection with a federal election. Further, any contribution to a federal candidate or committee must be made with federally permissible dollars.

19. Can state PC's accept contributions (monetary and in-kind) from businesses? What about a Club?

Both can accept contributions from corporations, BUT if a Club accepts contributions in excess of \$500 for the purpose of giving money to candidates, other state PCs, the RPOF, or other political entity, it must register as a state PC.

A federal PAC may not accept contributions from corporations or other federally impermissible sources.

The preceding is provided as general guidance and does not constitute legal advice. The answers above may change based on your unique factual circumstances. Therefore, you are advised to consult with competent legal counsel before engaging in any political club activities or registering a state or federal political committee.