

# the Ethical Times

**SUPERDEMOCRACY!**

by **ROBERT CASIMIR**

**What's better than democracy?** Answer: nothing. At least until the consultants in Washington invent *Superdemocracy*: democracy but with even more opportunities to do democracy baked in – because democracy *rules*: you get to vote, you get to assemble, you get to petition the government with grievances seeking redress. You get to change the maps every couple of cycles to keep it interesting! To be entirely honest with you, I love democracy so much that if it weren't for the wailings of my wife (Kate) and newborn son (Korn) I'd be doing democracy basically 24/7, all the time, because the last I checked, at least in *this* country, that's not illegal.

UPDATE: it turns out that is illegal. Or rather: doing *some* campaign-related activities at *some, certain times* actually can violate the law – specifically Chapter 68 of the New York City Charter. While I was taking a brief and patriotic break to walk around the Conflicts of Interest Board offices and show off the preceding paragraph, one of the COIB's Advice Attorneys helpfully pointed out that for public servants, at least, yes: there are times when it would be prohibited to engage in political campaign activity – because you're already supposed to be serving your City in a *different* but equally patriotic way!

Back in 1993 – a dark time, before I, personally, was allowed to participate in democracy – Mark Davies, then the Executive Director of the Conflicts of Interest Board, wrote an article in the *Fordham Law Journal* titled "*Keeping the Faith: A Model Local Ethics Law.*" In his article, Mark said that "the point of ethics laws for municipal offi-



cial is to improve both the perception and the reality of integrity in local government and to encourage, not discourage, citizens from participat-

ing in that government. If an ethics law fails in those goals, it fails in everything.” Now, I don’t know about you, but I’d hate to discourage someone from participating in government. But what exactly is Mark talking about?

Well, let’s say my City job involves trimming the trees for the NYC Department of Parks and Recreation. Pretty cool, right? My fellow Parks employees and I are clocked in and chain-sawing our way to cleaner, safer, more beautiful public spaces – and honestly, if you disregard the fact that we’re all being paid for our City work time, it really does feel, sometimes, like public service is its own reward.

Anyway: I’m trimming my tree and I look over and I see my co-worker, who loves democracy *almost* as much as I do, after every tree he finishes trimming he affixes to its trunk a flier that says “VOTE DAVE FOR MAYOR.” Well, I’d have to ask him what he was doing.

“Democracy,” he’d answer. “It’s the only thing I love more than trimming trees.” And while I’d undeniably like the cut of his jib, I’d also be struck with a sudden realization: I don’t want Dave to be mayor. In fact, I don’t even know who Dave is! But already I’m sure he’s not better than my favored candidate for office: Deborah.

*Dave is an idiot, I think, but Deborah can save this City.* And so, realizing the stakes at play, I start pasting “VOTE FOR DEBORAH” posters on all the trees that I’ve trimmed. Dave notices, of course, and starts trimming his trees a little more quickly — maybe a little more sloppily — in order to claim more and better advertising real estate for future tyrant Dave.

My colleague and I are definitely engaging in political campaign activity right now, but it

doesn’t feel like we’re contributing to the greater good; it feels like we’ve simply created a municipal Rabbit Season/Duck Season scenario — famously, one of the worst things possible for the efficient delivery of government services. If a New Yorker walked by in that moment, do you think, as Mark wrote, they would be “encouraged to participate in that government”?

Or would they question the quality *and intent* of our work? Would they wonder how many other City employees aren’t doing their actual jobs in order to serve some political campaign somewhere. Would they remember Boss Tweed and Tammany Hall?



Imagine: that New Yorker already doesn’t like Dave *or* Deborah, only now they’ve also got to worry 1% more about tree limbs falling on their head – on top of everything else! A political system where everyone else must clock in and go to work, but City employees get to multitask and push their political candidates is unlikely to build the trust in institutions necessary for the sort of well-oiled governance a municipality of this size requires. In effect: inappropriately timed or placed campaign activity by public servants can undermine the credibility of City government.

*In Conflicts of Interest Under the City*

*Charter (2018)*, COIB Deputy General Counsel Christopher Hammer wrote: “City employees owe their first duty of loyalty to the public whom they serve.” Whatever outside interests we might serve, when we become public servants, our obligations to the public come first. But what, specifically, are those things we absolutely cannot do?

### **Misuse of City Time & City Resources:**

Chapter 68 prohibits public servants from pursuing campaign-related activities during times when they are required to work for the City, and from using any City resource (such as supplies, letterhead, telephone, e-mail, computer technology, printers, or vehicles, their City title, or City personnel for to advance a candidate for elected office. That means not a minute of City time, and not a single email, for anything campaign related.

### **Political Solicitation of a Subordinate:**

Supervisors must be especially wary of campaign activities interfering with the public interest; given their status within the hierarchy of City government. City employees may feel an element of coercion at their supervisors’ requests — especially campaign-related ones — therefore, public servants may never (even on your own time!) ask a subordinate to make a campaign contribution or to participate in any campaign-related activity. After all, it can be tough to say “no” to your boss; doubly so, we imagine, when it’s about their political convictions. That’s a whole can of worms the law has circumvented simply by disallowing supervisors from making these requests of their subordinates.

**Coercing Political Activity:** If the law doesn’t like supervisors asking their subordinates to engage in campaign activity, we can probably assume the law doesn’t love the idea of a boss

just outright strong-arming someone into doing it. As such, Chapter 68 prohibits public servants from forcing or trying to force their subordinates to participate in any electoral activity, nor may they directly (or indirectly, you clever scofflaws!) threaten anyone or promise anything to anyone for the sake of obtaining a campaign contribution.

Of course, when you love democracy so much you decide to *really* get involved and run for elected office, you’re going to want to contact the Attorney of the Day (212-442-1400 or [AOD@coib.nyc.gov](mailto:AOD@coib.nyc.gov)) and drill into with a bit more specificity. But I hope, should that day come, that you will! Because effective, dedicated, and ethical public service is essential to our way of life as New Yorkers and an important part of what makes New York City the greatest city in the world! Is it a conflict of interest for the Conflicts of Interest Board to say that municipal ethics laws make New York City the greatest city in the history of human civilization? Perhaps you’ll find out in our next issue... of *The Ethical Times!*

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