

LAW OFFICE OF
HARRY KRESKY

250 WEST 57TH STREET, SUITE 2017, NEW YORK, NY 10107
TELEPHONE: 212-581-1516 FAX: 212-581-1352 E-MAIL: HKRESKY@HARRYKRESKYLAW.COM
Megan Zapata - Legal Assistant - mzapata@harrykreskylaw.com
Website: harrykreskylaw.com

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TESTIMONY OF HARRY KRESKY BEFORE THE NEW YORK CITY
CHARTER REVISION COMMISSION

Good evening. My name is Harry Kresky. I am counsel to the NYC Independence Party and IndependentVoting.org. I served on Mayor Bloomberg's 2002 Charter Revision Commission.

This is not the first time a Charter Revision Commission has before it structural fault lines in how our City's government is elected and how it functions. The 1989 Commission which rewrote the City's Charter was established in response to a U.S. Supreme Court ruling that found the structure of the City's government unconstitutional.¹ Specifically, the Court ruled that the powerful Board of Estimate which consisted of the three officials elected citywide, the Mayor, the Comptroller and the President of the City Council, along with each Borough President, violated the principle of one person one vote. The Court reasoned that this system of elections created a structural inequality in that the vote of a resident of the smallest Borough, Staten Island, counted more than that of a resident of the largest Borough, Brooklyn, as residents of each elected one member of the Board.

This Commission, which is charged with considering all aspects of the governmental structure created by the 1989 Commission, must now, to be true to its mandate and to live up to the standards set by its predecessor, address a structural inequality in how that government is elected. That inequality has to do with the exclusion of 1,398,513 voters from participating in the primary elections where almost all of our elected officials are chosen.

New York City functions as a one party town. The current enrollment figures are: 3,072,170 DP; 501,333 RP; 105,238 IP; 20,151 CP; 13,043 WFP and 751,442 non-aligned. For every municipal office with the exception of Mayor and a handful of City Council seats, the winner of the Democratic Party primary takes office, as the general election is not competitive.

However, of the three million enrolled Democrats eligible to vote in these primaries, only 13 percent of them voted in the 2009 primaries for City Council, 9.5

¹*Board of Estimate of City of New York v. Morris*, 489 U.S. 688 (1989)

percent of the overall electorate. In the hotly contested primaries for Comptroller and Public Advocate, the percentage was 12 percent of Democrats and 8 percent of the electorate. Moreover, primary voters, “primes,” tend to be the clubhouse and union activists and others who most closely identify with the Party organization. Put simply, our city is ruled by a small subset of voters who select the public officials who hold power over the rest of us.

How can this inequality be addressed? How can the effective disenfranchisement of the 1.4 million voters be redressed? As Bob Schieffer, the host of CBS’ *Face the Nation* editorialized on his March 28th broadcast, echoing the words of a former Democratic Secretary of State from Oregon whose views were published in the *New York Times*, the solution is to eliminate party primaries, and move towards a system that allows all voters to participate on an equal footing. In 2008 the Supreme Court upheld a “top two” system adopted by referendum in the State of Washington where all voters vote in a nonpartisan first round with candidates permitted to list their party preference.² The top two go onto to the general election ballot. It was a variant of this system that we’d hoped to offer New York City voters seven years ago.

Progressive change does not come easy. In 2003, the proponents of “top two” could not muster the votes needed to enact it. In New York City the battle against the party machines has been long and difficult. I would argue that the election of our mayor – for three successive terms – was an effort by the citizens to install a non-partisan government over the heads of the party machines. Moreover, in 2009 we elected our first independent Mayor. In 2010 we can take another step towards nonpartisan governance. I urge the Commission to take up the issue of nonpartisan municipal elections.

² *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442 (2008)