

How Weird New York Laws Keep Candidates on the Ballot

by Alana Mohamed



Alexandria Ocasio-Cortez and Joe Crowley will probably face off again in November since Crowley isn't likely to get his name removed from the ballot. Alamy; Getty Images

In June, Democratic Socialists of America candidate Alexandria Ocasio-Cortez stunned political observers by defeating longtime high-ranking Democratic congressman Joe

Crowley in the Democratic primary for the 14th Congressional District. In the midst of the million hot takes on what this all means ideologically for the future of the Democratic Party, something weird was happening at the nuts-and-bolts level of political process: Crowley is still slated to appear on the ballot in November on the Working Families Party ticket. Crowley said he accepted defeat and wasn't running against Ocasio-Cortez in the general election, but he also doesn't plan to take the steps necessary to remove his name from the ballot, which caused [a minor blowup between the two campaigns](#).

This gave the rest of the country another opportunity to look at New York state politics and say, "Huh?" Several quirks within New York's political culture, mainly the institution of *electoral fusion*, whereby a single candidate can appear multiple times on the ballot endorsed by multiple political parties, are to blame for this situation. Also in play is a law that was passed in the 1940s to deal with *another* insurgent socialist congressional candidate. The kicker is that this scenario might repeat itself when New York has its next primary in September. (Oh, in case you didn't know: There's going to be [another primary](#) in September.)

Fusion: A brief, weird history

Prior to the 1890s, electoral ballots, as we know them today, didn't exist: Voters would drop a piece of paper into a box that was placed at government-specified polling places. People could write their choices out longhand at home, but most submitted preprinted ballots handed out by political parties instead. Multiple parties could — and often did — endorse the same candidate, making [electoral fusion the norm in the nineteenth century](#). During an era where political parties were more about community identity and patronage networks than about coherent ideologies, a Democratic candidate, for example, could broker a deal to tap into the small but fervent Populist Party's voter pool.

At the end of the century, though, a shift to the so-called Australian ballot system that we know today occurred, where voters were given an identical ballot at a polling place that listed all the candidates for each office and then could choose one in secret. This transformation upended the American political system in many ways, one being that it gave state and local governments the ability to set the rules about who appeared on ballots, and allowed them to set up the system by which the parties choose their candidates. And in many states, the big parties aimed to put an end to fusion voting. As [one Republican state legislator in Minnesota put it](#), "We don't propose to allow the Democrats to make allies of the Populists, Prohibitionists, or any other party, and get up combination tickets against us. We can whip them single-handed, but don't intend to fight all creation." But in 1911, a [Court of Appeals struck down](#) an attempt to legislate away fusion in New York, which remains one of only eight states where fusion voting persists.

Old-time socialism

In the 1940s, New York's establishment took another stab at reigning in fusion voting. At the time, anyone could run in any party's primary or in *multiple* party primaries, in fact. Congressman Vito Marcantonio, an East Harlem socialist, identified as a member of the American Labor Party, which was widely viewed as a Communist front; but he routinely won Democratic and Republican primaries in his district during his six terms in office, much to the displeasure of those parties' leaders. In response, the New York legislature passed the [Wilson-Pakula Act](#), which forbade candidates from seeking a party's endorsement unless they were enrolled as a member of that party or had gotten the blessing of the party's leaders.

Now, big party candidates court third-party leadership to secure an endorsement, and to ensure they can appear on the ballot in more than one place. The goal for a third party, as explained in [a paper published by the Brennan Center for Justice at NYU's Law School](#), is usually not to run an opposing candidate, but to act as a sort of a loosely allied pressure group that steers a candidate's ideology toward one end of the political spectrum.

Unlike some other minor parties, the Working Families Party, founded in 1998, does not nominate candidates via primaries, but rather through an internal endorsement process that [progressive candidates are urged to apply for](#). In order for things to play out as intended, third parties like the WFP have to successfully predict who the major parties are going to nominate — often easy enough to do thanks to the strength of political machines. The candidates the WFP endorses are mostly Democrats, and even "establishment" New York Democrats like Crowley are progressive enough to get the WFP thumbs-up, as party founder Dan Cantor notes in a [Daily News op-ed](#) he wrote to apologize for not backing Ocasio-Cortez.

An establishment candidate ending up on the third-party line while the insurgent has major party backing is pretty much the opposite of what everyone wants. And indeed, the WFP has urged Crowley to withdraw from its ballot line. The problem is that this turns out to be much easier said than done.

Stuck on the ballot with you

If Crowley were in Texas, for example, he could get removed from the ballot just by [making a request in writing](#). But New York's rules are more strict; he has to [invalidate his candidacy somehow](#). In this instance, Crowley could accept the WFP's nomination in a different race that he knows he won't win. ([Rick Lazio did](#) this when he lost the 2010 GOP gubernatorial primary to Carl Paladino after he had already secured the Conservative Party nomination.) He could also register to vote in another state; like many members of Congress, he maintains a home in the Northern Virginia suburbs, so the WFP is actually urging him to register to vote there.

Gerald Benjamin, director of the Benjamin Center at State University of New York at New Paltz, says he suspects the system is set up this way to prevent political parties from swapping out candidates on a whim, possibly in defiance of primary voters.

At any rate, Crowley is on the record as not wanting to either fake-run for some other office or pretend-move to Virginia, saying he sees both as dishonest. (His third option, dying, similarly lacks appeal.) And so Crowley will be on the ballot in November. But since he's not actively campaigning, nobody seems to think he imperils Ocasio-Cortez's candidacy. But these convoluted threads are just the prologue to another, more important big fight: the gubernatorial election.

Nixon's the one...maybe

The WFP endorsed Andrew Cuomo in both his previous gubernatorial races, but the relationship between him and the party has never been *warm*, exactly. In 2010, he [only agreed to accept the party's endorsement if they signed off on his proposed budget](#), which included cuts to the unionized state workforce. But by 2018 he'd attracted enough labor allies to convince several big unions to [pull their support for the WFP](#). He also essentially [created the Women's Equality Party out of thin air](#), and [many suspect](#) he chose the name [to confuse voters](#). Not surprisingly, the WEP endorsed Cuomo this year.

Meanwhile, the WFP endorsed [Cynthia Nixon](#). But despite her insurgent politics, Nixon isn't planning on taking the fight to November if Cuomo defeats her in the September primary. Instead, it appears the WFP plans to run her as a candidate for state assembly against Democrat Deborah Glick — [whom Nixon would then campaign for](#), not against.

The reasons for this move have to do with the high stakes for the gubernatorial election. Despite the bad blood all around, neither Nixon nor the WFP particularly want to see her serving as a spoiler that throws the race to Republican Marcus Molinaro. But that outcome seems unlikely. The real issue is the future of the WFP. In order to maintain its place on the ballot in New York, [a party needs to receive at least 50,000 votes for governor](#). Nixon might be able to pull this off as a third-party candidate; but in order for the WFP to guarantee the votes it needs, it may be necessary for them make peace with Cuomo if he wins the primary. Polling currently has [him as the heavy favorite](#). If the WFP needs a lesson on what might happen if Nixon is on the ballot in the general election, the party need only remember 2002, when Cuomo abruptly quit the race for the Democratic gubernatorial nomination after securing the Liberal Party endorsement. In the general election, Cuomo [failed to win 50,000 votes as a Liberal and sent that venerable party into an effective demise](#), ironically helping solidify the WFP as the third-party voice of the left.

Cuomo will no doubt set a steep price for accepting the WFP's endorsement. And [as Nixon's camp has pointed out](#), Cuomo has received the endorsement of the WEP and the Independence Party, so *he'll* still be on the ballot if he loses the Democratic primary, and he's made no signal that he'll bow out gracefully. Things could still get weird.