

A 2020 Voters Guide To Energy Policies On The Ballot Nationwide

Forbes.com

October 30, 2020

Daniel b. Markind

This article originally ran on Forbes.com on October 30, 2020. All rights reserved.

Daniel B. Markind is a Forbes.com energy column contributor. The views expressed in this article are not to be associated with the views of Flaster Greenberg PC.

Every two years at election time, I publish a guide to the most interesting and important races around the country affecting energy. In 2020, however, energy, along with the coronavirus, is the election.

Already innumerable articles have been written, including by me, on the centrality of fracking to the presidential race. That being the case, the most interesting aspect of the 2020 election around the country is the absence of so many other energy-related topics on the various local ballots. Indeed, the most important energy-related election may be for a seat on the Texas Railroad Commission, which despite its name has little to do with railroads but regulates the state's oil and gas operations. More on that later.

It is hard to generalize about the reasons for so few energy-related ballot initiatives this cycle. What we do know is that, during the summer, when the ballots were finalized, the different interests that often put energy-related subjects on the ballots decided not to do so. In some cases, the stated reason was an unwillingness to risk confusing the issue with the presidency at stake. In others, proponents did not want to place the issue on the ballot during the COVID-19 pandemic.

One example of this is Colorado, where an anti-fracking ballot initiative failed to make the ballot. Colorado Rising, a local environmental group, sponsored a statewide ballot initiative in 2018 seeking to ban fracking. That initiative failed. They tried again earlier this year, but ultimately decided not to proceed, citing as the reason the potential health effects on their volunteers – from COVID-19 that is, not from fracking.

Similarly in Michigan, the Committee to Ban Fracking in Michigan tried to get its anti-fracking initiative on the Michigan ballot, but could not generate enough signatures in time. The group sued in Michigan state court seeking to force its way onto the ballot, but failed there also.

Without high profile ballot initiatives, two interesting races to watch will be for the Senate. These two races in energy producing states, Colorado and Montana, offer similar situations.

Continued

In Colorado, Republican Senator Cory Gardner is facing a strong challenge from former Democratic Governor John Hickenlooper. Gardner, who in many polls is the underdog just a week out, clearly is a fracking proponent. Hickenlooper's record is more conflicted. During his time as Governor, the geologically-trained Hickenlooper was one of the most prominent Democratic supporters of the energy industry. Now in his Senate race, Hickenlooper, much like Democratic Presidential candidate Joe Biden, has been trying to appeal to his party's left wing while not going too far to drive away moderates. It's a tricky balance that has Hickenlooper stressing the need to increase renewables and a desire to make fracking obsolete.

That same balance is being tried in Montana, where Democratic former Governor Steve Bullock is facing incumbent Senator Steve Haines. Unlike Hickenlooper, who as Governor threatened to take action against local Colorado communities that attempted to ban fracking, Bullock was less out front in favor of the energy industry as Governor. In 2017, Bullock launched a statewide climate assessment, and during a short-lived run for President in 2020 he promoted a vigorous clean energy agenda. One week before election day, Bullock is considered more of a longshot than Hickenlooper, but their campaigning during the last few days may give an indication of how the fracking debate is playing nationally, and not just in Pennsylvania where both Presidential candidates will be making multiple stops.

Without major ballot initiatives to discuss, as noted above, the most closely watched energy race will be for a seat on the Texas Railroad Commission (RRC), where Chrysta Castaneda seeks to become the first Democrat to win statewide office in Texas since 1994 and the first Democrat on the RRC since 1990. Her Republican opponent, Jim Wright, has run a lackluster campaign among reports that he violated RRC rules when he was the owner of a recyclable products company.

Central to the Texas election is the issue of "flaring", or the burning off into the atmosphere of any unwanted methane gas that is produced by the fracking process. Methane is a more powerful greenhouse gas than carbon dioxide, although the extent is a matter of debate. Castaneda wants to end exemptions for drillers who by Texas regulations and law are forbidden from flaring after the first ten days. She also wants to reinstate a process known as "proration", which in effect allocates how much gas and oil can be drilled and acts very much like a cartel. Some say that OPEC countries based itself on the Texas proration program, which was used frequently during the Great Depression of the 1930's, as a model when they established their cartel.

If Castaneda wins, expect more pushback from the RRC against the big energy companies. Whether that will be good or bad depends on your point of view. Regardless, while this race will not get much attention following the election, it should be watched by those who care about energy as it could have major future implications.

ATTORNEYS MENTIONED

Daniel Markind