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JOURNAL of LAW REFORM ONLINE

COMMENT

**GENTLE INTO THAT GOOD NIGHT: SUBSIDY EXPIRATION
PROVIDES A LESSON IN REFORM THROUGH INACTIONS**

Max Bulinski*

After thirty years, Congress let the federal subsidy for corn-based ethanol expire on December 31, 2011.¹ Although the influence of “Big Corn” is not as ubiquitously known as that of “Big Oil” or pharmaceuticals, the agricultural sector is consistently ranked among the top sectors for lobbying expenditures.² This political clout is well demonstrated by the extent of the former subsidy. The ethanol subsidy has been in existence for the last thirty years and cost taxpayers roughly six billion dollars in each recent year.³

It is unclear what prompted the end of the subsidy. Public opinion may have played a key role. The Tea Party opposed the subsidy on fiscally conservative grounds.⁴ Environmentalists have long opposed the subsidy. But until recently, the subsidy had been renewed continuously.

The political landscape has shifted significantly since then, and the subsidy of ethanol has fallen out of favor with many political candidates. When Tim Pawlenty declared his candidacy for the GOP nomination in Iowa, he did so in Iowa while opposing the corn subsidy, voicing his concern that government subsidy

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1. Robert Pear, *After Three Decades, Tax Credit for Ethanol Expires*, N.Y. TIMES, Jan. 2, 2012, at All, available at <http://www.nytimes.com/2012/01/02/business/energy-environment/after-three-decades-federal-tax-credit-for-ethanol-expires.html>.

2. Open Secrets, *Ranked Sectors*, INFLUENCE & LOBBYING, <http://www.opensecrets.org/lobby/top.php?indexType=c> (last visited Mar. 9, 2012).

3. Paul Ausick, *US Ethanol Subsidy is History*, 24/7 WALL ST. WIRE (Dec. 30, 2011, 8:00 AM), <http://247wallst.com/2011/12/30/us-ethanol-subsidy-is-history-adm-vlo-peix-gpre-czz-rds-a/>.

4. Conor Frierdersdorf, *Thank the Tea Party for the End of the Ethanol Tax Credit*, THE ATLANTIC (Jan. 3, 2012, 4:54 PM), <http://www.theatlantic.com/politics/archive/2012/01/thank-the-tea-party-for-the-end-of-the-ethanol-tax-credit/250823/>.

were fundamentally inconsistent with promoting competitive innovation in the industry.⁵ Evidently, Pawlenty's campaign thought enough of the voting public shared this opinion that the view would not be political suicide (although support for Pawlenty has dwindled and he is no longer running, this author attributes the decline to factors other than opposition to the corn ethanol subsidy). Opposition to the subsidy by a mainstream candidate for president marks a considerable change from the 2008 presidential election, where no major candidates opposed the subsidy.

But the subsidy did not end (at least not directly) because any particular political figure took a stand to eliminate it. After all the protests, lobbying, and meetings on Capitol Hill, Congress declined to extend the ethanol subsidy, which the *New York Times* states had become a "symbol of corporate welfare."⁶

To some observers, the expiration of the subsidy may seem functionally equivalent to Congress eliminating the funding. Letting the bill expire sends a message that it would be unfavorable to support an extension of the policy. It is a simple process of not doing anything (many would say this might be what Congress does best) and waiting for the days to pass until the term of the subsidy ends.

Voting to get rid of the policy signals an active disapproval of the program when weighed against competing priorities.⁷ Repealing the subsidy would have taken political capital, but would have saved money in the national treasury. Because saving tax dollars is a large motivation for cutting the subsidy in the first place, it might seem beneficial to cut the program as soon as public opinion was squarely behind removing it. Tim Pawlenty's speech in late May in Ohio serves as a rough estimate for when public opinion had turned against the ethanol subsidy: a presidential candidate who promises to remove the subsidy in a

5. See Kathie Obradovich, *Pawlenty's Straight Talk Not Huge Risk*, 2012 IOWA CAUCUSES (May 23, 2011, 4:17 PM), <http://caucuses.desmoinesregister.com/2011/05/23/pawlenty-straight-talk-not-a-huge-risk/>.

6. Pear, *supra* note 1.

7. See Lori Montgomery, *Senate Vote to Repeal Ethanol Tax Credit Fails, But Some in GOP Break Ranks*, THE WASHINGTON POST (June 14, 2011), http://www.washingtonpost.com/business/economy/senate-vote-to-repeal-ethanol-tax-credit-fails-but-some-in-gop-break-ranks/2011/06/14/AGydKEVH_story.html (discussing the national debt as a higher priority than the ethanol subsidy).

state whose agriculture is heavily corn-based, meeting minimal objections, might conclude the public is on his side. Ending the subsidy in June, rather than in December, would have saved taxpayers approximately \$3 billion.⁸

While that is only a drop in the national deficit bucket, it would be a start.

However, Congress rarely works as quickly as the public might like. Since the subsidy was close to expiration, maybe even those members of Congress who were truly opposed to the subsidy did not think the battle to repeal it was worth waging. Perhaps they left the subsidy out of deference to those who had enacted it. Whatever the reason, Congress took a passive role in the resolution of an issue that some congressional representatives recently have opposed actively.

It may not even be the case that the views of the American people have changed much with regard to subsidizing ethanol. In the current financial climate, much of the American constituency is worried about the economy. While the ethanol subsidy may have seemed a harmless or even beneficial expenditure last time it was passed, the fact that Congress let it expire may not signal a radical change in the perceived benefits of the program, but instead an increased awareness of budget problems and a movement toward a more conservative fiscal stance of voters.⁹

While the signal of disapproval for the subsidy could clearly have been stronger, the expiration of the subsidy for ethanol may be a response to the will of a large portion of the American public. In an era where the public is concerned about corporate control of the political process, this may be a good sign that shifts in priorities of the public still carry weight.

8. See Ausick, *supra* note 3.

9. See Felicia Sonmez, *Lawmakers Call for Repeal of Ethanol Subsidy*, THE WASHINGTON POST (Dec. 12, 2011), http://www.washingtonpost.com/blogs/2chambers/post/lawmakers-call-for-repeal-of-ethanol-subsidies/2011/12/12/gIQAVq6KqO_blog.html.