

The E-85 Illusion: A Law and Economics Critique of Year-Round Ethanol Mandates

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Overview

Capitol Hill is once again captivated by the allure of a seemingly straightforward populist fix: the push to permit year-round, uninhibited sales of high-blend ethanol, specifically E-85 (a fuel blend containing up to 85% ethanol). Proponents frame the issue as a win-win for the American consumer, pointing directly to the cheaper price displayed on the gas station rolling marquee. They promise that lifting seasonal restrictions will grant relief at the pump, foster American energy independence, and support rural economies.

However, as any student of law and economics understands, a superficial price tag rarely reflects true economic value. When the veil of political rhetoric is pierced and year-round E-85 access is subjected to rigorous cost-benefit analysis, the policy reveals itself to be economically inefficient, environmentally counterproductive, and structurally disruptive to global commodity markets.

The Operating Cost Illusion: Price vs. Energy Content

The primary argument for E-85 rests on a fundamental misunderstanding of retail pricing. While a gallon of E-85 may cost substantially less than a gallon of standard E-10 or pure petroleum gasoline, a consumer does not buy fuel simply to possess liquid; they buy it for the kinetic energy it yields.

From an engineering and thermodynamic perspective, ethanol possesses roughly 30% less energy density than pure gasoline. When blended at a concentration as high as 85%, the vehicle's fuel economy drops precipitously. Therefore, a rational economic actor must evaluate fuel not on a cost-per-gallon basis, but on an operating cost-per-mile basis.

$$\text{Cost per Mile} = \text{Price per Gallon} \backslash \text{Miles per Gallon (MPG)}$$

Because a vehicle running on E-85 must burn significantly more fuel to travel the same distance, the perceived savings at the pump disappear. If E-85 is priced 15% lower than regular gasoline but yields 25% fewer miles per gallon, the consumer is actually paying a premium for every mile driven. By codifying year-round availability without clarifying this energy deficit, Congress risks institutionalizing a consumer welfare loss disguised as inflation relief.

Distorting the Agriculture and Commodity Markets

Beyond the individual consumer, the expansion of high-blend ethanol policies creates severe distortionary effects throughout the broader economy. The federal government has long maintained a heavy hand in this sector via the Renewable Fuel Standard (RFS), which mandates

minimum blending volumes of renewable fuels (Schnepf, 2013). This artificial, state-mandated demand curve alters the organic price discovery mechanism of American agriculture.

When public policy structurally favors corn production for fuel over food, it triggers a cascade of unintended economic consequences:

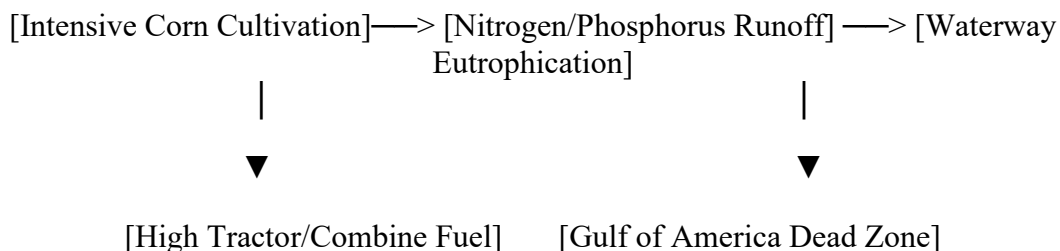
- **Acreage Reallocation:** Farmers respond to subsidized incentives by shifting acreage away from other essential crops—such as soybeans, wheat, and diverse produce—toward corn.
- **Food-vs-Fuel Conflict:** This artificial constriction of non-corn agricultural supply drives up the baseline costs of basic food staples.
- **Livestock Industry Pressures:** Because corn is a primary feedstock for the livestock sector, artificial inflation of corn prices cascades down the supply chain, raising operating costs for cattle, poultry, and dairy farmers, ultimately manifesting as higher grocery bills for families.

The law of unintended consequences operates mercilessly here: a policy intended to lower transportation costs for the working class directly inflates their cost of nourishment.

The Environmental Externalities of the "Green" Mandate

Supporters frequently wrap the year-round expansion of E-85 in environmental virtue, positioning it as a tool to curb greenhouse gas emissions. Yet, an honest accounting of the full lifecycle of ethanol production (what economists call the total external costs) dispels this green myth.

The environmental ledger of industrial corn-ethanol production is heavily in the red:



Furthermore, the seasonal restrictions that Congress is currently considering overturning were not instituted arbitrarily. They were put in place by the Environmental Protection Agency (EPA) because ethanol increases the vapor pressure of fuel blends. During high-temperature summer months, this leads to increased evaporative emissions, accelerating the formation of ground-level ozone and smog. Overriding these regulations by statutory fiat prioritizes rent-seeking political interests over sound environmental science.

The Myth of Geopolitical Self-Sufficiency and Gasoline Prices

Finally, we must address the geopolitical assertion that year-round E-85 will break the yoke of foreign oil dependence or shift the equilibrium of global oil pricing. This is a profound macroeconomic misunderstanding.

Crude oil is a highly fungible, globally traded commodity. Its price is determined by aggregate international supply and demand, heavily influenced by OPEC+ production quotas, industrial output in Asia, and global macroeconomic trends. The marginal increase in domestic ethanol consumption driven by year-round E-85 is a drop in the ocean of global energy markets; it possesses virtually zero leverage to alter the global price of a barrel of crude oil.

Moreover, the phrase "foreign oil dependence" is an anachronism. Thanks to the shale revolution and advanced hydraulic fracturing technologies, the United States has spent the last decade as a leading global producer of crude oil and petroleum liquids. True energy security is achieved by liberating domestic fossil fuel producers from overzealous regulatory bottlenecks—such as sluggish federal permitting and pipeline litigation—not by relying on a heavily subsidized, less efficient agricultural workaround.

Is it Consumer Fraud?

Bringing a consumer fraud lawsuit against the ethanol industry based on these arguments would face significant, likely insurmountable legal hurdles. While the economic, environmental, and thermodynamic critiques of E-85 are robust in a policy debate, translating them into a viable cause of action under consumer protection law runs directly into several core doctrines of American jurisprudence.

Deception" vs. legally mandated labels. To win a consumer fraud or deceptive trade practices claim, a plaintiff must show that a commercial actor made a material misrepresentation or omission likely to mislead a reasonable consumer. The ethanol industry and gas stations do not hide the nature of E-85. In fact, federal law explicitly mandates the disclosure of ethanol content. Under Federal Trade Commission (FTC) regulations, pumps dispensing E-85 must prominently display a black-and-orange label stating: "E-85 / Minimum 70% Ethanol."

Courts consistently rule that as long as an energy provider or automaker accurately reflects federally approved testing or disclosure standards, they cannot be held liable because a consumer failed to calculate their personal cost-per-mile. In consumer class actions concerning fuel economy courts look at whether the mandated disclosures were present. Because the lower energy density of ethanol is scientific fact, and the high concentration is explicitly labeled on the pump, courts expect the doctrine of *caveat emptor* (buyer beware) to apply to the consumer's mathematical calculations at the pump.

The Noerr-Pennington Doctrine: immunizing political advocacy. A major pillar of the user's argument focuses on how the ethanol industry lobbies Congress to secure year-round access and mandate blending volumes through the RFS. Under the Noerr-Pennington Doctrine, a legal precedent rooted in the First Amendment, private entities and trade associations enjoy absolute

immunity from liability when petitioning the government for legislation or regulations, even if that legislation would create a monopoly, distort markets, or cause economic harm to others.

The legal reality is that the ethanol industry's efforts to convince Congress to allow year-round E-85 is protected political speech. You cannot sue an industry for consumer fraud based on the arguments they make to lawmakers to pass a bill, because the First Amendment protects the right to petition the government.

The problem of "public injury" and lack of standing. To sue a private industry for the broad economic and environmental damages described (e.g., land reallocation, Gulf of America hypoxia, or food-vs-fuel inflation), a plaintiff must establish standing. Under Article III of the U.S. Constitution, a plaintiff must show a concrete, particularized, and actual injury caused by the defendant that can be redressed by the court. Higher grocery bills, environmental degradation, and macroeconomic market distortions are considered "generalized grievances." They affect society as a whole, rather than creating a specific, distinct tort against an individual consumer. In American law, broad socio-economic balances and environmental externalities are the exclusive domain of the legislative and executive branches (via agencies like the EPA or USDA), not the judiciary. A court will dismiss a lawsuit seeking to fix a "distorted commodity market" on the grounds that it is a non-justiciable political question.

Government-mandated disclaimers preempt state tort claims. If a consumer sued under state fraud (consumer protection) laws claiming, "*The industry failed to warn me that my fuel economy would drop by 25%*," the defense would immediately raise the doctrine of federal preemption. Because Congress and federal agencies (the FTC and EPA) have already established a comprehensive regulatory framework governing fuel labeling and automotive fuel economy standards, state-law tort claims that attempt to force additional, different warning labels on ethanol pumps are legally preempted. The industry is effectively complying with the exact legal requirements established by federal law.

Conclusion

As Congress deliberates on the year-round expansion of E-85, lawmakers must look past the immediate political optics of rural state solidarity and cheap pump prices. A rigorous legal and economic analysis reveals that E-85 mandates fail the test of efficiency. They burden the consumer with a higher cost-per-mile, inject artificial volatility into agricultural commodity markets, yield dubious environmental benefits, and offer no meaningful leverage in global energy geopolitics.

Rather than doubling down on the distortions of the RFS, the federal government should step back and allow alternative fuels to compete on an even, unsubsidized playing field based on their actual thermodynamic and economic merits.

In the meantime, "buyer beware."