



Insight

Farewell, Brown Bailout, Until We Meet Again

DOUGLAS HOLTZ-EAKIN | JANUARY 10, 2011

The 111th Congress is now history. Some of its legacy will live forever, the “stimulus” (still waiting for *that* to arrive), Obamacare, and Dodd-Frank (the mother of all rule-makings). Fortunately, other wrong-headed ideas have apparently fallen victim to the calendar and common sense. That does not mean that they should be forgotten. To do so would be to miss a chance to benefit from lessons learned and to leave the door open for their revival.

Take, for example, the so-called “Brown Bailout,” a provision in the Federal Aviation Administration reauthorization designed with seemingly only one goal in mind: to cripple FedEx to the benefit of rival UPS. Specifically, the House version of the FAA reauthorization (H.R. 915) contained:

(b) SPECIAL RULES FOR EXPRESS CARRIERS.—

*(1) IN GENERAL.—An employee of an express carrier shall be covered by this Act only if that employee is in a position that is eligible for certification under part 61, 63, or 65 of title 14, Code of Federal Regulations, and only if that employee performs duties for the express carrier that are eligible for such certification. **All other employees of an express carrier shall be covered by the provisions of the National Labor Relations Act (29 U.S.C. 151 et seq.).** [Emphasis added]*

At present, unionization at FedEx is governed by the Railway Labor Act, which was passed in 1926 to guard key network economic activities (at the time, railways) against the possibility of any single local unit holding the entire network hostage. Thus, to unionize under the RLA required a nationwide vote. In contrast, the FAA language would move the governing rules for ground pickup and delivery to the National Labor Relations Act, which governs UPS and permits unionization and bargaining to take place locality by locality.

The sole impact would be to empower unions and place FedEx’s integrated system at risk of disruption.

What can one learn from this episode?

First, it is symbolic of progressives’ efforts in the 111th Congress. Despite the obvious need for jobs to be the top priority, the vast majority of legislative effort was focused on economically damaging measures ranging from Waxman-Markey to health-care reform to the Brown Bailout.

Second, it is a tribute to crony capitalism. Rather than compete head-to-head on quality of service and price, UPS decided it would be easier to “compete” by having Congress do its bidding. (The Congressional Budget Office noted that H.R. 915 would impose \$139 million in costly private-sector mandates.) This coincided nicely with progressives’ belief in all things government-centric, including interference in the internal operations of private companies. But it has nothing to do with the competitive forces that have forged U.S. economic strength.

Finally, reflection about the issue suggests that the federal government is already way too involved in the transportation sector. Perhaps this is inevitable. The sector needs train stations, ports, airports, truck terminals, interchanges, and other large pieces of infrastructure that often have at least in part a public-purpose mission. But the policy goal should remain a multi-modal approach that is agnostic regarding how a particular persona or parcel arrives at a particular location. The fact that the debate centers on whether the government should regulate FedEx as a trucking company or an airline misses the basic insight that it should not care.

So, R.I.P. Brown Bailout — except that nothing ever dies in Washington (Exhibit A being Fannie Mae and Freddie Mac). So beware of the reincarnation of Brown Bailout. It is not a matter of if; it is a matter of when.

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