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On Examination, Will's Rationales Melt Away

RE: “CHERRY-PICKED Facts Heat Up Climate Debate” column by John Fleck

Regardless of “the whole George Will-climate change thing,” Will's latest columns strongly suggest that he should stick to writing about baseball. Ironically, a recent Will column describes Will's own argument.

The Constitution's takings clause states “nor shall private property be taken for public use, without just compensation.” Will urges the Supreme Court to approve a request by wealthy casinos to review an “Illinois case and reject the preposterous idea that money is not property within the scope of” this clause.

But as conservative National Review Online columnist Matthew Frank explains, Will is wrong: “'(M)oney is not property' where the takings clause is concerned (because) (t)he clause makes no sense otherwise.” If a court found that a tax was for a “public use” so “the taking was valid, then there still must be compensation -– and that will mean that the tax money, to the last penny, must be returned. This would mean that every valid tax would be canceled out as a taking.”

Will also misleadingly promoted a libertarian argument that the Emergency Economic Stabilization Act of 2008 is unconstitutional.

His selective quotation from a Jeffrey Rosen column ignores Rosen's conclusions that “it's not unconstitutional,” and “(t)he libertarian arguments are doomed – and the libertarians know it.”

Will erroneously claims that “since the New Deal era, few laws have been invalidated on the ground that they improperly delegated legislative powers.” In fact, the only time federal laws were invalidated on this ground was in 1935 by the political, anti-New Deal Supreme Court.

During more than seven decades since then, every federal challenge based on this judge-created doctrine has failed. Indeed, when a split D.C. circuit panel used it against Clean Air Act safeguards, the Supreme Court reversed 9-0-in the 2001 American Trucking case.

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