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Letter to the Editor

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## Flawed argument

George F. Will misleadingly presents as viable a libertarian argument that the Emergency Economic Stabilization Act of 2008 is unconstitutional because it violates the "nondelegation doctrine." ("Bailout Boundary Dispute," March 30).

Mr. 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 ever invalidated on this ground was in 1935, when the anti-New Deal Supreme Court used it to overturn a few Great Depression programs.

Every subsequent federal challenge based on this judge-created doctrine has failed during the more than seven decades since its one good year. 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.

The meaning of words depends on context. Mr. Will accurately describes a Jeffrey Rosen quotation about "risks for corruption and fraud" as making "a prudential point." However, because the column is about constitutional arguments, many people will misread it to imply that Mr. Rosen either supports nondelegation arguments or thinks they may succeed. In the same New Republic column, however, Mr. Rosen writes that "[t]he libertarian arguments are doomed - and the libertarians know it" and refers to "the fact that it's not unconstitutional."

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