

Fifth amendment to the constitution of the united states

[Politics](#)



The Fifth Amendment to the Constitution of the United States The Fifth Amendment to the Constitution states that no person shall be “deprived of life, liberty or property without due process of law” (Constitution: 11). But in the case of *Fuentes v Shevin*, appellants’ household goods were seized under the pre-judgment replevin provisions of Florida law.(www. justia. us). According to these provisions, the Sheriff could seize private property through a summary process, when an ex parte application was filed with the court clerk together with the posting of a bond for double the value of the property to be seized. The law further stated that the owners would have to repossess their property by putting in their claim within three days and paying double the value of the property with the Court. The Appellants filed their suit on the grounds that there had been an abuse of the Fourteenth Amendment, since their property had been seized without “due process of law” and this case has become a landmark case of sorts in ensuring that an opportunity is provided to the person whose property is being seized to appear before the Court and plead his case.

In the case of *Fuentes v Shevin*, the Court held in favor of the Appellants, finding that their Fifth and Fourteenth amendment rights had been violated under the Constitution, since their property had been seized without due processes of law. The Fifth Amendment to the U. S. Constitution guarantees this right, which indicates that every opportunity must be provided to the person whose property is being seized to justify his position. The judgment on this case spelt out the procedures associated with “due process” as follows: “

Parties whose rights are to be affected are entitled to be heard; and in order

that

they may enjoy that right they must first be notified..... It is equally

fundamental that

the right to notice and an opportunity to be heard " must be granted at a meaningful time

and in a meaningful manner." (Fuentes, 31)

Therefore, due process of law involves giving the affected party the right to a hearing before the property is seized. But a hearing is not always constituted to be a necessary requirement of execution of the due process clause. There are certain cases where an ex parte complaint may be sufficient procedural notice to justify seizure of property. In *Fuentes v Shevin*, these were identified as (a) being necessary to secure important Government interest (b) there is a special need for prompt seizure and (c) there is some overriding circumstance that justifies such an action.

In the case of *Mitchell v WT Grant Co*(1974) the Judge decided that the standards of *Fuentes v Shevin* did not apply in that case because there was no direct violation of the fourteenth amendment, while in the case of *North Georgia Connecticut v Doehr*(1991), Justice Powell stated that procedural due process could also be satisfied on the " factual basis of the need to resort to a remedy." Therefore in some cases, the procedural due process of law under the Fifth Amendment would be deemed to have been satisfied under extenuating circumstances. This is an extremely important aspect to be considered, because all too often, criminals have invoked the Fifth Amendment as a means to avoid answering for their crimes. Under the tough criminal atmosphere that prevails today, the question of the individual liberty

to remain silent under incriminating circumstances or to have the right to demand due process such as a hearing before legal action can be taken, is subject to debate. Individual freedom must be upheld at all costs, however there are certain constraints that must be imposed. When extenuating circumstances exist that necessitate action against a criminal, even through seizure of property, then there must be provision within the law to allow for those extenuating circumstances, in the interest of successful law enforcement. This is necessary, so that individuals avoid taking the Fifth Amendment as the cloak to escape indictment for their crimes.

References cited:

The Constitution of the United States of America. (1977) United States Government Printing Office, pp 11

Connecticut v. Doebr (1991). 501 US 1, 115 L. Ed. 2d 1 (1991)

Fuentes vs. Shevin. (1972). 407 U. S. 67. [Online] Available at: <http://justia.us/us/407/67/case.html>; accessed 11/1/2005

Mitchell v WT Grant Co. (1974) 416 US 600