The Burger Court Opinion Writing Database

Fuentes v. Shevin

407 U.S. 67 (1972)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

B
M

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 14, 1972

No. 70-5039 -- Fuentes v. Shevin
70-5138 -- Parham v. Cortese

Dear Potter:

You will recall I voted to affirm in this case and I remain of that view. At the moment I am "dissented out," but I will look forward to joining someone.

Regards,

WEB

Mr. Justice Stewart

Copies to Conference

B

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 31, 1972

Re: No. 70-5039 - Fuentes v. Shevin
No. 70-5138 - Parham v. Cortese

Dear Bill:

I have your memo of May 31 on the above case.

It is almost June and the the late-in-the-Term syndrome comes into play. If there is any "strategy" to reargue this case, I have not heard of it. Perhaps it is only "in the eye of the beholder"!

Regards,

WEB

Mr. Justice Douglas

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 31, 1972

No. 70-5039 -- Fuentes v. Shevin

Dear Bill:

Thank you for your May 31 note.

There may well be some value in a general policy such as you suggest. However, some cases should move fast while others at this level ought to "marinate" a bit. Time for cogitation has led me to change my views and join an opinion as to which my initial reaction was otherwise. It is hard to do these things by fixed "rules" but I incline toward your view that as a general proposition a dissenter probably should get on with his task.

As to Fuentes, I assume you read my brief note as an effort to relieve our pressures with a bit of flippancy. (Vera tells me I'm not very good at being flippant and that sometimes it is taken otherwise.) As to the "scuttlebutt", there is an abundance of it, mostly of the same quality as the nonsense we read in the various columns of the alleged "experts" who cover the Court for the media. Sometimes, I suspect that the foolish law clerk talk winds up in these columns, but the Republic will not falter nor we perish because of it.

Back to the other matter, I hope we can discuss a number of general "housekeeping" problems at a special "Tea Conference" soon. One of them: a "pooled" basic memo on argued cases done by a team drawn in rotation from all Chambers. Some may not like to join such a pool, but I am persuaded we are wasting a lot of law clerk time by duplicative effort.

Regards,

WEB

Mr. Justice Douglas

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 31, 1972

No. 70-5039 -- Fuentes v. Shevin

No. 70-5138 -- Parham v. Cortese

Dear Byron:

Please join me in your dissent.

Regards,

WEB

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 26, 1972

Dear Potter:

In No. 70-5039 - Fuentes v. Shevin and No. 70-5138 - Parham v. Cortese, please join me in your convincing opinion.

W. O. D.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 31, 1972

Dear Potter:

Re: Nos. 70-5039 and 70-5138

I am still with you in Fuentes and hope we push to get it down. It has been out a long time; and I believe the strategy is to have it reargued, to which I am opposed.

WOD

William O. Douglas

Mr. Justice Stewart

CC: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 31, 1972

Dear Chief Justice:

Re: No. 70-5039

I sent the note to Potter about Fuentes merely because of law clerk scuttlebutt that related not to you or any other member of the Court, but to the general idea that the case would be reargued.

My feelings about it are tied onto another matter which I will mention shortly.

Fuentes was argued on November 9, 1971. The first circulation was on February 26, 1972. Whether Potter has a Court for his opinion, I do not know. Before writing this note, I tried to reach him by phone but he was out and would not be back until later this afternoon, and by the time he got back it was likely I would be gone for the rest of the day. I wanted to follow up on the idea, hence this memo.

I have been planning to bring to the attention of the Conference, for discussion, a practice which was in vogue when I took my seat under Hughes and which has been more or less in vogue since that time, although some regimes have not observed it as faithfully as others. Stone, for example, meticulously observed it. Vinson, and to an extent Warren, did not. I refer to the policy that whenever an opinion for the Court is circulated that the dissenters drop everything else and prepare their dissents. It is, I think, a good practice as it enables the case to come to a rather rapid focus.

I think as far as this Term is concerned that Fuentes is a good example for the need to restore that practice. This is no criticism of anyone in particular. It is merely a suggestion that we try to improve the present system and I thought that Fuentes was perhaps a prime example.

William O. Douglas

The Chief Justice
CC: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 28, 1972

RE: No. 70-5039 & 70-5138 - Fuentes v. Shevin and Parham v. Cortese, et al.

Dear Potter:

It is a pleasure to join your very fine opinion in these cases.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

2nd DRAFT

Circulated: FEB 26 1972

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 70–5039 AND 70–5138

Margarita Fuentes et al., Appellants, 70–5039 *v.* Robert L. Shevin, Attorney General of Florida, et al. — On Appeal from the United States District Court for the Southern District of Florida.

Paul Parham et al., Appellants, 70–5138 *v.* Americo V. Cortese et al. — On Appeal from the United States District Court for the Eastern District of Pennsylvania.

[February —, 1972]

MR. JUSTICE STEWART delivered the opinion of the Court.

We here review the decisions of two three-judge federal district courts that upheld the constitutionality of Florida and Pennsylvania laws authorizing the summary seizure of goods or chattels in a person's possession under a writ of replevin. Both statutes provide for the issuance of writs ordering state agents to seize a person's possessions, simply upon the *ex parte* application of any other person who claims a right to them and posts a security bond. Neither statute provides for notice to be given to the possessor of the property, and neither statute gives the possessor an opportunity to challenge the seizure at any kind of prior hearing. The question is whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law.

3

TT, PS & WB have joined this pp 22, 24

PS

Please join me

TM

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

Circulated: ________

Recirculated: FEB 29 1972

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 70-5039 AND 70-5138

Margarita Fuentes et al., Appellants,
70-5039 v.
Robert L. Shevin, Attorney General of Florida, et al.

On Appeal from the United States District Court for the Southern District of Florida.

Paul Parham et al., Appellants,
70-5138 v.
Americo V. Cortese et al.

On Appeal from the United States District Court for the Eastern District of Pennsylvania.

[February —, 1972]

MR. JUSTICE STEWART delivered the opinion of the Court.

We here review the decisions of two three-judge federal district courts that upheld the constitutionality of Florida and Pennsylvania laws authorizing the summary seizure of goods or chattels in a person's possession under a writ of replevin. Both statutes provide for the issuance of writs ordering state agents to seize a person's possessions, simply upon the *ex parte* application of any other person who claims a right to them and posts a security bond. Neither statute provides for notice to be given to the possessor of the property, and neither statute gives the possessor an opportunity to challenge the seizure at any kind of prior hearing. The question is whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law.

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pp 18, 20, 24, 26, 27, 28

return

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

4th DRAFT

Circulated: _____

Recirculated: APR 25 1972

SUPREME COURT OF THE UNITED STATES

Nos. 70–5039 AND 70–5138

Margarita Fuentes et al., Appellants, 70–5039 *v.* Robert L. Shevin, Attorney General of Florida, et al.	On Appeal from the United States District Court for the Southern District of Florida.
Paul Parham et al., Appellants, 70–5138 *v.* Americo V. Cortese et al.	On Appeal from the United States District Court for the Eastern District of Pennsylvania.

[February —, 1972]

MR. JUSTICE STEWART delivered the opinion of the Court.

We here review the decisions of two three-judge federal district courts that upheld the constitutionality of Florida and Pennsylvania laws authorizing the summary seizure of goods or chattels in a person's possession under a writ of replevin. Both statutes provide for the issuance of writs ordering state agents to seize a person's possessions, simply upon the *ex parte* application of any other person who claims a right to them and posts a security bond. Neither statute provides for notice to be given to the possessor of the property, and neither statute gives the possessor an opportunity to challenge the seizure at any kind of prior hearing. The question is whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law.

Wm Taylor

Dec 11

B

p. 22

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

5th DRAFT

Circulated: _____

Recirculated: MAY 22 1972

SUPREME COURT OF THE UNITED STATES

Nos. 70–5039 AND 70–5138

Margarita Fuentes et al., Appellants, 70–5039 *v.* Robert L. Shevin, Attorney General of Florida, et al.	On Appeal from the United States District Court for the Southern District of Florida.
Paul Parham et al., Appellants, 70–5138 *v.* Americo V. Cortese et al.	On Appeal from the United States District Court for the Eastern District of Pennsylvania.

[May —, 1972]

MR. JUSTICE STEWART delivered the opinion of the Court.

We here review the decisions of two three-judge federal district courts that upheld the constitutionality of Florida and Pennsylvania laws authorizing the summary seizure of goods or chattels in a person's possession under a writ of replevin. Both statutes provide for the issuance of writs ordering state agents to seize a person's possessions, simply upon the *ex parte* application of any other person who claims a right to them and posts a security bond. Neither statute provides for notice to be given to the possessor of the property, and neither statute gives the possessor an opportunity to challenge the seizure at any kind of prior hearing. The question is whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law.

pp 3 6 27

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

6th DRAFT

From: Stewart, J.

Circulated: _____

Recirculated: MAY 30 1972

SUPREME COURT OF THE UNITED STATES

Nos. 70–5039 AND 70–5138

Margarita Fuentes et al., Appellants, 70–5039 *v.* Robert L. Shevin, Attorney General of Florida, et al.	On Appeal from the United States District Court for the Southern District of Florida.
Paul Parham et al., Appellants, 70–5138 *v.* Americo V. Cortese et al.	On Appeal from the United States District Court for the Eastern District of Pennsylvania.

[May —, 1972]

MR. JUSTICE STEWART delivered the opinion of the Court.

We here review the decisions of two three-judge federal district courts that upheld the constitutionality of Florida and Pennsylvania laws authorizing the summary seizure of goods or chattels in a person's possession under a writ of replevin. Both statutes provide for the issuance of writs ordering state agents to seize a person's possessions, simply upon the *ex parte* application of any other person who claims a right to them and posts a security bond. Neither statute provides for notice to be given to the possessor of the property, and neither statute gives the possessor an opportunity to challenge the seizure at any kind of prior hearing. The question is whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

Circulated: 5-29-72

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 70–5039 AND 70–5138

Margarita Fuentes et al., Appellants, 70–5039 *v.* Robert L. Shevin, Attorney General of Florida, et al. — On Appeal from the United States District Court for the Southern District of Florida.

Paul Parham et al., Appellants, 70–5138 *v.* Americo V. Cortese et al. — On Appeal from the United States District Court for the Eastern District of Pennsylvania.

[May —, 1972]

MR. JUSTICE WHITE, dissenting.

Because the Court's opinion and judgment improvidently, in my view, call into question important aspects of the statutes of almost all the States governing secured transactions and the procedure for repossessing personal property, I must dissent for the reasons which follow.

First: It is my view that when the federal actions were filed in these cases and the respective District Courts proceeded to judgment there were state court proceedings in progress It seems apparent to me that the judgments should be vacated and the District Courts instructed to reconsider these cases in the light of the principles announced in *Younger* v. *Harris,* 401 U. S. 37 (1971); *Samuels* v. *Mackell, id.,* at 66; *Boyle* v. *Landry, id.,* at 77; and *Perez* v. *Ledesma, id.,* at 82; cf. *Mitchum* v. *Foster,* — *post* —.

In No. 70-5039, the Florida statutes provide for the commencement of an action of replevin, with bond, by serving a writ summoning the defendant to answer the complaint. Thereupon the sheriff may seize the property, subject to repossession by defendant within three

pp 1, 6

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Nos. 70–5039 AND 70–5138

Circulated: _____

Recirculated: 6-8-72

Margarita Fuentes et al., Appellants, 70–5039 *v.* Robert L. Shevin, Attorney General of Florida, et al.	On Appeal from the United States District Court for the Southern District of Florida.
Paul Parham et al., Appellants, 70–5138 *v.* Americo V. Cortese et al.	On Appeal from the United States District Court for the Eastern District of Pennsylvania.

[May —, 1972]

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN join, dissenting.

Because the Court's opinion and judgment improvidently, in my view, call into question important aspects of the statutes of almost all the States governing secured transactions and the procedure for repossessing personal property, I must dissent for the reasons which follow.

First: It is my view that when the federal actions were filed in these cases and the respective District Courts proceeded to judgment there were state court proceedings in progress. It seems apparent to me that the judgments should be vacated and the District Courts instructed to reconsider these cases in the light of the principles announced in *Younger* v. *Harris*, 401 U. S. 37 (1971); *Samuels* v. *Mackell*, *id.*, at 66; *Boyle* v. *Landry*, *id.*, at 77; and *Perez* v. *Ledesma*, *id.*, at 82.

In No. 70–5039, the Florida statutes provide for the commencement of an action of replevin, with bond, by serving a writ summoning the defendant to answer the complaint. Thereupon the sheriff may seize the property, subject to repossession by defendant within three

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 29, 1972

Re: No. 70-5039 and 70-5138 - Fuentes v. Shelvin, etc.

Dear Potter:

Please join me.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 30, 1972

Re: No. 70-5039 - Fuentes v. Shevin
No. 70-5138 - Parham v. Cortese

Dear Byron:

Please join me in your dissent for these cases.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference