a replevin statute that authorized the seizure of property (here household goods purchased on an installment contract) simply upon the filing of an *ex parte* application and the posting of bond, has been limited,[827] so that an appropriately structured *ex parte* judicial determination before seizure is sufficient to satisfy due process.[828] Thus, laws authorizing sequestration, garnishment, or other seizure of property of an alleged defaulting debtor need only require that (1) the creditor furnish adequate security to protect the debtor's interest, (2) the creditor make a specific factual showing before a neutral officer or magistrate, not a clerk or other such functionary, of probable cause to believe that he is entitled to the relief requested, and (3) an opportunity be assured for an adversary hearing promptly after seizure to determine the merits of the controversy, with the burden of proof on the creditor.[829]

Similarly, applying the *Mathews v. Eldridge* standard in the context of government employment, the Court has held, albeit by a combination of divergent opinions, that the interest of the employee in retaining his job, the governmental interest in the expeditious removal of unsatisfactory employees, the avoidance of administrative

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[827] *Fuentes* was an extension of the *Sniadach* principle to all "significant property interests" and thus mandated pre-deprivation hearings. *Fuentes* was a decision of uncertain viability from the beginning, inasmuch as it was four-to-three; argument had been heard prior to the date Justices Powell and Rehnquist joined the Court, hence neither participated in the decision. *See Di-Chem*, 419 U.S. at 616–19 (Justice Blackmun dissenting); *Mitchell*, 416 U.S. at 635–36 (1974) (Justice Stewart dissenting).

[828] Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974); North Georgia Finishing v. Di-Chem, 419 U.S. 601 (1975). More recently, the Court has applied a variant of the Mathews v. Eldridge formula in holding that Connecticut's prejudgment attachment statute, which "fail[ed] to provide a preattachment hearing without at least requiring a showing of some exigent circumstance," operated to deny equal protection. Connecticut v. Doehr, 501 U.S. 1, 18 (1991). "[T]he relevant inquiry requires, as in *Mathews*, first, consideration of the private interest that will be affected by the prejudgment measure; second, an examination of the risk of erroneous deprivation through the procedures under attack and the probable value of additional or alternative safeguards; and third, in contrast to *Mathews*, principal attention to the interest of the party seeking the prejudgment remedy, with, nonetheless, due regard for any ancillary interest the government may have in providing the procedure or forgoing the added burden of providing greater protections." 501 U.S. at 11.

[829] Mitchell v. W.T. Grant Co., 416 U.S. at 615–18 (1974) and at 623 (Justice Powell concurring). *See also* Arnett v. Kennedy, 416 U.S. 134, 188 (1974) (Justice White concurring in part and dissenting in part). Efforts to litigate challenges to seizures in actions involving two private parties may be thwarted by findings of "no state action," but there often is sufficient participation by state officials in transferring possession of property to constitute state action and implicate due process. *Compare* Flagg Bros. v. Brooks, 436 U.S. 149 (1978) (no state action in warehouseman's sale of goods for nonpayment of storage, as authorized by state law), *with* Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982) (state officials' joint participation with private party in effecting prejudgment attachment of property); *and* Tulsa Professional Collection Servs. v. Pope, 485 U.S. 478 (1988) (probate court was sufficiently involved with actions activating time bar in "nonclaim" statute).