

# Appendix Y

## *Taxonomy of Due Process Manifesting Strict Scrutiny in the Middle Forum* *Harvard Law Review Vol. 122, No. 8 (June., 2009)*

(Facts Necessary to Understand Petitions)

*or as parts of the record that may be essential to understand the matters set forth in the petition*

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**FACT:** The Court have come to recognize that two aspects of due process exist: procedural due process and substantive due process. However, this has not been a visible fact in this case.

**FACT:** Taxonomy is the classification of things according to their natural relationships. The term is commonly used to refer to the classification of plants and animals, but animate objects, inanimate objects, places, and events, may be classified according to some taxonomic scheme. Source: <https://definitions.uslegal.com/t/taxonomy/>

**FACT:** In general, *substantive due process* prohibits the government from curtailing or infringing on fundamental constitutional liberties. By contrast, *procedural due process* refers to the *procedural* limitations placed on the manner in which a law, governmental policy or of its legal practices is administered, applied, or enforced.

**FACT:** *Substantive due process*, in United States constitutional law, is a principle allowing courts to protect certain fundamental rights from government interference, even if procedural protections are present or the rights are not specifically mentioned elsewhere in the U. S. Constitution. The Court has identified the basis for such protection from the due process clauses of the Fifth and Fourteenth Amendments to the Constitution, which prohibit the federal and state governments, respectively, from depriving any person of "life, liberty, or property, without due process of law." Substantive due process demarcates the line between the acts that courts hold is subject to government regulation or legislation and the acts that courts place beyond the reach of governmental interference. Whether the Fifth and/or Fourteenth Amendments were intended to serve that function continues to be a matter of scholarly as well as judicial discussion and dissent. <sup>[1]</sup>

**FACT:** Substantive due process is to be distinguished from procedural due process. A distinction arises from the words "of law" in the phrase "due process of law." <sup>[2]</sup> Procedural due process protects individuals from the coercive power of government by ensuring that adjudication processes, under valid laws, are fair and impartial. Such protections, for example, include sufficient and timely notice on why a party is required to appear before a court or other administrative body, the right to an impartial trier of fact and trier of law, and the right to give testimony and present relevant evidence at hearings. <sup>[2]</sup>

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<sup>[1]</sup> Ryan C. Williams (2010). *"The One and Only Substantive Due Process Clause"*. Yale Law J.

<sup>[2]</sup> Timothy Sandefur (2010). *The Right to Earn a Living: Economic Freedom and the Law*

In contrast, substantive due process protects individuals against majoritarian policy enactments that exceed the limits of true governmental authority: courts may find that a majority's enactment is not law and cannot be enforced as such, regardless of whether the processes of enactment and enforcement were actually fair.<sup>[2]</sup>

**FACT:** The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without *due process* of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the *Due Process Clause*, to describe a legal obligation of all states.

**LAW:** The Fifth Amendment of the U.S. Constitution provides,

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

**FACT:** *Due Process Clause:*

The guarantee of due process for all persons requires the government to respect all rights, guarantees, and protections afforded by the U.S. Constitution and all applicable statutes before the government can deprive any person of life, liberty, or property. Due process essentially guarantees that a party will receive a fundamentally fair, orderly, and just judicial proceeding. While the Fifth Amendment only applies to the federal government, the identical text in the Fourteenth Amendment explicitly applies this due process requirement to the states as well.

**FACT:** The procedural due process aims to ensure fundamental fairness by guaranteeing a party the right to be heard, ensuring that the parties receive proper notification throughout the litigation, and ensures that the adjudicating court has the appropriate jurisdiction to render a judgment. Meanwhile, substantive due process has developed during the 20th century as protecting those substantive rights so fundamental as "*immunities that are valid as against the federal government by force of the specific pledges of particular amendments [Footnote 2] have been found to be implicit in the concept of ordered liberty.*" Substantive due process as a "*principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.*" *Palko v. Connecticut*, 302 U.S. 319, 324 (1937).

**FACT:** Petitioner is entitled to *substantive due process* prohibiting government from curtailing or infringing on fundamental constitutional liberties, or by contrast, *procedural due process of law*.

*See: Strict Scrutiny in the Middle Forum*, Harvard Law Review, Vol. 122, No. 8 (Jun., 2009), pp. 2140-2161. Published by: The Harvard Law Review Association, page ct. 22 plus 2 cover sheets.

*See: "The One and Only Substantive Due Process Clause". Yale Law Journal*, page ct. 105