

## Appendix to *Following Lower-Court Precedent*

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This Appendix provides additional details on the cases listed in Table 1, in particular the sources of the information regarding the lower-court conflict differential and any additional notes on how to understand each conflict.

Lower-Court Conflict Differential	Case (Term), Citation	Page(s) Discussing Conflict	Notes
<b>Supreme Court Agreement with Lopsided Majority, by Size of Differential</b>			
Large but unspecified	<i>Martel v Clair</i> (OT11), 132 S Ct 1276 (2012).	1285, 1287.	The case concerned both a legal standard and the application of that standard to the facts at hand. The Court stated that the lower courts were unanimous on the first issue, but no exact count was given.
Large but unspecified	<i>CSX Transportation, Inc v McBride</i> (OT10), 131 S Ct 2630 (2011).	2636, 2640.	The exact count is unclear from the decision. According to the Court, every federal court of appeals to have addressed the matter was in accord, as was the large majority (though not all) of state high courts that considered the issue.
Large but unspecified	<i>Borough of Duryea, Pennsylvania v Guarnieri</i> (OT10), 131 S Ct 2488 (2011).	2491–93, 2495.	The Court repeatedly emphasized that the court below was alone among the circuits but presented a facially nonexhaustive list of the courts on the majority side of the

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- split.
- +12 (12–0) *Hosanna-Tabor Evangelical Lutheran Church and School v Equal Employment Opportunity Commission* (OT11), 132 S Ct 694 (2012). 705 & n 2, 707. The case concerned both whether there exists a “ministerial exception” to antidiscrimination laws and whether that exception applied to the facts at hand. The 12–0 split concerns the former issue.
- +10 (10–0) *Lafler v Cooper* (OT11), 132 S Ct 1376 (2012). 1385, 1388. The case concerned both whether a criminal defendant’s receipt of poor advice resulting in the rejection of a plea agreement can constitute ineffective assistance of counsel (the subject of the lopsided split reported here) as well as the proper remedy.
- +10 (11–1) *United States v Tinklenberg* (OT10), 131 S Ct 2007 (2011). 2014.
- +8 (11–3) *Perry v New Hampshire* (OT11), 132 S Ct 716 (2012). 723 n 4. The split involved several federal courts of appeals as well as many state courts. Removing the state courts would leave a 3–2 split in favor of the opposite side.
- +7 (7–0) *Coleman v Court of Appeals of Maryland* (OT11), 132 S Ct 1327 (2012). 1332.
- +7 (7–0) *Harrington v Richter* (OT10), 131 S Ct 770 (2011). 784, 787. The case concerned both a general legal question about the standard of review (the subject of the lopsided split reported here) and the question whether relief should be granted in the particular case at hand.
- +6 (8–2) *Abbott v United States* (OT10), 131 S Ct 18 (2010). 24 & n 2.
- +5 (6–1) *Sossamon v Texas* 1657 n 3.

	(OT10), 131 S Ct 1651 (2011).		
+4 (5–1)	<i>Peugh v United States</i> (OT12), 133 S Ct 2072 (2013).	2079 n 1.	
+4 (6–2)	<i>Kasten v Saint-Gobain Performance Plastics Corp</i> (OT10), 131 S Ct 1325 (2011).	1330.	The dissent decided the case on slightly different grounds than the majority and thus did not directly address the topic of the 6–2 split. Although it is not clear from the Court’s opinions, the dissent’s resolution of that distinct question departed from the position of most lower courts. See <i>Kasten v Saint-Gobain Performance Plastics Corp</i> , 585 F3d 310, 312–13 (7th Cir 2009) (Rovner dissenting from the denial of rehearing en banc).

**Supreme Court Disagreement with Lopsided Majority, by Size of Differential**

Large but unspecified	<i>Bailey v United States</i> (OT12), 133 S Ct 1031 (2013).	1037 (majority); 1048 (Breyer dissenting).	The majority mentioned a split but did not list the courts involved. Justice Breyer’s dissent stated that his opinion was in accord with “almost every” court of appeals and cited seven circuits on his side, but two of the citations are to unpublished opinions, and he did not claim unanimity.
-6 (1–7)	<i>Taniguchi v Kan Pacific Saipan, Ltd</i> (OT11), 132 S Ct 1997 (2012).	2000–01 & n 1 (majority); 2008–11 (Ginsburg dissenting).	The majority observed that the circuits were split but cited only two conflicting decisions. Justice Ginsburg’s dissent revealed a broader split. She also cited many district court decisions.
-5 (majority disagreed with both)	<i>Cullen v Pinholster</i> (OT10), 131 S Ct 1388 (2011).	1417 (Sotomayor dissenting).	The case concerned both a general legal question about the standard of review and the

sides of a  
split)

question whether relief should be granted in the case at hand. On the first question, most justices disagreed (in various opinions) with both sides of the circuit split, departing from the views of at least five circuits (and in fact likely more).

-4 (4–8) *Florence v Board of Chosen Freeholders of County of Burlington* (OT11), 132 S Ct 1510 (2012). 1515, 1518 (majority); 1530 (Breyer dissenting).

This case is harder to score than most. The majority opinion acknowledged “some” courts on the other side but claimed support from all four to have addressed the question in the last decade. Justice Breyer’s dissent listed eight circuits in support (though his opinion said “at least seven”) and three on the other side.

-4 (0–4) *Williamson v Mazda Motor of America, Inc* (OT10), 131 S Ct 1131 (2011). 1135.

-4 (0–4) *Kiobel v Royal Dutch Petroleum Co* (OT12), 133 S Ct 1659 (2013). 1675 (Breyer concurring in the judgment).

The majority did not discuss a split, but Justice Breyer’s dissent claimed support from at least four circuits on the question of extraterritoriality.

-4 (majority disagreed with both sides of a split) *FTC v Actavis, Inc* (OT12), 133 S Ct 2223 (2013). 2230.

The majority charted a middle course that disagreed with both sides of a circuit split, departing from the views of at least four circuits that had taken more categorical views on either side.

-4 (2–6) *Mims v Arrow Financial Services, LLC* (OT11), 132 S Ct 740 (2012). 747.