

STATE-COURT DEPARTURES FROM THE SUPREME COURT: A COMPREHENSIVE SURVEY

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INTRODUCTION

This Article canvasses the 1,013 cases from the U.S. Supreme Court to which Westlaw has assigned “Not Followed on State Law Grounds” tags (so far)⁶, about a thirtieth of the 29,956 cases in Harold J. Spaeth’s database on the Court.⁷ These cases feature a total of 1,868 such departures. California has the most, 114, followed by Texas with 92, Washington with 89, New York with 73, and Massachusetts and Hawaii with 67 each. All states have some departures; Maine at six has the fewest. The cases triggering the most departure are *Daubert v. Merrell Dow Pharmaceuticals, Inc.*

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⁶ Data are current up to December 1, 2021.

⁷ See Harold Spaeth, *The Supreme Court Database*, WASH. UNIV. L., <http://scdb.wustl.edu/about.php> [<https://perma.cc/2WML-ZUXD>] (last visited Dec. 1, 2021).

(1993), on the standards for expert testimony, with 24 departing states,⁸ *United States v. Leon* (1984), establishing a good-faith exception to the exclusionary rule, with 17,⁹ *California v. Hodari D.* (1991), holding that a chase is not a Fourth Amendment “seizure,” with 16,¹⁰ *Illinois Brick Co. v. Illinois* (1977), denying antitrust standing to indirect purchasers, with 15,¹¹ and *Moran v. Burbine* (1986), allowing police not to inform a suspect that a lawyer wanted to talk to him, with 14.¹²

A predecessor article¹³ canvassed the Court’s 342 Fourth Amendment cases, finding 306 departures from 125 cases. The Fourth Amendment subset and the full set feature the same overall statistically-significant correlations with characteristics of Supreme Court cases: older cases have fewer departures, those with dissents have more, and those that have been overruled do not significantly correlate with departures. The Fourth Amendment subset features very different statistically-significant correlations, however, with state characteristics. A state’s population was not significantly correlated with Fourth Amendment departures but is the most significant factor for overall departures. State income is significantly related to overall departure but not Fourth Amendment departure, while a state’s partisan tilt is related in both areas. States’ methods of choosing judges, however, are not significantly correlated with either overall or Fourth Amendment departures.

Part II of this Article sets out the data on which cases provoke departure. Part III sets out a statistical analysis of the properties of cases that correlate significantly with departure, breaking down the overall data into the Spaeth database’s fourteen broad topic areas. Part IV looks at a statistical analysis of the characteristics of states that correlate with departures.

⁸ *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

⁹ *United States v. Leon*, 468 U.S. 897 (1984).

¹⁰ *California v. Hodari D.*, 499 U.S. 621 (1991).

¹¹ *Ill. Brick Co. v. Illinois*, 431 U.S. 720 (1977).

¹² *Moran v. Burbine*, 475 U.S. 412 (1986).

¹³ LaKeith Faulkner & Christopher R. Green, *State-Constitutional Departures from the Supreme Court: The Fourth Amendment*, 89 MISS. L.J. 197 (2020).

I. THE CASES PROVOKING DEPARTURE

We organize our departures by the number of states that depart. Of the 1,013 cases provoking state-law departure, 685 involve only a single state. All fifty states have some solo departures. California departs alone from 53 cases,¹⁴ Texas 41,¹⁵

¹⁴ *Hohorst v. Hamburg-Am. Packet Co.*, 148 U.S. 262 (1893); *Keogh v. Chi. & Nw. Ry. Co.*, 260 U.S. 156 (1922); *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923); *Wickwire v. Reinecke*, 275 U.S. 101 (1927); *Minneapolis, St. Paul & Sault Ste. Marie Ry. Co. v. Moquin*, 283 U.S. 520 (1931); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944); *Comm'r v. Ct. Holding Co.*, 324 U.S. 331 (1945); *Roviaro v. United States*, 353 U.S. 53 (1957); *Gori v. United States*, 367 U.S. 364 (1961); *Lanza v. New York*, 370 U.S. 139 (1962); *Pate v. Robinson*, 383 U.S. 375 (1966); *Chapman v. California*, 386 U.S. 18 (1967); *Walker v. City of Birmingham*, 388 U.S. 307 (1967); *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481 (1968); *Commonwealth Coatings Corp. v. Cont'l Cas. Co.*, 393 U.S. 145 (1968); *North Carolina v. Pearce*, 395 U.S. 711 (1969); *United States v. Marion*, 404 U.S. 307 (1971); *United States v. Bishop*, 412 U.S. 346 (1973); *Gustafson v. Florida*, 414 U.S. 260 (1973); *Drope v. Missouri*, 420 U.S. 162 (1975); *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975); *Diamond Nat'l Corp. v. State Bd. of Equalization*, 425 U.S. 268 (1976); *Frank Lyon Co. v. United States*, 435 U.S. 561 (1978); *Douglas Oil Co. of Cal. v. Petrol Stops Nw.*, 441 U.S. 211 (1979); *NLRB v. Yeshiva Univ.*, 444 U.S. 672 (1980); *NLRB v. Hendricks Cnty. Rural Elec. Membership Corp.*, 454 U.S. 170 (1981); *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982); *United States v. Boyle*, 469 U.S. 241 (1985); *Dow Chem. Co. v. United States*, 476 U.S. 227 (1986); *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409 (1986); *Richardson v. Marsh*, 481 U.S. 200 (1987); *Perry v. Thomas*, 482 U.S. 483 (1987); *Lowenfield v. Phelps*, 484 U.S. 231 (1988); *Wheat v. United States*, 486 U.S. 153 (1988); *Clark v. Jeter*, 486 U.S. 456 (1988); *Taylor v. United States*, 495 U.S. 575 (1990); *Schad v. Arizona*, 501 U.S. 624 (1991); *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457 (1997); *Am. Tel. & Tel. Co. v. Cent. Off. Tel., Inc.*, 524 U.S. 214 (1998); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999); *Martin v. Hadix*, 527 U.S. 343 (1999); *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483 (2001); *Alabama v. Shelton*, 535 U.S. 654 (2002); *Cook Cnty. v. United States ex rel. Chandler*, 538 U.S. 119 (2003); *Woodford v. Garceau*, 538 U.S. 202 (2003); *Whorton v. Bockting*, 549 U.S. 406 (2007); *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008); *Indiana v. Edwards*, 554 U.S. 164 (2008); *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009); *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170 (2011); *Nev. Comm'n on Ethics v. Carrigan*, 564 U.S. 117 (2011); *Blueford v. Arkansas*, 566 U.S. 599 (2012); *Elonis v. United States*, 575 U.S. 723 (2015).

¹⁵ *Carpenter v. Longan*, 83 U.S. 271 (1872); *S. Pac. Terminal Co. v. Interstate Commerce Comm'n*, 219 U.S. 498 (1911); *Hicks v. Guinness*, 269 U.S. 71 (1925); *Deutsche Bank Filiale Nurnberg v. Humphrey*, 272 U.S. 517 (1926); *Hayman v. City of Galveston*, 273 U.S. 414 (1927); *Bull v. United States*, 295 U.S. 247 (1935); *Yearsley v. W. A. Ross Constr. Co.*, 309 U.S. 18 (1940); *Fed. Hous. Admin. v. Burr*, 309 U.S. 242 (1940); *Brinegar v. United States*, 338 U.S. 160 (1949); *Smith v. United States*, 348 U.S. 147 (1954); *United States v. Calderon*, 348 U.S. 160 (1954); *Draper v. United States*, 358 U.S. 307 (1959); *Mayer v. City of Chicago*, 404 U.S. 189 (1971); *Kirby v. Illinois*, 406 U.S. 682 (1972); *Bronston v. United States*, 409 U.S. 352 (1973); *Preiser v. Rodriguez*, 411

U.S. 475 (1973); *Doyle v. Ohio*, 426 U.S. 610 (1976); *Scott v. United States*, 436 U.S. 128 (1978); *Sanabria v. United States*, 437 U.S. 54 (1978); *Leroy v. Great W. United Corp.*, 443 U.S. 173 (1979); *Adams v. Texas*, 448 U.S. 38 (1980); *Fletcher v. Weir*, 455 U.S. 603 (1982); *United States v. Villamonte-Marquez*, 462 U.S. 579 (1983); *Nix v. Williams*, 467 U.S. 431 (1984); *Franchise Tax Bd. of Cal. v. USPS*, 467 U.S. 512 (1984); *Cooper v. Fed. Rsrv. Bank of Richmond*, 467 U.S. 867 (1984); *Maryland v. Macon*, 472 U.S. 463 (1985); *Randall v. Loftsgaarden*, 478 U.S. 647 (1986); *Loeffler v. Frank*, 486 U.S. 549 (1988); *Boyle v. United Techs. Corp.*, 487 U.S. 500 (1988); *Mansell v. Mansell*, 490 U.S. 581 (1989); *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1994); *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18 (1994); *Dr.'s Assocs., Inc. v. Casarotto*, 517 U.S. 681 (1996); *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43 (1997); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999); *Richardson v. United States*, 526 U.S. 813 (1999); *USPS v. Flamingo Indus. (USA) Ltd.*, 540 U.S. 736 (2004); *Fed. Express Corp. v. Holowecki*, 552 U.S. 389 (2008); *Regalado Cuellar v. United States*, 553 U.S. 550 (2008); *Kansas v. Nebraska*, 574 U.S. 445 (2015).

New York 40,¹⁶ Massachusetts 28,¹⁷ Washington 27,¹⁸ Maryland 24,¹⁹ Hawaii 23,²⁰ Illinois 22,²¹ Pennsylvania 20,²² Louisiana 19,²³

¹⁶ *Fong Yue Ting v. United States*, 149 U.S. 698 (1893); *Bugajewitz v. Adams*, 228 U.S. 585 (1913); *United Mine Workers of Am. v. Coronado Coal Co.*, 259 U.S. 344 (1922); *Salem Tr. Co. v. Mfrs.' Fin. Co.*, 264 U.S. 182 (1924); *Fleisher Eng'g & Constr. Co. v. United States ex rel. Hallenbeck*, 311 U.S. 15 (1940); *Cox v. New Hampshire*, 312 U.S. 569 (1941); *United States v. Di Re*, 332 U.S. 581 (1948); *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952); *Miller v. United States*, 357 U.S. 301 (1958); *United States v. Tateo*, 377 U.S. 463 (1964); *Estes v. Texas*, 381 U.S. 532 (1965); *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972); *Branzburg v. Hayes*, 408 U.S. 665 (1972); *Chaffin v. Stynchcombe*, 412 U.S. 17 (1973); *Cupp v. Murphy*, 412 U.S. 291 (1973); *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974); *Pell v. Procunier*, 417 U.S. 817 (1974); *Saxbe v. Wash. Post Co.*, 417 U.S. 843 (1974); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974); *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975); *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977); *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978); *Gannett Co. v. DePasquale*, 443 U.S. 368 (1979); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980); *J. Truett Payne Co. v. Chrysler Motors Corp.*, 451 U.S. 557 (1981); *Harris v. Rivera*, 454 U.S. 339 (1981); *Am. Soc'y of Mech. Eng'rs, Inc. v. Hydrolevel Corp.*, 456 U.S. 556 (1982); *Blue Shield of Va. v. McCreedy*, 457 U.S. 465 (1982); *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596 (1982); *Michigan v. Long*, 463 U.S. 1032 (1983); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985); *Texas v. McCullough*, 475 U.S. 134 (1986); *McNeil v. Wisconsin*, 501 U.S. 171 (1991); *Lockhart v. Fretwell*, 506 U.S. 364 (1993); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17 (1993); *Jones v. United States*, 527 U.S. 373 (1999); *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526 (1999); *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477 (2010); *Janus Cap. Grp., Inc. v. First Derivative Traders*, 564 U.S. 135 (2011); *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318 (2012).

¹⁷ *Lindsey v. Miller's Lessee*, 31 U.S. (6 Pet.) 666 (1832); *Armstrong v. Morrill*, 81 U.S. (14 Wall.) 120 (1871); *Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572 (1942); *Armour & Co. v. Wantock*, 323 U.S. 126 (1944); *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697 (1945); *Krulewitch v. United States*, 336 U.S. 440 (1949); *Leland v. Oregon*, 343 U.S. 790 (1952); *Still v. Norfolk & W. Ry. Co.*, 368 U.S. 35 (1961); *Bond v. Floyd*, 385 U.S. 116 (1966); *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528 (1972); *United States v. Santana*, 427 U.S. 38 (1976); *Singleton v. Wulff*, 428 U.S. 106 (1976); *United States v. Grayson*, 438 U.S. 41 (1978); *Deposit Guar. Nat'l Bank of Jackson v. Roper*, 445 U.S. 326 (1980); *United States v. Hasting*, 461 U.S. 499 (1983); *Pulliam v. Allen*, 466 U.S. 522 (1984); *Maine v. Taylor*, 477 U.S. 131 (1986); *Braswell v. United States*, 487 U.S. 99 (1988); *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153 (1988); *Begier v. IRS*, 496 U.S. 53 (1990); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993); *United States v. Watts*, 519 U.S. 148 (1997); *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394 (2006); *Berghuis v. Thompkins*, 560 U.S. 370 (2010); *Tapia v. United States*, 564 U.S. 319 (2011); *Perry v. New Hampshire*, 565 U.S. 228 (2012); *Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49 (2013); *Navarette v. California*, 572 U.S. 393 (2014).

¹⁸ *Edgington v. United States*, 164 U.S. 361 (1896); *Fairchild v. Hughes*, 258 U.S. 126 (1922); *New York v. United States*, 326 U.S. 572 (1946); *Michelson v. United States*, 335 U.S. 469 (1948); *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975); *Craig v. Boren*, 429 U.S. 190 (1976); *United States v. Ramsey*, 431 U.S. 606 (1977); *United States v. LaSalle Nat'l Bank*, 437 U.S. 298 (1978);

Duren v. Missouri, 439 U.S. 357 (1979); Rose v. Lundy, 455 U.S. 509 (1982); NLRB v. Transp. Mgmt. Corp., 462 U.S. 393 (1983); Allen v. Wright, 468 U.S. 737 (1984); Trans World Airlines, Inc. v. Thurston, 469 U.S. 111 (1985); New Jersey v. T.L.O., 469 U.S. 325 (1985); Maleng v. Cook, 490 U.S. 488 (1989); Florida v. Jimeno, 500 U.S. 248 (1991); Fex v. Michigan, 507 U.S. 43 (1993); Staples v. United States, 511 U.S. 600 (1994); Chandler v. Miller, 520 U.S. 305 (1997); Kansas v. Hendricks, 521 U.S. 346 (1997); Wyoming v. Houghton, 526 U.S. 295 (1999); Martinez v. Ct. of Appeal, 528 U.S. 152 (2000); Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967 (2005); Krupski v. Costa Crociere S.p.A., 560 U.S. 538 (2010); Musacchio v. United States, 577 U.S. 237 (2016); Utah v. Strieff, 579 U.S. 232 (2016).

¹⁹ Fisher v. Shropshire, 147 U.S. 133 (1893); Shepard v. United States, 290 U.S. 96 (1933); Boseman v. Conn. Gen. Life Ins. Co., 301 U.S. 196 (1937); Cobblestick v. United States, 309 U.S. 323 (1940); Briggs v. Pa. R.R. Co., 334 U.S. 304 (1948); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949); Pierson v. Ray, 386 U.S. 547 (1967); United States v. Ryan, 402 U.S. 530 (1971); Serfass v. United States, 420 U.S. 377 (1975); J. W. Bateson Co. v. United States *ex rel.* Bd. of Trs. of the Nat'l Automatic Sprinkler Indus. Pension Fund, 434 U.S. 586 (1978); Carey v. Piphus, 435 U.S. 247 (1978); Touche Ross & Co. v. Redington, 442 U.S. 560 (1979); Kissinger v. Reps. Comm. for Freedom of the Press, 445 U.S. 136 (1980); McLaughlin v. United States, 476 U.S. 16 (1986); Anderson v. Creighton, 483 U.S. 635 (1987); Graham v. Connor, 490 U.S. 386 (1989); Will v. Mich. Dep't of State Police, 491 U.S. 58 (1989); Carden v. Arkoma Assocs., 494 U.S. 185 (1990); Howlett v. Rose, 496 U.S. 356 (1990); Collins v. Youngblood, 497 U.S. 37 (1990); Cal. Dep't of Corrs. v. Morales, 514 U.S. 499 (1995); Zedner v. United States, 547 U.S. 489 (2006); Williams v. Illinois, 567 U.S. 50 (2012); Oxford Health Plans LLC v. Sutter, 569 U.S. 564 (2013).

²⁰ United States v. Atkinson, 297 U.S. 157 (1936); Jones v. United States, 362 U.S. 257 (1960); United States v. Ventresca, 380 U.S. 102 (1965); Terry v. Ohio, 392 U.S. 1 (1968); Turner v. United States, 396 U.S. 398 (1970); H. K. Porter Co. v. NLRB, 397 U.S. 99 (1970); Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973); United States v. 12 200-Ft. Reels of Super 8mm. Film, 413 U.S. 123 (1973); United States v. Orito, 413 U.S. 139 (1973); United States v. Calandra, 414 U.S. 338 (1974); Muniz v. Hoffman, 422 U.S. 454 (1975); United States v. Chadwick, 433 U.S. 1 (1977); United States v. N.Y. Tel. Co., 434 U.S. 159 (1977); Burks v. United States, 437 U.S. 1 (1978); Marek v. Chesny, 473 U.S. 1 (1985); Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437 (1987); United States v. Owens, 484 U.S. 554 (1988); Alabama v. Smith, 490 U.S. 794 (1989); Wilson v. Arkansas, 514 U.S. 927 (1995); Portuondo v. Agard, 529 U.S. 61 (2000); Brigham City v. Stuart, 547 U.S. 398 (2006); Michigan v. Fisher, 558 U.S. 45 (2009); Ryburn v. Huff, 565 U.S. 469 (2012).

²¹ Barth v. Clise, 79 U.S. (12 Wall.) 400 (1870); Dollar Sav. Bank v. United States, 86 U.S. (19 Wall.) 227 (1874); Kerrison v. Stewart, 93 U.S. 155 (1876); Davis v. United States, 160 U.S. 469 (1895); Landis v. N. Am. Co., 299 U.S. 248 (1936); SEC v. Variable Annuity Life Ins. of Am., 359 U.S. 65 (1959); United Steelworkers of Am. v. Enter. Wheel & Car Corp., 363 U.S. 593 (1960); Costello v. United States, 365 U.S. 265 (1961); Rinaldi v. Yeager, 384 U.S. 305 (1966); SEC v. United Benefit Life Ins. Co., 387 U.S. 202 (1967); Haines v. Kerner, 404 U.S. 519 (1972); F. D. Rich Co. v. United States *ex rel.* Indus. Lumber Co., 417 U.S. 116 (1974); Iannelli v. United States, 420 U.S. 770 (1975); Nixon v. Fitzgerald, 457 U.S. 731 (1982); United States v. Rylander, 460 U.S. 752 (1983); Minnesota v. Murphy, 465 U.S. 420 (1984); Richardson v. United States, 468 U.S. 317 (1984); Lozada v. Deeds, 498 U.S. 430 (1991); Landgraf v. USI Film Prods., 511 U.S. 244

(1994); *Castro v. United States*, 540 U.S. 375 (2003); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011); *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016).

²² *Lopez v. United States*, 373 U.S. 427 (1963); *Hoffa v. United States*, 385 U.S. 293 (1966); *United States v. O'Brien*, 391 U.S. 367 (1968); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970); *Hall v. Cole*, 412 U.S. 1 (1973); *Broadrick v. Oklahoma*, 413 U.S. 601 (1973); *United States v. Caceres*, 440 U.S. 741 (1979); *Associated Gen. Contractors, Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519 (1983); *Allen v. Hardy*, 478 U.S. 255 (1986); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *United States v. Hays*, 515 U.S. 737 (1995); *Washington v. Glucksberg*, 521 U.S. 702 (1997); *Nat'l Credit Union Admin. v. First Nat'l Bank & Tr. Co.*, 522 U.S. 479 (1998); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442 (2008); *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009); *McQuiggin v. Perkins*, 569 U.S. 383 (2013); *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220 (2014); *Integrity Staffing Sols., Inc. v. Busk*, 574 U.S. 27 (2014); *Collins v. Virginia*, 138 S. Ct. 1663 (2018).

²³ *1 Marshall Field & Co. v. Clark*, 143 U.S. 649 (1892); *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303 (1927); *Edwards v. California*, 314 U.S. 160 (1941); *Hoffman v. Blaski*, 363 U.S. 335 (1960); *NAACP v. Button*, 371 U.S. 415 (1963); *Harper v. Va. Bd. of Elections*, 383 U.S. 663 (1966); *Hunter v. Erickson*, 393 U.S. 385 (1969); *Police Dep't of Chicago v. Mosley*, 408 U.S. 92 (1972); *DeFunis v. Odegaard*, 416 U.S. 312 (1974); *Richardson v. Ramirez*, 418 U.S. 24 (1974); *City of New Orleans v. Dukes*, 427 U.S. 297 (1976); *Mathews v. Lucas*, 427 U.S. 495 (1976); *Orr v. Orr*, 440 U.S. 268 (1979); *Allen v. McCurry*, 449 U.S. 90 (1980); *Plyler v. Doe*, 457 U.S. 202 (1982); *Jones v. United States*, 463 U.S. 354 (1983); *Landreth Timber Co. v. Landreth*, 471 U.S. 681 (1985); *Gould v. Rufenacht*, 471 U.S. 701 (1985); *Porter v. Nussle*, 534 U.S. 516 (2002).

Mississippi²⁴ and Ohio²⁵ 18, Connecticut,²⁶ Florida,²⁷ and Oregon²⁸
17, Wisconsin²⁹ and Utah³⁰ 16, Minnesota 15,³¹ Alaska,³²

²⁴ Southard v. Russell, 57 U.S. 547 (1853); Choctaw, Okla. & Gulf R.R. Co. v. Mackey, 256 U.S. 531 (1921); Screws v. United States, 325 U.S. 91 (1945); Cleveland v. United States, 329 U.S. 14 (1946); United States v. S. Buffalo Ry. Co., 333 U.S. 771 (1948); Urie v. Thompson, 337 U.S. 163 (1949); Toolson v. N.Y. Yankees, Inc., 346 U.S. 356 (1953); James v. United States, 366 U.S. 213 (1961); Foman v. Davis, 371 U.S. 178 (1962); Rinaldi v. United States, 434 U.S. 22 (1977); Ridgway v. Ridgway, 454 U.S. 46 (1981); United States v. Gouveia, 467 U.S. 180 (1984); Michigan v. Jackson, 475 U.S. 625 (1986); McNally v. United States, 483 U.S. 350 (1987); Peretz v. United States, 501 U.S. 923 (1991); Hopkins v. Reeves, 524 U.S. 88 (1998); Kansas v. Marsh, 548 U.S. 163 (2006); Abbott v. United States, 562 U.S. 8 (2010).

²⁵ Dodge v. Woolsey, 59 U.S. 331 (1855); Watson v. Jones, 80 U.S. 679 (1871); Bogk v. Gassert, 149 U.S. 17 (1893); McCarthy v. Arndstein, 262 U.S. 355 (1923); United States *ex rel.* Tenn. Valley Auth. v. Powelson, 319 U.S. 266 (1943); Rochin v. California, 342 U.S. 165 (1952); Cheff v. Schnackenberg, 384 U.S. 373 (1966); Witherspoon v. Illinois, 391 U.S. 510 (1968); United States v. Russell, 411 U.S. 423 (1973); Jones v. Wolf, 443 U.S. 595 (1979); USPS Bd. of Governors v. Aikens, 460 U.S. 711 (1983); Sec'y of State v. Joseph H. Munson Co., 467 U.S. 947 (1984); Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470 (1987); Granfinanciera, S.A. v. Nordberg, 492 U.S. 33 (1989); Whitmore v. Arkansas, 495 U.S. 149 (1990); O'Connor v. Consol. Coin Caterers Corp., 517 U.S. 308 (1996); Oregon v. Ice, 555 U.S. 160 (2009); Burrage v. United States, 571 U.S. 204 (2014).

²⁶ Hague v. Comm. for Indus. Org., 307 U.S. 496 (1939); Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975); Wainwright v. Sykes, 433 U.S. 72 (1977); Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37 (1983); Ariz. Governing Comm. for Tax Deferred Annuity & Deferred Comp. Plans v. Norris, 463 U.S. 1073 (1983); McDonald v. Smith, 472 U.S. 479 (1985); Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788 (1985); Cleavinger v. Saxner, 474 U.S. 193 (1985); Lewis v. Jeffers, 497 U.S. 764 (1990); Connecticut v. Doehr, 501 U.S. 1 (1991); Int'l Soc'y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672 (1992); McKennon v. Nashville Banner Publ'g Co., 513 U.S. 352 (1995); Ark. Educ. Television Comm'n v. Forbes, 523 U.S. 666 (1998); Fed. Election Comm'n v. Akins, 524 U.S. 11 (1998); Garcetti v. Ceballos, 547 U.S. 410 (2006); United States v. Marcus, 560 U.S. 258 (2010); Henderson v. United States, 568 U.S. 266 (2013).

²⁷ Campbell v. Holt, 115 U.S. 620 (1885); S. Ry. Co. v. Gray, 241 U.S. 333 (1916); United States v. Norris, 300 U.S. 564 (1937); Johnson v. N.Y., New Haven & Hartford R.R. Co., 344 U.S. 48 (1952); Corey v. United States, 375 U.S. 169 (1963); Snyder v. Harris, 394 U.S. 332 (1969); United States v. Thirty-Seven Photographs, 402 U.S. 363 (1971); Zahn v. Int'l Paper Co., 414 U.S. 291 (1973); United States v. Feola, 420 U.S. 671 (1975); Mathews v. Eldridge, 424 U.S. 319 (1976); United States v. Donovan, 429 U.S. 413 (1977); Ohio v. Johnson, 467 U.S. 493 (1984); Caldwell v. Mississippi, 472 U.S. 320 (1985); Buckley v. Fitzsimmons, 509 U.S. 259 (1993); McIntyre v. Ohio Elections Comm'n, 514 U.S. 334 (1995); Raleigh v. Ill. Dep't of Revenue, 530 U.S. 15 (2000); Scott v. Harris, 550 U.S. 372 (2007).

²⁸ Hayburn's Case, 2 U.S. (2 Dall.) 408 (1792); Stroud v. United States, 251 U.S. 15 (1919); Chaplinsky v. New Hampshire, 315 U.S. 568 (1942); Roth v. United States, 354 U.S. 476 (1957); Whipple v. Comm'r, 373 U.S. 193 (1963); Estelle v. Gamble, 429 U.S. 97 (1976); Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977); Steagald v. United States, 451 U.S. 204 (1981); United States v. Knotts, 460 U.S. 276 (1983); United States

v. Rodgers, 461 U.S. 677 (1983); Kirby Forest Indus., Inc. v. United States, 467 U.S. 1 (1984); United States v. Karo, 468 U.S. 705 (1984); Ohio Forestry Ass'n v. Sierra Club, 523 U.S. 726 (1998); Carmell v. Texas, 529 U.S. 513 (2000); United States v. Drayton, 536 U.S. 194 (2002); United States v. Gonzalez-Lopez, 548 U.S. 140 (2006); Brendlin v. California, 551 U.S. 249 (2007).

²⁹ Smith v. United States, 30 U.S. (5 Pet.) 292 (1831); United States v. Lawton, 110 U.S. 146 (1884); Fillippon v. Albion Vein Slate Co., 250 U.S. 76 (1919); Shields v. United States, 273 U.S. 583 (1927); Brooks v. United States, 337 U.S. 49 (1949); Rogers v. United States, 422 U.S. 35 (1975); Henderson v. Morgan, 426 U.S. 637 (1976); Rhode Island v. Innis, 446 U.S. 291 (1980); Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980); Herman & MacLean v. Huddleston, 459 U.S. 375 (1983); Moskal v. United States, 498 U.S. 103 (1990); McCleskey v. Zant, 499 U.S. 467 (1991); Hudson v. United States, 522 U.S. 93 (1997); Allentown Mack Sales & Serv., Inc. v. NLRB, 522 U.S. 359 (1998); SEC v. Edwards, 540 U.S. 389 (2004); Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005).

³⁰ New Orleans Ins. Co. v. Piaggio, 83 U.S. (16 Wall.) 378 (1872); Parissi v. Telechron, Inc., 349 U.S. 46 (1955); La Buy v. Howes Leather Co., 352 U.S. 249 (1957); Stovall v. Denno, 388 U.S. 293 (1967); Lemon v. Kurtzman, 403 U.S. 602 (1971); Harris v. Oklahoma, 433 U.S. 682 (1977); Greenholtz v. Inmates of the Neb. Penal & Corr. Complex, 442 U.S. 1 (1979); Murphy v. Hunt, 455 U.S. 478 (1982); California v. Beheler, 463 U.S. 1121 (1983); Berkemer v. McCarty, 468 U.S. 420 (1984); New York v. Class, 475 U.S. 106 (1986); Jones v. Thomas, 491 U.S. 376 (1989); Am. Trucking Ass'ns v. Smith, 496 U.S. 167 (1990); Sandin v. Conner, 515 U.S. 472 (1995); Black & Decker Disability Plan v. Nord, 538 U.S. 822 (2003); Dist. Att'y Off. for the Third Jud. Dist. v. Osborne, 557 U.S. 52 (2009).

³¹ Wilcox v. Ex'rs of Plummer, 29 U.S. 172 (1830); 2 Duncan v. Louisiana, 391 U.S. 145 (1968); 3 Humphrey v. Cady, 405 U.S. 504 (1972); 4 Alexander v. U.S. Dep't of Hous. & Urb. Dev., 441 U.S. 39 (1979); 5 Harris v. McRae, 448 U.S. 297 (1980); 6 Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473 (1981); 7 Container Corp. of Am. v. Franchise Tax Bd., 463 U.S. 159 (1983); 8 AT&T Techs., Inc. v. Comm'n Workers of Am., 475 U.S. 643 (1986); 9 Kentucky v. Stincer, 482 U.S. 730 (1987); 10 Austin v. United States, 509 U.S. 602 (1993); 11 Robinson v. Shell Oil Co., 519 U.S. 337 (1997); 12 Johnson v. Fankell, 520 U.S. 911 (1997); 13 Almandarez-Torres v. United States, 523 U.S. 224 (1998); 14 Cleveland v. Pol'y Mgmt. Sys. Corp., 526 U.S. 795 (1999); Bush v. Palm Beach Cnty. Canvassing Bd., 531 U.S. 70 (2000).

³² Rutland Marble Co. v. Ripley, 77 U.S. 339 (1870); Sanders v. United States, 373 U.S. 1 (1963); Nat'l Bd. of Young Men's Christian Ass'ns v. United States, 395 U.S. 85 (1969); Oregon v. Hass, 420 U.S. 714 (1975); Bowen v. USPS, 459 U.S. 212 (1983); Chappell v. Wallace, 462 U.S. 296 (1983); Dixon v. United States, 465 U.S. 482 (1984); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Webster v. Reprod. Health Servs., 492 U.S. 490 (1989); Darby v. Cisneros, 509 U.S. 137 (1993); Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997); Saucier v. Katz, 533 U.S. 194 (2001); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); Clingman v. Beaver, 544 U.S. 581 (2005).

Kentucky,³³ New Jersey,³⁴ and Missouri³⁵ 14, Iowa³⁶ and Vermont³⁷ 12, Kansas,³⁸ Montana,³⁹ North Carolina,⁴⁰ and

³³ Confiscation Cases, 74 U.S. 454 (1869); *Costello v. United States*, 350 U.S. 359 (1956); *Peyton v. Rowe*, 391 U.S. 54 (1968); *Bullington v. Missouri*, 451 U.S. 430 (1981); *Polk Cnty. v. Dodson*, 454 U.S. 312 (1981); *McKaskle v. Wiggins*, 465 U.S. 168 (1984); *Arizona v. Rumsey*, 467 U.S. 203 (1984); *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984); *Green v. Mansour*, 474 U.S. 64 (1985); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996); *Verizon Md. Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635 (2002); *Burton v. Stewart*, 549 U.S. 147 (2007).

³⁴ *New Orleans-Belize Royal Mail & Cent. Am. S.S. Co. v. United States*, 239 U.S. 202 (1915); *Standard Oil Co. of N.J. v. United States*, 340 U.S. 54 (1950); *Libby, McNeill & Libby v. United States*, 340 U.S. 71 (1950); *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959); *Cardwell v. Lewis*, 417 U.S. 583 (1974); *Parker v. Randolph*, 442 U.S. 62 (1979); *United States v. Mendenhall*, 446 U.S. 544 (1980); *United States v. Payner*, 447 U.S. 727 (1980); *Goodman v. Lukens Steel Co.*, 482 U.S. 656 (1987); *Coleman v. Thompson*, 501 U.S. 722 (1991); *Lewis v. United States*, 518 U.S. 322 (1996); *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999); *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007); *Boyle v. United States*, 556 U.S. 938 (2009).

³⁵ *Ewell v. Daggs*, 108 U.S. 143 (1883); *Gulf, Colo. and Santa Fe Ry. Co. v. Texas*, 204 U.S. 403 (1907); *Grigsby v. Russell*, 222 U.S. 149 (1911); *Tex. & New Orleans R.R. Co. v. Sabine Tram Co.*, 227 U.S. 111 (1913); *Balt. & Ohio Sw. R.R. Co. v. Settle*, 260 U.S. 166 (1922); *United States v. Erie R.R. Co.*, 280 U.S. 98 (1929); *Herron v. S. Pac. Co.*, 283 U.S. 91 (1931); *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947); *Byrd v. Blue Ridge Rural Elec. Coop., Inc.*, 356 U.S. 525 (1958); *NLRB v. United Ins. Co. of Am.*, 390 U.S. 254 (1968); *Bd. of Educ. v. Allen*, 392 U.S. 236 (1968); *United States v. Lane*, 474 U.S. 438 (1986); *Ortega-Rodriguez v. United States*, 507 U.S. 234 (1993); *Carr v. United States*, 560 U.S. 438 (2010).

³⁶ *Gray v. Powell*, 314 U.S. 402 (1941); *Ross v. Bernhard*, 396 U.S. 531 (1970); *Tollett v. Henderson*, 411 U.S. 258 (1973); *South Dakota v. Opperman*, 428 U.S. 364 (1976); *Eastex, Inc. v. NLRB*, 437 U.S. 556 (1978); *Illinois v. Lafayette*, 462 U.S. 640 (1983); *Heckler v. Chaney*, 470 U.S. 821 (1985); *Liparota v. United States*, 471 U.S. 419 (1985); *United States v. Benchimol*, 471 U.S. 453 (1985); *Cent. Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164 (1994); *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417 (1995); *Berghuis v. Smith*, 559 U.S. 314 (2010).

³⁷ *1 Freedman's Sav. & Tr. Co. v. Shepherd*, 127 U.S. 494 (1888); *USDA v. Moreno*, 413 U.S. 528 (1973); *Lewis v. City of New Orleans*, 415 U.S. 130 (1974); *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125 (1976); *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256 (1979); *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456 (1981); *Robbins v. California*, 453 U.S. 420 (1981); *Key Tronic Corp. v. United States*, 511 U.S. 809 (1994); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995); *Romer v. Evans*, 517 U.S. 620 (1996); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Maryland v. King*, 569 U.S. 435 (2013).

³⁸ *Parker v. Brown*, 317 U.S. 341 (1943); *Carter v. Illinois*, 329 U.S. 173 (1946); *Mempa v. Rhay*, 389 U.S. 128 (1967); *California v. Green*, 399 U.S. 149 (1970); *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988); *Gomez v. United States*, 490 U.S. 858 (1989); *Schlup v. Delo*, 513 U.S. 298 (1995); *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830 (1996); *Stogner v. California*, 539 U.S. 607 (2003); *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007); *Dorsey v. United States*, 567 U.S. 260 (2012).

³⁹ *Burke v. S. Pac. R.R. Co.*, 234 U.S. 669 (1914); *Blodgett v. Silberman*, 277 U.S. 1 (1928); *United States v. Carolene Prods. Co.*, 304 U.S. 144 (1938); *Booth v. Maryland*, 482 U.S. 496 (1987); *Tex. State Tchrs. Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782 (1989); *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827 (1990); *Johnson v. Jones*, 515 U.S. 304 (1995); *Lonchar v. Thomas*, 517 U.S. 314 (1996); *Felker v. Turpin*, 518 U.S. 651 (1996); *Daniels v. United States*, 532 U.S. 374 (2001); *Lackawanna Cnty. Dist. Att'y v. Coss*, 532 U.S. 394 (2001).

⁴⁰ *Helvering v. Mitchell*, 303 U.S. 391 (1938); *United States v. Gagnon*, 470 U.S. 522 (1985); *Richardson-Merrell Inc. v. Koller*, 472 U.S. 424 (1985); *Rose v. Clark*, 478 U.S. 570 (1986); *Sch. Bd. of Nassau Cnty., Fla. v. Arline*, 480 U.S. 273 (1987); *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22 (1988); *Parker v. Dugger*, 498 U.S. 308 (1991); *United States v. R.L.C.*, 503 U.S. 291 (1992); *Sullivan v. Louisiana*, 508 U.S. 275 (1993); *TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443 (1993); *Ark. Dep't of Health and Hum. Servs. v. Ahlborn*, 547 U.S. 268 (2006).

Tennessee⁴¹ 11, Georgia,⁴² New Mexico,⁴³ and Nevada⁴⁴ 10, Michigan⁴⁵ and Virginia⁴⁶ 9, Arkansas⁴⁷ and South Carolina⁴⁸ 8,

⁴¹ *Sabariego v. Maverick*, 124 U.S. 261 (1888); *Rosenblatt v. Baer*, 383 U.S. 75 (1966); *Steffel v. Thompson*, 415 U.S. 452 (1974); *United Hous. Found., Inc. v. Forman*, 421 U.S. 837 (1975); *North v. Russell*, 427 U.S. 328 (1976); *Hobby v. United States*, 468 U.S. 339 (1984); *U.S. Dep't of Just. v. Repts. Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *U.S. Dep't of Def. v. FLRA*, 510 U.S. 487 (1994); *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397 (1997); *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424 (2001); *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002).

⁴² *Holt v. United States*, 218 U.S. 245 (1910); *Camp v. Gress*, 250 U.S. 308 (1919); *Schmerber v. California*, 384 U.S. 757 (1966); *United States v. Wade*, 388 U.S. 218 (1967); *United States v. Gaddis*, 424 U.S. 544 (1976); *Franks v. Delaware*, 438 U.S. 154 (1978); *Ward v. Rock Against Racism*, 491 U.S. 781 (1989); *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158 (2001); *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006); *Holland v. Florida*, 560 U.S. 631 (2010).

⁴³ *Hume v. United States*, 132 U.S. 406 (1889); *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974); *Patterson v. New York*, 432 U.S. 197 (1977); *New York v. Ferber*, 458 U.S. 747 (1982); *United States v. Jacobsen*, 466 U.S. 109 (1984); *Welsh v. Wisconsin*, 466 U.S. 740 (1984); *Florida v. Riley*, 488 U.S. 445 (1989); *United States v. Broce*, 488 U.S. 563 (1989); *Bennis v. Michigan*, 516 U.S. 442 (1996); *United States v. Banks*, 540 U.S. 31 (2003).

⁴⁴ *Rio Grande*, 90 U.S. 458 (1874); *Michigan v. Thomas*, 458 U.S. 259 (1982); *Illinois v. Perkins*, 496 U.S. 292 (1990); *Lambrix v. Singletary*, 520 U.S. 518 (1997); *Bousley v. United States*, 523 U.S. 614 (1998); *United States v. Grubbs*, 547 U.S. 90 (2006); *United States v. Denedo*, 556 U.S. 904 (2009); *Dolan v. United States*, 560 U.S. 605 (2010); *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560 (2012); *United States v. Sanchez-Gomez*, 138 S. Ct. 1532 (2018).

⁴⁵ *Snyder v. Massachusetts*, 291 U.S. 97 (1934); *McConnell v. Rhay*, 393 U.S. 2 (1968); *United Air Lines, Inc. v. Evans*, 431 U.S. 553 (1977); *Albernaz v. United States*, 450 U.S. 333 (1981); *Bowen v. Roy*, 476 U.S. 693 (1986); *United States v. Cabrales*, 524 U.S. 1 (1998); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000); *Gall v. United States*, 552 U.S. 38 (2007); *S. Union Co. v. United States*, 567 U.S. 343 (2012).

⁴⁶ *Brown v. Spofford*, 95 U.S. 474 (1877); *Bowman Dairy Co. v. United States*, 341 U.S. 214 (1951); *Ristaino v. Ross*, 424 U.S. 589 (1976); *Rosales-Lopez v. United States*, 451 U.S. 182 (1981); *Sch. Comm. of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359 (1985); *United States v. Nat'l Bank of Com.*, 472 U.S. 713 (1985); *U.S. Dep't of Just. v. Tax Analysts*, 492 U.S. 136 (1989); *Burns v. Reed*, 500 U.S. 478 (1991); *Patterson v. Shumate*, 504 U.S. 753 (1992).

⁴⁷ *Delta Air Lines, Inc. v. August*, 450 U.S. 346 (1981); *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R.*, 331 U.S. 519 (1947); *Baker v. Carr*, 369 U.S. 186 (1962); *Hensley v. Mun. Ct.*, 411 U.S. 345 (1973); *Daniels v. Williams*, 474 U.S. 327 (1986); *Davidson v. Cannon*, 474 U.S. 344 (1986); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997); *Clinton v. City of New York*, 524 U.S. 417 (1998).

⁴⁸ *United States v. Price*, 50 U.S. (9 How.) 83 (1850); *Pickersgill v. Lahens*, 82 U.S. 140 (1872); *United Zinc & Chem. Co. v. Britt*, 258 U.S. 268 (1922); *Thompson v. Keohane*, 516 U.S. 99 (1995); *Lilly v. Virginia*, 527 U.S. 116 (1999); *Grupo Mexicano de Desarrollo, S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308 (1999); *United States v. Olson*, 546 U.S. 43 (2005); *Grady v. North Carolina*, 575 U.S. 306 (2015).

Indiana,⁴⁹ Nebraska,⁵⁰ New Hampshire,⁵¹ and Oklahoma⁵² 7, Arizona⁵³ and Rhode Island⁵⁴ 5, Delaware,⁵⁵ Idaho,⁵⁶ Maine,⁵⁷ and West Virginia⁵⁸ 4, Alabama⁵⁹ and North Dakota⁶⁰ 3, and Colorado,⁶¹ South Dakota,⁶² and Wyoming⁶³ 2.

⁴⁹ *Louisville and Nashville R.R. v. Mottley*, 211 U.S. 149 (1908); *Arkadelphia Milling Co. v. St. Louis Sw. Ry. Co.*, 249 U.S. 134 (1919); *In Re Murchison*, 349 U.S. 133 (1955); *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975); *Brown v. Texas*, 443 U.S. 47 (1979); *United States v. Dixon*, 509 U.S. 688 (1993); *Texas v. Cobb*, 532 U.S. 162 (2001).

⁵⁰ *United States v. Benz*, 282 U.S. 304 (1931); *Lewis v. United States*, 445 U.S. 55 (1980); *Sheridan v. United States*, 487 U.S. 392 (1988); *Mistretta v. United States*, 488 U.S. 361 (1989); *Kansas v. UtiliCorp United, Inc.*, 497 U.S. 199 (1990); *Gonzales v. Thaler*, 565 U.S. 134 (2012); *Obergefell v. Hodges*, 576 U.S. 644 (2015).

⁵¹ *Elk v. United States*, 177 U.S. 529 (1900); *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968); *Baxter v. Palmigiano*, 425 U.S. 308 (1976); *Caban v. Mohammed*, 441 U.S. 380 (1979); *Miller v. Fenton*, 474 U.S. 104 (1985); *Salve Regina Coll. v. Russell*, 499 U.S. 225 (1991); *Arizona v. Fulminante*, 499 U.S. 279 (1991).

⁵² *Bauman v. Ross*, 167 U.S. 548 (1897); *N. Assurance Co. v. Grand View Bldg. Ass'n*, 183 U.S. 308 (1902); *NLRB v. Katz*, 369 U.S. 736 (1962); *Aguilar v. Texas*, 378 U.S. 108 (1964); *Beck v. Alabama*, 447 U.S. 625 (1980); *Metro. Edison Co. v. NLRB*, 460 U.S. 693 (1983); *Van Orden v. Perry*, 545 U.S. 677 (2005).

⁵³ *Berman v. Parker*, 348 U.S. 26 (1954); *Lassen v. Arizona ex rel. Ariz. Highway Dep't*, 385 U.S. 458 (1967); *Williams v. United States*, 458 U.S. 279 (1982); *Reves v. Ernst & Young*, 494 U.S. 56 (1990); *Camreta v. Greene*, 563 U.S. 692 (2011).

⁵⁴ *Appleby v. City of New York*, 271 U.S. 364 (1926); *Thomas v. Collins*, 323 U.S. 516 (1945); *Fay v. Noia*, 372 U.S. 391 (1963); *Curtis Publ'g Co. v. Butts*, 388 U.S. 130 (1967); *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991).

⁵⁵ *Massachusetts v. Mellon*, 262 U.S. 447 (1923); *Flast v. Cohen*, 392 U.S. 83 (1968); *Franklin v. Lynaugh*, 487 U.S. 164 (1988); *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

⁵⁶ *United States v. Stowell*, 133 U.S. 1 (1890); *Hill v. United States*, 368 U.S. 424 (1962); *Arnold Tours, Inc. v. Camp*, 400 U.S. 45 (1970); *Inv. Co. Inst. v. Camp*, 401 U.S. 617 (1971).

⁵⁷ *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871 (1990); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995); *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567 (2004).

⁵⁸ *Sav. Bank v. Ward*, 100 U.S. 195 (1879); *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186 (1946); *Link v. Wabash R.R.*, 370 U.S. 626 (1962); *Nixon v. United States*, 506 U.S. 224 (1993).

⁵⁹ *Lochner v. New York*, 198 U.S. 45 (1905); *California v. ARC Am. Corp.*, 490 U.S. 93 (1989); *Buchanan v. Angelone*, 522 U.S. 269 (1998).

⁶⁰ *Dakota County v. Glidden*, 113 U.S. 222 (1885); *Hampton v. United States*, 425 U.S. 484 (1976); *United States v. Bd. of Comm'rs*, 435 U.S. 110 (1978).

⁶¹ *United States v. Frady*, 456 U.S. 152 (1982); *Raines v. Byrd*, 521 U.S. 811 (1997).

⁶² *Bd. of Cnty. Comm'rs v. United States*, 308 U.S. 343 (1939); *Jones v. Cunningham*, 371 U.S. 236 (1963).

⁶³ *Watt v. W. Nuclear, Inc.*, 462 U.S. 36 (1983); *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985).

Another 151 cases have departures from two states each,⁶⁴ 69 from three states each,⁶⁵ and 36 from four states each.⁶⁶

⁶⁴ *Ill. Cent. R.R. v. Illinois*, 146 U.S. 387 (1892) (Rhode Island and Texas); *United States v. Spearin*, 248 U.S. 132 (1918) (Hawaii and Michigan); *Hester v. United States*, 265 U.S. 57 (1924) (New York and Oregon); *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304 (1945) (Arkansas and Florida); *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946) (California and Pennsylvania); *Cone v. W. Va. Pulp & Paper Co.*, 330 U.S. 212 (1947) (Florida and Rhode Island); *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951) (Arkansas and Washington); *Lutwak v. United States*, 344 U.S. 604 (1953) (Indiana and Pennsylvania); *Ryan Stevedoring Co. v. Pan-Atl. S.S. Corp.*, 350 U.S. 124 (1956) (New Jersey and Virginia); *Conley v. Gibson*, 355 U.S. 41 (1957) (Arizona and Missouri); *Marshall v. United States*, 360 U.S. 310 (1959) (Missouri and Wyoming); *Green v. United States*, 365 U.S. 301 (1961) (Connecticut and Washington); *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159 (1962) (Tennessee and Washington); *Sansone v. United States*, 380 U.S. 343 (1965) (Michigan and New Mexico); *Kent v. United States*, 383 U.S. 541 (1966) (North Carolina and Oregon); *Anders v. California*, 386 U.S. 738 (1967) (Hawaii and Ohio); *See v. City of Seattle*, 387 U.S. 541 (1967) (Washington and West Virginia); *Spinelli v. United States*, 393 U.S. 410 (1969) (Hawaii and Oklahoma); *Shapiro v. Thompson*, 394 U.S. 618 (1969) (Idaho and Louisiana); *Boykin v. Alabama*, 395 U.S. 238 (1969) (Illinois and Texas); *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971) (California and Kansas); *Harris v. New York*, 401 U.S. 222 (1971) (Alaska and California); *Blonder-Tongue Lab'ys, Inc. v. Univ. of Ill. Found.*, 402 U.S. 313 (1971) (Alabama and Florida); *Richardson v. Perales*, 402 U.S. 389 (1971) (California and Florida); *Gooding v. Wilson*, 405 U.S. 518 (1972) (Florida and Vermont); *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (California and Florida); *Colten v. Kentucky*, 407 U.S. 104 (1972) (New York and Oregon); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (California and Texas); *Philpott v. Essex Cnty. Welfare Bd.*, 409 U.S. 413 (1973) (Tennessee and Washington); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (Illinois and Oregon); *United States v. Matlock*, 415 U.S. 164 (1974) (Minnesota and Texas); *Pernell v. Southall Realty*, 416 U.S. 363 (1974) (Alaska and Tennessee); *United States v. Nixon*, 418 U.S. 683 (1974) (Oregon and Virginia); *United States v. Nobles*, 422 U.S. 225 (1975) (Alaska and Oregon); *Brown v. Illinois*, 422 U.S. 590 (1975) (Texas and Washington); *Buckley v. Valeo*, 424 U.S. 1 (1976) (New York and Oregon); *Paul v. Davis*, 424 U.S. 693 (1976) (New Hampshire and Pennsylvania); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977) (Maryland and Minnesota); *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333 (1977) (Illinois and Virginia); *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (Massachusetts and Vermont); *City of L.A. Dep't of Water & Power v. Manhart*, 435 U.S. 702 (1978) (California and Connecticut); *Coopers & Lybrand v. Livesay*, 437 U.S. 463 (1978) (Alabama and Maryland); *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104 (1978) (New Mexico and Ohio); *Bell v. Wolfish*, 441 U.S. 520 (1979) (Massachusetts and Washington); *Int'l Bhd. of Elec. Workers v. Foust*, 442 U.S. 42 (1979) (Montana and New Mexico); *Jackson v. Virginia*, 443 U.S. 307 (1979) (Arkansas and Indiana); *United States v. Kubrick*, 444 U.S. 111 (1979) (Arizona and California); *Ferri v. Ackerman*, 444 U.S. 193 (1979) (Kentucky and Minnesota); *Ohio v. Roberts*, 448 U.S. 56 (1980) (Colorado and South Carolina); *Rawlings v. Kentucky*, 448 U.S. 98 (1980) (Florida and New Jersey); *Upjohn Co. v. United States*, 449 U.S. 383 (1981) (California and New Hampshire); *Smith v. Phillips*, 455 U.S. 209 (1982) (Kansas and Wyoming); *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56 (1982) (Iowa and Kansas); *Missouri v. Hunter*, 459 U.S. 359 (1983) (Michigan and Montana); *South Dakota v. Neville*, 459

U.S. 553 (1983) (Georgia and Massachusetts); *Texas v. Brown*, 460 U.S. 730 (1983) (Hawaii and New Hampshire); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983) (Louisiana and North Carolina); *Solem v. Helm*, 463 U.S. 277 (1983) (Rhode Island and West Virginia); *California v. Ramos*, 463 U.S. 992 (1983) (Maryland and Oklahoma); *Rushen v. Spain*, 464 U.S. 114 (1983) (Georgia and Wisconsin); *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548 (1984) (Kansas and New Jersey); *Pulley v. Harris*, 465 U.S. 37 (1984) (Illinois and Louisiana); *Blum v. Stenson*, 465 U.S. 886 (1984) (Alaska and Indiana); *Strickland v. Washington*, 466 U.S. 668 (1984) (Hawaii and New York); *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229 (1984) (Arizona and Ohio); *California v. Trombetta*, 467 U.S. 479 (1984) (Alaska and Mississippi); *Chevron U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837 (1984) (California and Utah); *Hudson v. Palmer*, 468 U.S. 517 (1984) (Vermont and Washington); *Massachusetts v. Sheppard*, 468 U.S. 981 (1984) (Michigan and Washington); *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749 (1985) (New Mexico and Washington); *United States v. Mechanik*, 475 U.S. 66 (1986) (Minnesota and New York); *United States v. Inadi*, 475 U.S. 387 (1986) (Colorado and New York); *Turner v. Murray*, 476 U.S. 28 (1986) (Maryland and Pennsylvania); *Batson v. Kentucky*, 476 U.S. 79 (1986) (Connecticut and Washington); *Schiavone v. Fortune*, 477 U.S. 21 (1986) (Alaska and Minnesota); *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986) (Missouri and New York); *Bowers v. Hardwick*, 478 U.S. 186 (1986) (Arkansas and Kentucky); *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987) (California and Massachusetts); *United States v. Dunn*, 480 U.S. 294 (1987) (Idaho and Montana); *Martin v. Ohio*, 480 U.S. 228 (1987) (South Carolina and West Virginia); *Tison v. Arizona*, 481 U.S. 137 (1987) (Montana and New Jersey); *United States v. Salerno*, 481 U.S. 739 (1987) (Utah and Washington); *Bd. of Pardons v. Allen*, 482 U.S. 369 (1987) (Louisiana and Utah); *New York v. Burger*, 482 U.S. 691 (1987) (New York and Washington); *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 483 U.S. 711 (1987) (Alaska and New Jersey); *Griffin v. Wisconsin*, 483 U.S. 868 (1987) (Massachusetts and Washington); *Pinter v. Dahl*, 486 U.S. 622 (1988) (California and Washington); *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847 (1988) (New Hampshire and Texas); *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825 (1988) (Florida and Kansas); *Florida v. Long*, 487 U.S. 223 (1988) (California and Connecticut); *Patterson v. Illinois*, 487 U.S. 285 (1988) (Hawaii and New Jersey); *Lockhart v. Nelson*, 488 U.S. 33 (1988) (Hawaii and Virginia); *Skinner v. Ry. Lab. Execs.' Ass'n*, 489 U.S. 602 (1989) (Indiana and Washington); *Nat'l Treasury Emps. Union v. Von Raab*, 489 U.S. 656 (1989) (Indiana and Washington); *Schmuck v. United States*, 489 U.S. 705 (1989) (Delaware and Rhode Island); *Lauro Lines S.R.L. v. Chasser*, 490 U.S. 495 (1989) (North Carolina and Texas); *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504 (1989) (Mississippi and New Mexico); *Michael H. v. Gerald D.*, 491 U.S. 110 (1989) (Florida and West Virginia); *Missouri v. Jenkins*, 491 U.S. 274 (1989) (Idaho and Indiana); *Murray v. Giarratano*, 492 U.S. 1 (1989) (Florida and Mississippi); *Florida v. Wells*, 495 U.S. 1 (1990) (Iowa and Texas); *Alabama v. White*, 496 U.S. 325 (1990) (Massachusetts and Montana); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990) (Hawaii and South Carolina); *Milkovich v. Lorain J. Co.*, 497 U.S. 1 (1990) (New York and Ohio); *Maryland v. Craig*, 497 U.S. 836 (1990) (Illinois and Pennsylvania); *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991) (Montana and Rhode Island); *United States v. Gaubert*, 499 U.S. 315 (1991) (Hawaii and Utah); *Siegert v. Gilley*, 500 U.S. 226 (1991) (New Hampshire and Texas); *Chapman v. United States*, 500 U.S. 453 (1991) (Illinois and Texas); *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991) (Massachusetts and Montana); *Harmelin v. Michigan*, 501 U.S. 957 (1991) (Illinois and Michigan); *Hafer v. Melo*, 502

U.S. 21 (1991) (Maryland and Pennsylvania); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992) (Texas and Wisconsin); *Crosby v. United States*, 506 U.S. 255 (1993) (Maryland and New Jersey); *Reves v. Ernst & Young*, 507 U.S. 170 (1993) (Indiana and Michigan); *Am. Dredging Co. v. Miller*, 510 U.S. 443 (1994) (Oregon and South Dakota); *FDIC v. Meyer*, 510 U.S. 471 (1994) (Texas and Wisconsin); *Simmons v. South Carolina*, 512 U.S. 154 (1994) (California and New Jersey); *Arizona v. Evans*, 514 U.S. 1 (1995) (Tennessee and Washington); *Purkett v. Elem*, 514 U.S. 765 (1995) (Alabama and California); *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995) (Indiana and Washington); *Bailey v. United States*, 516 U.S. 137 (1995) (Arkansas and Texas); *United States v. Ursery*, 518 U.S. 267 (1996) (Georgia and New Mexico); *Richards v. Wisconsin*, 520 U.S. 385 (1997) (Hawaii and Massachusetts); *Spencer v. Kemna*, 523 U.S. 1 (1998) (Connecticut and Washington); *Pa. Bd. of Prob. & Parole v. Scott*, 524 U.S. 357 (1998) (Pennsylvania and Vermont); *Jones v. United States*, 526 U.S. 227 (1999) (Kentucky and Kansas);

Murphy v. United Parcel Serv., Inc., 527 U.S. 516 (1999) (California and New York); *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555 (1999) (California and New York); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000) (Alaska and Massachusetts); *United States v. Knights*, 534 U.S. 112 (2001) (Iowa and Washington); *United States v. Cotton*, 535 U.S. 625 (2002) (California and Idaho); *Ring v. Arizona*, 536 U.S. 584 (2002) (Kentucky and Mississippi); *Bd. of Educ. v. Earls*, 536 U.S. 822 (2002) (Pennsylvania and Washington); *Clay v. United States*, 537 U.S. 522 (2003) (Alaska and Nebraska); *Smith v. Doe*, 538 U.S. 84 (2003) (Indiana and Maryland); *Maryland v. Pringle*, 540 U.S. 366 (2003) (Florida and Washington); *Illinois v. Caballes*, 543 U.S. 405 (2005) (Florida and Pennsylvania); *Mayle v. Felix*, 545 U.S. 644 (2005) (Maryland and Utah); *Samson v. California*, 547 U.S. 843 (2006) (Iowa and New York); *Danforth v. Minnesota*, 552 U.S. 264 (2008) (Hawaii and Tennessee); *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008) (Indiana and Pennsylvania); *Puckett v. United States*, 556 U.S. 129 (2009) (Connecticut and Hawaii); *Corley v. United States*, 556 U.S. 303 (2009) (Massachusetts and Rhode Island); *Arizona v. Gant*, 556 U.S. 332 (2009) (Iowa and Washington); *Montejo v. Louisiana*, 556 U.S. 778 (2009) (Kentucky and West Virginia); *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167 (2009) (Connecticut and Texas); *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009) (Maryland and Washington); *Padilla v. Kentucky*, 559 U.S. 356 (2010) (Georgia and New Mexico); *Alleyne v. United States*, 570 U.S. 99 (2013) (Michigan and Texas); *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016) (Hawaii and Pennsylvania).

⁶⁵ *Allen v. United States*, 164 U.S. 492 (1896) (Kansas, Kentucky, and Ohio); *Dunn v. United States*, 284 U.S. 390 (1932) (Indiana, Maryland, and Utah); *Dimick v. Schiedt*, 293 U.S. 474 (1935) (Delaware, Kansas, and Minnesota); *Clifford F. MacEvoy Co. v. United States ex rel. Calvin Tomkins Co.*, 322 U.S. 102 (1944) (California, Georgia, and Maryland); *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) (Montana, New Mexico, and Tennessee); *Bell v. United States*, 349 U.S. 81 (1955) (Arizona, Louisiana, and Texas); *Dairy Queen, Inc., v. Wood*, 369 U.S. 469 (1962) (Arkansas, New Jersey, and Virginia); *Camara v. Mun. Ct.*, 387 U.S. 523 (1967) (Minnesota, New Jersey, and Washington); *Williams v. Florida*, 399 U.S. 78 (1970) (Arizona, Ohio, and Pennsylvania); *North Carolina v. Alford*, 400 U.S. 25 (1970) (Indiana, New Jersey, and Texas); *Lego v. Twomey*, 404 U.S. 477 (1972) (California, Indiana, and New Hampshire); *Kastigar v. United States*, 406 U.S. 441 (1972) (Alaska, Pennsylvania, and Tennessee); *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) (Arkansas, New Hampshire, and North Carolina); *Barker v. Wingo*, 407 U.S. 514 (1972) (Idaho, Nebraska, and Oregon); *Gagnon v. Scarpelli*, 411 U.S.

778 (1973) (California, Texas, and Wyoming); San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973) (Connecticut, Vermont, West Virginia); Schneckloth v. Bustamonte, 412 U.S. 218 (1973) (Arkansas, Iowa, and New Jersey); Sea-Land Servs., Inc. v. Gaudet, 414 U.S. 573 (1974) (Illinois, New York, and Oregon); Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240 (1975) (California, Hawaii, and Indiana); Weinstein v. Bradford, 423 U.S. 147 (1975) (Connecticut, Louisiana, and New Mexico); Menna v. New York, 423 U.S. 61 (1975) (Minnesota, Mississippi, and North Carolina); Abney v. United States, 431 U.S. 651 (1977) (Kansas, New Mexico, and Virginia); Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978) (Alaska, California, and Rhode Island); Michigan v. DeFillippo, 443 U.S. 31 (1979) (Idaho, Illinois, and Washington); United States v. Turkette, 452 U.S. 576 (1981) (Colorado, Michigan, Pennsylvania); Lassiter v. Dep't of Soc. Servs., 452 U.S. 18 (1981) (Alaska, Florida, and Hawaii); Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981) (New York, Texas, and Washington); Zipes v. Trans World Airlines, Inc., 455 U.S. 385 (1982) (Illinois, Oklahoma, and Texas); Hensley v. Eckerhart, 461 U.S. 424 (1983) (Missouri, Nebraska, and Texas); Morrison-Knudsen Constr. Co. v. Director, 461 U.S. 624 (1983) (Colorado, Oregon, and Washington); Oliver v. United States, 466 U.S. 170 (1984) (New York, Oregon, and Vermont); Anderson v. City of Bessemer City, 470 U.S. 564 (1985) (Massachusetts, North Dakota, and South Dakota); City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432 (1985) (Connecticut, Louisiana, and Vermont); California v. Ciraolo, 476 U.S. 207 (1986) (California, New Jersey, and New Mexico); Young v. United States *ex rel.* Vuitton et Fils S.A., 481 U.S. 787 (1987) (California, Colorado, and Tennessee); Tull v. United States, 481 U.S. 412 (1987) (California, Connecticut, and Rhode Island); Pennsylvania v. Finley, 481 U.S. 551 (1987) (Florida, Missouri, and South Dakota); Budinich v. Becton Dickinson & Co., 486 U.S. 196 (1988) (Kentucky, Texas, and Utah); United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29 (1987) (Maryland, New Mexico, and Ohio); Basic Inc. v. Levinson, 485 U.S. 224 (1988) (Delaware, New Jersey, and Oregon); H.J. Inc. v. Ne. Bell Tel. Co., 492 U.S. 229 (1989) (Colorado, New Jersey, and Ohio); Blanton v. City of North Las Vegas, 489 U.S. 538 (1989) (Alaska, Arizona, and Ohio); Hughey v. United States, 495 U.S. 411 (1990) (Massachusetts, Rhode Island, and Wisconsin); Mich. Dep't of State Police v. Sitz, 496 U.S. 444 (1990) (Indiana, Ohio, and Washington); New York v. Harris, 495 U.S. 14 (1990) (Connecticut, Hawaii, and Washington); Hernandez v. New York, 500 U.S. 352 (1991) (Alabama, California, and Connecticut); California v. Acevedo, 500 U.S. 565 (1991) (Nevada, New Mexico, and Vermont); United States v. Williams, 504 U.S. 36 (1992) (Massachusetts, Minnesota, and New Jersey); White v. Illinois, 502 U.S. 346 (1992) (Kansas, New Mexico, and Ohio); Herrera v. Collins, 506 U.S. 390 (1993) (Hawaii, Illinois, and South Dakota); Farrar v. Hobby, 506 U.S. 103 (1992) (Alabama, Connecticut, and Montana); Farmer v. Brennan, 511 U.S. 825 (1994) (Arkansas, Ohio, and Washington); Ornelas v. United States, 517 U.S. 690 (1996) (Nevada, South Carolina, and Texas); Pennsylvania v. Labron, 518 U.S. 938 (1996) (Montana, New Jersey, and Pennsylvania); Jaffee v. Redmond, 518 U.S. 1 (1996) (Georgia, Iowa, and Pennsylvania); Koon v. United States, 518 U.S. 81 (1996) (Arizona, Florida, and Iowa); Maryland v. Wilson, 519 U.S. 408 (1997) (Massachusetts, New Jersey, and Vermont); Maryland v. Dyson, 527 U.S. 465 (1999) (Montana, New Jersey, and Pennsylvania); Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res., 532 U.S. 598 (2001) (California, New Jersey, and Wyoming); Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137 (2002) (California, Minnesota, and New York); Desert Palace, Inc. v. Costa, 539 U.S. 90 (2003) (Kentucky, Michigan, and Minnesota); Thornton v. United States, 541 U.S. 615 (2004) (New Mexico, Vermont, and Washington); United States v. Patane, 542

U.S. 630 (2004) (Massachusetts, Vermont, and Wisconsin); *Hudson v. Michigan*, 547 U.S. 586 (2006) (Alaska, New Jersey, and New Mexico); *Herring v. United States*, 555 U.S. 135 (2009) (Illinois, Pennsylvania, and Tennessee); *Davis v. United States*, 564 U.S. 229 (2011) (Georgia, Tennessee, and Texas); *Bullcoming v. New Mexico*, 564 U.S. 647 (2011) (Maryland, Massachusetts, and Washington); *Chaidez v. United States*, 568 U.S. 342 (2013) (Massachusetts, Nevada, and New Mexico); *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338 (2013) (Connecticut, Iowa, and Wyoming).

⁶⁶ *Taylor v. Taintor*, 83 U.S. 366 (1873) (Colorado, Idaho, South Carolina, and Texas); *Carroll v. United States*, 267 U.S. 132 (1925) (New Mexico, Pennsylvania, Rhode Island, and Washington); *Pinkerton v. United States*, 328 U.S. 640 (1946) (Arizona, Nevada, Pennsylvania, and Washington); *United States v. Morgan*, 346 U.S. 502 (1954) (California, Maryland, Nevada, and Wisconsin); *Mallory v. United States*, 354 U.S. 449 (1957) (California, Massachusetts, Tennessee, and Washington); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967) (Kentucky, Missouri, Oklahoma, and Tennessee); *Vaca v. Sipes*, 386 U.S. 171 (1967) (Connecticut, Illinois, Nevada, and Pennsylvania); *Katz v. United States*, 389 U.S. 347 (1967) (New Jersey, New Mexico, Oregon, and Washington); *Cady v. Dombrowski*, 413 U.S. 433 (1973) (Iowa, Maryland, New Jersey, and Texas); *Rakas v. Illinois*, 439 U.S. 128 (1978) (New Jersey, Pennsylvania, Vermont, and Washington); *United States v. Batchelder*, 442 U.S. 114 (1979) (Colorado, Hawaii, Kansas, and Maryland); *United States v. Ross*, 456 U.S. 798 (1982) (Hawaii, New Mexico, Vermont, and Washington); *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752 (1984) (Delaware, Illinois, Louisiana, and Texas); *Mitchell v. Forsyth*, 472 U.S. 511 (1985) (Florida, Georgia, Ohio, and Montana); *Griffith v. Kentucky*, 479 U.S. 314 (1987) (Kentucky, New York, Oklahoma, and Texas); *Colorado v. Connelly*, 479 U.S. 157 (1986) (Hawaii, Indiana, Maine, and New Jersey); *Colorado v. Bertine*, 479 U.S. 367 (1987) (Florida, Iowa, Tennessee, and Texas); *Dowling v. United States*, 493 U.S. 342 (1990) (Florida, Hawaii, Massachusetts, and Tennessee); *Horton v. California*, 496 U.S. 128 (1990) (Hawaii, Massachusetts, New Jersey, and New York); *Emp. Div., Dep't of Hum. Res. v. Smith*, 494 U.S. 872 (1990) (Connecticut, Massachusetts, Michigan, and Minnesota); *Illinois v. Rodriguez*, 497 U.S. 177 (1990) (Delaware, Hawaii, Montana, and Oregon); *Jacobson v. United States*, 503 U.S. 540 (1992) (California, Colorado, Ohio, and Wyoming); *Griffin v. United States*, 502 U.S. 46 (1991) (Hawaii, Iowa, Massachusetts, and Washington); *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993) (Massachusetts, Minnesota, North Dakota, and South Carolina); *Custis v. United States*, 511 U.S. 485 (1994) (California, Montana, Nebraska, and Nevada); *Williamson v. United States*, 512 U.S. 594 (1994) (Kansas, Michigan, New Hampshire, and Ohio); *Davis v. United States*, 512 U.S. 452 (1994) (Connecticut, Florida, Hawaii, and Mississippi); *Tome v. United States*, 513 U.S. 150 (1995) (Kansas, Maryland, New Jersey, and Wyoming); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136 (1997) (Arizona, Connecticut, Minnesota, and New Mexico); *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) (California, Massachusetts, New York, and Tennessee); *Neder v. United States*, 527 U.S. 1 (1999) (Alaska, California, New Hampshire, and North Carolina); *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79 (2000) (Arizona, California, Hawaii, and Pennsylvania); *New Hampshire v. Maine*, 532 U.S. 742 (2001) (Florida, Georgia, Idaho, and Maryland); *United States v. Booker*, 543 U.S. 220 (2005) (California, Michigan, Minnesota, and Ohio); *Flores-Figueroa v. United States*, 556 U.S. 646 (2009) (Iowa, Tennessee, Vermont, and Washington); *Perdue v. Kenny A.*, 559 U.S. 542 (2010) (Alaska, Florida, Nebraska, and New Jersey).

That leaves these seventy-two cases with five or more departing states:

Case	Departing States	Topic	Spaeth Area
<p style="text-align: center;">Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)</p>	<p style="text-align: center;">Alabama, Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, South Carolina, Tennessee, Washington, Wisconsin (24)</p>	<p style="text-align: center;">Scientific standards for expert testimony</p>	<p style="text-align: center;">9</p>

Case	Departing States	Topic	Spaeth Area
United States v. Leon, 468 U.S. 897 (1984)	Connecticut, Delaware, Georgia, Hawaii, Idaho, Iowa, Michigan, Minnesota, New Jersey, New Mexico, Oklahoma, Pennsylvania, Tennessee, Texas, Vermont, Washington, Wisconsin (17)	Good-faith exception to exclusionary rule	1
California v. Hodari D., 499 U.S. 621 (1991)	Alaska, Connecticut, Delaware, Hawaii, Louisiana, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Washington (16)	Chase of suspect not a Fourth Amendment "seizure"	1

Case	Departing States	Topic	Spaeth Area
Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977)	Arizona, California, Florida, Iowa, Maine, Michigan, Minnesota, Nebraska, North Carolina, North Dakota, Pennsylvania, South Dakota, Tennessee, Vermont, Wisconsin (15)	No antitrust standing for indirect purchasers	8
Moran v. Burbine, 475 U.S. 412 (1986)	California, Connecticut, Delaware, Florida, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, New Hampshire, New Jersey, Oklahoma, Oregon, Texas (14)	Police conducting interrogation allowed not to inform suspect that lawyer wants to contact him	1

Case	Departing States	Topic	Spaeth Area
Houston v. Lack, 487 U.S. 266 (1988)	Arkansas, Connecticut, Delaware, Kentucky, Minnesota, Missouri, Nebraska, Nevada, New York, Ohio, Oklahoma, Oregon, Texas (13)	Deadlines for filings placed into prison mail system	1
Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)	Alabama, Arizona, Hawaii, Iowa, Kansas, Kentucky, Minnesota, Ohio, Oklahoma, Tennessee, Texas, West Virginia (12)	Pleading standards	8
Celotex Corp. v. Catrett, 477 U.S. 317 (1986)	Alabama, California, Connecticut, Florida, Indiana, Kentucky, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah (12)	Burden of proof in summary judgment	9

Case	Departing States	Topic	Spaeth Area
Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)	Alaska, Alabama, Florida, Indiana, Kentucky, New Jersey, New Mexico, Oregon, Tennessee, Texas, Wyoming (11)	Types of evidence in summary judgment	3
Ashcroft v. Iqbal, 556 U.S. 662 (2009)	Alabama, Hawaii, Iowa, Kentucky, Minnesota, Ohio, Tennessee, Texas, Washington, West Virginia (10)	Pleading standards	9
Illinois v. Gates, 462 U.S. 213 (1983)	Alaska, Connecticut, Hawaii, Iowa, Massachusetts, New Mexico, New York, Tennessee, Vermont, Washington (10)	No track record required for probable cause	1

Case	Departing States	Topic	Spaeth Area
Ohler v. United States, 529 U.S. 753 (2000)	Colorado, Iowa, Maryland, Minnesota, Nevada, New Hampshire, New Mexico, Oregon, Washington, Wisconsin (10)	Pre-emptively introducing evidence of prior conviction forfeits right to complain	1
Luce v. United States, 469 U.S. 38 (1984)	Alaska, Florida, Massachusetts, Michigan, Nevada, New York, North Carolina, Oregon, Pennsylvania (9)	Must testify to challenge hypothetically-improper impeachment	1
Norfolk & Western Railway Co. v. Liepelt, 444 U.S. 490 (1979)	Colorado, Florida, Georgia, Louisiana, Minnesota, Nevada, South Dakota, Tennessee, Virginia (9)	Must allow civil defendant to introduce evidence of freedom of award from income tax	8
Opper v. United States, 348 U.S. 84 (1954)	Alabama, California, Colorado, Mississippi, New Mexico, Oregon, Texas, Washington (8)	Corroboration of extrajudicial admissions need only be trustworthy, not sufficient to establish corpus delicti	1

Case	Departing States	Topic	Spaeth Area
New York v. Belton, 453 U.S. 454 (1981)	Iowa, Nevada, New Jersey, New Mexico, Pennsylvania, Vermont, Washington, Wyoming (8)	Search of vehicle incident to arrest allowed	1
Massaro v. United States, 538 U.S. 500 (2003)	Alabama, Hawaii, Minnesota, Nebraska, North Carolina, Oklahoma, Wisconsin, Wyoming (8)	Ineffective-assistance claims may be brought in collateral proceedings even if they could also have been raised on direct appeal	1
United States v. Olano, 507 U.S. 725 (1993)	Alaska, Connecticut, Hawaii, Maryland, South Carolina, Texas, Washington, Wisconsin (8)	Plain error (standards for reversal when no objection at trial)	1
Teague v. Lane, 489 U.S. 288 (1989)	California, Florida, Kansas, Missouri, New York, South Dakota, Tennessee (7)	Limits on retroactivity of new rules of procedure in habeas corpus	1
Old Chief v. United States, 519 U.S. 172 (1997)	Florida, Georgia, Louisiana, Ohio, Pennsylvania, Tennessee, Texas (7)	Offer to stipulate to prior conviction renders introduction of judgment unfair	1

Case	Departing States	Topic	Spaeth Area
Apprendi v. New Jersey, 530 U.S. 466 (2000)	California, Hawaii, Kansas, Kentucky, Michigan, Mississippi, Utah (7)	Facts increasing sentencing range must be proved to jury	1
Delaware State College v. Ricks, 449 U.S. 250 (1980)	California, Connecticut, Hawaii, Louisiana, Maryland, Minnesota, New Jersey (7)	Title VII limitations period begins to run with formal decision to deny tenure	2
Chardon v. Fernandez, 454 U.S. 6 (1981)	California, Connecticut, Hawaii, Louisiana, Maryland, Minnesota, New Jersey (7)	Section 1983 limitations period begins to run with formal decision to terminate employment	2
Brasfield v. United States, 272 U.S. 448 (1926)	California, Florida, Georgia, Idaho, North Carolina, Pennsylvania, Texas (7)	No asking deadlocked jury about their numerical division	1
Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)	Alaska, California, Florida, Illinois, Indiana, Kansas, Tennessee (7)	No undue burdens on abortion rights	5

Case	Departing States	Topic	Spaeth Area
Kumho Tire Co v. Carmichael, 526 U.S. 137 (1999)	Alabama, Alaska, Arizona, Maryland, Minnesota, North Dakota, Wisconsin (7)	<i>Daubert</i> expert-testimony rules apply to non-scientific experts too	<u>9</u>
Kelo v. City of New London, 545 U.S. 469 (2005)	Colorado, Iowa, Louisiana, Missouri, Ohio, Pennsylvania, Texas (7)	Takings to foster private development are public use	4
Harper v. Virginia Department of Taxation, 509 U.S. 86 (1993)	Florida, Kentucky, Montana, New Mexico, North Carolina, Ohio, Wisconsin (7)	Applying new civil rules retroactively	10
California v. Greenwood, 486 U.S. 35 (1988)	Iowa, New Hampshire, New Jersey, New Mexico, Oregon, Vermont, Washington (7)	No Fourth Amendment limits on searches of trash left on sidewalk	1
Martinez v. Ryan, 566 U.S. 1 (2012)	Arizona, Arkansas, Idaho, Illinois, Kentucky, Nevada, Pennsylvania (7)	Procedural default regarding claims that can only be raised collaterally, not on direct appeal	2

Case	Departing States	Topic	Spaeth Area
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)	Connecticut, Hawaii, North Carolina, South Carolina, South Dakota, Texas, Washington (7)	No citizen standing	9
Arizona v. Youngblood, 488 U.S. 51 (1988)	Alabama, Connecticut, Delaware, Tennessee, Texas, Utah, Vermont (7)	Failure-to-preserve-evidence due-process claim requires showing of bad faith	4
Mathews v. United States, 485 U.S. 58 (1988)	Arizona, Arkansas, Colorado, Connecticut, Idaho, Illinois, Texas (7)	Can raise entrapment defense and deny element of crime too	1
Spies v. United States, 317 U.S. 492 (1943)	California, Massachusetts, Nevada, New Mexico, Tennessee, Washington (6)	Without more, mere failure to send tax return not tax evasion	1
United States v. Martinez-Salazar, 528 U.S. 304 (2000)	California, Colorado, Georgia, Louisiana, Oklahoma, Washington (6)	No reversible error if peremptory challenge used on juror who should have been removed for cause	1
City of Burlington v. Dague, 505 U.S. 557 (1992)	Alaska, California, Florida, Hawaii, New Jersey, Pennsylvania (6)	No enhancement of attorney's fees based on contingency-fee arrangement	6

Case	Departing States	Topic	Spaeth Area
Warth v. Seldin, 422 U.S. 490 (1975)	Arkansas, California, Illinois, Massachusetts, New Jersey, Virginia (6)	No standing to challenge exclusionary zoning without specific causal chain	9
Oregon v. Kennedy, 456 U.S. 667 (1982)	California, Hawaii, Michigan, New Mexico, North Carolina, Texas (6)	Double jeopardy allows retrial after unintentional prosecutorial error and mistrial	1
Faragher v. City of Boca Raton, 524 U.S. 775 (1998)	California, Colorado, Massachusetts, Michigan, Missouri, Nebraska (6)	Vicarious liability for sexual harassment	2
Blockburger v. United States, 284 U.S. 299 (1932)	Indiana, Michigan, Montana, New Mexico, Ohio, Pennsylvania (6)	Double jeopardy and lesser-included offenses	1
East River Steamship Corp. v. Transamerica Delaval Inc., 476 U.S. 858 (1986)	Alaska, Arkansas, Delaware, South Carolina, Washington, West Virginia (6)	No admiralty products liability for mere damage to product itself; only warranty violation	8
California v. Carney, 471 U.S. 386 (1985)	Montana, Nevada, New Jersey, New Mexico, Pennsylvania, Washington (6)	Automobile warrant-requirement exception applies to mobile homes	1

Case	Departing States	Topic	Spaeth Area
United States v. Miller, 425 U.S. 435 (1976)	Arizona, Hawaii, Idaho, New Jersey, Pennsylvania, Utah (6)	No Fourth Amendment interest in bank records	1
Smith v. Maryland, 442 U.S. 735 (1979)	Arizona, Hawaii, Idaho, Massachusetts, Pennsylvania, Texas (6)	Use of pen register not a Fourth Amendment search	1
United States v. Salvucci, 448 U.S. 83 (1980)	Alaska, Massachusetts, New Jersey, Oregon, Vermont, Washington (6)	Possession-crime defendants can only raise exclusionary rule for their own property	1
Nichols v. United States, 511 U.S. 738 (1994)	Florida, Hawaii, Iowa, Louisiana, Nebraska, New Jersey (6)	Uncounseled misdemeanor conviction can enhance sentence for subsequent offense	1
United States v. Powell, 469 U.S. 57 (1984)	Illinois, Indiana, Maryland, Missouri, New York, Utah (6)	No reversal of conviction from rationally-inconsistent acquittal	1
United States v. Bagley, 473 U.S. 667 (1985)	Massachusetts, Minnesota, Nevada, New Jersey, New York, Rhode Island (6)	Failing to disclose impeachment evidence reversible if reasonable probability of different outcome	1

Case	Departing States	Topic	Spaeth Area
Illinois v. Krull, 480 U.S. 340 (1986)	Illinois, Iowa, New York, Tennessee, Texas, Washington (6)	No exclusionary rule for relying on administrative- search statute later found unconstitutional	1
Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998)	California, Massachusetts, Michigan, Missouri, Nebraska (5)	Vicarious liability for sexual harassment	2
Scott v. Illinois, 440 U.S. 367 (1979)	California, Florida, Hawaii, Iowa, Louisiana (5)	No right-to- counsel violation unless actual imprisonment imposed	1
Bourjaily v. United States, 483 U.S. 171 (1987)	California, Florida, New York, Wisconsin, Wyoming (5)	Rules of evidence do not apply to evidence used to resolve application of rules of evidence	1
United States v. Robinson, 414 U.S. 218 (1973)	Alaska, California, Connecticut, Indiana, Montana (5)	Search incident to arrest	1
Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978)	California, Louisiana, New York, North Carolina, Tennessee (5)	Municipal liability for constitutional torts	2
Blakely v. Washington, 542 U.S. 296 (2004)	California, Michigan, Minnesota, Ohio, Tennessee (5)	Must prove mandatory- sentencing facts to jury	1

Case	Departing States	Topic	Spaeth Area
National Railroad Passenger Corp. v. Morgan, 536 U.S. 101 (2002)	California, Illinois, New York, Tennessee, Texas (5)	Title VII limitations period not extended for “sufficiently related” earlier acts	2
Whren v. United States, 517 U.S. 806 (1996)	Delaware, New Mexico, New York, Washington, Wisconsin (5)	Fourth Amendment allows pretextual stops, as long as probable cause exists	1
Whalen v. United States, 445 U.S. 684 (1980)	Maryland, Michigan, Ohio, Utah, Washington (5)	No consecutive sentencing for lesser-included offenses	1
Neil v. Biggers, 409 U.S. 188 (1972)	Alaska, Connecticut, Massachusetts, Utah, Wisconsin (5)	Suggestive station-house identification allowed if reliable	1
Oregon v. Elstad, 470 U.S. 298 (1985)	Hawaii, Indiana, Massachusetts, Tennessee, Vermont (5)	Curing unwarned statements with subsequent <i>Miranda</i> warning	1
United States v. Place, 462 U.S. 696 (1983)	Alaska, Illinois, New Hampshire, New York, Pennsylvania (5)	Drug sniff not a Fourth Amendment search	1
Heien v. North Carolina, 574 U.S. 54 (2014)	Oregon, Idaho, Iowa, New Jersey, Washington (5)	No exclusionary rule for reasonable mistake of law	1

Case	Departing States	Topic	Spaeth Area
Atwater v. City of Lago Vista, 532 U.S. 318 (2001)	Louisiana, Minnesota, Montana, New Mexico, Ohio (5)	If probable cause, may arrest even for fine-only offense	1
Rosemond v. United States, 572 U.S. 65 (2014)	Georgia, Michigan, Missouri, Rhode Island, Wisconsin (5)	Aiding or abetting gun crime requires knowledge of gun us	1
Manson v. Brathwaite, 432 U.S. 98 (1977)	Alaska, Massachusetts, New Jersey, New Mexico, Wisconsin (5)	Unnecessarily suggestive identification procedure allowed if reliable	1
Delcostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983)	Maryland, Massachusetts, Minnesota, Missouri, Pennsylvania (5)	Labor-law statute of limitations	7
Huddleston v. United States, 485 U.S. 681 (1988)	Arizona, Louisiana, Oregon, Texas, West Virginia (5)	Similar-acts evidence admissible if other acts proven by preponderance of evidence	1
United States v. White, 401 U.S. 745 (1971)	Florida, Montana, Pennsylvania, Vermont, West Virginia (5)	Fourth Amendment allows undercover agent to wear a wire	1
Harlow v. Fitzgerald, 457 U.S. 800 (1982)	Florida, Kentucky, Maryland, Texas, Vermont (5)	Qualified immunity	8

Case	Departing States	Topic	Spaeth Area
Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979)	Alabama, Florida, Mississippi, Ohio, Tennessee (5)	Non-mutual offensive collateral estoppel	9
Ross v. Oklahoma, 487 U.S. 81 (1988)	Alabama, Arizona, Indiana, Missouri, Texas (5)	No reversible error if defendant uses peremptory challenge to remove juror who should have been removed for cause	1
Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)	Alabama, Kentucky, Michigan, New Mexico, Oregon (5)	Types of evidence in summary judgment	8

Here is the state-by-state breakdown of the 1868 departures by state:

State	Departures	State	Departures
California	114	Montana	32
Texas	92	Missouri	30
Washington	89	Utah	30
New York	73	Kansas	28
Hawaii	67	Mississippi	28
Massachusetts	67	Nevada	27
Pennsylvania	61	North Carolina	26
New Jersey	60	Georgia	26
Florida	57	Arizona	25
Maryland	52	Arkansas	22
Connecticut	50	New Hampshire	21
New Mexico	49	Alabama	20
Tennessee	48	Idaho	20

State	Departures	State	Departures
Minnesota	47	Colorado	19
Illinois	46	Oklahoma	19
Oregon	45	Nebraska	19
Ohio	45	South Carolina	18
Alaska	44	Rhode Island	17
Louisiana	40	Virginia	17
Iowa	38	Delaware	16
Vermont	36	West Virginia	15
Wisconsin	35	Wyoming	13
Kentucky	35	South Dakota	10
Michigan	34	North Dakota	8
Indiana	32	Maine	6

II. CHARACTERISTICS OF SUPREME COURT CASES

As in the Fourth Amendment, the age of a case and the number of dissenting votes at the Supreme Court are related significantly with the number of departures, but the effects are milder in the full data set. Newer precedents produce more departures only at the rate of one every 625 years ($p < 10^{-162}$, Pearson correlation 0.16); for Fourth Amendment cases, the effect is much larger, one additional departure every eighty years.⁶⁷ The younger-cases-more-departures relationship continues until we consider cases later than 1969, when it becomes statistically insignificant. For the most recent cases, the relationship flips; for cases since 2008, older cases have *more* departures at the rate of one every sixty-seven years ($p < 10^{-3}$, Pearson correlation 0.12).

Also as with the Fourth Amendment, dissenting votes at the Supreme Court are associated with more departures, but again the effect is smaller. Each dissenting vote at the Supreme Court is associated with about one-nineteenth of an additional departure ($p < 10^{-119}$, Pearson correlation 0.14); dissenting votes in Fourth Amendment cases are correlated with one-fifth of an additional departure.⁶⁸ Whether the Supreme Court itself has overruled an

⁶⁷ Faulkner & Green, *supra* note 13, at 214-15.

⁶⁸ *Id.* at 214. The Spaeth database, *supra* note 7, includes numbers of dissenting votes.

earlier case again turns out *not* to correlate with state-court departures. As with Fourth Amendment cases, a Westlaw “red flag” of overruling is not significantly correlated with the “yellow flag” of departure on state-law grounds, even though the Court has used state-court departures as a reason to overrule.⁶⁹

The Spaeth database divides Supreme Court cases into fourteen categories. In ten of them, a precedent’s youth is significantly correlated with the number of departures; in none, cases with more dissents feature more departures. But in none of the fourteen areas does the Supreme Court’s own overruling of a case correlate with departures. However, taking the Spaeth categories as wholes, there *is* a significant correlation between a category’s number of departures per case and its number of overrulings per case; a one percent increase in overruling chance is associated with 0.07 additional departures per case ($p < 0.05$, Pearson 0.65).

⁶⁹ *Id.* at 213 & n.198; see *Lawrence v. Texas*, 539 U.S. 558, 576-78 (2003) (overruling *Bowers v. Hardwick*, 478 U.S. 186 (1986), in part because of state-constitutional departures by Arkansas, Georgia, Montana, Tennessee, and Kentucky).

Spaeth Area	Cases	DPC ⁷⁰	OPC ⁷¹	Years per additional departure	Dissenting votes per additional departure
1. Criminal Procedure	3152	0.300	0.019	232 (p < 10 ⁻²³ , Pearson 0.18)	9.8 (p < 10 ⁻¹⁶ , Pearson 0.15)
2. Civil Rights	2709	0.072	0.009	780 (p < 10 ⁻¹³ , Pearson 0.14)	27.1 (p < 10 ⁻⁹ , Pearson .12)
3. First Amendment	805	0.103	0.015	Insignificant	42.3 (p < 0.05, Pearson 0.07)
4. Due Process	1136	0.066	0.004	663 (p < 10 ⁻¹⁰ , Pearson 0.19)	16.0 (p < 10 ⁻¹¹ , Pearson 0.20)
5. Privacy	137	0.182	0.022	Insignificant	Insignificant
6. Attorneys	334	0.111	0	305 (p < 10 ⁻⁵ , Pearson 0.26)	7.0 (p < 10 ⁻⁸ , Pearson 0.31)
7. Unions	529	0.074	0.015	749 (p < 0.05, Pearson 0.09)	Insignificant
8. Economic Activity	8389	0.025	0.009	1287 (p < 10 ⁻²¹ , Pearson 0.11)	48.0 (p < 10 ⁻¹² , Pearson 0.08)
9. Judicial Power	5549	0.034	0.005	900 (p < 10 ⁻¹⁶ , Pearson 0.11)	23.3 (p < 10 ⁻¹⁰ , Pearson 0.09)
10. Federalism	894	0.034	0.015	1658 (p < 0.01, Pearson 0.10)	67.2 (p < 0.05, Pearson 0.07)

⁷⁰ For purposes of this chart, “DPC” means “Departures Per Year.”.

⁷¹ For purposes of this chart, “OPC” means “Overrulings Per Case.”.

Spaeth Area	Cases	DPC	OPC	Years per additional departure	Dissenting votes per additional departure
11. Interstate Relations	270	0.019	0.000	Insignificant	Insignificant
13. Miscellaneous	115	0.035	0	1541 (p < 0.05, Pearson 0.18)	Insignificant
14. Private Action	3333	0.005	0.004	Insignificant	226.2 (p < 0.05, Pearson 0.04)

III. CHARACTERISTICS OF STATES

Looking at correlations between overall state departures and characteristics of states, we find that, as in the Fourth Amendment context, state judicial selection procedures⁷² are not significantly related. State age was not significantly related. As in the Fourth Amendment subset, states' political orientations were significantly related; each 1.1 additional percentage points in Democratic partisan advantage in the Cook Partisan Voting Index (PVI)⁷³ was related to an additional departure (p < 10⁻³, Pearson 0.52). Unlike the Fourth Amendment subset, however, state population and income *were* significantly related, population quite significantly so. Each additional 450,000 in state population⁷⁴ was related to an additional departure (p < 10⁻⁸, Pearson 0.72), as was each additional \$955 of state median household income (p < 10⁻³, Pearson 0.47).⁷⁵

⁷² For judicial selection data, see 52 BOOK OF THE STATES 203-05 (2020).

⁷³ For the PVI data, see *Cook Partisan Voting Index*, WIKIPEDIA, https://en.wikipedia.org/wiki/Cook_Partisan_Voting_Index [<https://perma.cc/NVB6-XGH6>] (page last edited Feb. 22, 2022, 16:49 UTC).

⁷⁴ For population data, see *2020 Population and Housing State Data*, U.S. CENSUS BUREAU, <https://www.census.gov/library/visualizations/interactive/2020-population-and-housing-state-data.html> [<https://perma.cc/ZGK6-GNSA>] (last revised Oct. 19, 2021).

⁷⁵ For income data, see *List of U.S. States and Territories By Income*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_U.S._states_and_territories_by_income#cite_note-1 [<https://perma.cc/RBT7-SNAA>] (page last edited Feb. 26, 2022, 13:21 UTC) (summarizing data from the Census Bureau).

Looking at state characteristics' correlations with departures in different Spaeth areas, we find that population is the most significant correlate, but that median state household income and PVI also correlated with departures in five Spaeth areas each:

Spaeth Area	Population Per Additional Departure	Additional State Median Household Income Per Additional Departure	Additional Democratic-Leaning Partisan Voting Index Percentage Points Per Additional Departure
1. Criminal Procedure	320,000 ($p < 10^{-4}$, Pearson 0.56)	\$420 ($p < 10^{-4}$, Pearson 0.54)	0.5 ($p < 10^{-4}$, Pearson 0.56)
2. Civil Rights	1,182,000 ($p < 10^{-5}$, Pearson 0.60)	\$745 ($p < 0.05$, Pearson 0.28)	1.2 ($p < 0.01$, Pearson 0.41)
3. First Amendment	944,000 ($p < 0.05$, Pearson 0.29)	\$1302 ($p < 0.05$, Pearson 0.30)	1.7 ($p < 0.05$, Pearson 0.36)
4. Due Process	2,110,000 ($p < 10^{-3}$, Pearson 0.46)	Insignificant	Insignificant
5. Privacy	Insignificant	Insignificant	Insignificant
6. Attorneys	1,936,000 ($p < 0.05$, Pearson 0.34)	\$ 2293 ($p < 0.05$, Pearson 0.29)	Insignificant
7. Unions	1,751,000 ($p < 0.05$, Pearson 0.28)	\$24,698 ($p < 0.05$, Pearson 0.34)	3.1 ($p < 0.05$, Pearson 0.36)

Spaeth Area	Population Per Additional Departure	Additional State Median Household Income Per Additional Departure	Additional Democratic-Leaning Partisan Voting Index Percentage Points Per Additional Departure
8. Economic Activity	1,973,000 (p < 10 ⁻¹⁰ , Pearson 0.77)	Insignificant	Insignificant
9. Judicial Power	1,535,000 (p < 10 ⁻³ , Pearson 0.48)	Insignificant	Insignificant
10. Federalism	3,508,000 (p < 0.01, Pearson 0.40)	Insignificant	Insignificant
11. Interstate Relations	8,234,000 (p < 0.05, Pearson 0.33)	Insignificant	Insignificant
12. Federal Taxation	7,134,000 (p < 10 ⁻⁷ , Pearson 0.69)	Insignificant	4.1 (p < 0.05, Pearson 0.28)
13. Miscellaneous	Insignificant	Insignificant	Insignificant
14. Private Action	Insignificant	Insignificant	Insignificant

A few other state factors—state age and method of judicial selection—were significantly related with departures in a Spaeth area:

Spaeth Area	Additional State Age Per Additional Seapature	Additional Departures With Judicial Elections	Additional Departures With Partisan Judicial Elections
1. Criminal Procedure	Insignificant	Insignificant	Insignificant
2. Civil Rights	4.0 years (p < 0.05, Pearson 0.30)	Insignificant	2.8 (p < 0.05, Pearson 0.30)
3. First Amendment	Insignificant	Insignificant	Insignificant
4. Due Process	Insignificant	Insignificant	Insignificant
5. Privacy	Insignificant	Insignificant	Insignificant
6. Attorneys	Insignificant	Insignificant	Insignificant
7. Unions	Insignificant	Insignificant	Insignificant
8. Economic Activity	Insignificant	Insignificant	Insignificant
9. Judicial Power	Insignificant	Insignificant	Insignificant
10. Federalism	Insignificant	0.65 (p < 0.05, Pearson 0.32)	Insignificant
11. Interstate Relations	Insignificant	Insignificant	Insignificant
12. Federal Taxation	Insignificant	Insignificant	Insignificant
13. Miscellaneous	Insignificant	Insignificant	Insignificant
14. Private Action	Insignificant	Insignificant	Insignificant

Finally, for the seventy-two cases with five or more departures, we looked for significant correlations between state characteristics and departure. Eighteen cases' states of departure correlate with population:

Case	Additional Population Associated With Departure
<u>Daubert</u> (1993)	4,618,000 (p < 0.05, Pearson 0.31)
<u>Moran</u> (1986)	5,967,000 (p < 0.01, Pearson 0.36)
<u>Celotex</u> (1986)	5,666,000 (p < 0.05, Pearson 0.33)
<u>Opper</u> (1954)	6,499,000 (p < 0.05, Pearson 0.32)
<u>Teague</u> (1989)	8,548,000 (p < 0.01, Pearson 0.40)
<u>Old Chief</u> (1997)	8,651,000 (p < 0.01, Pearson 0.41)
<u>Brasfield</u> (1926)	13,354,000 (p < 10 ⁻⁶ , Pearson 0.63)
<u>Casey</u> (1992)	7,436,000 (p < 0.05, Pearson 0.35)
<u>City of Burlington</u> (1992)	8,651,000 (p < 0.01, Pearson 0.38)
<u>Warth</u> (1975)	7,591,000 (p < 0.05, Pearson 0.33)
<u>Oregon v. Kennedy</u> (1982)	10,072,000 (p < 0.01, Pearson 0.45)
<u>Krull</u> (1986)	7,613,000 (p < 0.05, Pearson 0.34)
<u>Burlington Industries</u> (1998)	6,952,000 (p < 0.05, Pearson 0.28)
<u>Scott</u> (1979)	8,257,000 (p < 0.05, Pearson 0.34)
<u>Bourjaily</u> (1987)	12,046,000 (p < 10 ⁻³ , Pearson 0.49)
<u>Monell</u> (1978)	10,689,000 (p < 0.01, Pearson 0.44)
<u>Blakely</u> (2004)	9,029,000 (p < 0.01, Pearson 0.37)
<u>Amtrak v. Morgan</u> (2002)	16,695,000 (p < 10 ⁻⁷ , Pearson 0.68)

Thirteen cases' states of departure correlate positively with median household income, and one case correlates negatively:

Case	Additional Median Household Income Associated With Departure
Hodari D. (1991)	\$9,700 (p < 10 ⁻³ , Pearson 0.45)
Illinois v. Gates (1983)	\$10,000 (p < 0.01, Pearson 0.40)
Ohler (2000)	\$8,900 (p < .05, Pearson 0.36)
Olano (1993)	\$9,700 (p < 0.05, Pearson 0.35)
Delaware State College (1980)	\$13,300 (p < 10 ⁻³ , Pearson 0.46)
Chardon (1981)	\$13,300 (p < 10 ⁻³ , Pearson 0.46)
Greenwood (1988)	\$9,200 (p < 0.05, Pearson 0.32)
City of Burlington (1992)	\$10,500 (p < 0.05, Pearson 0.34)
Warth (1975)	\$9,300 (p < 0.05, Pearson 0.30)
Salvucci (1980)	\$11,700 (p < 0.01, Pearson 0.38)
Bagley (1985)	\$9,500 (p < 0.05, Pearson 0.31)
Neil v. Biggers (1972)	\$11,600 (p < 0.05, Pearson 0.35)
Manson v. Brathwaite (1977)	\$13,600 (p < 0.01, Pearson 0.41)
Case	Additional Median Household Income Associated With <i>Lack of</i> Departure
Parklane Hosiery (1979)	\$11,600 (p < 0.05, Pearson 0.35)

Seven cases' states of departure correlate with Democratic tilt in PVI:

Case	Additional Democratic-Leaning Partisan Voting Index Percentage Points Associate With Departure
Illinois v. Gates (1983)	10.1 (p < 0.01, Pearson 0.39)
Ohler (2000)	7.8 (p < 0.05, Pearson 0.30)
Delaware State College (1980)	11.5 (p < 0.01, Pearson 0.38)
Chardon (1981)	11.5 (p < 0.01, Pearson 0.38)
Salvucci (1980)	11.0 (p < 0.05, Pearson 0.34)
Bagley (1985)	11.9 (p < 0.01, Pearson 0.37)
Whren (1996)	9.9 (p < 0.05, Pearson 0.28)

A few cases' states of departure correlate positively or negatively with judicial selection methods:

Case	Additional Chance of Departure With Some Form of Judicial Elections
Celotex (1986)	0.31 (p < 0.05, Pearson 0.30)
Case	Additional Chance of Departure Without Some Form of Judicial Elections
Bagley (1985)	0.31 (p < 0.01, Pearson 0.40)
Oregon v. Elstad (1985)	0.22 (p < 0.05, Pearson 0.31)
Case	Additional Chance of Departure With Contested Judicial Elections
Harper (1993)	0.20 (p < 0.05, Pearson 0.29)
Martinez v. Ryan (2012)	0.20 (p < 0.05, Pearson 0.29)
Atwater v. Lago Vista (2001)	0.20 (p < 0.05, Pearson 0.33)
Matsushita (1986)	0.20 (p < 0.05, Pearson 0.33)
Case	Additional Chance of Departure Without Contested Judicial Elections
Teague (1989)	0.28 (p < 0.01, Pearson 0.40)
Oregon v. Elstad (1985)	0.20 (p < 0.05, Pearson 0.33)
Case	Additional Chance of Departure With Partisan Judicial Elections
Old Chief (1997)	0.33 (p < 0.01, Pearson 0.37)
Kelo (2005)	0.33 (p < 0.01, Pearson 0.37)
Oregon v. Kennedy (1982)	0.35 (p < 0.01, Pearson 0.43)
Blockburger (1932)	0.35 (p < 0.01, Pearson 0.43)
Atwater v. Lago Vista (2001)	0.25 (p < 0.05, Pearson 0.33)
Matsushita (1986)	0.25 (p < 0.05, Pearson 0.33)

Only one group of three or more states departed together from the same case: the seven-state group that departed together from two cases on how limitations periods deal with higher-education

terminations. California, Connecticut, Hawaii, Louisiana, Maryland, Minnesota, and New Jersey all departed together from both *Delaware State College v. Ricks*⁷⁶ and *Chardon v. Fernandez*.⁷⁷

Finally, we looked at which states' departures correlated best with departures from other states, i.e., which states were most characteristic of the entire Union and which states are most idiosyncratic. North Dakota, Alabama, and Delaware are the most typical states to depart, while departures by Mississippi and Utah were actually *negatively* correlated with departures elsewhere, making them the most idiosyncratic in their patterns of departure:

State	Departures	Number of Associated Departures in Other States Per Departure
North Dakota	8	4.20 (p < 10 ⁻¹³ , Pearson 0.24)
Alabama	20	3.70 (p < 10 ⁻²⁷ , Pearson 0.34)
Delaware	16	3.35 (p < 10 ⁻¹⁹ , Pearson 0.28)
Colorado	19	2.86 (p < 10 ⁻¹⁷ , Pearson 0.27)
Tennessee	48	2.77 (p < 10 ⁻⁴² , Pearson 0.42)
Oklahoma	19	2.70 (p < 10 ⁻¹⁶ , Pearson 0.26)
Nebraska	19	2.49 (p < 10 ⁻¹⁴ , Pearson 0.25)
Idaho	20	2.48 (p < 10 ⁻¹⁵ , Pearson 0.25)
Arizona	25	2.40 (p < 10 ⁻¹⁸ , Pearson 0.27)

⁷⁶ 449 U.S. 250 (1980) (beginning to run limitations period from formal decision to deny tenure).

⁷⁷ 454 U.S. 6 (1981) (beginning to run limitations period from formal decision to fire untenured faculty).

State	Departures	Number of Associated Departures in Other States Per Departure
Minnesota	47	2.31 (p < 10-31, Pearson 0.36)
South Dakota	10	2.29 (p < 10-7, Pearson 0.17)
Nevada	27	2.17 (p < 10-16, Pearson 0.26)
West Virginia	15	1.85 (p < 10-3, Pearson 0.12)
New Mexico	49	1.78 (p < 10-23, Pearson 0.31)
Iowa	38	1.68 (p < 10-16, Pearson 0.26)
North Carolina	26	1.65 (p < 10-11, Pearson 0.22)
Wisconsin	35	1.62 (p < 10-14, Pearson 0.25)
New Jersey	60	1.59 (p < 10-24, Pearson 0.32)
Michigan	34	1.54 (p < 10-13, Pearson 0.24)
Florida	57	1.51 (p < 10 ⁻²¹ , Pearson 0.30)
Georgia	26	1.45 (p < 10-9, Pearson 0.20)
Wyoming	13	1.42 (p < 10-5, Pearson 0.14)
Connecticut	50	1.39 (p < 10-17, Pearson 0.27)
Kentucky	35	1.35 (p < 10-12, Pearson 0.22)
Pennsylvania	61	1.31 (p < 10-19, Pearson 0.29)
Indiana	32	1.19 (p < 10-9, Pearson 0.20)

State	Departures	Number of Associated Departures in Other States Per Departure
Oregon	45	1.19 ($p < 10^{-13}$, Pearson 0.23)
New Hampshire	21	1.15 ($p < 10^{-6}$, Pearson 0.16)
South Carolina	18	1.08 ($p < 10^{-5}$, Pearson 0.15)
Vermont	36	1.06 ($p < 10^{-9}$, Pearson 0.20)
Maine	6	1.00 ($p < 0.05$, Pearson 0.08)
Missouri	30	0.98 ($p < 10^{-7}$, Pearson 0.17)
Hawaii	67	0.96 ($p < 10^{-15}$, Pearson 0.25)
Alaska	44	0.90 ($p < 10^{-9}$, Pearson 0.20)
Washington	89	0.82 ($p < 10^{-17}$, Pearson 0.27)
Louisiana	40	0.70 ($p < 10^{-7}$, Pearson 0.17)
Texas	92	0.59 ($p < 10^{-14}$, Pearson 0.24)
Ohio	45	0.51 ($p < 10^{-6}$, Pearson 0.16)
Illinois	46	0.39 ($p < 10^{-5}$, Pearson 0.15)
Massachusetts	67	0.33 ($p < 10^{-7}$, Pearson 0.17)
Arkansas	22	0.32 ($p < 0.01$, Pearson 0.10)
Montana	32	0.29 ($p < 10^{-3}$, Pearson 0.12)
California	114	0.28 ($p < 10^{-10}$, Pearson 0.21)

State	Departures	Number of Associated Departures in Other States Per Departure
Maryland	52	0.26 (p < 10-5, Pearson 0.14)
New York	73	0.11 (p < 10-5, Pearson 0.15)
Kansas	28	0.04 (p < 0.01, Pearson 0.09)
Rhode Island	17	insignificant
Virginia	17	insignificant
Mississippi	28	-0.07 (p < 0.05, Pearson 0.08)
Utah	30	-0.15 (p < 0.05, Pearson 0.07)

CONCLUSION

We conclude with a few thoughts on where research might go next. This canvass invites, of course, an obvious question of much larger scope than we can begin to answer: what if anything explains these statistical relationships? In particular, why are states' *populations* associated with such a large difference in departures overall, though they are not for departures from Fourth Amendment cases? One reason might be that in some areas of the law, more departures simply reflect more law. The more people in a state, the more litigation, and the more litigation, the greater likelihood that rules of civil procedure or evidence, say, will be clarified in a way distinct from the way the federal courts do things. But departures in the Fourth Amendment might be more likely than departures in other areas of the law to reflect genuine differences among the states in the relevant text, history, or judicial temperament.

A second way in which this canvass could be developed would be looking in detail at state courts' reasoning, which our mere description of patterns in the numbers of departures of course leaves out. What *justifies* a state in departing from federal law in

one area but not another? Going back over all 1868 instances of departure for a canvass of state courts' own proffered explanations would be quite a long story indeed. But a canvass of some of the most common instances of departure would likely be instructive.

Finally, independent of finding deeper explanations for these general patterns, there are many fascinating stories waiting to be told about state-court departures from the Supreme Court's lead. Each cluster of departures represents a critical piece of the epilogue of the story of how the Supreme Court resolved a case. While not all of the thousand cases provoking departure deserve a separate such epilogue, some do. This list of cases can serve as a map for those looking for a very particular sort of treasure of legal history.

