SUPREME COURT OF THE UNITED STATES

No. 99–1848

BUCKHANNON BOARD AND CARE HOME, INC., ET AL., PETITIONERS *v.* WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[May 29, 2001]

JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, dissenting.

The Court today holds that a plaintiff whose suit prompts the precise relief she seeks does not "prevail," and hence cannot obtain an award of attorney's fees, unless she also secures a court entry memorializing her victory. The entry need not be a judgment on the merits. Nor need there be any finding of wrongdoing. A court-approved settlement will do.

The Court's insistence that there be a document filed in court— a litigated judgment or court-endorsed settlement— upsets long-prevailing Circuit precedent applicable to scores of federal fee-shifting statutes. The decision allows a defendant to escape a statutory obligation to pay a plaintiff's counsel fees, even though the suit's merit led the defendant to abandon the fray, to switch rather than fight on, to accord plaintiff sooner rather than later the principal redress sought in the complaint. Concomitantly, the Court's constricted definition of "prevailing party," and consequent rejection of the "catalyst theory," impede access to court for the less well-heeled, and shrink the incentive Congress created for the enforcement of federal law by private attorneys general.

In my view, the "catalyst rule," as applied by the clear majority of Federal Circuits, is a key component of the fee-shifting statutes Congress adopted to advance enforcement of civil rights. Nothing in history, precedent, or plain English warrants the anemic construction of the term "prevailing party" the Court today imposes.

I

Petitioner Buckhannon Board and Care Home, Inc. (Buckhannon), operates residential care homes for elderly persons who need assisted living, but not nursing services. Among Buckhannon's residents in October 1996 was 102-year-old Dorsey Pierce. Pierce had resided at Buckhannon for some four years. Her daughter lived nearby, and the care provided at Buckhannon met Pierce's needs. Until 1998, West Virginia had a "self-preservation" rule prohibiting homes like Buckhannon from accommodating persons unable to exit the premises without assistance in the event of a fire. Pierce and two other Buckhannon residents could not get to a fire exit without aid. Informed of these residents' limitations, West Virginia officials proceeded against Buckhannon for noncompliance with the self-preservation rule. On October 18, 1996, three orders issued, each commanding Buckhannon to "cease operating . . . and to effect relocation of [its] existing population within thirty (30) days." App. 46–53.

Ten days later, Buckhannon and Pierce, together with an organization of residential homes and another Buckhannon resident (hereinafter plaintiffs), commenced litigation in Federal District Court to overturn the cease-and-desist orders and the self-preservation rule on which they rested. They sued the State, state agencies, and 18 officials (hereinafter defendants) alleging that the rule discriminated against persons with disabilities in violation of the Fair Housing Amendments Act of 1988 (FHAA), 42 U. S. C. §3601 *et seq.*, and the Americans with Disabilities

Act of 1990 (ADA), 42 U. S. C. §12101 *et seq*. Plaintiffs sought an immediate order stopping defendants from closing Buckhannon's facilities, injunctive relief permanently barring enforcement of the self-preservation requirement, damages, and attorney's fees.

On November 1, 1996, at a hearing on plaintiffs' request for a temporary restraining order, defendants agreed to the entry of an interim order allowing Buckhannon to remain open without changing the individual plaintiffs' housing and care. Discovery followed. On January 2, 1998, facing the state defendants' sovereign immunity pleas, plaintiffs stipulated to dismissal of their demands for damages. In February 1998, in response to defendants' motion to dispose of the remainder of the case summarily, the District Court determined that plaintiffs had presented triable claims under the FHAA and ADA.

Less than a month after the District Court found that plaintiffs were entitled to a trial, the West Virginia Legislature repealed the self-preservation rule. Plaintiffs still allege, and seek to prove, that their suit triggered the statutory repeal. After the rule's demise, defendants moved to dismiss the case as moot, and plaintiffs sought attorney's fees as "prevailing parties" under the FHAA, 42 U. S. C. §3613(c)(2), and the ADA, 42 U. S. C. §12205.[1]

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[1] The FHAA provides: "In a civil action . . . , the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee and costs." 42 U. S. C. §3613(c)(2). Similarly, the ADA provides: "In any action . . . , the court . . . , in its discretion, may allow the prevailing party . . . a reasonable attorney's fee, including litigation expenses, and costs . . . ." 42 U. S. C. §12205. These ADA and FHAA provisions are modeled on other "prevailing party" statutes, notably the Civil Rights Attorney's Fees Awards Act of 1976, 42 U. S. C. §1988 (1994 ed. and Supp. IV). See H. R. Rep. No. 101–485, pt. 2, p. 140 (1991) (ADA); H. R. Rep. No. 100–711, pp. 16–17, n. 20 (1988) (FHAA). Section 1988 was "patterned upon the attorney's fees provisions contained in Titles II and VII of the Civil Rights Act of 1964, 42 U. S. C. §§2000a–3(b) and 2000e–

Finding no likelihood that West Virginia would reenact the self-preservation rule, the District Court agreed that the State's action had rendered the case moot. Turning to plaintiffs' application for attorney's fees, the District Court followed Fourth Circuit precedent requiring the denial of fees unless termination of the action was accompanied by a judgment, consent decree, or settlement.[2] Plaintiffs did not appeal the mootness determination, and the Fourth Circuit affirmed the denial of attorney's fees. In sum, plaintiffs were denied fees not because they failed to achieve the relief they sought. On the contrary, they gained the very change they sought through their lawsuit when West Virginia repealed the self-preservation rule that would have stopped Buckhannon from caring for people like Dorsey Pierce.[3]

Prior to 1994, every Federal Court of Appeals (except the Federal Circuit, which had not addressed the issue) concluded that plaintiffs in situations like Buckhannon's

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5(k), and §402 of the Voting Rights Act Amendments of 1975, 42 U. S. C. 1973*l*(e)." *Hensley* v. *Eckerhart,* 461 U. S. 424, 433, n. 7 (1983) (citing *Hanrahan* v. *Hampton*, 446 U. S. 754, 758, n. 4 (1980) *(per curiam)*). In accord with congressional intent, we have interpreted these fee-shifting provisions consistently across statutes. The Court so observes. See *ante*, at 4, n. 4. Notably, the statutes do not mandate fees, but provide for their award "in [the court's] discretion."

[2] On plaintiffs' motion, the District Court sanctioned defendants under Federal Rule of Civil Procedure 11 for failing timely to notify plaintiffs "that the proposed [repeal of the self-preservation rule] was progressing successfully at several stages . . . during the pendency of [the] litigation." App. 144. In their Rule 11 motion, plaintiffs requested fees and costs totaling $62,459 to cover the expense of litigating after defendants became aware, but did not disclose, that elimination of the rule was likely. In the alternative, plaintiffs sought $3,252 to offset fees and expenses incurred in litigating the Rule 11 motion. The District Court, stating that "the primary purpose of Rule 11 is to deter and not to compensate," awarded the smaller sum. App. 147.

[3] Pierce remained a Buckhannon resident until her death on January 3, 1999.

and Pierce's could obtain a fee award if their suit acted as a "catalyst" for the change they sought, even if they did not obtain a judgment or consent decree.[4] The Courts of Appeals found it "clear that a party may be considered to have prevailed even when the legal action stops short of final . . . judgment due to . . . intervening mootness." *Grano* v. *Barry*, 783 F. 2d 1104, 1108 (CADC 1986). Interpreting the term "prevailing party" in "a practical sense," *Stewart* v. *Hannon*, 675 F. 2d 846, 851 (CA7 1982) (citation omitted), federal courts across the country held that a party "prevails" for fee-shifting purposes when "its ends are accomplished as a result of the litigation," *Associated Builders & Contractors* v. *Orleans Parish School Bd.*, 919 F. 2d 374, 378 (CA5 1990) (citation and internal quotation marks omitted).

In 1994, the Fourth Circuit en banc, dividing 6-to-5, broke ranks with its sister courts. The court declared

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[4] *Nadeau* v. *Helgemoe*, 581 F. 2d 275, 279–281 (CA1 1978); *Gerena-Valentin* v. *Koch*, 739 F. 2d 755, 758–759 (CA2 1984); *Institutionalized Juveniles* v. *Secretary of Pub. Welfare*, 758 F. 2d 897, 910–917 (CA3 1985); *Bonnes* v. *Long*, 599 F. 2d 1316, 1319 (CA4 1979); *Robinson* v. *Kimbrough*, 652 F. 2d 458, 465–467 (CA5 1981); *Citizens Against Tax Waste* v. *Westerville City School Dist. Bd. of Ed.*, 985 F. 2d 255, 257–258 (CA6 1993); *Stewart* v. *Hannon*, 675 F. 2d 846, 851 (CA7 1982); *Williams* v. *Miller*, 620 F. 2d 199, 202 (CA8 1980); *American Constitutional Party* v. *Munro*, 650 F. 2d 184, 187–188 (CA9 1981); *J & J Anderson, Inc.* v. *Erie*, 767 F. 2d 1469, 1474–1475 (CA10 1985); *Doe* v. *Busbee*, 684 F. 2d 1375, 1379 (CA11 1982); *Grano* v. *Barry*, 783 F. 2d 1104, 1108–1110 (CADC 1986). All *twelve* of these decisions antedate *Hewitt* v. *Helms*, 482 U. S. 755 (1987). But cf. *ante*, at 12, and n. 5 (SCALIA, J., concurring) (maintaining that this Court's decision in *Hewitt* "improvidently suggested" the catalyst rule, and asserting that only "a few cases adopting the catalyst theory predate *Hewitt*"). *Hewitt* said it was "settled law" that when a lawsuit prompts a defendant's "voluntary action . . . that redresses the plaintiff's grievances," the plaintiff "is deemed to have prevailed despite the absence of a formal judgment in his favor." 482 U. S., at 760–761. That statement accurately conveyed the unanimous view then held by the Federal Circuits.

that, in light of *Farrar* v. *Hobby*, 506 U. S. 103 (1992), a plaintiff could not become a "prevailing party" without "an enforceable judgment, consent decree, or settlement." *S–1 and S–2* v. *State Bd. of Ed. of N. C.*, 21 F. 3d 49, 51 (1994). As the Court today acknowledges, see *ante*, at 4–5, n. 5, and as we have previously observed, the language on which the Fourth Circuit relied was dictum: *Farrar* "involved no catalytic effect"; the issue plainly "was not presented for this Court's decision in *Farrar*." *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 194 (2000).

After the Fourth Circuit's en banc ruling, nine Courts of Appeals reaffirmed their own consistently held interpretation of the term "prevail."[5] On this predominant view, "[s]ecuring an enforceable decree or agreement may evidence prevailing party status, but the judgment or agreement simply embodies and enforces what is sought in bringing the lawsuit . . . . Victory can be achieved well short of a final judgment (or its equivalent) . . . ." *Marbley* v. *Bane*, 57 F. 3d 224, 234 (CA2 1995) (Jacobs, J.).

The array of federal court decisions applying the catalyst rule suggested three conditions necessary to a party's qualification as "prevailing" short of a favorable final judgment or consent decree. A plaintiff first had to show that the defendant provided "some of the benefit sought" by the lawsuit. *Wheeler* v. *Towanda Area School Dist.*, 950 F. 2d 128, 131 (CA3 1991). Under most Circuits' prece-

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[5] *Stanton* v. *Southern Berkshire Regional School Dist.*, 197 F. 3d 574, 577, n. 2 (CA1 1999); *Marbley* v. *Bane*, 57 F. 3d 224, 234 (CA2 1995); *Baumgartner* v. *Harrisburg Housing Auth.*, 21 F. 3d 541, 546–550 (CA3 1994); *Payne* v. *Board of Ed.*, 88 F. 3d 392, 397 (CA6 1996); *Zinn* v. *Shalala*, 35 F. 3d 273, 276 (CA7 1994); *Little Rock School Dist.* v. *Pulaski Cty. School Dist., #1*, 17 F. 3d 260, 263, n. 2 (CA8 1994); *Kilgour* v. *Pasadena*, 53 F. 3d 1007, 1010 (CA9 1995); *Beard* v. *Teska*, 31 F. 3d 942, 951–952 (CA10 1994); *Morris* v. *West Palm Beach*, 194 F. 3d 1203, 1207 (CA11 1999).

dents, a plaintiff had to demonstrate as well that the suit stated a genuine claim, *i.e.*, one that was at least "colorable," not "frivolous, unreasonable, or groundless." *Grano*, 783 F. 2d, at 1110 (internal quotation marks and citation omitted). Plaintiff finally had to establish that her suit was a "substantial" or "significant" cause of defendant's action providing relief. *Williams* v. *Leatherbury*, 672 F. 2d 549, 551 (CA5 1982). In some Circuits, to make this causation showing, plaintiff had to satisfy the trial court that the suit achieved results "by threat of victory," not "by dint of nuisance and threat of expense." *Marbley*, 57 F. 3d, at 234–235; see also *Hooper* v. *Demco, Inc.*, 37 F. 3d 287, 293 (CA7 1994) (to render plaintiff "prevailing party," suit "must have prompted the defendant . . . to act or cease its behavior based on the strength of the case, not 'wholly gratuitously'"). One who crossed these three thresholds would be recognized as a "prevailing party" to whom the district court, "in its discretion," *supra*, at 3–4, n. 1, could award attorney's fees.

Developed over decades and in legions of federal-court decisions, the catalyst rule and these implementing standards deserve this Court's respect and approbation.

II

A

The Court today detects a "clear meaning" of the term prevailing party, *ante*, at 12, that has heretofore eluded the large majority of courts construing those words. "Prevailing party," today's opinion announces, means "one who has been awarded some relief by the court," *ante*, at 4. The Court derives this "clear meaning" principally from Black's Law Dictionary, which defines a "prevailing party," in critical part, as one "in whose favor a judgment is rendered," *ante*, at 4 (quoting Black's Law Dictionary 1145 (7th ed. 1999)).

One can entirely agree with Black's Law Dictionary that

a party "in whose favor a judgment is rendered" prevails, and at the same time resist, as most Courts of Appeals have, any implication that *only* such a party may prevail. In prior cases, we have not treated Black's Law Dictionary as preclusively definitive; instead, we have accorded statutory terms, including legal "term[s] of art," *ante*, at 4 (opinion of the Court); *ante*, at 6 (SCALIA, J., concurring), a contextual reading. See, *e.g.*, *Pioneer Investment Services Co.* v. *Brunswick Associates Ltd. Partnership,* 507 U. S. 380, 395–396, n. 14 (1993) (defining "excusable neglect," as used in Federal Rule of Bankruptcy Procedure 9006(b)(1), more broadly than Black's defines that term); *United States* v. *Rodgers*, 466 U. S. 475, 479–480 (1984) (adopting "natural, nontechnical" definition of word "jurisdiction," as that term is used in 18 U. S. C. §1001, and declining to confine definition to "narrower, more technical meanings," citing Black's). Notably, this Court did not refer to Black's Law Dictionary in *Maher* v. *Gagne*, 448 U. S. 122 (1980), which held that a consent decree could qualify a plaintiff as "prevailing." The Court explained:

> "The fact that [plaintiff] prevailed through a settlement rather than through litigation does not weaken her claim to fees. Nothing in the language of [42 U. S. C.] §1988 conditions the District Court's power to award fees on full litigation of the issues or on a judicial determination that the plaintiff's rights have been violated." *Id.*, at 129.

The spare "prevailing party" language of the fee-shifting provision applicable in *Maher,* and the similar wording of the fee-shifting provisions now before the Court, contrast with prescriptions that so tightly bind fees to judgments as to exclude the application of a catalyst concept. The Prison Litigation Reform Act of 1995, for example, directs that fee awards to prisoners under §1988 be "proportionately related to the *court ordered relief* for the violation."

110 Stat. 1321–72, as amended, 42 U. S. C. §1997e(d)(1)(B)(i) (1994 ed., Supp. IV) (emphasis added). That statute, by its express terms, forecloses an award to a prisoner on a catalyst theory. But the FHAA and ADA fee-shifting prescriptions, modeled on 42 U. S. C. §1988 unmodified, see *supra*, at 3–4, n. 1, do not similarly staple fee awards to "court ordered relief." Their very terms do not foreclose a catalyst theory.

B

It is altogether true, as the concurring opinion points out, *ante*, at 1–2, that litigation costs other than attorney's fees traditionally have been allowed to the "prevailing party," and that a judgment winner ordinarily fits that description. It is not true, however, that precedent on costs calls for the judgment requirement the Court ironly adopts today for attorney's fees. Indeed, the first decision cited in the concurring opinion, *Mansfield, C. & L. M. R. Co.* v. *Swan,* 111 U. S. 379 (1884), see *ante*, at 1, tugs against the restrictive rule today's decision installs.

In *Mansfield*, plaintiffs commenced a contract action in state court. Over plaintiffs' objections, defendants successfully removed the suit to federal court. Plaintiffs prevailed on the merits there, and defendants obtained review here. See 111 U. S., at 380–381. This Court determined, on its own motion, that federal subject-matter jurisdiction was absent from the start. Based on that determination, the Court reversed the lower court's judgment for plaintiffs. Worse than entering and leaving this Courthouse equally "emptyhanded," *ante*, at 4 (concurring opinion), the plaintiffs in *Mansfield* were stripped of the judgment they had won, including the "judicial finding . . . of the merits" in their favor, *ante*, at 3 (concurring opinion). The *Mansfield* plaintiffs did, however, achieve this small consolation: The Court awarded them costs here as well as below. Recognizing that defendants had "pre-

vail[ed]" in a "formal and nominal sense," the *Mansfield* Court nonetheless concluded that "[i]n a true and proper sense" defendants were "the losing and not the prevailing party." 111 U. S., at 388.

While *Mansfield* casts doubt on the present majority's "formal and nominal" approach, that decision does not consider whether costs would be in order for the plaintiff who obtains substantial relief, but no final judgment. Nor does "*a single case*" on which the concurring opinion today relies, *ante*, at 4.[6] There are, however, enlightening analogies. In multiple instances, state high courts have regarded plaintiffs as prevailing, for costs taxation purposes, when defendants' voluntary conduct, mooting the suit, provided the relief that plaintiffs sought.[7] The concurring opinion

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[6] *The Baltimore,* 8 Wall. 377 (1869), featured in the concurring opinion, see *ante*, at 1–2, does not run the distance to which that opinion would take it. In *The Baltimore,* there was a judgment in one party's favor. See 8 Wall., at 384. The Court did not address the question whether costs are available absent such a judgment. *The Baltimore*'s "incident to the judgment" language, which the concurrence emphasizes, *ante*, at 1, 2 (citing 8 Wall., at 388, 390), likely related to the once-maintained rule that a court without jurisdiction may not award costs. See *Mayor* v. *Cooper,* 6 Wall. 247, 250–251 (1868). That ancient rule figured some years later in *Mansfield, C. & L. M. R. Co.* v. *Swan,* 111 U. S. 379 (1884); the Court noted the "universally recognized rule of the common law" that, absent jurisdiction, a "court can render no judgment for or against either party, [and therefore] cannot render a judgment even for costs." *Id.*, at 387. Receding from that rule, the Court awarded costs, even upon dismissal for lack of jurisdiction, because "there is a judgment or final order in the cause dismissing it for want of jurisdiction." *Ibid.;* see *U. S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership,* 513 U. S. 18, 21 (1994).

[7] See, *e.g.*, *Board of Ed. of Madison County* v. *Fowler*, 192 Ga. 35, 36, 14 S. E. 2d 478, 479 (1941) (mandamus action dismissed as moot, but costs awarded to plaintiffs where "the purposes of the mandamus petition were accomplished by the subsequent acts of the defendants, thus obviating the necessity for further proceeding"); *Baldwin* v. *Chesapeake & Potomac Tel. Co.*, 156 Md. 552, 557, 144 A. 703, 705 (1929) (costs awarded to plaintiff after trial court granted defendant's demurrer and

labors unconvincingly to distinguish these state law cases.[8] A similar federal practice has been observed in cases gov-

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plaintiff's appeal was dismissed "based on an act of [defendant] performed after . . . entry of the appeal"; dismissal rendered "it unnecessary to inquire into the merits of the suit"); *Ficklen* v. *Danville*, 146 Va. 426, 438, 132 S. E. 705, 706 (1926) (costs on appeal awarded to plaintiffs, even though trial court denied injunctive relief and high court dismissed appeal due to mootness, because plaintiffs achieved the "equivalent to . . . 'substantially prevailing'" in "gain[ing] all they sought by the appeal"); cf. *Scatcherd* v. *Love*, 166 F. 53, 55, 56 (CA6 1908) (although "there was no judgment against the defendant upon the merits," defendant "acknowledged its liability . . . by paying to the plaintiff the sum of $5,000," rendering plaintiff the "successful party" entitled to costs); *Talmage* v. *Monroe*, 119 P. 526 (Cal. App. 1911) (fees awarded to petitioner after court issued "alternative writ" directing respondent either to take specified action or to show cause for not doing so, and respondent chose to take the action).

[8] The concurrence urges that *Baldwin* is inapposite because it was an action *"in equity,"* and equity courts could award costs as the equities required. *Ante*, at 2. The catalyst rule becomes relevant, however, only when a party seeks relief of a sort traditionally typed *equitable*, *i.e.*, a change of conduct, not damages. There is no such thing as an injunction *at law*, and therefore one cannot expect to find long-ago plaintiffs who quested after that mythical remedy and received voluntary relief. By the concurrence's reasoning, the paucity of precedent applying the catalyst rule to "prevailing parties" is an artifact of nothing more "remarkable," *ante*, at 4, than the historic law-equity separation.

The concurrence notes that the other cited cases "all involve a judicial finding– *or its equivalent, an acknowledgment by the defendant*– of the merits of plaintiff's case." *Ante*, at 3 (emphasis added). I agree. In *Fowler* and *Scatcherd*, however, the "acknowledgment" consisted of nothing more than the defendant's voluntary provision to the plaintiff of the relief that the plaintiff sought. See also, *e.g.*, *Jefferson R. R. Co.* v. *Weinman*, 39 Ind. 231 (1872) (costs awarded where defendant voluntarily paid damages; no admission or merits judgment); *Wagner* v. *Wagner*, 9 Pa. 214 (1848) (same); *Hudson* v. *Johnson*, 1 Va. 10 (1791) (same). Common-law courts thus regarded a defendant's voluntary compliance, by settlement or otherwise, as an "acknowledgment . . . of the merits" sufficient to warrant treatment of a plaintiff as prevailing. But cf. *ante*, at 5, n. 7 (opinion of the Court). One can only wonder why the concurring opinion would not follow the same practice today.

erned by Federal Rule of Civil Procedure 54(d), the default rule allowing costs "to the prevailing party unless the court otherwise directs." See 10 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §2667, pp. 187–188 (2d ed. 1983) (When "the defendant alters its conduct so that plaintiff's claim [for injunctive relief] becomes moot before judgment is reached, costs may be allowed [under Rule 54(d)] if the court finds that the changes were the result, at least in part, of plaintiff's litigation.") (citing, *inter alia*, *Black Hills Alliance* v. *Regional Forester*, 526 F. Supp. 257 (ND 1981)).

In short, there is substantial support, both old and new, federal and state, for a costs award, "in [the court's] discretion," *supra*, at 3, n. 1, to the plaintiff whose suit prompts the defendant to provide the relief plaintiff seeks.

C

Recognizing that no practice set in stone, statute, rule, or precedent, see *infra*, at 21–22, dictates the proper construction of modern civil rights fee-shifting prescriptions, I would "assume . . . that Congress intends the words in its enactments to carry 'their ordinary, contemporary, common meaning.'" *Pioneer*, 507 U. S., at 388 (defining "excusable neglect") (quoting *Perrin* v. *United States,* 444 U. S. 37, 42 (1979) (defining "bribery")); see also, *e.g.*, *Sutton* v. *United Air Lines, Inc.,* 527 U. S. 471, 491 (1999) (defining "substantially" in light of ordinary usage); *Rutledge* v. *United States*, 517 U. S. 292, 299–300, n. 10 (1996) (similarly defining "in concert"). In everyday use, "prevail" means "gain victory by virtue of strength or superiority: win mastery: triumph." Webster's Third New International Dictionary 1797 (1976). There are undoubtedly situations in which an individual's goal is to obtain approval of a judge, and in those situations, one cannot "prevail" short of a judge's formal declaration. In a piano competition or a figure skating contest, for example, the

person who prevails is the person declared winner by the judges. However, where the ultimate goal is not an arbiter's approval, but a favorable alteration of actual circumstances, a formal declaration is not essential. Western democracies, for instance, "prevailed" in the Cold War even though the Soviet Union never formally surrendered. Among television viewers, John F. Kennedy "prevailed" in the first debate with Richard M. Nixon during the 1960 Presidential contest, even though moderator Howard K. Smith never declared a winner. See T. White, The Making of the President 1960, pp. 293–294 (1961).

A lawsuit's ultimate purpose is to achieve actual relief from an opponent. Favorable judgment may be instrumental in gaining that relief. Generally, however, "the judicial decree is not the end but the means. At the end of the rainbow lies not a judgment, but some action (or cessation of action) by the defendant . . . ." *Hewitt* v. *Helms*, 482 U. S. 755, 761 (1987). On this common understanding, if a party reaches the "sought-after destination," then the party "prevails" regardless of the "route taken." *Hennigan* v. *Ouachita Parish School Bd.*, 749 F. 2d 1148, 1153 (CA5 1985).

Under a fair reading of the FHAA and ADA provisions in point, I would hold that a party "prevails" in "a true and proper sense," *Mansfield*, 111 U. S., at 388, when she achieves, by instituting litigation, the practical relief sought in her complaint. The Court misreads Congress, as I see it, by insisting that, invariably, relief must be displayed in a judgment, and correspondingly that a defendant's voluntary action never suffices. In this case, Buckhannon's purpose in suing West Virginia officials was not narrowly to obtain a judge's approbation. The plaintiffs' objective was to stop enforcement of a rule requiring Buckhannon to evict residents like centenarian Dorsey Pierce as the price of remaining in business. If Buckhannon achieved that objective on account of the strength of

its case, see *supra*, at 7— if it succeeded in keeping its doors open while housing and caring for Ms. Pierce and others similarly situated— then Buckhannon is properly judged a party who prevailed.

III

As the Courts of Appeals have long recognized, the catalyst rule suitably advances Congress' endeavor to place private actions, in civil rights and other legislatively defined areas, securely within the federal law enforcement arsenal.

The catalyst rule stemmed from modern legislation extending civil rights protections and enforcement measures. The Civil Rights Act of 1964 included provisions for fee awards to "prevailing parties" in Title II (public accommodations), 42 U. S. C. §2000a–3(b), and Title VII (employment), 42 U. S. C. §2000e–5(k), but not in Title VI (federal programs). The provisions' central purpose was "to promote vigorous enforcement" of the laws by private plaintiffs; although using the two-way term "prevailing party," Congress did not make fees available to plaintiffs and defendants on equal terms. *Christiansburg Garment Co.* v. *EEOC,* 434 U. S. 412, 417, 421 (1978) (under Title VII, prevailing plaintiff qualifies for fee award absent "special circumstances," but prevailing defendant may obtain fee award only if plaintiff's suit is "frivolous, unreasonable, or without foundation").

Once the 1964 Act came into force, courts commenced to award fees regularly under the statutory authorizations, and sometimes without such authorization. See *Alyeska Pipeline Service Co.* v. *Wilderness Society,* 421 U. S. 240, 262, 270–271, n. 46 (1975). In *Alyeska*, this Court reaffirmed the "American rule" that a court generally may not award attorney's fees without a legislative instruction to do so. See *id.*, at 269. To provide the authorization *Alyeska* required for fee awards under Title VI of the 1964 Civil

Rights Act, as well as under Reconstruction Era civil rights legislation, 42 U. S. C. §§1981–1983, 1985, 1986 (1994 ed. and Supp. IV), and certain other enactments, Congress passed the Civil Rights Attorney's Fees Awards Act of 1976, 42 U. S. C. §1988 (1994 ed. and Supp. IV).

As explained in the Reports supporting §1988, civil rights statutes vindicate public policies "of the highest priority," S. Rep. No. 94–1011, p. 3 (1976) (quoting *Newman* v. *Piggie Park Enterprises, Inc.,* 390 U. S. 400, 402 (1968) *(per curiam)*), yet "depend heavily on private enforcement," S. Rep. No. 94–1011, at 2. Persons who bring meritorious civil rights claims, in this light, serve as "private attorneys general." *Id.*, at 5; H. R. Rep. No. 94–1558, p. 2 (1976). Such suitors, Congress recognized, often "cannot afford legal counsel." *Id.*, at 1. They therefore experience "severe hardshi[p]" under the "American Rule." *Id.*, at 2. Congress enacted §1988 to ensure that nonaffluent plaintiffs would have "effective access" to the Nation's courts to enforce civil rights laws. *Id.*, at 1.[9] That objective accounts for the fee-shifting provisions before the Court in this case, prescriptions of the FHAA and the ADA modeled on §1988. See *supra*, at 3–4, n. 1.

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[9] See H. R. Rep. No. 94–1558, at 1 ("Because a vast majority of the victims of civil rights violations cannot afford legal counsel, they are unable to present their cases to the courts. . . . [This statute] is designed to give such persons effective access to the judicial process . . . ."); S. Rep. No. 94–1011, at 2 ("If private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs them to vindicate these rights in court."), quoted in part in *Kay* v. *Ehrler*, 499 U. S. 432, 436, n. 8 (1991). See also *Newman* v. *Piggie Park Enterprises, Inc.,* 390 U. S. 400, 401–402 (1968) *(per curiam)* ("When the Civil Rights Act of 1964 was passed, it was evident that enforcement would prove difficult and that the Nation would have to rely in part upon private litigation as a means of securing broad compliance with the law. . . . [Congress] enacted the provision for counsel fees . . . to encourage individuals injured by racial discrimination to seek judicial relief . . . .").

Under the catalyst rule that held sway until today, plaintiffs who obtained the relief they sought through suit on genuine claims ordinarily qualified as "prevailing parties," so that courts had discretion to award them their costs and fees. Persons with limited resources were not impelled to "wage total law" in order to assure that their counsel fees would be paid. They could accept relief, in money or of another kind, voluntarily proffered by a defendant who sought to avoid a recorded decree. And they could rely on a judge then to determine, in her equitable discretion, whether counsel fees were warranted and, if so, in what amount.[10]

Congress appears to have envisioned that very prospect. The Senate Report on the 1976 Civil Rights Attorney's Fees Awards Act states: "[F]or purposes of the award of counsel fees, parties may be considered to have prevailed when they vindicate rights through a consent judgment *or without formally obtaining relief*." S. Rep. No. 94–1011, at 5 (emphasis added). In support, the Report cites cases in which parties recovered fees in the absence of any court-conferred relief.[11] The House Report corroborates: "[A]fter

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[10] Given the protection furnished by the catalyst rule, aggrieved individuals were not left to worry, and wrongdoers were not led to believe, that strategic maneuvers by defendants might succeed in averting a fee award. Cf. *ante*, at 10 (opinion of the Court). Apt here is Judge Friendly's observation construing a fee-shifting statute kin to the provisions before us: "Congress clearly did not mean that where a [Freedom of Information Act] suit had gone to trial and developments have made it apparent that the judge was about to rule for the plaintiff, the Government could abort any award of attorney fees by an eleventh hour tender of information." *Vermont Low Income Advocacy Council* v. *Usery*, 546 F. 2d 509, 513 (CA2 1976) (interpreting 5 U. S. C. §552(a)(4)(E), allowing a complainant who "substantially prevails" to earn an attorney's fee); accord, *Cuneo* v. *Rumsfeld*, 553 F. 2d 1360, 1364 (CADC 1977).

[11] See S. Rep. No. 94–1011, at 5 (citing *Kopet* v. *Esquire Realty Co.*, 523 F. 2d 1005, 1008–1009 (CA2 1975) (partner sued his firm for

a complaint is filed, a defendant might voluntarily cease the unlawful practice. *A court should still award fees* even though it might conclude, as a matter of equity, that *no formal relief*, such as an injunction, is needed." H. R. Rep. No. 94–1558, at 7 (emphases added). These Reports, Courts of Appeals have observed, are hardly ambiguous. Compare *ante*, at 9 ("legislative history . . . is at best ambiguous"), with, *e.g.*, *Dunn* v. *The Florida Bar*, 889 F. 2d 1010, 1013 (CA11 1989) (legislative history "evinces a clear Congressional intent" to permit award "even when no formal judicial relief is obtained" (internal quotation marks omitted)); *Robinson* v. *Kimbrough*, 652 F. 2d 458, 465 (CA5 1981) (same); *American Constitutional Party* v. *Munro*, 650 F. 2d 184, 187 (CA9 1981) (Senate Report "directs" fee award under catalyst rule). Congress, I am convinced, understood that "[v]ictory' in a civil rights suit

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release of documents, firm released the documents, court awarded fees because of the release, even though the partner's claims were "dismissed for lack of subject matter jurisdiction"), and *Thomas* v. *Honeybrook Mines, Inc.*, 428 F. 2d 981, 984, 985 (CA3 1970) (union committee twice commenced suit for pension fund payments, suits prompted recovery, and court awarded fees even though the first suit had been dismissed and the second had not yet been adjudicated)).

The Court features a case cited by the House as well as the Senate in the Reports on §1988, *Parham* v. *Southwestern Bell Tel. Co.*, 433 F. 2d 421 (CA8 1970). The Court deems *Parham* consistent with its rejection of the catalyst rule, alternately because the Eighth Circuit made a "finding that the defendant had acted unlawfully," and because that court ordered the District Court to "'retain jurisdiction over the matter . . . to insure the continued implementation of the [defendant's] policy of equal employment opportunities.'" *Ante*, at 9, n. 9 (quoting 433 F. 2d, at 429). Congress did not fix on those factors, however: Nothing in either Report suggests that judicial findings or retention of jurisdiction is essential to an award of fees. The courts in *Kopet* and *Thomas* awarded fees based on claims as to which they neither made "a finding" nor "retain[ed] jurisdiction." (It nonetheless bears attention that, in line with the Court's description of *Parham*, a plaintiff could qualify as the "prevailing party" based on a finding or retention of jurisdiction.)

is typically a practical, rather than a strictly legal matter." *Exeter-West Greenwich Regional School Dist.* v. *Pontarelli*, 788 F. 2d 47, 51 (CA1 1986) (citation omitted).

IV

The Court identifies several "policy arguments" that might warrant rejection of the catalyst rule. See *ante*, at 10–11. A defendant might refrain from altering its conduct, fearing liability for fees as the price of voluntary action. See *ante*, at 10. Moreover, rejection of the catalyst rule has limited impact: Desisting from the challenged conduct will not render a case moot where damages are sought, and even when the plaintiff seeks only equitable relief, a defendant's voluntary cessation of a challenged practice does not render the case moot "unless it is 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Ibid.* (quoting *Friends of Earth, Inc.*, 528 U. S., at 189). Because a mootness dismissal is not easily achieved, the defendant may be impelled to settle, negotiating fees less generous than a court might award. See *ante*, at 11. Finally, a catalyst rule would "require analysis of the defendant's subjective motivations," and thus protract the litigation. *Ante*, at 11.

The Court declines to look beneath the surface of these arguments, placing its reliance, instead, on a meaning of "prevailing party" that other jurists would scarcely recognize as plain. See *ibid.* Had the Court inspected the "policy arguments" listed in its opinion, I doubt it would have found them impressive.

In opposition to the argument that defendants will resist change in order to stave off an award of fees, one could urge that the catalyst rule may lead defendants promptly to comply with the law's requirements: the longer the litigation, the larger the fees. Indeed, one who knows noncompliance will be expensive might be encouraged to conform his conduct to the legal requirements

before litigation is threatened. Cf. Hylton, Fee Shifting and Incentives to Comply with the Law, 46 Vand. L. Rev. 1069, 1121 (1993) ("fee shifting in favor of prevailing plaintiffs enhances both incentives to comply with legal rules *and* incentives to settle disputes"). No doubt, a mootness dismissal is unlikely when recurrence of the controversy is under the defendant's control. But, as earlier observed, see *supra*, at 16, why should this Court's fee-shifting rulings drive a plaintiff prepared to accept adequate relief, though out-of-court and unrecorded, to litigate on and on? And if the catalyst rule leads defendants to negotiate not only settlement terms but also allied counsel fees, is that not a consummation to applaud, not deplore?

As to the burden on the court, is it not the norm for the judge to whom the case has been assigned to resolve fee disputes (deciding whether an award is in order, and if it is, the amount due), thereby clearing the case from the calendar? If factfinding becomes necessary under the catalyst rule, is it not the sort that "the district courts, in their factfinding expertise, deal with on a regular basis"? *Baumgartner* v. *Harrisburg Housing Auth.*, 21 F. 3d 541, 548 (CA3 1994). Might not one conclude overall, as Courts of Appeals have suggested, that the catalyst rule "saves judicial resources," *Paris* v. *Department of Housing and Urban Development*, 988 F. 2d 236, 240 (CA1 1993), by encouraging "plaintiffs to discontinue litigation after receiving through the defendant's acquiescence the remedy initially sought"? *Morris* v. *West Palm Beach*, 194 F. 3d 1203, 1207 (CA11 1999).

The concurring opinion adds another argument against the catalyst rule: That opinion sees the rule as accommodating the "extortionist" who obtains relief because of "greater strength in financial resources, or superiority in media manipulation, rather than *superiority in legal merit.*" *Ante*, at 8, 9. This concern overlooks both the

character of the rule and the judicial superintendence Congress ordered for all fee allowances. The catalyst rule was auxiliary to fee-shifting statutes whose primary purpose is "to promote the vigorous enforcement" of the civil rights laws. *Christiansburg Garment Co.*, 434 U. S., at 422. To that end, courts deemed the conduct-altering catalyst that counted to be the substance of the case, not merely the plaintiff's atypically superior financial resources, media ties, or political clout. See *supra*, at 7. And Congress assigned responsibility for awarding fees not to automatons unable to recognize extoritionists, but to judges expected and instructed to exercise "discretion." See *supra*, at 3–4, n. 1. So viewed, the catalyst rule provided no berth for nuisance suits, see *Hooper*, 37 F. 3d, at 292, or "thinly disguised forms of extortion," *Tyler* v. *Corner Constr. Corp.*, 167 F. 3d 1202, 1206 (CA8 1999) (citation omitted).[12]

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[12] The concurring opinion notes, correctly, that "[t]here *must* be a cutoff of seemingly equivalent entitlements to fees– either the failure to file suit in time or the failure to obtain a judgment in time." *Ante*, at 11. The former cutoff, the Court has held, is impelled both by "plain language" requiring a legal "action" or "proceeding" antecedent to a fee award, and by "legislative history . . . replete with references to [enforcement] 'in suits,' 'through the courts' and by 'judicial process.'" *North Carolina Dept. of Transp.* v. *Crest Street Community Council, Inc.*, 479 U. S. 6, 12 (1986) (citations omitted). The latter cut-off, requiring "a judgment in time," is not similarly impelled by text or legislative history.

The concurring opinion also states that a prevailing party must obtain relief "*in the lawsuit*." *Ante*, at 6, 9. One can demur to that elaboration of the statutory text and still adhere to the catalyst rule. Under the rule, plaintiff's suit raising genuine issues must trigger the defendant's voluntary action; plaintiff will not prevail under the rule if defendant "ceases . . . [his] offensive conduct" by dying or going bankrupt. See *ante*, at 6. A behavior-altering event like dying or bankruptcy occurs outside the lawsuit; a change precipitated by the lawsuit's claims and demand for relief is an occurrence brought about "through" or "in" the suit.

V

As to our attorney fee precedents, the Court correctly observes, "[w]e have never had occasion to decide whether the term 'prevailing party' allows an award of fees under the 'catalyst theory,'" and "there is language in our cases supporting both petitioners and respondents." *Ante*, at 4–5, n. 5. It bears emphasis, however, that in determining whether fee shifting is in order, the Court in the past has placed greatest weight not on any "judicial *imprimatur*," *ante*, at 6, but on the practical impact of the lawsuit.[13] In *Maher* v. *Gagne*, 448 U. S. 122 (1980), in which the Court held fees could be awarded on the basis of a consent decree, the opinion nowhere relied on the presence of a formal judgment. See *supra*, at 8; *infra*, at 22, n. 14. Some years later, in *Hewitt* v. *Helms*, 482 U. S. 755 (1987), the Court suggested that fees might be awarded the plaintiff who "obtain[ed] relief without [the] benefit of a formal judgment." *Id.*, at 760. The Court explained: "If the defendant, under the pressure of the lawsuit, pays over a money claim before the judicial judgment is pronounced," or "if the defendant, under pressure of [a suit for declaratory judgment], alters his conduct (or threatened conduct) towards the plaintiff," *i.e.*, conduct "that was the basis for the suit, the plaintiff will have prevailed." *Id.*, at 761. I agree, and would apply that analysis to this case.

The Court posits a "'merit' requirement of our prior cases." *Ante*, at 7. *Maher*, however, affirmed an award of

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[13] To qualify for fees in any case, we have held, relief must be real. See *Rhodes* v. *Stewart*, 488 U. S. 1, 4 (1988) *(per curiam)* (a plaintiff who obtains a formal declaratory judgment, but gains no real "relief whatsoever," is not a "prevailing party" eligible for fees); *Hewitt* v. *Helms*, 482 U. S., at 761 (an interlocutory decision reversing a dismissal for failure to state a claim, although stating that plaintiff's rights were violated, does not entitle plaintiff to fees; to "prevail," plaintiff must gain relief of "substance," *i.e.*, more than a favorable "judicial statement that does not affect the relationship between the plaintiff and the defendant").

attorney's fees based on a consent decree that "did not purport to adjudicate [plaintiff's] statutory or constitutional claims." 448 U. S., at 126, n. 8. The decree in *Maher* "explicitly stated that 'nothing [therein was] intended to constitute an admission of fault by either party.'" *Ibid.* The catalyst rule, in short, conflicts with none of "our prior *holdings*," *ante*, at 7.[14]

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[14] The Court repeatedly quotes passages from *Hanrahan* v. *Hampton*, 446 U. S., at 757–758, stating that to "prevail," plaintiffs must receive relief "on the merits." *Ante*, at 5, 6, 9. Nothing in *Hanrahan*, however, declares that relief "on the merits" requires a "judicial *imprimatur*." *Ante*, at 6. As the Court acknowledges, *Hanrahan* concerned an interim award of fees, after plaintiff succeeded in obtaining nothing more than reversal of a directed verdict. See *ante*, at 6. At that juncture, plaintiff had obtained no change in defendant's behavior, and the suit's ultimate winner remained undetermined. There is simply no inconsistency between *Hanrahan*, denying fees when a plaintiff might yet obtain no real benefit, and the catalyst rule, allowing fees when a plaintiff obtains the practical result she sought in suing. Indeed, the harmony between the catalyst rule and *Hanrahan* is suggested by *Hanrahan* itself; like *Maher* v. *Gagne*, 448 U. S. 122, 129 (1980), *Hanrahan* quoted the Senate Report recognizing that parties may prevail "through a consent judgment *or* without formally obtaining relief." 446 U. S., at 757 (quoting S. Rep. No. 94–1011, at 5) (emphasis added). *Hanrahan* also selected for citation the influential elaboration of the catalyst rule in *Nadeau* v. *Helgemoe*, 581 F. 2d, at 279–281. See 446 U. S., at 757.

The Court additionally cites *Texas State Teachers Assn.* v. *Garland Independent School Dist.*, 489 U. S. 782 (1989), which held, unanimously, that a plaintiff could become a "prevailing party" without obtaining relief on the "central issue in the suit." *Id.*, at 790. *Texas State Teachers* linked fee awards to a "material alteration of the legal relationship of the parties," *id.*, at 792–793, but did not say, as the Court does today, that the change must be "court-ordered," *ante*, at 5, 6. The parties' legal relationship does change when the defendant stops engaging in the conduct that furnishes the basis for plaintiff's civil action, and that action, which both parties would otherwise have litigated, is dismissed.

The decision with language most unfavorable to the catalyst rule, *Farrar* v. *Hobby*, 506 U. S. 103 (1992), does not figure prominently in

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The Court states that the term "prevailing party" in fee-shifting statutes has an "accepted meaning." *Ante*, at 9. If that is so, the "accepted meaning" is not the one the Court today announces. It is, instead, the meaning accepted by every Court of Appeals to address the catalyst issue before our 1987 decision in *Hewitt*, see *supra*, at 5, n. 4, and disavowed since then only by the Fourth Circuit, see *supra*, at 6, n. 5. A plaintiff prevails, federal judges have overwhelmingly agreed, when a litigated judgment, consent decree, out-of-court settlement, or the defendant's voluntary, postcomplaint payment or change in conduct in fact affords redress for the plaintiff's substantial grievances.

When this Court rejects the considered judgment prevailing in the Circuits, respect for our colleagues demands a cogent explanation. Today's decision does not provide one. The Court's narrow construction of the words "prevailing party" is unsupported by precedent and unaided by history or logic. Congress prescribed fee-shifting provisions like those included in the FHAA and ADA to encourage private enforcement of laws designed to advance civil rights. Fidelity to that purpose calls for court-awarded fees when a private party's lawsuit, whether or not its

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the Court's opinion– and for good reason, for *Farrar* "involved no catalytic effect." See *ante*, at 4, n. 5 (quoting *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.,* 528 U. S. 167, 194 (2000) (internal quotation marks omitted)); *supra*, at 5–6. *Farrar* held that a plaintiff who sought damages of $17 million, but received damages of $1, was a "prevailing party" nonetheless not entitled to fees. 506 U. S., at 113–116. In reinforcing the link between the right to a fee award and the "degree of success obtained," *id.*, at 114 (quoting *Hensley* v. *Eckerhart,* 461 U. S., at 436), *Farrar*'s *holding* is consistent with the catalyst rule.

settlement is registered in court, vindicates rights Congress sought to secure. I would so hold and therefore dissent from the judgment and opinion of the Court.