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]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Numerous federal statutes allow courts to award attorney's fees and costs to the "prevailing party." The question presented here is whether this term includes a party that has failed to secure a judgment on the merits or a court-ordered consent decree, but has nonetheless achieved the desired result because the lawsuit brought about a voluntary change in the defendant's conduct. We hold that it does not.

Buckhannon Board and Care Home, Inc., which operates care homes that provide assisted living to their residents, failed an inspection by the West Virginia Office of the State Fire Marshal because some of the residents were incapable of "self-preservation" as defined under state law. See W. Va. Code §§16–5H–1, 16–5H–2 (1998) (requiring that all residents of residential board and care homes be capable of "self-preservation," or capable of moving themselves "from situations involving imminent danger, such as fire"); W. Va. Code of State Rules, tit. 87, ser. 1,

§14.07(1) (1995) (same). On October 28, 1997, after receiving cease and desist orders requiring the closure of its residential care facilities within 30 days, Buckhannon Board and Care Home, Inc., on behalf of itself and other similarly situated homes and residents (hereinafter petitioners), brought suit in the United States District Court for the Northern District of West Virginia against the State of West Virginia, two of its agencies, and 18 individuals (hereinafter respondents), seeking declaratory and injunctive relief[1] that the "self-preservation" requirement violated the Fair Housing Amendments Act of 1988 (FHAA), 102 Stat. 1619, 42 U. S. C. §3601 *et seq*., and the Americans with Disabilities Act of 1990 (ADA), 104 Stat. 327, 42 U. S. C. §12101 *et seq*.

Respondents agreed to stay enforcement of the cease and desist orders pending resolution of the case and the parties began discovery. In 1998, the West Virginia Legislature enacted two bills eliminating the "self-preservation" requirement, see H. R. 4200, I 1998 W. Va. Acts 983–986 (amending regulations); S. 627, II 1998 W. Va. Acts 1198–1199 (amending statute), and respondents moved to dismiss the case as moot. The District Court granted the motion, finding that the 1998 legislation had eliminated the allegedly offensive provisions and that there was no indication that the West Virginia Legislature would repeal the amendments.[2]

Petitioners requested attorney's fees as the "prevailing party" under the FHAA, 42 U. S. C. §3613(c)(2) ("[T]he court, in its discretion, may allow the prevailing party . . .

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[1] The original complaint also sought money damages, but petitioners relinquished this claim on January 2, 1998. See App. to Pet. for Cert. A11.

[2] The District Court sanctioned respondents under Federal Rule of Civil Procedure 11 for failing to timely provide notice of the legislative amendment. App. 147.

a reasonable attorney's fee and costs"), and ADA, 42 U. S. C. §12205 ("[T]he court . . . , in its discretion, may allow the prevailing party . . . a reasonable attorney's fee, including litigation expenses, and costs"). Petitioners argued that they were entitled to attorney's fees under the "catalyst theory," which posits that a plaintiff is a "prevailing party" if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct. Although most Courts of Appeals recognize the "catalyst theory,"[3] the Court of Appeals for the Fourth Circuit rejected it in *S–1 and S–2* v. *State Bd. of Ed. of N. C.*, 21 F. 3d 49, 51 (1994) (en banc) ("A person may not be a 'prevailing party' . . . except by virtue of having obtained an enforceable judgment, consent decree, or settlement giving some of the legal relief sought"). The District Court accordingly denied the motion and, for the same reason, the Court of Appeals affirmed in an unpublished, *per curiam* opinion. Judgt. order reported at 203 F. 3d 819 (CA4 2000).

To resolve the disagreement amongst the Courts of Appeals, we granted certiorari, 530 U. S. 1304 (2000), and now affirm.

In the United States, parties are ordinarily required to bear their own attorney's fees– the prevailing party is not entitled to collect from the loser. See *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U. S. 240, 247 (1975). Under this "American Rule," we follow "a general practice

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[3] See, *e.g.*, *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 Authority*, 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).

of not awarding fees to a prevailing party absent explicit statutory authority." *Key Tronic Corp.* v. *United States,* 511 U. S. 809, 819 (1994). Congress, however, has authorized the award of attorney's fees to the "prevailing party" in numerous statutes in addition to those at issue here, such as the Civil Rights Act of 1964, 78 Stat. 259, 42 U. S. C. §2000e–5(k), the Voting Rights Act Amendments of 1975, 89 Stat. 402, 42 U. S. C. §1973*l*(e), and the Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, 42 U. S. C. §1988. See generally *Marek* v. *Chesny,* 473 U. S. 1, 43–51 (1985) (Appendix to opinion of Brennan, J., dissenting).[4]

In designating those parties eligible for an award of litigation costs, Congress employed the term "prevailing party," a legal term of art. Black's Law Dictionary 1145 (7th ed. 1999) defines "prevailing party" as "[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded <in certain cases, the court will award attorney's fees to the prevailing party>. — Also termed *successful party*." This view that a "prevailing party" is one who has been awarded some relief by the court can be distilled from our prior cases.[5]

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[4] We have interpreted these fee-shifting provisions consistently, see *Hensley* v. *Eckerhart,* 461 U. S. 424, 433, n. 7 (1983), and so approach the nearly identical provisions at issue here.

[5] We have never had occasion to decide whether the term "prevailing party" allows an award of fees under the "catalyst theory" described above. Dicta in *Hewitt* v. *Helms,* 482 U. S. 755, 760 (1987), alluded to the possibility of attorney's fees where "voluntary action by the defendant . . . affords the plaintiff all or some of the relief . . . sought," but we expressly reserved the question, see *id.*, at 763 ("We need not decide the circumstances, if any, under which this 'catalyst' theory could justify a fee award"). And though the Court of Appeals for the Fourth Circuit relied upon our decision in *Farrar* v. *Hobby,* 506 U. S. 103 (1992), in rejecting the "catalyst theory," *Farrar* "involved no catalytic effect." *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.,* 528 U. S. 167, 194 (2000). Thus, there is language in our cases supporting both petitioners and respondents, and last Term we observed that it

In *Hanrahan* v. *Hampton,* 446 U. S. 754, 758 (1980) *(per curiam),* we reviewed the legislative history of §1988 and found that "Congress intended to permit the interim award of counsel fees only when a party has prevailed on the merits of at least some of his claims." Our "[r]espect for ordinary language requires that a plaintiff receive at least some relief on the merits of his claim before he can be said to prevail." *Hewitt* v. *Helms,* 482 U. S. 755, 760 (1987). We have held that even an award of nominal damages suffices under this test. See *Farrar* v. *Hobby,* 506 U. S. 103 (1992).[6]

In addition to judgments on the merits, we have held that settlement agreements enforced through a consent decree may serve as the basis for an award of attorney's fees. See *Maher* v. *Gagne,* 448 U. S. 122 (1980). Although a consent decree does not always include an admission of liability by the defendant, see, *e.g.*, *id.*, at 126, n. 8, it nonetheless is a court-ordered "chang[e] [in] the legal relationship between [the plaintiff] and the defendant." *Texas State Teachers Assn.* v. *Garland Independent School Dist.,* 489 U. S. 782, 792 (1989) (citing *Hewitt*, *supra,* at 760–761, and *Rhodes* v. *Stewart,* 488 U. S. 1, 3–4 (1988) *(per curiam)*).[7] These decisions, taken together, establish

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was an open question here. See *ibid.*

[6] However, in some circumstances such a "prevailing party" should still not receive an award of attorney's fees. See *Farrar* v. *Hobby, supra,* at 115–116.

[7] We have subsequently characterized the *Maher* opinion as also allowing for an award of attorney's fees for private settlements. See *Farrar* v. *Hobby, supra,* at 111; *Hewitt* v. *Helms, supra,* at 760. But this dicta ignores that *Maher* only "held that fees *may* be assessed . . . after a case has been settled by the entry of a consent decree." *Evans* v. *Jeff D.,* 475 U. S. 717, 720 (1986). Private settlements do not entail the judicial approval and oversight involved in consent decrees. And federal jurisdiction to enforce a private contractual settlement will often be lacking unless the terms of the agreement are incorporated into the order of

that enforceable judgments on the merits and court-ordered consent decrees create the "material alteration of the legal relationship of the parties" necessary to permit an award of attorney's fees. 489 U. S., at 792–793; see also *Hanrahan*, *supra*, at 757 ("[I]t seems clearly to have been the intent of Congress to permit . . . an interlocutory award only to a party who has established his entitlement to some relief on the merits of his claims, either in the *trial court* or *on appeal*" (emphasis added)).

We think, however, the "catalyst theory" falls on the other side of the line from these examples. It allows an award where there is no judicially sanctioned change in the legal relationship of the parties. Even under a limited form of the "catalyst theory," a plaintiff could recover attorney's fees if it established that the "complaint had sufficient merit to withstand a motion to dismiss for lack of jurisdiction or failure to state a claim on which relief may be granted." Brief for United States as *Amicus Curiae* 27. This is not the type of legal merit that our prior decisions, based upon plain language and congressional intent, have found necessary. Indeed, we held in *Hewitt* that an interlocutory ruling that reverses a dismissal for failure to state a claim "is not the stuff of which legal victories are made." 482 U. S., at 760. See also *Hanrahan*, *supra,* at 754 (reversal of a directed verdict for defendant does not make plaintiff a "prevailing party"). A defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial *imprimatur* on the change. Our precedents thus counsel against holding that the term "prevailing party" authorizes an award of attorney's fees *without* a corresponding alteration in the

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dismissal. See *Kokkonen* v. *Guardian Life Ins. Co. of America,* 511 U. S. 375 (1994).

legal relationship of the parties.

The dissenters chide us for upsetting "long-prevailing *Circuit* precedent." *Post*, at 1 (emphasis added). But, as JUSTICE SCALIA points out in his concurrence, several Courts of Appeals have relied upon dicta in our prior cases in approving the "catalyst theory." See *post*, at 11–12; see also *supra*, at 4–5, n. 5. Now that the issue is squarely presented, it behooves us to reconcile the plain language of the statutes with our prior *holdings*. We have only awarded attorney's fees where the plaintiff has received a judgment on the merits, see, *e.g.*, *Farrar*, *supra*, at 112, or obtained a court-ordered consent decree, *Maher*, *supra*, at 129–130– we have not awarded attorney's fees where the plaintiff has secured the reversal of a directed verdict, see *Hanrahan*, *supra*, at 759, or acquired a judicial pronouncement that the defendant has violated the Constitution unaccompanied by *"judicial* relief," *Hewitt*, *supra*, at 760 (emphasis added). Never have we awarded attorney's fees for a nonjudicial "alteration of actual circumstances." *Post*, at 13. While urging an expansion of our precedents on this front, the dissenters would simultaneously abrogate the "merit" requirement of our prior cases and award attorney's fees where the plaintiff's claim "was at least colorable" and "not . . . groundless." *Post*, at 7 (internal quotation marks and citation omitted). We cannot agree that the term "prevailing party" authorizes federal courts to award attorney's fees to a plaintiff who, by simply filing a nonfrivolous but nonetheless potentially meritless lawsuit (it will never be determined), has reached the "sought-after destination" without obtaining any judicial relief. *Post*, at 13 (internal quotation marks and citation omitted).[8]

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[8] Although the dissenters seek support from *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U. S. 379 (1884), that case involved costs, not attorney's

Petitioners nonetheless argue that the legislative history of the Civil Rights Attorney's Fees Awards Act supports a broad reading of "prevailing party" which includes the "catalyst theory." We doubt that legislative history could overcome what we think is the rather clear meaning of "prevailing party"– the term actually used in the statute. Since we resorted to such history in *Garland*, 489 U. S., at 790, *Maher*, 448 U. S., at 129, and *Hanrahan*, 446 U. S., at 756–757, however, we do likewise here.

The House Report to §1988 states that "[t]he phrase 'prevailing party' is not intended to be limited to the victor only after entry of a final judgment following a full trial on the merits," H. R. Rep. No. 94–1558, p. 7 (1976), while the Senate Report explains that "parties may be considered to

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fees. "[B]y the long established practice and universally recognized rule of the common law . . . the prevailing party is entitled to recover a judgment for costs," *id.*, at 387, but "the rule 'has long been that attorney's fees are not ordinarily recoverable,'" *Alyeska Pipeline Service Co.* v. *Wilderness Society,* 421 U. S. 240, 257 (1975) (quoting *Fleischmann Distilling Corp.* v. *Maier Brewing Co.,* 386 U. S. 714, 717 (1967)). Courts generally, and this Court in particular, then and now, have a presumptive rule for costs which the Court in its discretion may vary. See, *e.g.*, this Court's Rule 43.2 ("If the Court reverses or vacates a judgment, the respondent or appellee shall pay costs unless the Court otherwise orders"). In *Mansfield*, the defendants had successfully removed the case to federal court, successfully opposed the plaintiffs' motion to remand the case to state court, lost on the merits of the case, and then reversed course and successfully argued in this Court that the lower federal court had no jurisdiction. The Court awarded costs to the plaintiffs, even though they had lost and the defendants won on the jurisdictional issue, which was the only question this Court decided. In no ordinary sense of the word can the plaintiffs have been said to be the prevailing party here– they lost and their opponents won on the only litigated issue– so the Court's use of the term must be regarded as a figurative rather than a literal one, justifying the departure from the presumptive rule allowing costs to the prevailing party because of the obvious equities favoring the plaintiffs. The Court employed its discretion to recognize that the plaintiffs had been the victims of the defendants' legally successful whipsawing tactics.

have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief," S. Rep. No. 94–1011, p. 5 (1976). Petitioners argue that these Reports and their reference to a 1970 decision from the Court of Appeals for the Eighth Circuit, *Parham* v. *Southwestern Bell Telephone Co.*, 433 F. 2d 421 (1970), indicate Congress' intent to adopt the "catalyst theory."[9] We think the legislative history cited by petitioners is at best ambiguous as to the availability of the "catalyst theory" for awarding attorney's fees. Particularly in view of the "American Rule" that attorney's fees will not be awarded absent "explicit statutory authority," such legislative history is clearly insufficient to alter the accepted meaning of the statutory term. *Key Tronic*, 511 U. S., at 819; see also *Hanrahan, supra,* at 758 ("[O]nly when a party has prevailed on the merits of at least some of his claims . . . has there been a determination of the 'substantial rights of the parties,' which Congress determined was a necessary foundation for departing from the usual rule in this country that each party is to bear the expense of his own attorney" (quoting H. R. Rep. No. 94–1558, at 8)).

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[9] Although the Court of Appeals in *Parham* awarded attorney's fees to the plaintiff because his "lawsuit acted as a catalyst which prompted the [defendant] to take action . . . seeking compliance with the requirements of Title VII," 433 F. 2d, at 429–430, it did so only after finding that the defendant had acted unlawfully, see *id.*, at 426 ("We hold as a matter of law that [plaintiff's evidence] established a violation of Title VII"). Thus, consistent with our holding in *Farrar*, *Parham* stands for the proposition that an enforceable judgment permits an award of attorney's fees. And like the consent decree in *Maher* v. *Gagne*, 448 U. S. 122 (1980), the Court of Appeals in *Parham* ordered the District Court to "retain jurisdiction over the matter for a reasonable period of time to insure the continued implementation of the appellee's policy of equal employment opportunities." 433 F. 2d, at 429. Clearly *Parham* does not support a theory of fee shifting untethered to a material alteration in the legal relationship of the parties as defined by our precedents.

Petitioners finally assert that the "catalyst theory" is necessary to prevent defendants from unilaterally mooting an action before judgment in an effort to avoid an award of attorney's fees. They also claim that the rejection of the "catalyst theory" will deter plaintiffs with meritorious but expensive cases from bringing suit. We are skeptical of these assertions, which are entirely speculative and unsupported by any empirical evidence (*e.g.*, whether the number of suits brought in the Fourth Circuit has declined, in relation to other Circuits, since the decision in *S–1 and S–2*).

Petitioners discount the disincentive that the "catalyst theory" may have upon a defendant's decision to voluntarily change its conduct, conduct that may not be illegal. "The defendants' potential liability for fees in this kind of litigation can be as significant as, and sometimes even more significant than, their potential liability on the merits," *Evans* v. *Jeff D.*, 475 U. S. 717, 734 (1986), and the possibility of being assessed attorney's fees may well deter a defendant from altering its conduct.

And petitioners' fear of mischievous defendants only materializes in claims for equitable relief, for so long as the plaintiff has a cause of action for damages, a defendant's change in conduct will not moot the case.[10] Even then, it is not clear how often courts will find a case mooted: "It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice" unless it is "absolutely clear that the allegedly

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[10] Only States and state officers acting in their official capacity are immune from suits for damages in federal court. See, *e.g.*, *Edelman* v. *Jordan,* 415 U. S. 651 (1974). Plaintiffs may bring suit for damages against all others, including municipalities and other political subdivisions of a State, see *Mt. Healthy City Bd. of Ed.* v. *Doyle,* 429 U. S. 274 (1977).

wrongful behavior could not reasonably be expected to recur." *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.,* 528 U. S. 167, 189 (2000) (internal quotation marks and citations omitted). If a case is not found to be moot, and the plaintiff later procures an enforceable judgment, the court may of course award attorney's fees. Given this possibility, a defendant has a strong incentive to enter a settlement agreement, where it can negotiate attorney's fees and costs. Cf. *Marek* v. *Chesny,* 473 U. S., at 7 ("[M]any a defendant would be unwilling to make a binding settlement offer on terms that left it exposed to liability for attorney's fees in whatever amount the court might fix on motion of the plaintiff" (internal quotation marks and citation omitted)).

We have also stated that "[a] request for attorney's fees should not result in a second major litigation," *Hensley* v. *Eckerhart,* 461 U. S. 424, 437 (1983), and have accordingly avoided an interpretation of the fee-shifting statutes that would have "spawn[ed] a second litigation of significant dimension," *Garland*, 489 U. S., at 791. Among other things, a "catalyst theory" hearing would require analysis of the defendant's subjective motivations in changing its conduct, an analysis that "will likely depend on a highly factbound inquiry and may turn on reasonable inferences from the nature and timing of the defendant's change in conduct." Brief for United States as *Amicus Curiae* 28. Although we do not doubt the ability of district courts to perform the nuanced "three thresholds" test required by the "catalyst theory"– whether the claim was colorable rather than groundless; whether the lawsuit was a substantial rather than an insubstantial cause of the defendant's change in conduct; whether the defendant's change in conduct was motivated by the plaintiff's threat of victory rather than threat of expense, see *post*, at 6–7– it is clearly not a formula for "ready administrability." *Burlington* v. *Dague,* 505 U. S. 557, 566 (1992).

Given the clear meaning of "prevailing party" in the fee-shifting statutes, we need not determine which way these various policy arguments cut. In *Alyeska*, 421 U. S., at 260, we said that Congress had not "extended any roving authority to the Judiciary to allow counsel fees as costs or otherwise whenever the courts might deem them warranted." To disregard the clear legislative language and the holdings of our prior cases on the basis of such policy arguments would be a similar assumption of a "roving authority." For the reasons stated above, we hold that the "catalyst theory" is not a permissible basis for the award of attorney's fees under the FHAA, 42 U. S. C. §3613(c)(2), and ADA, 42 U. S. C. §12205.

The judgment of the Court of Appeals is

Affirmed.