SUPREME COURT OF THE UNITED STATES

No. 92–1750

JOHN C. FOGERTY, PETITIONER *v.*
FANTASY, INC.

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

[March 1, 1994]

JUSTICE THOMAS, concurring in the judgment.

In my view, the Court's opinion is flatly inconsistent with our statutory analysis in *Christiansburg Garment Co.* v. *EEOC*, 434 U. S. 412 (1978). Because I disagree with that analysis, however, and because I believe the Court adopts the correct interpretation of the statutory language at issue in this case, I concur in the judgment.

In *Christiansburg*, the Court interpreted the attorney's fee provision of Title VII of the Civil Rights Act of 1964, which states that "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee . . . as part of the costs . . . ." 42 U. S. C. §2000e–5(k) (1988 ed., Supp. III). In this case, the Court construes the attorney's fee provision of the Copyright Act of 1976, which states that "the court may . . . award a reasonable attorney's fee to the prevailing party as part of the costs." 17 U. S. C. §505. As the Court observes, the two provisions contain "virtually identical language." *Ante*, at 5. After today's decision, however, they will have vastly different meanings.

Under the Title VII provision, a prevailing plaintiff "ordinarily is to be awarded attorney's fees in all but special circumstances," *Christiansburg*, 434 U. S., at 417, whereas a prevailing defendant is to be awarded fees

only "upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation." *Id.*,

at 421. By contrast, under the Court's decision today, prevailing plaintiffs and defendants in the copyright context "are to be treated alike," and "attorney's fees are to be awarded to prevailing parties only as a matter of the court's discretion." *Ante*, at 17–18.

Interestingly, the Court does not mention, let alone discuss, *Christiansburg*'s statutory analysis. We began that analysis by considering the *Christiansburg* petitioner's argument:

> "Relying on what it terms `the plain meaning of the statute,' [petitioner] argues that the language of [the attorney's fee provision] admits of only one interpretation: `A prevailing defendant is entitled to an award of attorney's fees on the same basis as a prevailing plaintiff.'" 434 U. S., at 418.

We summarily rejected this contention, stating that "the permissive and discretionary language of the statute does not even invite, let alone require, such a mechanical construction." *Ibid.* We opined that the language "provide[s] no indication whatever of the circumstances under which either a plaintiff or a defendant should be entitled to attorney's fees." *Ibid.* (emphasis deleted). Turning to the "equitable considerations" embodied in the statute's policy objectives and legislative history, *id.*, at 418–420, we stated that those considerations counseled against petitioner's position—a position we concluded was "untenable." *Id.*, at 419.

Today, confronting a provision "virtually identical" to that at issue in *Christiansburg*, the Court adopts precisely the interpretation that *Christiansburg* rejected as "mechanical" and "untenable." The Court states that "the plain language of §505 supports petitioner's claim for disapproving the dual standard," *ante*, at 17, and that the language "gives no hint that successful plaintiffs are to be treated differently than successful defendants." *Ante*, at 5. Thus, the Court replaces the "dual" standard adopted by the Ninth Circuit with an "evenhanded" approach, under which district courts will apply the same standard to prevail-

ing plaintiffs and defendants when deciding whether to award fees. *Ante*, at 17–18, and n. 19.

It is difficult to see how the Court, when faced with "virtually identical" language in two provisions, can hold that a given interpretation is required by the "plain language" in one instance, but reject that same interpretation as "mechanical" and "untenable" in the other. After today's decision, Congress could employ the same terminology in two different attorney's fee statutes, but be quite uncertain as to whether the Court would adopt a "dual" standard (that is, reject the "mechanical" construction), or apply an "evenhanded" rule (that is, adopt the "plain meaning").

Such an inconsistent approach to statutory interpretation robs the law of "the clarity of its command and the certainty of its application." *Doggett* v. *United States*, 505 U. S. ___, ___ (1992) (THOMAS, J., dissenting) (slip op., at 11). Indeed, we repeatedly have sought to avoid this sort of inconsistency in our fee award decisions. See, *e.g.*, *Burlington* v. *Dague*, 505 U. S. ___, ___ (1992) (slip op., at 4) ("case law construing what is a `reasonable' fee applies uniformly to all" fee-shifting statutes using the term); *Ruckelshaus* v. *Sierra Club*, 463 U. S. 680, 691 (1983) ("similar attorney's fee provisions should be interpreted *pari passu*"); *Hensley* v. *Eckerhart*, 461 U. S. 424, 433, n. 7 (1983) (the standards "set forth in this opinion are generally applicable in all cases in which Congress has authorized an award of fees to a `prevailing party'"). See also *Flight Attendants* v. *Zipes*, 491 U. S. 754, 758, n. 2 (1989) ("fee-shifting statutes' similar language is `a strong indication' that they are to be interpreted alike"); *Northcross* v. *Memphis Bd. of Ed.*, 412 U. S. 427, 428 (1973) *(per curiam)* ("[S]imilarity of language . . . is, of course, a strong indication that . . . two [attorney's fee] statutes should be interpreted *pari passu*").

The Court recognizes the general principle that similar fee provisions are to be interpreted alike, *ante*, at 6, but states that the principle does not govern this case because the factors that guided our interpretation in *Christiansburg*—the policy objectives and legislative history of the statute—do not support the adoption of a "dual" standard in this context. See *ante*, at 5–7. The Court's analysis, however, rests on the mistaken premise—a premise implicit in *Christiansburg*—that whether we construe a statute in accordance with its plain meaning depends upon the statute's policy objectives and legislative history. Although attorney's fee provisions may be interpreted "in light of the competing equities that Congress normally takes into account," *Zipes*, *supra*, at 761, those "equities" cannot dictate a result that is contrary to the statutory language. "Our task is to apply the text, not to improve upon it." *Pavelic & LeFlore* v. *Marvel Entertainment Group*, 493 U. S. 120, 126 (1989). When the text of the statute is clear, our interpretive inquiry ends. See *Connecticut Nat. Bank* v. *Germain*, 503 U. S. ___, ___ (1992) (slip op., at 5). The Court goes astray, in my view, by attempting to reconcile this case with *Christiansburg*. Rather, it should acknowledge that *Christiansburg* mistakenly cast aside the statutory language to give effect to equitable considerations.

I concur in the judgment, however, because I believe the Court adopts the correct interpretation of the statutory language in this case. As the Court observes, the language of 17 U. S. C. §505 gives no indication that prevailing plaintiffs and defendants are to be treated differently. See *ante*, at 5, 17. In addition, as the Court states, the use of the word "may" suggests that the determination of whether an attorney's fee award is appropriate is to be left to the discretion of the district courts. *Ante*, at 17. This conclusion finds further support in the full text of §505, which provides that "the court *in its discretion*

may allow the recovery of full costs . . . . [T]he court *may also award* a reasonable attorney's fee to the prevailing party as part of the costs." (Emphasis added.)

Because considerations of *stare decisis* have "special force" in the area of statutory interpretation, *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172 (1989), I might be hesitant to overrule *Christiansburg* and other cases in which we have construed similar attorney's fee provisions to impose a "dual" standard of recovery. See, *e.g.*, *Hensley, supra*, at 429, and n. 2 (42 U. S. C. §1988 (1988 ed., Supp. III)); *Pennsylvania* v. *Delaware Valley Citizens' Council for Clean Air*, 483 U. S. 711, 713, n. 1 (1987) (42 U. S. C. §7604(d)). But while *stare decisis* may call for hesitation in overruling a dubious precedent, "it does not demand that such a precedent be expanded to its outer limits." *Helling* v. *McKinney*, 509 U. S. ___, ___ (1993) (THOMAS, J., dissenting) (slip op., at 6–7). I would therefore decline to extend *Christiansburg*'s analysis to other contexts. Because the Court—at least in result, if not in rationale—refuses to make such an extension, I concur in the judgment.