NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CITY OF BURLINGTON *v.* DAGUE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 91–810. Argued April 21, 1992—Decided June 24, 1992

After ruling on the merits for respondents, the District Court determined that they were ``substantially prevailing'' parties entitled to ``reasonable'' attorney's fees under the attorney's fee provisions of the Solid Waste Disposal Act and the Clean Water Act. The District Court calculated the fee award by, *inter alia,* enhancing the ``lodestar'' amount by 25% on the grounds that respondents' attorneys were retained on a contingent-fee basis and that without such enhancement respondents would have faced substantial difficulties in obtaining suitable counsel. The Court of Appeals affirmed the fee award.

Held: The fee-shifting statutes at issue do not permit enhancement of a fee award beyond the lodestar amount to reflect the fact that a party's attorneys were retained on a contingent-fee basis. In *Pennsylvania* v. *Delaware Valley Citizens' Council for Clean Air,* 483 U.S. 711 *(Delaware Valley II),* this Court addressed, but did not resolve, a question essentially identical to the one presented here. The position taken by the principal opinion in that case, *id.,* at 723–727 (opinion of WHITE, J.)—that the typical federal fee-shifting statute does not permit an attorney's fee award to be enhanced on account of contingency—is adopted. The position advocated by *Delaware Valley II*'s concurrence, *id.,* at 731, 733 (O'CONNOR, J., concurring in part and concurring in judgment)—that contingency enhancement is appropriate in defined limited circumstances—is rejected, since it is based upon propositions that are mutually inconsistent as a practical matter; would make enhancement turn upon a circular test for a very large proportion of contingency-fee cases; and could not possibly achieve its supposed goal of mirroring market incentives to attorneys to take cases. Beyond that approach, there is no other basis, fairly derivable from the fee-shifting statutes, by which

contingency enhancement, if adopted, could be restricted to fewer than all contingent-fee cases. Moreover, contingency enhancement is not compatible with the fee-shifting statutes at issue, since such enhancement would in effect pay for the attorney's time (or anticipated time) in cases where his client does *not* prevail; is unnecessary to the determination of a reasonable fee and inconsistent with this Court's general rejection of the contingent-fee model in favor of the lodestar model, see, *e. g., Blanchard* v. *Bergeron,* 489 U.S. 87, 96; and would make the setting of fees more complex and arbitrary, hence more unpredictable, and hence more litigable. Pp.3–9.

BURLINGTON *v.* DAGUE

Syllabus

935 F.2d 1343, reversed in part.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, KENNEDY, SOUTER, and THOMAS, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in which STEVENS, J., joined. O'CONNOR, J., filed a dissenting opinion.