

Filed: May 6, 2021

IN THE SUPREME COURT OF THE STATE OF OREGON

JAMES B. DE YOUNG,
a resident of Damascus,

Respondent on Review,

v.

KATE BROWN, in her official capacity
as Governor of Oregon, and
STATE OF OREGON,

Petitioners on Review,

and

CLACKAMAS COUNTY, a political
subdivision of the State of Oregon,

Defendant-Respondent,

and

DAMASCUS, a municipal corporation,

Defendant.

(CC 16CV12583) (CA A162584) (SC S067385)

En Banc

On review from the Court of Appeals.*

Argued and submitted November 16, 2020.

Philip Michael Thoennes, Assistant Attorney General, Salem, argued the cause and filed the briefs for petitioners on review. Also on the briefs were Ellen Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Tyler Smith, Tyler Smith & Associates PC, Canby, argued the cause and filed the brief for respondent on review.

Kristian Spencer Roggendorf, The Zalkin Law Firm, Evergreen, Colorado, filed the brief for *amicus curiae* Oregon Trial Lawyers Association.

BALMER, J.

The decision of the Court of Appeals is affirmed, and the case is remanded to the circuit court for further proceedings.

*297 Or App 355, 443 P3d 642 (2019).

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent on Review.

No costs allowed.

Costs allowed, payable by: Petitioners on Review.

Costs allowed, to abide the outcome on remand, payable to:

1 BALMER, J.

2 This case concerns attorney fees awarded by the Court of Appeals
3 following its decision in *De Young v. Brown*, 297 Or App 355, 443 P3d 642 (2019) ("*De*
4 *Young I*"). The question before this court is a narrow one -- namely, whether the Court of
5 Appeals erred in allowing plaintiff's petition for attorney fees under the "substantial
6 benefit" theory. For the reasons explained below, we hold that the Court of Appeals did
7 not err, and, thus, we affirm.

8 Plaintiff De Young was a city councilor and resident of the City of
9 Damascus. Defendants are Kate Brown, in her official capacity as Governor, and the
10 State of Oregon. We refer to defendants, collectively, as "the state." In *De Young I*, the
11 Court of Appeals considered the validity of an effort to disincorporate the City of
12 Damascus. In a 2013 election, the residents of the city had voted on a referral from the
13 city council to disincorporate the city. Although a majority of those participating in the
14 election voted in favor of disincorporating, the number fell short of the absolute majority
15 for disincorporation required by law. *See* ORS 221.610 (2013) (requiring affirmative
16 vote of a "majority of the electors of the city" to disincorporate). Subsequently, in 2015,
17 the legislature passed House Bill (HB) 3085, which referred to the voters of Damascus
18 the decision whether to disincorporate and specifically provided that a majority of those
19 voting, rather than an absolute majority of the city's electors, would be sufficient to
20 disincorporate. That legislative referral appeared on the ballots of residents of the city as
21 Measure 93 in the May 2016 election.

22 Prior to the 2016 election, plaintiff sought declaratory and injunctive relief,

1 seeking to enjoin the scheduled disincorporation vote. He alleged that HB 3085 violated
2 the city charter, state statutes, and the Oregon Constitution. The trial court denied
3 plaintiff's request to enjoin the election, and the city residents subsequently voted to
4 disincorporate. Following the election, the city paid its debts, transferred its assets to
5 Clackamas County, surrendered its charter, terminated or transferred its employees, and,
6 essentially, ceased to exist. Plaintiff continued his lawsuit, seeking a declaration that the
7 vote had violated various statutory and constitutional requirements and, therefore, the city
8 had not been validly disincorporated. The trial court granted summary judgment in favor
9 of the state, declaring Measure 93 valid.

10 Plaintiff appealed, renewing his arguments that Measure 93 violated state
11 statutory and constitutional provisions. The Court of Appeals ultimately agreed with
12 plaintiff on his statutory argument, holding that ORS 221.610 and ORS 221.621 (2013)
13 provided the only means by which a city could disincorporate and that, because Measure
14 93 had not complied with those statutes, it was invalid. *De Young I*, 297 Or App at 370-
15 71. Because it disposed of the case on statutory grounds, the Court of Appeals did not
16 reach plaintiff's constitutional argument. *Id.* at 355. Shortly after the Court of Appeals
17 decision was issued, the legislature passed Senate Bill (SB) 226 (2019) "to cure any
18 defect in the procedures, and to ratify the results" of the 2016 disincorporation vote. Or
19 Laws 2019, ch 545, § 4(1). The legislature gave this court original jurisdiction to
20 determine the validity of the substantive provisions of that law, *id.* at § 4(2), which we
21 did in *City of Damascus v. State of Oregon*, 367 Or 41, 472 P3d 741 (2020). In that case,
22 we concluded that "SB 226 is valid and that it accomplishes what the legislature intended,

1 *i.e.*, it gives effect to the 2016 vote by the city's residents to disincorporate." *Id.* at 43.

2 Following the Court of Appeals' decision in *De Young I* but prior to the
3 issuance of this court's decision in *City of Damascus*, plaintiff petitioned that court for an
4 award of attorney fees and costs in the *De Young I* litigation, amounting to a little over
5 \$40,000. Plaintiff argued that he was entitled to fees because he was the prevailing party
6 and because he sought "to vindicate important constitutional rights, and was not seeking a
7 pecuniary gain for himself other than to protect the statutory and constitutional rights of
8 those in Damascus who wanted the law to be followed." The state objected to the award
9 of attorney fees, arguing that, "because [plaintiff] prevailed on statutory and not
10 constitutional grounds, [Court of Appeals case law] forecloses any attorney fee award."
11 Plaintiff filed a reply asserting that, contrary to the state's argument, the court's inherent
12 equitable power to award attorney fees does not require a finding of a constitutional
13 violation.

14 The Court of Appeals framed the threshold issue as "whether a plaintiff
15 must prevail on a constitutional issue in order for us to exercise our inherent equitable
16 power to award attorney fees." *De Young v. Brown*, 300 Or App 530, 532, 451 P3d 651
17 (2019) ("*De Young II*"). The Court of Appeals explained that "[t]he inherent equitable
18 power to award attorney fees was first recognized in Oregon in *Gilbert [v. Hoisting &*
19 *Port. Engrs.*, 237 Or 130, 384 P2d 136 (1963), *aff'd as modified*, 237 Or 140, 390 P2d
20 320 (1964), *cert den*, 376 US 963 (1964),]" and that recovery of fees was "limited to
21 cases * * * in which equitable relief would in effect be denied or severely inhibited unless
22 the plaintiff who prevails in the suit is awarded attorneys' fees." *De Young II*, 300 Or

1 App at 533 (internal citations and quotation marks omitted).

2 The Court of Appeals held ultimately that "the vindication of a
3 constitutional right has never been required by the Supreme Court in awarding attorney
4 fees under a court's equitable powers," and that "[t]he 'substantial benefit' theory * * * is a
5 form of the equitable attorney fee doctrine that does not require the vindication of a
6 constitutional right." *Id.* at 539. The Court of Appeals described the "substantial benefit"
7 theory as:

8 "allow[ing] equitable attorney fees where there is a representative or
9 derivative suit brought for the benefit of the entire organization or where
10 there are other circumstances in which equitable relief would in effect be
11 denied or severely inhibited unless the plaintiff who prevails in the suit is
12 awarded attorneys' fees. The action must confer a 'substantial benefit' on
13 others."

14 *Id.* at 539-40 (internal citations and quotation marks omitted). The Court of Appeals
15 agreed with plaintiff that his litigation had directly benefitted the residents of Damascus
16 by holding that the legislative referral and the resulting disincorporation election failed to
17 comply with state statutes and that it also had "potentially" conferred an indirect benefit
18 on other residents of the state "in regard to how the legislature makes referrals to voters."
19 *Id.* at 540.¹ Applying the substantial benefit theory, the Court of Appeals allowed
20 plaintiff's petition for attorney fees and costs in the amount of about \$16,000 and
21 remanded for a determination of fees and costs incurred in the circuit court. *Id.* at 532.

¹ We recognize, of course, that the Court of Appeals' decision in *De Young I* was superseded by the legislature's enactment of SB 226 (2019), which this court held to be valid in *City of Damascus*, 367 Or at 73-74, and that the disincorporation of the city was not undone. But *De Young I* itself was never reversed and stands as a valid appellate court interpretation of the statutes at issue there.

1 The state petitioned this court for review. In its petition, the state did not
2 renew its argument that fees could be recovered only for a successful constitutional
3 challenge, and not for a statutory one. The state instead responded to the Court of
4 Appeals' substantial benefit theory, asserting that the "beneficiaries" of the litigation were
5 the residents of Damascus, but a fee award against the state would be paid by residents of
6 the whole state -- state taxpayers. The state contended that the fee award would "spread
7 the cost of litigation not just among those who benefitted from it, but also to those who
8 would not benefit from it," contrary to the purpose of the substantial benefit theory. The
9 state also argued that any potential benefit from the litigation was uncertain, because of
10 the pending *City of Damascus* case before this court. In the state's view, the substantial
11 benefit theory does not permit an award of fees here because, "[e]ven assuming that
12 reincorporating Damascus would confer a substantial benefit on those residents who
13 opposed Measure 93, the Court of Appeals' ruling did not confer that benefit * * *
14 [b]ecause there is still substantial uncertainty whether Damascus will ever again exist as a
15 city[.]"

16 Plaintiff filed a response to the state's petition for review, arguing that the
17 state's articulation of the Court of Appeals' decision was misleading because the Court of
18 Appeals did not conclude, contrary to the state's assertion, that *only* the residents of
19 Damascus benefitted from that court's ruling in *De Young I*. Rather, plaintiff noted that
20 the Court of Appeals considered the benefits to be "both in regard to the direct litigation
21 and potentially in regard to how the legislature makes referrals to voters." *De Young II*,
22 300 Or App at 540. Therefore, plaintiff argued, the Court of Appeals correctly

1 understood that its opinion in *De Young I* clarified the permissible scope of legislative
2 referrals and of the statutes regarding disincorporation and that that clarification inured to
3 the benefit of all Oregon residents -- not just those directly impacted by the 2015 referral.
4 Thus, plaintiff contended, the court's attorney fee opinion correctly held that the
5 substantial benefit theory permits the costs of the litigation to be shared by those
6 beneficiaries -- all Oregon residents. This court allowed review.

7 Before this court, as noted, the state largely abandons the argument that it
8 made before the Court of Appeals -- that, because plaintiff vindicated a statutory right
9 rather than a constitutional right, he is not entitled to fees. It also retreats from the
10 argument made in its petition for review that the only beneficiaries of the litigation are
11 the residents of Damascus. Instead, the state argues primarily that the Court of Appeals
12 improperly awarded plaintiff fees under the substantial benefit theory because any
13 "benefit" from the litigation is actually held in common by all residents of the state and
14 that such a diffuse, indirect benefit is not sufficiently substantial to justify an award of
15 fees.²

16 We agree with the state that Oregon generally adheres to the so-called
17 "American rule" -- that the prevailing party in a civil action ordinarily is not entitled to
18 recover attorney fees from the losing party unless some statute or contractual provision

² One of plaintiff's arguments is that the state did not preserve its substantial benefit argument regarding attorney fees. It is true that the state's argument has evolved over the course of the attorney fee dispute, but the state has consistently taken the position that the litigation did not confer a sufficiently significant benefit on any group to justify an equitable award of attorney fees. We conclude that the issue is sufficiently preserved for our review.

1 authorizes the recovery of fees. *See Swett v. Bradbury*, 335 Or 378, 381, 67 P3d 391
2 (2003) ("Ordinarily, a court awards attorney fees to a litigant only if a statute or contract
3 authorizes such an award."); *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 US
4 240, 247, 95 S Ct 1612, 44 L Ed 2d 141 (1975) (describing the "American rule"). That
5 rule, however, is not absolute: "This court for many years has recognized an equitable
6 exception to the American rule," *Crandon Capital Partners v. Shelk*, 342 Or 555, 565,
7 157 P3d 176 (2007), and it is well established that an Oregon court may use its inherent
8 equitable power to award attorney fees, even in the absence of a contract or statutory
9 scheme authorizing fees, *Gilbert*, 237 Or at 137.

10 Our caselaw on the equitable award of attorney fees makes clear that an
11 award is permissible in a variety of circumstances but that an award of fees does not
12 automatically follow from a favorable outcome. *Crandon*, 342 Or at 565 (noting that, in
13 certain "circumstances, the court *may* spread the cost of litigation to avoid unjust
14 enrichment" (emphasis added)). This court has identified three prerequisites for a fee
15 award under that inherent equitable authority: (1) the proceeding must be one in equity,
16 (2) the party requesting fees must have been the prevailing party, and (3) the party
17 requesting fees must have been seeking to vindicate a right that applies to others as well
18 as the party itself, without an overriding personal pecuniary interest. *Armatta v.*
19 *Kitzhaber*, 327 Or 250, 287, 959 P2d 49 (1998); *Gilbert*, 237 Or at 137-38. Where a
20 party has met those prerequisites, this court has permitted the award of equitable attorney
21 fees in three different circumstances: where a party vindicates an important
22 constitutional right applying to all residents of the state, without personal gain to the

1 party, *Deras v. Myers*, 272 Or 47, 66, 535 P2d 541 (1975); where a party creates,
2 discovers, increases, or preserves a common fund of money to which others also have a
3 claim, *Strunk v. PERB*, 341 Or 175, 181, 139 P3d 956 (2006); and where a party's
4 litigation confers "substantial benefit" on others, even if neither constitutional nor
5 financial, *Krause v. Mason*, 272 Or 351, 358-59, 537 P2d 105 (1975).

6 In reviewing whether a lower court has properly awarded fees under its
7 inherent equitable authority, we assess for legal error whether the fee award meets the
8 three prerequisites described above and comes within a qualifying circumstance. *See*
9 *Swett*, 335 Or at 384 (considering first whether plaintiffs were "*disqualified*" from
10 receiving an award of attorney fees" for failing to meet one of the prerequisites (emphasis
11 added)). *See also Dennehy v. Dept. of Rev.*, 308 Or 423, 427-28, 781 P2d 346 (1989)
12 (concluding that the Tax Court erred in awarding fees because the plaintiff did not meet
13 several of the prerequisites). In this case, the state argues that the Court of Appeals
14 misapplied the "substantial benefit" test and committed legal error in awarding plaintiff
15 attorney fees. It asserts that the Court of Appeals erred in holding that "the benefit
16 conferred in this case -- both in regard to the direct litigation and potentially in regard to
17 how the legislature makes referrals to voters -- is substantial enough to warrant an award
18 of attorney fees." *De Young II*, 300 Or App at 540.

19 Unlike statutory or contractual attorney fees awards, the purpose of
20 awarding equitable attorney fees is not to punish a wrongdoer or to make a plaintiff
21 whole. *Crandon*, 342 Or at 566. *Cf. Mattiza v. Foster*, 311 Or 1, 4, 803 P2d 723 (1990)
22 (describing the legislative history of ORS 20.105(1) "allowing for the award of attorney

1 fees based on the misconduct of the opposing party or attorney"). Rather, the purpose of
2 equitable fees is to recognize that, when a plaintiff has vindicated the rights of others in a
3 significant way, equity may require that the costs of that litigation be borne not just by
4 the plaintiff, but also by others who have benefitted. *See Crandon*, 342 Or at 565
5 (holding that the court may award attorney fees "when it would be inequitable for that
6 party to bear all the costs of the litigation"). The three circumstances that we have
7 identified -- vindication of a constitutional right, common fund, and substantial benefit --
8 rely on this basic premise: that fees awarded under the court's equitable authority "are
9 awarded not * * * to make the plaintiff whole by shifting all costs to the wrongdoer, but
10 instead to spread the costs among those on whose behalf the case was brought and who
11 benefitted from the plaintiff's efforts." *Id.* at 566.

12 Although our focus here is on whether plaintiff's success in *De Young I*
13 conferred a "substantial benefit" on others, the "vindication of a constitutional right" basis
14 for an attorney fee award is not irrelevant to our inquiry. Despite the fact that we have
15 not always awarded fees to plaintiffs who have brought successful constitutional
16 challenges, *see Pendleton School Dist. v. State of Oregon*, 347 Or 28, 35, 217 P3d 175
17 (2009) (declining to award fees following successful constitutional challenge), we often
18 have done so when a plaintiff has vindicated an important constitutional right that applies
19 to all Oregonians. *See Armatta*, 327 Or at 289 (awarding fees where plaintiffs sought
20 declaratory and injunctive relief, arguing that a measure submitted to and adopted by the
21 voters was unconstitutional); *Swett*, 335 Or at 378 (same). In part, this is because we
22 have assumed, often without extended discussion, that the vindication of a constitutional

1 right likely confers a benefit on individuals other than the plaintiff and that such a benefit
2 -- since, after all, it is constitutional -- may well qualify as "substantial." We have
3 recognized, in the constitutional context, that "[i]t is beyond dispute that the interest of
4 the public in preservation of the individual liberties guaranteed against governmental
5 infringement of the constitution is even stronger" than the interest in fair voting in union
6 elections, which permitted a fee award in *Gilbert. Deras*, 272 Or at 66. If a plaintiff can
7 demonstrate that the constitutional right was sufficiently "important" and that the
8 litigation clarified the scope of that right, we have been more likely to conclude that the
9 plaintiff conferred a "substantial" benefit on other Oregonians and that an equitable
10 attorney fee award was justified. Although some statutory rights may be of similar
11 importance to fundamental constitutional rights, when a non-constitutional right has been
12 vindicated, the nature of the benefit may be less apparent, and the beneficiaries may need
13 to be identified more precisely. In both instances, however, the central issue for the court
14 is whether the nature of the benefit conferred on those beyond the plaintiff is sufficiently
15 substantial that it would be inequitable for the plaintiff to bear the costs alone.

16 Here, the Court of Appeals' decision in *De Young I* was based on its
17 holding that Measure 93 was invalid because it was inconsistent with statutes regarding
18 disincorporation elections, rather than any constitutional provision. It is clear, however,
19 that election laws hold a special place in the spectrum of constitutional and statutory
20 rights. For that reason, this court has long held that:

21 "[e]lection laws should be liberally construed to the end that the people may
22 have the opportunity of expressing opinion concerning matters of vital
23 interest to their welfare. Expression, not suppression, tends towards good

1 government. The great constitutional privilege of a citizen to exercise his
2 sovereign right to vote should not be taken away by narrow or technical
3 construction."

4 *State ex rel. v. Hoss*, 143 Or 383, 389, 22 P2d 883 (1933). Although not included in the
5 constitution itself, Oregon's election laws implement the constitutional right to vote in all
6 elections. *See* Or Const, Art II, § 2 (subject to age, residency, and registration
7 requirements, "[e]very citizen of the United States is entitled to vote in all elections * *
8 *"); *id.* § 8(1) ("The Legislative Assembly shall enact laws to support the privilege of free
9 suffrage [and] prescribing the manner of regulating, and conducting elections * * *").

10 Moreover, the issues in the underlying litigation here involved not just laws governing
11 elections generally, but also the concept of home rule embodied in Article XI, section 2,
12 and Article IV, section 1(5), of the Oregon Constitution, which grant the "authority of
13 local governments to establish and modify their political structures as they see fit." *City*
14 *of Damascus*, 367 Or at 54. In *City of Damascus*, this court recounted the history of the
15 enactment of those constitutional provisions in 1906, describing that "the primary
16 concern of those who advocated for the measures was that the voters of municipalities be
17 permitted to determine the structure and organization of their own municipal
18 governments[.]" *Id.* at 55. To that end, in plaintiff's fee petition, he asserted generally
19 that "[a]ll of the claims made in [the complaint] related to voting rights, constitutional
20 rights, or statutory election and process rights that he asserted were violated by" the
21 legislature. Ultimately, however, as described above, the Court of Appeals disposed of
22 the case not on constitutional grounds, but on relatively narrow statutory grounds, despite
23 the myriad of constitutional arguments raised by plaintiff. *De Young II*, 300 Or App at

1 535.

2 The question before us, then, is whether the Court of Appeals erred in
3 determining that the benefits conferred here were sufficiently substantial that it would be
4 inequitable for the plaintiff to bear those costs alone. The Court of Appeals did not
5 identify and analyze a specific benefit to persons other than the plaintiff that resulted
6 from the underlying litigation; rather, the court stated generally that "the benefit
7 conferred in this case -- both in regard to the direct litigation and potentially in regard to
8 how the legislature makes referrals to voters -- is substantial enough to warrant an award
9 of attorney fees." *Id.* at 540. For the reasons that follow, we agree with the Court of
10 Appeals that the litigation provided a sufficiently significant benefit to the people of the
11 state as a whole; therefore, we do not address whether the litigation provided any
12 additional or different benefit to the people of Damascus.

13 To determine whether the benefits that result from litigation are sufficiently
14 substantial to justify an equitable attorney fee award, it is essential to identify, as
15 precisely as possible, the benefits and the beneficiaries. *Krause*, 272 Or at 358-59
16 (affirming an award of fees based on the benefits that the plaintiff shareholders' litigation
17 conferred specifically on the corporation and other shareholders). It is not enough to say
18 that, of several benefits, surely one of them was sufficiently substantial to justify an
19 award of fees. Likewise, as described above, the central principle behind both the
20 constitutional and substantial benefit theories is that the costs are shared among those
21 who benefitted from the litigation, *Crandon*, 342 Or at 566, whether those who "benefit"
22 are shareholders of a corporation, voters of a particular city, or the residents of the state

1 as a whole. If the benefit or beneficiaries have not been identified precisely, the court
2 cannot analyze whether the benefits were sufficiently substantial to justify a fee award.

3 We do not intend to say that litigation cannot have multiple benefits or
4 benefit various groups differently. *See, e.g., Moro v. State of Oregon*, 360 Or 467, 493-
5 94, 384 P3d 504 (2016) (discussing the various groups of beneficiaries of PERS
6 litigation). With any litigation, there are ripples of consequences for the parties and often
7 for non-parties. Some consequences may be beneficial, and some may not, and it is not
8 always possible to assess the significance of any benefits at the close of the litigation. In
9 the common fund cases, the question is relatively straightforward -- the litigation
10 produces a fund from which the plaintiff's fees may be paid, and the costs are shared by
11 everyone entitled to a portion of the common fund. However, in the substantial benefit
12 cases, the litigation does not produce a fund from which those fees can be drawn.
13 *Gilbert*, 337 Or at 138 ("[T]he fact that no money or property is involved does not detract
14 from the importance of the litigation."). When litigation produces a common fund, then
15 those who benefit from the litigation are those who benefit from the fund. But, without a
16 common fund and without a determination of the identity of beneficiaries, it is impossible
17 to say whether an award of fees will distribute the costs of the litigation among those who
18 benefit from the litigation. *See Moro*, 360 Or at 477 (considering how to fund a fee
19 award where the underlying litigation benefitted different groups of PERS members
20 differently).

21 In this case, plaintiff contends that the litigation resulted in substantial
22 direct benefits to him and to the residents of Damascus (among others) and indirect

1 benefits to all residents of the state, because of the Court of Appeals' clarification in *De*
2 *Young I* of local home rule authority, including statutes regarding disincorporation and
3 legislative referrals to local voters. The state agrees that plaintiff succeeded in obtaining
4 judicial "clarification of the way that the legislature must refer election measures when it
5 seeks to exempt a vote from existing statutory requirements." However, the state
6 disputes that this was a "direct" benefit to plaintiff or the residents of Damascus, arguing
7 that it does not accrue solely to them, "but applies with equal force to every person in the
8 state." More significantly, the state asserts that "such an abstract, widely held interest
9 cannot be considered substantial enough to warrant an equitable fee." We disagree.

10 Our caselaw does not require that each individual who benefits from
11 litigation receive a "substantial" benefit. Rather, the benefit provided to the beneficiaries
12 as a whole must be substantial one. Oregon courts have never held that the size of the
13 group benefitted determines the significance of the benefit bestowed. *See Tanner v.*
14 *OHSU*, 161 Or App 129, 133, 980 P2d 186, *rev den*, 329 Or 528 (1999) ("The fact that *
15 * * our decision on the merits of [the] claims will directly benefit 'only a relatively small
16 class of persons' is not controlling. How small or large the directly benefitted class may
17 be is not the point * * *. What controls is the extent to which the constitutional issue
18 resolved is a matter of primary concern to the public at large."). Like class actions or
19 actions under the Unfair Trade Practices Act, ORS 646.605 to 646.656, permitting an
20 award of attorney fees in some substantial benefit cases may encourage individuals to
21 bring legal actions to vindicate not only their own rights but also the rights of others.
22 *See, e.g., Honeywell v. Sterling Furniture Co.*, 310 Or 206, 213, 797 P2d 1019 (1990)

1 (describing that, in the unlawful trade practices context, the "availability [of attorney
2 fees] assures that wronged consumers can obtain counsel to prosecute claims that
3 otherwise might be impractical to pursue because such claims would require an
4 expenditure of attorney time the value of which greatly exceeded the value of the goods
5 or services in question"). When successful actions confer important, but individually
6 small and widely shared benefits, an equitable fee award can ensure that the costs of
7 litigation also can be shared.

8 In our view, the unique relationship between the election statutes at issue in
9 this case and the foundational constitutional rights of citizens to vote and of local
10 governments to establish and modify their political structures demonstrates that important
11 legal rights were at stake. Plaintiff's success in obtaining a favorable statutory ruling
12 from the Court of Appeals conferred a substantial benefit on persons other than plaintiff.
13 As the Court of Appeals observed, plaintiff

14 "acted in a representative capacity on behalf of the City of Damascus and
15 its residents to ensure that a special election to determine whether to
16 disincorporate the City of Damascus complied with ORS 221.610 and ORS
17 221.621, the statutes that govern municipal disincorporation. We conclude
18 that the benefit conferred in this case -- both in regard to the direct litigation
19 and potentially in regard to how the legislature makes referrals to voters --
20 is substantial enough to warrant an award of attorney fees."

21 *De Young II*, 300 Or App at 540.

22 We agree with the Court of Appeals that plaintiff acted in a representative
23 capacity to the benefit of others and that that benefit was sufficiently substantial to
24 support an award of fees under the substantial benefit theory. We conclude that the
25 substantial benefit supporting that fee award is the benefit to all residents of the state of

1 the Court of Appeals' decision clarifying how the legislature may make referrals to voters
2 on matters of local government structure.³ Accordingly, we conclude that the Court of
3 Appeals did not err in awarding plaintiff fees under the substantial benefit theory.

4 The decision of the Court of Appeals is affirmed, and the case is remanded
5 to the circuit court for further proceedings.

³ Because we conclude that plaintiff's litigation conferred a "substantial benefit" on all residents of the state, including the residents of Damascus, we need not decide whether the "direct" effect of the litigation on Damascus residents would, standing alone, constitute a substantial benefit for purposes of an equitable award of attorney fees.