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Intervention in the Public Interest Under Rule 24(a)(2) of the Federal Rules of Civil Procedure

INTERVENTION IN THE PUBLIC INTEREST UNDER RULE 24(a)(2) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Rule 24 of the Federal Rules of Civil Procedure provides guidelines and procedures for a person who is not party to a law suit (hereinafter, applicant) to intervene and become a party in the lawsuit.[1] The purpose of Rule 24 is to allow an applicant to protect any interest the applicant may have in the outcome of the action.[2] Under Rule 24(a) an applicant has a right to intervene in an action in two circumstances.[3] First, under Rule 24(a)(1) an applicant has a right to intervene in an action when a United States statute gives the applicant an unconditional right to intervene.[4] Second, under Rule 24(a)(2) an applicant has the right to intervene in an action when the applicant can show an interest in the outcome of the action.[5]

An applicant can show an interest in the outcome of an action under Rule 24(a)(2) in two ways.[6] First, an applicant can show that the outcome

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1. FED. R. CIV. P. 24 (setting forth criteria for determining whether applicant has right to intervene in an action). Rule 24 uses the term "applicant" to refer to a person who desires to intervene in an action. *Id.* For the purposes of this note, "applicant" shall refer to any person asserting a right to intervene or requesting to intervene in an action.

2. *See* Amendments to Rules of Civil Procedure, 39 F.R.D. 69, 109-111 (1966) (Advisory Committee Notes to Rule 24 stating that Rule 24 enables applicant to protect interest in action); 3B J. KENNEDY & J. MOORE, MOORE'S FEDERAL PRACTICE (hereinafter, MOORE'S FEDERAL PRACTICE) § 24.02 (1987) (stating that purpose of Rule 24 is to enable applicant to protect interest in action).

3. *See* FED. R. CIV. P. 24(a)(1),(2) (setting forth criteria for courts to determine when applicant has right to intervene). If an applicant can not assert a right to intervene under Rule 24(a)(2), the applicant may apply to a court to intervene permissively under Rule 24(b). FED. R. CIV. P. 24(b); *see* MOORE'S FEDERAL PRACTICE § 24.10 (discussing Rule 24(b)). An applicant has no right to intervene under Rule 24(b), but may intervene under Rule 24(b) if a court, in its discretion, finds that the applicant should be permitted to intervene. FED. R. CIV. P. 24(b); *see* MOORE'S FEDERAL PRACTICE § 24.10 (discussing Rule 24(b)).

4. *See* FED. R. CIV. P. 24(a)(1) (setting forth applicant's right to intervene in action when United States statute confers right to intervene).

5. *See* FED. R. CIV. P. 24(a)(2) (setting forth applicant's right to intervene in action when applicant can demonstrate interest in action). Rule 24(a)(2) of the Federal Rules of Civil Procedure states as follows:

> Upon Timely application anyone shall be permitted to intervene in an action: . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

FED. R. CIV. P. 24(a)(2).

6. *Id.* Rule 24(a)(2) sets forth two types of interest an applicant may show in an action. *Id.*; *see infra* notes 7-8 and accompanying text (discussing two types of interests applicant may show in action to meet requirements of Rule 24(a)(2)).

of the action will harm the applicant's property interest in the action.[7] Second, the applicant can show that the outcome of the action may have some detrimental effect on the applicant's legal interests.[8] Rule 24(a)(2), however, does not clearly state what type of detrimental impact the outcome of an action must have on an applicant's legal interests for the applicant to have a right to intervene.[9] Applicants have attempted to show a wide variety of legal interests in actions to intervene under Rule 24(a)(2).[10] In several cases applicants have attempted to intervene in actions under Rule 24(a)(2) claiming that they represent the legal interests of the public.[11] The United States Circuit Courts of Appeals are divided on the question of whether Rule 24(a)(2) permits an applicant to intervene to represent the public interest.[12]

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7. FED. R. CIV P. 24(a)(2); *see* MOORE'S FEDERAL PRACTICE § 24.07[2] (discussing property interest in action under Rule 24(a)(2)). An applicant showing a property interest in an action generally has established a right to intervene in the action under Rule 24(a)(2). *See* MOORE'S FEDERAL PRACTICE § 24.07[2]; Calvert Fire Ins. Co. v. Environs Dev. Corp., 601 F.2d 851, 858 (5th Cir. 1979) (stating that contractor's lien on property destroyed by fire created sufficient interest under Rule 24(a)(2)); Corby Recreation Inc. v. General Electric Co., 581 F.2d 175, 176-77 (8th Cir. 1978) (holding that owner of building had sufficient interest to intervene under Rule 24(a)(2) in action involving fire damage).

8. FED. R. CIV. P. 24(a)(2); *see* MOORE'S FEDERAL PRACTICE § 24.07[2] (discussing applicant's non-property interest in action under Rule 24(a)(2)). Courts have never clearly established the nature of the interest an applicant must show to demonstrate a right to intervene in an action under Rule 24(a)(2). *See* MOORE'S FEDERAL PRACTICE § 24.07[2]; *infra* note 9 and accompanying text (discussing courts' difficulty defining interest required by Rule 24(a)(2)).

9. *See, e.g.*, Harris v. Pernsley, 820 F.2d 592, 596 (3d Cir. 1987) (stating that courts cannot easily define interest required by Rule 24(a)(2)); Rosebud Coal Sales Co. v. Andrus, 644 F.2d 849, 850-51 (10th Cir. 1981) (stating that interest required by Rule 24(a)(2) defies easy definition); Blake v. Pallan, 554 F.2d 947, 952 (9th Cir. 1977) (stating that precise nature of interest required by Rule 24(a)(2) is not clear).

10. *See* Dilks v. Aloha Airlines, 642 F.2d 1155, 1156 (9th Cir. 1981) (union asserting right to intervene in wrongful discharge action to argue for correct interpretation of collective bargaining agreement); DuPree v. United States, 559 F.2d 1151, 1152-53 (9th Cir. 1977) (Mexican ambassador asserting right to intervene under Rule 24(a)(2) to protect Mexican nationals); Horton v. Lawrence Cty. Bd. of Educ., 425 F.2d 735, 735-36 (5th Cir. 1970) (National Education Association asserting interest in desegregation case). MOORE'S FEDERAL PRACTICE § 24.07[2] at 24-55 to 24-62, nn.4-21 (discussing various interests asserted by applicants under Rule 24(a)(2)).

11. *See, e.g.*, Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525 (9th Cir. 1983) (public interest group seeking to intervene to represent public's interests in action); Washington State Bldg. and Constr. Trades v. Spellman, 684 F.2d 627 (9th Cir. 1982) (same); Idaho v. Freeman, 625 F.2d 886 (9th Cir. 1980) (same); Blake v. Pallan, 554 F.2d 947 (9th Cir. 1977) (government official asserting right to intervene to represent public's interests in action).

For the purposes of this note, an interest shown by an applicant seeking to intervene in an action to protect the public's interests in an action shall be treated as a separate category of interest.

For the purposes of this note, an applicant's attempt to represent the "public's interest" in an action shall refer to any interest not unique to the applicant that an applicant seeks to protect by intervening in an action. The "public's interest" shall include political and social policies advocated by an applicant, as well as challenges to political and social policies ostensibly raised for the benefit of society generally or for some significant portion of society.

12. *See infra* notes 54-138 and accompanying text (discussing disagreements among Circuit

RULE 24(a)(2)

When courts address the question of whether an applicant has a right under Rule 24(a)(2) to intervene in an action to represent the interests of the public in the action, the courts' analyses often focus primarily on the adequacy of the applicant's interest in the action.[13] The applicant's interest in the action, however, is only one of the requirements set out in Rule 24(a)(2).[14] Rule 24(a)(2) sets forth a four part test for a court to determine when an applicant has the right to intervene.[15] First, the applicant must file a timely request for intervention that conforms to the requirements of Rule

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Courts over applicants right to intervene in action under Rule 24(a)(2) to protect public's interests).

13. *See* Keith v. Daley, 764 F.2d 1265, 1268 (7th Cir. 1985) (stating that applicant's interest in action was most important factor in court's decision); Athens Lumber Co. v. Federal Election Comm'n, 690 F.2d 1364, 1366-67 (11th Cir. 1982) (setting forth applicant's lack of interest in action as one of two reasons for rejecting applicant's motion to intervene).

14. FED. R. CIV. P. 24(a)(2); *see* Nuesse v. Camp, 385 F.2d 694, 699 (D.C. Cir. 1967) (stating that Rule 24(a)(2) sets forth three requirements for applicant to meet to intervene under Rule 24(a)(2)). In *Nuesse v. Camp* the United States Circuit Court of Appeals for the District of Columbia became the first appellate court to interpret the present version of Rule 24(a)(2). *Nuesse*, 385 F.2d at 699. In *Nuesse* a Wisconsin bank sued the United States Comptroller of the Currency to prevent the Comptroller from issuing a certificate of approval to a competing bank. *Id.* at 698. The Commissioner of Banks of the State of Wisconsin filed a motion to intervene under Rule 24(a)(2). *Id.* The Commissioner asserted that the plaintiff in the action might not represent the Commissioner's interests in the action adequately. *Id.*

In addressing the Commissioner's motion to intervene, the D.C. Circuit held that Rule 24(a)(2) set forth a three part test for courts to determine whether an applicant has a right to intervene in an action under Rule 24(a)(2). *Id.* at 699. First, the D.C. Circuit held that the applicant must show an interest in the action. *Id.* Second, the D.C. Circuit held, the applicant must show that the outcome of the action might impede the applicant's ability to protect that interest. *Id.* Third, the D.C. Circuit held, the applicant must demonstrate that the parties in the action might not represent adequately the applicant's interest in the action. *Id.* The D.C. Circuit held that the Commissioner met the requirements of the test set forth under Rule 24(a)(2) and granted the Commissioner's motion to intervene. *Id.* at 706.

The D.C. Circuit in *Nuesse* characterized the test set forth in Rule 24(a)(2) as a three part test. *Id.* at 699. Other courts include the timeliness requirement set forth at the beginning of Rule 24(a) and apply a four part test. *See* Harris v. Pernsley, 820 F.2d 592, 596 (3d Cir. 1987) (setting forth four part test including timeliness under Rule 24(a)(2)); MOORE'S FEDERAL PRACTICE § 24.07[1] at 24-50 (same). Because the four part test simply adds the timeliness requirement of Rule 24(a) to the criteria set forth in Rule 24(a)(2), the results are the same in both cases. MOORE'S FEDERAL PRACTICE § 24.07[1].

15. FED. R. CIV. P. 24(a)(2); *see, e.g.*, Harris v. Pernsley, 820 F.2d 592, 596 (3d Cir. 1987) (setting forth four part test for applicant to intervene under Rule 24(a)(2)); Pennsylvania v. Rizzo, 530 F.2d 501, 504 (3d Cir) *cert. denied sub nom.* Fire Fighters Union v. Pennsylvania, 426 U.S. 921 (1976) (same); MOORE'S FEDERAL PRACTICE § 24.07[1], 24-50 (same).

Several courts have characterized the four part test set forth in Rule 24(a)(2) as a "strike one, you're out" test. *See* New Hampshire Ins. Co. v. Greaves, 110 F.R.D. 549, 550 (D.R.I. 1986) (stating that applicant must meet all four parts of test under Rule 24(a)(2) to intervene). If an applicant fails to fulfill the requirements of any part of the four part test, the applicant has no right to intervene. *Id.*; see infra notes 16-19 and accompanying text (discussing four part test set forth under Rule 24(a)(2)).

24(c).[16] Second, the applicant must demonstrate some interest relating to the action.[17] Third, the applicant must show that the interest may be impaired if the court does not permit the applicant to intervene.[18] Fourth, the applicant must show that none of the original parties to the action will represent the applicant's interest adequately.[19]

An applicant fulfills Rule 24(a)(2)'s timeliness requirement when the applicant files a motion to intervene in an action that the court considers timely.[20] In determining whether an applicant's motion to intervene is timely, courts consider the length of time that the applicant has had knowledge of the action.[21] Courts also consider when the applicant realized that the action would have some impact on the applicant's interests.[22] By considering when an applicant knew of an action and the action's potential to harm the applicant's interests, courts have great flexibility in determining when an applicant's motion to intervene is timely.[23]

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16. FED. R. CIV. P. 24(a). Rule 24(a) begins with the general requirement that an applicant must file a timely motion to intervene. *Id.* The timeliness requirement of Rule 24(a) applies to both Rule 24(a)(1) and Rule 24(a)(2). *Id. See supra* notes 14-15 and accompanying text (discussing relationship of timeliness requirement of Rule 24(a) to test set forth in Rule 24(a)(2)); *infra* notes 20-23 and accompanying text (discussing timeliness requirement of Rule 24(a)(2)).

17. FED. R. CIV. P. 24(a)(2); *see* Nuesse v. Camp, 385 F.2d 694, 699 (D.C. Cir. 1967) (setting forth applicant's interest in action as second element of right to intervene under Rule 24(a)(2)).

18. Fed. R. Civ. P. 24(a)(2); *see Nuesse*, 385 F.2d at 699 (setting forth impairment of applicant's interests as element of test for determining applicant's right to intervene under Rule 24(a)(2)).

19. FED. R. CIV. P. 24(a)(2); *see Nuesse*, 385 F.2d at 699 (setting forth inadequate representation as element of test to determine applicant's right to intervene under Rule 24(a)(2)).

20. *See* NAACP v. New York, 413 U.S. 345, 366 (1973) (holding that timeliness of applicant's motion to intervene is matter entirely within discretion of court); Stotts v. Memphis Fire Dept., 679 F.2d 579, 582 (6th Cir. 1982) (same).

21. *See, e.g.*, Stotts v. Memphis Fire Dept., 679 F.2d 579, 582 (6th Cir. 1982) (stating that courts should consider length of time applicant knew of action in evaluating timeliness of applicant's motion to intervene); Michigan Ass'n for Retarded Citizens v. Smith, 657 F.2d 102, 105 (6th Cir. 1981) (same); Stallworth v. Monsanto Co., 558 F.2d 257, 264 (5th Cir. 1977) (same).

22. *See, e.g.*, Stotts v. Memphis Fire Dept., 679 F.2d 579, 583 (6th Cir. 1982) (stating that courts should consider when applicant knew action might harm applicant's interests in evaluating applicant's motion to intervene); Michigan Ass'n. for Retarded Citizens v. Smith, 657 F.2d 102, 105 (6th Cir. 1981) (same); Stallworth v. Monsanto Co., 558 F.2d 257, 264 (5th Cir. 1977) (same).

23. *See* Stotts v. Memphis Fire Dept., 679 F.2d 579, 582 (6th Cir. 1982) (stating that appellate court may only reverse district court's decision on applicant's motion to intervene for abuse of discretion). District courts occasionally construe the timeliness requirement of Rule 24(a) very broadly. *See* Brown v. Board of Educ. of Topeka, Shawnee Co., Kansas, 84 F.R.D. 383, 405 (D. Kansas 1979) (construing timeliness requirement broadly). In *Brown v. Board of Educ.*, for example, an applicant moved to intervene under Rule 24(a)(2) in the famous school desegregation case twenty four years after the last judicial decision in the case. *Id.* at 386-89. The applicants, black parents and children enrolled in Topeka schools, alleged that Topeka schools were still racially segregated, and that the named parties in the action

The second part of the test for intervention under Rule 24(a)(2) requires an applicant to demonstrate an interest relating to the action.[24] The applicant must show one of three types of interests to meet the requirements of the second part of the test.[25] First, an applicant may show a property interest in the action.[26] Commentators recognize that courts consider a property interest in the subject of the action to be the most obvious ground for an applicant to intervene.[27] Second, an applicant may show that the outcome of the action might harm the applicant's legal interests.[28] Some United States Circuit Courts of Appeals hold that the second part of the four part test requires the applicant to demonstrate a potentially independent claim to intervene in the action.[29] Other United States Circuit Courts of Appeals consider any practical, legally protectable interest an applicant can demonstrate in the action sufficient to fulfill the requirements of the second part

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could no longer represent adequately the applicant's interests in the action. *Id.* at 391. The United States District Court for the District of Kansas held that the case had not yet been resolved, and that the applicants had demonstrated an interest in the action. *Id.* at 392-405. Further, the court held that the applicants' motion to intervene was timely. *Id.* at 398-404.

24. FED. R. CIV. P. 24(a)(2); *see also* Harris v. Pernsley, 820 F.2d 592, 596 (3rd Cir. 1987) (stating that applicant's interest in action is second part of four part test under Rule 24(a)(2)); MOORE'S FEDERAL PRACTICE § 24.07[1], 24-50 (same).

25. *See infra* notes 25-31 and accompanying text (discussing three different types of interests applicant may show to meet requirements of Rule 24(a)(2)). Commentators distinguish between two general interests an applicant may show in an action; an interest in property that is the subject of the action, or a legal interest in the action that the outcome of the action would effect. *See* MOORE'S FEDERAL PRACTICE § 24.07[2] (distinguishing between property and other interests an applicant may show to meet requirements of Rule 24(a)(2)). An applicant may also intervene to protect the public's interests in an action. *See supra* note 11 and accompanying text (discussing public's interests in action as third category of interest sufficient to meet requirements of Rule 24(a)(2)).

26. FED. R. CIV. P. 24(a)(2); *see also* MOORE'S FEDERAL PRACTICE § 24.07[2], 24-55 to 24-56 (discussing applicant's interest in property in action as ground for intervention under Rule 24(a)(2)); *supra* note 7 and accompanying text (discussing applicant's property interest in action as ground for intervention under Rule 24(a)(2)).

27. *See* MOORE'S FEDERAL PRACTICE § 24.07[2], 24-54 to 24-55 (stating that courts generally consider applicant's property interest in action sufficient to meet interest requirement of Rule 24(a)(2)). An applicant's property interest in an action is one of the oldest grounds for establishing an applicant's right to intervene under Rule 24(a). *See* W. DAWSON, RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES, 52-54 (1938) (hereinafter, W. DAWSON (original version of Rule 24 stating that property interest in action is ground for demonstrating applicant's right to intervene).

28. FED. R. CIV. P. 24(a)(2); *see also* MOORE'S FEDERAL PRACTICE § 24.07[2], 24-57 to 24-62 (noting that courts recognize applicant's right to intervene under Rule 24(a)(2) when applicant shows that outcome of action could harm applicant's legal interests).

29. *See* Wade v. Goldschmidt, 673 F.2d 182, 185 (7th Cir. 1982) (stating that applicant must show direct, legally protectable interest equivalent to independent cause of action to intervene in action under Rule 24(a)(2)). United States v. Perry County Bd. of Educ., 569 F.2d 277, 278-80 (5th Cir. 1978)(stating that applicant must demonstrate potentially independent cause of action to meet interest requirement of Rule 24(a)(2)); Diaz v. Southern Drilling Corp., 427 F.2d 1118, 1124 (5th Cir. 1970 (same); *infra* note 54 (discussing direct, legally protectable interest set forth in *Wade v. Goldschmidt*).

of the test.[30] Third, according to the decisions of some United States Circuit Courts of appeals, an applicant's desire to represent the public's interests in an action demonstrates an interest sufficient to fulfill the requirements of the second part of the test set forth in Rule 24(a)(2).[31]

After an applicant has demonstrated an interest in an action, the applicant must satisfy the third part of the test set forth in Rule 24(a)(2) by showing that the outcome of the action might harm the applicant's interest.[32] The applicant need not show that the outcome of the action will bar the applicant from protecting an interest.[33] Rule 24(a)(2) requires only that the outcome of the action hinder the applicant's practical ability to protect an interest.[34] Some United States Circuit Courts of Appeals have construed the third part of the test broadly to grant an applicant the right to intervene when the outcome of the action might have a stare decisis effect on the applicant's interests.[35] The United States Circuit Court of Appeals for the Sixth Circuit, however, has taken a narrower view of the third part of the test, and has required the applicant to show that the outcome of the action might directly harm the applicant's interests in the action.[36]

The fourth part of the test set forth in Rule 24(a)(2) requires an applicant to demonstrate that none of the parties in the action can represent adequately

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30. *See* Harris v. Pernsley, 820 F.2d 592, 601 (3d Cir. 1987) (stating that courts may consider practical effects of action on applicant's interests when evaluating applicant's motion to intervene); National Resources Defense Council, Inc. v. United States Nuclear Reg. Comm'n., 578 F.2d 1341, 1345 (10th Cir. 1978) (same); Blake v. Pallan, 554 F.2d 947, 952 (9th Cir. 1977) (stating that Rule 24(a)(2) does not require specific legal or equitable interest in action).

31. *See* Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 529 (9th Cir. 1983) (permitting applicant to intervene in action to protect public's interest in action); Wilderness Soc'y v. Morton, 463 F.2d 1261, 1263 (D.C. Cir. 1972) (same).

32. FED. R. CIV. P. 24(a)(2); *see* Harris v. Pernsley, 820 F.2d 592, 596 (3d Cir. 1987) (stating that third part of Four part test set forth in Rule 24(a)(2) requires applicant to show that outcome of action could harm applicant's interest); MOORE'S FEDERAL PRACTICE § 24.07[1], 24-50 to 24-51 (same).

33. *See* Piambino v. Bailey, 610 F.2d 1306 (8th Cir. 1980), *cert. denied*, 449 U.S. 1011 (1980) (stating that Rule 24(a)(2) requires applicant to show practical, not legal impairment of interest); MOORE'S FEDERAL PRACTICE § 24.07[3] (stating that Rule 24(a)(2) requires applicant to show practical impairment of interest, not that outcome of action might bar applicant from protecting interest).

34. *See* Planned Parenthood v. Citizens for Community Action, 558 F.2d 861 (8th Cir. 1977) (stating that applicant has right to intervene in action under Rule 24(a)(2) if outcome of action might have practical effect on applicant's ability to protect interests); MOORE'S FEDERAL PRACTICE § 24.07[3] (stating that Rule 24(a)(2) requires applicant to show only practical, not legal harm to applicant's ability to protect interests to intervene in action).

35. *See, e.g.*, Smith v. Pangilinan, 651 F.2d 1320 (9th Cir. 1981) (stating that stare decisis effect of action represents sufficient impairment of interest to meet requirement of Rule 24(a)(2)); Natural Resources Defense Council v. United States Nuclear Regulatory Comm'n, 578 F.2d 1341, 1345 (10th Cir. 1978) (same); Nuesse v. Camp, 385 F.2d 694, 702 (D.C. Cir. 1967)(same).

36. *See* Brewer v. Republic Steel Corp., 513 F.2d 1222 (6th Cir. 1975) (stating that stare decisis effect of action not sufficient to meet impairment of interest requirement of Rule 24(a)(2)).

the applicant's interests.[37] The United States Supreme Court has held that an applicant must make only a minimal showing that the parties in the action might not represent adequately the applicant's interests to fulfill the requirements of the fourth part of the test.[38] An applicant may show that the parties in the action cannot represent adequately the applicant's interests if the parties' interests conflict with the applicant's interests.[39] The applicant also may show that the parties do not have the incentive to prosecute the action vigorously.[40] Thus, an applicant may fulfill the fourth part of the test by showing that the parties in the action do not have interests identical to the applicant's interests.[41]

HISTORY OF RULE 24(a)(2)

The United State Supreme Court adopted the original version of Rule 24 in 1938.[42] The original version of Rule 24(a) allowed an applicant to

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37. FED. R. CIV. P. 24(a)(2); *see* Harris v. Pernsley, 820 F.2d 592, 596 (3d Cir. 1987) (stating that fourth part of test set forth under Rule 24(a)(2) requires applicant to show that parties in action cannot represent adequately applicant's interests); MOORE'S FEDERAL PRACTICE § 24.07[2] (same).

38. *See* Trbovich v. United Mine Workers of America, 404 U.S. 528 (1972). In *Trbovich v. United Mine Workers of America* the United States Supreme Court considered the circumstances under which an applicant's interests are inadequately represented under Rule 24(a)(2). *Id.* at 537-38. In *Trbovich* the Secretary of Labor sued the United Mineworkers Union alleging improprieties in union election procedures. *Id.* at 529. The applicant, a member of the union who filed a complaint with the Secretary of Labor over the union's election procedures, sought to intervene to urge the court to order specific changes in union election procedures. *Id.* at 529-30. In evaluating the applicant's motion to intervene, the Supreme Court held that although an applicant carries the burden of showing that the parties in an action will not represent adequately the applicant's interests in the action, an applicant need only make a minimal showing that the parties might not represent adequately the applicant's interests. *Id.* at 538, n. 10. The Supreme Court held that the applicant had made a minimal showing that the Secretary of Labor might not represent adequately the applicant's interests, and held that the applicant had a right to intervene in the action. *Id.* at 539

39. *See* Natural Resources Defense Council v. Costle, 561 F.2d 904 (D.C. Cir. 1977) (holding that interests of Environmental Protection Agency in pollution case conflicted with interests of chemical companies); New Mexico v. Aamodt 537 F.2d 1102 (10th Cir. 1976), *cert. denied,* 429 U.S. 1121 (1977) (holding that interests of indians in suit over water rights might conflict with interests of United States government); MOORE'S FEDERAL PRACTICE § 24.07[4], 24-68 (stating that applicant may meet requirement of Rule 24(a)(2) by showing that parties' interests conflict with applicant's interests).

40. *See* F.W. Woolworth Co. v. Miscellaneous Warehousmen's Union, 629 F.2d 1204 (7th Cir. 1980) (holding that party's failure to appeal order showed inadequate representation of applicant's interests); County of Fresno v. Andrus, 622 F.2d 436 (9th Cir. 1980) (holding that party's failure to vigorously argue applicant's position in action showed inadequate representation); MOORE'S FEDERAL PRACTICE § 24.07[4] (stating that applicant may meet requirement of Rule 24(a)(2) by showing that parties might not prosecute vigorously the applicant's claim in an action).

41. *See* MOORE'S FEDERAL PRACTICE § 24.07[4], 24-71 (stating that applicant need only show that applicant's interests differ from parties' interests to meet inadequate representation requirement of Rule 24(a)(2)).

42. *See* W. DAWSON, *supra* note 27 (original version of Rule 24 with Advisory Committee's Notes); *id.* at pp. iii-iv (recounting history of movement to adopt original version of Rule 24(a)(2)).

intervene when a judgment in an action would bind the applicant.[43] The original rule also permitted an applicant to intervene when the applicant claimed an interest in property in the court's custody.[44] Thus, the original version of Rule 24(a) set forth narrower grounds for an applicant to intervene than does the present Rule 24(a)(2).[45]

In 1946 the United States Supreme Court revised Rule 24(a).[46] The Supreme Court responded to commentators' and practitioners' criticisms of the original rule by granting an applicant more latitude to intervene in an action to protect the applicant's interests in property not in the custody of the court.[47] Because the 1946 version of Rule 24(a) no longer required an

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43. *See id.* at 52-54 (text of original Rule 24(a)). The original version of Rule 24(a) adopted in 1938 consisted of three subparts. *Id.* As originally written, Rule 24(a)(1) set forth an applicant's right to intervene in an action when a United States statute conferred an absolute right to intervene. *Id.* Rule 24(a)(2) also set forth an applicant's right to intervene when the parties in the action could not adequately represent the applicant's interests in the action and the applicant might be bound by the outcome of the action. *Id.* Additionally, Rule 24(a)(3) set forth an applicant's right to intervene in an action when the applicant could demonstrate an interest in property in the custody of the court. *Id.*

44. *Id.* (text of Rule 24(a)(3) as originally adopted). As originally written, Rule 24(a)(3) required an applicant to demonstrate an interest in property in the custody of the court or of an officer of the court to intervene in an action. *Id.* Rule 24(a)(3) also required an applicant to demonstrate that any act by the court distributing or disposing of the property might harm the applicant's interests in the property. *Id.*

45. *Compare* W. DAWSON, *supra* note 27, at 52-54 (1938 version of Rule 24(a)(2) and 24(a)(3) requiring applicant's to demonstrate that outcome of action might bind applicant or that applicant had interest in property in custody of court to show right to intervene in action) *with* FED. R. CIV. P. 24(a)(2) (requiring applicant to show that outcome if action might harm applicant's interests in action to demonstrate right to intervene in action under Rule 24(a)(2)). The original version of Rule 24(a)(2) simply codified the existing criteria courts used to grant an applicant's request to intervene in an action. *See* W. DAWSON, *supra* note 27, at 53 (stating that Rule 24(a) did not change criteria for intervention).

46. *See* Amendments to Federal Rules of Civil Procedure, 6 F.R.D. 229, 235-36 (1946) (reporting revision of Rule 24 by United States Supreme Court). The Federal Rules of Civil Procedure are amended pursuant to recommendations by the Advisory Committee. *Id.* 229. The Advisory Committee reports recommendations to the Supreme Court. *Id.* The United States Supreme Court then sends the proposed amendments to the Attorney General. 28 U.S.C.A. § 732c. The Attorney General then submits the proposed Amendments to Congress. *Id.* Congress then approves the amendments, and the amendments take effect shortly thereafter. *Id.*

47. *See* Report of the Advisory Committee on Federal Rules of Civil Procedure Recommending Amendments, 5 F.R.D. 339, 352 (1946) (stating that recommended revision of Rule 24(a) would broaden applicant's right to intervene to protect applicant's property interest in action). The 1946 version of Rule 24(a) permitted an applicant to intervene to protect the applicant's interest in property that would be distributed or disposed of by court order. *See* Amendments to Federal Rules of Civil Procedure, 6 F.R.D. 229, 235 (1946) (1946 version of Rule 24(a)). The 1946 version of Rule 24(a) contained three subparts. *Id.* Rule 24(a)(1) set forth an applicant's right to intervene in an action when a United States statute conferred an absolute right to intervene. *Id.* Rule 24(a)(2) set forth an applicant's right to intervene in an action when the applicant could demonstrate that the outcome of the action might bind the applicant. *Id.* Rule 24(a)(3) set forth an applicant's right to intervene in an action when the applicant could demonstrate an interest in property that the court had power to distribute by

applicant to have an interest in property in the custody of the court, the applicant could intervene in a greater number of actions.[48]

In 1966 the United States Supreme Court again revised Rule 24(a) and created the present version of Rule 24(a)(2).[49] The Supreme Court significantly expanded the rule, responding to the practice among lower federal courts of broadly construing the property interest requirement of the 1946 version of Rule 24 to permit more applicants to intervene.[50] The 1966 version of Rule 24(a)(2) grants an applicant the right to intervene in any action in which the applicant can show an interest that the outcome of the action might harm.[51] Because the 1966 version of Rule 24(a)(2) no longer requires an applicant to show that the outcome of the action would bind the applicant, the 1966 version of Rule 24(a)(2) expands an applicant's right to intervene in an action.[52] Some courts have responded to the 1966 revision of Rule 24(a)(2) by finding that an applicant now has a right to intervene in an action to defend a wide variety of interests, including the public's interest.[53]

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court order. *Id.* The 1946 version of Rule 24(a) altered only subpart (3) of the rule. *Compare id.* (1946 version of Rule 24(a)) *with* W. DAWSON, *supra* note 27, at 52 (original version of Rule 24(a)).

48. *See* Report of the Advisory Committee on Federal Rules of Civil Procedure Recommending Amendments, 5 F.R.D. 339, 352 (1946) (stating that revisions of Rule 24(a)(3) adopted in 1946 would broaden applicant's right to intervene in an action to protect the applicant's property interest in the action).

49. *See* Amendments to Rules of Civil Procedure, 39 F.R.D. 69, 109-111 (1966) (1966 amendments to Federal Rules of Civil Procedure). The 1966 revision of Rule 24(a)(2) altered Rule 24(a) in two important respects. *Id.* (revised text of Rule 24(a) and Advisory Committee's Note discussing changes in Rule 24(a)). First, the 1966 revision of Rule 24(a) merged subparts (2) and (3) into an single subpart, subpart (2). *Id.* Second, the 1966 revision of Rule 24(a) significantly expanded an applicant's non-statutory right to intervene in an action. *Id.*

In 1987 the Supreme Court again revised Rule 24(a)(2). *See* Federal Rules of Civil Procedure, 113 F.R.D. 189, 211 (1987) (revisions of Rule 24(a)(2)). The 1987 revisions replace the pronoun "he" in the 1966 version of the rule with the phrase "the applicant" in two places. *Id.* These changes do not alter the requirements of Rule 24(a)(2) in any way. *Id.*

50. *See* Federal Rules of Civil Procedure, 113 F.R.D. 189, 211 (1987) (Advisory Committee's Notes stating that lower federal courts tended to construe Rule 24(a) broadly). In the Note on the 1966 revision of Rule 24(a)(2), the Advisory Committee stated that federal courts had adopted a practice of construing the language of Rule 24(a)(3) as written in 1946 so broadly that the language had become meaningless. *Id.* According to the Advisory Committee, federal courts could construe Rule 24(a)(3) to grant an applicant the right to intervene in almost any action. *Id.* The Advisory Committee stated that the federal courts construed Rule 24(a)(3) broadly because the rule unnecessarily restricted an applicant's right to intervene in an action. *Id.* Thus, the Advisory Committee stated that Rule 24(a) needed to be revised. *Id.*

51. *Id.*; *see* MOORE'S FEDERAL PRACTICE § 24.07[1], 24-50 to 24-51 (stating that 1966 revision of Rule 24(a)(2) grants applicant right to intervene in any action in which applicant can demonstrate interest that outcome of action might harm).

52. *See* Amendments to Federal Rules of Civil Procedure, 39 F.R.D. 69, 109-11 (1966) (Advisory Committee's Notes explaining that 1966 revision of Rule 24(a)(2) broadens applicant's right to intervene in action); MOORE'S FEDERAL PRACTICE § 24.07[1] (explaining how 1966 revision of Rule 24(a)(2) broadens applicant's right to intervene in action).

53. *See* MOORE'S FEDERAL PRACTICE § 24.07[2] nn. 4-21 (discussing various interests that courts have held to meet requirements of Rule 24(a)(2)); *supra* notes 9-10 and accompanying text (discussing interest applicant must show in action under Rule 24(a)(2)).

INTERVENTION BY PUBLIC INTEREST GROUPS

Applicants seeking to intervene to protect the public's interests in an action fall into two categories.[54] The first category consists of public interest lobbying groups and other groups that seek to influence public policy through the legislative and judicial processes.[55] The second category consists of government entities and government officials that seek to represent the public's interest in an action.[56]

Courts often must decide whether an applicant has a right to intervene to represent the public's interest in an action when a public interest group seeks to intervene in an action.[57] Public interest groups often seek to

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54. *See infra* notes 55-56 and accompanying text (discussing categories of applicants seeking to intervene to represent public's interest). Applicants seeking to intervene in an action under Rule 24(a)(2) to represent the public's interest in the action fall into two major categories, public interest groups and government entities. *Id.* The applicant in *Wade v. Goldschmidt* represents a third, less important category, individuals seeking to represent the public's interest. *Wade v. Goldschmidt*, 673 F.2d 182 (7th Cir. 1982). In *Wade* a private citizen attempted to intervene in the action to represent the public's interests in the action. *Id.* at 183-4. The plaintiffs in *Wade* sought to prevent the State of Illinois from constructing a bridge across the Illinois River at the site that the state intended to use for the project. *Id.* The plaintiffs, owners of land that the State of Illinois intended to condemn for the bridge, alleged that the planners of the project had failed to make the required environmental impact studies, that the project did not meet the statutory criteria for federal funding, and that the project would destroy a farm that was eligible to be included on the National Register of Historic Places. *Id.* Therefore, the plaintiffs sought to prevent the State of Illinois from building the bridge. *Id.* The applicants, private citizens and several Illinois municipalities who favored building the proposed bridge project at the proposed site, asserted a right to intervene in the project under Rule 24(a)(2) to defend the Bridge project. *Id.*

In considering the applicant's motion to intervene, the United States Court of Appeals for the Seventh Circuit stated that the applicants must meet the requirements of the four part test set forth under Rule 24(a)(2). *Id.* at 185. The Second Circuit considered only the second part of the four part test set forth in Rule 24(a)(2), the requirement that an applicant demonstrate an interest in an action to intervene. *Id.* The Second Circuit stated that Rule 24(a)(2) requires an applicant to demonstrate a direct, significant, legally protectable interest in an action to intervene. *Id.* The Second Circuit held that the applicants could not demonstrate a direct, significant legally protectable interest in the action. *Id.* at 185-86. Therefore, the Second Circuit rejected the applicant's motion to intervene. *Id.* Because no other United States Circuit Court of Appeals has recognized a private citizen's right to intervene in an action under Rule 24(a)(2) to represent the public's interests in the action, this note will not address the topic of a private citizen's right to intervene to protect the public's interests.

55. *See, e.g.*, Sagebrush Rebellion Inc. v. Watt, 713 F.2d 525, 526 (9th Cir. 1983) (Audubon society seeking to intervene to protect land designated as bird sanctuary); Washington State Bldg. and Constr. Trades v. Spellman, 684 F.2d 627, 629 (9th Cir. 1982) (anti-toxic waste lobbying group seeking to intervene in action over legality of waste dump in Washington); Idaho v. Freeman, 625 F.2d 886, 887 (9th Cir. 1980) (National Organization for Women seeking to intervene in action challenging procedure for ratifying Equal Rights Amendment).

56. *See* Blake v. Pallan, 554 F.2d 947, 951 (9th Cir. 1977) (California Commissioner of Corporations seeking to intervene under Rule 24(a)(2) in class action alleging violations of securities laws).

57. *See* Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525 (9th Cir. 1983) (public interest group seeking to intervene to represent public interest); Washington State Building & Constr. Trades v. Spellman, 684 F.2d 627 (9th Cir. 1982) (same); Idaho v. Freeman, 625 F.2d 886 (9th Cir. 1980) (same).

intervene in an action to defend a piece of legislation or an administrative decision consistent with the group's objectives.[58] In these cases, the public interest group seeking to intervene generally cannot show a property interest in the action.[59] Similarly, public interest groups rarely are able to show that the outcome of the action could harm legally protectable interests unique to the public interest group.[60] Nonetheless, these groups contend that they have a right to intervene in an action to represent the public's interests in the action.[61]

In *Sagebrush Rebellion, Inc. v. Watt*[62] the United States Court of Appeals for the Ninth Circuit addressed the question of whether a public interest group has the right under Rule 24(a)(2) to intervene in an action to defend an administrative decision that the group supports.[63] In *Sagebrush Rebellion* the plaintiff, Sagebrush Rebellion, Inc., challenged a decision by the Secretary of the Interior, Cecil Andrus, creating a wildlife refuge for birds.[64] Sagebrush Rebellion, which had lobbied against the bird sanctuary, claimed that the bird sanctuary did not represent the most equitable use of the land and sought to have the Secretary's decision overturned.[65] The Audubon Society had lobbied the Department of the Interior to create the bird sanctuary.[66] The Audubon Society, describing itself as a non-profit

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58. *See supra* note 55 (listing cases in which public interest groups sought to intervene to defend legislation or court decision favored by group).

59. *See id.* (listing cases in which public interest groups seek to intervene in action under Rule 24(a)(2) to represent public's interest in action and assert no property interest in action).

60. *See id.* (listing cases in which public interest groups seek to intervene in action under Rule 24(a)(2) to represent public's interests in action and do not allege that outcome of action might harm interest unique to group).

61. *See id.* (listing cases in which applicants assert right to intervene in action under Rule 24(a)(2) to protect public's interests in action).

62. 713 F.2d 525 (9th Cir. 1983).

63. Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 526-27 (9th Cir. 1983). In *Sagebrush Rebellion, Inc. v. Watt* the Audubon society sought to intervene to defend an order by the Secretary of the Interior to set aside land in Idaho as a refuge for birds. *Id.* at 526. The Audubon Society described itself as a non-profit organization dedicated to protecting wildlife. *Id.* The Audubon Society sought to intervene in the action to defend a particular public policy, the Secretary's decision creating a wildlife refuge. *Id.* Therefore, the Society sought to intervene to represent the public's interest in the action. *See supra* note 11 (defining "public interest").

64. *Sagebrush Rebellion*, 713 F.2d at 526-27. Sagebrush Rebellion, Inc. was a non-profit organization formed to promote a multiple use style of land management. *Id.* Sagebrush Rebellion challenged Secretary Andrus' decision creating the Snake River Birds of Prey National Conservation Area. *Id.* Secretary of the Interior Cecil Andrus had created the conservation area by withdrawing 500,000 acres of land from a federal program designed to promote private development of desert lands. *Id.* Sagebrush Rebellion sued the Secretary of the Interior alleging that the Secretary's actions were illegal. *Id.*

65. *Id.* Sagebrush Rebellion, Inc. had lobbied against creating the Snake River Birds of Prey National Conservation Area. *Id.* Sagebrush Rebellion had argued that the Secretary of the Interior should adopt alternative uses for the land. *Id.* When the Secretary designated the land as a conservation area, Sagebrush Rebellion sued, alleging that the Secretary had acted illegally. *Id.*

66. *Id.* at 527. In *Sagebrush Rebellion v. Watt* the United States Court of Appeals for

organization for the protection of wildlife, claimed an interest in the action and sought to intervene.[67]

In considering whether the Audubon Society could intervene under Rule 24(a)(2), the Ninth Circuit stated that it previously had allowed public interest groups to intervene in actions that challenged the legality of measures that the group had supported.[68] The Ninth Circuit stated that to intervene

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the Ninth Circuit stated that both the Audubon Society and Sagebrush Rebellion, Inc. had actively lobbied the Secretary of the Interior over the Snake River Birds of Prey National Conservation Area. *Id.*

67. *Id.* at 526-28. *Sagebrush Rebellion* was the Audubon Society's appeal from an order by a federal district court denying the Society's motion to intervene. *Id.* The district court held that the Audubon Society could demonstrate no interest in the land set aside for the conservation area, and that the Secretary of the Interior, James Watt, would represent adequately the Society's interests in the action. *Id.*

Although the United States Court of Appeals for the Ninth Circuit referred to the applicants in *Sagebrush Rebellion* as the Audubon Society, the applicants consisted of a coalition of 15 separate groups. *Id.* Because all of the applicants retained the same counsel and asserted a common interest in the action, the Ninth Circuit treated all of the groups as a single applicant. *Id.*

68. *Id.* at 527. In *Sagebrush Rebellion, Inc. v. Watt* the United States Court of Appeals for the Ninth Circuit cited two earlier Ninth Circuit decisions for the proposition that a public interest lobbying group has a right to intervene in an action under Rule 24(a)(2) to defend products of the group's efforts. *Id.*; *see* Washington State Bldg. and Constr. Trades v. Spellman, 684 F.2d 627 (9th Cir. 1982) (holding that public interest group has right to intervene under Rule 24(a)(2) to defend public policy favored by group); Idaho v. Freeman, 625 F.2d 886 (9th Cir. 1980) (same). In *Washington State Building and Construction Trades v. Spellman* the Ninth Circuit considered whether a public interest group that had sponsored a ballot initiative had a right to intervene under Rule 24(a)(2) in an action challenging the initiative. *Washington State*, 684 F.2d at 629. The applicants in *Washington State*, a public interest group called "Don't Waste Washington" (D.W.W.), had sponsored a ballot initiative in Washington to prevent out of state producers of radioactive waste from using waste dumps inside Washington State. *Id.* Washington voters passed the initiative, and the United States and several other plaintiffs filed suit alleging that the initiative unconstitutionally restricted interstate commerce. *Id.* at 629-32. D.W.W. asserted a right to intervene under Rule 24(a)(2) to defend the constitutionality of the initiative. *Id.*

In Considering D.W.W.'s right to intervene under Rule 24(a)(2), the Ninth Circuit stated that courts traditionally construe Rule 24 liberally in favor of an applicant's right to intervene in an action. *Id.* Further, because D.W.W. had sponsored the initiative that was the subject of the action, the Ninth Circuit held that D.W.W. had a right to intervene in the action under Rule 24(a)(2). *Id.* The Ninth Circuit then held that D.W.W.'s right to intervene did not affect the outcome of the action and struck down the initiative as unconstitutional. *Id.*

Similarly, in *Idaho v. Freeman* the United States Court of Appeals for the Ninth Circuit considered whether a public interest lobbying group has a right to intervene under Rule 24(a)(2) to defend a public policy favored by the group. Idaho v. Freeman, 625 F.2d 886, 887 (9th Cir. 1980). In *Idaho v. Freeman* State legislators from Arizona and Idaho sued the General Services Administration, alleging that the ratification procedures for the Equal Rights Amendment were improper. *Id.* The National Organization For Women asserted a right to intervene in the action under Rule 24(a)(2). *Id.*

In considering the National Organization for Women's motion to intervene, the Ninth Circuit stated that the Organization must meet the requirements of the four part test set forth under Rule 24(a)(2). *Id.*; *see supra* notes 13-41 and accompanying text (discussing four part test set forth in Rule 24(a)(2)). The Ninth Circuit held that the Organization had demonstrated

the Audubon Society must meet the four part test of Rule 24(a)(2) by filing a timely motion to intervene, demonstrating an interest in the action, showing that the interest might be harmed by the outcome of the action, and showing that none of the parties in the action adequately would represent the interest.[69] The Ninth Circuit held that the Audubon Society had filed a timely motion to intervene.[70] The Ninth Circuit also stated that the Audubon Society clearly had an interest in the action because the group had supported the Snake River Wildlife Refuge.[71] The Ninth Circuit found that a decision in favor of the plaintiff could harm the Society's interests in the action.[72] Finally, the Ninth Circuit concluded that the government might not adequately protect the Audubon Society's interest in the action.[73] Because the Audubon Society met the requirements of Rule 24(a)(2), the Ninth Circuit held that the Audubon Society had a right to intervene to defend the wildlife sanctuary against the challenge by Sagebrush Rebellion, Inc.[74] *Sagebrush Rebellion* demonstrates that courts may allow a public interest group to intervene in an action to defend the product of the group's efforts when the group complies with the requirements of Rule 24(a)(2) of the Federal Rules of Civil Procedure.[75]

Although the United States Court of Appeals for the Ninth Circuit has permitted public interest groups to intervene in an action to represent the public's interests, other circuits have declined to recognize a right for an applicant to intervene under Rule 24(a)(2) to represent the public's interests

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the interest in the action required by Rule 24(a)(2). *Idaho v. Freeman*, 625 F.2d at 887. Further, the Ninth Circuit stated that the Organization had demonstrated that the outcome of the action might harm the Organization's interests in the action. *Id.* Therefore, the Ninth Circuit held that the National Organization for Women had a right to intervene in the action under Rule 24(a)(2). *Id.*

69. *Sagebrush Rebellion*, 713 F.2d at 527; *see supra* notes 14-41 and accompanying text (discussing four part test set forth in Rule 24(a)(2)).

70. *Sagebrush Rebellion*, 713 F.2d at 527.

71. *Id.* at 527-28; *see supra* note 68 (discussing cases in Ninth Circuit supporting public interest group's right to intervene in action under Rule 24(a)(2) to protect public's interest in action).

72. *Sagebrush Rebellion*, 713 F.2d at 527-28.

73. *Id.* at 528-29. In *Sagebrush Rebellion* the Ninth Circuit held that the defendant in the action, Secretary of the Interior James Watt, might not represent adequately the applicant's interests in the action. *Id.* The Ninth Circuit explained that Secretary Watt had not made the decision that the plaintiffs in the action challenged. *Id.* Watt's predecessor, Cecil Andrus, made the decision that the plaintiffs challenged. *Id.* Furthermore, the Ninth Circuit noted that Secretary Watt had headed the Mountain States Legal Foundation, the organization representing the plaintiffs in the action, prior to his appointment as Secretary of the Interior. *Id.* in addition, the Ninth Circuit explained that the applicants possessed specialized knowledge of the issues in the case not available to the parties. *Id.* Therefore, the Ninth Circuit held that the parties in the action might not represent adequately the applicant's interests in the action. *Id.*

74. *See id.* at 529 (holding that Audubon society had right to intervene in action under Rule 24(a)(2)).

75. *See id.* at 527-28 (stating that public interest group has right to intervene to protect product of group's efforts).

in an action.[76] Courts rejecting an applicant's right to intervene to protect the public's interests in an action construe the interest requirement of Rule 24(a)(2) narrowly.[77] These courts hold that an applicant must show a connection to an action stronger than a desire to represent the public interest to intervene under Rule 24(a)(2).[78] The second part of the four part test set forth under Rule 24(a)(2), according to these courts, requires the applicant to show a direct interest in the action.[79] Therefore, these courts reject arguments that an applicant has a right to intervene in an action to represent the public's interest.[80]

For example, in *Keith v. Daley*[81] the United States Court of Appeals for the Seventh Circuit considered whether a public interest lobbying group could intervene in an action to defend a statute for which the group had lobbied.[82] In 1984, the Illinois General Assembly enacted a law regulating abortions.[83] The plaintiffs, doctors in Illinois who wanted to perform abortions, challenged the statute, arguing that the statute violated a woman's constitutional right of privacy and the doctors' right to practice medicine.[84] The applicants, the Illinois Pro-Life Coalition, had lobbied the Illinois

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76. *See infra* notes 81-114 and accompanying text (discussing decisions rejecting public interest group's right to intervene to represent public's interests in action).

77. *See* Keith v. Daley, 764 F.2d 1265, 1272 (7th Cir. 1985)(rejecting applicant's motion to intervene in action to represent public's interest). The United States Court of Appeals for the Seventh Circuit has held that an applicant must show a direct, significant and legally protectable interest in an action to meet the interest requirement of Rule 24(a)(2). *Id.* at 1268. In practice, the Seventh Circuit's test for an applicant's interest excludes applicants who would probably have a right to intervene under Rule 24(a)(2) in the Ninth Circuit. *Compare* Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525 (9th Cir. 1983) (granting applicant's motion to intervene under Rule 24(a)(2) to protect public's interest in action) *with Keith*, 764 F.2d at 1272 (rejecting applicant's motion to intervene under Rule 24(a)(2) to represent Public's interests in action); *infra* notes 81-96 and accompanying text (discussing *Keith*).

78. *See Keith*, 764 F.2d at 1268 (holding that applicant must show direct, significant and legally protectable interest in action to meet requirement of Rule 24(a)(2)); *infra* note 92 (discussing direct, significant and legally protectable interest standard); *supra* note 54 (same).

79. *See Keith*, 764 F.2d at 1268 (holding that applicant must show direct, significant and legally protectable interest in action to meet requirement of Rule 24(a)(2)); *supra* note 54 (discussing direct, significant and legally protectable standard as set forth in *Wade v. Goldschmidt*).

80. *See infra*, notes 81-138 and accompanying text (discussing cases rejecting applicants' right to intervene to represent public interest).

81. 764 F.2d 1265 (7th Cir. 1985).

82. Keith v. Daley, 764 F.2d 1265, 1267-68 (7th Cir. 1985).

83. *Id.* at 1267. In 1984 the Illinois General Assembly amended Illinois' abortion statute. *Id.* The 1984 amendments to the statute required doctors to consider the life of a fetus more important than the life of the mother, to attempt to save the lives of non-viable fetuses and to inform the mother about possible pain that the fetus would experience. *Id.* The amendments to the statute also declared that conception marks the beginning of human life and subjected doctors to possible homicide prosecutions for aborting non-viable fetuses. *Id.*

84. *Id.* at 1267. The plaintiffs in *Keith* contended that some provisions of the Illinois statute were identical to provisions in an earlier Illinois statute held unconstitutional. *Id.*; *see* Charles v. Carey, 579 F.Supp 464 (N.D. Ill. 1983), *aff'd*, 749 F.2d 452, 461-62 (7th Cir. 1984) (holding Illinois abortion statute unconstitutional).

General Assembly to pass the abortion statute.[85] The applicants claimed that the lobbying efforts created an interest in the action and sought to intervene as defendants in the action to defend the constitutionality of the statute.[86]

In reviewing the Illinois Pro-Life Coalition's motion to intervene, the Seventh Circuit stated that the Coalition must satisfy the four part test set forth in Rule 24(a)(2).[87] The Seventh Circuit held that the Coalition had the burden of showing that the motion to intervene met the requirements of the four part test.[88] The Seventh Circuit addressed only the second part of the four part test, the question of whether the Coalition could show an interest in the action.[89] The Seventh Circuit explained that an applicant must show a direct, significant, and legally protectable interest in an action to intervene.[90] The Seventh Circuit held that the Coalition failed to meet the interest requirement of Rule 24(a)(2) for two reasons.[91] First, the Seventh Circuit held that the Coalition's lobbying efforts in favor of the abortion statute did not create a direct, legally protectable interest in the action.[92] Second, the Seventh Circuit stated that the Coalition could not be a defendant in the action.[93] Because the plaintiffs sought to prevent the State of Illinois from enforcing the allegedly unconstitutional statute, the Seventh

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85. *Keith*, 764 F.2d at 1267. In *Keith*, the applicants, Illinois Pro-Life Coalition (I.P.C.), asserted an interest in the action because the group had lobbied for laws setting forth alternatives to abortion. *Id.* I.P.C. had lobbied for the law challenged by the plaintiffs in *Keith*, had actively promoted alternatives to abortion, and had volunteered to adopt unwanted fetuses. *Id.*

86. *Id.* Counsel for I.P.C. in *Keith* asserted that I.P.C. had a right to intervene in the action under Rule 24(a)(2) because the counsel's extensive experience in abortion litigation created an interest in the action. *Id.* at 1268. The district court rejected I.P.C.'s request to intervene in the action, but granted I.P.C. the right to file an amicus curiae brief. *Id.*

87. *Id.* at 1268; *see supra* notes 13-41 and accompanying text (discussing four part test set forth in Rule 24(a)(2)).

88. *Keith*, 764 F.2d at 1268. In *Keith* the Seventh Circuit stated that an applicant bears the burden of showing that the applicant's motion to intervene meets all the requirements set forth in Rule 24(a)(2). *Id.* Should the applicant fail to meet any one of the requirements set forth in Rule 24(a)(2), the Seventh Circuit explained, the court must deny the applicant's motion to intervene. *Id.*

89. *Id.* In *Keith* the Seventh Circuit discussed only the second part of the four part test set forth in Rule 24(a)(2). *Id.* The Seventh Circuit stated that the parties in the action conceded the timeliness of the applicant's motion to intervene. *Id.*

90. *Id.* at 1268; *see supra* note 78 (discussing direct, significant legally protectable interest requirement in Seventh Circuit).

91. *Keith*, 764 F.2d at 1268-72.

92. *Id.* at 1269. In *Keith* the United State Court of Appeals for the Seventh Circuit rejected the applicant's argument that courts should construe the interest requirement of Rule 24(a)(2) broadly in public law cases. *Id.* The Seventh Circuit stated that Rule 24(a)(2) requires all applicants to demonstrate a direct, significant legally protectable interest in an action to intervene. *Id.* The Seventh Circuit explained that even though the applicant in *Keith* existed as an entity solely for the purpose of changing public policy on abortion, the applicant's activities in favor of the Illinois abortion statute did not create an interest meeting the requirements of Rule 24(a)(2). *Id.*

93. *Id.*

Circuit stated that only officials of the State of Illinois charged with enforcing the statute could be defendants in the action.[94] Because the Coalition could not enforce the statute, the Seventh Circuit held, the Coalition could not be a defendant in the action and had no interest in the action sufficient to meet the requirements of Rule 24(a)(2).[95] Therefore, the Seventh Circuit held that the Illinois Pro-Life Coalition had no right under Rule 24(a)(2) to intervene in the action.[96]

In *Sagebrush Rebellion* and *Keith* public interest lobbying groups asserted a right to intervene in an action under Rule 24(a)(2) to represent the public's interests in the action.[97] In another case a union asserted a similar right to intervene in an action under Rule 24(a)(2) to represent the public's interest in an action.[98] In *Athens Lumber Co., Inc. v. Federal Election Commission*[99] the United States Court of Appeals for the Eleventh Circuit considered whether a union has a right to intervene under Rule 24(a)(2) in an action by a corporation challenging Federal Election Commission limits on corporate political donations.[100] Athens Lumber Company's (Athens Lumber) shareholders had passed a resolution authorizing the use of corporate funds for political purposes.[101] Because the Federal Election Commission regulations prohibited corporations from making political expenditures, Athens Lumber challenged the constitutionality of the Federal Election Commission's regulations.[102] The applicants, the International Association of Machinists and Aerospace Workers (the Union), subsequently

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94. *Id.* at 1269-70. The Seventh Circuit stated that only the Illinois Attorney General and the Cook County State's Attorney had the authority to enforce the statute. *Id.*

95. *Id.*

96. *Id.* at 1272. In *Keith* the Seventh Circuit noted that I.P.C. existed primarily to influence and convince legislators and members of the public that public policy on abortion in the United States is wrong. *Id.* at 1270. The Seventh Circuit stated that I.P.C. was free, and in fact was encouraged to speak out on the issue of abortion and attempt to convince the world of the correctness of I.P.C.'s views. *Id.* The Seventh Circuit stated that the I.P.C.'s freedom to express its views on abortion did not create a right for I.P.C. to intervene in every action touching on the abortion issue. *Id.* Therefore, the Seventh Circuit rejected I.P.C.'s motion to intervene. *Id.*

97. *See supra* notes 62-75 and accompanying text (discussing *Sagebrush Rebellion, Inc. v. Watt*); notes 81-96 and accompanying text (discussing *Keith v. Daley*).

98. *See* Athens Lumber Co. v. Federal Election Comm'n, 690 F.2d 1364 (11th Cir. 1982) (union asserting right to intervene in action under Rule 24(a)(2) to protect public's interest in action).

99. 690 F.2d 1364 (11th Cir. 1982).

100. Athens Lumber Co. v. Federal Election Comm'n, 690 F.2d 1364, 1365 (11th Cir. 1982).

101. *Id.* at 1365. Athens Lumber's stockholders passed a unanimous resolution giving the company's president the power to spend corporate funds for political purposes. *Id.*

102. *Id.* The contributions authorized by Athens Lumber's shareholders clearly violated Federal Election Commission's regulations. *Id.* The shareholder's resolution authorized the company's president to make political expenditures on the condition that the corporation obtain a judgment declaring the regulations unconstitutional. *Id.* Athens Lumber therefore challenged the Federal Election Commission's regulations as unconstitutional. *Id.*

sought to intervene.[103] The Union asserted that it had an interest in protecting the Federal Election Commission's regulations because by limiting the amount of money corporations could spend for political purposes, the regulations helped to protect unions' political influence and, hence, the fairness of the political process.[104]

In addressing the Union's motion to intervene, the Eleventh Circuit stated that the Union must meet the four part test set forth in Rule 24(a)(2).[105] The Eleventh Circuit first addressed the interest requirement of the four part test.[106] The Eleventh Circuit explained that to have a right to intervene under Rule 24(a)(2), an applicant must demonstrate an important, legally protectable interest in an action.[107] The Eleventh Circuit further explained that the interest must be equivalent to that of a party to the transaction in question in the action.[108] Although the Eleventh Circuit acknowleged the Union's concern that the outcome of the action could result in the decline of the Union's political influence, the court stated that the union possessed no interest in the action not shared by the public at large.[109] Therefore, the Eleventh Circuit held that the Union's interest in the action was too general to meet the interest requirement of Rule 24(a)(2).[110]

In addressing the Union's motion to intervene, the Eleventh Circuit also considered the inadequate representation requirement of Rule 24(a)(2).[111] The Eleventh Circuit stated that the union and the Federal Election Com-

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103. *Id.* In *Athens Lumber* the shareholders of Athens Lumber, Inc. authorized the company to sue the Federal Election Commission (F.E.C.), alleging that F.E.C. regulations prohibiting corporate expenditures for political purposes were unconstitutional. *Id.* The applicant, the International Association of Machinists and Aerospace Workers (I.A.M.), moved to intervene in the action, asserting an interest under Rule 24(a)(2). *Id.* The district court denied I.A.M.'s motion to intervene and dismissed Athens Lumber's case for lack of justiciability. *Id.* Athens Lumber and I.A.M. then appealed the district court's decisions separately. *Id.*

104. *Id.* The I.A.M. argued that the outcome of *Athens Lumber* could harm unions' political influence if the F.E.C. lost and could no longer restrict corporate political expenditures. *Id.* The Seventh Circuit noted that I.A.M. considered its interest in the action to be private, but the Seventh Circuit disagreed, characterizing the I.A.M.'s interest in the action as identical to the interest of the public at large. *Id.* at 1365-66.

105. *Id.* at 1366; *see supra* notes 13-41 and accompanying text (discussing four part test set forth in Rule 24(a)(2)).

106. *Athens Lumber*, 690 F.2d at 1366. The Seventh Circuit stated that the timeliness of the applicant's motion to intervene was not an issue in the case. *Id.* at 1366 n. 2.

107. *Id.* at 1366, 1366 n. 2. The Eleventh Circuit acknowledged the union had reason to be concerned over the outcome of the action, but stated that the union's concern over the possible decline in its political influence did not create a sufficient interest in the action to meet the requirement set forth in Rule 24(a)(2). *Id.*

108. *Id.*

109. *Id.* The Eleventh Circuit noted that I.A.M. could not enforce the Federal Election Commission regulations against Athens Lumber. *Id.* Further, the Eleventh Circuit noted that I.A.M. had no connection with Athens Lumber. *Id.* The Eleventh Circuit stated that the only interest I.A.M. could demonstrate in the action was the same interest shared by every member of society, an interest in assuring that corporations do not unduly influence elections. *Id.*

110. *Id.* at 1366.

111. *Id.* at 1366-67.

mission both sought to uphold the constitutionality of the Federal Election Commission regulations.[112] Furthermore, the Eleventh Circuit explained that the Federal Election Commission had a duty to represent the interests of members of the public such as the Union, and thus adequately represented the Union's interests in the action.[113] Accordingly, the Eleventh Circuit denied the Union's application to intervene.[114]

GOVERNMENT INTERVENTION

In *Athens Lumber Co., Inc. v. Federal Election Commission*[115] the Eleventh Circuit stated that the applicant could not intervene because the Federal Election Commission adequately represented the public's interests in the action.[116] The Federal Election Commission was the original defendant in *Athens Lumber*.[117] Because the Federal Election Commission was a party to the original action, the Eleventh Circuit did not consider whether the Federal Election Commission had a right to intervene under Rule 24(a)(2) to represent the public's interests in the action.[118] Occasionally, however, government entities or officials seek to intervene in an action under Rule 24(a)(2) to represent the public's interests in the action.[119]

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112. *Id.* at 1366.

113. *Id.* In *Athens Lumber* the applicants also asserted that the United States Supreme Court decision in *Trbovich v. United Mine Workers of America* supported the applicant's right to intervene under Rule 24(a)(2). *Id.*; Trbovich v. United Mine Workers of America, 404 U.S. 528 (1972). In *Trbovich* the Secretary of Labor brought an action against the United Mine Workers of America for misconduct in union elections. *Id.* at 529. The union member who had filed the complaint on which the Secretary of Labor had based his action sought to intervene in the action under Rule 24(a)(2) to argue for specific safeguards in a new election. *Id.* at 529-30. The Supreme Court held that the applicant had satisfied the interest requirement of Rule 24(a)(2). *Id.* at 538. In considering whether the parties adequately represented the applicant's interests, the Supreme Court found that the Secretary of Labor had two duties in the action. *Id.* at 539. First, the Secretary had a duty to represent the interests of members of the union. *Id.* Second, the Secretary had a duty to represent the public's interest in the action. *Id.* Because the Secretary's duties were related but not identical, the Supreme Court held that the Secretary might not represent adequately the union member's interests in the action. *Id.* Therefore, the Supreme Court held that the union member had a right to intervene in the action under Rule 24(a)(2). *Id.* In *Athens Lumber* the Eleventh Circuit held that the Federal Election Commission had precisely the same interest in the action as that asserted by the applicant, and, thus, that *Trbovich* did not support the applicant's motion to intervene. *Athens Lumber*, 690 F.2d at 1366-67.

114. *Athens Lumber*, 690 F.2d at 1367.

115. 690 F.2d 1364 (11th Cir. 1982).

116. Athens Lumber Co. v. Federal Election Comm'n, 690 F.2d 1364, 1366-67 (11th Cir. 1982).

117. *Id.* at 1365; *see supra* note 103 (discussing history of *Athens Lumber* suit)

118. *See Athens Lumber*, 690 F.2d at 1365-67 (discussing applicant's motion to intervene).

119. *See* Wade v. Goldschmidt, 673 F.2d 182, 183-84 (7th Cir. 1982)(local and county government entities asserting right to intervene in action to protect public's interests in action); Blake v. Pallan, 554 F.2d 947, 953 (9th Cir. 1977)(government official asserting right to intervene in action to protect public's interests in action); *supra* note 54 (discussing Wade v. Goldschmidt).

For example, in *Blake v. Pallan*[120] the United States Court of Appeals for the Ninth Circuit considered whether a state official has a right under Rule 24(a)(2) to intervene in a federal action to protect the public's interest in the action.[121] In *Blake* investors in a land development scheme filed a class action lawsuit in federal court, alleging that the organizers of the scheme had violated federal securities laws.[122] The investors based their federal class action suit on the same transactions as two actions filed in California state court alleging that the defendants had violated California securities laws.[123] The California Commissioner of Corporations sought to intervene in the federal class action suit under Rule 24(a)(2).[124] The Commissioner asserted four interests in the action.[125] First, the Commissioner argued that the outcome of the federal action might alter the California securities laws that the Commissioner was charged with enforcing.[126] Second, the Commissioner argued that the action created novel questions of California securities law and that the Commissioner had a right to intervene to argue for a proper interpretation of the California laws.[127] Third, the

120. 554 F.2d 947 (9th Cir.1977).

121. Blake v. Pallan, 554 F.2d 947, 953 (9th Cir. 1977).

122. *Id.* at 950. In *Blake v. Pallan* the defendants had sold the plaintiffs interests in limited partnerships to develop land near several small airports. *Id.* The Investors filed a class action suit in federal court naming six promoters and 52 salesmen as defendants. *Id.* The plaintiff's complaint set forth two causes of action based on federal securities law and three additional counts based on California securities and fraud laws. *Id.* After the plaintiffs increased the size of the plaintiff class and dropped some defendants from the suit, the district court certified the class. *Id.* at 951.

123. *Id.* at 950. The federal class action filed by the plaintiffs in *Blake v. Pallan* was closely tied to two actions in California state courts. *Id.* The California Commissioner of Corporations filed the first of these actions, alleging that the defendants had violated California corporate securities laws. *Id.* Investors in the land development scheme then filed a class action against the defendants. *Id.* The California court consolidated the Commissioner's suit and the state class action. *Id.* at n. 2.

124. *Id.* at 951. In *Blake v. Pallan* the Commissioner moved to intervene in the Federal action under both Rule 24(a) and 24(b) and filed a proposed complaint. *Id.* The district court granted the Commissioners motion to intervene. *Id.* The Commissioner then filed a complaint containing three causes of action based on California law. *Id.* Some of the defendants moved to dismiss the Commissioner's complaint, and the district court modified its order to indicate that the Commissioner had intervened permissively under Rule 24(b). *Id.* The district court then dismissed the Commissioner's complaint for lack of jurisdiction. *Id.* The Commissioner appealed the district court's order. *Id.*

125. *Id.* at 952-53.

126. *Id.* at 952. In *Blake v. Pallan* the Commissioner moved to intervene under Rule 24(a)(2) asserting that he had an interest in the federal courts' interpretation of federal securities law because much of California securities law incorporates federal securities law and often refers to federal laws. *Id.* The Commissioner did not argue that a decision in federal court would directly affect California securities law, but rather suggested that the federal decision would indirectly affect California securities law. *Id.*

127. *Id.* at 953. In *Blake v. Pallan* the Ninth Circuit explained that the California Commissioner of Corporations would have an interest in the action under Rule 24(a)(2) if the outcome of the action affected the Commissioner's duties under California law. *Id.* The Ninth Circuit stated, however, that the simple fact that the district court hearing the *Blake* case would interpret California law to decide the action did not create a sufficient interest for the Commissioner to intervene under Rule 24(a)(2). *Id.*

Commissioner claimed an economic interest in the action because the Commissioner could sue defendants in securities cases for restitution under California securities law.[128] Finally, the commissioner asserted a right to intervene to protect the public's interests in the action.[129]

In considering the Commissioner's motion to intervene the Ninth Circuit stated that the Commissioner must meet the four part test set forth in Rule 24(a)(2).[130] The Ninth Circuit considered the interest requirement of the four part test most extensively.[131] The Ninth Circuit held that the effect the federal action might have on California securities law did not give the Commissioner an interest in the action under Rule 24(a)(2).[132] The Ninth Circuit also held that the California securities law claims asserted by the plaintiffs in the federal action did not give the Commissioner an interest in the action.[133] The Ninth Circuit held further that the Commissioner had no

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128. *Id.* In *Blake v. Pallan* the California Commissioner of Corporations asserted that California law gave the Commissioner the power to sue for restitution on behalf of victims of California securities laws violators. *Id.* The Commissioner asserted that this power met the interest requirement of Rule 24(a)(2). *Id.*

129. *Id.* In *Blake v. Pallan* the Ninth Circuit noted that several commentators have advocated government intervention in the public interest. *Id.*; *see* Shapiro, *Some Thoughts on Intervention Before Courts, Agencies, and Arbitrators*, 81 HARV. L. REV. 721, 734-36 (1968) (advocating right of government to intervene to protect public's interests in action). One commentator cited by the Ninth Circuit contends that courts should recognize the government's right to intervene in an action under Rule 24(a)(2) to represent the public's interests in the action for two reasons. *Id.* First, the commentator argues that lawsuits often affect persons who are unable adequately to represent themselves. *Id.* Second, the commentator argues that courts should recognize the government's right to intervene in an action under Rule 24(a)(2) to represent the public's interest in an action to enable the court to hear arguments that the parties to the action would not advance. *Id.* The commentator contends that courts therefore should recognize the government's right to intervene in an action to represent the interests of persons unable to represent their own interests. *Id.*

130. *Blake*, 554 F.2d at 951; *see supra* notes 13-41 and accompanying text (discussing four part test set forth in Rule 24(a)(2)). In *Blake* the Ninth Circuit stated that none of the parties contested the timeliness of the Commissioner's motion to intervene. *Blake*, 554 F.2d at 951-52. Therefore, the Ninth Circuit held that the Commissioner had met the timeliness requirement set forth in Rule 24(a). *Id.*

131. *Blake*, 554 F.2d at 952-53; *see supra* notes 24-31 and accompanying text (discussing interest requirement of four part test set forth under Rule 24(a)(2)).

132. *Blake*, 554 F.2d at 952-53; *see supra* note 126 and accompanying text (discussing Commissioner's assertion that outcome of federal action might alter California securities laws). In *Blake* the Ninth Circuit rejected the Commissioner's argument that the outcome of the federal securities action might affect California securities law. *Blake*, 554 F.2d at 952-53. The Ninth Circuit explained that federal securities laws and California securities laws are separate bodies of law, and that a decision in federal court construing federal securities law would not affect California securities law sufficiently to give the Commissioner an interest in the action under Rule 24(a)(2). *Id.*

133. *Blake*, 554 F.2d at 953; *see supra* note 127 and accompanying text (discussing Commissioner's argument that Commissioner had right to intervene under Rule 24(a)(2) to argue for proper interpretation of California securities law). In *Blake v. Pallan* the Ninth Circuit stated that the California Commissioner of Corporations could not demonstrate an interest in an action simply because the outcome of the action would require the court to interpret California securities law. *Blake*, 554 F.2d at 953. The Ninth Circuit dismissed the

economic interest in the action.[134] The Ninth Circuit found the Commissioner's assertion of a right to intervene to represent the public's interests in the action appealing, but held that the public's interest in the action did not create a practical ground for recognizing the Commissioner's right to intervene under Rule 24(a)(2).[135] Because the Commissioner had not shown sufficient interest in the action to meet the requirements of Rule 24(a)(2), the Ninth Circuit held that the outcome of the action could not impair the Commissioner's interests.[136] Finally, the Ninth Circuit noted that the plaintiffs in the action would represent adequately the Commissioner's interests in the action.[137] Accordingly, the Ninth Circuit denied the Commissioner's motion to intervene.[138]

Analysis of Rule 24(a)(2)

Although all courts considering whether an applicant has a right to intervene in an action under Rule 24(a)(2) to protect the public's interests in the action apply the same four part test, the United States Circuit Courts of Appeals disagree in interpreting the interest requirement of the test.[139] Several Circuit Courts have stated that courts cannot define precisely the interest that Rule 24(a)(2) requires an applicant to demonstrate.[140] These

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Commissioner's argument, stating that the Commissioner could protect any interest in the action through permissive intervention under Rule 24(b)(2) or an amicus curiae brief. *Id.*

134. *Blake*, 554 F.2d at 953; *see supra* note 128 and accompanying text (discussing Commissioner's assertion that Commissioner had economic interest in action). The Ninth Circuit stated that the Commissioner could protect any economic interest the Commissioner might show in the action in California state court. *Blake*, 554 F.2d at 953; *see supra* note 123 and accompanying text (discussing action filed by Commissioner in California state court against defendants in *Blake*).

135. *Id.* at 953; *see supra* note 129 and accompanying text (discussing Commissioner's argument that Commissioner had right to intervene in action under Rule 24(a)(2) to protect public interest). The Ninth Circuit stated that the Commissioner could represent the public's interest in the action in state court. *Blake*, 554 F.2d at 953; *see supra* note 123 and accompanying text (discussing action filed by Commissioner in state court). Further, the Ninth Circuit stated that the Commissioner's desire to represent the public's interest in the action did not represent a practical ground for finding an interest under Rule 24(a)(2). *Blake*, 554 F.2d at 953.

136. *Blake*, 554 F.2d at 954. The Ninth Circuit noted that the Commissioner had recourse to California state courts to represent any interest the Commissioner might demonstrate in the action. *Id.* The Ninth Circuit also held that the stare decisis effect of the outcome of the federal action would not impair the Commissioner's ability to protect any interest in the action. *Id.*; *see supra* notes 35-36 and accompanying text (discussing impairment of interest under Rule 24(a)(2) through stare decisis effect of action).

137. *Blake*, 554 F.2d at 954-55. In *Blake v. Pallan* the Ninth Circuit held that the plaintiffs in the federal action represented precisely the same interests that the Commissioner asserted in the action. *Id.*

138. *Id.* at 955.

139. *See supra* notes 62-138 and accompanying text (discussing different interpretations of interest requirement of Rule 24(a)(2)).

140. *See, e.g.*, Harris v. Pernsley, 820 F.2d 592, 596 (3d Cir. 1987) (stating that courts have not established clearly what constitutes interest under Rule 24(a)(2)); Rosebud Coal Sales Co. v. Andrus, 644 F.2d 849 (10th Cir. 1981) (same); Blake v. Pallan, 554 F.2d 947, 952 (9th Cir. 1977) (same); Moore's Federal Practice § 24.07[2], 24-57 (same).

courts explain that the United States Supreme Court intentionally drafted the interest requirement of Rule 24(a)(2) vaguely to allow as many applicants as possible to intervene.[141] These Circuit Courts explain that the rule must contain some ambiguity, or courts cannot construe the rule broadly.[142]

As originally drafted, Rule 24(a) allowed only applicants with narrow interests directly related to an action to intervene in the action.[143] In 1946, and again in 1966, the Supreme Court responded to calls to broaden an applicant's right to intervene in an action by revising Rule 24(a).[144] Both of the Supreme Court's revisions of Rule 24(a)(2) broadened the rule's interest requirement to give applicants demonstrating interests less closely tied to an action the right to intervene in the action.[145] Each time the Supreme Court broadened the interest requirement of Rule 24(a)(2), however, the precise interest an applicant had to demonstrate to intervene under Rule 24(a)(2) became less clear.[146] The 1966 version of Rule 24(a)(2), therefore, permits a court to interpret the rule's interest requirement very broadly.[147]

Factors other than the history of Rule 24(a)(2) encourage courts to construe the interest requirement of Rule 24(a)(2) broadly.[148] Two policies underlying Rule 24(a)(2) show that the Supreme Court intended for courts to construe the rule to permit as many applicants as possible to intervene.[149] First, according to one commentator, Rule 24(a)(2) helps courts to adjudicate actions more efficiently.[150] Rule 24(a)(2) helps courts to adjudicate actions more efficiently by combining two or more claims into a single action.[151] By combining related claims into a single action, a court often can settle all of the claims with a single judgment, thus eliminating the need for multiple trials on related claims.[152] Second, Rule 24(a)(2) helps to protect

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141. *See* Blake, 554 F.2d at 952 (stating that courts should construe interest requirement of Rule 24(a)(2) broadly in atypical cases).

142. *See* Harris v. Pernsley, 820 F.2d 592, 596-97 (9th Cir. 1987) (stating that vagueness of Rule 24(a)(2) permits courts to settle applicant's requests to intervene pragmatically).

143. *See supra* notes 42-45 and accompanying text (discussing requirements in original version of Rule 24(a) for interest applicant had to demonstrate to intervene).

144. *See supra* notes 46-53 and accompanying text (discussing 1946 and 1966 revisions of Rule 24(a)(2) and reasons for revisions).

145. *See supra* notes 46-53 and accompanying text (discussing changes in interest requirement set forth in Rule 24(a) brought about by 1946 and 1966 revisions of Rule).

146. *See supra* notes 46-53 and accompanying text (discussing changes in interest requirement set forth in Rule 24(a)(2) brought about by 1946 and 1966 revisions of rule).

147. *See* Harris v. Pernsley, 820 F.2d 592, 596-97 (3d Cir. 1987) (stating that 1966 version of Rule 24(a)(2) permits courts to settle intervention questions flexibly).

148. *See infra* notes 149-56 (discussing policies underlying Rule 24(a)(2)).

149. *See* Amendments to Federal Rules of Civil Procedure, 39 F.R.D. 69, 109-11 (1966) (Advisory Committee's Notes to Rule 24(a)(2) discussing policies underlying rule); MOORE'S FEDERAL PRACTICE § 24.07[1], 24-51 to 24-52 (same).

150. *See* MOORE'S FEDERAL PRACTICE § 24.07[1] at 24-51 to 24-52 (stating that Rule 24(a)(2) promotes more efficient adjudication).

151. *Id.*

152. *Id.*; *see also* Amendments to Federal Rules of Civil Procedure, 39 F.R.D. 69, 109-11 (1966) (Advisory Committee Notes to Rule 24 stating that rule should promote efficient

the interests of persons who can demonstrate an interest in an action but who are not party to the action.[153] If a person demonstrating an interest in an action has no right to intervene in the action, that person's interests could suffer irreparable harm from the outcome of the action.[154] Therefore, Rule 24(a)(2) gives persons who are not party to an action the right to intervene to protect an interest in the action.[155]

One commentator discussing the policies underlying Rule 24(a)(2) has characterized Rule 24(a)(2) as a balance between efficient adjudication of lawsuits on the one hand and the burden imposed on the original parties by complex actions on the other.[156] The commentator contends that the original parties in an action loose control of the action as the rule broadens the applicant's right to intervene.[157] Furthermore, broadening the applicant's right to intervene in an action promotes more efficient adjudication only if a court can settle the combined cases more quickly than it could settle the original action and the applicant's claim separately.[158] Thus, an applicant's right to intervene in an action may not promote efficient adjudication and may unduly inconvenience the parties in the action.[159] Rule 24(a)(2), however, contains no provisions that would allow courts to balance the rights of the parties in the action with the applicant's rights.[160]

Although Rule 24(a)(2) only allows courts to consider an applicant's interests in evaluating an applicant's motion to intervene in an action, one commentator has suggested that courts should consider judicial efficiency and the rights of the original parties in the action when considering whether an applicant has a right to intervene under Rule 24(a)(2).[161] The commentator

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adjudication). The Advisory Committee stated that Rule 24(a)(2) permits an applicant to intervene who would formerly have had to collaterally attack a judgment in the action. Ammendments to Federal Rules of Civil Procedure, 39 F.R.D. at 111. According to the Advisory Committee, a court may adjudicate the dispute more efficiently if the applicant has a right to intervene in the action and settle the action in a single proceeding. *Id.*

153. *See* Amendments to Federal Rules of Civil Procedure, 39 F.R.D. 69, 109-11 (1966) (Advisory Committee's Notes to Rule 24(a)(2) stating that rule give applicant right to intervene when outcome of action could harm applicant's interests).

154. *Id.* The Advisory Committee stated that courts should view Rule 24(a)(2) as an adjunct to Rule 19(a)(2)(i), which requires a court to join persons to an action whose interests might be harmed by the outcome of the action. *Id.* The Advisory Committee stated that a party who could be joined in an action by the court should have the right to enter the action voluntarily. *Id.*

155. *Id.*

156. *See* MOORE'S FEDERAL PRACTICE § 24.07[1], 24-51 to 24-52 (contending that Rule 24(a)(2) balances rights of applicant and parties with court's interest in judicial efficiency).

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*; *see* FED. R. CIV. P. 24(a)(2) (setting forth requirements for applicant to intervene in action); *supra notes* 13-41 and accompanying text (discussing requirements of Rule 24(a)(2)).

161. *See* MOORE'S FEDERAL PRACTICE § 24.07[1], 24-52 (suggesting that courts should consider interests of all parties when applicant seeks to intervene in action); *Infra* note 166 (listing cases holding that courts should consider interests of all parties in evaluating applicant's motion to intervene under Rule 24(a)(2)).

notes the similarities between the language of Rule 24(a) and the language of Rule 19 governing joinder of parties.[162] Because the language of Rule 24(a) parallels the language of Rule 19, the commentator contends that courts should consider the factors set forth in Rule 19 for determining when a court should join a party to an action when determining whether an applicant has a right to intervene.[163] Rule 19 requires courts to consider efficiency of adjudication and the interests of the parties in the action when determining whether a court should join a party to an action.[164] The commentator argues, therefore, that courts should consider efficient adjudication and the interests of the original parties in an action as factors in determining whether an applicant has a right to intervene in the action under Rule 24(a)(2).[165]

The United States Courts of Appeals for the Second and Third Circuits have recognized the commentator's argument that courts should examine interests other than those of the applicant when considering whether an applicant has a right to intervene in an action under Rule 24(a)(2).[166] The Second Circuit has held that courts considering whether an applicant has a right to intervene in an action to protect the public's interests in the action should examine factors beyond the applicant's interests in the action.[167] The

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162. *See* Amendments to Federal Rules of Civil Procedure, 39 F.R.D. 69, 109-11 (1966) (Advisory Committee's Note on Rule 24(a)(2) indicating similarities between Rule 19 and Rule 24(a)(2)); MOORE'S FEDERAL PRACTICE § 24.07[1], 24-52 (stating that language of Rule 24(a)(2) is similar to language of Rule 19).

163. *See* MOORE'S FEDERAL PRACTICE § 24.07[1], 24-52 (stating that courts should consider policies underlying Rule 19 when evaluating applicant's motion to intervene).

164. FED. R. CIV. P. 19; *see* Amendments to Federal Rules of Civil Procedure, 39 F.R.D. 69, 88-94 (1966) (Advisory Committee Note on Rule 19 discussing policies underlying rule and factors for courts to consider when joining parties).

165. *See* MOORE'S FEDERAL PRACTICE § 24.07[1], 24-52 (stating that courts should consider policies underlying Rule 19 when evaluating applicant's motion to intervene because language of Rule 24(a)(2) parallels language of Rule 19).

166. *See* Harris v. Pernsley, 820 F.2d 592, 596-97 (3d Cir. 1987) (stating that courts should consider all interests in action when evaluating applicant's motion to intervene); United States v. Hooker Chemicals & Plastics, 749 F.2d 968, 983 (2d Cir. 1984) (same).

167. *See* United States v. Hooker Chemicals & Plastics, 749 F.2d 968, 983 (2d Cir. 1984) (stating that courts should consider factors other than applicant's interests). In *United States v. Hooker Chemicals & Plastics* the United States Court of Appeals for the Second Circuit considered whether an environmental group had a right to intervene under Rule 24(a)(2) in an action by the Environmental Protection Agency against alleged polluters. *Id.* at 971-72. In *Hooker Chemicals* the E.P.A. sued Hooker alleging that Hooker had discharged pollutants into the Niagara Falls area. *Id.* at 972. The applicants, four New York environmental groups, asserted an interest in the action because the applicants had been exposed to pollutants created by the defendants. *Id.* The applicants further alleged that the E.P.A. had failed to take all necessary actions against the defendants and had failed to make all efforts to learn the scope of the pollution caused by the defendants. *Id.* at 974. Thus, the applicants argued, the E.P.A. inadequately represented the applicants' interests in the action. *Id.* Therefore, the applicants asserted a right to intervene in the action under Rule 24(a)(2). *Id.*

In considering the applicants' motion to intervene, the Second Circuit stated that courts should consider the objectives that Rule 24(a)(2) was designed to serve when evaluating an

Second Circuit has explained that factors other than those enumerated in the four part test set forth in Rule 24(a)(2) can equal the elements of the four part test in importance.[168] In particular, the Second Circuit has explained that in public law cases, courts should consider any statutes that provide the parties with a cause of action and consider whether one of the parties is a government entity to determine how adequately the parties represent the public's interests.[169] The Second Circuit stated that courts should take great care to examine all interests in an action when an applicant asserts a right to intervene to protect the public's interests, especially when the outcome of the action might have a substantial impact on public policy.[170]

CONCLUSION

An applicant asserting a right to intervene in an action under Rule 24(a)(2) to represent the public's interests in the action must meet the four part test set forth in Rule 24(a)(2).[171] In addition, courts can consider three other factors in evaluating an applicant's motion to intervene.[172] These three factors are efficiency of adjudication, the interests of the parties in the action, and the effect the outcome of the action might have on public policy.[173] Courts considering an applicant's motion to intervene under Rule 24(a)(2) to represent the public's interests in an action should routinely consider these three factors. By considering these factors and denying applicants' motions to intervene in appropriate cases, courts can insure that an applicant seeking to intervene to represent the public's interests in an action does not needlessly complicate the action at the expense of the original parties or waste court time with unnecessary litigation. Although applicants seeking to represent the public's interests in an action may often perform a useful service to society, courts must carefully regulate interven-

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applicant's motion to intervene. *Id.* at 983. The Second Circuit further stated that the criteria set forth in Rule 24(a)(2) should serve only as guidelines to a court. *Id.* In addition, the Second Circuit stated that although Rule 24(a)(2) does not specifically require a court to consider the circumstances surrounding the action, a court should consider factors beyond the applicant's interests when an applicant seeks to intervene. *Id.* The Second Circuit observed that the government was the plaintiff in the action. *Id.* at 984. The Second Circuit held that because the government was a party to the action, the applicants had to make a stronger than usual showing that the parties in the action represented the applicants' interests inadequately to intervene in the action. *Id.* at 985. Because the applicants failed to show that the E.P.A. represented the applicants' interests inadequately, the Second Circuit held that the applicants had no right to intervene in the action under Rule 24(a)(2). *Id.* at 991.

168. *Id.*

169. *Id.* at 983-84.

170. *Id.* at 988

171. *See supra* notes 13-41 and accompanying text (discussing four part test set forth in Rule 24(a)(2)).

172. *See supra* notes 161-70 and accompanying text (discussing reasons why courts should consider factors other than applicant's interests when evaluating applicant's motion to intervene).

173. *See supra* notes 161-65 and accompanying text (discussing factors courts should consider when evaluating applicant's motion to intervene).

tion under Rule 24(a)(2) to protect the rights of the original parties to the action and to insure that applicants do not abuse the judicial process by intervening unnecessarily. By considering these factors, courts can select those applicants most qualified to intervene and eliminate the applicants whose motions to intervene unnecessarily complicate the judicial process.

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