Constitutional Law—Court of International Trade Holds Article III Standing Not Required to Intervene in Existing Litigation—*Canadian Wheat Board v. United States*, 637 F. Supp. 2d 1329 (Ct. Int'l Trade 2009)

Article III of the United States Constitution (Article III) explicitly limits the jurisdiction of the federal courts to deciding only "cases" and "controversies."[1] Although the United States Supreme Court has interpreted Article III as implicitly requiring prospective parties to establish a basis for standing, it has provided no clear guidance as to what standing is constitutionally required of nonparties seeking to intervene in an existing litigation.[2] In *Canadian Wheat Board v. United States*,[3] the Court of International Trade considered whether a party seeking to intervene in an existing lawsuit must independently satisfy the standing requirements of Article III.[4] The Court of International Trade held that where a valid case or controversy exists between the remaining parties, an intervenor need not provide an independent basis for standing under Article III.[5]

The *Canadian Wheat Board* trio of decisions encompassed an international dispute between the United States and Canada over the imposition of import duties for alleged trade violations.[6] In 2002 and 2003, the United States Department of Commerce (Department) and the United States International Trade Commission (ITC) investigated the activities of the Canadian Wheat

1. *See* U.S. CONST. art. III, § 2, cl. 1 (setting forth "case" or "controversy" requirement). Article III reads, in pertinent part:

> The judicial Power shall extend to all Cases . . . arising under this Constitution, the Laws of the United States, and Treaties made, . . . to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States; . . . and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. CONST. art. III, § 2, cl. 1. Whether a plaintiff has established an Article III case or controversy is the threshold question for determining a federal court's jurisdiction. Warth v. Seldin, 422 U.S. 490, 498 (1975) (discussing purpose served by Article III).

2. *See* Diamond v. Charles, 476 U.S. 54, 61-62 (1986) (noting purpose of constitutional standing requirements); Valley Forge Christian Coll. v. Americans United for Separation of Church and State, 454 U.S. 464, 475 (1982) (admitting failure of Court to properly frame concept of constitutional standing); *see also* Lea Brilmayer, *The Jurisprudence of Article III: Perspectives on the "Case or Controversy" Requirement*, 93 HARV. L. REV. 297, 298 (1979) (portraying Court's framing of standing doctrine as inconsistent, unnatural and unpersuasive); Carl Tobias, *Standing to Intervene*, 1991 WIS. L. REV. 415, 416 (1991) (lamenting problems caused by Court's lack of guidance on intervenor standing).

3. 637 F. Supp. 2d 1329 (Ct. Int'l Trade 2009).

4. *Id.* at 1336-37 (considering merits of governments of Canada's motion).

5. *Id.* at 1342 (setting precedent for Court of International Trade).

6. *See infra* notes 7-13 and accompanying text (detailing trade dispute and Court of International Trade's involvement).

Board (CWB) and concluded that the CWB was causing material injury to the domestic wheat industry by illegally selling subsidized wheat products for less than market value.[7] As a result, the Department issued Antidumping and Countervailing Duties (AD/CVD) orders against the CWB, imposing higher, punitive trade duties on all CWB wheat entries, past and present.[8] Although the Department revoked the AD/CVD orders in early 2006 when a NAFTA panel overturned the ITC's affirmative material injury determination, the Department refused to refund the trade duties imposed on those entries made prior to the revocation's effective date.[9]

On May 2, 2007, the Court of International Trade granted the CWB's request to enjoin further liquidation of its pre-2006 wheat entries until the issue of the contested trade duties could be resolved judicially.[10] In the subsequent lawsuit, the Court of International Trade granted summary judgment for the CWB, holding the refunding of such punitive trade duties proper where the basis for their imposition is invalidated.[11] At that time, the court also dismissed the Canadian government's claims as lacking requisite standing under Article III.[12] On September 1, 2009, on reconsideration of its previous holding, the Court of International Trade determined that, because a valid case or

7. Canadian Wheat Bd. v. United States, 491 F. Supp. 2d 1234, 1237-38 (Ct. Int'l Trade 2007) (noting impetus for and results of Department and ITC investigations).

8. Canadian Wheat Bd. v. United States, 491 F. Supp. 2d 1234, 1236-38 (Ct. Int'l Trade 2007) (discussing implications of AD/CVD orders); *see also* BLACK'S LAW DICTIONARY 540 (8th ed. 2004) (defining "dumping"). The primary support for the Department's AD/CVD orders was the ITC's affirmative material injury determination. *See* Canadian Wheat Bd., 491 F. Supp. 2d 1234, 1236-38 (Ct. Int'l Trade 2007) (evaluating Department's justification for AD/CVD orders). The "dumping" of wheat products by the CWB addressed in the AD/CVD orders refers to "the act of selling a large quantity of goods at less than fair value" and is generally unlawful only when it materially injures the respective industry. *See* BLACK'S LAW DICTIONARY, *supra*, at 540.

9. Canadian Wheat Bd. v. United States, 491 F. Supp. 2d 1234, 1238-40 (Ct. Int'l Trade 2007) (explaining reasons for and implications of NAFTA panel's ITC reversal and Department's Notice of Revocation). On appeal, the NAFTA panel concluded that the ITC had failed to support its material injury determination with substantial evidence. *Id.* at 1238. NAFTA's lengthy appeals process for ITC decisions explains the more than two-year gap between the initial threat determination and the revocation of the AD/CVD orders. *See id.* at 1238-40. Because the CWB made the vast majority of its entries when the AD/CVD orders were in effect, the implications of the Department's refusal to refund the duties imposed prior to January 2, 2006 were significant. *See id.* at 1239. For example, in fiscal year 2004, the CWB paid over $175,000 in cash deposits to the United States pursuant to the AD/CVD orders and continued to pay cash deposits reflecting the higher duty rates until early 2007. *See id.* at 1239 n.5.

10. Canadian Wheat Bd. v. United States, 491 F. Supp. 2d 1234, 1236 (Ct. Int'l Trade 2007) (examining nature of preliminary injunction sought by CWB).

11. Canadian Wheat Bd. v. United States, 580 F. Supp. 2d 1350, 1370-71 (Ct. Int'l Trade 2008) (discussing basis for summary judgment in CWB's favor). Initially, the Canadian government joined the suit as a plaintiff, while the Canadian provincial governments of Alberta, Ontario and Saskatchewan joined as plaintiff-intervenors. *Id.* at 1353 n.1.

12. Canadian Wheat Bd. v. United States, 580 F. Supp. 2d 1350, 1364-67 (Ct. Int'l Trade 2008) (explaining reasons for government of Canada's lack of standing). The Court of International Trade held that the Canadian government's alleged injury-in-fact was "simply too conjectural and hypothetical" to establish standing. *Id.* at 1366. The court did not address whether the provincial governments were proper intervenors because the Department did not challenge their standing to intervene. *Id.* at 1364.

controversy existed between the United States and the CWB, the governments of Canada could properly intervene even though they lacked an independent basis for standing under Article III.[13]

As codified in Rule 24 of the Federal Rules of Civil Procedure (Rule 24), the ability of a nonparty to intervene in an existing lawsuit is a relatively recent legal development.[14] Rule 24 authorizes: (1) intervention of right by a party with an interest in the property or transaction at issue in the litigation, or (2) permissive intervention, at the court's discretion, where a party has a claim or defense in common with the main action.[15] From a policy standpoint, Rule 24 seeks to protect the interests of nonparties from adjudication without their participation, and to promote judicial efficiency by allowing for the resolution of an entire dispute in a single court action.[16] Generally, Article III requires that any party seeking redress before a federal court first establish a basis for its

13. 637 F. Supp. 2d at 1341-42 (allowing Canadian government's motion to intervene); *see also infra* notes 27-34 and accompanying text (discussing Court of International Trade's reasoning in setting precedent on intervenor standing). Note that at the time the governments of Canada sought intervention, the Court of International Trade's Rule 24 was identical to Federal Rule 24 "in all material respects," and thus the Court used the term "Rule 24" interchangeably. *See* 637 F. Supp. 2d at 1338 n.10 (comparing Court of International Trade's Rule 24 to Federal Rule 24).

14. *See* FED. R. CIV. P. 24 (originally enacted in 1937 as 28 U.S.C. §§ 45a, 48, 401); Missouri-Kansas Pipeline Co. v. United States, 312 U.S. 502, 508 (1941) (describing Rule 24 as "codification of general doctrines of intervention"); United States v. Widen, 38 F.2d 517, 518 (N.D. Ill. 1930) (noting concept of intervention unrecognized as common law procedure); James WM. Moore & Edward H. Levi, *Federal Intervention I. The Right to Intervene and Reorganization*, 45 YALE L.J. 565, 568-76 (1936) (tracing origins of intervention to American, English and Roman rules on common-law joinder).

15. *See* FED. R. CIV. P. 24 (setting forth rules for intervention of right and permissive intervention in federal courts); *see also* Diamond v. Charles, 476 U.S. 54, 68 (1986) (noting significantly protectable interest required under Rule 24(a)(2)); San Juan County, Utah v. United States, 503 F.3d 1163, 1195 (10th Cir. 2007) (describing "equitable balancing" process necessary in court's Rule 24 analysis); Tobias, *supra* note 2, at 447-48 (portraying essential question of intervention as whether applicant will help solve issues facing court). In analyzing a request for permissive intervention, a court must consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *See* FED R. CIV. P. 24(b)(3). The Tenth Circuit has held that courts should not view Rule 24's factors as "rigid, technical requirements," but should instead examine the factual circumstances underlying the would-be intervention and the case at hand in an attempt to reach a decision that is both legally and equitably permissible. *See* San Juan County, Utah v. United States, 503 F.3d 1163, 1194-95 (10th Cir. 2007) (describing factors to take into account in performing Rule 24 intervention analysis).

16. *See* Mausolf v. Babbitt, 85 F.3d 1295, 1300 (8th Cir. 1996) (noting judicial efficiency policy behind Rule 24); Nuesse v. Camp, 385 F.2d 694, 700 (D.C. Cir. 1967) (recognizing due process and efficiency concerns in Rule 24 intervention analysis); David L. Shapiro, *Some Thoughts on Intervention Before Courts, Agencies, and Arbitrators*, 81 HARV. L. REV. 721, 763 (1968) (arguing judicial efficiency favors liberal intervention rules); Ellyn J. Bullock, Note, *Acid Rain Falls on the Just and the Unjust: Why Standing's Criteria Should not Be Incorporated into Intervention of Right*, 1990 U. ILL. L. REV. 605, 639-40 (1990) (discussing equitable policy rationales behind Rule 24). *But see* Kerry C. White, Note, *Rule 24(A) Intervention of Right: Why the Federal Courts Should Require Standing to Intervene*, 36 LOY. L.A. L. REV. 527, 528-30 (2002) (arguing judicial efficiency hindered by not imposing standing requirements on public interest intervenors). According to Kerry White, the proliferation of public law litigation, or "lawsuit mania," has drastically diminished the efficiency of the federal court system. *See* White, *supra*, at 527-28. Restricting access to the federal courts to only those intervenors satisfying Article III standing requirements may help mitigate this "lawsuit mania," thus improving judicial efficiency. *See id.* at 530 (proposing stricter standing requirements as solution to problem of "lawsuit mania").

standing.[17] Nowhere in Rule 24, however, are prospective intervenors explicitly required to establish such a constitutional basis for standing.[18]

A federal circuit split has developed over whether a party satisfying Rule 24's intervention requirements must also meet the standing requirements of Article III.[19] The Supreme Court has yet to resolve the split, explicitly refusing to do so, for lack of necessity, in *Diamond v. Charles*.[20] The *Diamond* Court

17. *See* U.S. CONST. art. III, § 2, cl. 1 (requiring presence of case or controversy for judicial standing); Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (setting forth minimum constitutional requirements for standing); Valley Forge Christian Coll. v. Americans United for Separation of Church and State, 454 U.S. 464, 471 (1982) (recognizing Court has "always required" litigants to have standing). The Court has recognized that because the exercise of judicial power can "so profoundly affect the lives, liberty, and property of those to whom it extends," the requirement of standing serves to ensure that only the parties who have a direct stake in the case's outcome will stand before the court. Valley Forge Christian Coll. v. Americans United for Separation of Church and State, 454 U.S. 464, 473 (1982) (analyzing judicial significance of standing requirement). At an "irreducible constitutional minimum," a party seeking to establish standing must demonstrate a "concrete and particularized" and "actual or imminent" injury-in-fact, a "fairly traceable" causal connection between the alleged injury and the defendant's conduct, and a "substantial likelihood" that the court will be able to redress the injury should the plaintiff prevail. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

18. *See* FED. R. CIV. P. 24 (listing specific requirements for intervention, none of which implicate Article III); Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989) (holding satisfaction of Rule 24's requirements sufficient for intervention); United States v. $129,374 in U.S. Currency, 769 F.2d 583, 586 (9th Cir. 1985) (portraying Rule 24's requirements, rather than Article III's, as sole focus of motion to intervene); Day v. Sebelius, 376 F. Supp. 2d 1022, 1030 (D. Kan. 2005) (noting Rule 24 does not itself require intervenors to possess standing); Shapiro, *supra* note 16, at 763-64 (arguing independent standing for intervenors not required by and unnecessary under Rule 24). Believing strongly in the necessary separation of a court's Rule 24 and jurisdictional analyses, Professor Shapiro proposed the addition of a provision to the U.S. Code on a court's diversity analysis reading, "In the determination of jurisdiction . . . the citizenship or other status of any intervenor shall not be considered, if his intervention is properly regarded as part of the same case or controversy as the original action." Shapiro, *supra* note 16, at 764.

19. *See* Diamond v. Charles, 476 U.S. 54, 69 n.21 (1986) (recognizing split among Courts of Appeals on question of intervenor standing); *see also* Tobias, *supra* note 2, at 436 (discussing shift in federal courts' interpretation of intervention standing requirements); Amy M. Gardner, Comment, *An Attempt to Intervene in the Confusion: Standing Requirements for Rule 24 Intervenors*, 69 U. CHI. L. REV. 681, 697-98 (2002) (emphasizing problems created by circuit split over intervenor standing); *infra* notes 22-26 and accompanying text (laying out circuit split and arguments on intervenor standing). From the 1966 revision of the federal rules on intervention until 1980, federal judges rarely required intervenors to have standing. *See* Tobias, *supra* note 2, at 436. From 1980 on, some courts began requiring would-be intervenors to possess Article III standing, a trend Professor Tobias argued undesirably restricts "full and fair public access" to the federal court system. *See id.* at 436, 443. This restriction, he believed, affects public law litigants the most, as many public interest groups lack the means of independently conducting the often costly and complex lawsuits in which they usually seek intervention. *See id.*

20. 476 U.S. 54, 68-69 (1986) (avoiding decision on question of general standing for intervention); *see also* Dillard v. Chilton County Comm'n, 495 F.3d 1324, 1336-37 (11th Cir. 2007) (viewing *Diamond*'s holding as supporting intervention without standing); Landmark Land Co. v. Fed. Deposit Ins. Corp., 256 F.3d 1365, 1382 (Fed. Cir. 2001) (concluding decision on intervenor standing unnecessary under circumstances); Ruiz v. Estelle, 161 F.3d 814, 830-32 (5th Cir. 1998) (criticizing other circuits for misinterpreting *Diamond* decision as requiring intervenor standing). *But see* Solid Waste Agency of N. Cook County v. United States Army Corps of Eng'rs, 101 F.3d 503, 507 (7th Cir. 1996) (opining *Diamond* decision supports requiring standing of all intervenors). Because the party's proposed intervention failed under Rule 24, the Federal Circuit in *Landmark*, just like the Court in *Diamond*, refused to decide whether all intervenors need an independent basis for standing. *See* Landmark Land Co. v. Fed. Deposit Ins. Corp., 256 F.3d 1365, 1382 (Fed. Cir. 2001).

did hold, however, that where a case or controversy no longer exists among the remaining parties, a would-be intervenor may not "piggyback" on the original standing of a party no longer joined.[21]

The Courts of Appeals for the Second, Fifth, Sixth, Ninth, Tenth and Eleventh Circuits have generally held that an independent basis for Article III standing is not required of an intervenor where a case or controversy exists between the remaining parties.[22] These courts reason that once the original parties establish their basis for standing, a court's jurisdiction vests and, so long as a case or controversy remains, the proper addition of Rule 24 intervenors does not implicate Article III.[23] Conversely, the Courts of Appeals for the Seventh, Eighth and D.C. Circuits have denied intervention unless the requesting party can provide an independent basis for standing in addition to

21. *See* Diamond v. Charles, 476 U.S. 54, 64 (1986) (refusing intervenor's request to "piggyback" on standing of original party no longer involved); *see also* Trbovich v. United Mine Workers of America, 404 U.S. 528, 537 (1972) (allowing plaintiff to "piggyback" on standing of original party). Because the intervenor in *Diamond* was the only remaining plaintiff, the original "case or controversy" no longer remained and thus the intervenor would have had to provide his own basis for standing to continue adjudication. *See* Diamond v. Charles, 476 U.S. 54, 68-69 (1986). The Court demonstrated "piggybacking" in *Trbovich*, where it allowed a union member to intervene in a lawsuit based on the proper standing of the Secretary of Labor, even though union members were prohibited by statute from bringing such a suit. *See* Trbovich v. United Mine Workers of America, 404 U.S. 528, 537 (1972). Yet the Court restricted the scope of the union member's intervention to only those claims raised in the Secretary of Labor's original complaint. *Id.*

22. *See* San Juan County, Utah v. United States, 503 F.3d 1163, 1173 (10th Cir. 2007) (recognizing intervention without standing but dismissing intervenors for failure to rebut presumption of adequate representation); Dillard v. Chilton County Comm'n, 495 F.3d 1324, 1337 (11th Cir. 2007) (holding standing generally not required of intervenors except where case or controversy no longer exists); Ruiz v. Estelle, 161 F.3d 814, 830 (5th Cir. 1998) (allowing intervention by legislators despite lack of standing); Associated Builders & Contractors v. Perry, 16 F.3d 688, 690 (6th Cir. 1994) (recognizing intervenors do not need to provide same standing as other parties); Yniguez v. Ariz., 939 F.2d 727, 731 (9th Cir. 1991) (permitting intervention without independent showing of standing); Chiles v. Thornburgh, 865 F.2d 1197, 1213-15 (11th Cir. 1989) (allowing intervention by parties satisfying Rule 24 but lacking standing); United States v. $129,374 in U.S. Currency, 769 F.2d 583, 586 (9th Cir. 1985) (focusing only on Rule 24 in intervention analysis); United States Postal Serv. v. Brennan, 579 F.2d 188, 190 (2d Cir. 1978) (affirming lower court's treatment of labor union without standing as proper intervenor).

23. *See* San Juan County, Utah v. United States, 503 F.3d 1163, 1172 (10th Cir. 2007) (reasoning courts need not examine jurisdiction where case or controversy present); Ruiz v. Estelle, 161 F.3d 814, 830-32 (5th Cir. 1998) (explaining logical and constitutional implications of requiring independent standing of all intervenors); *see also* Shapiro, *supra* note 16, at 763-64 (arguing standing not needed for intervening parties); Bullock, *supra* note 16, at 638-39 (rejecting requirement of standing for intervenors as violating Rule 24's plain meaning). The Fifth Circuit in *Ruiz* reasoned that because Article III seeks only to ensure a case or controversy exists before the court, once the original parties establish standing, the constitutional analysis ends. *See* Ruiz v. Estelle, 161 F.3d 814, 830-32 (5th Cir. 1998). The *Ruiz* court noted the practice of allowing additional parties or claims that do not independently satisfy Article III is not a novel judicial concept. *See id.* at 833 & n.27. For example, federal courts have consistently recognized that neither a subsequent change in the citizenship of the parties, nor the presence of additional claims that do not independently satisfy Article III, will impact a court's jurisdiction where a valid case or controversy exists. *See id.* On a similar note, Professor Shapiro argues that a proper intervention analysis should focus only on whether Rule 24's requirements have been satisfied. *See* Shapiro, *supra* note 16, at 763-64. In his opinion, courts should not create implied constitutional barriers to the introduction of an intervenor when those same courts have failed to identify such explicit barriers in Article III. *See id.*

satisfying Rule 24's requirements.[24] This minority reasons that the intervention of any party lacking Article III standing spoils an established case or controversy before a court.[25] Furthermore, those circuits have recognized that because intervention seeks to place all parties on "equal footing" in court, it would be inequitable not to require an independent basis for standing from every party, regardless of when or how they joined the suit.[26]

In *Canadian Wheat Board v. United States*, the Court of International Trade sought to resolve the conflict over whether Article III implicitly requires standing of all parties before a court, including would-be intervenors.[27] Recognizing that the United States Court of Appeals for the Federal Circuit (Federal Circuit) had yet to resolve the issue, the Court of International Trade weighed the reasoning both for and against requiring independent standing of all intervenors.[28] In particular, the Court of International Trade concurred with the Fifth Circuit's reasoning that a court's jurisdictional analysis ends once a case or controversy is established and the subsequent presence of intervening parties lacking standing does not disturb its jurisdiction.[29] Inferring the Supreme Court would hold similarly, the Court of International Trade sided with the circuit majority and held an intervenor need not independently satisfy Article III's standing requirements where a case or controversy is already present.[30]

Applying that holding to the facts at hand, the Court of International Trade ultimately determined that the governments of Canada could properly join as

---

24. *See* Solid Waste Agency of N. Cook County v. United States Army Corps of Eng'rs, 101 F.3d 503, 506-07 (7th Cir. 1996) (dismissing intervenors lacking independent Article III standing); Mausolf v. Babbitt, 85 F.3d 1295, 1300, 1304 (8th Cir. 1996) (allowing intervention only upon showing of requisite standing); City of Cleveland, Ohio v. Nuclear Regulatory Comm'n, 17 F.3d 1515, 1517-18 (D.C. Cir. 1994) (denying motion to intervene for failure to allege sufficient injury for standing); S. Christian Leadership Conference v. Kelley, 747 F.2d 777, 779-81 (D.C. Cir. 1984) (rejecting intervention motion as lacking legally protectable interest).

25. *See* Mausolf v. Babbit, 85 F.3d 1295, 1300 (8th Cir. 1996) (opining intervention by party without standing ruins court's jurisdiction); *see also* S. Christian Leadership Conference v. Kelley, 747 F.2d 777, 779 (D.C. Cir. 1984) (pointing to Article III as necessary gloss on Rule 24); Rodrick J. Coffey, Note, *Giving a Hoot About an Owl Does Not Satisfy The Interest Requirement for Intervention: The Misapplication of Intervention as of Right in* Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Department of the Interior, 1998 B.Y.U. L. REV. 811, 820 (1998) (asserting not requiring standing of all intervenors violates Article III). The Eighth Circuit in *Mausolf* reasoned that, in a proper suit, the joining of an intervenor without standing simply negates the previously valid Article III case or controversy. *See* Mausolf v. Babbit, 85 F.3d 1295, 1300 (8th Cir. 1996).

26. *See* Mausolf v. Babbit, 85 F.3d 1295, 1300 (8th Cir. 1996) (asserting intervenors must demonstrate Article III standing to acquire full legal rights); City of Cleveland, Ohio v. Nuclear Regulatory Comm'n, 17 F.3d 1515, 1517 (D.C. Cir. 1994) (arguing judicial equity requires intervenors demonstrate basis for standing).

27. 637 F. Supp. 2d at 1338-42 (discussing differences of opinion among circuit courts on intervenor standing).

28. *See id.* at 1340-41 (evaluating varying circuit precedent on issue); *see also* Landmark Land Co. v. Fed. Deposit Ins. Corp., 256 F.3d 1365, 1382 (Fed. Cir. 2001) (leaving "open question" of intervenor standing).

29. *See* 637 F. Supp. 2d at 1340-41 (incorporating Fifth Circuit's reasoning in *Ruiz v. Estelle* into holding).

30. *See id.* at 1341-42 (setting precedent for Court of International Trade on standing requirements for intervenors).

plaintiff-intervenors.[31] Because there was an existing case or controversy between the CWB and the United States, the court reasoned that if the governments of Canada satisfied Rule 24's requirements, they could join regardless of Article III standing.[32] After evaluating their arguments for permissive intervention, the Court of International Trade concluded that the governments of Canada had asserted claims for relief identical to those of the CWB, and that their addition would not unduly burden the Department, the United States, the CWB or the court.[33] The court thus held that even though the governments of Canada lacked an independent basis for standing under Article III, their presence as intervenors was allowable under Rule 24.[34]

The Court of International Trade was correct in holding that Article III does not require all would-be intervenors to establish an independent basis for standing.[35] Because a court's jurisdictional analysis ends upon the satisfaction of Article III, it logically follows that subsequent Article III analyses are unnecessary so long as a case or controversy is present for adjudication at all times.[36] Thus, where a valid case or controversy is present, a proper intervention analysis should focus only on the satisfaction of Rule 24's requirements.[37]

Furthermore, despite the contrary belief of the Seventh, Eighth and D.C. Circuits, granting equal judicial rights to intervening parties that fail to satisfy Article III's requirements will not create inequitable results.[38] By requiring a prospective intervenor of right to allege a legally or significantly protectable interest in the litigation, Rule 24(a) ensures that a court only grants an equal footing in a lawsuit to absolutely necessary parties.[39] Similarly, because a Rule 24(b) analysis requires a court to consider the impact an intervention may have on the rights of the existing parties, a permissive intervenor's addition will also rarely be inequitable.[40]

---

31. *See id.* at 1342 (allowing intervention by governments of Canada).

32. *See id.* (noting existence of "case" or "controversy").

33. 637 F. Supp. 2d at 1342 (applying requirements of Rule 24 to facts at hand).

34. *Id.* (allowing governments of Canada to remain as proper intervenors under newly established precedent).

35. *See id.* (noting independent Article III standing not necessary for intervenors meeting Rule 24's requirements); *see also infra* notes 36-40 and accompanying text (explaining why courts' intervention analyses should focus on Rule 24 rather than Article III).

36. *See* Tobias, *supra* note 2, at 443 (asserting presence of case or controversy mobilizes "judicial machinery," removing need for independent intervenor standing); *supra* note 23 and accompanying text (articulating why jurisdictional analysis not necessary under Rule 24).

37. *See supra* note 18 and accompanying text (noting satisfaction of Rule 24's requirements, not Article III's, focus of intervention analysis).

38. *See supra* note 15 (setting forth reasons why requiring intervenor standing produces inequitable results). *But see supra* note 26 and accompanying text (discussing circuit minority's fairness argument for requiring intervenor standing).

39. *See* FED R. CIV. P. 24(a) (setting forth requirements for intervention of right); *supra* note 15 and accompanying text (describing stringent requirements for intervention of right).

40. *See* FED R. CIV. P. 24(b)(3) (requiring consideration of impact of intervention on existing parties); *see*

From a functional standpoint, requiring standing of prospective intervenors would be undesirable, as it might encourage forum shopping, discourage public law litigants from participating in institutional reform cases, and generally restrict public access to the federal courts.[41] Not requiring standing of intervenors actually promotes judicial efficiency, economy, and discourse by allowing for the resolution of an entire dispute in a single court action where the joined parties represent all viewpoints necessary for a court to make an informed and just decision.[42] Based on the Supreme Court's prior related decisions, and for the previously mentioned policy reasons, the Court of International Trade was justified in reasoning that, where a proper case or controversy exists, courts should permit intervention without requiring Article III standing.[43]

In *Canadian Wheat Board v. United States*, the Court of International Trade answered a fundamental constitutional question, not yet addressed by the Federal Circuit: should Article III standing be required of all prospective intervenors? Supported by compelling judicial and academic opinions, the court held where a case or controversy is present among the existing parties, questions of intervention should focus only on Rule 24's requirements. This perspective on intervenor standing is both logically and functionally sound—whether from the standpoint of constitutional scholars, future intervenors or party-plaintiffs—and ensures judicial efficiency and economy in the federal courts. Should the Federal Circuit consider this issue of intervenor standing in the near future, the reasoning of the Court of International Trade set out in *Canadian Wheat Board v. United States* may prove quite persuasive.

also supra note 15 (discussing equitable concerns behind intervention analyses).

41. *Compare* Tobias, *supra* note 2, at 443-44 (suggesting intervenor standing requirements unduly restrict judicial access, especially for public law litigants), *and* Gardner, *supra* note 19, at 697-98 (asserting forum shopping problems created by circuit split), *with* White, *supra* note 16, at 527-30 (arguing requirement of intervenor standing increases judicial efficiency by helping mitigate problem of "lawsuit mania").

42. *See* Tobias, *supra* note 2, at 443-44 (lamenting decline of public interest access and discourse in institutional reform cases); *supra* note 16 and accompanying text (discussing judicial efficiency policy rationale behind Rule 24).

43. *See* 637 F. Supp. 2d at 1339 (characterizing *Diamond* as rejecting requirement of independent Article III standing for all intervenors); *see also supra* note 20 (highlighting varying circuit court interpretations of *Diamond*'s impact on intervenor standing debate).