

In This Corner: An Analysis of Federal Boxing Legislation

Brad Ehrlichman*

INTRODUCTION

Muhammad Ali—arguably the greatest boxer of all time—lay beaten in a hospital bed. Defeated by his former sparring partner, Larry Holmes, Ali was battered and prone: King Arthur run through by Mordred.¹ An aide to Don King, Ali’s long-time promoter, stole into the room with a briefcase. At the time, King owed Ali over \$1 million.² Inside the briefcase was \$50,000 in cash, which Ali—defeated—accepted after signing a release dropping all claims against King.³ While the Senate’s version of what was to ultimately become the Muhammad Ali Boxing Reform Act (“Ali Act”), referenced only Ali’s “unsurpassed” “career achievements and personal contributions to the sport [of boxing],” it is likely that this shameful episode was present in legislators’ minds when honoring their bill’s revered—yet tragic—eponym.⁴

Passed in 2000, the Ali Act was Congress’s second foray into the arena of boxing legislation, following the Professional Boxers Safety Act (“PBSA”) of 1996.⁵ While the PBSA was aimed at protecting boxers within the ring, the Ali Act was intended “to protect the rights and welfare of professional boxers . . . by preventing certain exploitative, oppressive, and unethical business practices” outside the ring.⁶ Indeed, tales of corruption are as much a part of the folklore of

* J.D., Columbia Law School; M.A. Foreign Languages and Music History, Boston University. Thanks to my trainers, Goody Petronelli, C.J. Murphy and Scot Mendelson, for guiding me through my boxing career with enough of my wits left intact to muddle through law school. I am grateful to Brittney Pescatore, Sam Ennis and Professor Robert Kheel for their insights and edits. Thanks also to Professors Peter Arenella, Lance Liebman, Eben Moglen and Daniel Richman for being teachers as well as professors. Finally, thank you to all my fellow fighters; I learned more from all of you in the ring than from any other pursuit or institution. This Article is for you, A.M.D.G.

1. According to legend, King Arthur was killed by his illegitimate son, Mordred to whom he also dealt a fatal blow. See *The Death of Arthur and Mordred*, U. FLA., <http://www.clas.ufl.edu/users/jshoaf/Arthmort.html> (last visited Feb. 2, 2010). Unlike King Arthur, however, Ali was unable to inflict much damage on his opponent, landing only ten blows before being unable to meet the bell for the eleventh round. See Michael Katz, *Holmes Stops Ali and Keeps Heavyweight Title*, N.Y. TIMES, Oct. 3, 1980, <http://www.nytimes.com/books/98/10/25/specials/ali-holmesstops.html>.

2. JACK NEWFIELD, *ONLY IN AMERICA: THE LIFE AND CRIMES OF DON KING* 233 (1995) (detailing how King allegedly owed Ali \$1.1 million under a bout agreement).

3. LARRY ELDER, *THE TEN THINGS YOU CAN’T SAY IN AMERICA* 92 (2000).

4. S. 305, 106th Cong. § 2 (1999).

5. Professional Boxers Safety Act of 1996, Pub. L. No. 104-272, 110 Stat. 3314 (codified as amended at 15 U.S.C. §§ 6301–13 (2006)).

6. Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6301 (2006).

boxing as legends of great fights, indomitable champions and intrepid underdogs. Thus, for every retelling of Marvin Hagler's brutal three-round tilt with Thomas Hearns, there is an account of the indictment of former International Boxing Federation president Robert Lee for allegedly extorting \$338,000 in payoffs to manipulate rankings.⁷ For every awed recollection of Joe Louis's unprecedented twenty-five consecutive heavyweight title defenses, there is the story of former heavyweight champion Tim Witherspoon being forced to sign four contracts while being promoted by Don King: one made King his exclusive promoter; another made King's son, Carl, Witherspoon's manager, entitled to thirty-three percent of his earnings; the third was a duplicate of Carl King's managerial contract, only this one entitled him to fifty percent of Witherspoon's earnings; and the last was completely blank, allowing King to write in any terms he wished.⁸ And, for every narration of Buster Douglas's knockout victory of the seemingly invincible Mike Tyson in Tokyo, there is the embarrassing anecdote about Darrin Morris—a super-middleweight boxer who died in October of 2000, only to climb the World Boxing Organization ("WBO") rankings until he was able to attain in death what eluded him in life: a top-five ranking.⁹

It was against this backdrop of "corruption, manipulation, and scandal" that the Ali Act was passed.¹⁰ Part I of this Article will discuss the three main concerns of the Act: 1) coercive or unethical contracts; 2) manipulated rankings; and 3) piecemeal state regulation that allows promoters to "take advantage of the lack of equitable business standards in the sport by holding boxing events in States with weaker regulatory oversight."¹¹ The relative success or failure of the Ali Act in addressing these three interests will be evaluated in turn. Part II then addresses the three primary reasons why the Ali Act lacks punch: 1) its absence of enforcement; 2) the inadequate protection it offers the boxers most in need of safeguarding; and 3) its anonymity among those for whom it was enacted. Finally, Part III examines further measures that may help remedy the shortcomings identified in Part II, focusing on the establishment of a United States Boxing Commission, as proposed

7. Jack Newfield, *The Shame of Boxing*, THE NATION, Nov. 12, 2001, at 13. For an account of Hagler-Hearns, see Adeyinka Makinde, *Retreading Hagler Versus Hearns*, E. SIDE BOXING, <http://www.eastsideboxing.com/HaglerVsHearns.html> (last visited Feb. 2, 2011). The International Boxing Federation ("IBF"), along with the World Boxing Council ("WBC") and the World Boxing Federation ("WBA"), is one of the three major bodies that sanction championship bouts and promulgate rankings of fighters. See Michael J. Jurek, *Janitor or Savior: The Role of Congress in Professional Boxing Reform*, 67 OHIO ST. L.J. 1187, 1196 (2006).

8. NEWFIELD, *supra* note 2, at 224; see *List of Joe Louis' Fights*, BOXREC, http://boxrec.com/list_bouts.php?human_id=9027&cat=boxer (last visited Feb. 2, 2011).

9. Devin J. Burstein, Note, *The Muhammad Ali Boxing Reform Act: Its Problems and Remedies, Including the Possibility of a United States Boxing Administration*, 21 CARDOZO ARTS & ENT. L.J. 433, 459-60 (2003); *Douglas v. Tyson, Round by Round*, N.Y. TIMES, Feb. 12, 1990, <http://www.nytimes.com/1990/02/12/sports/douglas-vs-tyson-round-by-round.html?pagewanted=1>.

10. Jurek, *supra* note 7, at 1187.

11. H.R. REP. NO. 106-449, pt. 1, at 2 (1999); Thomas Hauser, *No One is Enforcing the Federal Boxing Laws*, ESPN.COM (Sept. 25, 2007), <http://sports.espn.go.com/sports/boxing/news/story?id=3032059>.

by the Professional Boxing Amendments Act.¹²

I. THE ALI ACT SHUFFLE: FIGHTING COERCIVE CONTRACTS, MANIPULATED RANKINGS AND DISUNIFORM STATE REGULATION

The Ali Act addresses coercive or unethical contracts, ranking manipulations and the deleterious effect of the current patchwork system of disuniform state regulation. It will prove helpful to provide a cursory discussion of the major players falling under the Act's ambit before discussing its substantive provisions. There are over 8,500 licensed professional boxers in the United States.¹³ "Boxers are often poor, uneducated, and inexperienced in business"; nearly ninety-nine percent of boxers come from impoverished backgrounds.¹⁴ Thus, boxers obtain representation from managers who handle boxers' business dealings, usually in exchange for one-third of the boxer's purse.¹⁵ Though managers are often considered to be more foe than friend—perhaps due to the large fees they claim—they nonetheless owe a fiduciary duty to their boxers.¹⁶

Promoters owe no such fiduciary duty to their boxers.¹⁷ In fact, "the boxer's financial interests are in direct conflict with those of the promoter" because the promoter "keeps the difference between the total revenues and total expenses for the promotion of a bout."¹⁸ The fighters' purses represent the greatest expenses in promoting a bout.¹⁹ Thus, in order to maximize profit, a promoter must minimize the purse paid to a fight's participants.²⁰ This "conflict of interest" underscores the importance of a manager negotiating with a promoter vigorously and impartially to further his boxer's best interest.²¹

12. S. 38, 111th Cong. § 202 (2009).

13. Melissa Neiman, *Protecting Professional Boxers: Federal Regulations with More Punch*, 15 SPORTS LAW. J. 59, 64 (2008).

14. JOYCE CAROL OATES, ON BOXING 85 (1987); Burstein, *supra* note 9, at 439; *see also* THOMAS HAUSER, THE BLACK LIGHTS 9 (1986) ("Most fighters come from tough places; small beginnings where life is hard.").

15. Jurek, *supra* note 7, at 1193.

16. Damon Moore, *Down for the Count: Is McCain's Bill the One to Lift Boxing off the Canvas?*, 4 VA. SPORTS & ENT. L.J. 198, 201–02 (2005); *see also* Jim Thomas, *How Fighters Can Protect Themselves Outside the Ring: Part One*, SECONDSOUT.COM, <http://www.secondsout.com/ringside/the-business-of-boxing/how-fighters-can-protect-themselves-outside-the-ring-part-one> (last visited Feb. 2, 2011) (comparing the manager-fighter relationship and the attorney-client relationship, wherein both managers and attorneys are obligated to pursue their clients' best interests and avoid conflicts of interest).

17. Symposium, *Boxing at the Crossroads*, 11 SETON HALL J. SPORT L. 193, 237 (2001) (statements of Lou DiBella and Patrick English) (noting that, under case law, a promoter does not owe a fiduciary duty to a boxer).

18. Jurek, *supra* note 7, at 1195.

19. Moore, *supra* note 16, at 204.

20. Scott Baglio, Note, *The Muhammad Ali Boxing Reform Act: The First Jab at Establishing Credibility in Professional Boxing*, 68 FORDHAM L. REV. 2257, 2262 ("[T]he less money a boxer accepts for a particular bout, the more profits are available for the promoter.").

21. *Id.*

Sanctioning bodies “control two very important aspects of boxing: sanctioning championship bouts and promulgating rankings of fighters.”²² Without official sanction, “a fight cannot be recognized as a ‘championship bout,’ and thus is less attractive to both television and the viewing public.”²³ Sanctioning bodies typically charge three percent of each fighter’s purse in exchange for sanctioning a championship fight.²⁴ The rankings promulgated by sanctioning bodies are vital to a boxer’s career, because they determine which fighters can fight for their respective division’s championship.²⁵ Though every sanctioning body has different rules, a “fighter generally must be ranked in the top fifteen of a sanctioning organization’s weight division” in order to get a title shot.²⁶

Furthermore, only the number one contender in each weight class is ever guaranteed the opportunity to fight for his division’s championship.²⁷ In fact, rankings are so fundamental to a boxer that one court held that a third-ranked junior middleweight contender had a protectable property interest in his ranking.²⁸ While every sanctioning body purports to rank fighters based on a set of subjective and objective criteria, the formulation and application of these criteria did not prevent a deceased fighter from twice moving up in a sanctioning body’s rankings in the year following his death.²⁹ Scandals such as Damien Moore’s blossoming posthumous career and the indictment of the former IBF president for receiving bribes to alter rankings allowed Senator McCain to uncontroversially state that “[i]t is a fact that the ratings system in professional boxing has less credibility among athletes and their fans than any other ratings system in professional sports.”³⁰ Unsurprisingly, then, “many credit sanctioning organizations . . . [as] the root of boxing’s evils.”³¹

Ever since boxing was first regulated by New York in 1896, state boxing commissions have been the “only party that has the legal and legislative authority

22. Jurek, *supra* note 7, at 1196.

23. Baglio, *supra* note 20, at 2263.

24. Jurek, *supra* note 7, at 1196.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Duva v. World Boxing Ass’n*, 548 F. Supp. 710, 718–20 (D.N.J. 1982).

29. Tim Graham, *New WBO Division: Dead Weight*, ESPN.COM (Feb. 20, 2001), <http://assets.espn.go.com/boxing/columns/graham/1097210.html>; *see, e.g., IBF Ratings Criteria*, IBF-USBA BOXINC, <http://www.ibf-usba-boxing.com/index.php?pg=12> (last visited Feb. 2, 2011) (showing that IBF ratings criteria include win/loss records, level of competition, activity and a boxer’s adherence to IBF/USBA rules and regulations).

30. *IBF Indictments Surprise Few*, CBS NEWS.COM, <http://www.cbsnews.com/stories/1999/07/26/sports/main55863.shtml?tag=mncol;lst;3> (last visited Feb. 2, 2011) (“In the IBF, rankings were bought, not earned. The defendants completely corrupted the IBF ranking system.”).

31. Jurek, *supra* note 7, at 1197; *see also* Symposium, *supra* note 17, at 200 (statement of Mills Lane); *id.* at 209 (statement of Amos C. Saunders) (“The major problem as I see it is the problem raised by both Mills Lane and Jerry Izenberg and that is the sanctioning organizations. Quite frankly they have to go. They are not honest. They are not fair. They are not moral.”); *id.* at 222 (statement of Kathy Duva) (“[E]verybody here [at the symposium] has just about said that the sanctioning organizations are the problem.”); *id.* at 231 (statement of Lou DiBella) (“You got to get rid of the ratings organization, which in my humble opinion are organized crime, are racketeering ventures and criminal conspiracies.”).

to regulate a boxing event.”³² As such, state boxing commissions are “charged with establishing and enforcing regulations in order to protect the health and safety of fighters.”³³ As Senator McCain has pointed out, despite their primary importance in the existing scheme of boxing regulation, state “boxing commissions are used by governors as a place to give political awards. A large number of boxing commissioners wouldn’t know a boxing glove from a catcher’s mitt.”³⁴ Unfortunately, Senator McCain’s statement is more fact than hyperbole.³⁵ Besides being “monuments to political patronage and soft money,” state boxing commissions “have been underfunded [and] undermanned.”³⁶ Undeniably, the “inadequate and improper staffing of state [boxing] commissions . . . allows . . . corruption by promoters and sanctioning organizations to go unchecked.”³⁷

Furthermore, in the absence of a federal boxing commission, “each state is free to promulgate its own regulations regardless of the requirements of other states.”³⁸ This creates a race to the bottom in which each state is incentivized to set forth the most lax regulations possible in order to attract promoters and bouts. For example, several states—including Nevada, Texas, Colorado, West Virginia and Georgia—refused to grant Mike Tyson a license to fight Lennox Lewis in a June 8, 2002 bout “due to his violent and criminal activity outside the ring and his violent and unsportsmanlike conduct inside the ring.”³⁹ However, Tennessee eventually agreed to license Tyson, and the fight occurred in Memphis, grossing over \$100 million, including gross gate revenue of \$17.5 million.⁴⁰ While forty-six state commissions

32. Patrick B. Fife, Note, *The National Boxing Commission Act of 2001: It’s Time for Congress to Step Into the Ring and Save the Sport of Boxing*, 30 HOFSTRA L. REV. 1299, 1305 (2002) (citing *Hearings on Muhammad Ali Boxing Reform Act Before the S. Comm. on Commerce, Sci. and Transp.*, 105th Cong. 43 (1998) [hereinafter *Ali Act Hearings*] (statement of Gregory P. Sirb, then President, Ass’n of Boxing Comm’n)); see Senator John McCain & Ken Nahigian, *A Fighting Chance for Professional Boxing*, 15 STAN. L. & POL’Y REV. 7, 10 (2004) (noting that “[i]n the United States, professional boxing or ‘prize-fighting’ was first legalized in California and Louisiana, [but] first regulated by New York in 1896.”).

33. Jurek, *supra* note 7, at 1198.

34. See Justin Brown, *Down for the Count?*, CHRISTIAN SCI. MONITOR, Aug. 24, 2001, at 13 (quoting Sen. John McCain); see also J. Bradley Clair, *Why Federal Preemption Is Necessary to Create Uniform Professional Boxer Safety Standards*, 73 BROOK. L. REV. 1173, 1200 (2008) (“[M]ost [state boxing] commissioners are selected based on political affiliations as opposed to qualifications.”); *id.* at 1199 (explaining how Nevada Governor Kenny Guinn appointed T.J. Day, “a man with no experience in the boxing industry,” because he was a “large contributor to the Nevada Republican Party”).

35. For example, Nancy Black, the executive director of the Kentucky Athletic Commission, the agency overseeing boxing regulation in that commonwealth, stated “[o]n boxing itself, I can’t say that I’m an expert.” See Deborah Hastings, *Page Should’ve Closed the Book*, TIMES UNION (ALBANY), Apr. 15, 2001, at E8 (quoting Nancy Black). Ms. Black had never even attended a boxing match until two weeks after former heavyweight champion Greg Page, then forty-two, sustained serious brain damage during a match held in Kentucky. See Fife, *supra* note 32, at 1306.

36. Symposium, *supra* note 17, at 214 (statement of Lou DiBella).

37. Fife, *supra* note 32, at 1307.

38. Jurek, *supra* note 7, at 1198.

39. Fife, *supra* note 32, at 1305.

40. See *Trinidad Retires?*; *Barrera-Morales & Lewis-Tyson PPV Numbers*, ABOUT.COM (July 7, 2002), <http://boxing.about.com/library/weekly/aa070702.htm> (noting that both figures set industry records); see also McCain & Nahigian, *supra* note 32, at 28 (stating that because of the “limitations of

are “loosely affiliated under the Association of Boxing Commissions” (“ABC”), the ABC is “merely a non-profit group with no regulatory power over state boxing commissions.”⁴¹ The ABC’s impotence was on display in the Tyson licensing debacle, when Tennessee, an ABC member, ignored the Commission’s request by licensing the former undisputed heavyweight champion.

Having clarified the roles of boxing’s background players—their relative advantages and disadvantages, motivations and means—the need for Congress to pass the Ali Act, and its purpose in doing so, should now be evident. Boxers, as vulnerable outside the ring as they are inside it, must negotiate against better educated, savvier, more experienced promoters who wield the assets accruing to “repeat players.”⁴² As a result, boxers are “continu[ously] exploited in their contractual agreements with managers and promoters.”⁴³ State boxing commissions are populated by individuals content in their sinecures, unable or unwilling to provide adequate protection to boxers.⁴⁴ Moreover, sanctioning bodies flout their own ratings criteria, with the result that undeserving but well connected fighters are given title fights, the public is subjected to “lower-quality bouts” involving boxers “undeserving” of their high rankings and overmatched fighters face potentially fatal consequences.⁴⁵

Against this backdrop, Congress passed the Ali Act.⁴⁶ As stated, the three primary purposes of the Ali Act are: 1) eliminating coercive or unethical contracts; 2) eradicating rankings manipulation through the imposition of published and rational criteria; and 3) circumventing the “forum shopping” that arises out of the current, piecemeal system of state regulation and the resulting race to the bottom among state boxing commissions in promulgating regulations and licensing requirements.⁴⁷ The means of achieving these three purposes, and the Ali Act’s success in doing so, will now be examined in turn.

state regulation in the interstate activity” of boxing, “Tyson was free to forum shop among state and tribal commissions for another venue to host the fight”); *id.* at 27 (“Because of the nearly \$200 million that was expected to be generated by the bout, many state commissions lined up to host the fight, eager to capitalize on what could have been significant revenue for their local economies.”).

41. Burstein, *supra* note 9, at 445; Jurek, *supra* note 7, at 1198.

42. For a discussion about the various and distinct advantages gained by “repeat players” in a system over “one-shot” players, see Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC’Y REV. 95 (1974).

43. Jurek, *supra* note 7, at 1207 (citing McCain & Nahigian, *supra* note 32, at 20).

44. Given that Senator Harry Reid of Nevada has stated that “his two most important constituents” are Don King and Bob Arum, boxing’s two biggest promoters, it does not seem far fetched that appointees to state boxing commissions would be solicitous of promoters’ wishes over those of boxers. See Fife, *supra* note 32, at 1310 n.88 (citing Baglio, *supra* note 20, at 2281).

45. See Baglio, *supra* note 20, at 2276–78 (discussing how Francois Botha, a heavyweight boxer promoted by Don King, was rated the IBF’s number one contender, “despite having never beaten a top-10 contender”); see also Burstein, *supra* note 9, at 444 (discussing bout between lightweight champion Ray “Boom-Boom” Mancini and Duk Koo Kim of South Korea, in which Kim was knocked unconscious and later died; at the time, Kim was the WBA’s number one contender, despite not even being ranked among Korea’s top forty fighters).

46. Muhammad Ali Boxing Reform Act, Pub. L. No. 106-210, 114 Stat. 321 (codified as amended at 15 U.S.C. §§ 6301–13 (2006)).

47. See McCain & Nahigian, *supra* note 32, at 27.

A. COERCIVE OR UNETHICAL CONTRACTS

The Ali Act attempts to stamp out coercive or unethical contracts through four provisions that: 1) require the ABC to “develop and . . . approve . . . guidelines for minimal contractual provisions that should be included in bout agreements and boxing contracts” within two years after the date of the Ali Act’s enactment; 2) provide that any coercive contract provision “shall be considered to be in restraint of trade, contrary to public policy, and unenforceable against any boxer”; 3) mandate that a promoter make various disclosures to the relevant state boxing commission regarding applicable contracts with any boxers involved in the match, as well as disclose to the boxer “the amounts of any compensation or consideration that a promoter has contracted to receive from [the] match”; and 4) establish a “firewall between promoters and managers” under which “[i]t is unlawful for a promoter to have a direct or indirect financial interest in the management of a boxer or . . . a manager . . . to be employed by or receive compensation or other benefits from a promoter.”⁴⁸

1. Minimal Contractual Guidelines

The Ali Act grants the ABC two years to “develop and . . . approve by a vote of no less than a majority of its member State boxing commissioners, guidelines for minimum contractual provisions that should be included in bout agreements and boxing contracts.”⁴⁹ While well intentioned, it is unclear whether this provision will provide boxers with any tangible protection or benefit. First, the ABC is comprised of forty-six states, many of which either do not sanction many boxing matches, or do so under the barest of regulations and licensing requirements.⁵⁰ Thus, having a majority of the member states of the ABC promulgate minimum contractual provisions may actually result in boxers encountering more onerous contract terms than they otherwise would have when fighting in states that are more solicitous of their welfare.

Second, issuing minimum contractual provisions may preclude opportunities for lesser known or more lightly regarded fighters to get their “shot.” A confident boxer may actually choose to sign a contract with provisions that fall below the floor set by the ABC, in order to prove his worth under the initial contract and thereafter secure a more favorable one. Further, whatever minimum contractual provisions are developed by the ABC, they are only valuable to the boxer who is aware of their existence. Any law or entitlement is only effective to the extent that it is known and invoked by its intended beneficiaries. Given the relative lack of

48. 15 U.S.C. §§ 6307–08 (2006).

49. *Id.* § 6307a.

50. See Charles Jay, *Kill the Bill—the NJ Question*, BOXING INSIDER, <http://www.boxinginsider.net/columns/stories/69248859.php> (last visited Feb. 2, 2011) (quoting one state boxing commissioner as saying, “I really don’t see any reason to stay with them (the ABC). When you look at the people running the thing, they’re all from states that just don’t have any significant boxing to speak of—Missouri, Oklahoma, Nebraska, et cetera. In their states, their standards are lower than mine.”).

education and meager means endemic among boxers, it is unreasonable to expect them to recognize or assert any contractual right provided by the Ali Act.⁵¹ As will be seen throughout this Article, there is a considerable and debilitating gap between the rights and protections granted by the Ali Act and boxers' familiarity therewith.⁵² Finally, and most fatally, the Ali Act does not even require that the ABC's guidelines be adopted. Rather, the Act meekly suggests that "[i]t is the sense of the Congress that State boxing commissions should follow these ABC guidelines."⁵³ Ultimately, this entire provision of the Ali Act amounts to Congress gently suggesting that state boxing commissions follow guidelines developed by a "non-profit group with no regulatory power over state boxing commissions" that is, in itself, just a loose affiliation of those same state commissions.⁵⁴

2. Making Coercive Contracts Unenforceable

The next provision of the Ali Act is aimed at option contracts, defined as "a contract provision that grants any rights between a boxer and a promoter . . . if the boxer is required to grant such rights . . . as a condition precedent to the boxer's participation in a professional boxing match against another boxer who is under contract to the promoter."⁵⁵ Such option contracts may not be for a period greater than twelve months.⁵⁶ This provision was included to combat the "common practice [of] a promoter who had successful boxers under contract to require that any challenger who sought to fight one of these boxers sign a long-term agreement with the promoter."⁵⁷ For example, in 1996 Evander Holyfield was forced to sign a long-term promotional contract with Don King before being afforded the opportunity to challenge heavyweight champion Mike Tyson, already one of King's men.⁵⁸

Because option contracts are usually proposed in the context of title fights, it is more likely that the class of boxers to whom this provision applies—those at the stage of their careers where they have a chance to fight for the championship of their respective weight divisions—will have the resources, management team and experience in the industry to avail themselves of the statutory protection. However, two problems persist. First, an experienced promoter would seemingly have little problem drafting a contract that provides him options in the boxer challenging the champion under his control, without making such options a condition precedent to the challenger's participation in the championship match. Indeed, "promoters have

51. See, e.g., Baglio, *supra* note 20, at 2260 ("Most boxers are uneducated men who come from impoverished backgrounds.").

52. Burstein, *supra* note 9, at 461 ("[I]n order for a fighter to sue under the Ali Act, he must first know of its existence and its provisions. It is doubtful that the typical fighter will have such knowledge.").

53. 15 U.S.C. § 6307a.

54. Burstein, *supra* note 9, at 445.

55. 15 U.S.C. § 6307b(a)(B).

56. *Id.* § 6307b(a)(1)(A)(i).

57. McCain & Nahigian, *supra* note 32, at 20.

58. Jurek, *supra* note 7, at 1207.

become quite skilled in duping boxers into signing long term contracts that represent nothing more than a sophisticated version of indentured servitude.”⁵⁹ Insofar as champions and their promoters have discretion in choosing challengers, they may still pressure potential opponents into signing option contracts without explicitly making their accession thereto a condition precedent to the championship fight. In fact, “[b]oxers often agree to these types of coercive contracts for fear of being blackballed by the promoter.”⁶⁰ Second, the Ali Act simply makes option contracts unenforceable. Thus, while a boxer signed to an option contract ultimately will not have to perform under that contract, it is likely that a promoter will force that boxer to establish his Ali Act rights in court. As will be discussed in further detail in Part II, litigation of any duration can be devastating to boxers because of the brevity of their careers and their need to stay active in order to maintain or advance their rankings.⁶¹ For example, even after a trial court determined that then-welterweight champion Felix Trinidad had presented sufficient questions of fact to proceed with a contract claim against his promoter, Don King, Trinidad agreed to continue under the disputed agreement so as not to “waste the prime of his career fighting in court.”⁶²

While the provision of the Ali Act addressing option contracts takes direct aim at a pervasive and coercive tactic employed by promoters, it is unclear that it lands anything more than a glancing blow. In the end, the provision will likely act as little more than a drafting rule for wily promoters and the foundation of a dilemma for aggrieved fighters who must choose whether to be active in court or in the ring.

3. Disclosure of Compensation

The Ali Act contains various disclosure provisions, requiring promoters to “provide[] to the boxing commission responsible for regulating the match in a State”: 1) a “copy of any agreement in writing to which the promoter is a party with any boxer participating in the match,” and 2) “a statement made under penalty of perjury that there are no other agreements, written or oral, between the promoter and the boxer with respect to that match.”⁶³ Furthermore, a promoter must provide “to the boxer it promotes . . . the amounts of any compensation or consideration that a promoter has contracted to receive from such match.”⁶⁴ These disclosure provisions aim to board off “the back room dealings that . . . dominate boxing negotiations” and to create “more open and equitable transactions” between boxers and promoters by reducing the asymmetry of information that persists between the two at the negotiating table.⁶⁵

59. *Ali Act Hearings*, *supra* note 32, at 7 (statement of Sen. John McCain).

60. McCain & Nahigian, *supra* note 32, at 20.

61. *See, e.g.*, Burstein, *supra* note 9 (discussing the dangers litigation presents to boxers).

62. *Trinidad v. King*, No. 98 CIV. 4518, 1998 WL 823653, at *1 (S.D.N.Y. Nov. 24, 1998); Baglio, *supra* note 20, at 2274.

63. 15 U.S.C. § 6307e(a) (2006).

64. *Id.* § 6307e(b).

65. Baglio, *supra* note 20, at 2285.

While sunlight may be the best disinfectant, it is not enough—in and of itself—to cleanse boxing of coercive and unethical contracts.⁶⁶ Disclosing contracts to state boxing commissions will be effective in promoting fair contracts among promoters and boxers only to the extent that the commissions actually review every contract submitted to them and invalidate those that are coercive or unconscionable. However, “some states simply are not aggressive in enforcing the requirements related to formation of contracts.”⁶⁷ This “lack of aggressiveness on the part of the states [may be] due to a lack of resources or the [un]willingness to investigate wrongdoing.”⁶⁸ As discussed above, there is a nexus between politicians, promoters and state boxing commissioners that casts doubt on the ability of politically appointed commissioners to act contrary to promoters’ interests. Not only are promoters sometimes valued campaign contributors, but often they directly patronize state boxing commissioners.⁶⁹ In Nevada, for example, “each of the state’s five commissioners is given six tickets [by promoters] in addition to his own set for every fight card held in the state.”⁷⁰ Two of these seats must be ringside.⁷¹ The value of these seats can be substantial. For the Oscar De La Hoya v. Floyd Mayweather fight, “six ringside tickets had a face value of \$12,000 and were being resold on the Internet and elsewhere for multiples of that amount.”⁷² Thus, while the Ali Act requires contracts between boxers and promoters to be brought to light, it is unlikely that illumination will result in equalization.

Perhaps the most ill conceived and ineffective provision of the Ali Act is § 6307e(b), which requires promoters to disclose to boxers “the amounts of any compensation or consideration that a promoter has contracted to receive” from a match.⁷³ Ostensibly, this requirement “removes a significant portion of the promoter’s power during . . . negotiations by allowing the boxer to know exactly how much a bout is worth to the promoter, thus enabling a boxer to negotiate larger purses for himself.”⁷⁴ The provision inexplicably requires a promoter to disclose his gross, rather than net profits to a boxer. Thus, “the disclosure is misleading because a boxer may assume that the promoter is keeping all of the revenue, while in actuality the boxers’ purses, fees, and expenses from the bout, along with company overhead, must be subtracted before determination of the promoter’s profit or loss.”⁷⁵ Likely, a boxer’s misperception of a promoter’s profit margin will lead to negotiating gridlock, increased transaction costs and aborted bouts where no

66. See LOUIS BRANDEIS, OTHER PEOPLE’S MONEY 13 (1913).

67. Moore, *supra* note 16, at 219.

68. *Id.*

69. Here it should be noted again that Senator Harry Reid called Don King and Bob Arum his “two most important constituents.” See Fife, *supra* note 32, at 1310 n.88 (citing Baglio, *supra* note 20, at 2281).

70. Hauser, *supra* note 11.

71. *Id.*

72. *Id.*

73. 15 U.S.C. § 6307e(b) (2006).

74. Baglio, *supra* note 20, at 2284.

75. *Id.* at 2285.

agreement can be reached.⁷⁶ Further, “[i]f the promoter, in addition to a main event fighter, has a contract with an undercard boxer, he must make the disclosures to him also. The undercard boxer, however, is not as responsible for most of the revenue the promoter receives.”⁷⁷ Once again, this disclosure requirement may lead to a boxer misapprehending his true leverage and worth. Ultimately, this “false sense of leverage could compromise the entire event” by leading boxers to demand contract provisions that are out of proportion to their true value to the promotion.⁷⁸

Though well intentioned, the disclosure provisions of the Ali Act are ill suited to achieving their purposes. First, while requiring the promoter to disclose contracts and financial information to state boxing commissions, the Act does not require those commissions to review the disclosures, nor does it set up any protocol mandating how those commissions should act when encountering coercive or unethical contract provisions. Thus, the disclosure provision is merely a good first step that, lacking an essential second step, ends up leading nowhere. Second, because the Act mandates the disclosure of gross income, it is essentially “meaningless [While n]et receipts might mean something . . . gross receipts [are] totally meaningless.”⁷⁹ Requiring a promoter to disclose his gross income from a bout to a fighter will only create a chilled negotiating climate in which the boxer has an inflated sense of the promoter’s profit margin, and thus greatly misperceives his own worth.⁸⁰ This provision would have been more valuable to boxers if it mandated net receipts, thereby providing useful and relevant information that would strengthen their bargaining positions. Instead, it merely sends them marching to the negotiating table overconfident in their position, power and worth.

4. Firewall Between Promoters and Managers

As discussed, managers owe a fiduciary duty to the boxers they represent. Promoters owe no such duty. In fact, “a boxer and a promoter have directly adverse interests during [contract] negotiations.”⁸¹ Thus, it is essential that a firewall between promoters and managers exists so that the latter can negotiate

76. See Cristina E. Groschel, Note, *Down for the Count: The Muhammad Ali Boxing Reform Act and Its Shortcomings*, 26 NOVA L. REV. 927, 945–46 (2002) (“In seeing a promoter’s gross revenue, boxers get a false sense of their true worth. They begin to believe that they have greater leverage than they actually do.”).

77. *Id.* at 946.

78. *Id.*

79. *Id.* (citing *Legis. Meeting of the Pa. State Athletic Comm’n in Ass’n with the Ass’n of Boxing Comm’ns* 151 (2000) [hereinafter *Legislative Meeting*] (statement of Patrick English, Attorney for Main Events)).

80. See *Legislative Meeting*, *supra* note 79, at 195 (statement of Ron Stevens) (“[T]he fighter is going to say . . . hey . . . [y]ou are making \$10 million. I deserve 50,000 here, not 5,000.”); *id.* at 209 (statement of Murad Muhammad) (“[W]e would have . . . major trouble because you don’t understand these athletes . . . [I]f they ever see the kind of money . . . grossed in a fight, I guarantee you . . . when that fighter reads that, I am not fighting.”).

81. Baglio, *supra* note 20, at 2285.

aggressively against the former in the best interests of the represented boxer. This is especially true because of the lack of education, sophistication and legal knowledge common among boxers. The Ali Act establishes such a firewall through its provision “forbidding both a promoter from having any interest in the management of the boxer, and a manager from having an interest in the promotion of the boxer.”⁸²

This interdiction is meant to obviate the traditional practice in boxing under which “many of the most powerful promoters force boxers to hire a particular manager, usually an employee or family member of the promoter, whose loyalty is to the promoter and not to the boxer, thus compromising the boxer’s interests during negotiations with the promoter.”⁸³ Don King was perhaps the most notorious proponent of this unsavory tactic, often requiring boxers to hire his son, Carl King, as their manager as a condition precedent to being promoted by the elder King. Once installed, Carl King routinely took fifty percent or more from purses of boxers that he managed and his father promoted.⁸⁴ More troubling, the boxer would then be represented by Carl King in negotiations against his own father, by whom the younger King was also employed.⁸⁵ Under such circumstances, it is impossible for anyone, including the boxer, to believe that his best interests were being pursued faithfully by his manager. Thus, the firewall provision of the Ali Act represents a pragmatic and effective solution to one of the underlying reasons why boxers are often subjected to coercive and inequitable contracts.⁸⁶

Like the disclosure provisions of the Act discussed above, the firewall provision is directed not at the substantive terms of contracts, but in how they are formed. By ensuring that boxers are more vigorously and faithfully represented by their managers during contract negotiations, the Ali Act assures that the fruits of those negotiations are more substantively fair. Naturally, it may still be possible for shifty promoters to set up shell companies and thereby force boxers to retain conflicted management. Further, as will be discussed in greater detail below, the recurring problems of educating boxers about this provision and facilitating their exercise of the rights it guarantees persist here—as they do with respect to the provision banning option contracts lasting more than a year.

B. RANKINGS PROVISIONS

The Ali Act also addresses the manipulation and corruption of rankings promulgated by sanctioning organizations. Historically, rankings have been “arbitrarily designated and altered, often promoting the financial interests of

82. *Id.* at 2283.

83. *Id.*

84. *See* NEWFIELD, *supra* note 2, at 209, 233, 241 (citing numerous examples of this practice).

85. *See* PETER HELLER, *BAD INTENTIONS: THE MIKE TYSON STORY* 218 (1989) (quoting boxer Alfonso Ratliff, who said, “Carl [King] became my manager because Don King said the only way he would promote me was to have his son be my manager. I didn’t want anything to do with Carl King, but I had no choice.”).

86. 15 U.S.C. § 6308(b) (2006).

boxing's most powerful promoters, who have been accused of bribing sanctioning organization officials in order to secure a particular ranking for their boxer."⁸⁷ The Ali Act takes a two-headed approach towards eliminating the arbitrariness and corruption pervasive in boxing rankings. First, as it did when requiring minimal contractual guidelines, the Act once again gives the ABC two years to "develop and . . . approve . . . guidelines for objective and consistent written criteria for the ratings of professional boxers."⁸⁸ However, the Act once again does not require sanctioning bodies and state boxing commissions to adopt these guidelines. Rather, the provision humbly advises that "[i]t is the sense of the Congress that sanctioning bodies and State boxing commissions should follow these ABC guidelines."⁸⁹ As discussed above, the ABC is "merely a non-profit group with no regulatory power over state boxing commissions," comprised of politically appointed boxing commissioners who maintain close ties with affluent and influential promoters.⁹⁰ The rankings criteria ultimately promulgated by the ABC represented a compromise between states that wanted a detailed and strict set of guidelines, and those that wanted to leave sanctioning bodies as much discretion as possible. Unsurprisingly then, the ABC's rankings guidelines are little more than vague reiterations of criteria ostensibly used by sanctioning organizations.

In the main, the ABC requires rankings to be based "solely on win/loss records, level of competition and activity."⁹¹ The ABC fleshes out this skeletal guideline with a few added provisions, stating, for example, that "if two boxers are rated and compete against each other, and the lower rated boxer wins: a) The lower rated boxer shall be elevated in the ratings and; b) The higher rated boxer shall be lowered in the ratings."⁹² The guidelines also forbid premising the rating of a boxer, "directly or indirectly, upon a consideration of . . . [t]he identity of the boxer's promoter, manager or any other person with whom the boxer is affiliated."⁹³

Despite these slightly more specific guidelines, the ABC's rankings requirements remain little more than sparse road marks on a long and notoriously winding highway. There is no guidance, for example, on how to consider one boxer's win/loss record as compared to another's. Should a boxer who has thirty wins and two losses have a higher or lower ranking than one who has fifteen wins and no defeats? To the extent that both boxers' level of competition is considered in determining who should have a higher ranking, how is that taken into account? Should a split decision victory over a top five fighter be given more weight than a knockout victory over the tenth ranked fighter? Importantly, the people making these judgment calls are sanctioning body officials. Essentially, the Ali Act

87. Baglio, *supra* note 20, at 2285.

88. 15 U.S.C. § 6307c(a).

89. *Id.*

90. Burstein, *supra* note 9, at 445.

91. *ABC Rating Criteria*, ASS'N BOXING COMMISSIONS, http://www.abcboxing.com/abc_ratings_criteria.html (last visited Feb. 2, 2011).

92. *Id.*

93. *Id.*

suggests that the very bodies who initially promulgated “preposterous” rankings that had “less credibility and confidence among the boxers and the fans than any other sports rating system in the world” now justify those rankings according to nonbinding guidelines that remain vague enough to allow corruption and favoritism to masquerade as discretion.⁹⁴

Of course, other sports—particularly college sports—also base their rankings on a combination of subjective and objective factors. Just as it would be impossible for all 120 Division I college football teams to play each other in order to determine which team should truly be ranked number one, it is likewise impossible for any boxer to fight every other boxer in his weight class in order to establish himself as its undisputed champion.⁹⁵ Therefore, boxing rankings, like rankings in other sports, are based on a combination of objective factors (win/loss record and opponents’ win/loss record) and subjective factors (margin of victory and subjective quality of opponent). However, the difference between the poll system prevailing in other sports and the rankings system used in boxing is that the former is “determined by newspaper writers who cover the particular sport . . . [who have] no financial interest in the outcome of the rankings process.”⁹⁶ By contrast, boxing “tends to produce questionable or controversial rankings because they are often manipulated by parties with a financial interest in the outcome of the rankings.”⁹⁷ Like college football, boxing would be well served by a system that delegates responsibility for making subjective rankings to those without a financial interest in the rating system—perhaps retired boxers and boxing writers and historians.⁹⁸ That subjective ranking system could also be combined with a computer ranking based on objective factors, similar to the methodology employed by the Bowl Championship Series.⁹⁹ Instead of mandating any real, effective change, the provisions of the Ali Act addressing rankings corruption will likely only force sanctioning bodies to be slightly more formulaic and slightly less opaque in promulgating their rankings.

One of the very few cases brought under the Ali Act demonstrates just how difficult it is to establish that a sanctioning body has promulgated rankings that disregard either its own rankings criteria, or the criteria it has adopted directly from the ABC.¹⁰⁰ In *Klitschko v. International Boxing Federation, Inc.*, Wladimir Klitschko sought a preliminary injunction requiring the IBF to designate him as the

94. Symposium, *supra* note 17, at 210 (statement of Paul Feeney).

95. See *Ranking Every FBS Team from 1 to 120*, SPORTSILLUSTRATED.COM (Aug. 12, 2009, 11:04 AM), <http://sportsillustrated.cnn.com/2009/football/ncaa/08/10/rankings/index.html>.

96. Baglio, *supra* note 20, at 2267.

97. *Id.*

98. McCain & Nahigian, *supra* note 32, at 22 (discussing the National Association of Attorneys General’s suggestion that “a private organization comprised of writers, broadcasters, and historians . . . rank boxers.”).

99. See *BCS Standings Methodology*, BOWL CHAMPIONSHIP SERIES (Jan. 21, 2010 3:33 PM), <http://www.bcsfootball.org/news/story?id=4765845>.

100. 15 U.S.C. § 6307c(d)(1)(A) (2006) (requiring sanctioning bodies to submit to the Federal Trade Commission and to the ABC “a complete description of the organization’s ratings criteria, policies, and general sanctioning fee schedule”).

next IBF mandatory challenger against whom the reigning heavyweight champion must defend his title.¹⁰¹ The IBF had bypassed Klitschko and instead designated DaVarryl Williamson as its mandatory challenger. Klitschko—who, incidentally is the current heavyweight champion as of this writing—filed his complaint after the IBF issued its May 2005 rankings in which Williamson was promoted from the fourth to the third ranked heavyweight boxer, while Klitschko was demoted from the third to the fourth spot in the division.¹⁰² While both fighters had won their last fights, Klitschko’s last opponent had a record of eighteen wins, zero losses and one draw bolstered by a victory over Williamson himself, while Williamson’s last opponent had a more modest record of eleven wins and eleven losses and was in the midst of a seven fight losing streak (six of those losses coming by knockout).¹⁰³ Klitschko claimed that Williamson’s superior ranking was due to the fact that he was represented by Don King, and not based on IBF rating criteria, including “boxers’ win/loss records, level of competition, and activity.”¹⁰⁴

In analyzing Klitschko’s claim that the IBF had violated the Ali Act by promulgating rankings not in accord with their adopted criteria, the court first stated that it “must . . . ordinarily defer to the internal decisions of private organizations such as the IBF.”¹⁰⁵ Already, Klitschko was fighting with one hand tied behind his back. Next, the court established a nearly impossible burden of proof for Klitschko to meet, stating that the IBF’s rankings did not “evidence plain disregard of any IBF rule.”¹⁰⁶ It is unclear exactly what ranking decision would meet that “plain disregard” standard. Before the disputed rankings, Klitschko was ranked higher than Williamson. Klitschko and Williamson both won their next fights; thus, both of their win/loss records progressed in tandem. Similarly, they both maintained the same level of activity—they both had one fight. Therefore, under the three criteria purportedly considered by the IBF—win/loss records, activity and level of competition—only that last criterion, level of competition, could be the variable producing the rankings change. Yet, Klitschko defeated a theretofore undefeated fighter who had a victory over Williamson on his resume, while Williamson beat a fighter with as many losses as wins, and who had been knocked out in six of his last seven fights.

Given the record before the court, it is hard to imagine any rankings decision by the IBF that could “evidence plain disregard of any” ratings criteria more than the one giving rise to Klitschko’s complaint. Falling back on the canard that “the application of [the IBF’s] objective criteria is a subjective enterprise,” the court held that while it “may be troubled by the conflicts of interest within the industry

101. Klitschko v. Int’l Boxing Fed’n, Inc., No. 05-CV-2578, 2005 WL 1638154, at *1 (D.N.J. July 11, 2005).

102. The first and second ranked heavyweight boxers were ineligible to fight for the title at the time the disputed rankings were promulgated. Thus, the third ranked boxer was deemed the mandatory challenger. *See id.* at *1, *2.

103. *Id.* at *1, *4 n.1.

104. *Id.* at *3.

105. *Id.*

106. *Id.* at *4.

and the appearance of impropriety that exists due to the dominance of certain promoters, none of this establishes a clear violation of any IBF rule entitling Klitschko to preliminary injunctive relief.”¹⁰⁷ Considering that level of competition may ultimately be a “subjective enterprise,” no reasonable person could consider Williamson’s latest opponent to be on par with Klitschko’s. Perhaps, if a boxer displaced by Damien Moore in the WBO’s rankings had sued under the Ali Act during Moore’s miraculous posthumous ascendancy, the court would have found “plain disregard” of the WBO’s sanctioning criteria.¹⁰⁸

By allowing sanctioning bodies to largely retain discretion in promulgating rankings, the Ali Act does little to stamp out the corruption and manipulation that has historically influenced those rankings. The Ali Act will continue to be especially ineffective in this area if courts continue to grant so much deference to the internal decisions of sanctioning organizations in disseminating rankings. Once again, the Ali Act is shown to be little more than a trap for the unwary or unsophisticated promoter or sanctioning body, rather than a sweeping instrument of reform.

C. PIECEMEAL STATE REGULATION

In its findings section, the Ali Act states that while “State officials are the proper regulators of professional boxing events . . . [p]romoters who engage in illegal, coercive, or unethical business practices can take advantage of the lack of equitable business standards in the sport by holding boxing events in States with weaker regulatory oversight.”¹⁰⁹ Further, the Act states as one of its purposes “assist[ing] State boxing commissions in their efforts to provide more effective public oversight of the sport.”¹¹⁰ Yet, even after the Act’s passage, professional boxing only has a “varying degree of oversight depending on the resources and priorities of each state . . . commission.”¹¹¹ This “lack [of] uniformity” gives state boxing commissions an incentive to promulgate and enforce lax regulations that bring boxing business into their states.¹¹² In turn, boxers and promoters are encouraged to “forum shop” among the various state commissions in order to obtain licenses or to perpetuate unfair business practices with a minimum of oversight or interference.¹¹³ According to Senator John McCain, one of the Ali Act’s sponsors, “[t]his vacuum of state regulation invite[s] forum shopping by unscrupulous promoters and managers and also provide[s] a fertile breeding ground for fixed bouts, the exploitation of boxers, and a lack of adequate medical services at many events.”¹¹⁴ In sum, the “lack of consistency in compliance with federal boxing law

107. *Id.*

108. The Moore incident occurred after the Ali Act was passed. *See* Jurek, *supra* note 7, at 1214; *see also supra* note 30 and accompanying text.

109. H.R. REP. NO. 106-449, pt. 1, at 2 (1999).

110. *Id.*

111. McCain & Nahigian, *supra* note 32, at 23.

112. Fife, *supra* note 32, at 1305.

113. *Id.*; *see supra* note 40 and accompanying text.

114. McCain & Nahigian, *supra* note 32, at 19.

among state . . . commissions ‘does not provide adequate assurance that professional boxers are receiving the minimum protections established in federal law.’”¹¹⁵

The reason boxers have not been adequately assured of the minimum protections established in federal law is that the Congress, while recognizing that “[p]romoters . . . take advantage of the lack of equitable business standards in the sport by holding boxing events in States with weaker regulatory oversight,” also found that “State officials are the proper regulators of professional boxing events.”¹¹⁶ Because of this federalism concern, the Ali Act does not seek to preempt any state licensing requirements or impose on state boxing commissions any affirmative duties. Rather, the act modestly seeks to “assist State boxing commissions in their efforts to provide more effective public oversight of the sport” by helping them to “receive adequate information to determine whether boxers competing in their jurisdiction are being subjected to contract terms and business practices which may violate State regulations, or are onerous and confiscatory.”¹¹⁷ Various provisions of the Ali Act are intended to provide “adequate information” to the States, including those requiring disclosures to state boxing commissions by sanctioning organizations, promoters and judges.¹¹⁸

As stated, the Ali Act does not impose any affirmative duties on state boxing commissions with regard to the information its provisions provide them. Thus, while a promoter may be required to disclose a coercive or unethical contract under the Ali Act, no corresponding provision requires the state commission to review the contract, much less either void it or sanction the promoter. Given the troubling nexus between state boxing commissioners, the politicians who appoint them and the promoters who fill those politicians’ campaign coffers, as well as the commissions’ lack of resources and general unwillingness to investigate wrongdoing, simply mandating the disclosure of information without imposing a corresponding duty to act thereon is like requiring firefighters to drive their truck to a burning house, but not take any steps to put out the flames they encounter.

The Ali Act, does, however, empower “the chief law enforcement officer of any State . . . as *parens patriae* . . . [to] bring a civil action on behalf of its residents” to “enforce compliance with” the Act or to “obtain the fines provided” by the Act.¹¹⁹ In addition, the Ali Act provides for a private right of action for “[a]ny boxer who suffers economic injury as a result of a violation of any provision of [the] Act” that may be brought in “Federal or State court.”¹²⁰ Thus, while not requiring state

115. *Id.* at 23 (citing U.S. GEN. ACCOUNTING OFFICE, PROFESSIONAL BOXING: ISSUES RELATED TO THE PROTECTION OF BOXERS’ HEALTH, SAFETY, AND ECONOMIC INTERESTS, 7 (2003) [hereinafter GAO REPORT]; see also April R. Anderson, *The Punch That Landed: The Professional Boxing Safety Act of 1996*, 9 MARQ. SPORTS. L.J. 191, 193 (1998) (“[W]hile individual states may have created commissions that promulgate regulations, there is no consistency, no minimal requirements that set the floor for acceptable policies and procedures.”).

116. H.R. REP. NO. 106-449, pt. 1, at 2 (1999).

117. *Id.*

118. *Id.*

119. 15 U.S.C. § 6309(c) (2006).

120. *Id.* § 6309(d).

boxing commissions to review any information mandatorily disclosed to them, nor requiring them to prosecute or sanction any violations of the Ali Act discovered upon such a review, the Act does at least provide state commissions and individual boxers with a federal cause of action to bring upon discovering a violation of one of its provisions. However, as will be discussed at length below, no state or United States Attorney has prosecuted an Ali Act violation, and the number of boxers who have brought suit could all fit comfortably within an eighteen square foot ring.¹²¹

It is worth noting the Ali Act's peculiar and measured deference to states' rights to regulate boxing, especially given the Congress's repeated references to the effect of boxing on interstate commerce.¹²² Under the Commerce Clause of the U.S. Constitution, Congress has the power to "regulate Commerce . . . among the several States."¹²³ Further, in *United States v. International Boxing Club of New York, Inc.*, the Supreme Court held that Congress could regulate the sport because professional boxing revenues are predominantly derived from interstate broadcasts and promoters use the channels of interstate commerce in order to negotiate contracts, lease arenas and maintain training quarters.¹²⁴ Such regulation is still permissible even in light of the Supreme Court's recent decisions restricting Congress's power under the Commerce Clause because "professional boxing occurs on interstate, national, even international levels."¹²⁵ Under *Gonzales v. Raich*, Congress may regulate purely intrastate noneconomic activity if it has a "rational basis" for concluding that the activity "substantially affect[s] interstate commerce."¹²⁶ Undoubtedly, even "local boxing has a substantial effect on interstate commerce. Rankings are determined by a boxer's total record, regardless of where the match is held, and boxers use local fights to affect their national rankings."¹²⁷ Moreover, "promoters and boxers frequently use the channels of interstate commerce to circumvent state health and safety regulations."¹²⁸

Given Congress's seemingly irrefutable power to regulate boxing under the Commerce Clause, the Ali Act's limp regulation of "an industry historically governed by the states" can only be explained by a hesitancy to preempt an aspect of the states' inherent police power.¹²⁹ However, it is apparent that Congress, in

121. The minimum permissible size for a professional boxing ring is eighteen square feet. *See Standard Measurements in Sports*, INFOPLEASE, <http://www.infoplease.com/ipa/A0113430.html> (last visited Feb. 2, 2011).

122. *See, e.g.*, H.R. REP. NO. 106-449, pt. 1, at 2 (1999) ("Common practices of promoters and sanctioning organizations represent restraints of interstate trade in the United States."); *id.* ("The purposes of this Act are to protect the rights and welfare of professional boxers on an interstate basis.")

123. U.S. CONST. art. I, § 8, cl. 3.

124. *United States v. Int'l Boxing Club of N.Y., Inc.*, 348 U.S. 236, 241, 247 (1955).

125. Anderson, *supra* note 115, at 193. *See generally* *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995).

126. *Gonzales v. Raich*, 545 U.S. 1, 22 (2005).

127. *McCain & Nahigian*, *supra* note 32, at 13.

128. *Id.*

129. PAUL C. WEILER & GARY R. ROBERTS, *SPORTS AND THE LAW* 1031 (3d ed. 2004); *see Muhammad Ali v. Div. of State Athletic Comm'n of Dep't of State of N.Y.*, 308 F. Supp. 11, 16 (S.D.N.Y. 1969) (stating that a state has "obviously sweeping powers . . . to regulate" boxing, including the power of "total prohibition").

propounding the Ali Act, gave too much weight to federalism concerns at the expense of viable and effective protections for boxers. As will be discussed in Part III, pending federal boxing legislation preempts much of the states' powers to regulate boxing in order to establish true and meaningful "consistency in compliance with federal boxing law among state . . . commissions."¹³⁰ Before analyzing possible solutions to boxing's persistent problems in Part III, this Article will next examine more generalized failures of the Ali Act to expurgate the "dark and corrupt business" of boxing.¹³¹

II. WHY THE ALI ACT LACKS PUNCH

Part I addressed the Ali Act's shortcomings with regards to standards embodied in specific provisions. Part II will now discuss overarching deficiencies in the Act that have made it largely impotent and irrelevant. Those deficiencies are rooted in: 1) the Act's lack of enforcement, and the underlying reasons therefore; 2) the inexplicable loopholes throughout the Act that provide less meaningful protection for "blue collar" boxers than that received by their more affluent and well insulated counterparts; and 3) the Act's anonymity among those it is intended to protect.¹³² Necessarily, some of the issues discussed in Part I will be folded into the analysis offered in Part II; likewise, there is a natural interrelatedness between the three shortcomings discussed.

A. LACK OF ENFORCEMENT

By any objective criterion, the Ali Act is not being enforced, either through federal or state actors, or through private actions. Though the Ali Act provides for enforcement by State Attorneys General, the federal Department of Justice and United States Attorneys are "primar[ily]" responsible for enforcing the Act.¹³³ Despite the fact that the Ali Act provides for considerable criminal sanctions, the Justice Department has yet to bring even a single indictment for a violation of any of the Act's provisions.¹³⁴ The lack of indictments under the Act should not be mistaken for confirmation that it is producing its desired deterrent effect. According to Tim Lueckenhoff, president of the ABC, his organization frequently alerts the Justice Department to violations of the Ali Act, yet gets "no help whatsoever from U.S. Attorneys around the country."¹³⁵ Prosecutors have wide discretion when deciding whether or not to bring a criminal case, and one report

130. McCain & Nahigian, *supra* note 32, at 23.

131. *Id.* at 8.

132. Fife, *supra* note 32, at 1302 (citing Hastings, *supra* note 35).

133. Hauser, *supra* note 11.

134. *Id.*; see 15 U.S.C. § 6309(b)(2) (2006) (providing for "imprison[ment] for not more than one year or [a] fine[]" not more than \$100,000" for violating antiexploitation or disclosure provisions of the Ali Act).

135. Hauser, *supra* note 11 (quoting Tim Lueckenhoff) ("I've made at least 10 referrals to U.S. Attorney's offices around the country and haven't found anyone who was willing to go to court to enforce the law.").

blamed the “lack of prosecutions under federal boxing law” on the fact that “violations of these laws are misdemeanors, which do not receive significant resources from the [Department of Justice].”¹³⁶ Nonetheless, it must be troubling to the legislators who passed the Ali Act to learn that no indictments have been brought under its provisions in the decade since it was enacted into law. After all, “[w]ithout proper enforcement [the Ali Act is] useless.”¹³⁷

Enforcement has been just as nonexistent on the state level.¹³⁸ Once again, the relationship between the state boxing commissioners charged with reviewing disclosures made by the promoters who contribute to the politicians who appoint the commissioners is likely one reason why those same commissioners so rarely, if ever, alert state attorneys general as to violations of the Ali Act. Moreover, the “state attorneys general and state boxing commissions are most likely not equipped to enforce the Ali Act. Not every state has a boxing commission, and for those that do, it is generally agreed that they are understaffed and under-funded.”¹³⁹ No wonder one commentator compared the Ali Act to a “New York City jaywalking statute”; it seems Don King is more likely to be fined for skirting across Lexington Avenue than for coercing boxers into illegal contracts.¹⁴⁰

The Ali Act also empowers an aggrieved boxer to “bring an action in the appropriate Federal or State court and recover damages suffered, court costs, and reasonable attorney’s fees and expenses.”¹⁴¹ However, the “idea that the fighters being injured by violations of the Ali Act will bring suits against the promoters and sanctioning bodies that are exploiting them is completely unrealistic.”¹⁴² The boxer must first be aware that he has even been injured; illegal contract provisions are not always as obvious as a blow to the head. Then, “in order for a fighter to sue under the Ali Act, he must . . . know of its existence and its provisions.”¹⁴³ Unfortunately, most fighters are unlikely to know of either the Act or the rights it provides.¹⁴⁴

Even if the boxer is aware of his injury and knows that the Ali Act provides him with a cause of action, “the obstacles to bringing suit against a promoter, manager or sanctioning body under the Act are substantial.”¹⁴⁵ The litigious boxer must first face the prospect of being blacklisted by the “promoters and sanctioning bodies [who] control any and all fighting opportunities.”¹⁴⁶ The fear of being blacklisted

136. McCain & Nahigian, *supra* note 32, at 23 (citing GAO REPORT, *supra* note 115, at 5). See generally *Inmates of Attica Corr. Facility v. Rockefeller*, 453 F.2d 12 (2d Cir. 1971).

137. *Review of the Professional Boxing Industry—Is Further Reform Needed?: Hearing Before the Sen. Comm. on Commerce, Sci., and Transp.*, 107th Cong. 8 (2001) (statement of Patrick English, Attorney for Main Events).

138. Jurek, *supra* note 7, at 1189.

139. Burstein, *supra* note 9, at 462.

140. *Id.* at 459.

141. 15 U.S.C. § 6309(d) (2006).

142. Burstein, *supra* note 9, at 461.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.* at 461–62.

is not a token fit of paranoia. In fact, some of boxing's most powerful and wealthy stars have lost their congenital courageousness when faced with the prospect of going up against the sport's controlling promoters and sanctioning bodies.¹⁴⁷

A maltreated boxer who still wishes to fight faces the further logistical problem of actually bringing suit. If the hypothetical boxer is one of the thousands of fighters who earn "as little as \$200–\$400 per fight," it is unlikely that he will be able to sustain the costs of litigation.¹⁴⁸ Unsurprisingly, then, of the over 100 lawsuits brought against Don King between 1978 and 1995, two were settled and the balance was simply dropped due to lack of funds necessary to pursue litigation.¹⁴⁹ It follows that "the only fighters who will bring claims under the Ali Act are those rich and successful enough to afford their own counsel."¹⁵⁰ The background facts giving rise to the relevant case law bears out this hypothesis. Each of the cases in the very small constellation of Ali Act claims brought by boxers involved a star.¹⁵¹ That is to say, the plaintiff in every case brought under the Ali Act was a former or future champion—Wladimir Klitschko, Bernard Hopkins, Lennox Lewis and Manny Pacquiao—or a top ranked contender—Soulemayne M'Baye, Nicolai Valuev and Antwun Echols.¹⁵² If the preceding list of plaintiffs were turned into a pay-per-view card, it would undoubtedly be the highest grossing event of all time. Unfortunately, the prohibitive costs of litigation are not the only reason why the Ali Act provides greater protection for the haves of boxing than for the have nots.

B. LACK OF PROTECTION FOR "BLUE COLLAR" BOXERS

While "[p]rofessional boxing is a multi-billion dollar industry," "[m]ost boxing matches feature unknown journeymen . . . who apply their trade for small crowds in exchange for nominal purse amounts."¹⁵³ It is these fighters who are most in need of protection. They are the ones most willing to overlook unfavorable contract terms in the hopes of getting the chance to fight on ever-bigger stages. They are the ones who cannot afford to hire independent legal counsel to review and

147. For example, Roy Jones, Jr., one of boxing's most decorated, famous and prosperous champions refused to testify on the issue of boxing reform when called before a Senate committee because he feared retaliation. *See* Symposium, *supra* note 17, at 255 (statement of Greg Sirb).

148. Jurek, *supra* note 7, at 1192.

149. NEWFIELD, *supra* note 2, at 247.

150. Burstein, *supra* note 9, at 462.

151. After assiduous research, the author discovered only ten cases brought by boxers under the Ali Act. Of those ten cases, one was dismissed on summary judgment because it was brought by a "manager, promoter, and/or trainer of boxers" and was thus not under the Act's ambit. *See* Peete v. Thompson, No. 4:06CV112-M-B, 2007 WL 2727256 (N.D. Miss. Sept. 17, 2007).

152. Echols v. Pelullo, 377 F.3d 272 (3d Cir. 2004); M'Baye v. World Boxing Ass'n, No. 05 Civ. 9581, 2007 WL 844552 (S.D.N.Y. Mar. 21, 2007); O'Donnell v. Shalayev, No. Civ.A. 01-4721, 2006 WL 3069011 (D.N.J. Oct. 26, 2006); Klitschko v. Int'l Boxing Fed'n, No. 05-CV-2578, 2005 WL 1638154 (D.N.J. July 11, 2005); Pacquiao v. M & M Sports, Inc., No. 05 Civ. 4200, 2005 WL 1539281 (S.D.N.Y. June 27, 2005); Don King Prods., Inc. v. Hopkins, No. 04 Civ. 9705, 2005 WL 1053336 (S.D.N.Y. May 4, 2005); Lewis v. Rahman, 147 F. Supp. 2d 225 (S.D.N.Y. 2001).

153. Baglio, *supra* note 20, at 2260; McCain & Nahigian, *supra* note 32, at 8.

negotiate contract terms; and once they do sign an illegal or unethical contract, they are the ones least able to sustain the litigation necessary for a court to declare that contract unenforceable. Yet, these same boxers are also the ones to whom the Ali Act denies some of its most important protections. For example, only a boxer rated among an organization's top ten contenders is required to receive notification of a change in his ranking.¹⁵⁴ More detrimentally, the Ali Act does not extend its firewall provision—prohibiting a promoter from having “a direct or indirect financial interest in the management of a boxer,” or a manager from having “a direct or indirect financial interest in the promotion of a boxer”—to boxers participating in a boxing match of less than ten rounds.¹⁵⁵ The ten round cut off, though seemingly innocuous to a layperson, means that the firewall provision only applies to championship-caliber fighters. A boxer who has just turned professional will fight a series of four round bouts. As his career progresses, so will the duration of his fights, from four rounds to six rounds to eight rounds and, finally, to ten rounds. Only championship fights are scheduled for more than ten rounds. Therefore, a boxer fighting in a bout scheduled for ten rounds or more is either fighting for the championship, or is boxing in the marquee bout on a fight card.

The fighters involved in bouts of ten rounds or more are logically those who have the most experience in the industry, the greatest amount of negotiating leverage and the best opportunity to be represented by independent counsel. In other words, they are the most affluent fighters in the sport. That is not to say that they are not in need of whatever protections the Ali Act offers. However, they certainly are not more in need of such protections than their poorer, less experienced, more vulnerable counterparts.¹⁵⁶ Irrationally, the Ali Act withdraws one of its most important protections from those who need it most.¹⁵⁷ Thus, not only is it more difficult for “blue collar” boxers to resort to litigation in order to enforce the Ali Act's protective provisions, but also they are protected by fewer of its provisions.

C. THE ANONYMITY OF THE ALI ACT

Entitlements and legal protections are only useful to the extent they are recognized and exercised by their intended beneficiaries.¹⁵⁸ The Ali Act does not

154. 15 U.S.C. § 6307c(e) (2006).

155. *Id.* § 6308(b) (noting that provision “only applies to boxers participating in a boxing match of 10 rounds or more”).

156. Symposium, *supra* note 17, at 255 (statement of Marc Ratner). In the words of Marc Ratner:

I never understand why all the discussions are always about maybe 2% of the fighters who are world famous, the best fighters such as Evander Holyfield, and nobody talks about the 4's and the 6's, who are who we need to protect . . . I think when we talk about boxing reform we got to worry about the small guy.

Id.

157. Moore, *supra* note 16, at 238 (“[T]he boxers that the Ali Act does reach are not the ones in need of the most protection. Instead, the Ali Act protects the boxers that have already reached a level of success within the profession.”).

158. Symposium, *supra* note 17, at 223 (statement of Jim Thomas) (“[I]n my opinion you can give

contain any provisions requiring its dissemination to boxers. In contrast, the Occupational Safety and Health Act requires covered employers to prominently display a poster “informing employees of their rights and responsibilities under the Act.”¹⁵⁹ The Ali Act contains no such display requirement, yet it would be simple and informative to require that all boxing gyms post relevant provisions of the Act in locker rooms or gym walls. Alternatively, the brief Ali Act—the entire bill totals eight pages—should be a mandatory attachment to all contracts, especially those signed by unrepresented boxers.¹⁶⁰ Requiring the boxer to read and sign the Ali Act before signing any contract with a manager, promoter or sanctioning body would at least alert him that there is some protective federal legislation he may invoke. If nothing else, the boxer’s bargaining position might be marginally enhanced. To the extent that requiring the Ali Act either be posted in gyms or attached to contracts increases transaction costs, those costs should be borne by the promoters and sanctioning bodies who not only can best afford to pay them, but also whose unethical behavior necessitated the extra disclosure.

Some commentators have also suggested requiring that state boxing “commissions . . . not recognize contracts that are signed [by boxers] without independent legal advice.”¹⁶¹ Independent counsel would alert a boxer to the Ali Act’s relevant provisions, thereby preventing their exposure to illegal or coercive contract terms. Of course, “the problem is how [to] make that . . . affordable to fighters at the lower level who don’t have enough money.”¹⁶² Jim Thomas suggested “challeng[ing] the Bar Associations in connection with law school[s] to make [legal] advice available” to boxers.¹⁶³ In other words, call on state Bar Associations to direct attorneys to donate some of their pro bono hours to helping boxers negotiate and sign contracts, while simultaneously prevailing upon law schools to establish clinics dedicated to the same end. Despite the abuses boxers suffer at the hands of promoters, sanctioning bodies and managers, there are some with far greater need of legal aid. Yet, it is likely that the opportunity to represent professional athletes will inspire more people to devote greater time to pro bono work. Thus, providing free representation for boxers will not drain the pool of available pro bono hours for other potential recipients, but rather add volume to that pool so that more people may benefit.

Whether its provisions are prominently displayed in gyms and locker rooms, affixed to contracts or explained by a pro bono lawyer, the Ali Act must be exposed and elucidated in order to be effective. Otherwise, its anonymity, its lack of enforcement and its parsimonious protection of “blue collar” boxers reduce it to a

all the rights in the world to fighters by rules but if there is nobody there to enforce those rights for the fighters, they might as well not have the rights.”)

159. Occupational Safety and Health Act, 29 U.S.C. § 651 (2006); *General OSHA Recordkeeping and Posting*, OCCUPATIONAL SAFETY & HEALTH NETWORK (Oct. 29, 2000), http://www.osh-net/articles/archive/osh_basics_2000_oct20.htm.

160. 15 U.S.C. §§ 6301–13.

161. Symposium, *supra* note 17, at 223 (statement of Jim Thomas).

162. *Id.*

163. *Id.*

well intentioned but largely ineffectual piece of legislation.

III. PROPOSED CHANGES

It should be clear from the foregoing discussion in Parts I and II that the Ali Act cannot and does not do enough to purge boxing of coercive contracts, rankings manipulation or piecemeal and ineffective state regulation. The fact remains that the “business of boxing is driven by the interconnectedness of promoters, managers, and sanctioning organizations.”¹⁶⁴ Trying to overlay this corrupt industry with federal regulations is like dropping roses into a broken vase. A less elegant, but perhaps more appropriate simile compares the Ali Act to “putting a band-aid on a gaping wound that’s badly in need of sutures.”¹⁶⁵ Part III of this Article will now offer three proposals—effective jointly or individually—that are intended to provide boxing with needed and fundamental changes. These proposals are: 1) passage of the Professional Boxing Amendments Act; 2) private regulation of the boxing industry; and 3) the creation of a union for boxers.

A. THE PROFESSIONAL BOXING AMENDMENTS ACT

Senator John McCain, who sponsored both the Professional Boxers Safety Act and the Ali Act, has introduced legislation every year since 2002 entitled the Professional Boxing Amendments Act (“PBAA”).¹⁶⁶ The central purpose of this “truly revolutionary” bill is to create the United States Boxing Administration (“USBA”), a federal regulatory agency to oversee the sport.¹⁶⁷ According to Senator McCain:

The primary functions of the USBA would be to protect the health, safety, and general interest of boxers . . . [T]he USBA would, among other things: administer Federal boxing laws and coordinate with other Federal regulatory agencies to ensure that these laws are enforced; oversee all professional boxing matches in the United States; and work with the boxing industry and local commissions to improve the statutes [sic] and standards of the sport.¹⁶⁸

The PBAA, through the creation of the USBA, directly addresses and mitigates many of the shortcomings and oversights of the Ali Act. First, § 202(b) of the PBAA would require that the three appointed members of the USBA have “extensive experience in professional boxing activities.”¹⁶⁹ In addition, the members of the USBA “would be precluded from any dealings in the boxing industry, and not more than two members would be from the same political

164. Jurek, *supra* note 7, at 1187.

165. THOMAS HAUSER, A YEAR AT THE FIGHTS 209 (2003).

166. McCain & Nahigian, *supra* note 32, at 30; *see* Professional Boxing Amendments Act, S. 84, 110th Cong. (2007).

167. Burstein, *supra* note 9, at 466.

168. 148 CONG. REC. S5032-02 (daily ed. June 5, 2002) (statement of Sen. John McCain).

169. S. 84 § 202(b)(2)(A)(i).

party.”¹⁷⁰ These requirements would prevent the USBA from being stricken with the same afflictions that compromise and enervate state boxing commissions; namely, that they are run by political appointees with no knowledge of boxing who are ultimately beholden to the promoters and sanctioning bodies who support their political benefactors. There would thus be hope that USBA members would show more solicitude for boxers than their counterparts on state boxing commissions have historically conceded.

Sections 204 and 207 of the PBAA, in tandem, provide the effective enforcement mechanism that the Ali Act so fatally lacks.¹⁷¹ Section 204 requires that “boxers, managers, promoters, and sanctioning organizations be licensed by the [United States Boxing Commission (“USBC”)] to participate in a professional boxing match.”¹⁷² Meanwhile, § 207 requires:

authoriz[ing] the USBC, after notice and opportunity for a hearing, to suspend or revoke any license issued under [the bill] if the USBC finds that . . . there are reasonable grounds to believe that a USBC standard is not being met or that certain criminal acts have occurred . . . or the licensee has violated a provision of the PBSA.¹⁷³

Further, § 207 “authorize[s] the USBC to conduct investigations and seek injunctions to further the purposes of the PBSA,” as well as “to intervene . . . on behalf of the public interest in any civil action relating to professional boxing filed in a United States district court.”¹⁷⁴ As a result, under the PBAA, an injured boxer would not have to go through the lengthy and costly process of litigation in order to void an illegal contract. Rather, the PBAA would grant him recourse to an administrative hearing in which he could rely on the USBC to conduct discovery and prosecute his claim.

Further, by authorizing the USBC to suspend or revoke licenses necessary for managers, promoters and sanctioning organizations to participate in boxing matches, the PBAA confronts transgressors with a clear and effective penalty. Because U.S. Attorneys have uniformly decided not to seek misdemeanor convictions under the Ali Act, managers, promoters and sanctioning organizations have not had an incentive to change their illegal business models. However, the more immediately effectuated threat of license revocation should have a chilling effect on their coercive, corrupt or unethical practices.

In addition, the PBAA mandates that “[n]o person may arrange, promote, organize, produce, or fight in a professional boxing match within the United States unless the match” is both “approved by the [USBC]” and “held in a State . . . that regulates professional boxing matches in accordance with standards and criteria established by the [USBC].”¹⁷⁵ At first blush, this provision would seem to bring

170. S. REP. NO. 110-28, at 4 (2007).

171. S. REP. NO. 110-28, at 14, 15.

172. *Id.* at 14.

173. *Id.* at 15.

174. *Id.*

175. Professional Boxing Amendments Act, S. 84, 110th Cong. § 5(a) (2007).

any U.S. boxing match within the USBC's purview, whether it was a heavyweight title bout, or a fight between two boxers earning "as little as \$200–\$400" for the night.¹⁷⁶ After all, the provision mandates the authorization of any "professional boxing match within the United States." "Professional boxing match" is defined by the Act as "a boxing contest held in the United States between individuals for financial compensation."¹⁷⁷ The definition contemplates neither a floor nor a ceiling for the amount of compensation that must be involved in order for the "boxing contest" to be considered a "professional boxing match." Thus, the PBAA apparently provides a similar level of protection for both contenders and club fighters by requiring matches involving both groups to be approved by the USBC.

However, subsequent provisions seem to militate the effectiveness of this protection, especially for "blue collar" boxers. For example, § 204(b)(1) states that, apart from limited exceptions, the USBC "shall be presumed to have approved any match."¹⁷⁸ Of the four enumerated exceptions, one exempts matches "with respect to which the [USBC] has been informed of an alleged violation of [the PBAA]."¹⁷⁹ Another exempts matches in which one of the boxers has either "suffered 10 consecutive defeats in professional boxing matches; or has been knocked out 5 consecutive times in professional boxing matches."¹⁸⁰ These exceptions to presumed USBC approval actually serve to protect the lowest of blue collar boxers, as only they will have "suffered 10 consecutive defeats" or "been knocked out 5 consecutive times."

On the other hand, the two remaining exceptions apply exclusively to boxing's upper class. For example, USBC approval of a match is not presumed if it is "advertised to the public as a championship match," or if it is "scheduled for 10 rounds or more."¹⁸¹ As discussed, only top contenders participate in matches lasting ten rounds or more, and only the best of those contenders have the opportunity to fight in a championship match. Thus, the PBAA mandates actual USBC approval only of bouts featuring the very least, and the very most, successful boxers.¹⁸² Unfortunately, the majority of boxers fall within these two poles, and will thus be left unprotected by the PBAA's sanctioning requirement—which, despite its seeming promise, is little more than a Potemkin Village.¹⁸³

176. Jurek, *supra* note 7, at 1192.

177. S. 84 § 3(a).

178. *Id.* § 5(a).

179. *Id.*

180. *Id.*

181. *Id.*

182. Admittedly, there would be a substantial cost to requiring the USBC to explicitly sanction every professional boxing match that occurs in the United States. Thus, it makes sense to delegate approval to on-the-ground state boxing commissions and to require explicit USBC approval only under certain enumerated circumstances. On the other hand, it seems nonsensical to establish a federal boxing commission, to require that it sanctions every professional boxing match taking place in the United States and then to add a provision that allows its sanction to be approved in the mine run of matches.

183. The approval presumption must be read in conjunction with Section 208, which permits state boxing commissions to sanction professional boxing matches "to the extent not inconsistent with the provisions of the [PBAA]." S. 84, § 208(a). In other words, the presumption merely means that explicit USBC approval is not needed—outside of the four enumerated exceptions—because state boxing

Perhaps most importantly, the PBAA, while still sympathetic to federalism concerns, sets a standard for boxing legislation that must act as a floor for any particularized state lawmaking in the field. While noting that “nothing in [the PBAA] prohibits any boxing commission from exercising any of its powers . . . with respect to the regulation . . . of professional boxing . . . to the extent not inconsistent with the provisions of” the proposed federal law, the PBAA establishes that any state boxing legislation must “exceed the minimum standards or requirements . . . under [the] Act.”¹⁸⁴ Again, the PBAA remedies one of the main shortcomings of the Ali Act: its failure to create a uniform federal law of boxing.

The PBAA also “strengthen[s] existing federal boxing laws” by eliding provisions merely offering “the sense of Congress” from the Ali Act, and replacing them with mandatory language.¹⁸⁵ For example, § 109 requires the USBC, in consultation with the ABC, to “develop guidelines for minimum contractual provisions that shall be included in each bout agreement, boxer-manager contract, and promotional agreement.”¹⁸⁶ Moreover, the PBAA mandates that “[e]ach boxing commission shall ensure that these minimal contractual provisions are present in any such agreement or contract submitted to it.”¹⁸⁷ Thus, not only does the PBAA require that the contract provisions developed by the USBA be included in every contract signed by a boxer, it mandates that the state boxing commission actually review these contracts to ensure they comply with the law. The Ali Act, as discussed, required neither action.

Again, it must be noted that requiring the establishment of uniform, mandatory contractual provisions limits a boxer’s freedom to contract as much as a promoter’s. An unheralded boxer might have to accept contract terms falling below the federally mandated floor in order to even get his “shot” in the ring. Otherwise, a promoter might decide that signing an unproven prospect is too expensive or too risky.¹⁸⁸ Thus, fringe boxers might actually be harmed by provisions meant to protect them.

Arguably, boxers should have the right to subject themselves to arrangements that do not include the PBAA’s mandatory contractual provisions in the hopes of proving their worth during the course of their initial contract and thereby securing more favorable terms during their next negotiations. While it seems unfair to label the PBAA’s restriction of boxers’ right to contract—as IBF General Counsel Walter R. Stone did—as “benign racism,” it is fair to view the restriction as

commissions’ approval is presumed to be a stand in for Commission approval. However, the presumption remains troubling. If the PBAA is necessary because state boxing commissions are unable or unwilling to enforce regulations that adequately protect boxers, allowing a wide presumption that they are doing so—and therefore not subject to direct USBC oversight in sanctioning bouts—seems unwise.

184. S. 84 § 208.

185. McCain & Nahigian, *supra* note 32, at 30.

186. S. 84 § 10(a).

187. *Id.*

188. See *Legislative Meeting*, *supra* note 79, at 192 (statement of Murad Muhammad) (“Everybody thinks a promoter makes money in the first, second, third fight. Sometimes we lose in ten just to make it on the 12th.”).

“paternalistic.”¹⁸⁹ Ultimately, the conflicting needs to protect boxers from unfair contracts and to allow them the freedom to enter into contracts that make them attractive to promoters, may be resolved by providing an informed consent opt-out provision. The provision would allow a boxer to waive his right to certain contract provisions upon a showing to the USBC or relevant state boxing commission that he is doing so knowingly and freely.

The PBAA also addresses rankings manipulation, requiring the USBC to “develop guidelines for objective and consistent written criteria for the rating of professional boxers based on the athletic merits and professional record of the boxers.”¹⁹⁰ Again, the PBAA gives one of its provisions actual bite by further mandating that “[w]ithin 90 days after the [USBC’s] promulgation of the guidelines, each sanctioning organization . . . adopt the guidelines and follow them.”¹⁹¹ Though the criteria used to determine rankings are still vague—i.e., “athletic merits and professional record”—and the power to actually promulgate the rankings remains with the sanctioning bodies and not a panel of sportswriters, historians, broadcasters and former boxers, the mandatory adoption of rankings criteria is a strong step towards eliminating rankings manipulation.

At first blush, supervising rankings might seem to be an unwise use of the USBC’s limited resources. After all, by definition, rankings only affect an infinitesimally small percentage of boxing’s 8,500 athletes.¹⁹² However, rankings manipulation “tarnishes” the sport, its champions and its marquee bouts.¹⁹³ The fact that boxing’s rankings have “less credibility and confidence among the boxers and the fans than any other sports rating system in the world” surely diminishes the sport’s marketability and popularity.¹⁹⁴ As a result, while only a relative handful of boxers will be directly affected by the PBAA’s attempt to ameliorate rankings fraud, all boxers would conceivably benefit by the trickle down effects of increasing the sport’s credibility and attractiveness to fans turned away by decades of scandal and corruption.

Despite all its salutary provisions, the PBAA is not without fault. Most fundamentally, the prospects of the bill being enacted seem slight. As stated, Senator McCain has been unable to shepherd the bill into law, despite efforts to do so dating back to 2002. Relatedly, “[t]here is very strong opposition [to a federal commission] on the part of the states.”¹⁹⁵ Also, “[m]any question whether the . . .

189. *Ali Act Hearings*, *supra* note 32, at 33 (statement of Walter R. Stone, General Counsel, IBF) (calling Congress’s regulation of boxing “benign racism at worst . . . and at best paternalist and over reaching.”).

190. S. 84 § 12(a).

191. *Id.*

192. Assuming the same ten to fifteen boxers in their respective weight classes by the different sanctioning organizations, only 240 of boxing’s 8,500 athletes would be ranked. Thus, less than .05% of all boxers are likely to be ranked at any given time.

193. See Jurek, *supra* note 7, at 1187 (“Years of corruption, manipulation, and scandal have tarnished the sport to the point that it is hardly covered by the mainstream media.”).

194. See Symposium, *supra* note 17, at 210 (statement of Paul Feeney).

195. Brown, *supra* note 34, at 16 (quoting an anonymous official of the New York State Boxing and Wrestling Commission).

Act promotes government waste,” especially given the Congressional Budget Office’s report that the USBC “would require \$34 million in funding over a five-year period.”¹⁹⁶ However, the cost of running the USBC could likely be mitigated through the imposition of licensing fees and fines on managers, promoters and sanctioning bodies. Finally, there is considerable doubt, given the fact that the “powers-that-be” in boxing are “comfortable with the status quo,” that Congress will ever be able to affect the industry beyond “cleaning up certain problematic aspects of the sport.”¹⁹⁷ While the business of boxing may, in fact, be “structured in a way that prevents Congress from reaching all of the sport’s ailments” because there are “too many aspects of boxing well beyond congressional reach that need to be addressed in order for it to be the sport’s savior,” finally passing the PBAA would at least give boxers a fighting chance in a system designed to manipulate, abuse and coerce them.¹⁹⁸

B. UNIONIZATION

While some commentators claim that “if a boxers’ union were established, it would be enormously beneficial to its members” by serving to “ensure that boxers are treated fairly and [by] shift[ing] the balance of power from the promoters and sanctioning bodies to the boxers themselves,” it is unclear how much benefit a union would actually provide.¹⁹⁹ It should be noted that boxing is one of the few professional sports without a union.²⁰⁰ While unions have proved undeniably effective in other sports, especially baseball, a union might not provide similar advantages to boxers.²⁰¹

First, boxers have historically been unable to establish a union.²⁰² Much of the difficulty may lie in the caste system that persists in the sport.²⁰³ The blue collar boxers most in need of establishing a union have the least ability and leverage to do so. Given the sheer number of professional boxers in the United States, it is not only exceedingly difficult to launch any collective action, but also promoters likely will always be able to pluck a desperate boxer willing to fight for some much needed cash.²⁰⁴ Also, because the career span of boxers is so brief, and because so

196. Moore, *supra* note 16, at 226.

197. Jurek, *supra* note 7, at 1226; Patrick Kehoe, *Lou DiBella on Boxing Reform*, SECONDSOUT.COM, <http://www.secondsout.com/archive/patrick-kehoe/lou-dibella-on-boxing-reform1> (last visited Feb. 2, 2011) (statement of Lou DiBella).

198. Jurek, *supra* note 7, at 1226.

199. Burstein, *supra* note 9, at 494.

200. Baglio, *supra* note 20, at 2267 (“The structure of the boxing industry is also different from that of other sports in that other athletes are represented through a players’ association or union, while there is no such group for boxers.”).

201. See *History of the Major League Baseball Players Association*, MAJOR LEAGUE BASEBALL PLAYERS ASS’N, <http://mlbplayers.mlb.com/pa/info/history.jsp> (last visited Feb. 2, 2011).

202. See Kathy Glasgow, *The Fight of Their Lives*, MIAMI NEW TIMES, July 20, 2000, <http://www.miamiherald.com/2000-07-20/news/the-fight-of-their-lives/>.

203. See McCain & Nahigian, *supra* note 32, at 8 (contrasting the “premier side” of boxing with the “vast majority of professional boxing events . . . featur[ing] unknown journeymen”).

204. See *supra* notes 13–14 and accompanying text.

many journeymen fighters support themselves with other nine-to-five jobs, there is little time or effort to devote to unionizing. The upper-class boxers, on the other hand, have no need for a union. The top boxers are fabulously wealthy, and have no need to draw on their leverage in order to help establish a union.²⁰⁵ Moreover, even the ruling class of boxers fear being blacklisted, and are therefore unlikely to lend their cache to a cause that would no longer help them.²⁰⁶

The establishment of a boxers' union may, in fact, be contrary to the interests of the sport's top earners. "It is a first principle of the National Labor Relations Act that employees in a bargaining unit lose their 'right' to bargain individually when a majority vote to be represented by a union."²⁰⁷ As the Second Circuit once wrote:

[I]n sports leagues, unionized players generally engage in individual bargaining with teams . . . 'once an exclusive representative has been selected, the individual employee is forbidden by federal law from negotiating directly with the employer absent the representative's consent, even though that employee *may actually receive less compensation under the collective bargain than he or she would through individual negotiations.*²⁰⁸

Therefore, top professional boxers may find their earning potential limited by a ceiling on purses established during collective bargaining. While an earnings cap would likely be offered in exchange for benefits accruing to boxing's vast underclass, it is unlikely that the sport's elite would assent to, much less actively pursue, the establishment of a union in which their interests would be decidedly idiosyncratic. Currently, superstar boxers "often have special individual talents" that allow them to exponentially out-earn blue collar boxers under the current system.²⁰⁹ The establishment of a union would permit boxers "to seek the best deal for the greatest number by the exercise of collective rather than individual bargaining power."²¹⁰ Thus, the very boxers whose star power would be most essential to the founding of a boxers' union are also those who would be most likely to oppose it as contrary to their interests.

More fundamentally, it is unclear whether boxers would be able to legally establish a union. Under the National Labor Relations Act ("NLRA"), "[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, [and] to bargain collectively through representatives of their own choosing."²¹¹ The National Labor Relations Board ("NLRB") is empowered to certify that a union is "appropriate for the purposes of collective bargaining."²¹²

205. See Symposium, *supra* note 17, at 249 (statement of Evander Holyfield) ("[W]hen I was the undisputed champion of the world I was going to get more than 17 million dollars.").

206. See *supra* note 151 and accompanying text.

207. Michael S. Jacobs & Ralph K. Winter, Jr., *Antitrust Principles and Collective Bargaining by Athletes: Of Super Stars in Peonage*, 81 YALE L.J. 1, 7 (1971).

208. *Caldwell v. Am. Basketball Ass'n*, 66 F.3d 523, 528 (2d Cir. 1995) (quoting *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967)) (emphasis added).

209. *Brown v. Pro Football, Inc.* 518 U.S. 231, 249 (1996).

210. *Wood v. Nat'l Basketball Ass'n*, 809 F.2d 954, 959 (2d Cir. 1987).

211. National Labor Relations Act, 29 U.S.C. § 157 (2006).

212. *Id.* § 159(b).

However, it is unclear whether boxers may unionize and bargain collectively under the NLRA because the Act excludes “independent contractors” from its definition of “employees.”²¹³ Only workers falling under the Act’s definition of employee may unionize and bargain collectively with their respective employers.

While the NLRB and courts apply a common law agency test to determine whether a worker should be classified as an employee or an independent contractor, there is “no shorthand formula or magic phrase that can be applied to find the answer, but all the incidents of the [employment] relationship must be assessed and weighed with no one factor being decisive.”²¹⁴ In *FedEx Home Delivery v. NLRB*, the court determined that the petitioner package delivery provider’s single-route drivers were independent contractors, rather than employees, under the NLRA.²¹⁵ The court’s conclusion was premised on the fact that FedEx could not “prescribe hours of work, whether or when the contractors take breaks, what routes they follow, or other details of performance.”²¹⁶ Moreover, the single-route drivers were “not subject to reprimands or other discipline” and did “not need to show up at work every day.”²¹⁷

Even assuming that boxers and promoters enter into an employment contract, rather than merely a promotional contract, it is unlikely that a court would find boxers to be employees under the NLRA. Like the single-route drivers found to be independent contractors in *FedEx Home Delivery*, boxers structure their training without direction from their promoters, are not “subject to reprimands or other discipline” from promoters and are not required to show up at work—i.e., the gym—every day.

Illustratively, professional golfers—the athletes whose situation most resembles that of boxers because they compete in a tour rather than a private league—were found to be independent contractors by the Supreme Court.²¹⁸ The differences between the PGA Tour and the current structure of professional boxing will be discussed in greater detail in Section C of this Part. For now, it suffices to note that while golfers arguably have a stronger argument that they are employees of the Tour than boxers’ argument that they are employees of their respective promoters,

213. *Id.* § 152(3).

214. *NLRB v. United Ins. Co.*, 390 U.S. 254, 258 (1968). The D.C. Circuit has provided the following guidance:

The common law factors include, *inter alia*, ‘the extent of control which, by the agreement, the master may exercise over the details of the work’; ‘the kind of occupation’; whether the worker ‘supplies the instrumentalities, tools, and the place of work’; ‘the method of payment, whether by the time or by the job’; ‘the length of time for which the person is employed’; whether ‘the work is a part of the regular business of the employer’; and the intent of the parties.

FedEx Home Delivery v. NLRB, 563 F.3d 492, 496 n.1 (D.C. Cir. 1968) (citing RESTATEMENT (SECOND) OF AGENCY § 220(2) (1958)).

215. *FedEx Home Delivery*, 563 F.3d at 504.

216. *Id.* at 498.

217. *Id.* at 498–99.

218. *See PGA Tour, Inc. v. Martin*, 532 U.S. 661, 678 (2001) (adopting the district court’s finding that Title I of the Americans with Disabilities Act does not apply to a golfer because he was an independent contractor rather than an employee).

the former are—according to the Supreme Court—independent contractors.²¹⁹

On the other hand, if established, a boxers' union would provide “oversight of all the various actions of promoters and sanctioning bodies.”²²⁰ Such a union could “demand fair treatment of its members and could put pressure on promoters and sanctioning organizations through the use of boxer strikes,” however difficult it may be to maintain a strike involving 8,500 athletes.²²¹ More practically, “a union could set up health and retirement plans for its members,” which are currently absent and undoubtedly vital in boxing.²²²

Moreover, if boxers unionized, they would have recourse to the NLRB's streamlined adjudicatory procedures, which are less costly and time consuming than litigating in court. The NLRB, in turn, is empowered to petition U.S. courts of appeals to enforce orders granting either “appropriate temporary relief” or a “restraining order” precluding the “unfair labor practice.”²²³ Here, too, boxers would be spared the time and expense of proceeding on their own in court. Finally, a boxers' union could educate its members as to their rights under various state and federal laws, provide for a legal defense fund and disseminate information about the unethical practices of certain managers, promoters or sanctioning bodies.

Boxers' lack of labor law remedies, especially recourse to the NLRB's adjudicatory procedures, coupled with the prohibitive time and expense of litigation, agitate for the implementation of the PBAA's own adjudicatory provisions. Like the NLRB, the USBC is empowered by the PBAA to conduct investigations, issue subpoenas and bring an action in federal courts for injunctive relief.²²⁴ In addition, as noted, the USBC may, “after notice and opportunity for a hearing, suspend or revoke any license . . . if the Commission finds that the license holder has violated any provision of” the PBAA or if “the suspension or revocation is necessary for the protection of health and safety or is otherwise in the public interest.”²²⁵ Under the PBAA, boxers would feel less acutely the absence of labor law remedies guaranteed by the NLRA.

C. PRIVATE REGULATION

A final solution for “eliminat[ing] the exploitation,” corruption and manipulation that have “tarnished” boxing is to change the “entire structure” of the sport through the creation of a “private league . . . that is responsible for all aspects of the sport.”²²⁶ Boxing is the “only national sport without a national commissioner to enforce safety standards, rules and integrity.”²²⁷ Ideally, a private, independent organization could “oversee all of the transactions that occur within

219. *Id.*

220. Burstein, *supra* note 9, at 494.

221. *Id.*

222. *Id.*

223. 29 U.S.C. § 160(e) (2006).

224. Professional Boxing Amendments Act, S. 84, 110th Cong. § 207(b) (2007).

225. *Id.* § 207(a)(1).

226. Baglio, *supra* note 20, at 2296; Burstein, *supra* note 9, at 494; Jurek, *supra* note 7, at 1187.

227. Jack Newfield, *Should We Let Boxing Die?*, PARADE, May 2, 2004, at 7.

the boxing industry, similar to how leagues operate in team sports. All contracts [could] be registered and reviewed by this organization, which [could] also make certain that all parties perform their obligations under these agreements.”²²⁸ In fact, if all members of the boxing community agree to be bound by the organization’s rules, it could then “create a code of uniform practices and procedure . . . [and] enforce its own rules through the use of fines or expulsion from the sport.”²²⁹ Moreover, the “organization [could] also rank boxers in each weight division,” providing what would ideally be a fair and impartial rating system.²³⁰

Privatization in boxing may be modeled after the Professional Golfers’ Association (“PGA”), as suggested by Devin Burstein. The PGA is a nonprofit organization comprised of over 23,000 professional golfers.²³¹ It “sponsors multiple golf tours, where professional golfers go to various golf venues and compete against one another. All of the golfers playing against each other at a professional PGA event are members of the PGA.”²³² The PGA is empowered to “set uniform rules for the sport.”²³³ PGA golfers must abide by the expounded rules or else face fines or be excluded from events.²³⁴ The PGA Commissioner may discipline offending tour participants.²³⁵ In sum, the “PGA example provides important concepts upon which a professional boxers’ association could be built.”²³⁶

It is easy to see how the tour model could be applied to boxing. A corresponding “entity” would “sponsor . . . professional [boxing] tournaments . . . [in arenas] leased and operated” by the Tour.²³⁷ As in golf, each event could take place over three to four days. As individual boxers, unlike golfers, only fight a few times per year, the number and length of events would permit most of boxing’s 8,500 athletes to participate in Tour-sanctioned matches. By holding a number of events in venues not accustomed to hosting professional boxing matches, the Tour could help sow the seeds of the sport’s future popularity.

In 2007, the PGA Tour earned nearly a billion dollars in revenue.²³⁸ Much of

228. Baglio, *supra* note 20, at 2296.

229. Burstein, *supra* note 9, at 496.

230. Baglio, *supra* note 20, at 2296.

231. Burstein, *supra* note 9, at 495 n.393 (citation omitted). For an overview of the development of the professional golf tours, see AL BARKOW, *THE HISTORY OF THE PGA TOUR* (1989).

232. Burstein, *supra* note 9, at 495.

233. *Id.*; see also *Deesen v. Prof'l Golfer's Ass'n*, 358 F.2d 165 (9th Cir. 1966); *Weser v. Prof'l Golfer's Ass'n*, No. 76 C 1783, 1979 WL 1650 (N.D. Ill. June 21, 1979) (holding that the PGA may promulgate eligibility requirements).

234. Burstein, *supra* note 9, at 495 (citing Baglio, *supra* note 20, at 2265). Three sets of rules govern competition in tour events: The “Rules of Golf,” the “Conditions of Competition and Local Rules” and “Notices to Competitors for particular tournaments.” See *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 666–67 (2001).

235. *O'Grady v. PGA Tour, Inc.*, Civ. No. 86-1511-S(M), 1986 WL 15389 (S.D. Cal. Aug. 14, 1986) (upholding fine, challenged on antitrust grounds, of PGA golfer by PGA Commissioner after golfer publicly disparaged the Commissioner).

236. Burstein, *supra* note 9, at 496.

237. *Martin*, 532 U.S. at 665.

238. See *Tours Produce 9% Rise in Revenue*, *SPORTSBUSINESS J.*, May 12, 2008, <http://www.sportsbusinessdaily.com/Journal/Issues/2008/05/20080512/This-Weeks-News/Tours->

the PGA Tour's revenue "is distributed in prize money."²³⁹ Similarly, the revenues generated by a professional boxing tour through "television, admissions, concessions, and contributions from cosponsors" would constitute participating boxers' purse money.²⁴⁰

Moreover, the Tour could establish "rules [that] govern competition in tour events."²⁴¹ The Tour's promulgation of uniform rules would obviate the perils of patchwork state regulation discussed throughout this Article, without raising the specter of an intrusive and overreaching federal regulatory scheme. As noted, case law establishes the ability of the would-be Tour Commissioner to enforce rules and regulations through the imposition of fines and suspensions.

However, because the PGA "sponsors all of the events for the players," imposing its structure on boxing would "leave[] no room for promoters," and "it is improbable that promoters could be completely eliminated from a sport in which they are such an integral part."²⁴² One commentator has suggested that the federal government act to cut promoters out of boxing by "mak[ing] a law that in order to participate in professional boxing, the participant must be a member of the private association" modeled on the PGA.²⁴³ Yet, the federal government has thus far not exhibited any willingness to encroach so substantially on boxing's current structure.

Once established, the boxing "tour" could provide matches with a measure of credibility and luster lacking from promotions occurring outside of its purview, thus attracting greater fan appreciation and participation. However, in order to gain that status, the tour would first have to either incorporate or usurp boxing's powerful promoters. The former option would probably be more successful. Tour organizers could point to boxing's ever-decreasing visibility and profitability under the current regime.²⁴⁴ Promoters may be amenable to becoming shareholders in a tour whose imprimatur promises to allow them to share admittedly smaller pieces of a larger pie.²⁴⁵ It is conceivable that the business model provided by a private tour that stamped out corruption and manipulation would lead to higher television ratings, increased opportunities for merchandizing and larger venues for professional boxing matches. By seeking to incorporate, rather than oust the promoters, tour organizers may be able to secure boxers' participation in the private tour without recourse to federal regulation requiring that participation. Of course, once the promoters have been incorporated into the tour's profit-making hierarchy, the problem would become ensuring that the tour's rules and bylaws protect boxers rather than merely empower promoters to continue their unethical and predatory

Produce-9-Rise-In-Revenue.aspx58947 ("The three tours owned by the PGA Tour pulled in a combined \$971.9 million in revenue in 2007.")

239. *Martin*, 532 U.S. at 665.

240. *Id.*

241. *Id.* at 666.

242. Burstein, *supra* note 9, at 495.

243. *Id.* at 496.

244. See Jurek, *supra* note 7, at 1187.

245. While the PGA is a "nonprofit entity," clearly, under this conception of a Tour that incorporated promoters, that characteristic could not be imported. See *Martin*, 532 U.S. at 665.

practices by different means.

Many of the same obstacles that apply to establishing a boxers' union present an even greater barrier to creating a private, national organization to govern the sport, regardless of whether that organization takes the form of a league or a tour. First, "for a private league [or tour] to work, all aspects of professional boxing would have to be governed by the league. Without this absolute power, promoters could choose to ignore the league and operate outside of its regulations and its watch."²⁴⁶ In other words, if a portion of the country's 8,500 professional boxers decided that their interests would be better served by not joining the proposed private organization, such an organization would be powerless both to provide protection or oversight to those fighters, and to bring promoters and sanctioning bodies within its jurisdiction. More fatally, the promoters, the managers, the sanctioning organizations and the state boxing commissions all profit too much under the status quo to permit such a disastrous and ruinous disruption to their business models. Harry Reid listed Don King and Bob Arum as his two most important constituents, not Floyd Mayweather and Mike Tyson, who are also Nevada residents.²⁴⁷ It is telling that Senator McCain has been unable to pass the PBAA, despite his ardent efforts over the better part of this past decade.

While some iteration of the PBAA has been passed by the Senate four times, it has never been voted on by the House of Representatives.²⁴⁸ In other words, it has not so much been killed as it has been left to die. Similarly, in 1999, the Ali Act "was never brought to a final vote . . . due to the use of 'arcane Senate rules' employed by two Democratic Senators to block the vote."²⁴⁹ Several Senators later identified Nevada Senator Harry Reid "as being responsible for blocking the vote."²⁵⁰ Certainly, the PBAA has powerful opponents, not only in affluent promoters whose nefarious business practices would be constrained by its provisions, but also in politically connected state athletic commissions who "object[] to a federal [boxing] commission because they feel it may supercede and negatively impact" their own authority.²⁵¹

Undoubtedly, a private governing boxing organization would be far more disruptive to those who control boxing than the PBAA could ever hope to be. The money, the power and the inertia all lie on the side of those whose interests would be harmed, if not destroyed, by the creation of a private boxing organization. For that reason, though such an organization would be the change most likely to provide real, lasting protection for boxers, it is also the change that is least likely to occur, unless promoters could be convinced that their financial interests would be best served by joining the organization.

246. Burstein, *supra* note 9, at 496.

247. *See supra* note 44.

248. *See H.R. 523: Professional Boxing Amendments Act of 2009*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h111-523&tab=related> (last visited Feb. 2, 2011).

249. Baglio, *supra* note 20, at 2258 (citation omitted).

250. *Id.* at 2259 n.17.

251. Royce Feour, *Commission Objects to Federal Body*, LAS VEGAS REV. J., June 16, 2001, at 8C; *see also supra* note 34 and accompanying text.

IV. CONCLUSION

Boxing is perhaps the oldest sport in existence, owing to its primal simplicity and balletic brutality. It has been depicted in 5,000 year old Sumerian stone carvings and iconic photographs, and contested everywhere from the first Olympic Games to backyards and playgrounds across the world.²⁵² Yet, the sport that was once “second in popularity only to baseball” in the United States is now, after decades of “corruption, manipulation, and scandal . . . hardly covered by the mainstream media.”²⁵³ Twice, Congress has passed bills aimed at protecting vulnerable boxers, both within the ring and without. Nevertheless, boxers are still being killed in the ring at an alarming rate, subjected to illegal, coercive contracts and failed by the laws enacted to protect them.²⁵⁴

While the Professional Boxing Amendments Act offers the promise of substantive and enforceable protections for boxers, Congress has knocked it down more times than Jack Dempsey floored Jess Willard.²⁵⁵ The prospect of unionization and the creation of a private governing boxing organization is too remote and impractical to offer substantial hope to boxers. Perhaps, then, the sport’s best chance lies with fighters like Oscar de la Hoya and Shane Mosley, champions who have used their wealth and affluence to become top promoters themselves. They—not Congress, not the hordes of journeymen boxers and not the ABC—are in the best position to leverage their power in order to truly revolutionize the sport. The question remains: Will they answer the bell?

252. McCain & Nahigian, *supra* note 32, at 9.

253. Jurek, *supra* note 7, at 1187.

254. See, e.g., Fife, *supra* note 32, at 1299 (discussing the death of Beethavean Scotland); Symposium, *supra* note 17, at 224 (discussing the death of Stefan Johnson).

255. In their 1919 heavyweight championship fight, Dempsey knocked Willard down seven times in the first round alone. See B.R. Reardem, *Dempsey and Willard: The Worst Beating in Boxing History*, E. SIDE BOXING, <http://www.eastsideboxing.com/DempseyvsWillard.html> (last visited Feb. 2, 2010).