The National Boxing Commission Act of 2001: It's Time for Congress to Step into the Ring and Save the Sport of Boxing

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

I. INTRODUCTION

On July 2, 2001, Beethavean Scottland, a professional boxer, died after sustaining severe brain injuries during a June 26, 2001 match held aboard the U.S.S. Intrepid in New York City. After the match, allegations surfaced that the event was held with improper emergency equipment, Scottland was overmatched by his opponent, and the New York State Athletic Commission was inexperienced in the field of boxing and improperly staffed. Only three months earlier, on March 9, 2001, a professional boxing match in Erlanger, Kentucky left former world heavyweight champion Greg Page, age forty-two, with permanent brain damage. Some medical experts feel that, had Page’s bout taken place in another state, he may not have received medical clearance to box. These two incidents illustrate the fact that, in addition to the risks posed by their opponent, professional boxers face other possibly preventable safety risks when they enter the ring. In addition to these safety problems, boxing is also plagued by unethical business practices that threaten the integrity of the sport. Given these problems, boxing is

4. One such expert is Flip Homansky, a former ringside physician and current member of the Nevada Athletic Commission. Homansky believes that Page would have been looked at much more closely if the bout took place in Nevada, as boxers in Nevada over the age of thirty-six must undergo specialized medical exams before getting clearance to box. See Royce Feour, Homansky’s Opinion on Aging Boxers Should Be Heard, LAS VEGAS REV. 1., Mar. 17, 2001, at 7C.
in need of a set of rules and regulations that are uniformly enforced throughout the sport.

Boxing is currently the only major professional sport in the United States that is not governed by a central body, league, or association. Individual state boxing commissions have been the only form of organization and regulation in the sport and there has been no consistent level of regulation among the state commissions. The federal government has tried to respond to this problem with the passage of the Professional Boxing Safety Act of 1996 ("Safety Act") and the Muhammad Ali Boxing Reform Act ("Ali Act"). Neither of these regulations took the step of creating a central federal authority, instead they still leave oversight of the sport to the states.

As a response to the problems that plague boxing, Senators Harry Reid and John McCain have introduced the National Boxing Commission Act of 2001 ("Boxing Commission Act"). The purpose of this Note is not to say that this legislation would have definitely prevented the death of Beethavean Scottland or the injuries suffered by Greg Page. Such a claim would be too speculative. Instead, this Note argues that the establishment of a National Boxing Commission would lead to the creation and enforcement of a uniform set of safety rules, which in turn would lessen the chance of such tragic incidents from reoccurring. A national commission with enforcement powers would also be able to curb the use of the unethical business practices that pervade the sport of boxing today.

Part II of this Note begins with a discussion concerning the present day structure of the sport, including the roles played by promoters, sanctioning organizations, and state boxing commissions. Part III of the Note looks at the history of federal regulation in the sport. Specific attention will be given to the Safety Act and the Ali Act. The weaknesses of each of these reforms will also be addressed. Part IV

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Hearings on Reform of Professional Boxing] (statement of Patrick C. English, Esq., General Counsel for boxing promoter Main Events).


7. See id.


9. See id. These two pieces of legislation were enacted separately, but are now codified together.

10. See S. 893, 107th Cong. (2001) (finding that boxing is beset with wide-ranging problems, including exploitation of boxers, conflicts of interest, questionable judging, and corruption). Senator McCain has since introduced a similar piece of legislation to reform the sport of boxing, the Professional Boxing Amendments Act of 2002. See infra note 115 and accompanying text.

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examines the Boxing Commission Act. Section A contains an overview of the proposed bill and discusses how certain provisions can remedy many of the problems set forth in the previous section of the Note. Section B considers whether the Boxing Commission Act itself is constitutional. Section C discusses policy arguments in favor of passage of the Boxing Commission Act. Part V then suggests additional provisions that should be included as part of the Act. The analysis concludes that the Boxing Commission Act should be enacted, as a federal commission is the best way to establish a long-lasting framework for regulation and enforcement of standards in safety and business practices in the sport of boxing.

II. BACKGROUND: THE CURRENT STRUCTURE OF BOXING

In order to understand the problems surrounding boxing, it is important to look at the current structure of the sport and the various roles different parties play in that structure. When a boxing match is held, particularly a title bout, there are usually four major parties involved: (1) the boxer, (2) the promoter, (3) the sanctioning body, and (4) the state’s boxing commission. This Part explains the role that each of these parties has in the sport.

A. Boxers

To a casual observer of the sport, it may seem that professional boxers as a whole are a group of overpaid athletes. The facts actually show a much different story. Many boxers come from impoverished backgrounds. They get involved in boxing in order to escape their surroundings and chase down the dream of a million dollar purse. However, in reality, boxing is a sport where only a handful of the boxers actually wind up reaching their dreams and earning large sums of money.

Many fighters retire without any type of savings or with significant physical and mental damage. Even boxers who earn large purses from a

14. See id.
15. See id.
16. See id. For instance, one of the greatest boxers in the history of the sport, Joe Louis, retired broke. See id.; see also Evan Kanew, Darkness Visible: Boxer Gerald McClellan, Blind and Brain Damaged, Leaves Home, SPORTS ILLUSTRATED, May 13, 2002, at 25 (noting that former
fight often never see anything close to the actual purse, as they usually give up about half their earnings to managers, trainers, and licensing fees. Greg Page, the former heavyweight champion of the world, is a common example of a boxer who, despite his success, was in financial ruin. Page, who earned $500,000 when he won the championship in 1984, was boxing for a purse of only $1500 when he fought the fight that left him permanently brain damaged in March 2001. The world of "blue-collar boxing," where boxers travel from town to town, supporting families on earnings as little as $400 a fight, is much more common in the sport than the championship bouts for million-dollar purses.

B. Promoters

The relationship between a boxer and a promoter is usually a very complex business arrangement. Most boxers have managers that handle their business affairs and negotiations in return for a percentage of the boxer’s purse for each bout. The boxer and manager then try to negotiate contracts with a promoter, who can guarantee to provide bouts at a certain dollar amount in exchange for exclusive promotional rights to the fighter. The promoter pays all the expenses associated with promoting the bout, thus he or she assumes the financial risk for each fight. The less money a promoter can get a boxer to accept, the more potential profit available to the promoter.

Obviously, the promoter also stands to gain more when one of the boxers they have under contract is a champion or a top-ranked boxer. Often the desire of a promoter to obtain contracts with these boxers can lead to some questionable business practices. One such example is the World Boxing Council ("WBC") middleweight champion Gerald McClellan was left without insurance, savings, or pension following a brain injury he suffered in a 1995 bout, despite a thirty-four bout career and two-year title reign).
recent contract dispute regarding the rights to promote former heavyweight champion Hasim Rahman, which eventually wound up in litigation. On May 9, 2001, Rahman signed a promotion agreement with Don King and in return Rahman received $200,000 cash and a $4.8 million check as a signing bonus. Rahman's previous promoter, Cedric Kushner Promotions, Ltd. ("CKP"), claimed that Rahman was still under contract with CKP. The court ruled that because of an injury provision in the contract, CKP still had the contractual right to promote Rahman's next bout. Although this could have just simply been a contract dispute, it illustrates the complexities that exist in promotion agreements and the sometimes-questionable lengths promoters like King may go to in order to secure an agreement with a top-ranked boxer.

C. Sanctioning Organizations

The sanctioning body becomes involved in the process when a boxer holding one of its titles is involved in a championship bout. There are currently over a dozen major sanctioning organizations in the world, most of which are headquartered outside of the United States. The three major sanctioning bodies are the World Boxing Association ("WBA"), the World Boxing Council ("WBC"), and the International Boxing Federation ("IBF").

In addition to sanctioning title bouts, the sanctioning bodies rank the top fighters in each weight class. The top rankings are extremely precious to a boxer because they determine which boxers get big-money bouts and opportunities to fight for the championship. The ranking

27. See id. at 232.
28. See id. at 227.
29. The contract period extended past the expiration date for any period of time for which Rahman was injured and unable to box. See id. at 225.
30. See id. at 236.
32. See Brown, supra note 13.
35. See Springer & Wharton, supra note 33.
systems used by the various sanctioning bodies have often come under
attack because the criteria for rankings are too subjective.\textsuperscript{36}

The legitimacy of rankings is also often questioned due to the fact
that several promoters have admitted to bribing sanctioning organization
officials in order to secure better rankings for their boxers.\textsuperscript{37} Bob Arum,
one of boxing's top promoters, admitted during the bribery trial of
former IBF head Bob Lee that he once made a $100,000 pay-off to Lee.\textsuperscript{38}
These pay-offs result in the sale of a deceptive product to the public, as
rankings are based on bribes rather than the ability of the boxers.\textsuperscript{39} Aside
from the deceptive nature of the rankings to the public, rankings that are
not actually based on talent and skill exploit boxers and risk their safety.
A promoter who bribes a sanctioning organization to advance a boxer of
average skill in the rankings, jeopardizes the safety of that boxer by
creating a situation where the boxer could find himself in a mismatch
against a boxer of superior skill. The sanctioning organization profits
financially from the bribe and the promoter profits from the increased
revenue a bout with a higher ranked opponent brings. However, it is the
boxers that are exploited. Their safety is at risk for no financial gain of
their own, as the promotion contract previously establishes the amount
of their purse regardless of the opponent.\textsuperscript{40}

Sanctioning bodies have also come under criticism for their
ignorance in preparing the rankings of boxers.\textsuperscript{41} For example, last year
the World Boxing Organization ("WBO") ranked a dead fighter, super
middleweight Darrin Morris, and then proceeded to advance him into the
top six in a subsequent ranking.\textsuperscript{42} The fact Morris actually advanced in
the rankings exemplifies the lack of care and review used when
sanctioning bodies rank boxers. The end result is that when a ranking is
not based on actual skill, there is a potential for mismatches that may
expose a boxer to unnecessary health and safety risks.

\textsuperscript{36} See id. The Muhammad Ali Boxing Reform Act ("Ali Act"), which is currently in force,
does require the sanctioning organizations to make their criteria for rankings public, it does not
specify the criteria that the sanctioning organizations must use. See infra note 95 and accompanying
text.

\textsuperscript{37} See Springer & Wharton, supra note 33.

\textsuperscript{38} See John Whisler, A Fighting Chance: Bob Arum Says Boxing's Mexican-American
Fanbase is the Best Hope to Save a Dying Sport, SAN ANTONIO EXPRESS NEWS, June 11, 2001, at
1C.

\textsuperscript{39} See id.

\textsuperscript{40} See supra notes 23-25 and accompanying text.

\textsuperscript{41} See Tim Graham, A Goofi Change for a Goofi Sport, ESPN Boxing, (Aug. 7, 2001),
available at http://www.espn.go.com/boxing/columns/graaham/1236284.html (last visited July 22,

\textsuperscript{42} See id.
D. State Boxing Commissions

The state boxing commission is the only party that has the legal and legislative authority to regulate a boxing event.\textsuperscript{43} State boxing commissions from across the country are loosely organized under the Association of Boxing Commissions\textsuperscript{44} ("ABC"), an organization of forty-six state and tribal boxing commissions located throughout the United States.\textsuperscript{45} Despite the presence of the ABC, state boxing commissions still lack uniformity and consistency among one another.\textsuperscript{46}

Perhaps the most glaring example of the lack of uniformity among the state commissions is Mike Tyson's attempt to obtain a boxing license for a June 8, 2002, bout with heavyweight champion Lennox Lewis. The ABC had requested that none of its members grant Tyson a license due to his violent and criminal activity outside the ring and his violent and unsportsmanlike conduct inside the ring.\textsuperscript{47} Nevada, Texas, Colorado, West Virginia, and Georgia all followed the ABC and refused to license Tyson.\textsuperscript{48} However, fellow ABC members Tennessee, the eventual site of the bout, and Washington, D.C.\textsuperscript{49} agreed to license Tyson.\textsuperscript{50} The ability of Mike Tyson to forum shop for a license symbolizes the lack of uniformity among the state commissions.\textsuperscript{51}

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\item \textsuperscript{43} See \textit{Hearings on Ali Act-1999}, supra note 12 (testimony of Greg Sirb, then President, ABC).
\item \textsuperscript{44} A more detailed explanation of the role of the ABC can be found at its homepage, http://www27.brinkster.com/abcboxing/Home.asp (last visited July 23, 2002).
\item \textsuperscript{45} See \textit{Federal Regulation of Boxing: Hearing Before the Senate Comm. on Commerce, Sci. and Transp., 107th Cong.} (2002) [hereinafter \textit{Hearings on Federal Regulation of Boxing}] (statement of Tim Lueckenhoff, President, ABC) (noting that this organization has tried to push for uniform creation and enforcement of rules within the sport, but that ultimately this effort has been hampered by a lack of funding and authority).
\item \textsuperscript{46} See \textit{id.} For a further discussion related to the problems related to a lack of uniformity among states, see \textit{supra} Part II A-B.
\item \textsuperscript{47} See Thom Loverro, \textit{IBF Says it Will Allow Lewis to Fight Tyson}, \textit{WASH. TIMES} (D.C.), Feb. 26, 2002, at C01; Chuck Finder, \textit{Pressure Forces West Virginia to Rescind Tyson-Lewis Bid}, \textit{PITTS. POST-GAZETTE}, Mar. 10, 2002, at B16 (noting that the ABC sent letters to each member state asking them to follow Nevada's January 26, 2002 decision not to grant Tyson a license).
\item \textsuperscript{48} See Finder, \textit{supra} note 47.
\item \textsuperscript{51} See \textit{Hearings on Federal Regulation of Boxing, supra} note 45 (testimony of Bert Sugar, boxing historian) (noting that license shopping is not a new phenomenon, as in 1914, former heavyweight champion Bob Fitzsimmons was twice denied a license at age fifty by the New York State Supreme Court, yet two days later he went over the border and fought in the state of Pennsylvania when that state granted him a license).
\end{itemize}
State boxing commissions have also come under attack in some states for being run by boards who are inexperienced with the sport of boxing and often only hold their job for political reasons.\textsuperscript{52} Senator John McCain has said "'[g]enerally speaking, [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.'"\textsuperscript{55} In New York, several members of the New York State Athletic Commission have been linked to campaign contributions to the Republican Party and to current New York Governor George Pataki.\textsuperscript{54} Marc Ratner, Executive Director of the Nevada State Athletic Commission, admits that there is no question that the five-person commission in Nevada that is appointed by the governor is a vehicle for political appointments.\textsuperscript{55}

Recently, several examples indicating inexperienced or improperly staffed state commissions have come to light.\textsuperscript{56} In Kentucky, Nancy Black, the executive director of the Kentucky Athletic Commission, the agency that oversees the regulation of boxing in that state, said "[o]n boxing itself, I can't say that I'm an expert."\textsuperscript{57} Ms. Black did not even attend her first professional fight until two weeks after Greg Page suffered brain damage as a result of a match held in that state.\textsuperscript{58} In Ohio, two doctors who examined boxers for the state and worked as ringside physicians for several years within the state were found to have been practicing medicine without licenses.\textsuperscript{59} In addition, it was claimed by one of the alleged physicians that the state commission did not review doctors’ qualifications, and as a result veterinarians and chiropractors

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\bibitem{52} See Brown, supra note 13 (quoting Sen. McCain about the problems related to state boxing commissions).
\bibitem{53} Id.
\bibitem{54} See Smith & Saltonstall, supra note 2. The father of New York State Athletic Commissioner Marc Comstein has contributed over $75,000 to Pataki's campaigns over the years; Commission Chairman Mel Southard's former law firm had contributed $5600 to Pataki and the Republican Party while Southard was working for the firm; Commission Attorney Larry Madelker, who is also an attorney for the State Republican Party, donated $5000 to the Republican Committee; Commission special assistant, James Polsinello, had contributed more than $27,000 to Pataki's inaugural fund since 1994; and Commissioner Jerry Becker, a key backer of Pataki's 1994 and 1998 campaigns, has contributed over $2000 to the Conservative Party since 1999.
\bibitem{56} See Smith & Saltonstall, supra note 2.
\bibitem{57} Hastings, supra note 17 (quoting Nancy Black, Kentucky Athletic Commission Executive Director).
\bibitem{58} See id.
\bibitem{59} See Joe Maxse, Two Ringside 'Physicians' Not Licensed, Panel Learns, PLAIN DEALER, May 9, 2001, at 1A.
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had routinely medically supervised events in that state. The inadequate and improper staffing of state commissions not only risks the safety of boxers, but also allows for corruption by promoters and sanctioning organizations to go unchecked.

III. PRIOR FEDERAL REGULATION

The first substantial federal intervention in the sport of boxing took place in the late 1950s and early 1960s, when the Senate looked into breaking up parts of the sport that were apparently controlled by organized crime. Since then, Congress has introduced numerous pieces of legislation focused on resolving the problems that plague boxing. Recently, Congress was successful in enacting two of these attempts: the Safety Act and the Ali Act. These two pieces of legislation have created some improvements, but glaring problems still remain in the sport. This section analyzes the two regulations in terms of what they were intended to accomplish and where they have been unsuccessful.

A. The Professional Boxing Safety Act

1. History

The Safety Act was designed to create minimum safety standards inside the ring that would make boxing a "safer and better sport, and serve to protect the athletes who sustain this industry with their skill, dedication, and courage." The legislation sought to strengthen health and safety precautions for boxers and protect their welfare. The legislation was especially aimed at protecting the boxers that are out of the media spotlight and box for little more than a few hundred dollars a bout in order to make a living. These boxers are often subject to excessive punishment, dangerous mismatches, and rarely receive the benefit of any health or safety precautions.

60. See id.
61. See Symposium, supra note 55, at 219 (statement of Patrick C. English, Esq.).
64. See Loverro, supra note 25.
66. See id.
67. See id.
68. See id.
The Safety Act contains several major provisions that were designed to achieve its aims. First, all boxing events or matches are required to be supervised by a state boxing commission.69 Second, each boxer must register with a state boxing commission and receive an identification card identifying any health or safety disclosures they may have.70 Third, all commissioners and promoters must honor the medical suspensions of boxers that have been ordered by other state commissions.71 Commissioners must also promptly share the results of an event they supervised with the other state commissioners.72 Fourth, no boxing match may be held unless a physical examination of the boxer, certifying that he or she is fit to safely compete, is completed and an ambulance or medical personnel including appropriate resuscitation equipment and a doctor are on site at the event.73 Lastly, promoters must provide each boxer with health insurance to cover any injuries sustained during the fight.74

2. Weaknesses

Unfortunately, the Safety Act has not achieved all of its goals. It lacks the strength to do so because it is constructed with vague language that leaves much of the decision-making regarding safety to the states. For example, the Safety Act only requires that a state ensure that there is “a physical examination of each boxer by a physician certifying whether or not the boxer is physically fit to safely compete.”75 As a result of vague language like this, safety standards within the sport can vary from state to state. Boxers may be considered physically unable to box in one state, yet cleared to box in another, since states have different standards for defining what it means to be “physically fit to safely compete.”

For instance, New York and New Jersey require that, prior to licensing, a boxer must undergo a CAT scan or MRI of the brain.76 Nevada makes no specific requirement regarding diagnostic testing of the brain, but instead states that physicians may chose to require that a

69. See 15 U.S.C. § 6303(a) (2000). A state without a boxing commission wishing to hold a match must obtain supervision from a state that has a boxing commission. See id.
70. See id. § 6305(a)-(c).
71. See id. § 6306 (a)(2). This provision has resulted in the creation of a National Suspension List. This list can be found at http://www.sportsnetwork.com/default.asp?c=sportsnetwork&page =boxing/stat/suspension1.htm.
72. See id. § 6307.
73. See id. § 6304(1)-(3).
74. See id. § 6304(4).
75. Id. § 6304(1).
boxer undergo any necessary testing.\textsuperscript{77} In Kentucky, the state holding the bout where Greg Page was left brain damaged, a medical examination is required but there is no mention of any requirements related to diagnostic testing of any kind.\textsuperscript{78} As a result of these differences, a boxer who may be denied a license in one state can obtain a license in another and continue to box.\textsuperscript{79}

Another example of differences among states in their medical regulations is in the requirements for medical examinations of older boxers. In Nevada, any boxer over the age of thirty-six must undergo a special medical review by the state athletic commission prior to obtaining a license to box in that state.\textsuperscript{80} An even stricter standard is applied in New Jersey, where a boxer over the age of thirty-five must demonstrate his capability to a physician before receiving his license.\textsuperscript{81} However, New York and Kentucky have no additional medical requirements for older boxers wishing to obtain licenses. These differences can be traced to the fact that the language of the Safety Act is too vague and still allows the states the decision to make the determination of what being "physically able to compete" means.

Even when provisions of the Safety Act are clear, there have been problems associated with the state commissions and their failure to properly follow those provisions. For example, Stefan Johnson died following a bout in New Jersey despite the fact he was supposed to be on the national suspension list.\textsuperscript{82} Johnson had suffered a severe knockout during a bout in Canada and was placed on the suspension list pending three scheduled medical exams.\textsuperscript{83} Despite being on the list, the South Carolina commission allowed him to box in a subsequent bout. As a result of that bout, Johnson slipped off of the suspension list and was assumed reinstated.\textsuperscript{84} It was at that point that he took part in the New

\begin{footnotesize}
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    \item \textsuperscript{77} See NEV. ADMIN. CODE ch. 467, § 027 (2001).
    \item \textsuperscript{78} See KY. REV. STAT. ANN. § 229.111 (Michie 2001).
    \item \textsuperscript{79} For instance, former champion and Olympic gold medalist Meldrick Taylor, who some doctors feel is suffering from brain damage caused by repetitive head trauma, has been refused a license in New Jersey and avoided bouts in Nevada and Georgia due to those states' requirements of neurological exams. See Mike Fish, \textit{Quitting Time: Against Advice, E-champ Meldrick Taylor Fights On}, SPORTS ILLUSTRATED, June 3, 2002, at 22. Yet, Taylor has still been able to continue to box in states like Alabama, a state which has no boxing commission. See id.
    \item \textsuperscript{80} See NEV. ADMIN. CODE ch. 467.017 (2001).
    \item \textsuperscript{81} See N.J. ADMIN. CODE tit. 13 § 46-5.2 (2002).
    \item \textsuperscript{82} See Symposium, supra note 55, at 224 (statement of Jerry Izenberg, sports columnist).
    \item \textsuperscript{83} See id. (statement of Greg Sirb, former President, ABC and current Executive Director of the Pennsylvania Athletic Commission). According to Sirb, since Johnson's bout was in Canada, South Carolina did not need to recognize the suspension, but it is "pretty much common knowledge" that it should have been. Id.
    \item \textsuperscript{84} See id. (statement of Jerry Izenberg).
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Jersey bout that cost him his life. The fact that multiple organizations were in charge of overseeing suspensions led to one agency making an assumption and following the lead of the previous one. It is possible that such a tragedy would never have unfolded had one agency, more experienced with the sport, been empowered to oversee suspensions.

B. The Muhammad Ali Boxing Reform Act

1. History

The Ali Act was created out of the feeling that the Safety Act was too limited, as it only provided protection for boxers while inside the ring. The drafters of the Ali Act were concerned with eliminating the unethical, and often illegal, contracts between boxers, promoters, and managers that existed in the sport, as well as questionable practices in the refereeing and judging of bouts. Senator John McCain proposed the Ali Act in June 1998, although two Democratic Senators blocked it when it went to a final vote in 1999. Eventually, Congress approved the Ali Act and it became law on May 26, 2000.

The Ali Act contains several measures aimed at correcting and preventing unethical business practices and conflicts of interest in boxing. It prevents promoters from serving as managers of fighters and prohibits promoters and managers from having conflicts of interest. The Ali Act also contains provisions banning what it considers to be coercive contracts by promoters. Importantly, option contracts, contracts that grant the promoter exclusive promotional rights to the

85. See id.
87. See id. at 479-84.
88. See Baglio, supra note 20, at 2281 (noting that one of the Senators that blocked the vote was Harry Reid, who may have been against the Ali Act because of its possible adverse effects on boxing promoters such as Bob Arum and Don King; two individuals Reid had previously stated were his two most important constituents).
90. See id. § 6308(b)(1)(A)-(B).
91. See id. § 6307b(a)(1)(A). A coercive contract contains: [A] contract provision that grants any rights between a boxer and a promoter, or between promoters with respect to a boxer, if the boxer is required to grant such rights, or a boxer's promoter is required to grant such rights with respect to a boxer to another promoter, as a condition precedent to the boxer's participation in a professional boxing match against another boxer who is under contract to the promoter.
Id. § 6307b(a)(1)(B).
challenger in the event the challenger defeats the champion, are banned under the Ali Act if they are for longer than twelve months. The Ali Act also calls for the ABC, within two years of enactment of the Ali Act, to develop and approve minimum contractual provisions for bout agreements and boxing contracts. However, “[i]t is [only] the sense of the Congress that State boxing commissions should follow these ABC guidelines.”

The Ali Act also attempted to eliminate some of the credibility problems associated with the sanctioning organizations. There is a provision requiring sanctioning organizations to make public their guidelines and criteria for determining rankings. The provision also mandates that within two years after enactment, the ABC develop and approve consistent and written criteria for the ratings of professional boxers. However, once again, the provision states “[i]t is [only] the sense of the Congress that sanctioning bodies and State boxing commissions should follow these ABC guidelines.”

2. Weaknesses

Questions about the overall effectiveness of the Ali Act and the state of professional boxing prompted Senator McCain to hold Congressional hearings in May 2001. These questions have arisen because the Ali Act provides assistance to the state boxing commissions in providing more effective oversight of the sport, but it still leaves enforcement to the states. Criticism has focused on the fact that some states simply are not aggressively enforcing the requirements related to formation of contracts because they do not have the resources or the willingness to investigate wrongdoings.

States are also still inconsistent in the business regulation of professional boxing contracts, with contracts valid under the laws of

92. See id. § 6307(b)(1)(A)(i).
93. See id. § 6307a.
94. Id. This is problematic because, as already indicated, the state boxing commissions have not had a strong history of following the ABC’s directions. See supra notes 46-51 and accompanying text.
95. See id. § 6307c(c)-(d).
96. See id. § 6307c(a).
97. Id.
98. See Hearings on Reform of Professional Boxing, supra note 5 (statement of Sen. McCain).
99. See id.
100. See id. (statement of Patrick C. English, Esq.); see also id. (statement of Gregory P. Sirb, then President, ABC) (“Without proper enforcement these laws are useless.”).
some states but not others. One example of this, which apparently was not in the headlines, involved a boxer that wanted to break a managerial contract without any grounds. The New Jersey Athletic Control Board, ("NJACB") which had jurisdiction over the contract, held a full hearing and found the contract to be valid. The boxer then fought in another state that also held the contract valid, but that state commission would only turn over the manager's share to the NJACB, despite the fact the NJACB had no mechanism to accept it. To make matters worse, the boxer fought in a third state that decided not to follow the NJACB decision at all. As a result, despite the presence of the Ali Act, full faith and credit was not being given to a due process hearing that resulted in a final determination.

Despite the Ali Act, the process for handling bout agreements and contracts are also still not uniform. Even with the elimination of certain types of option contracts, boxer/manager and boxer/promoter contracts vary widely and are still not based on one universal form. Contracts are also not on file in one central location where all parties can readily obtain information on a particular boxer's contractual situation. This makes it especially difficult for a state to review contracts that were formed and on file in other states.

The Ali Act is apparently weak in other areas as well. The provision requiring sanctioning organizations to disclose criteria for their determination of rankings does not go far enough. There is no requirement that the criteria chosen be rational or objective. Without objective criteria, it is impossible to tell if a boxer has advanced in ranking because of a victory or a bribe. Also, in many cases promoters and managers have been able to avoid the licensing requirements and, more importantly, the conflict of interest regulations of the Ali Act by calling themselves "matchmakers."

101. See id. (statement of Patrick C. English, Esq.).
102. See id.
103. See id.
104. See id.
105. See id.
106. See id.
107. See id. (statement of Gregory P. Sirb, then President, ABC).
108. See id.
109. See id. (stating that "[t]he current system of how [state] commissions compile and enforce these contracts is a mess!").
110. See id. (statement of Patrick C. English, Esq.).
111. See id.
112. See id.
Senator Harry Reid believes that the Ali Act is actually doing what it was supposed to, but therein lies the problem.\textsuperscript{113} Reid feels the Ali Act does not go far enough, as "[i]t was limited to what it was supposed to do. It dealt in a limited way with fight promoters."\textsuperscript{114} As a result of this limitation, Senators Reid and McCain have introduced the Boxing Commission Act.\textsuperscript{115}

IV. THE NATIONAL BOXING COMMISSION ACT OF 2001

A. National Boxing Commission Act of 2001: An Overview

The Boxing Commission Act creates a federal commission that would "prescribe and enforce uniform regulations for professional boxing in order to protect the health and safety of boxers and to ensure fairness in the sport."\textsuperscript{116} The Commission is an independent establishment in the executive branch and is made up of a five-member panel appointed by the President, by and with the advice and consent of the Senate.\textsuperscript{117} The members of the Commission are all required to have a background that supports a "broad understanding" of boxing and its business relationships.\textsuperscript{118} This ensures that members of the Commission are appointed on grounds that are not just purely political and that they have the experience to handle all matters related to boxing. To further eliminate the Commission as being a place to reward political loyalty, the Commission requires that no more than three Commission members may be of the same political party.\textsuperscript{119} Conflicts of interest within the

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\item \textsuperscript{113} See Royce Feour, Reid Puts Increased Clout Behind Fed Role in Ring, LAS VEGAS REV. J., June 2, 2001, at 3C.
\item \textsuperscript{114} Id.
\item \textsuperscript{115} See id. Since the introduction of this bill, another bill has been introduced in Congress to reform the sport of boxing. The Professional Boxing Amendments Act of 2002 is a bill to amend the Professional Boxing Safety Act of 1996 ("Safety Act"), and to establish the United States Boxing Administration, a federal agency to oversee the sport. See H.R. 5006, 107th Cong. (2002). An identical Senate bill is supported by John McCain. See 148 CONG. REC. S4705, 4721 (May 22, 2002) (statement of Sen. McCain). The Professional Boxing Amendments Act of 2002 is similar in almost every way to the National Boxing Commission Act of 2001 ("Boxing Commission Act"), but it does not include regulation of cable television networks, an issue that McCain and Reid have apparently become divided over. See Tony Batt, Senators Divided on Best Way to Improve Boxing, LAS VEGAS REV. J., Aug. 1, 2002, at 3B.
\item \textsuperscript{116} S. 893, 107th Cong. § 3 (2001).
\item \textsuperscript{117} See id. § 5(a)-(b)(1).
\item \textsuperscript{118} See id. § 5(b)(3)(A).
\item \textsuperscript{119} See id. § 5(b)(4).
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sport are also eliminated, as no member of the Commission is allowed to serve a role in the sport or earn money from the sport in any capacity. At least one member of the Commission must be an expert in the field of medicine and at least one member must be a former member of a local boxing authority. Having a medical expert ensures that provisions pertaining to the physical safety of boxers are comprehensive and are written with precise medical terms. As a result, it is likely that the vague terms that currently exist in many state regulations will be eliminated. In addition, including at least one member from a former local boxing authority, along with other provisions of this Boxing Commission Act, ensures that the Commission is familiar with and respects the rights of the state boxing commissions.

The Commission supervises all the participants in the sport of boxing and keeps track of them through licensing and registration requirements. The Boxing Commission Act requires that boxers, referees, judges, managers, promoters, matchmakers, sanctioning organizations, trainers, physicians, cut men, and any “other person determined by the Commission as performing a professional role in boxing” must be either licensed or registered with the Commission. All licensed boxers and boxing personnel are then listed in a national computerized registry. The licensing and registry requirements eliminate the loopholes that some promoters and managers have used to get around provisions of the Ali Act, since the registry will make it obvious when a manager is trying to serve as a promoter or avoid regulations by calling themselves a “matchmaker.” The registry also ensures that the Commission will have the necessary information to be alerted to bouts that are obvious mismatches and could possibly result in

120. See id. § 5(b)(5). In addition, the Boxing Commission Act requires a geographic balance among members of the Commission. See id. No more than three members of the Commission may be from states either east or west of the Mississippi River. See id.
121. See id. § 5(b)(3)(B).
122. The Boxing Commission Act requires the Commission to draft the regulations regarding the health and safety of boxers. See infra note 128 and accompanying text.
123. See infra notes 136-38 and accompanying text.
125. Id. § 7(b)(1). Boxers, judges, referees, and boxing officials must apply for licenses that are renewed on an annual basis. See id. § 7(a). Promoters, matchmakers, sanctioning organizations, managers, trainers, physicians, cut men, or any other persons serving professional roles in boxing must register with the Commission every three years. See id. § 7(b).
126. See id. § 8(a). A boxer’s listing in the registry must contain their medical records; results of medical testing; the boxing matches in which the boxer has participated, including the date of each match, the outcome, and whether any medical assistance was necessary; their won-lost record; their height and weight; and business associates they have. See id. § 8(a)(1)(A)-(D).
127. See supra note 107 and accompanying text.
a risk to one boxer's safety. Finally, a national licensing and registration system eliminates the ability of boxers to go forum shopping for a boxing license.

The Commission is required to create one set of standards related to the safety of participants, physical examinations of boxers, medical services at events, and boxing equipment.\textsuperscript{128} Importantly, under the Boxing Commission Act, Congress does not set the medical standards themselves. The Boxing Commission Act could have just made the Commission an agency that would enforce medical regulations created by Congress, but instead it is the Commission that prescribes the regulations and standards. This allows the Commission to make use of the expertise that they possess in both medicine and boxing. The Commission will likely set national standards in many areas. For example, the Commission can set national regulations such as requiring that every licensed boxer undergo a yearly MRI or CAT scan of the brain, all boxers over the age of thirty-five undergo additional medical testing prior to licensing, and ringside physicians be qualified neurological experts.

Another important safety aspect to the Boxing Commission Act is that it requires the Commission to conduct discussions and enter into agreements with foreign boxing entities regarding minimum health and safety standards.\textsuperscript{129} Under the current system, state commissions do not have the unified power or resources to make such agreements. This is problematic as many American boxers participate in matches all over the world. Obviously, the Commission would not possess jurisdiction in foreign nations. However, requiring the Commission to work on agreements with foreign regulatory agencies makes certain that someone is looking out for a boxer's health and safety interests in foreign bouts. Such agreements may even be facilitated by the fact that several other nations, such as Great Britain,\textsuperscript{130} already have national regulatory bodies.

In an effort to curb unethical business practices, the Commission is responsible for setting the standards related to formation of contracts involved in professional boxing; and the Boxing Commission Act requires that any contract for a match must be filed with the Commission.

\textsuperscript{128} See S. 893, 107th Cong. § 9(a) (2001).
\textsuperscript{129} See id. § 9(a)(6).
\textsuperscript{130} The British Boxing Board of Control, a private nonprofit organization, has overseen British professional boxing since 1929. See British Boxing Board of Control, The Role of the British Boxing Board of Control in Professional Boxing in this Country, available at http://www.bbboxc.com/Role_of_the_board.htm (last visited Jan. 21, 2002) (on file with author).
some time prior to the match.\textsuperscript{131} It also makes the Commission responsible for regulations and standards applicable to the establishment of championship titles, weight classes, and the awarding of rankings.\textsuperscript{132} These provisions should prevent the opportunities for fraud that are present in the sport. If objective criteria are used to rank boxers, it will make it much more difficult for a promoter to bribe a sanctioning organization in return for a higher ranking, as a move up in the rankings based on a bribe would become more obvious to state and federal officials. Greater scrutiny of contractual provisions, such as those that force a winner to relinquish his rights to the loser’s promoter, would lessen the possibility of contracts of adhesion and ensure that deserving boxers are not denied the opportunity to challenge for a championship.

The enforcement powers given to the Commission will allow the Commission to be effective in the areas of improving safety and preventing unethical business practices. The Ali Act has been ineffective because some states have not been aggressive in enforcing its provisions.\textsuperscript{133} The Boxing Commission Act grants the Commission the authority to issue suspensions\textsuperscript{134} and prohibitory orders,\textsuperscript{135} conduct investigations,\textsuperscript{136} seek injunctions,\textsuperscript{137} intervene in civil actions,\textsuperscript{138} and

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  \item \textsuperscript{131} See S. 893, 107th Cong. § 9(a)(8)(A)-(B) (2001).
  \item \textsuperscript{132} See id. § 9(a)(9)(A)-(C). The Commission only establishes the standards for the creation of rankings, and is prohibited from the actual ranking of boxers. See id. § 9(c)(1).
  \item \textsuperscript{133} See supra notes 96-101 and accompanying text.
  \item \textsuperscript{134} See S. 893, 107th Cong. § 11(a)(1) (2001). The Commission may, after notice and opportunity for a hearing, suspend or revoke any license or registration issued under the Boxing Commission Act if it is necessary for the protection of health and safety of a boxer or is otherwise in the public interest. See id. The Commission may determine the appropriate length of suspension, but it may not be less than six months. See id. § 11(a)(2)(A).
  \item \textsuperscript{135} See id. § 11(b). Reasons for issuing prohibitory orders include a contract, arrangement, or agreement that does not comply with Commission regulations; a match that is either unlicensed or in which the participants are unlicensed; a reasonable belief that a match may be affected by bribery, collusion, intentional losing, racketeering, extortion, the use of unlawful threats, coercion, intimidation, or violence; undue risk to the health and safety of a boxer’s participation in a match; or the violation of any other regulation in the Boxing Commission Act. See id. § 11(b)(1). Once notice is given, regardless if an affected party received the notice, the Commission may then summarily prohibit a match pending the final outcome of a proceeding. See id. § 11(b)(2)(A).
  \item \textsuperscript{136} See id. § 11(c). Investigations may be held to determine if a person has violated, or is about to violate, any provisions of the Boxing Commission Act. See id. § 11(c)(1)(A). The refusal of a party to cooperate with an investigation is a misdemeanor criminal offense and can be punishable by a fine of not more than $1,000, or imprisonment for a term of no more than one year. See id. § 11(c)(3)(D).
  \item \textsuperscript{137} See id. § 11(c)(5). If the Commission determines that a person is engaged or about to engage in an activity that constitutes a violation of the Boxing Commission Act, they may bring an action in the appropriate court for injunctive relief. See id.
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With one body uniformly enforcing regulations, instead of each state, the Boxing Commission Act should be more successful at enforcement than the state commissions. Under the current system it is inevitable that there will be communication gaps between the patchwork of state commissions, as well as differences on how each state enforces provisions of the Safety Act and the Ali Act. Simply put, these communication gaps and differences will not exist under a central authority. Also, the criminal penalties associated with the failure to cooperate in a Commission investigation ensure that the boxing community will take the Commission’s authority seriously.

The Boxing Commission Act also provides that state commissions wishing to enact more stringent provisions will still have the authority to do so and the Commission will not interfere with the operations of the state boxing commissions as long as they meet the requirements of the Boxing Commission Act. The Act only maintains a floor that every state must abide by. States are still free to set a higher ceiling of regulation. Therefore, states like Nevada, who have expressed concerns about the Boxing Commission Act, will not see their authority infringed upon. The co-existence of state commissions and the National Commission will make the National Commission stronger because states may be able to alert the National Commission about a local problem that has the potential to develop into a national one.

Additionally, no less than eighteen months after the enactment of the Boxing Commission Act, state and tribal Indian boxing agencies must submit a “local boxing plan” that meets the requirements of the Boxing Commission Act to the Commission. On the opposite end, before prescribing regulations or establishing standards, the Commission must first consult with local commissions. The cooperation of the state and federal government in creating each other’s plans will ensure that the most comprehensive regulations possible are created. The states will also have a say in how the Commission creates federal standards. Therefore, the state standards will only then need to meet the federal standards the states themselves helped to create. Politically, these

138. See id. § 11(d). On behalf of the public interest, the Commission may intervene as right under Rule 24(a) of the Federal Rules of Civil Procedure in any civil action relating to professional boxing filed in a United States District Court. See id. § 11(d)(1).
139. See id. § 11(e).
140. See supra notes 96-101 and accompanying text.
141. See supra note 136 and accompanying text.
142. See S. 893, 107th Cong. § 13(a)-(b) (2001).
143. See id. § 12(a).
144. See id. § 10.
provisions may be beneficial in easing opposition by certain states and limiting the possibility that a state commission would question the constitutionality of the Boxing Commission Act.

B. Constitutionality of the Boxing Commission Act

Despite the proposed advantages the Boxing Commission Act may bring, there is a possible argument that the Act itself is unconstitutional. To date, there have been no constitutional challenges to either the Safety Act or the Ali Act. However, state boxing commissions have already expressed concern over the creation of a federal boxing commission. Therefore, there is a possibility that either a state, or perhaps a boxing promoter, would bring a constitutional challenge against the creation of a National Boxing Commission.

Congress has the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” As a result, if boxing as a whole is characterized as interstate commerce, Congress has the authority to regulate it. The Supreme Court has spoken about boxing as it relates to interstate commerce on one prior occasion. In International Boxing, the Court held that boxing promotion did qualify as interstate commerce and that professional boxing is not exempt from the Sherman Antitrust Act. However, in International Boxing the Court was specifically looking at whether promoters who promoted “professional championship boxing contests on a multistate basis, coupled with the sale of rights to televise, broadcast, and film the contests for interstate transmission” constituted interstate commerce within the meaning of the Constitution.

The question surrounding the constitutionality of the Boxing Commission Act is different because this Act deals with the sport of boxing on a whole, not just the promotion of major televised boxing

145. For an interesting discussion about constitutional concerns related to the constitutionality of the Safety Act, see Anderson, supra note 62, at 206-09, which indicates that since Colorado had no state boxing commission when the act was passed, it could be argued that the statute was unconstitutional, as it forces states without commissions to submit to the supervision of another state if they want to hold a boxing event.

146. See Royce Feour, Commission Objects to Federal Body, LAS VEGAS REV. J., June 16, 2001, at 8C (indicating that the Nevada boxing commission objects to a federal commission because they feel it may superecede and negatively impact Nevada’s commission; see also Brown, supra note 13, at 16 (quoting an anonymous official of the New York State Boxing and Wrestling Commission as saying “‘There is very strong opposition to a federal commission on the part of the states.’”).

147. U.S. Const. art. I, § 8, cl. 3.


149. See id. at 241-43.

150. Id. at 240.
events. Only a very small percentage of professional boxing matches are actually the high profile championship matches that are seen on television. The majority of bouts the Commission would be regulating would be local, non-televised, or club fights. The Court in International Boxing did not address the question of whether these types of local events would also be considered interstate commerce and, as such, subject to federal regulation. A commission that only regulated major championship bouts would almost surely be constitutional but it would also be pointless, as it is crucial that federal regulation of boxing is designed to create “uniform health and safety standards and other initiatives reach local industry activities where arguably the risk of injury is greatest.”

In response to a constitutional challenge, there is a view that even the smallest local boxing event can be considered interstate commerce. Since a boxer’s advancement is based on rankings that are primarily affected by a win-loss record, every fight, whether highly promoted, televised or not, can potentially impact his or her ranking. In order to increase his or her professional standing, a boxer is then likely to travel from state to state in an attempt to expand his or her opportunities to fight. Therefore, even local professional bouts have an impact on the interstate aspects of the sport. “Additionally, the frequent use of interstate commerce to circumvent many states’ regulatory schemes is persuasive evidence that the inadequacy of current health safeguards in professional boxing at all levels of competition is a problem of national scope.”

This line of reasoning seems to fall within the broad view the Supreme Court has taken with regard to the Commerce Clause. In United States v. Lopez, the Supreme Court stated that “[w]here economic activity substantially affects interstate commerce, legislation regulating

151. The Boxing Commission Act defines the term “boxing match” as “a professional boxing match, or any part of such a match, that is held within the United States. The term does not include an amateur boxing match.” S. 893, 107th Cong. § 4(1) (2001). This term is much broader than the scope of boxing as analyzed in International Boxing. See supra note 150 and accompanying text.


154. See Anderson, supra note 62, at 207.

155. See id.

156. See id.

157. Id. at 207-08.
that activity will be sustained.”\(^{158}\) In the case of local boxing matches, each individual bout can have a substantial affect on the parts of the sport that involve interstate activity.\(^{159}\) Further, the Supreme Court has also held that Congress can regulate and protect the instrumentalities, persons, or things in interstate commerce, even though a threat may come only from intrastate activities.\(^{160}\)

Additional support for the constitutionality of the Boxing Commission Act comes from the fact that the Supreme Court has recognized that even activities that are “purely intrastate” in character can nevertheless be regulated if they “directly affect interstate and foreign commerce.”\(^{161}\) In Perez, the Court upheld the power of Congress to criminally punish intrastate extortionate credit transactions, as this type of loan sharking provides organized interstate crime “with its second most lucrative source of revenue.”\(^{162}\) In a similar fashion, intrastate boxing is the backbone or base to the structure of interstate boxing. Intrastate boxing develops the participants and the fan support that make interstate events so financially lucrative and popular. Therefore, despite the fact the Boxing Commission Act regulates intrastate boxing as well as interstate boxing, it appears that the arguments supporting the constitutionality of the Act fall more into line with the Supreme Court’s recent Commerce Clause jurisprudence.

C. The Boxing Commission Act: A Policy Perspective

In addition to constitutional concerns about the Boxing Commission Act, it is likely the Act will face strong opposition from those that believe the federal government should not play a role in the regulation of sports. However, several policy arguments support the need for the federal government to take a more aggressive role in boxing.

Boxing is a multi-million dollar industry\(^{163}\) and problems with the sport can have a tremendous impact on consumers. Boxing fans pay high prices to view the sport both in person and on television. For example, the previously mentioned June 8, 2002, heavyweight championship bout


\(^{159}\) See supra notes 154-57 and accompanying text.


\(^{161}\) Perez v. United States, 402 U.S. 146, 156 (1971).

\(^{162}\) Id.

\(^{163}\) See Baglio, supra note 20, at 2260 n.18 (stating that a 1997 bout between Mike Tyson and Evander Holyfield grossed $120 million in one night, which is equal to the movie Titanic playing for four weeks on 2000 movie screens).
between Lennox Lewis and Mike Tyson at the Pyramid in Memphis, Tennessee, had ticket prices as high as $2,400 a seat. The expected gross revenue for the Pyramid was fifteen times more than the arena’s previous highest-grossing event. Almost two million people purchased the bout on pay-per-view at a cost of $54.95, leading to a record $103 million in television revenue. Besides direct pay-per-view purchasers, many cable and satellite television consumers also indirectly pay for boxing when they purchase other programming, as HBO and Showtime budget a combined $100 million annually for their boxing telecasts. These high prices paid by consumers obviously lead to enormous revenues, but they also mean that corruption in boxing can have a tremendous financial impact on consumers and fans alike.

Recently, purchasers of the pay-per-view event between Mike Tyson and Evander Holyfield brought suit against Tyson “claim[ing] they were entitled to view a ‘legitimate heavyweight title fight’ fought ‘in accordance with the applicable rules and regulations’ of the governing boxing commission.” The match grossed over $100 million in one night, because of pay-per-view technology. Instead of a legitimate boxing match, Tyson bit a piece of Holyfield’s ear off and the match ended in a disqualification. The court denied the plaintiffs relief, as they had no legal basis for their claim. Although the plaintiffs were unsuccessful in Castillo, the case does illustrate the impact of the sport’s lack of credibility among consumers. If rankings are being bought, judges are being bribed, or matches are being fixed, a legitimate argument can then be made that in those instances, consumers are being fraudulently deceived. Therefore, in order to ensure consumer protection, there needs to be a central authority that can enforce rules preventing possible corruption.

164. See Sandomir, supra note 50.
165. See id.
166. See Richard Sandomir, Lewis-Tyson Bout Provides a Knockout Revenue Figure, N.Y. TIMES, June 12, 2002, at D4 (noting that, by contrast, the one day record for a film that had recently been set by “Spider-Man,” was less than half of the amount grossed by the Lewis-Tyson pay-per-view sales).
169. See Newfield, supra note 167, at 13.
170. See Castillo, 70 N.Y.S.2d at 425. The court found that the plaintiff’s claims of breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, breach of express and implied warranties, tortious interference with contractual relations, wantonness, fraud, and negligent representation all lacked merit. See id. at 424. Despite the plaintiff’s lack of a legitimate legal claim, the fact they pursued litigation is an indicator that consumers question the credibility of the sport.
In addition to consumers, professional boxers themselves also need the protection that the Boxing Commission Act would offer. Most boxers are not earning millions of dollars in high-profile championship bouts. Instead many are journeymen boxers, out of the glare of the media, who are subject to excessive punishment and injury at poorly supervised events. In addition, the majority of boxers are minorities who come from economically disadvantaged backgrounds, which has led some to call boxing the “the sport of the underclass.” For this reason society has often had a tendency to overlook the cheating and injuries that are associated with boxing. This Act can help to eliminate this mindset and guarantee all boxers the same protection that boxers participating in a high-profile bout in Las Vegas would receive.

Further support for the Boxing Commission Act can be found in the fact that federal intervention into sports is not a new phenomenon. In fact, history shows that the federal government has previously been successful in regulating other sports because of concerns similar to those in boxing today. The federal government currently regulates interstate wagering in the sport of horse racing. These regulations are designed to promote cooperation among the states in the acceptance of legal interstate wagers. Similarly, boxing not only lacks cooperation among the states, but uniformity. The federal government has also intervened in the past to protect the health and safety of players in sports with inadequate private regulation. President Theodore Roosevelt, disturbed by the brutality in collegiate football, began a reform movement in 1905 to create a uniform set of rules and establish a broader range of penalties in order to reduce the rates of injury and death in football. Although it did not involve direct federal legislation or control, Roosevelt’s initiative was so successful that many major aspects of today’s football had their origins from the rules developed in 1906.

171. See supra notes 16-19 and accompanying text.
174. See id.
177. See Anderson, supra note 62, at 208.
178. See id.
179. See id.
V. SUGGESTIONS FOR ADDITIONAL PROVISIONS

A. Alternate Dispute Resolution Provision

In order to lessen the use of litigation in boxing and allow boxers to obtain quick resolution of contract disputes, the Boxing Commission Act should include a provision that either establishes or encourages the establishment of an arbitration or alternative dispute resolution system. Generally a boxer's career is brief, only spanning a few years due to the demanding physical nature of the sport. Contract disputes that wind up in litigation can be devastating to a boxer's career earning potential, as until the litigation is resolved the boxer is usually prevented from participating in bouts. Unfortunately, boxers often find themselves in the courtroom. Conceivably, there are also many boxers with contract disputes that do not pursue litigation either because they could not risk the loss of time in the ring or they lacked the financial means to commence litigation. Therefore, it is necessary for boxers to have a viable remedy for resolving these disputes.

The Boxing Commission Act should include or promote the formation of an arbitration or alternative dispute resolution plan similar to the types already utilized by other sports. Major League Baseball ("MLB"), the National Football League ("NFL"), the National Basketball Association ("NBA"), and the National Hockey League ("NHL") all utilize some form of grievance or salary arbitration system in order to resolve disputes. These sports have been successful in implementing arbitration systems because, unlike boxing, each one of these sports has a player's union. Although the presence of a player's union has made it easier for those sports to implement an arbitration system, boxing should still try to follow their example.

181. See Hearings on Ali Act-1998, supra note 152 (statement of Sen. Richard H. Bryan) (stating that "[t]he relationships that exist between boxers, promoters, managers, and sanctioning bodies is often so muddled that some boxers spend more time fighting in court than they do in the ring"). For some recent examples, see Lewis v. Rahman, 147 F. Supp. 2d 225 (S.D.N.Y. 2001); Remick v. Manfredy, 238 F.3d 248 (3d Cir. 2001); and Lewis v. Don King Productions., 94 F. Supp. 2d 430 (S.D.N.Y. 2000).
182. See Frederick N. Donegan, Examining the Role of Arbitration in Professional Baseball, 1 SPORTS LAW. J. 183, 189 (1994) (noting that all of these sports have an arbitration system for grievances and all but the National Basketball Association have a salary arbitration system as well).
183. See id. at 199.
MLB is thought to have the best and most developed arbitration system in professional sports. Salary arbitration was bargained for in baseball in 1973. The system is used to determine salaries for players with between three and six years of major league service that are unable to reach a salary agreement for the upcoming season with their respective team. In the baseball system, each side presents final salary figures to an impartial arbitrator. Arbitrators are selected from lists of potential arbitrators submitted by both the Major League Baseball Players’ Association and the owners’ Player Relations Committee. The arbitration hearing is held privately and consists of a one-hour presentation by each side with an additional half hour for each side to present a rebuttal and summation. The arbitrator then makes his or her choice of which offer to accept by using criteria that is set forth in the collective bargaining agreement. A decision is usually rendered within twenty-four hours.

Although the situations for which arbitration would be used in boxing would be different than the situations it is used in for baseball, boxing could benefit from the use of the procedural framework utilized in baseball. It would be possible to require all boxers and promoters to sign agreements to arbitrate their disputes when they apply for their license and registration. The agreement would specify the arbitration rules and identify the criteria to be used by the arbitrator. Boxers and promoters would then need to notify the Commission of their intent to arbitrate and disputes would be heard before an arbitrator or panel of arbitrators. A window for arbitration already exists in all cases, as the Boxing Commission Act already requires that a copy of the contract for any match must be filed with the Commission some time before the match. Just as the members of the Commission are, the arbitrators

184. See id. at 198.
186. See id.
187. See id. at 228-29.
188. See id. at 229.
189. See id.
190. See id.
191. See id. at 230.
192. Major League Baseball’s system is only for salary-arbitration cases, while a system in boxing would be mainly focused on resolving contractual disputes between boxers, promoters, and managers.
should be required to be knowledgeable about the sport and unbiased.\textsuperscript{195}
As with baseball, the procedures should call for a short hearing that results in the rendering of a quick decision. This would ensure a timely and fair resolution to all contract disputes within the sport.

Nevada currently makes use of an arbitration system in boxing\textsuperscript{196} that may also be a useful blueprint for a plan on a national level. The Nevada law is not mandatory, but it allows for contracts between boxers and managers to provide for voluntary binding arbitration of disputes by the Nevada Athletic Commission, pursuant to the Uniform Arbitration Act.\textsuperscript{197} The chairman of the Commission appoints a representative of the Commission to serve as an arbitrator in the matter.\textsuperscript{198} The process has been successful, especially for boxers, as they have been able to resolve disagreements with their managers in an expeditious manner.\textsuperscript{199} Boxers also receive protection from the possibility that a manager could pressure them in business dealings by intentionally tying up their career by filing of a lawsuit.\textsuperscript{200} In addition, both sides receive the benefit of a quick and economic resolution of their disputes.\textsuperscript{201}

\textbf{B. Pension/Medical Insurance Provision}

In addition to an alternative dispute resolution provision, it is important for the Boxing Commission Act to contain some type of mandatory insurance and pension plan. As currently proposed, one of the Commission's "[r]equired functions" is to "[e]ncourage the establishment of a life, accident, and health insurance fund for professional boxers."\textsuperscript{202} This provision is poorly constructed, as despite the Commission being "required" to act in this area, the fact they are only required to "encourage" allows for the possibility that insurance and pension provisions will never be established.\textsuperscript{203} Therefore, this portion of the Boxing Commission Act must be strengthened. Congress

\textsuperscript{195.} See id. § 5(b)(3)(C).
\textsuperscript{197.} See id.
\textsuperscript{198.} See id.
\textsuperscript{199.} See id.
\textsuperscript{200.} See id.
\textsuperscript{201.} See id.
\textsuperscript{202.} S. 893, 107th Cong. § 9(a)(4) (2001).
\textsuperscript{203.} It should be noted that the Commission is required, within one year of the effective date of the Boxing Commission Act, to submit a special report to Congress on the feasibility of establishing a pension system for professional boxing. See id. § 19. This Note takes the position that a pension system is not only feasible, but should be mandatory. See supra notes 200-02 and infra note 204 and accompanying text.
should either specifically establish a detailed insurance and pension plan, or mandate that the Commission is “required to establish” such a plan within a given time frame, such as one year.\(^{204}\)

A plan by Congress should first include the establishment of a mandatory insurance plan that covers all boxers. Medical and life insurance providing coverage for the possibility of injuries and/or death suffered during a boxer’s career should be established. Second, any plan must include the establishment of a pension plan. A pension plan is necessary to limit the pressure some boxers feel to keep fighting at the end of their career in order to reach financial stability.\(^{205}\) It is always difficult to get a boxer to quit,\(^{206}\) but eliminating the need to keep boxing in order to earn money would help. A guarantee of some money at the end of a boxer’s career may also eliminate the attitude in the boxing community that boxers should be given “every opportunity” by officials and referees to win because money is at stake.\(^{207}\)

One proposal on how to set up a pension system is to have a pension system for boxers that includes a health plan and death benefits.\(^{208}\) Any boxer who has been active for four years, or has had twenty bouts, should qualify for the system.\(^{209}\) This provision would probably be successful as boxers can become vested in the plan after reaching fairly reasonable requirements that make it unlikely a boxer would need to hang around the sport just to obtain the benefits. Importantly, this proposal does not attach any age requirement to become vested in the pension plan. An age requirement, especially one that went beyond the age of thirty-five, would not be a good decision as it would encourage boxers to continue to box to an age when their medical risks become more significant. If fighters, promoters, cable television networks and casinos agreed to allocate just two percent of the

\(^{204}\) The Commission may be more suited to take on the role of creating these plans, as they will have the boxing and medical knowledge that would be necessary to tailor a plan suited for the needs of boxing. Just as the Commission’s role in creating standards for physical and mental examinations of boxers is mandatory, Congress should look to make the creation of a pension and insurance plan mandatory in order to ensure their eventual creation.

\(^{205}\) For example, Meldrick Taylor continues to box despite the possible onset of brain damage. See Fish, supra note 79.

\(^{206}\) See Dineen, supra note 1, at 3 (quoting Bruce Silverglade, President of Gleason’s Gym in Brooklyn).

\(^{207}\) See id.

\(^{208}\) See Newfield, supra note 167, at 21 (arguing for the creation of a “Bill of Rights” in boxing that would, among other things, establish a national commission and set up a pension plan for boxers).

\(^{209}\) See id.
revenue from major bouts, an endowment for the plan could be established.210

VI. CONCLUSION

Boxing will always be a violent sport that poses risks of injuries to the athletes that compete in it. There will also always be the opportunity for some type of corruption no matter what regulatory steps are initiated. However, the unnecessary safety risks and the blatant corruption in the sport must come to an end. The Boxing Commission Act would be a serious step towards accomplishing these goals because it would create one set of minimum standards for the sport and ensure that these standards are enforced uniformly across the nation.

As with most federal regulatory legislation, the most compelling argument against the Boxing Commission Act may simply be that the taxpayer’s money can be better spent elsewhere and that boxing should simply regulate itself.211 History has demonstrated, however, that self-regulation or organization is not going to take place in boxing.212 It is up to Congress to step in, and at the very least, establish the framework for a central authority. Once successful, it may be possible for the federal government to step back from the day-to-day operations of the Commission and simply act as a monitor on its activity, handing control over to an independent league or agency.213 If the Commission were successful in restoring the image of boxing, there would likely be a large increase in corporate sponsorship and revenue,214 which would make a small tax on boxing revenues more agreeable to the boxing community. A tax of this nature could then help to fund a private independent

210. See id.

211. The Commission may generate some funding through its own activities, as the Act does allow the Commission to “charge fees for the licensing and registration” of boxing personnel. S. 893, 107th Cong. § 7(d) (2001). The “sanctioning organizations and promoters” are required to “pay the largest portion of the fees,” and boxers the smallest possible fees. Id. § 7(d)(3)(B)-(C). Additional funding would still be required, as the total amount collected in fees cannot exceed ten percent of the total budget of the Commission’s fiscal year. See id. § 7(d)(2). In order to generate additional funding, it would be possible for Congress to levy taxes on the sport, such as an event tax, which would allow the sport of boxing to be responsible for funding its own commission.

212. See id. § 2 (stating that “boxing is not successfully regulated by a private entity, and there is no prospect for meaningful self-regulation”).

213. See Baglio, supra note 20, at 2296-97 (concluding that the best solution for the problems faced by boxing would be a private solution, including the formation of an independent league and a boxers union).

214. See Symposium, supra note 55, at 218-19 (interviewing Max Kellerman, boxing commentator for ESPN2) (stating that since Las Vegas has tightened its regulation of the sport, it has seen increased corporate sponsorship of boxing events).
commission and accomplish the goals of the legislation at a much lower cost to taxpayers. In any event, the first step in offering much needed protection to boxers and consumers alike is for Congress to answer the bell and pass the Boxing Commission Act.

Patrick B. Fife*