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**THE MUHAMMAD ALI EXPANSION ACT:
THE RISE OF MIXED MARTIAL ARTS AND THE FIGHT THAT LIES AHEAD**

*Brandon Weber**

I. Introduction

Earlier this year, Rep. Markwayne Mullin (R) of Oklahoma's 2nd congressional district introduced H.R. 44, dubbed the Muhammad Ali Expansion Act (the "Expansion Act").¹ H.R. 44 would expand the Muhammad Ali Reform Act, so that Mixed Martial Artists and other combat sports athletes would be included under its protections.² Introduced in 1999, the Muhammad Ali Reform Act was implemented as an amendment to the Professional Boxing Safety Act of 1996, in order to expand protections to professional boxers.³ The Muhammad Ali Expansion Act was introduced on January 3, 2017 and has slowly been working its way through congress.⁴ The Expansion Act was initially referred to the Committee on Education and Workforce, and then later referred to the House Energy and Commerce Committee.⁵ Most recently, the Expansion Act was reviewed by the Subcommittee on Digital Commerce and Consumer Protections on November 9, 2017, in a hearing entitled, "Perspectives on Mixed Martial Arts."⁶ The key protections discussed include: (1) Protecting fighter health⁷ (2) Restricting coercive contracts⁸ (3) Disclosing financial information⁹ (4) Creating objective rankings¹⁰ and (5) Prohibiting conflicts of interest.¹¹ This note will discuss the necessity of the Muhammad Ali Expansion Act, as well as the need for unionization. Having said this, there are several hurdles fighters must overcome in order to gain such protections.

On August 20, 2016, millions of MMA enthusiasts located around the globe tuned in to witness UFC 202: Diaz v. McGregor 2.¹² The Ultimate Fighting Championship ("UFC") took center stage and exhibited international prominence, highlighting one of the world's fastest growing professional sports. The fight of the night was a Welterweight (170 lb.) rematch between former UFC lightweight (155 lb.) title contender Nate Diaz and UFC featherweight (145 lb.) champion Conor McGregor.¹³ Conor McGregor won the rematch via majority decision (48–47, 47–47, 48–47).¹⁴ The rematch went on to set multiple records including the highest number of pay-per view buys, at 1.65

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¹ Muhammad Ali Expansion Act, H.R. 44, 115th Cong.

² *Id.* at § 2(b)(8)(A).

³ Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6301 (2000); *see also* Professional Boxing Safety Act 15 USC 6301.

⁴ *Supra* note 1.

⁵ *Id.*

⁶ Transcript of November 9, 2017 hearing on *Perspectives on Mixed Martial Arts*, H.R. 44 Before the Subcommittee on Digital Commerce on Consumer Protection, 115th Cong. (2017), <https://docs.house.gov/meetings/IF/IF17/20171109/106604/HHRG-115-IF17-Transcript-20171109.pdf> (last visited Apr. 1, 2018).

⁷ *Id.* at 10.

⁸ *Id.* at 34.

⁹ *Id.* at 25-26.

¹⁰ *Id.* at 36.

¹¹ *Id.* at 18.

¹² En.wikipedia.org. (2018). *UFC 202*. [online] Available at: https://en.wikipedia.org/wiki/UFC_202 [Accessed 2 Apr. 2018].

¹³ Brent Brookhouse, *Rematch between Nate Diaz and Conor McGregor set for UFC 202*, MMA JUNKIE (Jun. 4, 2016), <https://mmajunkie.com/2016/06/rematch-between-nate-diaz-and-conor-mcgregor-set-for-ufc-202> (last visited Apr. 1, 2018).

¹⁴ *Supra* note 12.

million, and the highest purse ever recorded, which saw Conor McGregor take home \$3 million.¹⁵ The event attendance was 15,539 and the total gate revenue eclipsed \$7.6 million.¹⁶ The UFC had cemented Mixed Martial Arts as a powerhouse professional sport poised for future success. Having said this, the total payout for all 12 bouts was roughly 6 million dollars.¹⁷ Several of the fighters, even main card participants, walked away with less than \$12,000 for their fights.¹⁸ Although McGregor was handsomely rewarded for his efforts, questions began to form as to the improper treatment of various other MMA fighters.

A. Origins of Mixed Martial Arts

In 648 B.C. the ancient Greeks added “Pankration” as a sport to the 33rd Olympic Games.¹⁹ Pankration was a combat sport involving two participants who used boxing and wrestling techniques, such as a combination of strikes, chokes, and takedowns to submit their opponent.²⁰ The fighting would continue until one of the competitors acknowledged defeat.²¹ Fighters fought in the nude and did not wear gloves.²² The goal of the sport was for one of the fighters to submit the other by any means necessary.²³ Pankration had virtually no rules and the only outlawed activity was eye gouging and biting.²⁴ The sport gained prominence for roughly a millennium until it was outlawed in the fourth century.²⁵ Pankration remains the first recorded form of mixed martial arts.²⁶

B. Mixed Martial Arts Arrives in America

In 1993, mixed martial arts became a professional sport in the United States when Rorion Gracie teamed up with Bob Meyrowitz and formed the Ultimate Fighting Championship.²⁷ UFC-1 was broadcast live via pay-per-view television on November 11, 1993.²⁸ This event was held to test how various martial arts disciplines would fair when pitted against one another. The fights took place in an eight-sided cage referred to as the “Octagon.”²⁹ UFC-1 contestants did not wear gloves and

¹⁵ MMA Junkie Staff, *Full UFC 202 salaries: McGregor, Diaz get \$5 million of \$6.1 million total payout*, MMA JUNKIE (Aug. 22, 2016), <https://mmajunkie.com/2016/08/full-ufc-202-salaries-mcgregor-diaz-get-5-million-of-6-1-million-total-payout> (last visited Apr. 1, 2018).

¹⁶ MMA Junkie Staff, *UFC 202 attendance: Entertaining card nets fifth highest gate in UFC history*, MMA JUNKIE (Aug. 21, 2016) <https://mmajunkie.com/2016/08/ufc-202-attendance-entertaining-card-nets-fifth-highest-gate-in-ufc-history> (last visited Apr. 1, 2018).

¹⁷ MMA Junkie Staff, *supra* note 15.

¹⁸ *Id.*

¹⁹ Ancient History Encyclopedia, *Pankration*, Stella Nenova, <https://www.ancient.eu/pankration/> (last visited May 1, 2018).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Stefan Andrews, *Pankration was the Ancient Olympics version of Mixed Martial Arts, and it is the only discipline not reinstated with the creation of Modern Olympics in 1896*, THE VINTAGE NEWS (Jan. 19, 2017), <https://www.thevintagenews.com/2017/01/19/pankration-was-the-ancient-olympics-version-of-mixed-martial-arts-and-it-is-the-only-discipline-not-reinstated-with-the-creation-of-modern-olympics-in-1896/> (last visited May 1, 2018).

²⁷ Guillermo Cruz, *Rorion Gracie and the day he created the UFC*, MMA FIGHTING (Nov. 12, 2013), <https://www.mmafighting.com/2013/11/12/5043630/rorion-gracie-and-the-day-he-created-the-ufc> (last visited May 1, 2018).

²⁸ *Id.*

²⁹ *Id.*

were allowed to do anything except for eye gouge or bite their opponent.³⁰ Fighting relatively uncontested, Royce Gracie, the brother of co-founder Rorion Gracie, dominated the field at UFC-1.³¹ The event garnered 85,000 viewers according to pay-per-view records.³² The UFC continued to grow in rapid fashion and as such began adapting time limits, weight classes, and safety restrictions.

The UFC stated the three ways to defeat your opponent included submission, knockout, or death.³³ The physical brutality of the sport coupled with its rapid growth caught the attention of political power players in Washington, D.C. On numerous occasions, Senator John McCain (AZ) spoke before Congress to prohibit MMA fights from taking place across all 50 states.³⁴ He referred to the nature of these bouts as “human cockfighting” and stressed the importance of prohibiting the advancement of the sport.³⁵ As a result of Senator McCain’s efforts, a multitude of states enacted laws to regulate MMA contests and 36 states even banned MMA altogether.³⁶ In 1997, McCain became chair of the Senate Commerce Committee and influenced several pay-per-view carriers to drop all MMA contests.³⁷ The UFC’s growing revenue stream was sent into an immediate decline and the organization faced significant financial struggle for the next four years.³⁸

C. Expansion of UFC via Zuffa L.L.C. Acquisition

After several years of financial turmoil, the near-bankrupt UFC received new life with its 2-million-dollar acquisition by the Fertitta brothers and Dana White through their newly formed company, Zuffa L.L.C.³⁹ The three men all shared the vision of turning MMA into a legitimate, mainstream sport. The first course of action to legitimize the UFC was unified rules and safety regulations, which allowed MMA to be universally recognized as its own unique and authentic sport.

On April 3, 2001, Marc Ratner of the Nevada State Athletic Commission and Larry Hazard of the New Jersey Athletic Commission met to discuss the sanctioning of mixed martial arts events.⁴⁰ The meeting addressed the lack of uniformity and the effect of constant rule changes on the safety of the sport.⁴¹ Both executives decided it was time to implement unified rules of competition regarding MMA events.⁴² On July 23, 2001 Nevada followed New Jersey in adopting the *Unified Rules for Mixed Martial Arts* (“Unified Rules”).⁴³ The Unified Rules set weight classes, number of rounds, time limits, 31 different fouls, and eight ways to properly end a fight.⁴⁴ The Unified Rules led several states to lift

³⁰ Peter Hess, *The Development of Mixed Martial Arts: From Fighting Spectacles to State-Sanctioned Sporting Events*, 4 Willamette Sports L.J. 1, 8 (2007).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Jordan T. Smith, *Fighting for Regulation: Mixed Martial Arts Legislation in the United States*, 58 Drake L. Rev. 617, 622 (2010).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Clyde Gentry, *No Holds Barred: Ultimate Fighting and the Martial Arts Revolution*, 208, Milo Books (2d ed. 2005).

⁴⁰ *Id.* at 243.

⁴¹ *Id.*

⁴² *Id.* at 208.

⁴³ New Jersey State Athletic Control Board, Mixed Martial Arts Unified Rules of Conduct (purposed Apr. 2001) (to be codified at 13 N.J. Admin. Code, §§ 46-4.25) available at www.state.nj.us/lps/sacb/docs/martial.html (last Visited May 2, 2018).

⁴⁴ *Id.*

their ban on MMA, aiding the resurgence of MMA for purchase on pay-per-view.⁴⁵ The institution of a unified rule system led to professional uniformity and increased fighter safety, both of which legitimized MMA. The Unified Rules have become the standard rules, in most mixed martial arts productions. These rules will be analyzed in further detail in the coming sections.

D. Key Players

There are several key players that comprise the entirety of a professional MMA bout. The first category of players consists of the actual fighters.⁴⁶ The fighters are defined as the participants in combat.⁴⁷ The fighters are compensated directly from the MMA promotional organization and can receive purses ranging from a few thousand dollars to a few million.⁴⁸ Additionally, they are often compensated through sponsorship deals, in an effort to brand a company's product.⁴⁹ The second category of key players are the fighters manager or agent.⁵⁰ The manager/agent is responsible for handling all business and administrative needs of the fighter, such as procuring deals with promoters and sponsors.⁵¹ For this reason, managers must maintain relationships with both MMA promoters and sponsors in order to compensate fighters.⁵² Often fighters early in their careers rely on sponsorship money, as they do not receive enough from their fight purse alone.⁵³ The manager/agent often receives a percentage of the fighter's purse for his work.⁵⁴ The third key player in MMA is the promotional organization.⁵⁵ The promotional organization is the company that finances, promotes, and holds the MMA fights.⁵⁶ Such companies include the UFC, Bellator, and StrikeForce. The UFC is by far the largest promotional organization and was recently bought for over 4 billion dollars by talent agency WME-IMG.⁵⁷ These promotional companies contract for the participants to compete on their fight card in exchange for a predetermined fight purse.⁵⁸ The fourth and final players of note are the regulatory officials.⁵⁹ Regulatory officials are associated with licensing, rule-making, oversight, and discipline.⁶⁰ MMA regulation is a consistent endeavor and, as such, compliance serves as an integral part of the governance of large promotional organizations.⁶¹ For example, the UFC recently hired former Nevada State Athletic Commission Executive Marc Ratner to serve as its VP of

⁴⁵ *Id.*

⁴⁶ Brendan S. Maher, *Understanding and Regulating The Sport of Mixed Martial Arts*, 32 *Hastings Comm. & Ent L.J.* 219-220 (2009).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Cf. Nev. Admin. Code § 467.0028 (2009) (defining "manager"). See also Mike Harris, *End of an Era: Fighter-Manager Handshake Deals Die as MMA Grows*, SHERDOG (Jan. 13, 2009), <http://www.sherdog.com/news/articles/2/End-of-an-Era-Fighter-Manager-Handshake-Deals-Die-as-MMA-Grows-15757> (last Visited Apr. 1, 2018).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Cf. Nev. Admin. Code § 467.0031 (2009) (defining "promoter").

⁵⁶ Gary Wimsett, *Promotions and the Use of Exclusive Fighter Agreements in MMA*, FIVE OUNCES OF PAIN (May 19, 2009), <https://www.fiveouncesofpain.com/2009/05/19/promotions-and-the-use-of-exclusive-fighter-agreements-in-mma/> (discussing promotional contracts) (last visited May 1, 2018).

⁵⁷ Joseph Cotterill and Cardiff Garcia, *WME-IMG buys Ultimate Fighting Championship for \$4bn*, FINANCIAL TIMES (Jul. 11, 2016), <https://www.ft.com/content/eed0fc18-4760-11e6-b387-64ab0a67014c> (last visited May 2, 2018).

⁵⁸ Wimsett, *supra* note 56.

⁵⁹ Maher, *supra* note 46, at 220.

⁶⁰ *Id.*

⁶¹ *Id.*

Regulatory Affairs.⁶² Ratner serves as the company's officer in charge of state compliance, a position he once held and a field in which he maintains strong relationships.⁶³ Evidently, conflicts of interest arise as powerful promotional organizations maintain influence over state regulators. Owners of large promotional organizations often wield this power by threatening to hold bouts in other states, effectively precluding the state from collecting fees, taxes, and other revenues in relation to the MMA events. Such monetary power leads many to believe that state regulators are beholden to the companies they are tasked with regulating.

II. Current MMA Regulation

In 2016, New York ended its ban on mixed martial arts, becoming the 50th and final state to legalize MMA.⁶⁴ Currently, MMA is regulated by administrative bodies, state and federal statutes, or a combination of both.⁶⁵ State legislatures have regulated MMA in the following two ways: (1) By granting administrative bodies the power to adopt and enforce regulations or (2) By passing regulations through statutory construction and then giving administrative bodies the power to enforce them.⁶⁶ The first scenario allows the administrative agencies to actually draft MMA rules and regulations, while the second scenario only affords them the power to enforce existing statutory law.

A. State Athletic Commissions

The most common form of MMA regulation is for states to delegate authority to administrative bodies known as State Athletic Commissions.⁶⁷ The state legislature then grants broad authority to the state athletic commission to oversee MMA related policy matters such as rulemaking.⁶⁸ Upon receiving this power, the Athletic Commission is afforded the right to elect the rules and regulations that will govern all aspects of the promotional bout procedure.⁶⁹ The regulatory body will retain all discretion over these decisions.⁷⁰ Upon the finality of their decisions, the rules become law pursuant to the states administrative codes.⁷¹ The benefit of this system is that, upon formation of an administrative body, administrative rules can be changed more quickly when compared to statutes, which require legislative action.⁷² In several states, the State Boxing Commission assumes the role of governance over regulating professional MMA events.⁷³ A few states, including Alaska and Delaware, have no state athletic commission, deferring to the Association of Boxing Commissions.⁷⁴

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Aaron Smith, *MMA wins long fight to be legal in New York State*, CNN MONEY (Mar. 23, 2016), <http://money.cnn.com/2016/03/23/news/mma-ufc-fight-in-new-york/index.html> (last visited May 2, 2018).

⁶⁵ Smith, *supra* note 34, at 628.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 629.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

B. Regulation via Statute

The second approach to MMA regulation is when the legislature passes statutes regarding MMA and then directs an administrative body to adopt and enforce these statutory rules and regulations.⁷⁵ States set standard health requirements, as well as tax and fee requirements, which the State Athletic Commission then enforces.⁷⁶ This is more commonly seen in states which have recently lifted their bans on MMA.⁷⁷ State legislators maintain more control in this scenario.⁷⁸

C. Unified Rules of Mixed Martial Arts

As stated previously, the creation of the Unified Rules played an important role in the evolution of MMA regulation. Drafted by the New Jersey Athletic Control Board, these rules of conduct unified regulations set forth by various mixed martial arts companies across the United States.⁷⁹ The Unified Rules of Conduct created in-fight rules, equipment standards, and health and safety guidelines.⁸⁰

First, the Unified Rules established weight classes starting with flyweight (125 lbs.) and ending with super heavyweight (265+ lbs.).⁸¹ This decision outlawed weight discrepancies in MMA bouts, a dangerous aspect of early organizational events.⁸² Second, the Unified Rules established that the fight area had to be at least 18 feet by 18 feet and no bigger than 32 feet by 32 feet.⁸³ This eliminated the disparity between differing fight organizations and made it easier for fighters to train properly for bouts.⁸⁴ Third, the Unified Rules provided specific equipment requirements including: mouthpieces, protective cups, and commission sanctioned gloves.⁸⁵ These equipment rules promoted fighter fairness while also increasing fighter safety.⁸⁶ Fourth, the rules limited the number of rounds and round length.⁸⁷ The rules limited the bouts to three rounds at 5 minutes per round.⁸⁸ A rest period between each round was set at one minute.⁸⁹

Next, the Unified Rules provided a detailed system for scoring fights based on criteria guidelines involving striking, grappling, control, and aggressiveness.⁹⁰ Athletes and fans now had a cognizable system capable of declaring a winner. Given the complexity of MMA, as well as the subjectivity of judging, this amendment was far overdue. Lastly, the Unified Rules established several key provisions to promote health and safety in MMA. The Unified Rules banned several techniques

⁷⁵ *Id.* at 630.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Michael Kim, *Mixed Martial Arts: The Evolution of A Combat Sport and Its Laws and Regulations*, 17 Sports Law. J. 49, 56 (2010).

⁸⁰ *Id.*

⁸¹ N.J. Admin. Code §13:46-24A.1 (2003).

⁸² *Id.*

⁸³ *Id.* §13:46-24A.2.

⁸⁴ *Id.*

⁸⁵ *Id.* §13:46-24A.4, -24A.9.

⁸⁶ *Id.*

⁸⁷ *Id.* §13:46-24A.11.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* §13:46-24A.13.

such as head butting, groin attacks, strikes to the spine, and various other techniques that had high risks of significant bodily injury to one's opponent.⁹¹ MMA athletes were now required to take part in medical examinations and blood testing, while promoters were required to provide medical insurance, access to medical physicians, and other safety oversights.⁹²

D. Association of Boxing Commissions (ABC)

The final regulatory body worth mentioning is the Association of Boxing Commissions (“ABC”).⁹³ The ABC is a nonprofit organization created to serve as the national governing body over all combat sports.⁹⁴ The ABC's listed goals are to: (1) Promote uniform health and safety standards in boxing and MMA, (2) Provide accurate records for boxers and mixed martial artists, (3) Increase communication between organizations, (4) Publish medical and training information and education for all boxing and MMA related professionals, (5) Encourage adherence to, and enforcement of, applicable federal laws by each member of the ABC, and (6) Select and retain record keeping source for suspension and records.⁹⁵ However, the ABC does not have any binding authority over the state athletic commissions.⁹⁶

On January 1, 2017, after discussion by the ABC, changes were implemented to the Unified Rules of MMA.⁹⁷ The new rules revise the language of the scoring criteria language and revising the definition of a “grounded fighter.”⁹⁸ While the ABC does not have definitive power over the state commissions, it does have binding control over the terminology of the Unified Rules of MMA.⁹⁹ Whether or not state athletic commissions decide to implement these changes is up to them. Since the implementation of these new rules, several states including—New Jersey, Ohio, Missouri, Colorado, Virginia, Maryland and South Dakota—have chosen not to adopt the changes in full.¹⁰⁰ Recent actions and inactions by individual states display the current mode of regulation in mixed martial arts. Each state possesses its own legislature, which appoints its own commissioners who subsequently are given the power to act autonomously.¹⁰¹

III. Current MMA Abuses

Abuses in the modern age of MMA have mirrored a lot of the same abuses professional boxers faced several decades ago. The abuses both athletes experienced can be broken down into three categories. Primary Examples include: (1) contractual abuses; (2) financial abuses; and (3) ranking abuses. It is important to analyze these abuses as they have occurred in the formation of professional mixed martial arts. The necessity of the Expansion Act and its effect on MMA cannot be fully

⁹¹ *Id.* §13:46-24A.15.

⁹² *Id.* §13:46-12A.3, -12A.16, -12A.17, -12B.2(d), -12B.6.

⁹³ Association of Boxing Commissions Const. & Bylaws (Jul. 31, 2006), <http://www.abcboxing.com/abc-constitution/> (last visited May 2, 2018).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Marc Raimondi, *New MMA rules to be implemented beginning Jan. 1, 2017*, MMA FIGHTING (Aug. 3, 2016), <https://www.mmfighting.com/2016/8/3/12370276/new-mma-rules-to-be-implemented-beginning-jan-1-2017> (last visited May 1, 2018).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

appreciated without an understanding of these abuses and their effect on MMA and its competitors.

A. Contractual Abuses

Although there are some regulations regarding bout agreements and fighter contracts, the content of the deals is determined heavily by individual athlete bargaining. For years, professional boxers faced significant bargaining disadvantages at the hands of the promoters, causing many to push for regulatory limits on the contractual relationship between competitors and professional boxing organizations. The MMA field is currently facing similar issues. As a result of its success, the UFC has amassed a very large amount of bargaining power, unmatched by its member athletes.¹⁰² This means that MMA competitors have little recourse from coercive, one-sided contracts that heavily favor the interests of the fight organization.¹⁰³ The UFC is notorious for its restrictive contracts, often giving its fighters an ultimatum regarding the terms and conditions of contracts and/or individual bout agreements.¹⁰⁴ Given the fact that there are a multitude of fighter's willing to accept these terms, fighters lack the necessary bargaining power to properly negotiate contract agreements.¹⁰⁵ Additionally, the UFC's near monopoly on MMA contests make it even more difficult for competitors to gain access to a fair bargaining process.¹⁰⁶

Since gaining national prominence, the UFC has insisted that each of its competitors be held to exclusive fighter agreements.¹⁰⁷ These agreements grant the promoter control over the contractual relationship ns a myriad of ways. The term "exclusivity" asserts that fight organizations own the entirety of an athlete's rights to participate in professional MMA fights.¹⁰⁸ Competitors signed to exclusive contracts with the UFC must compete only in the UFC for the agreed upon term or the agreed upon number of fights.¹⁰⁹ Regardless of the term provisions, the contract often involves termination rights and extension clauses, which can be exercised at the sole discretion of the fight organization.¹¹⁰ Essentially, the UFC can force fighters to compete exclusively for the UFC and not for any other fight organizations.¹¹¹ This aspect of UFC policy has been litigated on numerous occasions. Contract abuses seen in the UFC have mirrored several of the abuses that boxers of the previous generation faced. The Ali Act defines a coercive contract as:

¹⁰² See generally Leland Roling, *UFC Holds All the Power in Contract Negotiations with Dan Henderson*, BLOODY ELBOW (Sep. 15, 2011, 1:00 PM), <http://www.bloodyelbow.com/2011/9/15/2426983/ufc-dan-henderson-holds-all-the-power-in-contract-negotiations> (last visited May 2, 2018).

¹⁰³ See Geoff Varney, *Fighting for Respect: MMA's Struggle for Acceptance and How the Muhammad Ali Boxing Reform Act Would Give It a Sporting Chance*, 112 W. VA. L. REV. 269, 299-300 (2009) (discussing how the Muhammad Ali Boxing Reform Act would prevent one-sided contracts if the Act applied to MMA). President Dana White has stated that fighters must "get with the program" and accept the terms of the contract or forget about fighting for the UFC.

¹⁰⁴ Matt De La Rosa, *Historic MMA Rivalries, Part Four: UFC vs. Fighters*, BLEACHER REPORT (Feb. 24, 2009), <http://bleacherreport.com/articles/128714-historic-mma-rivalries-part-4-ufc-vs-fighters> (explaining that the UFC is the biggest promoter in MMA and has the "luxury" of running its business based completely on its own preferences) (last visited May 2, 2018).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Wimsett, *supra* note 56.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Gentry, *supra* note 39, at 52.

A contract provision that grants any rights between a boxer and promoter, or between promoters with respect to the 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.¹¹²

An example of this can be seen in the practices set forth by legendary boxing promoter Don King.¹¹³ King often had boxers challenging for title fights sign an agreement stating that if they won a championship belt from a fight against one of his fighters they would be forced, upon winning the belt, to allow King to become their sole promoter.¹¹⁴ These provisions ensured that King would always be the promoter for the current boxing champion.¹¹⁵ This was an example of a fight promoter effectively contracting with his own interests in mind.¹¹⁶ This act is similar to that of the UFC's "Champions Clause" and is what the Ali Act sought to address.¹¹⁷

A controversial extension clause, often used in UFC contracts, is the "Champions Clause."¹¹⁸ This clause asserts that promoters can precondition the extension of a contract, if a fighter wins a belt while under the original contract terms.¹¹⁹ This has an enormous effect on the bargaining power of the champion, as he cannot use his title as a bargaining chip to retain more money from the current organization or a different organization with a better offer. This prevents the best fighters from leaving and joining other fight organizations.¹²⁰ A hotly debated issue involving this clause is whether the UFC should have time restrictions.¹²¹ In theory, the UFC could draft a contract with a Champions Clause that extends indefinitely, thus maintaining exclusive rights to a fighter for as long as he is the UFC champion.¹²² A clause like this must be restricted to allow for fighters' to properly utilize their status as the world's best. An example of this contractual abuse can be seen in the UFC's handling of Anderson Silva. Early in his career, Silva wanted to fight boxing champion Roy Jones Jr. in a boxing match.¹²³ In order to fight in a separate organization, Silva would have had to first breach his UFC contract, at which point he would be subject to damages at the hands of the UFC.¹²⁴

The next provision that unfairly disadvantages fighters is the "Retirement Clause", which is invoked when a top fighter retires.¹²⁵ It allows the fight organization to retain the rights of the retired fighter in perpetuity.¹²⁶ This clause gives the UFC the power to suspend the contract term for the

¹¹² Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6307b(a)(1)(B).

¹¹³ John McCain & Ken Nahigian, *Sports and the Law: A Fighting Chance for Professional Boxing*, 15 Stan. L. & Pol'y Rev. 7, 20 (2004).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Associated Press, *House Passes Ali Reform Act*, JERRY QUARRY FOUND (May 22, 2000), <http://www.jerryquarry.com/aliact.htm>

¹¹⁸ Kelsey Philpott, *Anderson Silva Looking to Avoid "UFC Champion" Clause?*, MMA PAYOUT (Aug. 11, 2009), <http://mmapayout.com/2009/08/anderson-silva-looking-to-avoid-ufc-champions-clause/> (last visited May 2, 2018).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Adam Swift, *Inside the Standard Zuffa Contract*, SHERDOG (Oct. 31, 2007), <http://www.sherdog.com/news/articles/Inside-the-Standard-Zuffa-Contract-9734> (last visited May 2, 2018).

¹²⁶ *Id.*

period in which the fighter is not competing.¹²⁷ Not only does this clause not allow fighters to retire and then work for another organization, it also guarantees the fighter will still be subject to all the contractual provisions controlling the athlete's behavior.¹²⁸ For example, UFC legend Randy Couture was sued by the UFC for breach of contract for attempting to compete for another organization. In addition, the UFC sought damages related to comments Couture made about the UFC after retiring.¹²⁹ As you can see, certain provisions can become quite restrictive on athletes, even beyond retirement from the sport.

Lastly, fight organizations often make their participants sign an Ancillary Rights Agreement, which requires the fighter to sign over his or her name and likeness over to the fight organization.¹³⁰ Pursuant to the agreement, fighters assign the UFC exclusive rights to be used in any way the organization sees fit.¹³¹ This agreement becomes prevalent when you have new fighters who start in the UFC, but do not rise to fame in the UFC. If a fighter loses and is terminated by the UFC, but later gains fame in another organization, the UFC still retains the rights to his or her likeness.¹³² Therefore, the agreement allows the UFC to prevent an athlete from taking part in self-promotion even after his career with the UFC is finished.¹³³ Again, the UFC preys on the minimal bargaining power afforded to new fighters looking to get their start. If fighters choose not to accept these terms, their spot will be given to another fighter who will.¹³⁴

The UFC often uses certain broad termination agreements to get rid of fighters.¹³⁵ Examples of such termination reasons include losses, failed drug tests, and unapproved sponsorships.¹³⁶ Matt Lindland was a top contender in the middleweight division who was dismissed from the UFC after wearing an unapproved sponsor's logo on his T-Shirt during a pre-fight weigh-in.¹³⁷ The UFC claimed Lindland's act was a material breach of the contract's conflict of interest provisions.¹³⁸ A seemingly harmless act led to Lindland's suspension from the UFC and was believed to be the reason the UFC chose not to renegotiate his next contract.¹³⁹ This small act displays the contractual power fight organizations possess and their willingness to exercise this power at a fighter's expense. In all, these provisions have an adverse effect on fighters and their careers. The fight organizations maintain an increasingly high level of bargaining power, and as such, use this power to draft restrictive contracts that can be extended or terminated solely at the discretion of the fight organization.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ David Nelmark, *Intellectual Property Rights Under the Zuffa Standard Contract*, MMA PAYOUT (Jul. 16, 2009), <http://mmapayout.com/2009/07/intellectual-property-rights-under-the-zuffa-standard-contract/> (last visited May 2, 2018).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Wimsett, *supra* note 56.

¹³⁶ Eric Foster, *Matt Lindland: UFC Refuses to Negotiate New Deal*, MMA JUNKIE (Feb. 15, 2008, 7:00 AM), <https://mmajunkie.com/2008/02/matt-lindland-ufc-refuses-to-negotiate-new-deal> (last visited May 2, 2018).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

B. Financial Abuses

Major mixed martial arts organizations such as the UFC and Bellator remain steadfast in their decision not to reveal the financial disclosures of their events and business.¹⁴⁰ This means that fighters remain in the dark on just how much money their fights actually do in terms of revenue for their fight organization.¹⁴¹ The highest fight purse recorded in UFC history was given to Conor McGregor for his fight against Nate Diaz at UFC 202.¹⁴² McGregor collected \$3 million for his participation in the fight, while Diaz collected \$2 million.¹⁴³ Although a combined \$5 million may sound generous, the key to a proper analysis of this statistic requires knowledge of how much the UFC brought in as a result of the fight. If the UFC made \$100 million, then perhaps \$5 million is no longer commensurate with the event. To put this into perspective, Conor McGregor collected at least \$30 million for his most recent fight against Floyd Mayweather.¹⁴⁴ This event took place, not for the UFC, but for professional boxing. The deal was believed to have included additional television rights and endorsements, which would have put McGregor's estimated combined earnings for the event at \$100-150 million.¹⁴⁵ The McGregor boxing match did 4.3 million pay-per-view buys, while the UFC event did 1.65 million buys, roughly 2.5 times as many buys.¹⁴⁶ Having said this, the payout of the boxing match was 10 times the payout of the UFC fight as opposed to 2.5, which remains incommensurate with the above difference in pay-per-view buys. Currently, 259 of the UFC's 537 competitors make less than \$57,000 per year, which is the U.S. household median income.¹⁴⁷ 73 UFC fighters actually collected less than \$15,000 in 2017, which falls under the annual minimum wage in the United States.¹⁴⁸ Only 29 UFC fighters made over \$450,000 in 2017, which is currently the NFL's league minimum salary.¹⁴⁹ UFC champion T.J. Dillashaw made \$280,000 in all of 2017, despite defeating Cody Garbrandt to become the bantamweight world champion.¹⁵⁰ Despite these lopsided statistics, the UFC remains steadfast in its unwillingness to disclose the revenues of their events. This unwillingness to disclose the financials of professional MMA events naturally begs the question, "Are professional MMA fighters being taken advantage of financially?"

C. Ranking Abuses

The third abuse related to the current system of UFC governance can be seen in the current ranking system.¹⁵¹ The UFC has come under heavy scrutiny by its former competitors and Congressman Markwayne Mullin, because the current system lacks an independent sanctioning

¹⁴⁰ *Supra* note 6, at 58.

¹⁴¹ *Id.*

¹⁴² Shaun Al-Shatti, *UFC 202 salaries: Conor McGregor, Nate Diaz cash seven-figure paydays*, MMA FIGHTING (Aug. 22, 2016), <https://www.mmfighting.com/2016/8/22/12587038/ufc-202-salaries-conor-mcgregor-nate-diaz-cash-seven-figure-paydays> (last visited May 2, 2018).

¹⁴³ *Id.*

¹⁴⁴ Scott Polacek, *Mayweather vs. McGregor Purse: Known Prize Money Payout Distribution*, BLEACHER REPORT (Aug. 27, 2017), <http://bleacherreport.com/articles/2728958-mayweather-vs-mcgregor-purse-known-prize-money-payout-distribution> (last visited May 2, 2018).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Jeff Fox, *2017 UFC Fighter Salaries - Complete List*, THE SPORTS DAILY (Jan. 8, 2016), <http://thesportsdaily.com/mma-manifesto/2017-ufc-fighter-salaries-complete-list/> (last visited Apr. 1, 2018).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Supra* note 6, at 6.

organization.¹⁵² Rankings are determined by a select group of journalists, who are employed by the UFC.¹⁵³ This has led many to believe that the UFC maintains total control over the ranking system. If this is the case, fights may not be given to fighters who have earned them, by way of being the number one challenger, but given to fighters who can best aid the promoters purpose, which is almost always based on which fighters can bring in the most revenue. For example, at UFC 193, Holly Holm was given a title shot against Ronda Rousey, despite Holm being ranked 8th at the weight class. It was speculated that the UFC determined the Holm v. Rousey matchup to be the most appealing to fans and most profitable for the organization.¹⁵⁴ At the time Holm fought Rousey, there were 6 fighters ranked ahead of her who should have reasonably been given a shot at fighting Rousey before Holm. Another example, was at UFC 217, where George St. Pierre was given the opportunity to fight world champion Michael Bisping, although St. Pierre hadn't fought competitively in several years.¹⁵⁵ An independent ranking system would have never allowed a semi-retired fighter to immediately participate in a title fight upon his return to the sport. However, the UFC controlled system determined this matchup to be profitable enough to allow it to move forward as an "extenuating circumstance." As you can see, this system is in dire need of an overhaul in order to fix the inconsistencies that currently dominate the system. The current lack of an independent ranking system raises valid concerns regarding the legitimacy of the sport. If fighters are not able to earn a title shot based on merit, the sport and its fans will surely suffer the consequences.

IV. Statutory Construction

Professional MMA organizations face pressure from the Congressional Subcommittee on Digital Commerce and Consumer Protections to fix the current abuses plaguing professional fighters.¹⁵⁶ As a result of this pressure, the United States House of Representatives have proposed H.R. 44 – Muhammad Ali Expansion Act, to expand the rights of professional MMA fighters.¹⁵⁷ In order to fully understand the intricacies of this bill, relevant legislation preceding this bill must first be analyzed. The Expansion Act is proposed as legislation amending the Professional Boxing Safety Act of 1996 and the Muhammad Ali Boxing Reform Act.¹⁵⁸ These two bills were enacted to combat the abuses seen in the professional boxing industry.¹⁵⁹ They serve as precedent for the Expansion Act.¹⁶⁰

A. Professional Boxing Safety Act of 1996

H.R. 4167, dubbed the Professional Boxing Safety Act of 1996, was created as the initial policy measure against the abuses facing professional boxers.¹⁶¹ The act has several key provisions related to

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Fraser Coffeen, *UFC 193 Fight Card Primer: Ronda Rousey vs Holly Holm, BLOODY ELBOW* (Nov. 14, 2015), <https://www.bloodyelbow.com/2015/11/14/9723612/ronda-rousey-ufc-193-fight-card-holly-holm-preview-primer-analysis> (last visited Apr. 1, 2018).

¹⁵⁵ *Supra* Note 6, at 48-49.

¹⁵⁶ Steve Marrocco, *Congressman Grills UFC Executive during Ali Expansion Act Hearing, MMA JUNKIE* (Nov. 9, 2017) <https://mmajunkie.com/2017/11/congressman-questions-ufc-executive-ali-expansion-act-hearing> (last visited May 2, 2018).

¹⁵⁷ *Id.*

¹⁵⁸ Professional Boxing Safety Act of 1996, 15 U.S.C. § 6301 (Supp. II 1996), amended by Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6301 (2000).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Professional Boxing Safety Act of 1996, 15 U.S.C. § 6301 (Supp. II 1996).

requirements for state athletic commissions and imposes penalties for illegal activities. The act first prohibits any person from arranging, promoting, organizing, producing, or fighting in a professional boxing match held in a State that has no boxing commission unless the match is: (1) supervised by a commission from another State; and (2) subject to the most recent Association of Boxing Commissions guidelines, as well as any additional relevant professional regulations and requirements of such other State. The act also requires that for any professional boxing match: (1) a physical examination of each boxer to determine fitness to compete; (2) the presence of an ambulance or medical personnel and a physician on site; and (3) health insurance coverage for each boxer.¹⁶²

This section of the act gives great power to the state athletic commissions, but also places stringent rules on their actions. The act begins by placing significant emphasis on fighter safety. Section 6 of the act requires that every professional boxer register with the commission in the state in which that boxer presides.¹⁶³ The commission is then directed to issue an identification card to each registrant.¹⁶⁴

Next, Section 7 directs each commission to establish procedures to: (1) evaluate the professional records and physician's certification of each boxer participating in a match in the State and to deny fight authorization where appropriate; (2) ensure that no boxer is permitted to box while under suspension from any commission due to a recent knockout or series of consecutive losses, an injury, a required medical procedure, a physician denial of certification, failure of a drug test, or use of false aliases, identification cards, or documents; (3) review a suspension when appealed by a boxer; and (4) revoke a suspension where appropriate proof is presented that a suspension was not, or is no longer, merited by the facts.¹⁶⁵ Now the act goes beyond health and safety concerns and focuses on the denial of fight authorizations.

Section 9 outlines the key requirements for conflict-of-interests in regard to commission members or employees, persons who administer or enforce State boxing laws, and members of the ABC.¹⁶⁶ This section was important in combating the abuses facing the boxing industry in the 1990's.

B. Muhammad Ali Boxing Reform Act

H.R. 1832, Muhammad Ali Boxing Reform Act, was enacted in 2000 to amend the Professional Boxing Safety Act of 1996.¹⁶⁷ The Muhammad Ali Boxing Reform Act directs the Association of Boxing Commissions to develop and approve, by a majority vote of its member State boxing commissioner's, guidelines for: (1) minimum contractual provisions that should be included in bout agreements and boxing contracts; and (2) objective and consistent written criteria for the ratings of professional boxers.¹⁶⁸ The act declares that a contract provision shall be considered to be in restraint of trade, contrary to public policy, and unenforceable, against any boxer to the extent that it contains a coercive provision as provided in this Act and that: (1) it is for a period greater than a year; or (2) the other boxer under contract to the promoter came under that contract pursuant to a coercive provision.¹⁶⁹ The act continues by stating that it "prohibits a boxing service provider from requiring a boxer to grant any future promotional rights as a requirement of competing in a professional boxing

¹⁶² *Id.* §6303

¹⁶³ *Id.* §6305

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* §6306

¹⁶⁶ *Id.* §6308

¹⁶⁷ Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6301 (2000).

¹⁶⁸ *Id.* § 6307a

¹⁶⁹ *Id.* § 6307b

match that is a mandatory bout under the rules of the sanctioning organization.”¹⁷⁰ These provisions are pertinent to the UFC and the current mishandling of their competitors.

This act began to address some of the key abuses seen in the professional boxing industry. It amended the previous act by adding clauses that prohibit a sanctioning organization from receiving any compensation, directly or indirectly, in connection with a match unless, not later than January 31 of each year, it submits to the Federal Trade Commission (“FTC”) and to the ABC: (1) a complete description of the organization's ratings criteria, policies, and general sanctioning fee schedule; (2) the bylaws of the organization; (3) the appeals procedure of the organization for a boxer's rating; and (4) a list and business address of the organization's officials who vote on the ratings of boxers.¹⁷¹ This clause was directly added as a safeguard against non-independent ranking systems.

The act set forth provisions regarding required disclosures. The Act requires MMA organizations to disclose: (1) to State boxing commissions by sanctioning organizations; (2) for promoters; and (3) for judges and referees.¹⁷² Required financial disclosures are the key aspect of this provision, as professional boxers had been financially taken advantage of for years. This amendment sought to end financial abuses of this manner. Similar abuses are thought to be taking place in MMA. Additionally, the act set forth additional provisions to combat contractual abuses related to the emerging conflicts of interest.¹⁷³ The act stated that “it amends the Boxing Act to prohibit: (1) a promoter from having a direct or indirect financial interest in the management of a boxer; or (2) a manager from having a direct or indirect financial interest in the promotion of a boxer, or from being employed by or receiving compensation or other benefits from a promoter, except for amounts received as consideration under the manager's contract with the boxer.”¹⁷⁴ As you can see, the Muhammad Ali Boxing Reform Act intended to combat several abuses in boxing industry, that directly mirror abuses now facing MMA.

C. Muhammad Ali Expansion Act

H.R. 44, or the Muhammad Ali Expansion Act, is a current bill that was introduced in 2017 and is awaiting committee determination prior to a United States House of Representatives vote.¹⁷⁵ The Expansion Act's purpose is the inclusion of MMA fighters as competitor's subject to the Professional Boxing Safety Act of 1996.¹⁷⁶ The expansion of MMA fighters as categorical members of the Professional Boxing Safety Act would undoubtedly combat the current abuses competitors face in the MMA industry. As such, the Expansion Act amends the Professional Boxing Safety Act of 1996 to: (1) establish definitions for "fighter," "combat sport competition," and "mixed martial arts"; and (2) include individuals who fight in a professional mixed martial arts competition or other professional combat sport competition, such competitions, and the professional combat sports industry within the scope of such Act.¹⁷⁷

¹⁷⁰ *Id.*

¹⁷¹ *Id.* § 6307c

¹⁷² *Id.*

¹⁷³ *Id.* § 6308

¹⁷⁴ *Id.*

¹⁷⁵ Muhammad Ali Expansion Act, H.R. 44, 115th Cong.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

The Expansion Act's main purpose is two-fold. The Expansion Act requires the Association of Boxing Commissions, within two years after its enactment, to establish: (1) guidelines for minimum contractual provisions that should be included in bout agreements and mixed martial arts and other combat sport contracts, and (2) guidelines for objective and consistent written criteria for the ratings of mixed martial arts and other combat sports.¹⁷⁸ The Expansion Act places emphasis on these two provisions, since congress believes the contractual and ranking abuses are central to fighter mismanagement in professional mixed martial arts.¹⁷⁹ The specifics of the Expansion Act are devised to directly combat the individual abuses present in MMA. Additionally, the Expansion Act applies conflict of interest provisions that prohibit a promoter from having a financial interest in the management of a boxer, or a manager from having a financial interest in the promotion of a boxer, to fighters participating in a mixed martial arts or other combat sport competition scheduled for 11 minutes or more.¹⁸⁰ In furtherance of this standard, if the Expansion Act is passed, financial disclosures will become commonplace. This has to happen for fighters to gain adequate compensation. In all, the Expansion Act is of vital importance to the well-being of current MMA fighters and the growth of professional fight organizations.

V. Effect of the Muhammad Ali Expansion Act on the aforementioned MMA Abuses

The Muhammad Ali Expansion Act seeks to redefine those subject to the Professional Boxing Safety Act to include MMA fighters. If the Expansion Act becomes law, it will have a similar effect on MMA, as the Professional Boxing Safety Act had on professional boxing in the 1990's. The Expansion Act's central purpose is to combat all aspects of contractual, financial, and ranking abuses that are present in MMA.

A. The Muhammad Ali Expansion Act's Effect on Contractual Abuses

By allowing MMA fighters to be subject to the Expansion Act, the fighters will attain immediate benefits related to their contractual relationship with their respective fight organization. The Expansion Act would require that not later than 2 years after the date of enactment of its enactment, the Association of Boxing Commissions shall develop and shall approve guidelines for minimum contractual provisions, to be included in bout agreements and other MMA contracts.¹⁸¹

Before we analyze the effect of this provision, it is important to first gain an understanding of what exactly Congress deems to be a coercive contract. Congress states that a coercive contract is "a contract provision that grants any rights between a boxer and promoter if the boxer is required to grant such rights, as condition precedent to the boxer's participation in a professional boxing match against a boxer who is under contract to the promoter, for a period greater than 12 months."¹⁸² The key analysis here is two-fold. First, a contract would be coercive if it is greater than 12 months.¹⁸³ Second, competitors could not be forced to give up their rights as a condition for participation.¹⁸⁴ Subject to the proposed Expansion Act, if a promoter were to own the rights to a champion and a second fighter wanted to fight the champion, the champions promoter could acquire the rights to the

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6307b(a)(1)(B).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

second fighter if he won. However, the promoter would only be able to acquire the second fighter's right for up to one year.¹⁸⁵ This provision directly combats the "Champions Clause" by not allowing for a fight organization to use its power to retain the rights to a challenger, shall he become the champion, for more than one year.¹⁸⁶ Upon one year of competing, the challenger is free to compete for whichever fight organization he or she chooses.¹⁸⁷ This gives MMA champions the right to use their status as a world champion to procure employment at their own discretion, which would allow the fighters to capitalize on significant financial opportunities.¹⁸⁸ Additionally, the Expansion Act's yearlong provision would combat both the "exclusivity" restrictions and the "retirement clause" currently in play within fight organizations.¹⁸⁹ Also, this provision prohibits promoters from forcing fighters to sign long term option contracts in order to get initial fights.¹⁹⁰ The standards established pursuant to the Expansion Act will address the term length of the contracts and the responsibilities of the parties to remedy the above mentioned abuses.¹⁹¹ The ABC will be tasked with establishing a set of guidelines to eradicate unfair terms as set by the current industry players.¹⁹²

Another important aspect of limiting contractual abuses is the right to attain a mandatory challenger status.¹⁹³ If an MMA fighter is able to attain mandatory challenger status, he or she will not be subject to any coercion at the hands of the fight organization, because the organization will have no leverage to impose on the fighter. If a fighter attains mandatory challenger status, the fighter will not have to give up any future promotional rights. This regulatory standard is the type of action the Expansion Act can procure for the benefit of MMA fighters across the nation. Under this provision, the mandatory challenger must be given a title shot, even if he refuses to sign a long term deal with the fight organization.

The provisions established by the Expansion Act will address not only the duration of the contract, but also the obligations of both parties, as well any other terms the ABC deems necessary. Provisions include a limitation on the rights of fight organizations to ascertain the likeness and life rights of its' competitors. These exact determinations are not known at this time, but what is known is the necessity for continuing safety efforts.

B. Ali Expansion Act Effect on Financial Abuses

Under the proposed Expansion Act, a promoter would not be entitled to receive any compensation directly or indirectly in connection with a match until it provided to the competitor it promotes—(1) the amount of any compensation or consideration that a promoter has contracted to receive from such match; (2) all fees, charges, and expenses that will be assessed by or through the promoter on the boxer pertaining to the event, including any portion of the fighter's purse that

¹⁸⁵ Scott Baglio, *The Muhammad Ali Boxing Reform Act: The First Jab at Establishing Credibility in Professional Boxing*, 68 Fordham L. Rev. 2257, 2282 (2000).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ H.R. 1832, 106th Cong. § 10 (1999).

¹⁹¹ Baglio, *supra* note 185, at 2283.

¹⁹² *Id.*

¹⁹³ WBO, <http://www.wboboxing.com/regulations/> (last visited May 11, 2018).

the promoter will receive, and training expenses; and (3) any reduction in a fighter's purse contrary to a previous agreement between the promoter and the fighter or a purse bid held for the event.¹⁹⁴

The first clause requiring the promoter to disclose the amount of any compensation that a promoter has contracted to receive from such match, is vital towards aiding MMA fighters. Currently, fighters do not have the luxury of knowing exactly how much money they generate for their respective fight organizations and, as a result, promoters can exploit the fighters' skills and make significantly more money than the fighters.¹⁹⁵ This total revenue disclosure would undoubtedly give the MMA fighter a much needed bargaining chip to negotiate fair compensation. Although arguments have been made regarding how the fight revenue is used, revenue disclosures still prevail as a necessary force to benefit a historically disadvantaged party.

The second clause addresses the disclosure of all fees, charges, and expenses that will be assessed by or through the promoter on the fighter pertaining to the event.¹⁹⁶ This will prevent a promoter from reducing the boxer's compensation, through the creation of a formalized record as to the necessary expenses.¹⁹⁷ This clause will force promoters to display transparency in fight negotiations and dealings, which will deter promoters from altering obligations to their competitors prior to the fight. Additionally, by documenting these obligations, dispute resolution would become manageable.

The third clause, referencing any reduction in a boxer's purse contrary to a previous agreement between the promoter and the fighter, shall serve the purpose of holding promoters accountable to their original agreements. The ability to reduce fighter purses in direct conflict with an agreed-upon figure, is detrimental to the financial stability of the organizations fighters. The organization is allowing itself a windfall, at the hands of its fighters. This act of deceit is the exact kind of maneuver the Ali Expansion Act hopes to eliminate.

Furthermore, the Expansion Act would set mandatory disclosures to the state boxing commissions as well.¹⁹⁸ Promoters shall not be entitled to receive any compensation directly or indirectly in connection with a match until it provides to the athletic commission responsible for regulating the match, a statement of— (1) a copy of any agreement in writing to which the promoter is a party with any fighter participating in the match; (2) a statement made under penalty of perjury that there are no other agreements, written or oral, between the promoter and the fighter with respect to that match; and (3) (A) all fees, charges, and expenses that will be assessed by or through the promoter on the fighter pertaining to the event, including any portion of the fighter's purse that the promoter will receive, and training expenses; (B) all payments, gifts, or benefits the promoter is providing to any sanctioning organization affiliated with the event; and (C) any reduction in a fighter's purse contrary to a previous agreement between the promoter and the fighter or a purse bid held for the event.¹⁹⁹ These provisions ensure that the state athletic commission also receives disclosures necessary to promoting a fair contest.²⁰⁰ The key provision here is provision (2) which states there are

¹⁹⁴ Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6307e(b).

¹⁹⁵ Baglio, *supra* note 185, at 2284.

¹⁹⁶ Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6307e(b).

¹⁹⁷ Jack Newfield, *Only in America: The Life and Crimes of Don King*, 227, (1995).

¹⁹⁸ Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6307e(a).

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

no other agreements between the competitor and the promoter.²⁰¹ This ensures that only one agreement exists, and that the promoter does not force a fighter to sign more than one contract with varying terms. The other clauses have a similar effect as mentioned above.

The last aspect of the Expansion Act requires that certain disclosures be made to state attorney generals.²⁰² A promoter would have to make information required to be disclosed under this section available to the chief law enforcement officer of the State in which the match is to be held upon request of such officer.²⁰³ This would enable law enforcement officials to investigate promotional deals. This would add protection for fighters unable to challenge promoters who maintain immense bargaining power. Also, this may deter a promoter from engaging in inequitable business practices.

C. Ali Expansion Act Effect on Ranking Abuses

The proposed Ali Expansion Act states that “within 2 years after its enactment, the ABC shall develop and shall approve guidelines for objective and consistent written criteria for the ratings of professional fighters.”²⁰⁴ It is the hope of Congress that sanctioning organizations follow these guidelines.²⁰⁵ This immediately calls into question the current UFC system, which allows UFC journalists to control the entirety of the ranking process. Objective and consistent written criteria administered by the ABC would lead to an independently controlled ranking system.²⁰⁶ This system will not be as susceptible to promoter interests, as it would not formally be associated with the promotional company. An independent ranking system will help fighters receive title fights on the basis of his or her merit, regardless of the fights potential revenue.

The Expansion Act continues by explaining the appeals process, which would require the sanctioning organization to provide the fighter with a written explanation of the organization’s criteria, its rating of the fighter, and the rationale or basis for its rating.²⁰⁷ This would give fighters the opportunity to appeal their ranking, a luxury not afforded to current fighters competing in the UFC.²⁰⁸ If a fighter were to appeal, the sanctioning organization would then be required to issue him or her an explanation.²⁰⁹ This clause would put an exceeding amount of pressure on the UFC and its current ranking system.

Furthermore, the Expansion Act would prohibit a sanctioning organizations from receiving any compensation, until, with respect to a change in rating, the organization—(1) posts a copy, within 7 days of such change, on its Internet website or home page, if any, including an explanation of such change, for a period of not less than 30 days; and (2) provides a copy of the rating change and explanation to an association to which at least a majority of the State boxing commissions belong.²¹⁰ This clause hopes to guarantee that a ranking system is not arbitrary, but warrants merit.

²⁰¹ *Id.*

²⁰² *Id.* § 6309(a).

²⁰³ *Id.*

²⁰⁴ Muhammad Ali Expansion Act, H.R. 44, 115th Cong.

²⁰⁵ *Id.*

²⁰⁶ Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6307(c)

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

Additionally, the Expansion Act would require the sanctioning organization provide the Federal Trade Commission with a complete description of their ratings, criteria, policies, and general sanctioning fee lists, the organizer's bylaws, and appeal procedures.²¹¹ This would provide for increased consistency in a ranking system that has lacked such stability in the past.

The Expansion Act is a necessity in the sport of Mixed Martial Arts. Its enactment will help remedy the sports past abuses, while simultaneously attracting top talent. In all, the Expansion Act must be passed for the betterment of the athletes, but also to legitimize the sport and guide it towards further international success.

VI. Unionization

In the business world, the scariest phrase to a business owner is "unionization." In the case of the UFC, I believe unionization would actually serve as a benchmark displaying the company's worldwide presence. In sports, the talk of unionization is often a sign that the organization is financially flourishing while starting to gain global recognition. Here, unionization is necessary to propel the UFC from being a second-tier sports organization to a first-tier business entity captivating audiences on an international stage. Unionization is a staple of modern American sports. The time has come for the UFC to start allowing athletes to collectively bargain regarding their terms and conditions of employment. This process, along with the Expansion Act, will allow fighters the same opportunities given to athletes in other major American sporting leagues such as the NFL, MLB, and NBA. Unionization in these sports drastically increased athlete rights. Having said this, UFC fighters face a major obstacle rarely seen in the American sports landscape. UFC fighters are currently classified as independent contractors and not employees, meaning they do not have Section 7 rights to collectively bargain under the National Labor Relations Act.²¹² This prohibits the formation of a union.²¹³

A. Independent Contractors or Employees?

UFC fighters are currently hired as independent contractors or subcontractors, which is a very important distinction because it bars fighters from receiving employee benefits, worker's compensation, and the right to unionize.²¹⁴ Although UFC fighters are hired as independent contractors, many believe they have grown to be employees over the last few years. To determine whether an individual is an employee or an independent contractor, one must look to the factors set out in *Donovan v. DialAmerica Marketing, Inc.*²¹⁵ This case established the Sureway Cleaners Test, which is a six-factor test analyzing control, investment, profit/loss, skill, permanency, and integral part.²¹⁶ The test weighs each of the factors in their totality to determine whether an individual is an employee or independent contractor.²¹⁷

²¹¹ *Id.*

²¹² 29 U.S.C. §§ 151-169

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Donovan v. DialAmerica Mktg., Inc.*, 757 F.2d 1376 (3d Cir. 1985).

²¹⁶ *Id.* at 1382.

²¹⁷ *Id.*

First, we must address the control factor.²¹⁸ This factor is the most important factor in determining whether an individual is an independent contractor or an employee.²¹⁹ The control factor analyzes the degree of the alleged employer's right to control the manner in which the work is to be performed.²²⁰ Examples of control include the employer's right to determine when one shows up, how work is to be done, the amount of supervision given to individuals, discipline, hiring, firing, setting hours, setting wages, and assigning work.²²¹ The current UFC format forces competitors to wear a UFC sanctioned uniform and participate in anti-doping programs.²²² The UFC controls assignment of work by determining which fighters get to fight one another.²²³ The UFC also controls the fight schedules, which means it controls when fighters must show up.²²⁴ The UFC's strict rules of competition displays its control over how the competitors work is to be done.²²⁵ Additionally, the UFC controls the hiring and firing of its athletes, as well as the disciplining of fighters.²²⁶ The UFC's counter argument may be that it does not control the wages of the athletes, rather a fighter's wages are negotiated by the UFC and the athlete's manager or agent.²²⁷ Although this is true, oftentimes the UFC has so much bargaining power that the athlete is forced to accept whatever the UFC has to offer in terms of wages. Looking at the totality of the circumstances, it is clear that the fighters should be classified as employees based on the control factor of the Sureway Cleaners Test, but we must remember that the test analyzes its factors through a totality of the circumstances approach.

The second factor is profit or loss.²²⁸ This factor analyzes the alleged employee's opportunity for profit or loss depending upon his managerial skill.²²⁹ The profit or loss factor weighs in favor of having fighters be classified as independent contractors. If we substitute managerial skill for training, then the fighter has significant opportunity to control his or her own profit or loss. Based on their training and work methods, UFC fighters control this aspect of the test.

The third factor is the alleged employee's investment in equipment or materials required for his task, or his employment of helpers.²³⁰ This factor is more complex because fighters have to invest in their own equipment and materials related to their training, while the UFC has to invest in the equipment and materials related to the actual fight.²³¹ For example, fighters invest in sparring equipment, partners, and training gyms, while the UFC invests in stadiums, training facilities, UFC sponsored gear, TV equipment, and much more.²³² As a result, this factor could allow fighters to be classified as independent contractors or employees. In the case of UFC fighters, the UFC's investment in the fight outweighs the fighter's investment. Again, signaling that fighters are employees.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² Ben Fowlkes, *Are UFC Fighters Employees or Contractors? Why the Distinction Matters- And Could Mean Millions*, MMA JUNKIE (August 12, 2017), <https://mmajunkie.com/2017/08/ufc-fighters-employees-or-independent-contractors> (last visited May 2, 2018).

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ 757 F.2d 1376 (3d Cir. 1985).

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ Fowlkes, *supra* note 222.

²³² *Id.*

The fourth factor, in determining the status of an alleged employee, is whether the service rendered requires a special skill.²³³ The more special a skill is, the more likely a court is to find that individual is an independent contractor.²³⁴ Given the specialty of mixed martial arts fighters, this factor would signal an independent contractor relationship.

The fifth factor is degree of permanence of the working relationship.²³⁵ This factor analyzes the permanency of the working relationship.²³⁶ It states that employees are often hired for indefinite amounts of time, while independent contractors are hired for projects and are not expected to work forever.²³⁷ In this case, a court should rule that UFC fighters are independent contractors because they work on a fight to fight to basis, which is similar to that of a project basis.²³⁸ The court will most likely determine fights are equivalent to projects.

The sixth and final factor is whether the service rendered is an integral part of the alleged employer's business.²³⁹ This factor, along with the control factor, holds the most weight in the analysis.²⁴⁰ The integral part factor determines whether the fighter's job duties is essential to the alleged employer's business.²⁴¹ Seeing as though fighters serve as the essential aspect to the employer's operation, it can reasonably be concluded that fighters are employees.²⁴² Without the fighter's services the business would undoubtedly collapse.²⁴³

The six-factor analysis of Sureway Cleaners has found that three factors are in favor of employee and three factors are in favor of independent contractor. Although the factors remain split, the totality of the circumstances overwhelmingly support the notion that fighters are employees. Seeing as though the control and integral part factors hold the most weight, it is reasonable to assume that fighters are employees operating at the behest of their employer, the UFC. This conclusion would allow fighters the right to collectively bargain by attaining Section 7 Rights under the NLRA. This right would be accompanied by employee benefits, worker's compensation, and the right to unionize. All of which, would aid fighters in obtaining equity as professional athletes. This right must be granted to fighters as the final step in ushering in a new era governing Mixed Martial Arts.

VII. Conclusion

For decades mixed martial arts competitors have suffered at the hands of unjust promotional organizations wielding unscrupulous amounts of power. The emergence of the Muhammad Ali Expansion Act, as well as the need for unionization are natural and logical steps that need to be taken to further advance the rights of MMA fighters. Congressman Markwayne Mullin has begun the conversation about the current abuses seen in the MMA industry, but he has gone a step further by proposing swift and immediate action to combat such abuses.

²³³ 757 F.2d 1376 (3d Cir. 1985).

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ Fowlkes, *supra* note 222.

²³⁹ 757 F.2d 1376 (3d Cir. 1985).

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

In my opinion, fight organizations such as the UFC should be welcoming of this legislation, as it signals the dominance of their organization within the American sports landscape. MMA has become so much more than a low budget, fight-to-the-death event; it has become an international spectacle with viewers all around the globe. It is time the UFC provides fighters with benefits equal to those seen in various other professional sports. When professional fighters start receiving equitable benefits, there is no telling how prosperous the world of MMA can become. I look forward to the upcoming congressional matters and the effect they may have on the growth of this great sport.