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# THE TWELFTH ROUND: WILL BOXING SAVE ITSELF?

KATHERINE FIGUEROA\*

In 2010, Sergio “Maravilla” Martinez was stripped from his WBC middleweight title belt that was then easily handed over to a boxing favorite. In 2015, two big promotional companies, Top Rank Inc. and Golden Boy Promotions, filed similar claims against manager and advisor Al Haymon accusing him of unfair and anticompetitive business practices. These incidents make one long-standing point clear: professional boxing’s current structure is an abyss of deception and corruption. Corruption is not only harmful to those intended to be harmed; corruptive practices also diminish the quality, creditability, and integrity of the sport. However, corruption in the sport of boxing is but a novel issue. Indeed, deception lies at the heart of the sport. Despite corruption’s persistence, there have been many governmental attempts throughout the decades to regulate such unlawful conduct. However, none have had much success in combating corruption *effectively*.

This Note will begin by giving a brief overview of the history of modern boxing and the many failed attempts by the federal government to pass laws in an effort to regulate the sport. It will then analyze current legislation, such as the Muhammad Ali Boxing Reform Act and antitrust laws, that govern activities in boxing. Additionally, this Note will analyze certain proposals aimed at curtailing corruption. However, this Note will show that lack of enforcement, partiality towards fighters, and inefficiency has rendered these measures and proposals superfluous in regulating boxing.

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\*J.D. candidate 2017, Loyola Law School, Los Angeles; B.A., History and Theological Studies, 2014, Loyola Marymount University. I want to thank Professor Cindy Archer for her commitment to this paper and her guidance as I struggled not only with this paper but also finding my place in law school. I am grateful to my family who without their understanding, love, and support throughout the years I would not be where I am today. I want to extend a special thanks to Rob Allison, a former professor and good friend of mine, who incited my interest in boxing and kindled my love for argumentation. Lastly, I want to thank Loyola Law School, Los Angeles and its Entertainment Law Review Executive Board for providing a splendid environment and opportunity to explore two interests of mine, boxing and the law.

Nonetheless, this Note will argue that the best solution to curing boxing's corruptive ills is a private governing body in the form of a league. To be effective, a solution must combat corruption on all fronts. This means that all interests of participating parties in the sport of boxing must be represented and protected. This way, corruption will not make its way at the expense of the fighter or the promoter. Moreover, protection of all interests will incentivize participants to properly police the sport. Although it is uncontested in boxing literature that a private league is the most effective solution, not many have spoken on how such a league would look, operate, or combat corruption. Thus this Note will propose a model that is predominantly based on the Professional Golf Association, the PGA of America, and in part the National Football League and National Basketball League.

## I. INTRODUCTION

The sport of boxing is a chasm of corruption in which the law governs but enforcement is nonexistent.

Corruptive practices by those who participate<sup>1</sup> in the sport of boxing are harmful to those intended to be harmed, as well as to those not intended to be harmed, such as the fans and sport in general. These corruptive practices deprive fans of potential matches and faith in their beloved sport. Outsiders and potential fans look unfavorably upon the sport and are often disgusted by the shady underlying conduct.<sup>2</sup> Thus, these corruptive practices not only harm individual participants but also diminish the quality, credibility, and integrity of the sport as a whole.

An illustration of corruption's harmful consequences is the 2010 title strip of the World Boxing Council ("WBC") light middleweight champion, Sergio Martinez.<sup>3</sup> Sergio "Maravilla" Martinez was an impoverished Argentinian boxer who quickly rose to fame and became the lineal light middleweight World Boxing Organization ("WBO") and WBC champion.<sup>4</sup>

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1. "Participants" or "those who participate" are individuals or companies who in some way contribute to the organization of boxing events. Such individuals include fighters, promoters, managers, and sanctioning bodies.

2. See Michael J. Jurek, Note, *Janitor or Savior: The Role of Congress in Professional Boxing Reform*, 67 OHIO ST. L.J. 1187, 1187 n.7 (2006) ("Years of corruption, manipulation, and scandal have tarnished the sport to the point that it is hardly covered by the mainstream media.").

3. MARAVILLA (Blue Production Company 2014).

4. *Id.*

However, after winning the WBC belt, Sebastian Zbik was the WBC mandatory challenger.<sup>5</sup> HBO, a television network that pays promoters to broadcast Martinez's fights, preferred that Martinez fight someone more competitive.<sup>6</sup> During Martinez and HBO's indecision, WBC stripped Martinez of his belt and handed it to the mandatory challenger Zbik.<sup>7</sup> Zbik was required to defend his belt against Julio César Chávez Jr., the son of a Mexican boxing legend.<sup>8</sup> Later, HBO agreed to air the fight between Zbik and Chávez, despite the network's disinclination to broadcast a fight between Martinez and Zbik.<sup>9</sup> After defeating Zbik, Chávez became the WBC light middleweight champion.<sup>10</sup> Because of the ease<sup>11</sup> in becoming the WBC middleweight champion, many boxing analysts have stated that Chávez was nothing but a "paper champion" who was handed a belt due to his name and nationality.<sup>12</sup>

Although fighters are usually the primary targets of corruption, two recent lawsuits demonstrate that even the wealthiest and most influential can be victims of deception. On May 5, 2015, Golden Boy Promotions ("Golden Boy"), one of boxing's biggest promotional companies, along with its part owner, Bernard Hopkins, filed a complaint against another major figure in professional boxing, Alan Haymon.<sup>13</sup> The complaint

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5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. MARAVILLA, *supra* note 3.

10. *Id.*

11. The ease stems from the mismatch of the fight: Although "Zbik is actually a good fighter . . . [he is] not good enough to be a threat and is not necessarily a dangerous opponent." Kirk Jackson, *Impressions of Chavez vs. Zbik and Moving Forward*, BOXING INSIDER, <http://www.boxinginsider.com/columns/impressions-of-chavez-vs-zbik-and-moving-forward/> [<http://perma.cc/BV5F-SBH8>].

12. MARAVILLA, *supra* note 3.

13. *Al Haymon*, BOXREC, [http://boxrec.com/media/index.php/Al\\_Haymon](http://boxrec.com/media/index.php/Al_Haymon) [<http://perma.cc/ME9Y-BMLZ>] ("Al Haymon is a so-called adviser, manager, and/or promoter to many top boxers in the United States. . . . He is licensed in Nevada as a manager, yet he also performs many of the same functions as a promoter.").

describes Haymon's dominance over the financial aspect of boxing.<sup>14</sup> It alleges that Haymon engaged in unlawful business practices and criminal activities that violated the Muhammad Ali Act, the Sherman Act, and other federal and state unfair competition laws.<sup>15</sup> On July 1, 2015, another major promotional company, Top Rank, Inc., filed its own complaint against Haymon and accused him of similar violations.<sup>16</sup>

The purpose of this Note is multifold: first, Part II will show that corruption is an established facet of modern boxing, taking on different forms throughout the decades. Further, it will show that corruption is a problem that government efforts have failed to cure. Second, Part III of this Note will analyze existing laws enacted by legislatures while Part IV will analyze different proposals made by scholars that aim to curtail corruption, such as the creation of a union or an administrative agency. However, as will be shown, partiality towards the fighters' interests and overall lack of enforcement has rendered such measures mere bauble, making them ineffective in countering corruption.

Lastly, in Part V, this Note will argue that a private governing body in the form of a league is the best solution to combat corruptive practices. In fact, it is uncontested in boxing literature that the most effective cure to corruptive conduct in the sport is the establishment of a private governing body. However, no one has addressed how such a governing body would look, function, or combat corruption.<sup>17</sup> This Note will propose a model of a private league that will effectively combat corruption by attacking it from different fronts. This means that to effectively cure boxing's corruptive ills, the private league will represent and protect the interests of all participating parties. Thus, the proposed private league would provide proper oversight of the sport because it would create new rules and laws that address emerging issues and help protect and address the interests of all participants. Moreover, not only would the league provide proper protection for all parties, it would also be self-enforcing because

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14. See Complaint at \*12–17, *Golden Boy Promotions LLC v. Alan Haymon*, No. 2:15-cv-03378, 2015 WL 2089683 (C.D. Cal. May 5, 2015).

15. *Id.*

16. Complaint at \*2, *Top Rank, Inc. v. Alan Haymon*, No. 2:15-cv-04961, 2015 WL 4073114 (C.D. Cal. July 15, 2015).

17. This author is not aware of, nor did extensive research for this Note to show, any jurisprudence articulating how a private governing body would operate to curtail corruption in boxing.

participants would be incentivized to police themselves in exchange for protection.

## II. HISTORICAL BACKGROUND: BOXING, CORRUPTION, AND REGULATION

### A. *The Beginning*

Corruption is all but a novel issue in the sport of boxing. Since the time when prizefights in the United States were held in the backrooms of taverns, abusive and corruptive practices have penetrated the sport.<sup>18</sup> During the early twentieth century, boxing became extremely popular in the United States.<sup>19</sup> After many attempts to legitimize boxing, New York enacted the Frawley Law in 1911, making it the first state to recognize boxing as a legitimate sport.<sup>20</sup> Along with legitimization came regulation: the Frawley Law created the first state athletic commission.<sup>21</sup> Part of the law required a “no-decision” declaration for matches that did not end in a knockout.<sup>22</sup> This requirement was an effort to regulate judges and thereby minimize corruption in boxing outcomes.<sup>23</sup> But like the many other regulatory efforts this Note will discuss, the Frawley Law was ineffective as corruption took new forms. Corruptive practices shifted to news reporters: reporters began to declare unofficial outcomes of fights (known as newspaper decisions) and people who gambled on the outcomes of such fights would agree to bind themselves to decisions of specific reporters.<sup>24</sup>

It was not until the 1950s that the federal government first intervened in professional boxing.<sup>25</sup> During the 1940s and 1950s, organized crime held substantial power in the sport.<sup>26</sup> After the Department of Justice

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18. See ROBERT G. RODRIGUEZ, *THE REGULATION OF BOXING: A HISTORY AND COMPARATIVE ANALYSIS OF POLICIES AMONG AMERICAN STATES* 25–26 (2009).

19. CONGRESS AND BOXING: A LEGISLATIVE HISTORY 1960–2003 2 (Edmund P. Edmonds & William H. Manz eds., 2005) [hereinafter CONGRESS AND BOXING].

20. GRAHAM BROOKS ET AL., *FRAUD, CORRUPTION AND SPORT* 161–62 (2013).

21. See RODRIGUEZ, *supra* note 18, at 33.

22. *Id.* at 34.

23. See *id.* at 33–34.

24. See *id.* at 34.

25. BROOKS ET AL., *supra* note 20, at 163.

26. CONGRESS AND BOXING, *supra* note 19.

(“DOJ”) launched an investigation into organized crime in boxing, it filed a civil antitrust action against the International Boxing Club of New York, among others,<sup>27</sup> claiming violations of sections one and two of the Sherman Antitrust Act.<sup>28</sup> The district court found for the DOJ, applying the Sherman Act to the sport of boxing. The defendants appealed directly to the Supreme Court of the United States.<sup>29</sup>

Before the Supreme Court, the government alleged that the defendants engaged in interstate trade and commerce when promoting professional championship boxing contests.<sup>30</sup> The government further alleged that the defendants restrained and monopolized “the promotion, exhibition, broadcasting, telecasting, and motion picture production and distribution of professional championship boxing contests in the United States.”<sup>31</sup> The Court found that professional boxing was subject to antitrust laws and, unlike baseball, did not enjoy antitrust exemptions.<sup>32</sup> The Court held that the government was entitled to pursue its cause of action and affirmed the district court’s decision.<sup>33</sup>

In the following decades, this Supreme Court decision encouraged Congress to monitor boxing more closely.<sup>34</sup> Beginning in 1960, Senator Estes Kefauver, Chair of the Senate Subcommittee on Antitrust and

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27. See *United States v. Int’l Boxing Club of N.Y., Inc.*, 348 U.S. 236, 242 (1955) (stating that the other corporations and individuals named as defendants included the Madison Square Garden Corporation, James D. Norris, and Arthur M. Wirtz).

28. *Int’l Boxing Club of N.Y.*, 348 U.S. at 237–38 n.2; BROOKS ET AL., *supra* note 20, at 163; CONGRESS AND BOXING, *supra* note 19.

29. See generally *Int’l Boxing Club of N.Y.*, 348 U.S. 236.

30. *Id.* at 238–39 (stating that such interstate trade and commerce included (1) negotiating contracts with boxers, advertising agencies, referees, judges, announcers, and other personnel living in states other than those in which the promoter resides; (2) leasing suitable arenas; (3) selling tickets; and (4) arranging other details for boxing contests outside the states in which the promoters resided).

31. *Id.* at 239–40 (stating that the claim regarding the monopolization of boxing’s trade and commerce is based on the conspiracy to exclude competition). It is claimed that such conspiracy began in 1949 with an agreement between the defendant and Joe Louis which, for an attractive amount, required Louis to resign his title and exclusive rights to four promising fighters he managed. Additionally, the agreement required Louis to assign exclusive rights to broadcast, televise, and film the contests of these fighters to the defendants. *Id.*

32. *Id.* at 241–45.

33. *Id.*; *Int’l Boxing Club of N.Y., Inc. v. United States*, 358 U.S. 242, 252 (1959).

34. CONGRESS AND BOXING, *supra* note 19.

Monopoly, commenced a four-year investigation of the sport.<sup>35</sup> During a hearing in 1961, former heavyweight champion Gene Tunney testified that “there is a great tendency for monopoly to develop in the sport, . . . [It] is strong, influential, and almost unbreakable.”<sup>36</sup> Essentially, Senator Kefauver concluded that organized crime did, in fact, control the sport.<sup>37</sup>

### *B. The 1960s: The Decade of Failed Attempts*

The 1960s was a decade permeated with fervent attempts by Congress to overhaul professional boxing. Before his death, Senator Kefauver attempted to pass bills that created a Federal Boxing Commission (S. 1474 and 1182).<sup>38</sup> In 1965, the Committee on Interstate and Foreign Commerce held multiple hearings regarding six bills that were introduced to the House which dealt with the creation of such a commission.<sup>39</sup> Senator Kefauver’s bills and those that came after enjoyed great support from former boxing champions, boxers, sports commissioners, and politicians, among others.<sup>40</sup> Supporters of these bills felt strongly that a federal regulatory commission was needed to rescue this great sport from deterioration.<sup>41</sup> Unsurprisingly, Congress refused to pass any of these bills and instead, largely ignored boxing for the next twelve years.<sup>42</sup>

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35. *Id.* at 3.

36. *Professional Boxing Part I: Jacob “Jake” LaMotta: Hearings on S. Res. 238 Before the Subcomm. on Antitrust & Monopoly of the Comm. on the Judiciary*, 86th Cong. 1418 (1960) (statement of Gene Tunney, former American professional boxer).

37. *See* CONGRESS AND BOXING, *supra* note 19, at 8.

38. *Id.* at 4–9.

39. *Id.* at 10–11.

40. *Professional Boxing Part 3: Hearings Before the Subcomm. on Antitrust & Monopoly of the Comm. on the Judiciary*, 87th Cong. 1267 (1961) (testimony of Rocky Marciano); *id.* at 1346 (testimony of Melvin Krulewitch); *id.* at 1405 (testimony of Jack Dempsey); *Professional Boxing Part 4: Liston-Clay Fight: Hearings Before the Subcomm. on Antitrust & Monopoly of the Comm. on the Judiciary*, 88th Cong. 1761 (1964).

41. *Professional Boxing Part 3*, *supra* note 40 (testimony of Rocky Marciano); *id.* at 1346 (testimony of Melvin Krulewitch); *id.* at 1405 (testimony of Jack Dempsey); *Professional Boxing Part 4*, *supra* note 40, at 1766.

42. CONGRESS AND BOXING, *supra* note 19, at 12.



### C. The 1970s, Don King, and Failure

In 1977, the American Broadcasting Company (“ABC”) television network joined Don King Productions and created a tournament called the United States Boxing Championships.<sup>43</sup> Shortly after the formation of this tournament, a scandal surfaced that focused national attention on the world of boxing: many fighters in the sanctioned fights of the United States Boxing Championships had fabricated records.<sup>44</sup> Consequently, twelve years after the last congressional attempt to federally regulate boxing, a House subcommittee held hearings to consider an investigation of the United States Boxing Championships.<sup>45</sup> Despite the subcommittee’s concerns regarding Don King’s questionable business practices and his relationship with fighters whose bouts were televised on ABC, Congress showed no interest and once more failed to produce a legislative response.<sup>46</sup>

Threatened by the return of organized crime into boxing, yet another bill was proposed two years later.<sup>47</sup> This time, the bill was proposed by the House Subcommittee on Labor Standards of the House Committee on Education and the Workforce.<sup>48</sup> Although a hearing was held in 1979, the bill never made it out alive.<sup>49</sup> During the 1980s and until 1993, different House subcommittees proposed many bills but each suffered the fate of their unfortunate predecessors.<sup>50</sup>

### D. The Turn of the Century: Congress Finally Legislates

In 1994, Senators John McCain and Richard Bryan sponsored the Professional Boxing Safety Act (“PBSA”), which focused on protecting the

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43. BROOKS ET AL., *supra* note 20, at 165.

44. *Id.* (stating as an example Ike Fluellen, who was given an honorable mention as the “most improved boxer” and claimed two wins in Mexico when, in reality, he had not fought at all that year).

45. CONGRESS AND BOXING, *supra* note 19, at 12.

46. BROOKS ET AL., *supra* note 20, at 165.

47. CONGRESS AND BOXING, *supra* note 19, at 12–13.

48. *Id.*

49. BROOKS ET AL., *supra* note 20, at 166.

50. *Id.* at 166–67; CONGRESS AND BOXING, *supra* note 19, at 13–15.

health and safety of boxers.<sup>51</sup> Instead, the House received a bill titled the Boxing Labor Standards Act, which the 103rd Congress did not pass.<sup>52</sup> In 1995, McCain reintroduced the PBSA while proposing the Boxing, Safety, Retirement, and Restraining Act of 1995.<sup>53</sup> After almost four decades of congressional inaction, the 104th Congress enacted the PBSA.<sup>54</sup>

The purpose of the PBSA is: “(1) to improve and expand the system of safety precautions that protects the welfare of professional boxers; and (2) to assist State boxing commissions to provide proper oversight for the professional boxing industry in the United States.”<sup>55</sup> To protect boxers’ health, the PBSA requires that a physician and an ambulance or medical personnel be present during fights<sup>56</sup> and that boxers undergo physical examinations before every fight in order to prevent injured boxers from fighting.<sup>57</sup> Unfortunately, loopholes in the PBSA were evident the same year of its enactment: these requirements did nothing to protect boxers from injury, mainly because the Act depended on fractured enforcement at the state-level.<sup>58</sup> Although the passage of the PBSA was the first major legislation in professional boxing—hence, a significant moment in the sport’s history—the PBSA came under great criticism because of its lack of enforceability and inability to remedy industry corruption.<sup>59</sup> Thus, the PBSA’s ineffectiveness further diminished the sport’s credibility.<sup>60</sup>

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51. CONGRESS AND BOXING, *supra* note 19, at 15–16; Professional Boxing Safety Act, 15 U.S.C. § 6302 (1996).

52. CONGRESS AND BOXING, *supra* note 19, at 16.

53. *Id.*

54. *Id.*

55. Professional Boxing Safety Act, 15 U.S.C. § 6302 (1996).

56. *Id.* § 6304.

57. *Id.*

58. Antoinette Vacca, *Boxing: Why It Should Be Down for the Count*, 13 SPORTS LAW. J. 207, 214 (2006).

59. See Melissa Bell, *Time to Give Boxers a Fighting Chance: The Muhammad Ali Boxing Reform Act*, 10 DEPAUL-LCA J. ART & ENT. L. 473, 477–78 (2000). While the 1996 Act forbid commissioners from creating deals with promoters, nothing in the act addressed the problem of state boxing commission members who served on organizations that state boxing commissions regulated. Additionally, the 1996 Act did not address staged fights in bouts where promoters who were interested in a particular result were the parties paying the referees. *Id.*

60. *Id.* at 478.

Senator McCain's persistence did not stop there. In 1998, he introduced, along with two other bills, the Muhammad Ali Boxing Reform Act ("Ali Act"), which created amendments to the PBSA.<sup>61</sup> The Ali Act sought to address some of the PBSA's shortcomings.<sup>62</sup> While the PBSA's central purpose was to protect boxers within the ring,<sup>63</sup> the Ali Act aimed to protect the rights and welfare of professional boxers by mitigating exploitative, oppressive, and unethical business practices outside the ring.<sup>64</sup>

More specifically, the Ali Act addressed corruption in the boxing industry by remedying contractual abuses<sup>65</sup> and conflicts of interest between promoters, managers, and fighters.<sup>66</sup> Further, the Ali Act sought to reduce fixed fights through the regulation of judges, referees,<sup>67</sup> and sanctioning organizations.<sup>68</sup> Despite being a laudable legislative accomplishment, the Ali Act proved to be another "failure to launch" effort.

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61. The two other bills were the Professional Boxing Safety Act Amendments of 1999, which was introduced in the Senate, and the Professional Boxing Integrity Act, which was introduced in the House. However, both of these bills died in Congress while the Ali Act enjoyed reports from both Houses of Congress recommending its passage. CONGRESS AND BOXING, *supra* note 19, at 17–18. Technically, the Ali Act was reintroduced in 1999 since it was first introduced, but not considered, in 1998. *See id.* at 18.

62. BROOKS ET AL., *supra* note 20, at 167.

63. Brad Ehrlichman, *In This Corner: An Analysis of Federal Boxing Legislation*, 34 COLUM. J.L. & ARTS 421, 421 (2011) (quoting the Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6301 (2006)).

64. *Id.* (quoting the Muhammad Ali Boxing Reform Act, 15 U.S.C. § 6301 (2006)); 145 Cong. Rec. 28884, 28886 (1999) (stating that the purpose of the Ali Act is "(1) to protect the rights and welfare of professional boxers on an interstate basis by preventing certain exploitive oppressive and unethical business practices; (2) to assist State boxing commissions in their efforts to provide more effective public oversight of the sport; and (3) to promote honorable competition in professional boxing and enhance the overall integrity of the industry").

65. Professional Boxing Safety Act, 15 U.S.C. § 6307(a) (2015) (allowing the American Boxing Commission to create contractual guidelines regarding boxing contracts that state commissions must follow); *id.* § 6307(b) (affording protections from coercive contracts).

66. *Id.* § 6307(e).

67. *Id.* § 6307(f) (forbidding judges and referees from receiving compensation, directly or indirectly, in connection with a boxing match until they provide the state commission that is regulating such match with a statement of all considerations having to do with said match); *id.* § 6307(h) (requiring professional boxing matches to have referees and judges who are certified and approved by state commissions).

68. *Id.* § 6307(c)–(d).

### III. THE LAW: DISILLUSIONS NOT SOLUTIONS IN THE MUHAMMAD ALI BOXING REFORM ACT AND ANTITRUST LAWS

This section will introduce current boxing laws and assess their enforcement and effectiveness.

#### A. *The Muhammad Ali Boxing Reform Act*

The Muhammad Ali Boxing Reform Act (“Ali Act”) suffers from many defects, one of which is that its provisions do not protect boxers as much as they provide consequences for promoters.<sup>69</sup> Moreover, the Ali Act provides minimal financial protection for boxers and ultimately protects top contenders more than fighters who need it.<sup>70</sup> While the Ali Act does a great job in remedying some of boxing’s major problems, a major defect is that it lacks proper and realistic enforcement.<sup>71</sup> Because the Ali Act does not establish a proper system of oversight, enforcement of the Act is essentially reserved to the United States Attorney General, individual state attorneys, and boxers.<sup>72</sup> However, the Attorney General, the Federal Trade Commission (the “FTC”), and the chief law enforcement officer of each respective State are not obligated to prosecute claims regarding violations of the Ali Act.<sup>73</sup> Consequently, the Ali Act provides these offices and officers with immunity from prosecution and immunity from discharging their official duty.<sup>74</sup>

From 1996 to 2002, the Attorney General brought no cases under federal boxing law and law enforcement agencies made no records of referrals.<sup>75</sup> From this five-year period of silence, it can be inferred that the

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69. For further reading regarding the defects within specific provisions of the Muhammad Ali Act see Cristina E. Groschel, Note, *Down for the Count: The Muhammad Ali Boxing Reform Act and Its Shortcomings*, 26 NOVA L. REV. 927, 942–50 (2002).

70. *See id.* at 950.

71. Devin J. Burstein, *The Muhammad Ali Boxing Reform Act: Its Problems and Remedies, Including the Possibility of a United States Boxing Administration*, 21 CARDOZO ARTS & ENT. L.J. 433, 459 (2003).

72. *See id.* at 461; Professional Boxing Safety Act, 15 U.S.C. § 6309 (2015).

73. *See Groschel, supra* note 69, at 949–50.

74. *Id.* at 949.

75. U.S. GEN. ACCOUNTING OFFICE, GAO-03-699, COMM. ON COMMERCE, SCI. AND TRANSP., PROFESSIONAL BOXING ISSUES RELATED TO THE PROTECTION OF BOXERS' HEALTH, SAFETY, AND ECONOMIC INTERESTS 5 (2003); John McCain & Ken Nahigian, *A Fighting Chance for Professional Boxing*, 15 STAN. L. & POL'Y REV. 7, 23 (2004).

DOJ did not and continues not to have a demonstrated interest in prosecuting any violations of the Ali Act or other federal boxing laws. Further, the DOJ has explicitly stated that violations of such laws are misdemeanors that “do not receive significant resources from the DOJ.”<sup>76</sup> Moreover, even if the DOJ did have an interest in boxing, the Attorney General is not in the position to oversee the sport and find violations of the Ali Act.<sup>77</sup> Thus, enforcement is essentially left to the state commissions and individual boxers.<sup>78</sup>

The next option for enforcement is private civil claims brought by the injured party.<sup>79</sup> It is unrealistic to expect an individual boxer to sue the sanctioning bodies or his respective promoters for violating the Ali Act.<sup>80</sup> For a boxer to bring a cause of action under the Ali Act (or any other law that grants him rights or protection), the boxer must know the law exists.<sup>81</sup> The majority of boxers are uneducated and come from sheltered backgrounds; thus, many boxers lack awareness of their legal rights and are unlikely to exercise them.<sup>82</sup>

Assuming that a boxer is aware of his legal rights and decides to sue his exploiter, he does so at his own peril.<sup>83</sup> Boxers have to worry about being blacklisted by promoters or the sanctioning bodies they are suing.<sup>84</sup> Moreover, a boxer must figure out financially how to bring a legal action.<sup>85</sup> Promoters are usually boxers’ only financial source and as such, boxers are unable to bring a lawsuit without their promoters financing it.<sup>86</sup>

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76. McCain, *supra* note 75, at 23.

77. Burstein, *supra* note 71, at 461.

78. *Id.*

79. *Id.* (exploring the idea of civil suits).

80. *Id.*

81. *Id.*

82. *Id.*; Jeremy Camacho, *I Could Have Been a Contender: Arbitration and the Ali Act*, 20 SPORTS LAW. J. 135, 154 (2013).

83. See Burstein, *supra* note 71, at 461–62 (discussing issues boxers face if they pursue a lawsuit, including the possibility of blacklisting).

84. *Id.*

85. *Id.* at 462.

86. *Id.*

Realistically, “[i]t is unlikely that a promoter will hire a lawyer so that a fighter can sue him.”<sup>87</sup> Therefore, only wealthy premier boxers who have the resources to bring a claim are financially capable of actually doing so, yet they are not the ones in need of such protection.<sup>88</sup>

The average fighter’s only realistic recourse is to turn to the state.<sup>89</sup> However, just like the United States Attorney General, the state is not in the position to bring claims under boxing laws.<sup>90</sup> If a boxer with enough knowledge of the law identifies violations of the Ali Act to the state commission, the commission may notify the state attorney general to prosecute the claim.<sup>91</sup> However, the state attorney general and the state commission would likely be unable to enforce the Ali Act without support from the federal government because the states that do have commissions are usually understaffed and underfunded.<sup>92</sup> Moreover, as noted previously, the state attorneys’ general and commissions’ records indicate an overall lack of interest.<sup>93</sup>

In short, although the Ali Act aims to solve many of boxing’s major problems, it fails to reform the sport because of its lack of enforcement.<sup>94</sup>

### B. Antitrust Laws

For those harmed by corruptive practices, antitrust laws, such as the Sherman Act, the Clayton Act, and state antitrust laws, provide other avenues of relief. Section one of the Sherman Act provides: “Every contract, combination in the form of trust or otherwise, or conspiracy, in

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87. *Id.*

88. *See id.*

89. Burstein, *supra* note 71, at 462.

90. *See id.* at 461–62.

91. *Id.* at 462.

92. *See id.* (stating that some critics have gone much further, arguing that state boxing commissions are “jokes, run by small-time politicians interested in free seats facing TV cameras”).

93. *Hearing on Reform of the Professional Boxing Industry Before the Senate Comm. on Commerce, Sci, and Transp.*, 107th Cong. 8 (2001) (statement of Gregory P. Sirb) (“The current system of letting the various State Attorney Generals [sic] handle these issues has not been working.”).

94. *See* Burstein, *supra* note 71, at 463.

restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”<sup>95</sup> Section two of the Sherman Act essentially outlaws monopolization, attempts to monopolize, or conspiracies to monopolize.<sup>96</sup> A party that violates either of these two sections is guilty of a felony.<sup>97</sup> Moreover, section 15 of the Clayton Act grants the federal courts jurisdiction to “prevent and restrain violations of this Act.”<sup>98</sup> The Clayton Act allows the attorney general of the DOJ or private parties threatened with loss or damage by a violation of the antitrust laws to seek an injunction.<sup>99</sup>

A plaintiff may bring a private cause of action against a party who violated an antitrust law provision and caused the plaintiff’s antitrust injury.<sup>100</sup> Accordingly, a harmed boxer or even a promoter may bring such an action. The DOJ is the exclusive federal authority that can enforce the Sherman Act and the DOJ shares federal authority with the FTC and other agencies to enforce the Clayton Act.<sup>101</sup> Additionally, state attorneys general hold significant rights under federal and state antitrust laws to make enforcement decisions. State enforcers may bring state law claims as supplemental claims in federal law and may make enforcement decisions that differ from other state and federal enforcers.<sup>102</sup>

However, as noted, most boxers do not have the legal knowledge to identify when unlawful conduct has caused them injury and generally do not have the means to finance litigation. Moreover, the DOJ has shown

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95. Sherman Antitrust Act, 15 U.S.C. § 1 (2016).

96. Sherman Antitrust Act § 2; DOUGLAS BRODER, U.S. ANTITRUST LAW AND ENFORCEMENT: A PRACTICE INTRODUCTION 18 (2d ed. 2012).

97. BRODER, *supra* note 96.

98. *Id.* at 22 (citing The Clayton Antitrust Act, 15 U.S.C. § 25 (2016)).

99. *Id.*

100. SPORTS AND ANTITRUST LAW 87–88 (2014) (“All private antitrust plaintiffs must have antitrust standing. Antitrust standing is generally determined by reference to five factors: (1) whether the plaintiff’s injury is an antitrust injury; (2) the directness of the injury; (3) the speculative measure of the harm; (4) the risk of duplicative recovery; and (5) the complexity in the apportioning damages. . . . Antitrust injury is an injury to a plaintiff’s business or property that is of the type the antitrust laws were meant to prevent and that flows from that which makes the challenged conduct unlawful.”).

101. ANTITRUST LAW DEVELOPMENTS 707 (Jonathan I. Gleklen et al. eds., 7th ed. 2014).

102. *Id.* at 740–41.

little interest in investigating the sport.<sup>103</sup> Antitrust laws exist and can be enforced but, like the Ali Act, there is no one to enforce them.

#### IV. OTHER PROPOSALS: IDEALISTICALLY AROUSING, PRACTICALLY IMPOSSIBLE

A privatized national league headed by a Commissioner and national governing body is not the only proposed solution to the corruptive ills of professional boxing. Other solutions include unionization of boxers, more federal regulation, or a federally governed commission. Aside from the creation of a privatized national league, the remaining proposed solutions are impractical and fail to address other forms of corruption present in professional boxing besides those affecting boxers' interests.

##### *A. Unionization: A One-Sided Solution*

Looking to become champion and net over one million dollars, professional boxer Gerald McClellan fought WBC super middleweight champion Nigel Benn on February 23, 1995.<sup>104</sup> McClellan was knocked out in the tenth round and left unconscious when returned to his corner.<sup>105</sup> After losing the fight, McClellan was rushed to the hospital where he underwent surgery to save his life.<sup>106</sup> As a result of his injuries, McClellan suffered multiple strokes and became deaf and blind.<sup>107</sup> To pay for his medical expenses, McClellan exhausted his assets and became dependent on trust fund donations.<sup>108</sup>

Although the fight had caused McClellan's physical injuries, it was the lack of a sport-wide pension or disability insurance fund to cover medical costs that ruined McClellan financially.<sup>109</sup> While some professional boxers

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103. This author has not come across any investigation of boxing by the FTC or other federal government agency that has granted authority under the Clayton Act to pursue civil action.

104. Arlin R. Crisco, Note, *Fighting Outside the Ring: A Labor Alternative to the Continued Federal Regulation of Professional Boxing*, 60 OHIO ST. L.J. 1139, 1139 (1999).

105. *Id.* at 1140.

106. *Id.*

107. *Id.* at 1139.

108. *Id.*

109. *Id.* at 1140.



make millions during their boxing career, many other “journeymen” boxers<sup>110</sup> (who either suffer physical tragedies similar to McClellan or retire with some chronic ailment because of the sport) are left to fight high medical costs with no financial security.<sup>111</sup> Indeed, journeyman boxers take many risks that subject them to financial ruin and abuse: oftentimes, these fighters have no assistance in negotiating contractual terms with promoters and managers.<sup>112</sup> Further, federal regulations fail to adequately address conditions inside the ring and fail to regulate unscrupulous promoters and managers.<sup>113</sup> Additionally, the lack of uniformity among state laws addressing these problems has left fighters with unreliable protection.<sup>114</sup>

The issues above particularly concern proponents of unionization in professional boxing. Such proponents argue that a union in professional boxing would benefit its members by ensuring that the balance of power shifts from promoters and sanctioning bodies to boxers.<sup>115</sup> Unionized boxers would have the power to organize federally protected work stoppages, thereby halting the income of the sport’s, promoters, and managers until better benefits and working conditions are established.<sup>116</sup> Through the force of collective bargaining, like what is used in professional team sports, boxers would be able to bargain for a pension or retirement plan, gain more leverage in choosing bouts, improve working conditions, and reduce financial exploitation.<sup>117</sup>

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110. “Journeyman” boxers are those that jump “from promoter to promoter, or manager to manager, hoping to get placed as opponents in fights” while making very little money. They are willing to “fight all the time, anywhere, in order to make enough money to get by.” *See Health and Safety of Professional Boxing: Hearings Before the Comm. on Commerce, Sci., and Transp.*, 103d Cong. 70 (1994).

111. Crisco, *supra* note 104, at 1140–41.

112. *Id.* at 1141.

113. *See id.* at 1153–56.

114. *See id.* at 1153–55.

115. *Id.* at 1175; Devin J. Burstein, *The Muhammad Ali Boxing Reform Act: Its Problems and Remedies, Including the Possibility of a United States Boxing Administration*, 21 CARDOZO ARTS & ENT. L.J. 433, 494 (2003).

116. Crisco, *supra* note 104, at 1175.

117. *See id.* at 1164–65.

However, the benefits of unionizing boxers are one-sided: although it appears that unionization might give a collective voice to many fighters, a union would not address issues and interests that do not concern the fighter. Unlike the legislative attempts that sought to mitigate abusive and corruptive business practices in general and not just practices against fighters, a professional boxers union would represent and promote only the boxers' interests.<sup>118</sup> Moreover, unionization could be detrimental to the sport's top earners: if the majority of professional boxers (the majority being comprised of journeymen fighters) vote to be represented by a union, boxers would lose their right to bargain individually.<sup>119</sup> Top-prize fighters could be limited by a ceiling on purses if, during collective bargaining, earning caps are offered in exchange for benefits.<sup>120</sup> Thus, unionization is an inadequate solution to effectively mitigate the corruptive ills of professional boxing because it would only relieve the journeymen boxers from unfair and abusive practices while leaving the interests of the promoters, managers, and other boxers unprotected.

Even if unionization protected all parties, the creation of a collective labor union among professional boxers is practically impossible. First, boxers have been unable to establish a union because of the sport's current system.<sup>121</sup> The boxers who benefit the most and are truly in need of a labor union are boxing's underclass.<sup>122</sup> However, these journeymen boxers are not in the position to establish a union as they lack the ability and power to

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118. National Labor Relations Act, 29 U.S.C. § 152(5) (2016) ("The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.").

119. Brad Ehrlichman, *In This Corner: An Analysis of Federal Boxing Legislation*, 34 COLUM. J.L. & ARTS 421, 450 (2011) ("[I]n sports leagues, unionized players generally engage in individual bargaining with teams . . . '[O]nce an exclusive representative has been selected, the individual employee is forbidden by federal law from negotiating directly with the employer absent the representative's consent, even though that employee may actually receive less compensation under the collective bargain than he or she would through individual negotiations.'" (quoting *Caldwell v. Am. Basketball Ass'n*, 66 F.3d 523, 528 (2d Cir. 1995))).

120. *Id.*

121. *Id.* at 449; see Kathy Glasgow, *The Fight of Their Lives*, MIAMI NEW TIMES (July 20, 2000), <http://www.miaminewtimes.com/news/the-fight-of-their-lives-6355675> [<http://perma.cc/AA39-HNG3>] (stating that in 2000, the Boxer's Organizing Committee ("BOC") had been attempting to organize boxers for about thirteen years).

122. Ehrlichman, *supra* note 119, at 449.

do so.<sup>123</sup> Notwithstanding the difficulty of organizing thousands of fighters across the country, boxers typically work nine-to-five jobs and have little time to organize.<sup>124</sup> Moreover, because many journeymen boxers have humble backgrounds and are vulnerable to promoters, promoters are often able to recognize desperate boxers who are willing to fight for a handsome wad of cash.<sup>125</sup> Further, if a union were to exist, promoters might begin to contract non-union fighters to hinder collective organization.<sup>126</sup> Fighters who decide not to organize with the majority but instead concede to promoters' attractive offers and opportunities would not enjoy the benefits and protections that collective bargaining provides.<sup>127</sup> In effect, boxers would remain unprotected from unfair treatment inside and outside the ring.

Even if unionization protected all parties and even assuming that a union was a practical and effective centralized authority, it is still unclear whether professional boxers are permitted to unionize under the law. The National Labor Relations Act ("NLRA") provides: "[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."<sup>128</sup> As defined in the Act, the term "employee" excludes "independent contractors."<sup>129</sup>

To determine whether a worker is an employee, the National Labor Relations Board ("NLRB")<sup>130</sup> and other courts apply broad common law

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123. *Id.*

124. *See id.* at 450.

125. *Id.* at 449.

126. *Id.* at 494.

127. *Id.*

128. National Labor Relations Act, 29 U.S.C. § 157 (2015).

129. *Id.* § 152(3) ("The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include . . . any individual having the status of an independent contractor . . .").

130. The NLRB is a board created by the NLRA that consists of five members appointed by the President of the United States. The NLRB has the authority to delegate to its regional directors its power to "determine the unit appropriate for the purpose of collective bargaining, to

agency principles.<sup>131</sup> As the Supreme Court explained, there is “no shorthand formula or magic phrase that can be applied to find the answer, but all the incidents of the relationship must be assessed and weighed with no one factor being decisive.”<sup>132</sup> Both the NLRB and reviewing courts have refused to construct a specific formula to differentiate between an employee and an independent contractor.<sup>133</sup> Accordingly, “[r]eviewing courts have applied a variety of case-specific factors similar to those listed in the Restatement (Second) of Agency.”<sup>134</sup>

On the one hand, it is argued that professional boxers fall under the NLRA’s definition of an employee because promoters control the most critical economic elements of fighters’ careers, and fighters perform functions essential to the promoter’s operation.<sup>135</sup> One of the agency factors that courts give much weight to is the “right to control.”<sup>136</sup> Although promoters do not have control over the daily training of fighters, promoters do have the power through their exclusive representation contracts to limit a boxer’s ability to fight.<sup>137</sup> Promoters do so by choosing the boxer’s opponents, negotiating the time and place of the bout, and even

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investigate and provide for hearings, and determine whether a question of representation exists . . . .” *Id.* § 153.

131. *NLRB v. United Ins. Co.*, 390 U.S. 254, 258 (1968).

132. *Id.*

133. *Herald Co. v. NLRB*, 444 F.2d 430, 433 (2d Cir. 1971).

134. RESTATEMENT (SECOND) OF AGENCY § 220(2) (1958) (providing that “(a) the extent of the control which, by the agreement, the master may exercise over the details of the work; (b) whether or not the one employed is engaged in a distinct occupation or business; (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; (d) the skill required in the particular occupation; (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (f) the length of time for which the person is employed; (g) the method of payment, whether by the time or by the job; (h) whether or not the work is part of the regular business of the employer; (i) whether or not the parties believe they are creating the relation of master and servant; and (j) whether the principal is or is not in business”); Crisco, *supra* note 104, at 1169–70.

135. Crisco, *supra* note 104, at 1172.

136. *Seven-Up Bottling Co. of Boston, Inc. v. NLRB*, 506 F.2d 596, 597–98 (1974) (“The right to control the manner of physical performance of the services—as opposed to control over the results sought—is generally determinative of employee status, although a number of matters of fact must be considered in making that determination.”); Crisco, *supra* note 104, at 1173.

137. Crisco, *supra* note 104, at 1171–72.

requiring the boxer to give up his title if the promoter decides not to promote a bout against the mandatory challenger.<sup>138</sup>

An additional factor that distinguishes an employee from an independent contractor is that employees “do not operate their own independent business, but perform functions that are essential parts of the company’s normal operations.”<sup>139</sup> Despite promotional contracts explicitly referring to fighters as independent contractors,<sup>140</sup> professional boxers are an “essential part” of a promoter’s operations because without the fighter, there is no fight to promote.<sup>141</sup> If these factors and circumstances are taken together, it seems a professional boxer would fall under the NLRA’s definition of employee.<sup>142</sup> Nevertheless, even if the NLRB and other courts recognize professional boxers as employees as defined under the NLRA, boxers’ lack of labor law remedies makes the NLRB an inadequate recourse for their legal problems.<sup>143</sup>

On the other hand, one may argue that professional boxers are independent contractors and do not fall under the NLRA’s definition of employee.<sup>144</sup> In *FedEx Home Delivery v. NLRB*, the court determined that package delivery providers’ single-route drivers were independent contractors under the NLRA because FedEx could not “prescribe hours of work, whether or when the contractors take breaks, what routes they follow, or other details of performance.”<sup>145</sup> Promoters, like FedEx, do not have such detailed oversight over fighters: promoters do not structure fighters’ training, they do not reprimand or discipline fighters, fighters choose their own trainers, and fighters are not required to show up to the gym every day for work.<sup>146</sup>

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138. *Id.* at 1173.

139. *United Ins. Co. of America*, 390 U.S. at 259.

140. *Herald Co.*, 444 F.2d at 431 (determining that newspaper distributors were employees despite being explicitly referred to as independent contractors on contracts).

141. *Crisco*, *supra* note 104, at 1174.

142. *Id.* at 1167–75.

143. *See Ehrlichman*, *supra* note 119, at 452.

144. *Id.* at 451.

145. *FedEx Home Delivery v. NLRB*, 563 F.3d 492, 493, 498 (D.C. Cir. 1968).

146. *See Ehrlichman*, *supra* note 119, at 451.

A comparable sport to professional boxing is professional golfing since both are considered sports with individual athletes. When compared to the argument that boxers are employees of their promoters, professional golfers have a stronger argument<sup>147</sup> that they are employees of the PGA Tour.<sup>148</sup> Nonetheless, the Supreme Court determined that professional golfers were not employees, but independent contractors.<sup>149</sup>

*B. Federal Regulatory Agency: The United States Boxing Administration*

Although the PBSA and the Ali Act were foundational pieces of legislative reform, they were not designed to cure all existing problems<sup>150</sup> and the issues that they were designed to remedy were not effectively addressed. Therefore, Senator John McCain, sponsor of the PBSA and Ali Act, introduced the Professional Boxing Amendments Act (“PBAA”) to address the shortcomings and oversights of both the PBSA and the Ali Act.<sup>151</sup> The PBAA’s central purpose is to create the United States Boxing Administration (“USBA”),<sup>152</sup> a federal regulatory agency which would oversee the sport. Senator McCain stated:

The primary functions of the USBA would be to protect the health, safety, and general interests of boxers. More specifically, the USBA would, among other things: administer Federal boxing laws and coordinate with other Federal regulatory agencies to ensure that these laws are enforced; oversee all professional boxing matches in the United States; and work with the boxing industry and local commissions to improve the status and standards of the sport.<sup>153</sup>

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147. *Id.* at 451–52.

148. PGA stands for Professional Golfers’ Association. The PGA Tour is the privatized league for professional golfing that organizes the main golfing tours in North America. *See generally PGA of America vs. PGA Tour*, PGA S. CENT. SECTION ARK. CHAPTER, <http://arkansaspga.com/2011/09/14/pga-of-america-vs-pga-tour/> [<http://perma.cc/9PSX-8CRW>].

149. *See PGA Tour, Inc. v. Martin*, 532 U.S. 661, 697 n.2 (2001).

150. John McCain & Ken Nahigian, *A Fighting Chance for Professional Boxing*, 15 STAN. L. & POL’Y REV. 7, 33 (2004).

151. Ehrlichman, *supra* note 119, at 444.

152. Also known as the United States Boxing Commission (“USBC”).

153. 148 CONG. REC. S5032-02 (daily ed. June 5, 2002) (statement of Sen. McCain).

The USBA would belong to the Department of Labor and be headed by an administrator experienced in boxing and the President, with the advice and consent of the Senate, would appoint him or her.<sup>154</sup> One of the responsibilities of the USBA would be to administer federal boxing laws and work with other federal regulatory agencies to oversee boxing matches in the United States, enforce the law, and help improve the status and standards of boxing.<sup>155</sup> Under section 203(b)(5), an important purpose of the USBA is to ensure, through the Attorney General, the FTC, and other appropriate officers and agencies of the federal government, “that Federal and State laws applicable to professional boxing matches in the United States are vigorously, effectively, and fairly enforced.”<sup>156</sup>

In essence, the USBA would be able to enforce and strengthen current federal laws, discipline violators, and create new regulations protecting the interests of boxers. Further, the USBA would have authority to launch and conduct investigations regarding legal violations and, if needed, seek injunctive relief in court.<sup>157</sup> The USBA would create an additional avenue for injured boxers to address the harm they have suffered while avoiding costly and time-consuming litigation.<sup>158</sup> Under the PBAA, boxers would be granted administrative hearings in which the USBA would conduct discovery and prosecute claims.<sup>159</sup> The USBA would have the authority to license boxers, promoters, managers, sanctioning organizations, and broadcasters, as well as suspend or revoke such licenses if the USBA finds violations of federal boxing laws or if it believes that revocations or suspensions serve the public interest.<sup>160</sup> Moreover, the USBA would maintain a centralized database of medical and statistical information on boxers in the United States that would be used confidentially by local commissions responsible for licensing decisions.<sup>161</sup> The fees charged

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154. Burstein, *supra* note 115, at 467; McCain, *supra* note 150, at 30.

155. McCain, *supra* note 150, at 30.

156. Professional Boxing Amendments Act of 2002, S. 2550, 107th Cong. § 203(b)(5) (2002).

157. *Id.* § 207(b)(1)(A).

158. Ehrlichman, *supra* note 119, at 445.

159. *Id.*

160. McCain, *supra* note 150, at 30–31.

161. *Id.* at 31.

would be used to offset a certain percentage of the expenses associated with activities of the agency.<sup>162</sup>

The Act is by no means flawless and has some troublesome requirements. The PBAA requires that certain contract provisions developed by the USBA be included in every contract with a boxer.<sup>163</sup> It also requires each state boxing commission to review each of these contracts to ensure that they comply with the law.<sup>164</sup> As one legal scholar critiqued, mandatory contract provisions are paternalistic and limit boxers' and promoters' freedom to contract because a boxer might have to accept a contract that does not include certain mandatory provisions in order to get his "shot" in the ring.<sup>165</sup> While mandatory contract provisions serve to protect the boxer's health, such requirements both limit a boxer's financial opportunities and expose promoters to more risks and costs.

For a person to arrange, promote, organize, produce, or fight in a match, the PBAA requires that the match be approved by the USBA.<sup>166</sup> This provision initially appears to provide extra protection for all fighters by having the agency review and approve each match.<sup>167</sup> However, a match is presumed to be approved by USBA absent one of four exceptions.<sup>168</sup> One exception requires actual approval when matches involve boxers who have "suffered 10 consecutive defeats in professional boxing matches; or ha[ve] been knocked out 5 consecutive times in professional boxing matches."<sup>169</sup> This means that only matches that include the lowest of the blue-collar boxers would be individually reviewed and approved under this exception.<sup>170</sup> Another exception applies to

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162. *Id.*

163. Professional Boxing Amendments Act, S. 84, 110th Cong. § 10(a) (2007).

164. *Id.*

165. Ehrlichman, *supra* note 119, at 447–48 ("An unheralded boxer might have to accept contract terms falling below the federally mandated floor in order to even get his 'shot' in the ring. Otherwise, a promoter might decide that signing an unproven prospect is too expensive or too risky.").

166. Professional Boxing Amendments Act § 5(a).

167. Ehrlichman, *supra* note 119, at 446.

168. *Id.* (citing Professional Boxing Amendments Act § 5(a)).

169. Professional Boxing Amendments Act § 5(a).

170. Ehrlichman, *supra* note 119, at 446.



matches that are “advertised to the public as championship match[es],” or matches that involve ten rounds or more,<sup>171</sup> which, in practice, would apply only to top contenders and premier boxers.<sup>172</sup> Thus, it has been pointed out that under the USBA approval mandate, only the lowest of blue-collar fighters and top contenders are protected, leaving the majority of the boxers who fall in between unprotected.<sup>173</sup> Consequently, protection of boxers through the approval of matches by the USBA is, at most, an empty promise.

Additionally, Senator McCain acknowledged that the USBA would not interfere with the daily operations of local boxing and that the agency would have to consult with local commissions.<sup>174</sup> Senator McCain further stated that the administrator would only exercise his power if there was reasonable grounds for intervention.<sup>175</sup> Accordingly, two government agencies would have to agree and work together in order to pass a single regulatory measure. One could only imagine such glorious bureaucratic efficiency!

Further, the USBA might fall victim to its overreaching power. If the USBA is part of the Department of Labor or is its own administrative agency itself, the USBA would be governed by administrative law.<sup>176</sup> Congress creates administrative agencies and delegates power to such agencies through an organic act, also known as an enabling act.<sup>177</sup> Under current administrative common law, the USBA would be given great deference regarding issues of statutory authority and statutory interpretation of its organic act.<sup>178</sup> This great deference given to agencies would make the USBA vulnerable to overreaching its power. The

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171. Professional Boxing Amendments Act § 5(a).

172. Ehrlichman, *supra* note 119, at 446.

173. *Id.*

174. McCain, *supra* note 150, at 31.

175. *Id.*

176. JACK M. BEERMAN, ADMINISTRATIVE LAW: WHAT MATTERS AND WHY 128 (2011).

177. *Id.*

178. *Id.* at 127. See generally *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

difficulty of judicial review of administrative decisions further adds to this vulnerability.<sup>179</sup>

Further, similar to unionization in that the purpose of the USBA is to protect only the boxer's interests, the USBA would not adequately address corruptive practices within boxing in general. Again, boxing is a sport but it has developed into a lucrative business.<sup>180</sup> If the USBA's only authority is to regulate boxers' interests, doing so would be at the expense of the business aspect of boxing<sup>181</sup> or would otherwise leave the corrupt business side of the sport untouched.

While Senator McCain acknowledges that the PBAA is not the best solution, he states that it is a "realistic" one.<sup>182</sup> Nevertheless, reality has proved otherwise. Since 2002, the PBAA has been reintroduced to Congress each year and each year it has failed.<sup>183</sup> The bill consistently receives strong opposition and many question whether the creation of such an agency would constitute governmental waste.<sup>184</sup> Consequently, the probability of the PBAA's enactment is slim to none.<sup>185</sup>

## V. THE SOLUTION: A PRIVATE GOVERNING BODY

The proposed solutions discussed earlier have a common purpose: to safeguard boxers outside the ring from abusive and unscrupulous business practices while protecting their wellbeing inside the ring through the creation and enforcement of health-protecting laws.<sup>186</sup> However, such proposals also share two common deficiencies: partiality and ineffectiveness.<sup>187</sup> It is not disputed that promoters and managers

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179. See BEERMAN, *supra* note 176, at 65–144.

180. Ehrlichman, *supra* note 119, at 450.

181. *Id.*

182. McCain, *supra* note 150, at 33.

183. Ehrlichman, *supra* note 119, at 444.

184. *Id.* at 448–49.

185. *Id.* at 449.

186. See *supra* Part IV.

187. See *supra* Part IV.

frequently abuse and exploit boxers.<sup>188</sup> It is not contested that fighters are inadequately protected inside the ring.<sup>189</sup> What these solutions fail to recognize is that boxing is not just a sport but also a very lucrative business.<sup>190</sup> The business side of boxing has made premier boxing possible and has created multimillion dollar opportunities for boxers.<sup>191</sup> Boxers fight, managers protect boxers' interests,<sup>192</sup> promoters make the boxing events happen,<sup>193</sup> and sanctioning organizations bestow prestige. A solution that only cures the ills affecting boxers is not the solution that will "save" boxing from corruption unless advocates of such solutions miss the days when all boxing matches took place in the backrooms of taverns and where boxers risked their lives for miserable pay. Therefore, the solution that will "save" the sport in all aspects—from loss of quality, creditability, and integrity—is one that attacks corruption on all fronts. It is one that protects the interests of all those who participate in the sport of boxing.

A solution that represents all interests will not only address corruption from different aspects effectively, but it will also be self-enforcing. The other solutions discussed above are not necessarily inefficient because they fail to address certain major concerns in the sport. In fact, it can be argued that the Ali Act does a great job in addressing some of the issues it *intends*

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188. Brad Ehrlichman, *In This Corner: An Analysis of Federal Boxing Legislation*, 34 COLUM. J.L. & ARTS 421, 425 (2011).

189. Those who advocate for more protection for boxers inside the ring are concerned with the majority of boxers, who are journeymen. These journeymen boxers risk their lives for nominal pay and do not have sufficient funds to rectify any medical problems incurred while boxing. Additionally, journeymen boxers are the ones most likely to overlook unfavorable contract terms because of their hope of landing a bigger fight and their inability to afford independent legal counsel to review and negotiate contract terms. See Ehrlichman, *supra* note 188, at 441–42; see also Michael J. Jurek, *Janitor or Savior: The Role of Congress in Professional Boxing Reform*, 67 OHIO ST. L.J. 1187, 1199 (2006); John McCain & Ken Nahigian, *A Fighting Chance for Professional Boxing*, 15 STAN. L. & POL'Y REV. 7, 8 (2004).

190. See Jurek, *supra* note 189.

191. See Scott Baglio, Note, *The Muhammad Ali Boxing Reform Act: The First Jab at Establishing Credibility in Professional Boxing*, 68 FORDHAM L. REV. 2257, 2260 (2000).

192. See Jurek, *supra* note 189, at 1196; Matt Gerovac, *A Fan's Guide to the Business World of Class Boxing*, BOXING INSIDER, <http://www.boxinginsider.com/columns/fans-guide-business-world-class-boxing/> [<http://perma.cc/UV5M-PRG9>].

193. Boxing promoters' only goal is to make money. It is the promoters who take the financial risk because they invest a lot of money in making a boxing event happen by paying for advertisements, legal fees, and licensing, among other things. Therefore, since promoters take most of the financial risks, they receive a big portion of the boxer's purse, any money made from network or pay-per-view deals, and venue admissions. See Gerovac, *supra* note 192.

to cure.<sup>194</sup> But the issue of enforcement is a separate one. Any measure whose enforceability relies on the government's initiative will inevitably fail because the government lacks incentive to prosecute violations of the law within boxing.<sup>195</sup> Those who are in the best financial position to file a civil suit against violators are those who either do not need protection or are the ones who create the violations.<sup>196</sup> Therefore, even if a measure grants rights to an injured party to recover, those rights are essentially rendered superfluous.<sup>197</sup> Other proposals are inadequate because they address only issues that are pertinent to fighters.<sup>198</sup> Moreover, such proposals are, in a sense, impractical.<sup>199</sup> For these reasons and many others, a centralized governing body in the form of a private league is undoubtedly the best solution. In a private league, all participants and major actors will be involved—and therefore their interests represented—and together will be incentivized to combat corruption by policing the sport, enforcing existing law, and creating new regulations that resolve emerging issues.

Despite critics' hopelessness in the establishment of a private boxing league, such a solution is the most promising solution that will help restore the sport and cure most of its problems.<sup>200</sup> One legal scholar argued: "though such an organization would be the change most likely to provide real, lasting protection for boxers, it is also the change that is least likely to occur, unless promoters could be convinced that their financial interests would be best served by joining the organization."<sup>201</sup> Given the recent lawsuits by Golden Boy and Top Rank against manager and advisor Haymon, it is possible that promoters can be convinced that a private centralized governing body may best serve their interest.

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194. See Devin J. Burstein, *The Muhammad Ali Boxing Reform Act: Its Problems and Remedies, Including the Possibility of a United States Boxing Administration*, 21 *CARDOZO ARTS & ENT. L.J.* 433, 459 (2003).

195. See *id.* at 461.

196. See *supra* Part III.

197. See *supra* Part III.

198. See *generally supra* Part IV.

199. See *generally supra* Part IV.

200. Burstein, *supra* note 194, at 494; see Jurek, *supra* note 189, at 1226. See *generally* Ehrlichman, *supra* note 188, at 455.

201. Ehrlichman, *supra* note 188, at 455.

Thus, although the possibility of such a governing body has been highly questioned,<sup>202</sup> this section will illustrate the feasibility of creating a private governing body. This section will also detail the logistics behind how such a governing body would operate.

### A. A Fight Amongst Promoters

On May 5, 2015, Golden Boy and part owner Bernard Hopkins filed a \$100 million lawsuit against Alan Haymon and his companies,<sup>203</sup> alleging that they are attempting to monopolize professional boxing by eliminating all competitors.<sup>204</sup> Haymon is alleged to have violated the Ali Act, the Sherman Act, and other fair competition state laws.<sup>205</sup> This lawsuit seeks not only monetary damages but also an injunction that would bar “the defendants from acting as managers and promoters for boxers, and from having a financial interest in the promotions of bouts featuring the boxers the plaintiffs manage.”<sup>206</sup>

Golden Boy alleges that Haymon “blatantly” ignores the “firewall” required by both federal and state law that prevents an individual from acting as both manager and promoter.<sup>207</sup> Although Haymon denies acting like a promoter, he forbids the boxers he manages from signing with any promotional company, effectively forcing them to work with one of his “sham” promoters.<sup>208</sup> Contracts for Haymon’s managerial services include provisions that “condition [his companies’] professional services on the boxers’ agreement not to contract with legitimate boxing promoters,” which according to Golden Boy’s brief is a per se violation of the Sherman

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202. *See id.*; Burstein, *supra* note 194, at 496.

203. Complaint at \*2, 33, Golden Boy Promotions LLC v. Haymon, No. 2:15-cv-03378, 2015 WL 2089683 (C.D. Cal. May 5, 2015) (naming as defendants Alan Haymon, Alan Haymon Development, Inc., Haymon Sports, LLC, Haymon Boxing Management, Haymon Boxing LLC, Haymon Boxing: Media Group Holdings LLC, Waddell & Reed Financial, Inc., Waddell & Reed, Inc., Ivy Asset Strategy Fund, WRA Asset Strategy, Ivy Funds VIP Assets Strategy, Ryan Caldwell, and Does 1 through 20, all of whom Golden Boy Promotions alleges Haymon operates through).

204. *Id.* at \*8.

205. *Id.* at \*2.

206. *See id.*

207. *Id.* at \*1.

208. *Id.* at \*11.

Act.<sup>209</sup> Further, the complaint alleges that Haymon already possesses a dominant share in the management market and is now using such power to dominate the promotional market and monopolize boxing in general.<sup>210</sup> Moreover, Haymon and his companies have not only “acted to cut off legitimate promoters [from] . . . promoting boxers he manages, but also from essential network television of boxing matches and from the quality arenas necessary for the effective presentation of their bouts.”<sup>211</sup>

Similarly, Top Rank filed a complaint on July 1, 2015 against the same parties for violating the Sherman Act, the Ali Act, and other antitrust state laws by unlawfully acting as both manager and promoter and engaging in anticompetitive business practices in an effort to monopolize the sport.<sup>212</sup> Such efforts include “tie out” agreements with boxers that prevent such boxers from contacting other promotional companies as a condition for receiving managerial services.<sup>213</sup> Moreover, the complaint alleged that Haymon fraudulently concealed his role as promoter by employing “sham” promoters or “frontmen” who were essentially controlled by Haymon.<sup>214</sup>

Further, Haymon’s alleged monopolistic practices include venue blocking, which is the practice of fraudulently reserving major locations and venues for events and then canceling reservations after other competitors have been forced to seek other locations.<sup>215</sup> Because of Haymon’s dominance in the management business, if venues refuse to comply with Haymon’s exclusionary demands, they risk being denied access to bouts involving top boxers in the industry.<sup>216</sup> Moreover, the

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209. Golden Boy Promotions LLC, 2015 WL 2089683, at \*12.

210. *Id.* at \*5.

211. *Id.* at \*2.

212. Complaint at \*2–3, Top Rank Inc., v. Haymon, No. CV 15-4961-JFW (MRWx), 2015 WL 9952887 (C.D. Cal. July 15, 2015).

213. *Id.* at \*15–16.

214. *Id.* at \*16–18 (alleging that Haymon’s sham promoters do not have promotional contracts with their boxers, a common practice among legitimate promoters. Moreover, Top Rank alleges that Haymon has taken up promoter responsibilities, such as paying boxers’ their purse for certain bouts. This is evidenced by the picture Julio César Chávez, Jr. posted on Instagram, a picture which demonstrates that Haymon paid nearly \$2 million of Chávez, Jr.’s “purse” for the bout against Fonfara.).

215. *Id.* at \*25–26.

216. *Id.* at \*25.

complaint alleges that the defendants have engaged in “payola” practices that have been similarly employed by the twentieth century music industry.<sup>217</sup> Such practices prevent other “promoters from access to television broadcasters through exclusive dealing, overbooking, and other unlawful means.”<sup>218</sup> By buying network time, Haymon is reversing the ordinary flow of money between promoter and broadcaster.<sup>219</sup> Typically, promoters sell broadcast rights to television channels.<sup>220</sup> However, by purchasing broadcasting time, Haymon is eliminating competition because he is paying consumers to take his product.<sup>221</sup> Once Haymon has eliminated competition, it will be easy for him to recoup his initial loss through “supracompetitive pricing.”<sup>222</sup> Thus, it is alleged that the defendants are “rigging” the boxing industry to control every aspect of the sport by acting as promoters, managers, ticket broker, and sponsor for almost every professional boxer competing in the United States.<sup>223</sup> Top Rank claims that this is a loss for both the television broadcasters and consumers alike.<sup>224</sup> However, Top Rank’s complaint was dismissed based on a failure to state damages.<sup>225</sup> Nevertheless, Top Rank has decided to amend its complaint.<sup>226</sup>

Had a private governing body been in place, Haymon and his people would not have engaged in the damaging conduct that is the subject of the two promotional companies’ complaints. In other words, the financial interests of Golden Boy and Top Rank would have been best served by a private governing body because each company would not have wasted

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217. *Id.* at \*3.

218. *Top Rank Inc.*, 2015 WL 9952887, at \*4.

219. *Id.* at \*24.

220. *Id.*

221. *Id.* at \*25.

222. *Id.* at \*24.

223. *Id.* at \*2–3.

224. *Top Rank Inc.*, 2015 WL 9952887, at \*25.

225. Don Rafael, *Judge Dismisses Antitrust Claims in Bob Arum Lawsuit vs. Al Haymon*, ESPN (Oct. 23, 2015), [http://espn.go.com/boxing/story/\\_/id/13942821/judges-dismisses-antitrust-claims-bob-arum-lawsuit-vs-al-haymon-premier-boxing-champions](http://espn.go.com/boxing/story/_/id/13942821/judges-dismisses-antitrust-claims-bob-arum-lawsuit-vs-al-haymon-premier-boxing-champions) [http://perma.cc/A43S-6BQM].

226. *Id.*

money and resources on pursuing a claim in a court of record. Furthermore, the two promotional companies would not have suffered the damages caused by Haymon's unlawful conduct since there would have been a proper system of oversight and law enforcement that would have prevented Haymon from acting unlawfully.

*B. A Private Centralized Governing Body*

The four major sports in the United States—baseball, basketball, football, and hockey—are respectively organized in the form of a league that handles the day-to-day operations of the sport and provides planning, supervision, and control over the enterprise.<sup>227</sup> Among other things, these leagues operate as centralized governing bodies that provide unified rules applicable to any participant of the sport and in the process, monitor the welfare of players, franchises, and public confidence in the sport.<sup>228</sup> Moreover, these organizations enforce their rules and regulations by imposing penalties such as fines, bans, and suspensions.<sup>229</sup> Noncompliance with imposed penalties will prevent the person from participating in the sport.<sup>230</sup>

A private league is the most effective solution to combat many forms of corruption as exemplified by major professional team sports leagues, such as the National Football League (“NFL”). Unlike boxing, the NFL is a team sports league, but like boxing, football was tainted by deceptive practices.<sup>231</sup> In 1920, fourteen football team owners made a deal to save professional football by creating a professional football league.<sup>232</sup> Football team owners were losing money because of “soaring player salaries and intense bidding wars” that poached players from other teams.<sup>233</sup>

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227. See Baglio, *supra* note 191, at 2264 (quoting PAUL D. STAUDOHR, PLAYING FOR DOLLARS: LABOR RELATIONS AND THE SPORTS BUSINESS 8 (1996)).

228. *Id.* at 2265.

229. *Id.*

230. *Id.*

231. *History 1911–1920*, NFL (2016), <http://www.nfl.com/history/chronology/1911-1920> [<http://perma.cc/S57H-RF73>].

232. Christopher Klein, *The Birth of the National Football League*, HISTORY (2014), <http://www.history.com/news/the-birth-of-the-national-football-league> [<http://perma.cc/B3QC-R9GR>].

233. *Id.*



Accordingly, the purpose of this new venture was to “raise the standard of professional football in every way possible, to eliminate bidding for players between rival clubs and to secure the cooperation in the formation of schedule.”<sup>234</sup> In other words, the league was created to protect the interests of the owners.

Decades later, the NFL created the office of the commissioner.<sup>235</sup> During the 1960s, the league expanded the power of the commissioner with the election of the third commissioner of the NFL, Pete Rozelle.<sup>236</sup> Essentially, the owners gave Rozelle “full, complete, and final jurisdiction and authority over any dispute involving a member or members in the League.”<sup>237</sup> The commissioner’s discretion has further widened today because he now has the power to punish a player for conduct that he considers “detrimental to the integrity of, or public confidence in, the game of professional football.”<sup>238</sup> However, the commissioner’s power is limited in that he must answer to the owners because they hold the power to remove him.<sup>239</sup>

The NFL also consists of a Competition Committee (the “Committee”) which approves any change in game rules, league policy, club ownership, or other modification to the game.<sup>240</sup> Essentially, the Committee leads the rule-making process.<sup>241</sup> When deciding what regulatory modifications to make, other interests are represented and heard because the Committee receives input from its coaches’ and general managers’ subcommittees, experts, clubs, players, league committees, the

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234. *Id.*

235. *See NFL Commissioners and Presidents*, PRO FOOTBALL HALL OF FAME (Jan. 1, 2005), <http://www.profootballhof.com/news/nfl-commissioners-and-presidents/> [<http://perma.cc/G8F6-D6UZ>].

236. *Id.*

237. *Constitution and Bylaws of the National Football League*, NFL (2006), [http://www.nfl.com/static/content/public/static/html/careers/pdf/co\\_.pdf](http://www.nfl.com/static/content/public/static/html/careers/pdf/co_.pdf) [<http://perma.cc/XVW8-9B52>].

238. *Id.*

239. *League Governance*, NFL FOOTBALL OPERATIONS, <http://operations.nfl.com/football-ops/league-governance/> [<http://perma.cc/RX3M-37XS>].

240. *Id.*

241. *The NFL Competition Committee*, NFL FOOTBALL OPERATIONS, <http://operations.nfl.com/football-ops/league-governance/the-nfl-competition-committee/> [<http://perma.cc/G8F6-D6UZ>].

NFL Players Association, and others sources.<sup>242</sup> Afterwards, the Committee holds a national meeting to discuss the feedback it received, among other things, and reviews information with league medical advisors, members of the coaches' and general managers' subcommittees and NFL Players Association representatives.<sup>243</sup> After further review at the annual meeting, the Committee presents a report of its findings to all owners, who then vote on any proposed rules or rule changes.<sup>244</sup> Adoptions of a new rule or a revision of an existing rule must have the support of seventy-five percent of the owners.<sup>245</sup>

The players' interests are further represented through the National Football League Player's Association ("NFLPA"). The NFLPA represents players' financial interests by playing a key role in renewing of collective bargaining agreements, among other things.<sup>246</sup> It provides insight and feedback to the Committee regarding player protection during the rule-making process.<sup>247</sup>

Additionally, the league has created regulations that protect the owners' interests, such as "the salary cap," which promotes fair competition by limiting the amount each team can spend on player's salaries.<sup>248</sup> Further, the Commissioner may protect the owners' interests and those of the sport by exercising his power to discipline "an owner, shareholder, partner or holder of an interest in a member club . . . [who] has either violate[d] the Constitution and Bylaws of the League or professional football."<sup>249</sup> Moreover, bargaining with the NFLPA has granted discretion to the league's Commissioner by allowing him to punish conduct, including criminal conduct, that affects "the integrity of, or public confidence in, the

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242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. Michael Lydakakis & Andrew Zapata, *Tackling the Issues: The History of the National Football League's 2011 Collective Bargaining Agreement and What It Means for the Future of the Sport*, WILLAMETTE SPORTS L. REV. 17, 19–32 (2012).

247. *The NFL Competition Committee*, *supra* note 241.

248. Louis Bien, *The 2015 NFL Salary Cap Explained*, SB NATION (Mar. 2, 2015, 5:52 PM), <http://www.sbnation.com/nfl/2015/3/2/8134891/nfl-salary-cap-2015-franchise-tag-explained> [<http://perma.cc/G554-VJY7>].

249. *Constitution and Bylaws of the National Football League*, *supra* note 237.

game of professional football.”<sup>250</sup> This broad discretion is premised on two justifications: the conduct’s harm to the sport’s image and profitability.<sup>251</sup> These reasons explain why the Commissioner had the power to discipline Michael Vick for his involvement in dogfighting and gambling<sup>252</sup> and his power to discipline Tom Brady for his involvement in the “Deflategate” scandal.<sup>253</sup> However, the Deflategate scandal has placed limits on the Commissioner’s unfettered discretion. After Brady and his employer challenged the commissioner’s ruling, the U.S. District Court for the District of Minnesota vacated the ruling, thereby calling into question the commissioner’s partiality.<sup>254</sup>

While a centralized governing body such as a sports league seems to be the best solution for the corruptive ills of boxing since it has been proven effective in major professional team sports leagues,<sup>255</sup> not much has been discussed as to how such a body will operate and be structured. The sole purpose of having a governing body in boxing would be to manage the sport: create rules and regulations, enforce these rules and regulations along with existing law, and impose penalties if ignored. To effectively combat corruption, the structure of such a private league must contain a balance of powers, meaning that the interests of all participating parties must be represented and heard. Therefore, because the sole purpose in creating a centralized governing body would be to manage the sport, enforcement would most likely not be overlooked and fair practices and treatment would be assured.<sup>256</sup> Moreover, because a private league will have a structure that represents and protects the interests of all parties, the league will be self-

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250. *Id.*

251. *Id.*

252. *Id.*

253. The “Deflategate” scandal alleged that the New England Patriots deflated the footballs used in the American Football Conference (AFC) Championship game. Rachel G. Bowers, *What is the ‘Deflategate’ Controversy?*, BOS. GLOBE (Jan. 20, 2015), <https://www.bostonglobe.com/sports/2015/01/20/what-deflategate/z0DJ1t5cmjeliqGLvSiu3L/story.html> [<http://perma.cc/4XC2-DQW3>].

254. *Five’s a Trend*, ECONOMIST (Sept. 10, 2015, 10:00 PM), <http://www.economist.com/blogs/gametheory/2015/09/player-discipline-american-football> [<http://perma.cc/4WDP-MJRX>].

255. Burstein, *supra* note 194, at 494; *see* Baglio, *supra* note 191, at 2296; Jurek, *supra* note 189, at 1226. *See generally* Ehrlichman, *supra* note 188, at 455.

256. Burstein, *supra* note 194, at 496.

enforcing since it will incentivize those involved to properly oversee the sport.

Indeed, it is true that boxing is different from other major sports in the United States in that it is not a team sport;<sup>257</sup> however, the fact that boxing is not a team sport does not warrant complete dismissal of adapting certain aspects of such team sports' organizational structures.<sup>258</sup> Nevertheless, because boxing is an individual sport like golf, the Professional Golfers' Association of America ("PGA") may serve as a better organizational model.<sup>259</sup> Thus, to achieve the primary purpose mentioned above, the sport of boxing could adopt the PGA's organizational structure as well as aspects of team sports' structure provided that the structure adequately addresses the needs and interests of all participants.

### 1. The Mechanics and Templates

As a template, those in the sport of boxing may choose from two structures: the PGA Tour or the PGA of America.<sup>260</sup> The PGA Tour's structure consists of a board called the Player Advisory Council ("PAC"), directors known as the Policy Board, and the Commissioner.<sup>261</sup> The Policy Board's responsibility is to govern and control the sport<sup>262</sup> by promulgating rules, regulations, and penalties it deems in the best interests of the sport.<sup>263</sup>

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257. *See id.* at 494–95.

258. *See generally id.* at 494.

259. *Id.* at 495.

260. The PGA Tour and the PGA of America were once one association until they split in 1968. Now the PGA Tour is an association in which the members play cumulatively in tours. The players of the PGA of America, on the other hand, "often do play competitively, but primarily are the people who run the golf industry daily by using their expertise in the game to service the needs of their customers and/or membership, run facilities, teach, and generally be leaders in the industry." *PGA of America v. PGA Tour*, PGA S. CENT. SECTION ARK. CHAPTER (Sept. 14, 2011), <http://arkansaspga.com/2011/09/14/pga-of-america-vs-pga-tour/> [<http://perma.cc/9PSX-8CRW>].

261. The structure also includes a deputy commissioner and officers; however, for the purposes of this section they do not play a major role. *Id.*

262. *Tour Golfers, PGA Settle Fuss over Tournament Control*, THE SPOKESMAN-REVIEW 15 (Dec. 14, 1968) [<http://perma.cc/95CM-2NM8>].

263. *See generally 2015–2016 PGA Tour: Player Handbook & Tournament Regulations*, PGA TOUR, <http://playersupport.pgatourhq.com/Tour/PLP/playersupportinforegistration.nsf/xsp/ibmmodres/domino/OpenAttachment/Tour/PLP/playersupportinforegistration.nsf/C727DB7A7733806285257CC50066F582/pgAttachments/2015->

The Policy Board consists of four player directors serving three-year terms, one PGA of America director, and four volunteer independent directors who are among the nation's leading businessmen.<sup>264</sup> Professional golfers who play in fifteen or more regular PGA Tour events in a year have voting rights to elect the player directors.<sup>265</sup> However, the candidates that professional golfers may vote for come from a slate of candidates chosen by the existing player directors.<sup>266</sup> Preceding independent directors elect the succeeding independent directors.<sup>267</sup>

The PAC consists of sixteen members, each serving a one-year term.<sup>268</sup> Eight of the sixteen PAC members are appointed by the player directors from the Policy Board and the remaining eight are elected by vote of the general membership.<sup>269</sup> The PAC “works with, advises, and consults the PGA Tour Policy Board and commissioner Tim Finchem on various issues facing the PGA Tour and its membership.”<sup>270</sup> Because of the role the PAC plays, the fact that members of the PGA Tour are able to vote in PAC members, combined with the absence of a players' union, means that players must solely rely on the PAC as well as the Policy Board to represent their interests on issues with the Commissioner and his staff.<sup>271</sup>

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16%20PGA%20TOUR%20Handbook%20&%20Regulations%20-%20Final.pdf  
[<http://perma.cc/KR5K-7846>].

264. *Id.*

265. *Martin v. PGA Tour, Inc.*, 984 F. Supp. 1320, 1325 (D. Or. 1998).

266. *Id.* at 1320 n.4 (stating that whenever the office of any player director becomes vacant, either by death, resignation, disqualification, or removal, if he is no longer a voting member of the PGA Tour, the remaining player directors shall elect a successor who will serve for the remaining time of the predecessor); *see 2015–2016 PGA Tour: Player Handbook & Tournament Regulations*, *supra* note 262, at 163–65.

267. *See* Tim Rosaforte, *What's Behind the PGA Tour Policy Board*, GOLF DIGEST, <http://www.golfdigest.com/story/gw20080201rosaforte> [<http://perma.cc/HD4F-62FZ>]. *See generally* AT&T CEO to Join PGA Tour Policy Board, GOLF CHANNEL (Dec. 8, 2011, 3:00 PM), <http://www.golfchannel.com/news/golftalkcentral/att-ceo-join-pga-tour-policy-board/> 1/3 [<http://perma.cc/HD4F-62FZ>].

268. PGA Tour Announces Advisory Board, ESPN (Jan. 17, 2015), [http://espn.go.com/golf/story/\\_/id/12183876/pga-tour-announces-16-players-fill-player-advisory-council-2015](http://espn.go.com/golf/story/_/id/12183876/pga-tour-announces-16-players-fill-player-advisory-council-2015) [<http://perma.cc/23D4-U5S7>].

269. *Id.*

270. *Id.*

271. Rosaforte, *supra* note 267.

The Commissioner's responsibility is to interpret and apply the regulations set forth by the Policy Board: "[h]is job is to hire a staff and make sure the directives of the [Policy] [B]oard are followed."<sup>272</sup> A search committee made up of the Policy Board's independent directors elects the Commissioner.<sup>273</sup> Any complaint regarding the violation of rules or regulations are first filed with the PAC.<sup>274</sup> If the PAC decides that the complaints are important enough, they are discussed and ultimately passed on to the Policy Board.<sup>275</sup>

The Chief of Operations, who is part of the Commissioner's office, presents a notice to the member who is the subject of the complaint unless the notice is of a proposed major penalty (in which case the Commissioner executes it).<sup>276</sup> The member must then submit a proposed disciplinary action, penalty facts, or evidence of mitigating circumstances that may apply to the Commissioner within fourteen days of such notice.<sup>277</sup> Within fourteen days of receiving the information from the member, the "Commissioner shall notify the member in writing of the imposition of the proposed disciplinary action or penalty, or that the proposed action has been dismissed."<sup>278</sup> After the imposition of either a disciplinary action or penalty, the member may appeal to the Appeals Committee, which consists of non-player directors designated by the Policy Board.<sup>279</sup>

The PGA of America has a different and simpler organizational and disciplinary structure. The structure consists of a board of directors, a board of control, and a board of inquiry.<sup>280</sup> In the PGA of America, complaints are filed with the Board of Inquiry, who then could further

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272. Rosaforte, *supra* note 267; see *2015–2016 PGA Tour: Player Handbook & Tournament Regulations*, *supra* note 263.

273. See Rosaforte, *supra* note 267.

274. See *id.*

275. See *id.*

276. *2015–2016 PGA Tour: Player Handbook & Tournament Regulations*, *supra* note 263, at 150.

277. *Id.*

278. *Id.* at 151.

279. *Id.*

280. The PGA of America does elect executive officers; however, for the purposes of this section, executive officers are not relevant.

investigate the issue and report it to the Board of Control.<sup>281</sup> The Board of Control consists of the Secretary of the Association and four members of the association appointed by the President according to geography.<sup>282</sup> The Board of Control may hear complaints filed with the association and appeals from any other decisions made by the association.<sup>283</sup>

The Board of Directors consists of three officers: the President, a Player Director elected by the Player Directors of the PGA Tour, Directors representing each of the Association's Districts, and two Independent Directors.<sup>284</sup> The Board of Directors, like the Policy Board of the PGA Tour, is responsible for the promulgation of rules, policies, and regulation of the association and its members.<sup>285</sup> However, unlike the Policy Board but like the Commissioner of the PGA Tour, the Board of Directors is responsible for the management of the association and has the power to interpret its rules, regulations, policies, and even the constitution and bylaws of the association.<sup>286</sup> Moreover, the Board of Directors "has the jurisdiction to hear appeals that arise from decisions of the Board of Control."<sup>287</sup> Decisions by the Board of Directors are final.<sup>288</sup>

## 2. Proposed Models

Given that boxing is not organized in the exact same way as golf, the sport of boxing should adopt a variation of the two PGA structures. Similarly, because boxing is not a team sport, a league structure suitable for boxing should not be identical to the private leagues of professional team sports.<sup>289</sup> Moreover, to avoid doubts regarding partiality, boxing should

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281. *Constitution Bylaws and Regulations*, THE PROFESSIONAL GOLFER'S ASSOCIATION OF AMERICA 11 (2013), [http://pdf.pgalinks.com/regmemos/2013\\_Constitution\\_Bylaws\\_Regulations.pdf](http://pdf.pgalinks.com/regmemos/2013_Constitution_Bylaws_Regulations.pdf) [<http://perma.cc/B55Y-T34R>].

282. *Id.* at 1.

283. *Id.* at 40.

284. *Id.*

285. *Id.*

286. *Id.*

287. *2015–2016 PGA Tour: Player Handbook & Tournament Regulations*, *supra* note 262, at 151.

288. *Constitution Bylaws and Regulations*, *supra* note 281, at 40.

289. Burstein, *supra* note 194, at 494.

not strictly adhere to the NFL's structure.<sup>290</sup> Additionally, although it was mentioned that the "best of all possible worlds would have" both a central governing body and a union,<sup>291</sup> unions have proven to be at times ineffective and harmful to some sports and their fans, sometimes causing lockouts and work stoppages in the NBA, MLB, and NFL.<sup>292</sup>

Despite boxing's lack of boxer organization, boxers' interests may still be represented in a centralized governing body through the adaptation of a player council (the "Council") similar to the PAC of the PGA Tour. Should such a structure be adopted, the boxers participating in the association should have voting rights that would allow them to elect the Council's members. Therefore, the Council will serve to work in the best interests of the fighters. Moreover, unlike the PAC in the PGA Tour, the Council should be allowed to choose some of its members from among the association's general membership. This way, the concerns of all members are adequately heard and the voices of journeymen boxers are not overshadowed by the voices of premiere boxers.

Additionally, boxing should adopt a board of directors who, like both the PGA of America's Board of Directors and the PGA Tour's Policy Board, promulgates rules, regulations, and penalties it deems in the best interests of the sport. Boxing can strictly follow the same structure as the PGA Tour by allowing the board of directors to consist of player directors who are elected by premier boxers. The remaining board members could be independent directors, as in the PGA Tour. However, to adequately address the interests of all participants of the sport, some of the board members should be elected by managers and promoters, who will be members of the association as well. Thus, the board of directors would be comprised of members that represent the interests of boxers, managers, and promoters when promulgating and enforcing regulations.

With respect to disciplinary authority, it could either be conferred to a commissioner, like the PGA Tour, or to a board of control, like the PGA of America. If the former option is adopted, boxers can appeal to a committee to review the decisions of the board of directors or to an outside arbitrator,

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290. *See supra* Part V.B.

291. Burstein, *supra* note 194, at 494.

292. *See generally Pro Sports Lockouts and Strikes Fast Facts*, CNN LIBRARY, (Jan. 28, 2015, 9:48 PM), <http://www.cnn.com/2013/09/03/us/pro-sports-lockouts-and-strikes-fast-facts/> [<http://perma.cc/QW6Z-G3G6>].



like in the NBA.<sup>293</sup> However, for a more fair and disinterested decision, an outside arbitrator would be the better of the two options unless the appeals committee is comprised of disinterested officers. If instead a board of control is given disciplinary authority, jurisdiction to hear appeals should then be conferred to either the board of directors, an appeals committee, or neutral third party arbitration while possibly including a board of inquiries for investigatory purposes. To prevent a “floodgate” effect, like in the PGA of America and the NBA, formal complaints should only be filed if probable cause exists. Like the NBA, the standard of review for appeals should be the “arbitrary and capricious” standard.<sup>294</sup>

## VI. CONCLUSION

Deceptive and corruptive practices are harmful not only to their intended targets but also to innocent bystanders. Corruption, whether it be in an attempt to monopolize the sport or circumvent health and safety protections for boxers, hurts the interests of boxers, promoters, managers, as well as boxing fans and the sport in general. If a manager limits his fighters’ choice of promoter, as in the two cases brought against Haymon, the manager is interfering with fair competition while at the same time depriving the fighter of promotional and financial opportunities. Moreover, the manager is possibly preventing the anticipated matches from occurring.

Additionally, bringing a lawsuit and going to trial is expensive. Court fees, witness expenses, and attorney’s fees, among other things, make up the cost. Thus, it is safe to say that both the Golden Boy and Top Rank lawsuits against Haymon have not been cheap and the trial expenses will be hefty. This is money that is not only taken away from wealthy promoters but also from future investments in boxing. Moreover, if the remainder of allegations set forth in both complaints are true, boxing fans, promoters, managers, and boxers have all been deprived of boxing opportunities and matches. In short, if Haymon had engaged in venue blocking, used the music industry’s “payola” practices, and included tie-out provisions in contracts, he prevented matches involving other promoters from occurring

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293. James M. Pollack, Note, *Take My Arbitrator, Please: Commissioner “Best Interests” Disciplinary Authority in Professional Sports*, 67 *FORDHAM L. REV.* 1645, 1646–49 (1999).

294. See, e.g., *Code of Ethics Bylaws and Regulations*, THE PROFESSIONAL GOLFERS’ ASSOCIATION OF AMERICA, 1, 3 <http://pdf.pgainks.com/regmemos/CodeofEthicsGuidelines.pdf> [<http://perma.cc/3EC7-7MG2>]; Pollack, *supra* note 293, at 1703–04.

and deprived boxers from opportunities and fans from enjoying potential matches.

A private governing body like the one this Note proposes would mitigate the unfair practices and corruptive ills that penetrate the sport of boxing.<sup>295</sup> Such a private league would be unlike the solutions proposed by other legal scholars.<sup>296</sup> This private governing body would effectively deal with corruption by combating it on all fronts, having the enforcement power that the Ali Act lacks, and existing as a proper policing and oversight system that disciplines behavior before it creates harm.<sup>297</sup> The representation of every league participant's interest in the league's internal structure and regulations would serve as an incentive to ensure that all aspects of corruptive conduct are properly dealt with, prevented, or redressed.<sup>298</sup> The governing body would be an avenue where injured parties could redress the harm they have suffered.<sup>299</sup> Moreover, the governing body would continuously promulgate rules and laws that deal with emerging issues and new forms of corruption.<sup>300</sup>

In acting in the best interests of all participants and the sport, if such a private league had been in place during the occurrence of these allegations against Haymon, the private league would have either prevented such conduct from reoccurring or mitigated the harm that flowed from such conduct. As mentioned, three months after Top Rank filed their complaint, the court dismissed it for failure to state damages. The answer to whether Top Rank did in fact sustain damages from Haymon's conduct, however, would not have impeded a private league from pursuing disciplinary action and ceasing Haymon's practices. If a private league were in place, Top Rank would not need to amend its complaint for failure to state damages. The damages were clear: Haymon's conduct robbed boxers, managers, promoters, and fans from potential bouts and it further tarnished the quality, creditability, and integrity of the sport.

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295. *See supra* Part V.B.2.

296. *See supra* Part IV.

297. *See supra* Part IV.

298. *See supra* Part IV.

299. *See supra* Part V.B.2.

300. *Id.*