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Why Federal Preemption Is Necessary to Create Uniform Professional Boxer Safety Standards

I. INTRODUCTION

Boxing is a dangerous sport.¹ This was tragically illustrated twice within three months in 2005 when both Martin Sanchez and Leavander Johnson died after suffering injuries during professional boxing matches.² Sanchez died shortly after suffering a brain bleed during a fight with Rustam Nugaev; Johnson, who also received a fatal brain injury, died five days after his fight with Jesus Chavez.³ While boxing is undoubtedly dangerous,⁴ extensive regulations covering boxer safety have supposedly made the sport safer.⁵ Despite the presence of these regulations, the circumstances surrounding the recent deaths of Sanchez and Johnson, especially the death of Sanchez, have led many to believe that the current safety regulations are not being properly enforced.⁶ For example, one of these regulations requires each boxer to undergo a pre-fight physical examination.⁷ However, there is evidence that

¹ For a history of boxer injuries and legislative responses, see Sen. John McCain & Ken Nahigian, *A Fighting Chance for Professional Boxing*, 15 STAN. L. & POL'Y REV. 7, 9-18 (2004).

² Thomas Hauser, *Fighter Safety and the Nevada State Athletic Commission*, SECONDSOUT, <http://www.secondsout.com/usa/colhauser.cfm?ccs=208&cs=17827> (last visited Feb. 19, 2008).

³ *Id.*; see *infra* Part III (discussing the circumstances surrounding these fatalities).

⁴ Thomas Hauser, one of the most well respected and informed journalists covering the boxing industry, has done an excellent job of summing up the sport of boxing and the importance of safety regulations; he wrote, "When boxing is run right, it's a scary sport. When it's run wrong, the risks become unacceptable." Thomas Hauser, *Medical Issues and the AAPRP*, SECONDSOUT, <http://www.secondsout.com/usa/colhauser.cfm?ccs=208&cs=15463> (last visited Feb. 19, 2008).

⁵ McCain & Nahigian, *supra* note 1, at 18-23.

⁶ Hauser, *Fighter Safety*, *supra* note 2.

⁷ The regulation states:

No person may arrange, promote, organize, produce, or fight in a professional boxing match without meeting each of the following requirements or an alternative requirement in effect under regulations of a boxing commission

Sanchez's pre-fight physical was either not done or done in an extremely negligent manner.⁸ And, because Sanchez did not speak English, and the ringside doctors who were supposed to attend to him as required by the regulations did not speak Spanish, the medical staff was unable to communicate with him during the fight.⁹ Unfortunately, there are examples from multiple states which indicate that improper enforcement of current regulations is a nationwide problem that has had a negative impact on the health and safety of many fighters.¹⁰

The recent boxing deaths should not be surprising to anyone familiar with the sport. In fact, the sport of boxing has a long history of legal problems in the United States.¹¹ Boxing is different from other contact sports in that conduct that would otherwise be considered criminal is lawful in the boxing ring. Simply put, the goal of a professional boxer is to knock his or her opponent unconscious, but outside of the ring this is considered assault.¹² Therefore, while the game of basketball is legal without having a law about putting a leather ball through a metal hoop, people can only box legally when it is sanctioned by law. Another reason there have been legal problems in the boxing industry is that, because boxers receive a large amount of physical punishment throughout their careers, with the most serious injuries coming from blows to the head,¹³ there have been calls over the years to regulate boxing in order to make it

that provides equivalent protection of the health and safety of boxers: (1) A physical examination of each boxer by a physician certifying whether or not the boxer is physically fit to safely compete, copies of which must be provided to the boxing commission. . . .

15 U.S.C. § 6304 (2006) (paragraph break omitted).

⁸ Hauser, *Fighter Safety*, *supra* note 2; *see infra* Part III.

⁹ Hauser, *Fighter Safety*, *supra* note 2. This clearly violates the spirit of the regulation stating that there must be a "physician continuously present at ringside," 15 U.S.C. § 6304 (2006), since a physician cannot render competent medical advice if he cannot communicate with the patient.

¹⁰ *See* discussion *infra* Part III.

¹¹ *See* McCain & Nahigian, *supra* note 1, at 9-18.

¹² *See* MODEL PENAL CODE § 211.1 ("(1) Simple Assault. A person is guilty of assault if he: (a) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or (b) negligently causes bodily injury to another with a deadly weapon; or (c) attempts by physical menace to put another in fear of imminent serious bodily injury.").

¹³ The U.S. military conducted a study of injuries commonly sustained by boxers, which "showed that sixty-eight percent of the boxers suffered head injuries, including intracranial injuries, concussions, intracranial hemorrhages, and skull fractures." Kevin M. Walsh, *Boxing: Regulating a Health Hazard*, 11 J. CONTEMP. HEALTH L. & POL'Y 63, 65 (citing Robert W. Enzenauer et al., *Boxing-Related Injuries in the US Army, 1980 Through 1985*, 261 JAMA 1463, 1464 (1989)).

safer for the participants, or to ban the sport altogether.¹⁴ The calls for increased boxer safety, which seem to cycle in and out of the public's consciousness,¹⁵ have once again been renewed based on a number of recent boxer injuries and the deaths of Sanchez and Johnson.¹⁶ This is especially true because many within the boxing industry believe that improved safety standards, or even stricter enforcement of the existing standards, could have prevented these injuries and deaths.¹⁷

Many of the issues relating to boxing safety result from the economics of the sport and a lack of federal oversight that has led to a patchwork of state laws. There are two classes of fighter that fill the ranks of professional boxing: the premier fighters, whose names are widely recognizable, and the club fighters, who are unknown to the general public but make up the majority of the sport's participants.¹⁸ While the premier fighters are highly compensated, the club fighters often receive little money.¹⁹ While the boxing industry depends on the club fighters, they are likely to be exploited both physically and financially.²⁰ In part, this exploitation continues because of the

¹⁴ While the idea of banning boxing entirely has not received much attention in the United States, some countries have either banned the sport or are seriously considering the possibility. See Mark Barden, *Boxing on the Ropes*, BBC SPORT, Dec. 18, 2000, http://news.bbc.co.uk/sport2/hi/other_sports/1076244.stm.

¹⁵ For an illustration of the cycles of safety regulation, especially on the federal level, see McCain & Nahigian, *supra* note 1.

¹⁶ See Hauser, *Fighter Safety*, *supra* note 2. The circumstances surrounding the deaths of Leavander Johnson and Martin Sanchez will be discussed further in Part III, *infra*.

¹⁷ See Hauser, *Fighter Safety*, *supra* note 2.

¹⁸ McCain & Nahigian, *supra* note 1, at 8.

¹⁹ Two of the sport's most popular fighters, Oscar De La Hoya and Floyd Mayweather, Jr., fought in Las Vegas on May 5, 2007. De La Hoya was expected to make at least \$25 million and Mayweather was expected to make at least \$10 million. Dan Rafael, *Finally! The De La Hoya-Mayweather Bout Is Official*, ESPN BOXING, Nov. 13, 2006, <http://sports.espn.go.com/sports/boxing/news/story?id=2661028>. However, because the fight made more money than expected, grossing over \$150 million, De La Hoya actually received roughly \$50 million while Mayweather earned around \$20 million. Dan Rafael, *De La Hoya 'Ecstatic' that Fight Was Richest Ever*, ESPN BOXING, MAY 9, 2007, <http://sports.espn.go.com/sports/boxing/news/story?id=2865349>. In contrast, it is common for a club fighter to receive less than \$200 for a fight. Mike Mosedale, *In This Corner*, CITY PAGES, Jan. 12, 2000, <http://citypages.com/databank/21/997/article8360.asp>.

²⁰ One illustration of this dependence and exploitation is in the area of matchmaking (which is the process where it is determined who a fighter's opponent will be). In order to build up a promising young fighter's win-lose record, his handlers will schedule fights with opponents of considerably less skill. This allows the young fighter to showcase his skills without any real risk of losing. An example of this practice can be seen by looking at the record of Shad Howard. Shad Howard has a record of thirteen wins and ten losses. As of February 29, 2008 Howard had lost four of his last five fights with three of the losses coming against young contenders who have a

large amount of money that a boxing event can generate. Boxing is especially important to the city of Las Vegas, which has no major professional sports teams.²¹ For example, tickets for the Oscar De La Hoya/Floyd Mayweather Jr. fight at the MGM Grand Casino in Las Vegas were priced from \$150 to \$2000.²² Incredibly, almost all of the tickets were sold before the tickets officially went on sale.²³ It was estimated that the live gate alone would exceed \$19 million,²⁴ and the event almost reached that goal by bringing in over \$18 million.²⁵ In fact, so much money was made that the two fighters are in negotiations for a rematch even though the first fight was extremely one-sided.²⁶ With such large amounts of money coming into the state, it must be hard for state regulators to remain objective when deciding whether or not to allow a fight to take place.

Boxing has traditionally been regulated by the states through state athletic commissions.²⁷ There are variations from state to state, but New York provides an example of how state athletic commissions are generally set up.²⁸ New York State law requires the establishment of an athletic commission.²⁹ The

combined record of fifty-nine wins and no losses and were looking to showcase their talents. BoxRec.com, Shad Howard, http://www.boxrec.com/boxer_display.php?boxer_id=049775 (last visited Feb. 13, 2008). Julio Cesar Chavez Jr. is a promising young fighter who is also the son of one of Mexico's greatest and most popular fighters, Julio Cesar Chavez. Tim Korte, *The Son Also Boxes: Julio Cesar Chavez Jr. Ready to Make His Own Name*, USA TODAY, Nov. 13, 2007, available at http://www.usatoday.com/sports/boxing/2007-11-30-1352562633_x.htm. Dmitriy "the Star of David" Salita is also a rising young star and has a strong amateur background. He also has a very large fan base in Brooklyn, N.Y., where he lives and trains. His Brooklyn fan base is a market that many boxing promoters are interested in appealing to. Salita's popularity is so great that a movie has been made about his life. Orthodox Stance, <http://www.orthodoxstance.com> (last visited Feb. 13, 2008).

²¹ Answers.com, Sports in Las Vegas, <http://www.answers.com/topic/sports-in-las-vegas> (last visited Feb. 13, 2008).

²² Dan Rafael, *Tickets for De La Hoya-Mayweather on Sale Jan. 27*, ESPN BOXING, <http://sports.espn.go.com/sports/boxing/news/story?id=2733979> (last visited Feb. 13, 2008).

²³ The advance tickets were sold to sponsors, casinos, the fighters' camps, and HBO. *Id.*

²⁴ *Id.*

²⁵ Dan Rafael, *Golden Boy CEO: Mayweather-De La Hoya II Could Come in September*, ESPN BOXING, Jan. 17, 2008, <http://sports.espn.go.com/sports/boxing/news/story?id=3200384>.

²⁶ Associated Press, *Fighters to Take Time Off, Make Decisions Later*, ESPN BOXING, MAY 7, 2007, <http://sports.espn.go.com/sports/boxing/news/story?id=2862362>.

²⁷ See *infra* Parts II, III.

²⁸ A complete list of commissions with links to each commission's home page, is available at Association of Boxing Commissions, <http://www.abcboxing.com> (follow "Commission Contacts" link) (last visited Feb. 13, 2008).

²⁹ See New York State Athletic Commission, <http://www.dos.state.ny.us/athletic/index.html> (last visited Dec. 23, 2007).

body consists of three commissioners who are appointed by the governor and a support staff that includes a physician and a medical advisory board.³⁰ The commission is responsible for setting safety standards and procedures involved in the regulation of boxing and wrestling activities.³¹ In addition, the commission administers all required licenses.³²

While the state commissions theoretically protect the safety of the participants, there is concern that in reality many state commissions have not adequately developed or enforced safety procedures. As a result, reformers have called for the federal government to regulate boxing in order to curtail some of the safety problems that have plagued the sport.³³ These calls led Congress to use its Commerce Clause power to pass the Professional Boxing Safety Act (“PBSA”) of 1996.³⁴ Through the PBSA, Congress tried to raise safety standards by requiring certain minimum safety measures for all professional boxing matches.³⁵ The PBSA’s most important provision was aimed at increasing the standards of the less-regulated states by requiring all the state commissions to honor one another’s medical suspensions.³⁶ In 2000, the PBSA was amended by the Muhammad Ali Boxing Reform Act (“MABRA”).³⁷ The MABRA amended the PBSA but was primarily concerned with protecting professional boxers economically, and it left most of

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See McCain & Nahigian, *supra* note 1, at 13-20.

³⁴ Professional Boxing Safety Act of 1996, Pub. L. No. 104-272, 110 Stat. 3309, 104th Cong. (1996) (codified at 15 U.S.C. §§ 6301-6313 (2006)). In addition to the increasing concern for boxer safety, the PBSA was passed in large part because of the corruption in the awarding of boxing match decisions. McCain & Nahigian, *supra* note 1, at 16, 18.

Another catalyst for reform was the perceived corruption in boxing’s four major sanctioning organizations: the World Boxing Association, the World Boxing Council, the World Boxing Organization (“WBO”), and the International Boxing Federation (“IBF”). Each of these organizations has its own champions and ranking systems. Boxing Sanctioning Bodies, <http://boxinggyms.com/sanctioningbodies.htm> (last visited Feb. 7, 2008). There is widespread belief that the organizations are corrupt and do not accurately determine who the best boxers are. This position gained credence in 2001 when the WBO moved Darrin Morris two spots up in the rankings even though he had only fought once in the last three years, and had been deceased for over a year. Tim Graham, *New WBO Division: Dead Weight*, ESPN BOXING, <http://espn.go.com/boxing/columns/graham/1097210.html> (last visited Feb. 7, 2008).

³⁵ See 15 U.S.C. §§ 6301-6313 (2000).

³⁶ *Id.* § 6306.

³⁷ *Id.* §§ 6301-6313. Since the MABRA left most of the PBSA safety provisions unchanged, this Note will refer to the PBSA when discussing boxer safety regulation.

the safety provisions unchanged.³⁸ The major problem with the PBSA and MABRA is that they rely heavily on the state athletic commissions.³⁹ Thus, while these statutes do provide some federal oversight of the boxing industry, they do not significantly remedy the problem of state commissions failing to develop and enforce safety standards because of their reliance on these same commissions. As a result, even though the PBSA is generally seen as a positive step, there has been a large amount of debate about how effective the federal legislation has been in regulating the sport of boxing.⁴⁰

Because he does not believe that the previous acts have been effective in promoting boxer safety, Senator John McCain, who was instrumental in passing the PBSA and the MABRA, proposed the Professional Boxing Amendments Act (“PBAA”).⁴¹ The PBAA attempts to address the problem of inadequate oversight by providing for the formation of the United States Boxing Commission (“USBC”), an additional bureaucratic level providing federal oversight.⁴² The problem with this proposal is that, even with the establishment of the USBC, the state commissions would still be responsible for most of the oversight of the sport.⁴³

This Note will argue that the PBSA has failed to create adequate boxer safeguards due to the poor enforcement of its provisions by the state athletic commissions and the fact that a recent state court decision has effectively nullified the most important aspect of the Act.⁴⁴ It will further argue that the only way to provide proper oversight of the sport is for the federal government to preempt the field of boxing regulation. This can be achieved by creating a federal boxing commission, similar to Senator McCain’s proposed USBC, that is capable of replacing the state commissions. Finally, this article will explain how Congress can constitutionally create such a commission.

Part II of this Note will provide a brief overview of the PBSA and the MABRA, and will discuss the role of the Association of Boxing Commissions (“ABC”) in regulating the

³⁸ *See id.* §§ 6301-6313.

³⁹ *Id.* § 6306 (placing primary responsibility for the establishment of numerous procedures on the Commissions).

⁴⁰ *See infra* Part III.

⁴¹ *See* Professional Boxing Amendments Act of 2005, S. 148, 109th Cong. (2005), available at <http://www.govtrack.us/congress/bill.xpd?bill=s109-148>.

⁴² *Id.*

⁴³ *Id.* § 4(a).

⁴⁴ *See infra* Part III.

sport. Part III will provide examples of how the PBSA has failed to achieve its goals by neglecting to ensure uniform safety standards. Part III will also concentrate on the case of Joe Mesi, a boxer who was suspended in one state but was then allowed to fight in other jurisdictions even though he was never cleared by the medical board that suspended him.⁴⁵ The role that the state athletic commissioners played in enforcing the PBSA in the Mesi case will be discussed. Part IV will explain why the proposed PBAA will not produce the intended results of increased boxer safety. Finally, Part V will illustrate how federal oversight, independent of state athletic commissions, can improve boxer safety and will argue that Congress can constitutionally achieve federal oversight. This argument will be made by citing previous areas where Congress has preempted the states from acting by passing exhaustive regulations, and will explain how Congress can pass similar laws for the purpose of controlling boxing regulation.

II. OVERVIEW OF THE PBSA, MABRA, AND ABC

While it is not known when boxing first developed as a sport, there is evidence that it was popular in Rome prior to 500 A.D.⁴⁶ Almost from the beginning of the sport, attempts were made to regulate it.⁴⁷ In England “Broughton’s Rules” were developed to make the sport safer for the participants in 1743,⁴⁸ and ongoing concern for boxer safety resulted in the establishment of the Marquis of Queensberry rules in 1867.⁴⁹ In the United States, boxing was first legalized in California and Louisiana,⁵⁰ but New York was the first state to regulate boxing with the passage of the Horton Act.⁵¹ As soon as boxing was legalized it was profitable for those who ran it, while the fighters who participated usually were doing so only to escape

⁴⁵ *Federal Judge Rules Mesi’s Medical Suspension Expired*, ESPN BOXING, <http://sports.espn.go.com/sports/boxing/news/story?id=2265510> (last visited Jan. 9, 2008).

⁴⁶ McCain & Nahigian, *supra* note 1, at 9.

⁴⁷ In Rome, Emperor Theodoric eventually banned the sport because he was concerned that it had become too violent. *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* (footnote omitted).

⁵⁰ *Id.* at 10.

⁵¹ *Id.*

poverty.⁵² Eventually the state athletic commission scheme was adopted by a majority of the states.⁵³

Prior to 1996, professional boxing was regulated entirely by state athletic commissions.⁵⁴ In 1955, in *United States v. International Boxing Club of N.Y., Inc.*, the Supreme Court ruled that Congress could regulate professional boxing under the Commerce Clause, at least to the extent that the government could sue in civil court for violations of the Sherman Act by the boxing industry.⁵⁵ However, at the time, the Court ruling did not lead Congress to adopt any federal standards concerning the boxing industry. Since there were no universal standards, safety conditions varied from state to state, depending on the regulations adopted by the state athletic commissions.⁵⁶ This led to “forum shopping” by professional boxers; fighters who could not pass the medical tests of those states with strict medical requirements or who were medically suspended by a state would travel to states with less stringent regulations in order to fight.⁵⁷ The wide variety of safety regulations and the ease with which fighters could evade them prompted congressional action to help protect professional boxers.

⁵² *Id.* at 10-11. For example, Jake La Motta, the former middleweight champion, described the difficulties of growing up poor during his early childhood. It is clear that his upbringing shaped the rest of his life and was something that he drew on during his boxing career. La Motta wrote:

What I remember about the tenement as much as anything else is the smell. It's impossible to describe the smell of a tenement to someone who's never lived in one. You can't just put your head in the door and sniff. You have to live there, day and night, summer and winter, so the smell gets a chance to sink into your soul. There's all the dirt that the super never really manages to get clean even on the days when he does an hour's work, and this dirt has a smell, gray and dry and, after you've smelt it long enough, suffocating.

JAKE LA MOTTA, *RAGING BULL: MY STORY 2* (Da Capo Press 1997) (1970).

⁵³ See Association of Boxing Commission, *Boxing Commissions—Contact Information*, http://www.canadianboxing.com/abcboxing_commissions_contact.htm (last visited Feb. 14, 2008).

⁵⁴ See McCain & Nahigian, *supra* note 1, at 19-20.

⁵⁵ *United States v. Int'l Boxing Club of N.Y., Inc.*, 348 U.S. 236, 240-41 (1955). This case will be discussed further in Part V, *infra*.

⁵⁶ The standards of the State Athletic Committees still vary widely. For example, only a small number of states require neurological exams as a condition of being licensed. See Association of Boxing Commissions, *State Medical Requirements*, http://www.canadianboxing.com/abcboxing_commission_medical_requirements.htm (last visited Feb. 14, 2008).

⁵⁷ McCain & Nahigian, *supra* note 1, at 19. Senator McCain wrote that one of the aims of the PBSA was to “prohibit[] medically-suspended fighters from participating in boxing matches in other states and assure[] that states are aware that a fighter may be suspended in another state.” *Id.*

A. *The PBSA*

The PBSA was passed in 1996, pursuant to the authority recognized in *International Boxing Club of N.Y.*, in an attempt to regulate the safety standards in professional boxing.⁵⁸ Section 6302 of the Act states that two of the purposes of the Act are, “(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.”⁵⁹ In order to achieve these large-scale goals, the Act concentrates on specific practices: for example, because Congress realized that one of the obstacles facing the boxing industry was accurate record-keeping, the Act provides that the state athletic commissions must establish procedures to evaluate the records, both medical and win-loss, of each boxer fighting in the state, and requires the state to prevent the fighter from fighting within the state if appropriate.⁶⁰ Congress also addressed the issue of “forum shopping” in the Act by ordering state athletic commissions to establish “[p]rocedures to ensure that . . . no boxer is permitted to box while under suspension from any boxing commission due to—(A) a recent knockout or series of consecutive losses; (B) an injury, requirement for a medical procedure, or physician denial of certification”⁶¹ By requiring states to recognize one another’s medical suspensions, Congress hoped to end the practice in which boxers avoid medical suspensions in more restrictive states by traveling to other, less restrictive ones.⁶²

⁵⁸ Professional Boxing Safety Act of 1996, Pub. L. No. 104-272, 110 Stat. 3309, 104th Cong. (1996) (codified at 15 U.S.C. §§ 6301-6313 (2006)).

⁵⁹ *Id.* § 6302.

⁶⁰ *Id.* § 6306.

⁶¹ *Id.* § 6306(a)(2)(A)-(B). The statute allows a suspended boxer to fight in another state if:

(1) for any reason other than those listed in subsection (a) of this section if such commission notifies in writing and consults with the designated official of the suspending State’s boxing commission prior to the grant of approval for such individual to participate in that professional boxing match; or (2) if the boxer appeals to the Association of Boxing Commissions, and the Association of Boxing Commissions determines that the suspension of such boxer was without sufficient grounds, for an improper purpose, or not related to the health and safety of the boxer or the purposes of this chapter.

Id. § 6306(b).

⁶² See McCain & Nahigian, *supra* note 1, at 19.

B. *The MABRA*

The MABRA, passed in 2000, amended the PBSA.⁶³ It is aimed at protecting boxers financially and, aside from some minor textual changes, leaves the safety standards developed by the PBSA untouched.⁶⁴ For example, under the MABRA, states still have to honor the medical suspensions of other states.⁶⁵ The MABRA begins with a list of findings by Congress, including:

*State officials are the proper regulators of professional boxing events, and must protect the welfare of professional boxers and serve the public interest by closely supervising boxing activity in their jurisdiction. State boxing commissions do not currently receive adequate information to determine whether boxers competing in their jurisdiction are being subjected to contract terms and business practices which may violate State regulations, or are onerous and confiscatory.*⁶⁶

The finding that state officials are the proper regulators of the sport is the main reason why attempts to regulate boxers' safety have been unsuccessful up to this point. A pattern has emerged with respect to boxing regulation: the federal government finds that the states are not adequately protecting boxers, Congress passes legislation designed to provide protection, the state athletic commissions fail to follow the legislation, the boxers are once again left unprotected, and Congress responds by passing new legislation. However, adequate protection would be provided if the federal government simply took boxing regulation out of the states' hands. An examination of the effectiveness of the PBSA and the MABRA reveals that almost all of the major failures result from improper oversight from the state athletic commissions.⁶⁷ One attempt to achieve proper oversight was the creation of the Association of Boxing Commissions.

C. *The ABC*

The creation of the ABC was an initial attempt to provide uniformity among the state athletic commissions, but

⁶³ Muhammad Ali Boxing Reform Act, Pub. L. No. 106-210, 114 Stat. 321, 321-29 (codified as amended at 15 U.S.C. §§ 6301-6309 (2006)).

⁶⁴ 15 U.S.C. §§ 6301-6313 (2000).

⁶⁵ *Id.*

⁶⁶ *Id.* § 6302 (emphasis added).

⁶⁷ *See infra* Part III.C.

so far it has proven to be largely ineffective.⁶⁸ The ABC is a non-profit organization whose membership includes the athletic commissioners of states that have formed commissions to regulate boxing in accordance with the PBSA of 1996.⁶⁹ It is recognized by both the PBSA and the MABRA.⁷⁰ According to its constitution, one of the main purposes of the ABC is “[t]o promote continual improvement of, and for, the sport of professional boxing.”⁷¹ The ABC also provides training for referees and other ringside personnel.⁷² Additionally, the PBSA allows a state that does not have an athletic commission to hold boxing events under the supervision of a neighboring commissioner or the ABC.⁷³ While the ABC mainly has a supervisory role, Congress also envisioned that it would make suggestions for substantive reforms.⁷⁴

When enacting the MABRA, Congress provided general guidelines for some of the reforms and left the specific details in the hands of the ABC.⁷⁵ This was probably based on the belief that the ABC, whose sole responsibility is the boxing industry, is better informed than Congress about the needs of the boxing industry. For example, when addressing the issue of

⁶⁸ See *infra* Part III.A.

⁶⁹ See Association of Boxing Commissions, Constitution/Bylaws of the Association of Boxing Commissions, http://www.canadianboxing.com/abcboxing_bylaws_constitution.htm (last visited Feb. 14, 2008) [hereinafter ABC Constitution].

⁷⁰ For example, § 6303 states:

(a) No person may arrange, promote, organize, produce, or fight in a professional boxing match held in a State that does not have a boxing commission unless the match is supervised by a boxing commission from another State and subject to the most recent version of the recommended regulatory guidelines certified and published by the Association of Boxing Commissions as well as any additional relevant professional boxing regulations and requirements of such other State.

(b) For the purpose of this Act, if no State commission is available to supervise a boxing match according to subsection (a), then—(1) the match may not be held unless it is supervised by an association of boxing commissions to which at least a majority of the States belong; and (2) any reporting or other requirement relating to a supervising commission allowed under this section shall be deemed to refer to the entity described in paragraph (1).

15 U.S.C. § 6303 (2006) (paragraph breaks omitted).

⁷¹ ABC Constitution, *supra* note 69, art. I, Sec. 1.3(A).

⁷² *Id.* art. I, sec. 1.3(E).

⁷³ 15 U.S.C. § 6303 (2006).

⁷⁴ *Id.* § 6307c (“It is the sense of the Congress that sanctioning bodies and State boxing commissions should follow these ABC guidelines [for boxer rating standards].”).

⁷⁵ *Id.*

fighter rankings,⁷⁶ the MABRA stated, “Within 2 years after the date of the enactment of the [MABRA], the [ABC] shall develop and shall approve by a vote of no less than a majority of its member state boxing commissioners, guidelines for objective and consistent written criteria for the ratings of professional boxers.”⁷⁷ Even though Congress did not expressly state that the findings of the ABC would be adopted, it did express its willingness to allow ABC recommendations to influence decisions traditionally made by the individual state commissions. This is clear because the section concludes, “It is the sense of the Congress that sanctioning bodies and state boxing commissions should follow these ABC guidelines.”⁷⁸

The ABC has subsequently used its ability to influence policy to try to augment and improve safety standards in the sport of boxing.⁷⁹ The ABC Constitution includes the following goals as part of its mission:

(B) To promote the uniformity of health and safety standards and other requirements pertaining to the conduct of professional boxing events. (C) To promote standard reporting of boxing contests between members, including results, injury reports, suspensions and other medical information. . . . (G) To encourage adherence to, and enforcement of, applicable federal laws by each member of the ABC.⁸⁰

In trying to achieve these goals, the ABC has made a variety of recommendations.⁸¹ Unfortunately, the ABC, for a variety of reasons set forth below, has not had much success in promoting boxer safety.

Most of the recommendations made by the ABC came after extensive studies were undertaken by the group. The minutes of the ABC’s 2005 annual meeting include presentations by medical professionals regarding such issues as hand injuries,⁸² weigh-in procedures,⁸³ and mouthpiece selection.⁸⁴

⁷⁶ For the major controversy surrounding the rankings, see *supra* note 34 and accompanying text.

⁷⁷ 15 U.S.C. § 6307c (2006).

⁷⁸ *Id.*

⁷⁹ See ABC Constitution, *supra* note 69, art. I, sec. 1.3.

⁸⁰ *Id.*

⁸¹ For example, the ABC has made recommendations for minimum safety standards. See Boxing Severity Index, http://www.canadianboxing.com/abcboxing_minimum_medical_qualifications_championship_bouts_BSI.htm (last visited Feb. 14, 2008).

⁸² It was determined that most boxers have significant hand injuries by the time they become professionals. There is a higher risk of hand injury for boxers with small hands. The ABC believes that this problem can be combated by estab-

Although not all of these presentations led to changes in procedure (for example, the ABC decided to keep weigh-ins at the day before the fight),⁸⁵ the presentations illustrate the ABC's willingness to improve regulations that are already in place. However, despite the ABC's laudable goal of promoting boxer safety, it has no real authority to make any substantive changes.⁸⁶ This is because the power of the ABC is constricted by its constitution. For example, section 2.3 of the ABC Constitution states, "After a thorough investigation by the ABC's Disciplinary Committee of any complaint or allegation of wrongdoing, any member may be counseled, reprimanded, suspended or suffer loss of membership in the ABC upon a majority vote of the Board of Directors."⁸⁷ Another limitation on the reform powers of the ABC is that it is composed mostly of state athletic commissioners⁸⁸ who in many states are picked more on the basis of political affiliations than on knowledge of the boxing industry.⁸⁹ Another reason the ABC has not had much success in promoting boxer safety is that there have recently been allegations that the ABC is not as insulated from the sanctioning organizations as it is supposed to be.⁹⁰ Further, while the ABC has conducted several studies about issues concerning boxer safety, it has no enforcement powers to

lishing uniformity in hand-wrapping procedures. See Canadianboxing.com, http://www.canadianboxing.com/abcboxing_regulatory_guidelines_draft.htm (last visited Nov. 20, 2006).

⁸³ Fights occur between opponents of the same weight. However, most weigh-ins occur over twenty-four hours before the fight takes place, which can result in a significant weight disparity. *Id.* For example, Jorge Arce, a popular fighter, routinely gains over fifteen pounds between the time that he weighs-in and the time that he fights. This is an especially large amount of weight to gain in a day considering that he fights at a 115-pound weight limit. Jon Wertheim, *Packing a Big Punch*, SPORTS ILLUSTRATED.COM, Dec. 8, 2006, http://sportsillustrated.cnn.com/2006/writers/the_bonus/12/06/arce/index.html. This weight disparity situation has become a serious safety issue. Boxer Joey Gamache has sued his 2000 opponent Arturo Gatti claiming that he suffered physical injury in the fight because Gatti weighed too much. See Associated Press, *Boxer Injured in 2000 Fight Sues Gatti*, <http://www.msnbc.msn.com/id/11643791> (last visited Feb. 14, 2008).

⁸⁴ See Canadianboxing.com, *supra* note 82.

⁸⁵ See Association of Boxing Commissions, <http://www.canadianboxing.com/abcboxing.index.htm> (last visited Feb. 14, 2008).

⁸⁶ See ABC Constitution, *supra* note 69, art. I, sec. 1.3(G).

⁸⁷ *Id.* art. II, sec. 2.3.

⁸⁸ See *id.*

⁸⁹ See *infra* Part III.

⁹⁰ Thomas Hauser, *Sleaze for Compensation, the Good Old Days and Saying 'No' to Strangers*, ESPN BOXING, Jan. 3, 2008, <http://sports.espn.go.com/sports/boxing/news/story?id=3177464>.

ensure change.⁹¹ Finally, if the ABC did have enforcement powers, it is possible that it would cease to be as diligent in addressing the safety concerns facing boxing, since it would then have to calculate the cost of enforcement when making its findings.

The PBSA, MABRA, and ABC were important steps in promoting boxer safety. However, they have in large part not achieved their goals. Their impact has been limited because there are no universal safety standards, state courts are able to undermine their effectiveness, and many state athletic commissioners fail to enforce the existing regulations.

III. FAILURES OF THE PBSA AND MABRA

The PBSA and MABRA were passed for the purpose of increasing professional boxer safety, in part by maintaining universal safety standards across multiple jurisdictions. Despite this federal legislation, there continues to be significant differences in safety regulations based on where the fight is being held. This section first illustrates that there are no uniform safety standards in the sport of boxing. It then explains that this failure is due to the fact that the state athletic commissions have not been active enough in their role as enforcers of the PBSA, and that this problem will get worse as a result of a recent Nevada ruling.

A. *Failure to Achieve Uniform Safety Standards*

Despite the passage of the PBSA and the MABRA, as well as the creation of the ABC, medical standards continue to vary greatly from state to state. These varying standards manifest themselves before the boxer even steps in the ring because the tests that a boxer must pass in order to be licensed to box differ greatly depending on which state is issuing the license.⁹² For example, the Pennsylvania State Athletic Commission only requires a boxer to undergo an annual physical examination and to provide negative HIV/AIDS and Hepatitis C test results (which cannot be older than sixty days)

⁹¹ See ABC Constitution, *supra* note 69, art. I, sec. 1.3.

⁹² See *supra* note 56.

in order to be licensed.⁹³ In contrast, the New York State Athletic Commission, in addition to requiring annual physical examinations and HIV/AIDS and Hepatitis tests, requires a boxer to pass a wide variety of tests, which include an annual EKG,⁹⁴ eye exam,⁹⁵ and neurological tests along with an MRI⁹⁶ exam at least once every three years.⁹⁷ Admittedly, this situation, in which state standards differ vastly, was foreseeable at the time of the passage of the PBSA (which was not meant to instantly create uniform safety standards across the states).⁹⁸ However, there is now an example of the PBSA failing to prevent a fighter from fighting in one jurisdiction after being medically suspended in another, which is one of the most important purposes for which it was designed.⁹⁹

B. *The Case of Joe Mesi*

The failure of the PBSA to protect boxer safety can best be illustrated by the circumstances surrounding the suspension and reinstatement of Joe Mesi. Mesi is a popular heavyweight boxer with a professional record of thirty-six wins and no losses.¹⁰⁰ While he has yet to fight a top ranked heavyweight, he is considered a legitimate prospect.¹⁰¹ However, over the last

⁹³ See Pa. State Athletic Comm'n, Boxer License Requirements, <http://www.dos.state.pa.us/sac/cwp/view.asp?a=1090&Q=430454&sacNav> (last visited Feb. 4, 2008).

⁹⁴ An electrocardiogram measures the electric signals that travel through the human heart. It is used to detect irregularities in the heart rhythm or heart structure. See MayoClinic.com, Electrocardiogram: Tracing the Electrical Path Through the Heart (June 30, 2006), <http://www.mayoclinic.com/health/electrocardiogram/HB00014>.

⁹⁵ There are a variety of eye tests that make sure that sight is not impaired. See MayoClinic.com, Eye Exams: What to Expect (Oct. 20, 2006), <http://www.mayoclinic.com/health/eye-exams/MC00021>.

⁹⁶ Magnetic resonance imaging uses a magnetic field and radio waves to create cross-section images of the head and body. These images can be used to diagnose a wide variety of neurological disorders. See MayoClinic.com, MRI: Viewing Your Brain (Nov. 30, 2006), <http://www.mayoclinic.com/health/mri/SM00035>.

⁹⁷ See New York State Athletic Commission, Boxer Medical Requirements, <http://www.aaprp.org/Pre-Fight%20New%20York> (last visited Feb. 4, 2008).

⁹⁸ "Nothing in this chapter shall prohibit a State from adopting or enforcing supplemental or more stringent laws or regulations not inconsistent with this chapter, or criminal, civil, or administrative fines for violations of such laws or regulations." 15 U.S.C. § 6313 (2006).

⁹⁹ The state commissions must create "[p]rocedures to ensure that, except as provided in subsection (b), no boxer is permitted to box while under suspension from any boxing commission due to . . . a recent knockout or series of consecutive losses." 15 *Id.* § 6306(a)(2).

¹⁰⁰ See Baby Joe Mesi, On Track for the Title, <http://www.babyjoemesi.com/highlights.htm> (last visited Apr. 3, 2008).

¹⁰¹ *Federal Judge Rules Mesi's Medical Suspension Expired*, *supra* note 45.

few years he has received more attention for his fight outside of the ring with the Nevada Athletic Commission.¹⁰² As a result of his legal campaign to resume his professional career, Mesi is currently fighting even though he was never cleared from a prior medical suspension.¹⁰³ As indicated above, one of the key protections for boxers that the PBSA provides is that each state athletic commission must establish “[p]rocedures to ensure that . . . no boxer is permitted to box while under suspension from any boxing commission due to—(A) a recent knockout or series of consecutive losses.”¹⁰⁴ The statute goes on to state that each state athletic commission must not allow a boxer who is suspended in another state to fight if the suspension is because of “(B) *an injury, requirement for a medical procedure, or physician denial of certification*; (C) failure of a drug test; [or] (D) the use of false aliases, or falsifying, or attempting to falsify, official identification cards or documents.”¹⁰⁵ Subsection 6306(b) allows a fighter to fight if he can show that the suspension in the other state is no longer warranted.¹⁰⁶ Subsection (b) does not apply to medical suspensions from other states. In a decision that nullifies the key safety provision of the PBSA, which prevents “forum shopping,” Mesi is currently being allowed to fight in other jurisdictions without being cleared by the Nevada medical board that suspended him.¹⁰⁷

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ 15 U.S.C. § 6306(a)(2)(A) (2006).

¹⁰⁵ *Id.* § 6306(a)(2)(B)-(D) (emphasis added).

¹⁰⁶ Subsection 6306(b) provides:

(b) SUSPENSION IN ANOTHER STATE. A boxing commission may allow a boxer who is under suspension in any State to participate in a professional boxing match—(1) for any reason other than those listed in subsection (a) if such commission notifies in writing and consults with the designated official of the suspending State’s boxing commission prior to the grant of approval for such individual to participate in that professional boxing match; or (2) if the boxer appeals to the Association of Boxing Commissions, and the Association of Boxing Commissions determines that the suspension of such boxer was without sufficient grounds, for an improper purpose, or not related to the health and safety of the boxer for the purposes of this act.

Id. § 6306(b).

¹⁰⁷ *Federal Judge Rules Mesi’s Medical Suspension Expired*, *supra* note 45.

Mesi suffered two subdural hematomas¹⁰⁸ during a fight with Vassiliy Jirov that took place on March 13, 2004 in Las Vegas, Nevada.¹⁰⁹ The Nevada Administrative Code states, “The Commission will not issue or renew a license to engage in unarmed combat to an applicant . . . who has suffered cerebral hemorrhage.”¹¹⁰ When the Nevada Athletic Commissioners learned of Mesi’s hematomas, they followed Nevada procedure and suspended him indefinitely due to his injuries.¹¹¹ Mesi challenged the Nevada Athletic Commission’s ruling in a Nevada (Clark County) court, and in December of 2005, his suspension was overturned.¹¹² The court found that the state of Nevada could not suspend a fighter for a period longer than he was licensed for.¹¹³ The court also ruled that a boxer has a property right in his license, which means that it cannot be rescinded by the state without due process.¹¹⁴ Notably, the judge did not address the issue of whether or not Mesi was healthy enough to fight; he merely ruled that the Nevada suspension could not outlive the license.¹¹⁵ This result was important, because under the PBSA once the Nevada medical suspension was lifted other jurisdictions were free to license Mesi.¹¹⁶ This ruling also effectively ties the hands of the Nevada State Athletic Commission because the Commission can no longer suspend fighters for as long as it would like without making severe concessions such as the extension of the licensing period. This is because under the Clark County ruling, in order to increase the length of a suspension, the length of the licensing period must be correspondingly

¹⁰⁸ A hematoma in the head “occurs when a blood vessel ruptures . . . between your skull and your brain. The collection of blood (hematoma) compresses your brain tissue. . . . Treating an intracranial hematoma often requires surgery to remove the blood.” MayoClinic.com, Intracranial Hematoma (June 28, 2007), <http://www.mayoclinic.com/health/intracranial-hematoma/DS00330>.

¹⁰⁹ Associated Press, *Mesi Ready to Make Comeback Against Bellemey*, ESPN BOXING, Mar. 29, 2006 <http://sports.espn.go.com/espn/wire?section=boxing&id=2389505>.

¹¹⁰ NEV. ADMIN. CODE § 467.017(3) (2003), available at <http://www.leg.state.nv.us/Register/2003Register/R076-03A.pdf>.

¹¹¹ See Patrick Kehoe, *The Case of Joe Mesi: Legality, Ethics and Self-Determinism*, THE SWEET SCIENCE, Jan. 13, 2006, <http://www.thesweetscience.com/boxing-article/3203/case-joe-mesi-legality-ethics-self-determinism-part>.

¹¹² *Federal Judge Rules Mesi’s Medical Suspension Expired*, *supra* note 45.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Allowing Mesi to fight in jurisdictions outside Nevada after the court’s ruling was permissible because he was no longer under a medical suspension in any jurisdiction. 15 U.S.C. § 6306 (2006).

increased (fighters in Nevada, and in most other states, are currently licensed through the calendar year).¹¹⁷ Extending the licensing periods creates serious issues of boxer safety because it prevents the Commission from being able to check fighters regularly.¹¹⁸

However, the most important aspect of the Clark County ruling is its impact on federal legislation. Keith Kizer, the deputy attorney general who handled the Mesi case, stated that the ruling “takes a lot of teeth out of the Ali Act It takes away Congress’s ability to prevent a fighter who has not proven he’s fit to fight from going elsewhere. But the adverse impact is on the federal law. It’s not on the state law or on the commission.”¹¹⁹ This is a valid assessment of the situation. Mesi cannot get a license to fight in Nevada because Nevada has stricter regulations than most other states. However, since Nevada is only withholding a license, rather than issuing a medical suspension, Mesi is free to fight in states that have lower licensing standards. The Clark County ruling is especially troubling because Nevada is one of the only states that require fighters to pass an MRI exam,¹²⁰ and thus once a fighter with a head injury serves his Nevada suspension, it is unlikely that any other state will uncover the injury. While it is true that Mesi was prevented from fighting for over a year in Nevada,¹²¹ he still fought in several other states without ever having been cleared by Nevada. Mesi’s situation is exactly the type of forum-shopping scenario that Congress intended to eliminate.

Since his medical suspension was lifted, Mesi has fought seven times (none of these fights occurred in Nevada).¹²² One

¹¹⁷ “[E]very license issued to any fighter in the State of Nevada expires on December 31st of each year” Allan Scotto, *Meet the New Boss*, MAXBOXING.COM, Apr. 20, 2006, <http://www.maxboxing.com/News/Scotto042006.asp>.

¹¹⁸ For example, if the licensing period were extended to five years a suspension could last for five years. However, a boxer could be healthy when he applies for his license, suffer an undetected injury early in the licensing period, and continue to fight for five years without having to renew his license.

¹¹⁹ Thomas Hauser, *Lamon Brewster and the Medical Mess*, SECONDSOUT, <http://www.secondsout.com/usa/colhauser.cfm?ccs=208&cs=19125> (last visited Feb. 13, 2008).

¹²⁰ See State Medical Requirements, *supra* note 56.

¹²¹ This has been cited as an example of federal safety regulations having the potential for success. See Michael F. Jurek, *Janitor or Savior: The Role of Congress in Professional Boxing Reform*, 67 OHIO ST. L.J. 1187, 1204-06 (2006).

¹²² See BoxRec.com, Joe Mesi, http://www.boxrec.com/list_bouts.php?human_id=016554&cat=boxer (last visited Feb. 11, 2008). Mesi has fought once in Puerto Rico, once each in Michigan, Rhode Island, and West Virginia, and twice in Arkansas. *Id.* It

hopes that Mesi will finish his career without suffering any adverse health consequences as a result of his prior injuries. However, whether or not Mesi is injured in the ring, the precedent of disregarding safety procedures is likely to cause harm to future boxers.

C. *The Role of State Athletic Commissioners*

Even if the Mesi case had not removed some of the statutory protections provided by the PBSA, there would still be a need for additional federal legislation, because the biggest reason that the safety provisions of the PBSA have failed is that the state athletic commissions are not enforcing them.¹²³ For example, the PBSA, in a section that was not amended by the MABRA, states:

No person may arrange, promote, organize, produce, or fight in a professional boxing match without meeting each of the following requirements or an alternative requirement in effect under regulations of a boxing commission that provides equivalent protection of the health and safety of boxers: (1) A physical examination of each boxer by a physician certifying whether or not the boxer is physically fit to safely compete, copies of which must be provided to the boxing commission. (2) Except as otherwise expressly provided under regulation of a boxing commission promulgated subsequent to the enactment of this Act [enacted Oct. 9, 1996], an ambulance or medical personnel with appropriate resuscitation equipment continuously present on site. (3) A physician continuously present at ringside.¹²⁴

While in theory this provision of the Act provides adequate protection for boxers by requiring review of their medical histories and providing medical supervision during a fight, there are many examples of the provision failing because falsified medical records went undetected due to improper state commission examination or only superficial medical supervision was provided during fights.¹²⁵

An example of the PBSA's failure to provide adequate medical oversight is revealed by the circumstances surrounding

appears that all of his fights have been sanctioned by the Association of Boxing Commissioners. *Id.* Mesi has also fought once in Canada, *see id.*, which raises interesting questions about international safety standards, which are beyond the scope of this Note.

¹²³ See Hauser, *Lamon Brewster*, *supra* note 119.

¹²⁴ 15 U.S.C. § 6304 (2006). The provision also requires, "(4) Health insurance for each boxer to provide medical coverage for any injuries sustained in the match." *Id.*

¹²⁵ Hauser, *Fighter Safety*, *supra* note 2.

Tommy Morrison's retirement and subsequent return to boxing. Morrison reached the height of his boxing career in 1993 when he earned a decision victory over George Foreman to win the World Boxing Organization heavyweight title.¹²⁶ In 1996, the Nevada Athletic Commission suspended Morrison after a pre-fight blood test revealed that he was HIV positive.¹²⁷ Morrison fought one more time in 1996—in Japan, which at the time did not have any rules which prevented an HIV positive fighter from fighting—and then retired.¹²⁸ However eleven years later Morrison began his boxing comeback in West Virginia with a knockout victory over John Castle.¹²⁹

The initial licensing of Morrison in West Virginia occurred in an unusual manner. West Virginia does not normally require fighters to take an HIV test in order to be licensed; however, because of concern over Morrison's HIV status he was required to submit one.¹³⁰ Since the West Virginia Commission does not normally require a blood test, it accepted the results of a test that was conducted in Arizona; the test indicated that Tommy Morrison was not HIV positive.¹³¹ While Morrison won his West Virginia fight, problems arose when he tried to get licensed in Texas for his next bout.¹³² After initial reports that he had been granted a license, Texas state officials informed the press that Morrison would not be granted a license due to incomplete lab results.¹³³ Shortly after the announcement, Morrison withdrew his application for a Texas license.¹³⁴ Since then, he won a professional boxing match in Mexico,¹³⁵ and he has fought in a mixed

¹²⁶ Dan Rafael, *Morrison Medically Cleared to Fight Thursday*, ESPN BOXING, <http://sports.espn.go.com/sports/boxing/news/story?id=2772386> (last visited Feb. 13, 2008).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Morrison Begins Comeback Bid with KO*, ESPN BOXING, <http://sports.espn.go.com/sports/boxing/news/story?id=2775863> (last visited Feb. 13, 2008).

¹³⁰ See Rafael, *supra* note 126.

¹³¹ *Id.*

¹³² Associated Press, *Lack of Morrison's Lab Results Prevents Houston Bout*, ESPN BOXING, <http://sports.espn.go.com/sports/boxing/news/story?id=2851711> (last visited Feb. 13, 2008).

¹³³ *Id.*

¹³⁴ Associated Press, *Morrison Withdraws Texas License Request*, ESPN BOXING, <http://sports.espn.go.com/espn/wire?section=boxing&id=2858633> (last visited Feb. 13, 2008).

¹³⁵ Associated Press, *Chavez Jr. prevails by TKO in Mexico; Morrison Wins, Too*, ESPN BOXING, Feb. 10, 2008, <http://sports.espn.go.com/sports/boxing/news/story?id=3239532>.

martial arts event. Mixed martial arts events are also generally regulated by state athletic commissions, but Morrison's fight was unsanctioned by the Arizona State Commission.¹³⁶ In the week leading up to Morrison's mixed martial arts debut, his former agent came forward with allegations that Morrison was HIV positive and had only passed the Arizona blood test through the use of fraud.¹³⁷ Whatever the truth about Morrison's HIV status is, it is clear that there are serious questions which should have been resolved before Morrison was allowed to return to the ring.

Unfortunately, examples of poor medical oversight are prevalent in many states. In Ohio, Lamon Brewster suffered a detached retina¹³⁸ during a fight with Sergei Liakhovich on April 1, 2006.¹³⁹ Despite reports that Brewster had undergone laser eye surgery weeks before the fight, he passed his eye exam and there is no mention of the laser surgery on the medical report.¹⁴⁰ However, a previous eye examination had indicated that Brewster was having vision problems and had previously undergone eye surgery.¹⁴¹ While Ohio only requires fighters to undergo an eye exam once a year in order to be eligible to fight,¹⁴² failure to comply with this rule was not an issue for this fight because Brewster had had an eye exam eight days before the fight took place.¹⁴³ This means that either

¹³⁶ *Morrison Hears Boos from Crowd After First-Round KO of Stover*, ESPN MIXED MARTIAL ARTS, June 26, 2007, <http://sports.espn.go.com/extra/mma/news/story?id=2899457>.

¹³⁷ Associated Press, *Report: Morrison's Former Agent Says Fighter Tested Positive for HIV*, ESPN BOXING, <http://sports.espn.go.com/espn/wire?section=boxing&id=2898529> (last visited Feb. 13, 2008).

¹³⁸ See Hauser, *Lamon Brewster*, *supra* note 119.

The retina is the light-sensitive tissue that lies smoothly against the inside back wall of your eye and sends messages to your brain through your optic nerve. . . . Retinal detachment occurs when the retina separates from the choroId. . . . Retinal detachment is a medical emergency, and time is critical. Unless the detached retina is promptly surgically reattached, this condition can cause permanent loss of vision in the affected eye.

MayoClinic.com, *Retinal Detachment* (Nov. 6, 2006), <http://www.mayoclinic.com/health/retinal-detachment/DS00254>.

¹³⁹ See Hauser, *Lamon Brewster*, *supra* note 119.

¹⁴⁰ *Id.*

¹⁴¹ Thomas Hauser, *Fighters Are Dying: Stop the Nonsense*, SECONDSOUT, <http://www.secondsout.com/usa/colhauser.cfm?ccs=208&cs=19386> (last visited Feb. 13, 2008).

¹⁴² See American Association of Professional Ringside Physicians, 2007 State Medical Requirements, <http://www.aaprp.org/Pre-Fight%20Ohio> (last visited Feb. 13, 2008).

¹⁴³ See Hauser, *Lamon Brewster*, *supra* note 119.

the Commission knew about the surgery but allowed the fight to take place anyway to generate revenue for the state, or the Commission was fooled by a fraudulent medical report. No matter which scenario occurred, the Ohio State Athletic Commission failed to fulfill its safety obligations by allowing an injured fighter to fight.¹⁴⁴

In some cases lax enforcement of safety regulations has arguably lead to tragedy. For example, on July 1, 2005, Martin Sanchez died after suffering a brain bleed during his fight with Rustam Nugaev in Nevada.¹⁴⁵ Sanchez was a twenty-six-year-old fighter with an 18 and 8 win-loss record who was fighting outside of Mexico for the first time.¹⁴⁶ Examples of poor oversight can be seen before, during, and after his fight and injury. To start, Sanchez was granted a license by the Nevada State Athletic Commission despite the fact that his application to fight in Nevada lists his height as 5 feet 9 inches, while his pre-fight physical examination lists his height as 6 feet 1 inch.¹⁴⁷ Even a superficial review of the application and physical would have alerted a diligent official to the possibility that there were serious questions about the validity of the application. The lack of adequate oversight continued during the fight. After Sanchez was hit with a blow to the back of the head in the fourth round, he did not throw punches with the same authority that he had displayed prior to the hit, and he appeared to be moving much more slowly.¹⁴⁸ Although medical personnel were present at the fight, nobody examined Sanchez between rounds.¹⁴⁹ Moreover, even if someone had examined

¹⁴⁴ It is often the case that the state commission needs to protect the fighter from himself. While it may seem strange that a fighter would risk his health by fighting with a pre-existing injury, it happens all the time for a variety of reasons. For example, "The decision to proceed with Brewster-Liakhovich is believed to have been made in part because of Lamon's desire to fulfill his contractual obligations to Don King so he could move to a new promoter." *See id.*

¹⁴⁵ Hauser, *Fighter Safety*, *supra* note 2.

¹⁴⁶ *Id.* There is growing concern that Mexican fighters are getting around the safety standards required by law by providing medical records from Mexico that cannot be verified. *Id.* This phenomenon involves not only club fighters; in 1997 Marco Antonio Berrera, one of the highest profile boxers in the sport, underwent brain surgery in Mexico in an attempt to hide his surgery from the state athletic commissions. *See* Thomas Hauser, *Boxing's Medical Mess*, SECONDSOUT, May 27, 2004, <http://www.secondsout.com/usa/colhauser.cfm?ccs=208&cs=13484>. Although it is unclear if this is where he learned to cover his tracks, before becoming a professional boxer Berrera was a law student in Mexico. *See* HBO.com, Bio: Marco Antonio Berrera, http://www.hbo.com/boxing/fighters/berrera_marco/bio.html (last visited Feb. 19, 2008).

¹⁴⁷ *See* Hauser, *Fighters Are Dying*, *supra* note 141.

¹⁴⁸ Hauser, *Fighter Safety*, *supra* note 2.

¹⁴⁹ *Id.*

him, communication barriers may have hindered any medical treatment as neither of the doctors present at the fight spoke Spanish and Sanchez did not speak English.¹⁵⁰ The fight was allowed to continue until Sanchez was knocked down and counted out in the ninth round.¹⁵¹ After the fight Sanchez was left in his dressing room without medical supervision even though he appeared to have trouble walking under his own power.¹⁵² While he was in his dressing room he had a seizure.¹⁵³ He was then taken to the hospital where he underwent brain surgery.¹⁵⁴ Unfortunately his injury was too severe and he died the next morning.¹⁵⁵

After the fight the Nevada State Athletic Commission asked then deputy attorney general of Nevada Keith Kizer¹⁵⁶ to review the facts surrounding Sanchez's death.¹⁵⁷ His conclusion was, "I don't have any recommendation. I don't see any way to improve."¹⁵⁸ This statement seems to ignore the fact that the Commission could have made sure that the licensing application was truthful and that medical personnel could communicate with the fighters. One Nevada State Athletic Commissioner, long time safety advocate Dr. Flip Homansky, disagreed with Keith Kizer's conclusion.¹⁵⁹ Dr. Homansky went public with the fact that there was a discrepancy between the height listed on Sanchez's application and the height recorded during his pre-fight physical, and noted that this discrepancy should have been discovered before the fight.¹⁶⁰ Rather than being commended for doing his job, Dr. Homansky was removed from his position.¹⁶¹ This suggests that the Nevada State Athletic Commission wants to generate as much money as possible from the fights within the state without spending the money and time required to properly protect the fighters.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Kizer later became a Nevada State Athletic Commissioner. Kevin Iole, *Fighter Safety Is Kizer's Priority*, LAS VEGAS REV.-J., Apr. 1, 2006, available at http://www.reviewjournal.com/lvrj_home/2006/Apr-01-Sat-2006/sports/6656180.html.

¹⁵⁷ Hauser, *Fighter Safety*, *supra* note 2.

¹⁵⁸ *Id.*

¹⁵⁹ See Hauser, *Fighters Are Dying*, *supra* note 141.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

Another tragedy occurred in Las Vegas the night of September 17, 2005, when Leavander Johnson defended his IBF lightweight¹⁶² title against Jesus Chavez.¹⁶³ Unlike the fight involving Sanchez, Johnson was checked by medical personnel between rounds, the fight was stopped before he was counted out, and he was taken to the hospital immediately after showing neurological systems.¹⁶⁴ However, despite these precautions Johnson had to undergo surgery to relieve swelling in his brain that was a result of the fight and died five days later.¹⁶⁵ The way the fight was handled prompted Jim Lampley, HBO's blow-by-blow commentator, to state, "Some ring tragedies are avoidable; others aren't. If you can't live with Leavander Johnson's death, you ban boxing."¹⁶⁶ However, despite the belief by some that everything was done correctly, there are rumors that Johnson was knocked unconscious during his training for the fight; if this is true it should have resulted in a medical suspension,¹⁶⁷ since in Nevada when a fighter is knocked out, either in training or in a fight, he is automatically suspended.¹⁶⁸ Also, regardless of whether or not Johnson had been knocked out during training, the referee should have been aware that despite winning his last fight against Stefano Zoff he had received a great number of punches in that match.¹⁶⁹ This is where having experienced boxing people involved in the fights can be invaluable. Good referees know the styles, reputations, and histories of the fighters

¹⁶² There are seventeen weight classes in professional boxing. While the different sanctioning organizations have different names for the weight classes, the weight requirements are roughly the same. The lowest weight class requires participants to be below 105 pounds, while the highest weight class consists of boxers who weigh at least 200 pounds. See Ring of Dreams, Amateur and Professional Boxing Weight Classes, <http://www.ringofdreams.com/articles/boxingweightclasses.shtml> (last visited Feb. 19, 2008).

¹⁶³ Hauser, *Fighter Safety*, *supra* note 2.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Hauser, *Fighters Are Dying*, *supra* note 141.

¹⁶⁸ *Id.* The issue of boxers being knocked out in training has become the subject of much debate. This is because, while they are not supposed to fight after being knocked out, there is no oversight in the gyms. This creates a situation where the only people who know if a fighter has been knocked out are the people on the fighter's training team, and they have a financial interest in making sure that the fight takes place. Thomas Hauser has pointed out that if Johnson was knocked out during training, then his handlers lied on his application to fight, which may make them criminally liable for his death. *Id.*

¹⁶⁹ *Id.*

involved in the fights,¹⁷⁰ allowing them to anticipate potential problems so that they can be addressed before they get out of hand. An informed referee would have known that Johnson received a lot of punishment in his last fight, would have seen that he was not responding well to the punches he was taking, and might have stopped the fight sooner.¹⁷¹ These examples of failures to properly protect boxers before, during, and after their fights highlight the need for new regulations.

D. *Appointing State Athletic Commissioners*

Referees are not the only group involved with the boxing industry that benefits from experience. Outside of the failure to enforce medical standards, many of the problems with safety oversight occur because a large number of state athletic commissioners have no experience in the boxing business.¹⁷² In Nevada, after Governor Kenny Guinn removed Dr. Homansky from the Commission for publicly raising the issue of the discrepancies in Martin Sanchez's medical records,¹⁷³ he appointed as a replacement T.J. Day, a man with no experience in the boxing industry.¹⁷⁴ Day is a businessman and large contributor to the Nevada Republican Party.¹⁷⁵ When asked about his lack of experience in the boxing industry (a large concern given the recent deaths in Nevada), he stated, "Boxing has a major financial impact on the state, and I'm a major financial man in the state If I need some help from doctors and the safety people, I can find those people, but it's a lot harder to find a qualified businessman."¹⁷⁶ He also

¹⁷⁰ For example, before one event, New York State Commissioner Ron Scott Stevens talked to the referees while referring to the specific individual fighters that were competing that night. He then said:

These guys are coming in as opponents. Give them a fair chance to win. But if they're getting hurt, do what you have to do sooner rather than later. The fans are entitled to see good honest boxing and that includes guys getting hit. But I don't want anyone taking unnecessary punishment.

Thomas Hauser, *Ron Scott Stevens*, SECONDSOUT, <http://www.secondsout.com/usa/colhauser.cfm?ccs=208&cs=16605> (last visited Feb. 13, 2008).

¹⁷¹ *See id.*

¹⁷² *See id.*; *supra* notes 145-161 and accompanying text.

¹⁷³ Hauser, *Fighters Are Dying*, *supra* note 141.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Geoffrey Gray, *A Debate over Safety, Without a Neutral Corner*, N.Y. TIMES, Dec. 3, 2005, at D7.

acknowledged that his close relationship with Governor Guinn was a motivating factor behind his appointment.¹⁷⁷

This phenomenon, in which political connections rather than experience in the boxing industry determines who participates in reform efforts, can also be seen outside of the Commission itself.¹⁷⁸ After the deaths of Martin Sanchez and Leavander Johnson in Nevada, a five-person safety committee was formed to determine if any procedural changes should be made to Nevada's laws regulating professional boxing.¹⁷⁹ The committee was chaired by Sig Rogich, a Republican consultant and fundraiser.¹⁸⁰ Before the committee's suggestions were released, it was noted that "Boxing regulators have criticized the safety panel because every member has links to the boxing commissioners in Nevada or has political ties to the state's Republican governor, Kenny Guinn, who appoints the commissioners."¹⁸¹ Once released, the committee suggestions were not taken seriously by those in the boxing industry because they failed to address the substantive problems of the sport.¹⁸² Also, some suggestions seemed like they were aimed at protecting the financial interests of the state rather than the health of the participants. For example, one suggestion, which seems like it would hurt the fighters rather than help them, was that in order to prevent boxers from dehydrating themselves to make weight for a fight, boxers who fail to make weight should be fined ten percent of their fight purse.¹⁸³ Rather than trying to protect fighters from dehydrating themselves before a fight, this suggestion seems geared towards "punish[ing] a fighter who endangers a fight."¹⁸⁴

¹⁷⁷ An article stated, "Day said his close relationship with Guinn was the motivating factor behind his appointment. According to campaign records, he contributed \$9,750 to Guinn's 2002 campaign . . ." *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² See Thomas Hauser, *Nevada's "Safety Committee" Report*, SECONDSOUT, <http://www.secondsout.com/usa/colhauser.cfm?ccs=208&cs=19924> (last visited Feb. 13, 2008).

¹⁸³ *Id.*

¹⁸⁴ *Id.* In an attempt to gain an advantage many boxers lose a drastic amount of weight in a short period of time in order to fight an opponent who they believe is naturally smaller. For example, while Ricky Hatton fights at 140 pounds, his weight between fights is somewhere between 170 and 180 pounds. See HBO.com, Juan Urango vs. Ricky Hatton: Compobox Post Fight Analysis, http://www.hbo.com/boxing/events/2007/0120_hatton_urango/columns/compobox_post.html (last visited Feb. 13, 2008). While the Nevada Commission claims to be concerned with the fighters' health, it has

Nevada is not the only state that has a history of using political patronage to determine the makeup of the state athletic commission. In New York, from the mid 1990s until 2003, the State Athletic Commission was filled with political appointees who were corrupt or disinterested.¹⁸⁵ Bernard Kerik served as the chairman of the Commission and was notorious for not even attending fights within the state.¹⁸⁶ Kerik is but one example of a commissioner apparently appointed based on political connections rather than experience in boxing. However, this changed in 2003 when Kerik resigned and was replaced by Ron Scott Stevens.¹⁸⁷ Stevens has a long history in boxing and has greatly improved the way boxing events are conducted in New York by taking an active role in overseeing how they are run.¹⁸⁸ Stevens has also increased the number of boxing events held in New York since taking over. For example, there were seventeen events statewide in 2003, compared to fifteen events in just the first six months of 2005.¹⁸⁹ Increasing the number of events held in a state is important for improving boxing safety because more events allow officials to gain more experience. Stevens also showed great concern for boxer safety

shown that it is more interested in making sure that the fight takes place. For example, when Jose Luis Castillo failed to make weight for his fight with Diego Corrales, the first thing that Castillo did, although already clearly dehydrated, was to go into a sauna to try and lose more weight. It was only after this attempt failed that Castillo was suspended from fighting for the rest of the year. See Matt Wells, *The Return of Jose Luis Castillo*, SECONDSOUT, <http://www.secondsout.com/USA/news.cfm?ccs=229&cs=21141> (last visited Feb. 13, 2008).

¹⁸⁵ For a recent history of the New York State Athletic Commissioners, see Thomas Hauser, *Joe Dwyer and the New York State Athletic Commission*, SECONDSOUT, <http://www.secondsout.com/usa/colhauser.cfm?ccs=208&cs=3951> (last visited Feb. 18, 2008).

¹⁸⁶ Bernard Kerik was the New York City police commissioner from 2001 until the end of 2002. In that position he gained national acclaim for his response to the September 11th attacks. He was later nominated for the position of Director of Homeland Security by President George W. Bush, but withdrew his name after information surfaced that he had hired an illegal immigrant as a nanny. Mr. Kerik moved into the private sector where he worked in consulting, but controversy continued to follow him. In 2006 he pled guilty to two misdemeanor ethical violations, which resulted from his business practices. See William K. Rashbaum, *Testimony by Giuliani Indicates He Was Briefed on Kerik in '00*, N.Y. TIMES, Mar. 30, 2007, at A1. Most importantly, there was never any inquiry into his qualifications to be a commissioner. Thomas Hauser, *Joe Dwyer and the New York State Athletic Commission*, <http://www.secondsout.com/usa/colhauser.cfm?ccs=208&cs=3951> (last visited March 24, 2008).

¹⁸⁷ Hauser, *Ron Scott Stevens*, *supra* note 170.

¹⁸⁸ Before an event he states that that the fights are live and, "It's not a play. It happens once and won't come back again tomorrow night, so everything has to be done right the first time." *Id.*

¹⁸⁹ *Id.*

when, in two different cases, he placed popular boxers, Evander Holyfield and Al Cole, on medical suspensions.¹⁹⁰ Despite causing the state to lose the money that would have come into New York from future fights involving Holyfield and Cole (from licensing fees and tourism), Stevens acted correctly by placing their safety above the financial interests of the state.¹⁹¹

As illustrated by the examples above, most commissioners are selected based on political affiliations as opposed to qualifications. As long as state commissioners are chosen in this way, any federal legislation that must be enforced at the state level will fail because the commissioners will be more concerned with pleasing the governor that put them in their position than with enforcing the safety precautions established by Congress. Although there are examples of competent commissioners, such as Ron Scott Stevens, unfortunately they are the exceptions.

IV. PROPOSED CHANGES TO MABRA

Because of the problems with safety enforcement and because he does not believe that the current regulations are adequate, Senator McCain has proposed amending the PBSA through the Professional Boxing Amendments Act of 2005 ("PBAA").¹⁹² Although the Senate passed the legislation, the House did not vote on it, and it did not become law.¹⁹³ The major problem with the PBAA is that it creates a new level of federal bureaucracy, but effectively leaves the enforcement of its provisions in the hands of the state commissions by putting them in charge of the day-to-day oversight of the boxing industry.¹⁹⁴ The PBAA effectively requires lawmakers to expend a great amount of time and money on a program that is not likely to produce results because of its continued reliance on the state athletic commissions.

¹⁹⁰ Despite Commissioner Stevens's efforts, Evander Holyfield's suspension was successfully appealed, and he has since fought outside of New York. BoxRec.com, Evander Holyfield, http://www.boxrec.com/list_bouts.php?human_id=000499&cat=boxer (last visited Mar. 24, 2008). Al Cole traveled to Nevada where he worked as the sparring partner of Samuel Peter, who has a reputation as one of the hardest punchers in the heavyweight division. Hauser, *Fighter Safety*, *supra* note 2.

¹⁹¹ Hauser, *Ron Scott Stevens*, *supra* note 170.

¹⁹² Professional Boxing Amendments Act of 2005, S. 148, 109th Cong. (2005).

¹⁹³ GovTrack.us, S. 148 [109th]: Professional Boxing Amendments Act of 2005, <http://www.govtrack.us/congress/bill.xpd?bill=s109-148>.

¹⁹⁴ See Professional Boxing Amendments Act of 2005, S. 148, 109th Cong. § 21 (2005) (adding proposed PBSA sec. 203).

A. *Reforms*

The main reform proposed in the PBAA is the creation of a new bureaucratic agency, the United States Boxing Commission (“USBC”).¹⁹⁵ At first glance, the proposed creation of the USBC appears to address many of the problems that exist in boxing today.¹⁹⁶ The PBAA states that no person can promote or arrange a professional boxing match “within the United States unless the match—(1) is approved by the [USBC]; and (2) is held in a State, or on tribal land of a tribal organization, that regulates professional boxing matches in accordance with standards and criteria established by the [USBC].”¹⁹⁷ This would finally result in uniform safety standards across the United States. The USBC would “consist of 3 members appointed by the President, by and with the advice and consent of the Senate.”¹⁹⁸ In order to combat the problem of commissioners with no experience, the members of the USBC must “ha[ve] extensive experience in professional boxing activities or in a field directly related to professional sports”¹⁹⁹ In addition, the members of the Commission cannot

- (i) be engaged as a professional boxer, boxing promoter, agent, fight manager, matchmaker, referee, judge, or in any other capacity in the conduct of the business of professional boxing; (ii) have any pecuniary interest in the earnings of any boxer or the proceeds or outcome of any boxing match; or (iii) serve as a member of a boxing commission.²⁰⁰

These provisions would ensure that the problems of conflicting loyalties that plague state athletic commissions would not occur at the federal level. However, under the PBAA as currently written, it is unlikely that many substantive issues will come to the attention of the USBC.

B. *Problems with the Suggested Reforms*

The problem with the USBC is that it would still rely on the state athletic commissions to oversee the day-to-day

¹⁹⁵ See *id.* § 21.

¹⁹⁶ See *id.* §§ 5-20 (amending 15 U.S.C. §§ 6302-6313).

¹⁹⁷ *Id.* § 5(a) (amending PBSA sec. 4(a)).

¹⁹⁸ *Id.* § 21(a) (adding PBSA sec. 202).

¹⁹⁹ *Id.* (adding PBSA sec. 202(b)(2)(A)(i)).

²⁰⁰ *Id.* (adding PBSA sec. 202(b)(2)(C)).

running of the sport.²⁰¹ The PBAA is set up so that many of the boxing matches will have presumed approval from the Commission: “[T]he [USBC] shall be presumed to have approved any match”²⁰² The matches that will not receive presumed approval include, “a match with respect to which the Commission has been informed of an alleged violation of this Act and with respect to which it has notified the supervising boxing commission that it does not approve”²⁰³ The PBAA is also concerned with matches that are advertised as championships; it therefore reserves the presumed approval from “a match advertised to the public as a championship match” or “a match scheduled for 10 rounds or more”²⁰⁴ Finally, the PBAA addresses fighter safety and withholds presumed approval from “a match in which 1 of the boxers has—(i) suffered 10 consecutive defeats in professional boxing matches; or (ii) has been knocked out 5 consecutive times in professional boxing matches.”²⁰⁵ The end result is that for almost every fight, approval by the USBC will be presumed. The fact that for the majority of fights the approval of the USBC will be presumed means that the majority of fights will continue to be regulated by the state athletic commissioners alone, which have already proven themselves to be ineffective.²⁰⁶ It is useless to expend the time and money to create another level of bureaucracy if it is not clear that it will address the problems that it was created to address.

V. HOW OVERSIGHT OF STATE ATHLETIC COMMISSIONERS CAN ACHIEVE BOXER SAFETY

In most states the athletic commissions do not do an adequate job of enforcing the safety standards required by the PBSA and the MABRA.²⁰⁷ The state commissioners fail to enforce the law because they are more concerned with pleasing

²⁰¹ For a section by section analysis of the PBAA, see Devin J. Burstein, Note, *The Muhammad Ali Boxing Reform Act: Its Problems and Remedies, Including the Possibility of a United States Boxing Administration*, 21 CARDOZO ARTS & ENT. L.J. 433 (2003).

²⁰² Professional Boxing Amendments Act of 2005, S. 148, 109th Cong. § 5(a) (2005) (adding PBSA sec. 4(b)(1)).

²⁰³ *Id.* (amending PBSA sec. 4(b)(1)(A)).

²⁰⁴ *Id.* (amending PBSA sec. 4(b)(1)(B)-(C)).

²⁰⁵ *Id.* (amending PBSA sec. 4(b)(1)(D)).

²⁰⁶ See *supra* Part III.

²⁰⁷ *Id.*

the governors that control their appointments than protecting the interests of boxers with no political power.²⁰⁸ Therefore, if federal legislation is going to be effective in regulating the boxing industry, the legislation must not rely on the state athletic commissions for enforcement.

Federal enforcement of boxing regulations would likely produce better results than state enforcement because under a scheme of federal enforcement, there would be a greater level of disconnect between the regulating agency and the economic consequences which result from a fight.²⁰⁹ Under the current system, a state must police itself in circumstances where strictly enforcing regulations can mean millions of dollars in lost revenue for the state.²¹⁰ Given these circumstances, it was, and is, not realistic to expect the states to follow the letter of the law, and the poor record of the state commissions (such as Nevada's) has shown that indeed the law has not been followed.²¹¹ In addition to financial independence, federal enforcement would also create a universal standard of enforcement. A universal federal standard would greatly improve the current system in which individual states have no incentive, and are in fact discouraged, from developing high safety standards.²¹² This occurs because a state with high safety standards will watch as money goes to other states with less stringent standards without any corresponding liability.

In order for Congress to regulate an industry there must be something that brings that industry within Congress' power. Article I, section 8 of the U.S. Constitution states, "The Congress shall have Power To . . . regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . ." ²¹³ In *United States v. International Boxing Club of N.Y., Inc.*, the Supreme Court, in order to determine if the Government's civil suit for antitrust violations under the Sherman Act could continue, found that boxing affects interstate commerce.²¹⁴ The Court stated that even though the

²⁰⁸ See *supra* Part III.D.

²⁰⁹ The economic impact of a fight on a state can be huge. See Rafael, *supra* note 22. However, because of the relative sizes of the revenue streams, this will not affect the federal government as much.

²¹⁰ *Id.*

²¹¹ See *supra* Part III.

²¹² Rafael, *supra* note 22.

²¹³ U.S. CONST. art. I, § 8.

²¹⁴ *United States v. Int'l Boxing Club of N.Y., Inc.*, 348 U.S. 236, 240-41 (1955).

boxing match itself takes place in only one state, this “fact alone does not bar application of the Sherman Act to a business based on the promotion of such matches, if the business is itself is engaged in interstate commerce or if the business imposes illegal restraints on interstate commerce.”²¹⁵ The Court then went on to find that since much of the International Boxing Club’s revenue came from interstate operations, it could be regulated by Congress.²¹⁶ The Court finally concluded that exemptions to the Sherman Act were properly determined by Congress and not the Court (thereby allowing Congress to enact an antitrust exemption for professional baseball without having to create similar exemptions for other professional sports).²¹⁷

While *International Boxing Club of N.Y.* established that parts of the boxing industry could be regulated on the ground that they were in commerce,²¹⁸ it is still not apparent that the federal government can directly regulate the state athletic commissions. The simplest way for the federal government to ensure boxer safety would be to exercise direct control over the commissions. However any regulation that was formulated such that federal authorities exercised direct control over state athletic commissions would likely be struck down as unconstitutional.²¹⁹ An example of an effective, but likely unconstitutional, regulation would provide that a federal entity, such as the USBC, watch over the state athletic commissions to make sure that they were enforcing the PBSA. If the state commissions continued to fail to enforce the PBSA, the federal government could compel them to comply with the statute by using its political and economic power. This regulation would be relatively inexpensive and easy to administer because it would only entail regulating commissions, as opposed to regulating each individual fight that takes place within the state. While the most practical approach to improving boxer safety would be federal oversight of the state athletic commissions, the best way to guarantee that the solution would be constitutional is for Congress to engage in federal preemption, without first trying to work with the

²¹⁵ *Id.* at 241.

²¹⁶ *Id.*

²¹⁷ *Id.* at 243.

²¹⁸ *Id.* at 241.

²¹⁹ See *infra* text accompanying notes 221-230.

states, in light of the relationship between the federal and state governments.

Any attempt by the federal government to regulate boxing would have to comply with the Tenth Amendment of the U.S. Constitution. The Tenth Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people.”²²⁰ One of the most important cases interpreting the scope of the Tenth Amendment is *Printz v. United States*.²²¹ In *Printz*, the Supreme Court, in a 5-4 decision, held that state officers cannot be “dragooned” into carrying out federal functions,²²² meaning that the federal government cannot use state officials for the purpose of enforcing federal regulations.

Printz involved a challenge to interim provisions of the Brady Handgun Violence Prevention Act.²²³ The interim provisions required a firearms dealer who wished to transfer ownership of a handgun to receive information from the buyer and transfer it to the chief law enforcement officer (“CLEO”) of the buyer’s residence.²²⁴ The CLEO then had to “make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.”²²⁵ After that point, the CLEO was not required to take any further action.²²⁶ Also, the CLEO was not required to do a background check “if the purchaser possesses a state handgun permit issued after a background check or if state law provides for an instant background check.”²²⁷ Based on these requirements, the Court stated that “it is apparent that the Brady Act purports to direct state law enforcement officers to participate, albeit only temporarily, in the administration of a federally enacted regulatory scheme.”²²⁸ A

²²⁰ U.S. CONST. amend. X.

²²¹ 521 U.S. 898 (1997).

²²² *See id.* at 928.

²²³ *Id.* at 902.

²²⁴ *Id.* at 902-03.

²²⁵ *Id.* at 903 (quoting 18 U.S.C. § 922(s)(2)).

²²⁶ *Id.*

²²⁷ *Id.* (citations omitted).

²²⁸ *Id.* at 904.

majority of the Court found that this was constitutionally impermissible.²²⁹

Applied to the area of boxing regulation, the ruling in *Printz* prevents the federal government from engaging in direct oversight of the state athletic commissions for the purpose of ensuring that the federal laws are being complied with. However, the majority in *Printz* conceded that actions which achieved similar results were permissible when the Court looked at federal statutes that utilized state actors and stated, “Some of these are connected to federal funding measures, and can perhaps be more accurately described as conditions upon the grant of federal funding than as mandates to the States”²³⁰ As a result, it is possible that federal oversight could be constitutional if it was a requirement of receiving federal funds. In *South Dakota v. Dole*, the Court held that the federal government could use the threat of withholding money for highways to South Dakota to encourage the state to set the drinking age at twenty-one years old.²³¹ However, it is unlikely that Congress will be able to tie federal money into an area that would provide a sufficient nexus to allow for federal oversight of the state athletic commissions.²³² Regardless of whether or not Congress could find a way to tie regulation into funding, it could directly preempt the field of boxing regulation because that does not entail using state actors to enforce federal law.²³³

The *Printz* ruling does not prevent the federal government from preempting the field of boxing regulation. In fact, while the *Printz* decision sought to protect states’ rights, it may have the opposite effect. Instead of using state actors to carry out federal law indirectly, the federal government has to enforce the law directly. The decision refers to the separation of powers: “The power of the Federal Government would be augmented immeasurably if it were able to impress into its service—and at no cost to itself—the police officers of the 50 States.”²³⁴ The dissent points out that “the majority’s rule seems more likely to damage than to preserve the safeguards

²²⁹ *Printz*, 521 U.S. at 904.

²³⁰ *Id.* at 917-18.

²³¹ *South Dakota v. Dole*, 483 U.S. 203, 205-06 (1987).

²³² While a nexus can possibly be found to Medicaid or Medicare, for example, cutting off of these funds would be an extreme threat, especially given the low level of interest in establishing minimum safety standards for professional boxing.

²³³ See *infra* text accompanying notes 234-238.

²³⁴ *Printz*, 521 U.S. at 922.

against tyranny provided by the existence of vital state governments.”²³⁵ This is because “[b]y limiting the ability of the Federal Government to enlist state officials in the implementation of its programs, the Court creates incentives for the National Government to aggrandize itself.”²³⁶ This is certainly a valid point in the area of boxing regulation where, since federal control cannot be used over state agencies, the result must be the dissolution of the state athletic commissions and the creation of a federal one.

It is clear from prior case law interpreting the U.S. Constitution that Congress can directly regulate boxing; it just cannot regulate boxing by overseeing the state commissions. It has already been established that the boxing industry is in interstate commerce,²³⁷ and that Congress may constitutionally regulate items in interstate commerce.²³⁸ Therefore, Congress has the authority to directly regulate the boxing industry.

Federal preemption of boxing regulation should be achieved by amending the PBAA. An entity like the USBC should be created, but provisions should be added for the selection of a federal boxing commissioner for each state. These federal commissioners could be set up in the same way that the state commissions are currently operated. While this system would require much more federal attention than the proposed PBAA, it would be preferable for two reasons. First, it would be effective. The PBAA increases federal bureaucracy while still heavily relying on the state athletic commissions, thus calling into question whether it will produce tangible results. Federal preemption, while requiring much more federal bureaucracy, would eliminate any reliance on the state commissions, making success almost a certainty. Second, the costs of creating additional federal bureaucracy could be offset by taxing the boxing industry. While this step would represent a significant departure from current practice, federal control of the boxing industry is necessary to provide a safer environment for the participants.

²³⁵ *Id.* at 959 (Stevens, J., dissenting).

²³⁶ *Id.*

²³⁷ *United States v. Int'l Boxing Club of N.Y., Inc.*, 348 U.S. 236 (1955).

²³⁸ U.S. CONST. art. I, § 8.

CONCLUSION

From the time of its inception in the United States, the sport of boxing has not had an adequate system to ensure the safety of the fighters. While attempts to regulate the boxing industry have been made with the formation of the state athletic commissions and the passage of the PBSA, they have not been successful. Since current regulations have fallen short of their goals, the best way to achieve comprehensive enforcement is for Congress to take control of all boxing regulation. While this is a major departure from the current system, it is necessary to ensure that the fights are conducted under the safest possible conditions. Even though this would require somewhat complex legislation from Congress, the recent deaths of Martin Sanchez and Leavander Johnson illustrate the high cost of not properly regulating the sport. These deaths, along with the erosion of the PBSA through the Joe Mesi case, have created a climate where Congress should realize that increased federal regulation is necessary for the sport. If not, more preventable deaths will occur.

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