

# FIGHTING FOR REGULATION: MIXED MARTIAL ARTS LEGISLATION IN THE UNITED STATES

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## I. INTRODUCTION

Most sports, and the organizations charged with running them, cringe at the idea of increased governmental regulation and oversight. Often,

government rules and regulations are viewed by those organizations as hindrances and unwanted interferences. While this is usually true, it is not the case with the fastest growing sport in America today. For the sport of mixed martial arts, the motto has become “run toward regulation, not away from it.”<sup>1</sup>

Mixed martial arts (commonly referred to as MMA) is defined by the Nevada State Athletic Commission as “unarmed combat involving the use . . . of a combination of techniques from different disciplines of the martial arts, including, without limitation, grappling, kicking, and striking.”<sup>2</sup> In practice, it is a constantly evolving combat sport in which highly trained professional athletes utilize the disciplines of jiu-jitsu, karate, boxing, kickboxing, wrestling, and other forms of martial arts to their strategic and tactical advantage to win by knockout, submission, or decision in a supervised and regulated match.<sup>3</sup> It is the fastest growing sport in America today.<sup>4</sup> Free MMA events on cable television routinely draw more viewers than Major League Baseball and National Basketball Association games.<sup>5</sup> Live events sell out some of the biggest venues around the country, and pay-per-view purchases consistently outsell all but the biggest boxing events.<sup>6</sup> Even the United States military has incorporated MMA into its soldiers’ training.<sup>7</sup>

Despite the sport’s growing popularity, MMA is still not a legally regulated sport in every state across the country.<sup>8</sup> The sport is

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1. Interview with Marc Ratner, Vice President of Legislative Affairs, Ultimate Fighting Championship, in Las Vegas, Nev. (Summer 2008); Interview with Michael Mersch, Assistant General Counsel, Ultimate Fighting Championship in Las Vegas, Nev. (Summer 2008).

2. NEV. ADMIN. CODE § 467.00285 (2008). It has also been defined as “the convergence of techniques from a variety of combative sports disciplines including boxing, wrestling, judo, jujitsu, kickboxing and others.” OHIO ADMIN. CODE 3773:7-01(P) (2007).

3. UFC, Fact Sheet, <http://www.ufc.com/index.cfm?fa=LearnUFC.FactSheet> (last visited Feb. 9, 2010).

4. See Daniel Schorn, *Mixed Martial Arts: A New Kind of Fight*, CBS News, July 29, 2007, <http://www.cbsnews.com/stories/2006/12/18/60minutes/main2241525.shtml>.

5. L. Jon Wertheim, *The New Main Event*, SPORTS ILLUSTRATED, May 22, 2007, at 54.

6. *Id.*

7. Robert Cassidy, *MMA Combatives Training a Hit in Military*, NEWSDAY, Aug. 2, 2008, available at <http://www.newsday.com/sports/mma-combatives-training-a-hit-in-military-1.881505?ar=1> (free subscription required).

8. “Regulation” is “[t]he act or process of controlling by rule or

continuously plagued by preconceived notions that it is an unsafe, bloody, violent, glorified bar fight with no rules or skill required. Those stereotypes have led lawmakers and members of the public across the country to view the sport as a political pariah that should be ignored or, in some cases, banned outright.<sup>9</sup> This Note will dispel those stereotypes and argue that MMA regulation at the state level is in the best interests of the state, the public, and the sport.

This Note is divided into three Rounds.<sup>10</sup> Round One will place the sport of mixed martial arts into historical context. Round Two will explore the current state of MMA regulation and the features of that regulation. Round Three will argue that states must adopt a comprehensive set of laws and administrative rules to regulate MMA in order to protect participants and the public while at the same time generating much-needed state revenue.

## II. ROUND ONE: HISTORY

### A. *Mixed Martial Arts in Ancient Times*

The art and science of fighting as a form of sporting competition is almost as old as humankind itself. Indeed, it is almost indisputable that fighting, as well as competition, are innate parts of human nature. “If you’re in the middle of a street somewhere, and guys are playing pickup basketball to one side, and playing football on the other corner, and playing baseball, and a fight broke out, you’d automatically gravitate to the fight. It’s something in our soul, our DNA.”<sup>11</sup> However, as the long history of the sport of MMA shows, it is also almost inevitable that a when combative sport lacks a set of properly regulated rules and safety procedures, enforced and accepted by governmental bodies, the sport is

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restriction[.]” BLACK’S LAW DICTIONARY 1398 (9th ed. 2009). In the context of MMA, “regulation” means the collection of state statutes and administrative rules which control all aspects of the sport including at minimum, but not necessarily limited to, the licensing, taxes and fees, medical requirements, and rules under which its bouts are conducted.

9. See, e.g., N.Y. COMBATIVE SPORTS LAW § 8905-a(2) (McKinney 2002) (“No combative sport shall be conducted, held or given within the state of New York, and no licenses may be approved by the commission for such matches or exhibitions.”).

10. Under the Unified Rules of Mixed Martial Arts, bouts are divided into three rounds of five minutes with the exception of championship bouts which are divided into five rounds of five minutes. NEV. ADMIN. CODE § 467.7954 (2008).

11. Tim Marchman, *To Some, the Ultimate Fight*, WALL ST. J., Nov. 14, 2008, at W4 (quoting Marc Ratner).

likely to produce public outcry that could potentially lead to its prohibition.

The first form of mixed-discipline fighting competition was introduced by the Greeks at the thirty-third Olympiad in 648 B.C.<sup>12</sup> This form of MMA, called pankration, combined Hellenic boxing and wrestling.<sup>13</sup> Matches were held in a small arena called a skamma—the only rules consisted of prohibitions against biting, eye gouging, and scratching, which were enforced by a referee wielding a stick.<sup>14</sup> The competition often took place on the ground, with opponents grappling with each other and employing techniques such as “bruising strikes to the face,” joint locks, choke holds, and kicks.<sup>15</sup> The matches commonly ended when one competitor was seriously injured—referred to as being “completely destroyed”—or submitted by raising his hand.<sup>16</sup> However, some matches resulted in death.<sup>17</sup> These matches lasted a millennium until Roman Emperor Theodosius I outlawed the Olympic Games in the fourth century.<sup>18</sup>

The more immediate forbearers to MMA, as it is known today, were the *vale tudo*, or anything-goes, fighting and challenge matches that originated in Brazil approximately eighty years ago.<sup>19</sup> Much like Greek pankration matches, *vale tudo* matches had few, if any, rules and often left competitors seriously injured.<sup>20</sup> However, these matches, often held in a carnival-like atmosphere, were extremely popular and drew a lot of local attention.<sup>21</sup> One family in particular, the Gracie family, dominated the *vale tudo* matches in Brazil using its own fighting style based on of the Japanese martial art of jiu-jitsu.<sup>22</sup> The Gracie family’s unique fighting style became known as Brazilian jiu jitsu, and it would forever change the course of

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12. 1 ANDREAS V. GEORGIU, PANKRATION: AN OLYMPIC COMBAT SPORT, AN ILLUSTRATED RECONSTRUCTION 13 (2005).

13. *Id.* at 4 (citing ARISTOTLE, RHETORIC I.v.14).

14. *Id.* at 20–21.

15. *Id.* at 4 (citing PHILOSTRATUS, IMAGINES II.6.(3)).

16. *Id.* at 19–20.

17. *Id.* at 52.

18. *Id.* at 4 n.6, 14.

19. UFC, History of the Ultimate Fighting Championship, <http://www.ufc.com/index.cfm?fa=LearnUFC.History> (last visited Feb. 14, 2010).

20. *See Jiu Jitsu*, TIME, Sep. 24, 1928, at 24 (“Even kicks in the head are allowed . . .”).

21. *See* JONATHAN SNOWDEN, TOTAL MMA: INSIDE ULTIMATE FIGHTING 22 (2008); *see also Jiu Jitsu*, *supra* note 20; History of the Ultimate Fighting Championship, *supra* note 19.

22. *See* SNOWDEN, *supra* note 21, at 14–28.

MMA.<sup>23</sup> It was the Gracie family's desire to spread Brazilian jiu jitsu around the world, combined in no small measure with the imposition of bans on *vale tudo* matches by Brazilian politicians, that brought MMA to America.<sup>24</sup>

### B. *Mixed Martial Arts Comes to the United States*

In 1993, Rorion Gracie teamed up with Bob Meyrowitz, an entrepreneur from New York, to create the Ultimate Fighting Championship.<sup>25</sup> The idea behind the original promotion was to produce an event that would answer the age old question that had been on the minds of teenage men and legal scholars alike for centuries—what fighting style was the best?<sup>26</sup> For example, who would win if locked in a cage—a boxer or a kung fu master, or a Brazilian jiu jitsu black belt or an Iowa wrestler?<sup>27</sup>

Early UFC events “were more spectacle than sport.”<sup>28</sup> The events were advertised as anything-goes, two-men-enter, one-man-leaves brawls.<sup>29</sup> These were tournament-style events and the matches had few, if any, additional rules beyond those of the early Greek pankration matches. Eye-gouging, biting, head-butting, and strikes to the groin were selectively prohibited, and there were no weight classes, judges, or point systems for a match to end by decision.<sup>30</sup> Because of the lack of rules and often brutal outcomes of the bouts, the early UFC was forced to hold these events in small venues and civic centers in states where athletic or boxing commissions were either inept or nonexistent.<sup>31</sup> The company relied on pay-per-view purchases for revenue, perhaps a result of being too controversial for regular television.<sup>32</sup>

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23. *Id.* at 16.

24. *Id.* at 22–23.

25. Wertheim, *supra* note 5, at 57.

26. *See id.* at 56.

27. In these early events, where competitors mainly relied on only one martial art, the Brazilian jiu jitsu competitor Royce Gracie won three of the first four events. *See* MMA Memories, UFC Tournament Winners & Runners-Up, <http://www.mma-memories.com/2007/12/14/ufc-tournament-winners-runners-up.html> (last visited Feb. 14, 2010).

28. Wertheim, *supra* note 5, at 56.

29. *See* SNOWDEN, *supra* note 21, at 38–39.

30. *See* Matthew Miller, *Ultimate Cash Machine*, FORBES, May 5, 2008, at 80, 86.

31. Wertheim, *supra* note 5, at 56.

32. *See* SNOWDEN, *supra* note 21, at 36–37.

The lack of rules, safety equipment, and necessary precautions made broken bones and nasty injuries commonplace during these early events. Not surprisingly, public outcry soon led lawmakers to become involved.<sup>33</sup> Most famously, Senator John McCain went on the United States Senate floor in 1996 and labeled the sport “human cockfighting.”<sup>34</sup> Soon thereafter, some events that were scheduled were later cancelled when local lawmakers learned what exactly was going to be happening in their city’s auditorium.<sup>35</sup> Eventually the public outcry and political pressure became so great that even pay-per-view executives grew nervous about showing UFC events.<sup>36</sup> Politicians in nearly all fifty states took steps to ban or prohibit no-holds-barred fighting and pressured cable operators to stop broadcasting the events.<sup>37</sup> Numerous states successfully enacted bans.<sup>38</sup> With political bans and pay-per-view revenue drying up, the UFC nearly became bankrupt and began looking to sell.<sup>39</sup> MMA in America was essentially dead.

### C. *Running Toward Regulation, Not Away from It*

In 2001, Frank and Lorenzo Fertitta, brothers and heirs to the Station Casino chain, and Dana White, a friend and former boxing promoter, bought the UFC for \$2 million dollars.<sup>40</sup> They recognized that to bring the UFC and the sport of MMA back from the brink of extinction, and for it to gain mainstream acceptance as a legitimate sport, the UFC had to lose its image of barbarity by implementing rules and safety precautions.<sup>41</sup> Most importantly, they recognized that the UFC, and MMA generally, were not

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33. See Miller, *supra* note 30.

34. Wertheim, *supra* note 5, at 56.

35. *Id.*

36. *Id.*

37. Miller, *supra* note 30.

38. *Id.*; see also, e.g., N.Y. COMBATIVE SPORTS LAW § 8905-a(2) (McKinney 2002) (“No combative sport shall be conducted, held or given within the state of New York, and no licenses may be approved by the commission for such matches or exhibitions.”); R.I. GEN. LAWS § 41-5-1 (2006), *interpreted by* Op. Att’y Gen. 96-02 (R.I. 1996), available at 1996 WL 350764 (“[T]he Ultimate Fighting Championship . . . is subject to the Commission’s jurisdiction . . . and may not take place in Rhode Island unless licensed by the Commission.”); S.C. CODE ANN. § 40-81-530 (2003) (repealed) (“Ultimate fighting events or exhibitions are prohibited in this State, and no license or event or exhibition permit may be issued by the commission authorizing an ultimate fighting event or exhibition.”).

39. Miller, *supra* note 30.

40. *Id.*

41. Wertheim, *supra* note 5.

going anywhere without gaining the approval of state legislatures and athletic commissions.<sup>42</sup> To facilitate this effort, the UFC eventually hired famed Executive Director of the Nevada State Athletic Commission Marc Ratner as Vice President of Regulatory Affairs.<sup>43</sup> The Fertitta brothers believed that having an experienced regulator like Ratner involved in the UFC would provide valuable knowledge and insight into the regulatory process and the skills necessary to get the sport accepted in states across the country.<sup>44</sup> The UFC also hired former Nevada Deputy Attorney General Michael Mersch to assist Ratner with the regulatory efforts across the country.<sup>45</sup>

After the new hires, and the credibility that came with them, the UFC began working with athletic commissions and lobbying state legislatures around the country in an attempt to adopt a set of rules and procedures that would allow them to legally hold events once again.<sup>46</sup> To further legitimize the sport, the UFC created a policy under which it did not hold events in states where MMA was not regulated and overseen by state athletic commissions.<sup>47</sup> As Ratner and Mersch stated, “Our motto became ‘we run toward regulation, not away from it [like the previous owners of the UFC].’”<sup>48</sup> The UFC also wanted MMA to be conducted under the same set of rules and safety procedures without regard to where the event was held or what promoter was holding the event.<sup>49</sup> Mersch explains the

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42. Miller, *supra* note 30.

43. See John Eligon, *A Boxing Regulator Changes Corners*, N.Y. TIMES, Nov. 24, 2006, at D6.

44. *See id.*

45. Kevin Iole, *Hatton Relishes Shot at Castillo*, LAS VEGAS REV. J., Mar. 18, 2007, at 4C, available at [http://www.reviewjournal.com/lvrj\\_home/2007/Mar-18-Sun-2007/sports/13241985.html](http://www.reviewjournal.com/lvrj_home/2007/Mar-18-Sun-2007/sports/13241985.html).

46. *See generally* Miller, *supra* note 30.

47. Interview with Michael Mersch, *supra* note 1; Interview with Marc Ratner, *supra* note 1.

48. Interview with Marc Ratner, *supra* note 1; Interview with Michael Mersch, *supra* note 1; see also Myron P. Medcalf, *Mixed Martial Arts: Policing a Popular Product*, STAR TRIB., Aug. 8, 2008, at C1, available at [http://www.startribune.com/sports/26398104.html?elr=KArksi8cyaiUo8cyiaUiD3aPc:\\_Yyc:aULPQL7PQLaunch07DiU](http://www.startribune.com/sports/26398104.html?elr=KArksi8cyaiUo8cyiaUiD3aPc:_Yyc:aULPQL7PQLaunch07DiU) (quoting UFC owner Dana White as saying, “[r]ather than running from regulation, we’d run toward regulation”).

49. The term promoter, as used in regulations and the remainder of this Note, refers to “any person who produces or stages any professional contest or exhibition of unarmed combat.” NEV. REV. STAT. § 467.0104 (2007). The UFC is an example of an MMA promoter. There are other companies that promote MMA events. However, the UFC controls an estimated 90% of the MMA market. Miller, *supra* note 30, at 82.

UFC's strategy with this analogy:

Take the sport of soccer for example. It doesn't matter where you are playing the game—America, Africa, or Europe—everyone plays by the same set of rules. Not only do these rules set the parameters for how the game is played and the safety standards for the players, but the rules also standardize the game and make it easier of people to understand and learn. The rules give the people watching it the idea that they are watching a legitimate and professionalized sport. We want the same thing for mixed martial arts.<sup>50</sup>

Today, through the efforts of Ratner and Mersch, the UFC is the driving force behind the legislative efforts aimed at getting MMA properly regulated in every state.<sup>51</sup> The UFC alone assumes the cost of educating legislators and lobbyists at both the state and federal level, not only for the benefit of their business, but also for the health and safety of the sport, its fans, and competitors.<sup>52</sup>

### III. ROUND TWO: THE CURRENT STATE OF MIXED MARTIAL ARTS REGULATION IN THE UNITED STATES

Today, MMA is regulated either statutorily, administratively, or through a combination of both, in forty-two of the forty-eight states with regulatory bodies<sup>53</sup> (Alaska and Wyoming do not have athletic sanctioning

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50. Interview with Michael Mersch, *supra* note 1.

51. Peter Duffy, *Banned Sport Gains Fans, and Seeks More in Albany*, N.Y. TIMES, Jan. 21, 2009, at A28, available at [http://www.nytimes.com/2009/01/21/nyregion/21martial.html?\\_r=1](http://www.nytimes.com/2009/01/21/nyregion/21martial.html?_r=1).

52. See Kim Chi Ha, *Ultimate Fighting Hires Lobbying Firm*, HILL (Wash. D.C.), May 27, 2008, at 8, available at <http://thehill.com/business-a-lobbying/3616-ultimate-fighting-hires-lobbying-firm>.

53. See, e.g., ARIZ. REV. STAT. ANN. § 5-225 (2002 & Supp. 2009); ARK. CODE ANN. § 17-22-101 (2001); CAL. BUS. & PROF. CODE § 18640 (West 2008); DEL. CODE ANN. tit. 28, § 103 (Supp. 2008); FLA. STAT. ANN. § 548 (West 2007); GA. CODE ANN. § 43-4B-1 (West 2003); HAW. REV. STAT. § 440-E (Supp. 2007); 225 ILL. COMP. STAT. ANN. 105/1 (West 2007 & Supp. 2009); IND. CODE ANN. § 25-9-1-0.3 (LexisNexis Supp. 2009); KAN. STAT. ANN. § 74-50, 181 (Supp. 2008); KY. REV. STAT. ANN. § 229.001 (West 2007 & Supp. 2009); LA. REV. STAT. ANN. §§ 4:61 to :85 (2003 & Supp. 2010); ME. REV. STAT. ANN. tit. 8, §§ 521–28 (Supp. 2009); MD. CODE ANN., BUS. REG. §§ 4-302 to 4-323 (West 2004 & Supp. 2009); 2009 Mass. Acts ch. 169, available at <http://www.mass.gov/legis/laws/seslaw09/sl090169.htm> (to be codified at MASS. GEN. LAWS ch. 22 § 12, ch. 29 § 2AAAA, ch. 147 §§ 32–40A, 42, 46–51, ch. 180 § 28, ch. 265 § 12); MICH. COMP. LAWS ANN. §§ 338.3601–3663 (West Supp. 2009); MINN. STAT. ANN. §§ 341.21–.37 (West Supp. 2010); MISS. CODE ANN. §§ 75-75-101 to -123 (West 1999 &

bodies<sup>54</sup>). The number of states that regulate MMA has exploded in the last three years, increasing initially from twenty-two to forty,<sup>55</sup> and now to the current total of forty-two. During the 2008–2009 legislative session alone, at least seven states enacted laws to regulate MMA.<sup>56</sup> Wisconsin was the first state to enact MMA legislation in 2010.<sup>57</sup> Legislation for MMA regulation has “either been approved or [is] under review in all states with a sanctioning athletic commission.”<sup>58</sup> Even states that currently ban the sport frequently debate legislation that would lift those bans.<sup>59</sup>

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Supp. 2009); MO. ANN. STAT. §§ 317.001–.021 (West 2001 & Supp. 2009); NEB. REV. STAT. ANN. § 81-8,129 (LexisNexis 2005 & Supp. 2009); N.H. REV. STAT. ANN. §§ 285:1 to :20 (LexisNexis 1999 & Supp. 2009); N.C. GEN. STAT. ANN. § 143-652.1 (West 2007); N.D. CENT. CODE § 53-01-07 (2007); OR. REV. STAT. ANN. § 463 (West 2003 & Supp. 2009); 58 PA. CODE § 29 (2010); 2009 R.I. Pub. Laws ch. 312, *available at* <http://www.rilin.state.ri.us/PublicLaws/law09/law09312.htm> (to be codified at R.I. GEN. LAWS § 41-5.2-1); S.C. CODE ANN. § 40-81-230 (Supp. 2009); S.D. CODIFIED LAWS § 42-12-2 (Supp. 2009); TENN. CODE ANN. §68-115 (2006 & Supp. 2009); TEX. OCC. CODE ANN. § 2052 (Vernon 2004 & Supp. 2009); UTAH CODE ANN. § 63C-11-301 (2008); VA. CODE ANN. § 54.1-831 (2005); S.B. 290, 2009 Gen. Assem. Reg. Sess. (Wis. 2009); 4 COLO. CODE REGS. § 740-2 (2007); IDAHO ADMIN. CODE r. 03.01.01.731 (2009); IOWA ADMIN. CODE r. 875-177.1 (2008); NEV. ADMIN. CODE § 467.795 (2008); N.J. ADMIN. CODE § 13:46-24A (2009); N.M. CODE R. § 15.6.1.1 (Weil 2010); OHIO ADMIN. CODE 3773-7 (2007); OKLA. ADMIN. CODE § 92:1-0-1 (2006); WASH ADMIN. CODE § 36-14 (2009). Montana previously had comprehensive MMA regulations. *See* MONT. ADMIN. R. 24.117.1501 (2006). However, due to the state’s money concerns, Montana’s program was essentially shut down. *See* Mont. Code Ann. §§ 23-3-101 to 23-3-209 (repealing State Board of Athletics and Boxing, Sparring, and Wrestling matches).

54. Mixed Martial Arts Regulation in the United States Map (On file with Author).

55. Arnold M. Knightly, *Nevadan at Work: Longtime Sports Official Instrumental in UFC’s Birth, Growth*, LAS VEGAS REV. J., Nov. 15, 2009, at 1E.

56. DEL. CODE ANN. tit. 28, § 103 (Supp. 2008); IND. CODE ANN. § 25-9-1-0.3 (LexisNexis Supp. 2009); ME. REV. STAT. ANN. tit. 8, § 521 (Supp. 2009); S.C. CODE ANN. § 40-81-230 (Supp. 2009); S.D. CODIFIED LAWS § 42-12-1 (Supp. 2009); 2009 Mass. Acts ch. 169, *available at* <http://www.mass.gov/legis/laws/seslaw09/sl090169.htm> (to be codified at MASS. GEN. LAWS ch. 22 § 12, ch. 29 § 2AAAA, ch. 147 §§ 32–40A, 42, 46–51, ch. 180 § 28, ch. 265 § 12); 2009 R.I. Pub. Laws ch. 312, *available at* <http://www.rilin.state.ri.us/PublicLaws/law09/law09312.htm> (to be codified at R.I. GEN. LAWS § 41-5.2-1).

57. S.B. 290, 2009 Gen. Assem., Reg. Sess. (Wis. 2009).

58. Wertheim, *supra* note 5; *see, e.g.*, H.R. 2665, 79th Gen. Assem., Reg. Sess. (W. Va. 2009).

59. *See, e.g.*, H.R. A02009C, 2009 Gen. Assem., Reg. Sess. (N.Y. 2009) (Legislative Memo) (“An act to amend chapter 912 of the laws of 1920 relating to the regulation of boxing, sparring and wrestling, in relation to establishing protocols for combative sports and authorizing mixed martial arts events in this state . . . the

Truly comprehensive legislation must cover a wide range of topics in order to regulate the sport properly. The most important areas that must be regulated include the rules under which a bout will be conducted, medical requirements and precautions, licensing and registration requirements, and fee and tax requirements. States have a number of options through which they can adopt those regulations. The following sections will explore these issues.

#### A. *The First Round of Regulation*

The first state to adopt regulations regarding rules and procedures for holding a state-sanctioned MMA event was New Jersey in May of 2001.<sup>60</sup> New Jersey was initially reluctant to sanction MMA competitions due to the lack of formal rules, which created health and safety concerns.<sup>61</sup> However, once the New Jersey State Athletic Control Board became aware that the UFC and other promoters were voluntarily implementing their own set of rules in hopes of becoming state sanctioned, the New Jersey State Athletic Control Board began a course of communications with the California State Athletic Commission with regard to regulating

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NYSAC needs to be properly empowered to maintain both the dignity of the sport and the best interest of the safety and welfare of the professional combative sports participants.”). This bill failed to reach the floor of the General Assembly after it passed the Tourism Committee by a vote of fourteen to six because it got lost in the fray of a constitutional crisis that consumed the New York Legislature at the end of the 2009 legislative session. See Mitch Abramson, *Albany Power Struggle Leaves Mixed Martial Arts Bill in the Lurch*, N.Y. DAILY NEWS, June 5, 2009, [http://www.nydailynews.com/sports/more\\_sports/2009/07/05/2009-07-05\\_mma.html](http://www.nydailynews.com/sports/more_sports/2009/07/05/2009-07-05_mma.html). Two disgruntled democratic senators left their party’s caucus, giving the Republican Party the majority and the power to realign the assembly’s agenda. *Id.* This is not the first time a bill to regulate mixed martial arts has gotten lost in the quagmire of New York politics. A similar bill failed to pass the New York Assembly in 2008. See H.R. A11458A, 2008 Gen. Assem., Reg. Sess. (N.Y. 2009). The bill failed due to opposition from the UNITE HERE labor union. See Tom Hamlin, *UFC Pushes for New York Approval*, S.I. ONLINE, Nov. 11, 2008, <http://sportsillustrated.cnn.com/2008/mma/11/11/mma-new-york/index.html>. The union opposed the bill because the UFC’s ownership also owns the largest non-union casino chain in Nevada. *Id.* As this Note went to publication, the Governor of New York, David Paterson, announced his support for the regulation of MMA by including plans to legalize MMA in his 2010–2011 fiscal year budget proposal. See Editorial, *A Leaner Budget for Lean Times*, N.Y. TIMES, Jan. 19, 2010, at A20. As of publication, no affirmative steps had yet been taken. Two other states, Rhode Island and South Carolina, successfully repealed bans on MMA during the 2008–2009 legislative session. See *supra* note 53; see also 2009 R.I. Pub. Laws 09-313; S.C. CODE ANN. § 40-81-230 (Supp. 2009).

60. N.J. STAT. ANN. § 5:2A-4 (West Supp. 2009).

61. *Id.*

MMA.<sup>62</sup> As a result of its discussions with the California State Athletic Commission, the New Jersey State Athletic Control Board began allowing MMA promoters to hold events in New Jersey while the board reviewed the potential regulations, on the condition that the promoters agreed to incorporate New Jersey's medical testing and safety requirements.<sup>63</sup> These events, even though not technically sanctioned by the state, gave the New Jersey State Athletic Control Board the opportunity to observe actual events and gather the information they needed to determine what would be required to establish a comprehensive and complete set of rules to effectively regulate the sport.<sup>64</sup>

On April 3, 2001, New Jersey State Athletic Control Board Commissioner, Larry Hazzard, Sr., hosted a meeting with members from several other state regulatory bodies, numerous MMA promoters, and other interested parties in an effort to unify the myriad rules and regulations that had been utilized by different states and by a number of MMA organizations.<sup>65</sup> By the conclusion of this three-hour meeting, all members attending agreed upon a proposed set of rules to govern the sport of mixed martial arts.<sup>66</sup> These rules have become widely known as the "Mixed Martial Arts Unified Rules of Conduct" (Unified Rules).<sup>67</sup> Soon after adoption of the Unified Rules by the New Jersey State Athletic Control Board, in April, 2001, the Nevada State Athletic Commission and California State Athletic Commission followed suit.<sup>68</sup> The world's most prestigious sporting regulatory bodies and athletic commissions—California, Florida, Nevada, New Jersey, Ohio, and Pennsylvania—regulate MMA using the Unified Rules.<sup>69</sup> The states that have adopted the

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62. *Id.*

63. Agency Proposal, Mixed Martial Arts Unified Rules of Conduct, N.J. ADMIN. CODE § 13:46-24A, <http://www.state.nj.us/lps/sacb/docs/martial.html>.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* These rules are also sometimes referred to as the "Uniform Rules of Mixed Martial Arts." For the remainder of this Note, the term "Unified Rules" will be used.

68. See CAL. CODE REGS. tit. 4, § 500 (2010); NEV. ADMIN. CODE § 467 (2001).

69. See CAL. CODE REGS. tit. 4, § 500 (2010); FLA. ADMIN. CODE r. 61k1-1 (2004); NEV. ADMIN. CODE § 467; N.J. ADMIN. CODE § 13:46-24A-B; OHIO ADMIN. CODE 3773-7-(2007); 58 PA. CODE § 29 (2010); see also JULIE WOOD, MMA FACT KIT: THE HISTORY, <http://www.mmafacts.com/images/FE/chain226sitetype8/site195/client/FACT%20KIT-HISTORY.pdf> (last visited Feb. 13, 2010).

Unified Rules, along with the other necessary regulations, have done so in a number of ways.

B. *Common Approaches Among the States to Regulating Mixed Martial Arts*

Like any other regulation, rules and regulations sanctioning MMA must be passed either explicitly by statute, by administrative rules, or by some combination thereof. The states that have regulated MMA have done so, in large part, in one of two ways: by granting regulatory bodies the power to administratively adopt regulations and enforce them or by explicitly passing the regulations by statute while giving state agencies enforcement power.

1. *Delegating Authority to Regulatory Bodies*

The most common approach to adopting MMA regulation is for a state legislature to grant broad authority to a department or agency that oversees sports-related policy matters.<sup>70</sup> Most often among these types of states, the legislature grants rulemaking authority directly to an athletic commission.<sup>71</sup> However, some states give the broad grant of authority to the head of a government department who may also act as a sports commissioner.<sup>72</sup> There are a number of ways that states grant this authority. Often, the statute passed by the legislature authorizes the regulatory body to adopt regulations and rules for MMA by either expressly referencing “mixed martial arts,”<sup>73</sup> “combative sports,”<sup>74</sup> or “unarmed combat;”<sup>75</sup> or preexisting statutes regarding boxing, wrestling, or both can be modified or interpreted by the agency as implicitly granting the regulatory body power to make rules for MMA.<sup>76</sup> Once authority has been granted, these agencies or departments are then charged with adopting whatever rules, regulations, and procedures will govern the happenings before, during, and after an MMA bout.<sup>77</sup> The discretion over which set of

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70. *E.g.*, N.J. STAT. ANN. § 5:2A-4 (West Supp. 2009).

71. *E.g.*, *id.*

72. *E.g.*, IOWA CODE ANN. § 90A.7 (West Supp. 2009).

73. *E.g.*, OR. REV. STAT. ANN. § 463.018 (West Supp. 2009).

74. *E.g.*, N.J. STAT. ANN. § 5:2A-4 (West Supp. 2009).

75. *E.g.*, NEV. REV. STAT. § 467.0107 (2007).

76. *E.g.*, IOWA ADMIN. CODE r. 875-177.1 (2008) (“The labor commissioner finds that professional shoot fighting [MMA] is a contest within the scope of Iowa Code chapter 90A [the boxing and wrestling chapter].”).

77. *See, e.g.*, IOWA CODE § 90A.7; N.J. STAT. ANN. § 5:2A-4; OR. REV. STAT.

rules and regulations to adopt is left solely to the regulatory body.<sup>78</sup> Those rules and regulations are developed through the notice and comment process and then published in their respective state's administrative codes.<sup>79</sup>

Using the delegation method of adopting regulations is generally the slower of the two approaches. In addition to the time it takes for a legislature to pass a bill granting authority, if no authority already exists in current boxing or wrestling statutes, there is the additional time it takes for the administrative agency to notify the public of its intent to make rules and allow the process of notice and comment. One solution to the expediency problem is for regulatory bodies, once granted authority, to pass emergency rules that take effect immediately while more permanent administrative rules are being adopted.<sup>80</sup>

One advantage of the delegation approach is that it is much more flexible than the legislation approach. It is easier and faster for a regulatory body to make modifications to the regulations to fit local needs, as those needs become apparent, because it is generally much faster for a regulatory body to change an administrative rule than it is for a legislature to change a statute. For example, if a certain licensing requirement or procedure proves to be unworkable, the rule can be changed administratively in a few short weeks, compared to the much longer process of amending a state statute through the legislature. Another advantage of this process is that people with specialized knowledge make the rules. Members of sports regulatory agencies possess more sport-specific knowledge than state legislators. Their knowledge and understanding of MMA facilitates their ability to craft practical and effective rules and regulations. Furthermore, the process of notice and comment invites interested parties with specialized knowledge to provide their input in a much more interactive format than a regular legislative session provides. The notice and comment process allows knowledgeable and experienced managers, agents, trainers, promoters, and the competitors themselves to provide their opinions.

## 2. *Adopting Rules and Regulations by Statute*

The second way states regulate MMA is by adopting the applicable

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ANN. § 463.018.

78. See, e.g., IOWA CODE ANN. § 90A.7; N.J. STAT. ANN. § 5:2A-4.

79. See, e.g., N.J. ADMIN. CODE § 13:46-24A (2003).

80. See, e.g., IND. CODE ANN. § 25-9-1-4.5(b) (LexisNexis Supp. 2007).

rules and regulations by statute. Most often in these states, the legislature explicitly directs the athletic commission or designated regulatory body to adopt the Unified Rules by law.<sup>81</sup>

States that primarily use this method also set medical requirements, fees, and taxes by law.<sup>82</sup> The directive to oversee and enforce the laws adopted by statute is delegated to an athletic commission or other applicable state agency that also has authority to fill in any deficiencies left by the statutes.<sup>83</sup>

This has become the trend in states that have most recently passed regulations.<sup>84</sup> One of the primary reasons states have begun using this approach is that state legislators have become more educated about the effectiveness of the rules and regulations in place in Nevada and New Jersey through the UFC's lobbying efforts. As the UFC is more active in lobbying for the adoption of similar regulations, lawmakers have become increasingly convinced that those regulations, or ones very similar, are in their state's best interest, and they do not see the need to go through the administrative rule making process. This approach has other advantages as well. It is more efficient than using the administrative rules approach because once the statute is passed there is no question about what set of rules and regulations to adopt; the rules are already in place, and there is no longer a need for notice and comment. Additionally, any gaps left by the statute can be filled with emergency administrative rules.<sup>85</sup> This is particularly advantageous in states where timing may be an important factor in attracting a big MMA event to the area.

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81. *E.g.*, ARIZ. REV. STAT. ANN. § 5-225(C) (Supp. 2009); MICH. COMP. LAWS ANN. § 338.3622(7) (West Supp. 2009); MINN. STAT. ANN. § 341.2(c) (West Supp. 2010); R.I. GEN. LAWS § 41-5.1 to -5.2; TENN. CODE ANN. § 68-115-501(c) (Supp. 2008); 2009 Wis. Sess. Laws 111 (“[E]xcept as otherwise specified in this chapter, mixed martial arts fighting contests shall be conducted under the Association of Boxing Commissions’ uniform rules of mixed martial arts.”).

82. *E.g.*, R.I. GEN. LAWS §§ 41-5.2-10, 41-5.2-11, 41-5.2-15.

83. *E.g.*, *id.* § 4-5-22 (“The division of racing and athletics may make such rules and regulations for the administration and enforcement of this chapter as it may deem necessary.”); TENN. CODE ANN. § 68-115-207(a).

84. *E.g.*, ARIZ. REV. STAT. ANN. § 5-225(C); MICH. COMP. LAWS ANN. § 338.3622(6); MINN. STAT. ANN. § 341.21; TENN. CODE ANN. § 68-115-501; 2009 R.I. Pub. Laws Ch. 312; 2009 Wis. Sess. Laws 111.

85. *E.g.*, TENN. CODE ANN. § 68-115-201(a).

### C. The Features of Mixed Martial Arts Regulations

#### 1. The Majority Decision

The majority of states that regulate MMA, whether through administrative regulations or through statutes, have generally adopted language and substance similar to the language and substance in New Jersey and Nevada's regulations, therefore sharing many common features. This is the case despite the fact that each state is not bound by the decisions of another state and therefore must individually, either by statute or administrative rule, adopt its own set of regulations that can be modified to meet individual state needs.<sup>86</sup> The primary reason for these similarities is the UFC's lobbying efforts to standardize MMA regulation. When advocating in state legislatures and agencies to adopt MMA regulation, the UFC encourages lawmakers to use the Nevada regulations as examples.<sup>87</sup> In addition to providing input when Nevada was crafting regulations, the UFC has found the Nevada regulations have been the most complete, efficient, and workable regulations because they have been refined over the hundreds of events that have been hosted in Nevada.<sup>88</sup> The most common features of effective MMA regulations in these states are the licensing and registration requirements, fee and tax requirements, and the implementation of the Unified Rules.<sup>89</sup>

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86. There is an organization, the Association of Boxing Commissions (ABC), with which states often associate. *See, e.g., id.* § 68-115-501(b). ABC is made up of representatives from member-states' athletic commissions. CONSTITUTION/BYLAWS OF THE ASSOCIATION OF BOXING COMMISSIONS art. I, § 2.1. The group makes recommendations for rule changes and improvements for MMA, as well as for boxing. *Id.* § 1.3. However, member commissions may return to their respective states and adopt any recommendations on their own initiative, or they may choose to disregard their recommendations altogether. *Id.* § 1.3(G) (describing a mission of the ABC as "[t]o encourage adherence to, and enforcement of, applicable federal laws by each member of the ABC." (emphasis added)).

87. Interview with Michael Mersch, *supra* note 1.

88. *Id.*

89. Another common feature of many state MMA regulations are provisions that govern the contractual relationships and content of agreements between a mixed martial artist, his promoter, and his managers. *E.g.,* NEV. ADMIN. CODE §§ 467.102, 467.104, 467.112 (2001 & Supp. 2003 & Supp. 2005). While beneficial, these regulations are ancillary to the effective regulation of the sport itself. As discussed below, the rampant exploitation of boxers prompted Congress to pass the Muhammad Ali Boxing Reform Act, Pub. L. No. 106-210, 114 Stat. 321 (2000), to regulate the content of boxer contractual relations. MMA does not have the history of participant exploitation that pervaded the sport of boxing, making these types of provisions unnecessary in the context of MMA.

a. *Licensing and Registration Requirements.* The most basic feature of MMA regulation is the licensing and registration requirement for all persons wishing to participate in an event. Either statutorily or administratively, some regulatory body has been given jurisdiction over all MMA contests in the state, so determining when and if a person or entity is granted a license is the primary means of control a state has over an individual or company. Thus, these requirements determine an individual's ability to compete or do business in any fashion within that state's jurisdiction.

In states that regulate MMA, this means that no person may participate, either directly or indirectly, in any MMA contest without first procuring a license from the governing regulatory body.<sup>90</sup> This requirement applies to all competitors, promoters, matchmakers, managers, trainers (seconds), referees, judges, timekeepers, announcers, and physicians.<sup>91</sup> State regulatory bodies may deny an application for a license or grant a limited, restricted, or conditional license for any cause.<sup>92</sup> Applications for a license are often considered requests for a determination of the person's or entity's "general suitability, character, integrity, and ability to participate or engage in, or be associated with" MMA contests.<sup>93</sup> Promoters are often subject to even higher standards regarding their integrity and financial stability to ensure they are capable of paying promised compensation to their competitors.<sup>94</sup> The burden of proof is on the applicant to establish to the satisfaction of the regulatory body that "the applicant is qualified to receive a license."<sup>95</sup> If a license is denied, that person or entity is effectively barred from participation in MMA in that state.<sup>96</sup> If, on the other hand, a license is granted, the licensee is then subject to all disciplinary actions of the regulatory body. The majority of states make licensees subject to disciplinary actions, including license revocation, for use of illegal substances (drug abuse and steroids), violation of state laws, being involved in moral turpitude, disciplinary action by another state's regulatory body, and activities that bring disrepute to the sport of MMA.<sup>97</sup>

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90. *E.g.*, NEV. REV. STAT. § 467.100 (2007).

91. *E.g.*, NEV. ADMIN. CODE § 467.012.

92. *E.g.*, NEV. REV. STAT. § 467.100.

93. *E.g.*, *id.*

94. *E.g.*, NEV. ADMIN. CODE § 467.052.

95. *E.g.*, NEV. REV. STAT. § 467.100.

96. *E.g.*, *id.*

97. *E.g.*, NEV. ADMIN. CODE § 467.850–90.

Without the licensing and registration requirements, regulatory bodies would have no means to enforce a state's regulatory scheme. Furthermore, the licensing and registration components of MMA regulation play a central role in generating revenue for the states through assessments of fees and taxes.

b. *Fees and Taxes.* Fees and taxes are the primary means by which states create revenue from the regulation of MMA and are often the factor that most motivates states to regulate the sport in the first place. That topic will be explored in more depth in the third section of this Note. This section will explain the methods by which states charge fees and implement taxes. Fees and taxes imposed on MMA can be a large source of income for both state and local governments. Most often, fees are assessed as part of the licensing and registration requirements.<sup>98</sup> Since all persons associated with MMA must be licensed to operate within a given state, fees are a guaranteed source of revenue made from the licensing procedure. To maximize revenue, states charge not only competitors but also promoters, matchmakers, managers, trainers, referees, judges, timekeepers, announcers, and physicians for the privilege of operating within that state.<sup>99</sup> The amount of the fees assessed differs greatly from state to state and depends on the capacity in which a person wants to be licensed. A competitor is often licensed for as little as five dollars,<sup>100</sup> but the fee can be as much, or more than, twenty-five dollars.<sup>101</sup> Managers, matchmakers, and announcers are commonly charged as much as one hundred dollars.<sup>102</sup> Promoters are typically charged a yearly fee as high as five hundred dollars to operate.<sup>103</sup> In addition to the licensing fee that promoters are required to pay, they are often required to pay the fees and expenses for the officials that the regulatory body mandates attend events.<sup>104</sup> This means that promoters often have to pay the fees for the commission-approved announcers, judges, physicians, referees, and timekeepers.<sup>105</sup>

States also impose taxes on tickets sold,<sup>106</sup> souvenir sales,<sup>107</sup>

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98. *E.g., id.* § 467.012; N.J. ADMIN. CODE § 13:46-4.25(b) (2006).

99. *E.g.,* NEV. ADMIN. CODE § 467.012.

100. *E.g.,* N.J. ADMIN. CODE § 13:46-4.25(b).

101. *E.g.,* NEV. ADMIN. CODE § 467.012(6)(b).

102. *E.g., id.* § 467.012(6)(e)–(g).

103. *E.g., id.* § 467.052(4).

104. *E.g.,* 27 KAN. REG. § 365 (Mar. 20, 2008).

105. *E.g., id.*

106. *E.g.,* NEV. REV. STAT. § 467.108 (2007).

107. *E.g.,* FLA. STAT. ANN. § 548.06(1)(b) (West 2007).

concession sales,<sup>108</sup> and television and pay-per-view revenues that promoters make from events held within the state.<sup>109</sup> Generally, states tax the gross receipts of these sales at five percent and require the promoter of the event to pay the regulatory body within a short period of days or weeks after the completion of the event.<sup>110</sup>

The cost of fees and taxes on participants and promoters has a large impact on where and when those entities decide to hold events. If a state's fees and taxes are too onerous, it becomes uneconomical for a promoter to hold an event in that state. High fees and taxes increase the number of tickets and pay-per-view purchases that promoters need to sell in order to turn a profit. This is especially hard to do for events held in smaller markets where arenas do not hold many people and the promoters lack the ability to do pay-per-view broadcasts. By imposing higher fees and taxes than its market can support, a state creates an almost de facto ban on the sport because promoters cannot afford to hold events and turn a profit. Hawaii was previously an example of a state that had an overly burdensome tax structure that effectively precluded promoters from holding events in the state.<sup>111</sup> However, the Hawaii Department of Commerce and Consumer Affairs, which oversees MMA, has since stated a willingness to adopt a Nevada-style tax structure in order to attract the UFC and other promoters to the state.<sup>112</sup> As the example of Hawaii illustrates, states should treat MMA as they would any other business and keep fees and taxes low to support growth.

c. *The Unified Rules of Mixed Martial Arts.* Perhaps the largest criticism of MMA made by lawmakers and the public is that it lacks sufficient rules to govern the contests and protect the safety of its participants. For that reason, the most central and important feature of all MMA legislation is the inclusion of the Unified Rules adopted by the New Jersey State Athletic Control Board and Nevada State Athletic Commission. The Unified Rules distinguish MMA in its present form from its barbaric cousins—Greek pankration, Brazilian *vale tudo*, and the experiences of American competitors in the early 1990s. The Unified Rules comprehensively govern the conduct under which all MMA contests

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108. *E.g., id.*

109. *E.g.,* NEV. REV. STAT. § 467.107.

110. *E.g.,* FLA. STAT. ANN. § 548.06(5); GA. CODE ANN. § 43-4B-20 (West Supp. 2009); IOWA CODE ANN. § 90A.7(1) (West 1996); MO. ANN. STAT. § 317.006(3) (West 2001).

111. Interview with Michael Mersch, *supra* note 1.

112. *Id.*

are held. Those rules cover issues ranging from the competition area,<sup>113</sup> competitor attire,<sup>114</sup> equipment,<sup>115</sup> and weight classes,<sup>116</sup> to round length.<sup>117</sup>

However, the most important aspect of the Unified Rules regarding safety is the list of thirty-one fouls and prohibited acts that competitors cannot engage in during MMA bouts.<sup>118</sup> The list of fouls ensures, to the greatest degree possible, the safety of the participants by limiting techniques that pose ultra-hazardous dangers to the competitors. Those fouls include:

1. Butting with the head;
2. Eye gauging of any kind;
3. Biting or spitting at an opponent;
4. Hair pulling;
5. Fish hooking;
6. Groin attacks of any kind;
7. Intentionally placing a finger in any opponent's orifice;
8. Downward pointing of elbow strikes;
9. Small joint manipulation;
10. Strikes to the spine or back of the head;
11. Heel kicks to the kidney;
12. Throat strikes of any kind;
13. Clawing, pinching, twisting the flesh or grabbing the clavicle;
14. Kicking the head of a grounded fighter;
15. Kneeing the head of a grounded fighter;
16. Stomping of a grounded fighter;
17. The use of abusive language in fighting area;
18. Any unsportsmanlike conduct that causes an injury to opponent;
19. Attacking an opponent on or during the break;
20. Attacking an opponent who is under the referee's care at the time;
21. Timidity (avoiding contact, or consistent dropping of mouthpiece, or faking an injury);
22. Interference from a mixed martial artists [sic] seconds;
23. Throwing an opponent out of the fighting area;
24. Flagrant disregard of the referee's instructions; and

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113. N.J. ADMIN. CODE § 13:46-24A.2 (2010).

114. NEV. ADMIN. CODE §§ 467.592, .598 (2001); N.J. ADMIN. CODE §§ 13:46-24A.9-10.

115. N.J. ADMIN. CODE §§ 13:46-24A.3-8.

116. *Id.* § 13:46-24A.1.

117. *Id.* § 13:46-24A.11.

118. *Id.* § 13:46-24A.15; NEV. ADMIN. CODE § 467.7962.

25. Spiking an opponent to the canvas on his or her head or neck.<sup>119</sup>

Any participant who commits a foul can be penalized one or more points on the judges' scorecards by the referee.<sup>120</sup> Furthermore, if the foul was intentional or of a sufficiently serious nature, the offending competitor can be disqualified and a portion of the fight purse compensation can be withheld.<sup>121</sup>

Another important feature of the Unified Rules is the number of ways that a contest can end. A widespread misconception about MMA is that bouts can only end when one of the competitors is knocked unconscious or is seriously injured. However, bouts can end in numerous ways, most of which do not involve the loss of consciousness by a competitor. A bout can end by: 1) submission, which is when a competitor signals either physically or verbally that he does not wish to continue; 2) a technical knockout, where the referee stops the contest; 3) a knockout, when a competitor fails to rise from the canvas; and 4) a decision, where the contest has gone the full number of rounds and the winner is determined by totals on the panel of judges' scorecards.<sup>122</sup> Additionally, a referee may stop a contest in the interest of safety for a number of reasons, including: 1) if he determines that one of the competitors has sustained an injury, 2) if the contest is too one-sided and a competitor is at risk of injury, or 3) if one of the competitors is deemed not to be honestly competing.<sup>123</sup>

The Unified Rules also implement standards for medical testing and precautions that all competitors and promoters must follow.<sup>124</sup> All MMA competitors must undergo a determination of their physical and mental

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119. N.J. ADMIN. CODE § 13:46-24A.15(a); *accord.* NEV. ADMIN. CODE § 467.7962.

120. NEV. ADMIN. CODE § 467.7964; N.J. ADMIN. CODE § 13:46-24A.15(b)–(c).

121. NEV. ADMIN. CODE § 467.695.

122. NEV. ADMIN. CODE § 467.7968; N.J. ADMIN. CODE § 13:46-24A.17. The scoring system used for judging a contest is based on a "Ten Point Must System." *See* 2009 R.I. Pub. Laws Ch. 312. That means the competitor considered the winner of a round by a judge must be awarded ten points on the judge's scorecard and the loser must be awarded nine points, or fewer, except for the rare instances when the judge deems the round a draw. *See id.* In the case of a draw, both competitors can be awarded ten points. *Id.* The criterion used for judging individual rounds is based on effective striking, grappling, control of the competition area, and effective aggressiveness and defense. *Id.* For additional descriptions of common MMA techniques, positions, and terms see OHIO ADMIN. CODE 3773:7-01(A)–(BB) (2007).

123. NEV. ADMIN. CODE §§ 467.713–23.

124. NEV. ADMIN. CODE § 467.027; N.J. ADMIN. CODE § 13:46-24B.4.

fitness to compete.<sup>125</sup> These exams, at a minimum, include ophthalmological exams, brain magnetic resonance imaging, cerebral magnetic resonance angiography, human immunodeficiency virus tests, and hepatitis viral tests.<sup>126</sup> Also, MMA event promoters are required to have ambulances and emergency medical personnel onsite in case of a medical emergency.<sup>127</sup> Furthermore, promoters are required to carry insurance coverage sufficient to provide each contestant with medical, surgical, and hospital care and must not require the contestant to pay any sort of deductible for injuries sustained while competing.<sup>128</sup>

## 2. *The Minority Decision*

In the other corner is the minority of states that have chosen not to use the New Jersey or Nevada regulations as guides when crafting their own regulations. The biggest deficiencies in these states stem from failures to adopt the Unified Rules, to require proper commission licensing, to exercise oversight, to require medical precautions, and to use proper terminology. These failures create numerous problems with potentially dangerous consequences for participants.

The first problem that this Note considers arises when a state's laws and administrative regulations are completely silent on the issue of what rules govern an MMA contest. Colorado provides one such example.

a. *Colorado.* Some might find it as no surprise that Colorado's regulations are lacking. The state's reputation for having a notoriously toothless athletic commission was a primary reason that the UFC held its first event there during the sport's no-holds-barred days in November 1993.<sup>129</sup> Since then, Colorado—like the forty-one other states that currently regulate the sport—has taken substantial steps to toughen regulations. Unfortunately, the regulations in Colorado still do not specify what rules govern MMA bouts or what acts constitute fouls.<sup>130</sup> Lumping

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125. NEV. ADMIN. CODE § 467.027; N.J. ADMIN. CODE § 13:46-24B.4.

126. See NEV. ADMIN. CODE § 467.027.

127. *Id.* §§ 467.414–17; N.J. ADMIN. CODE §§ 13:46-24B.4(b)–(c).

128. NEV. ADMIN. CODE § 467.149; N.J. ADMIN. CODE § 13:46-24B.4(d).

129. L. JON WERTHEIM, *BLOOD IN THE CAGE: MIXED MARTIAL ARTS, PAT MILETICH, AND THE FURIOUS RISE OF THE UFC 57* (2009).

130. Some commentators, including a former member of the Colorado State House, argue that the lack of specific MMA rules indicates that Colorado does not actually regulate the sport. See Jerry Kopel, *Time for Colorado to Wrestle MMA Rules*, COLO. STATESMAN, Nov. 20, 2009, at 3, available at <http://coloradostatesman.com/kopel/991428-time-colorado-wrestle-mma-rules>. While a plausible argument,

MMA contests under the heading “Various Martial Arts,” Colorado only requires that promoters file “a copy of the official rules with the office of boxing before it will approve the holding of the contest or exhibition.”<sup>131</sup> This leaves the rules for each match completely at the discretion of the event’s promoters. In essence, promoters are allowed to choose their own fouls. Promoters can then choose to use the Unified Rules, or they can use a set of rules with substantially fewer safeguards. By allowing promoters to choose their own fouls, which the athletic commission then implements, the state could be put into a position in which it would be enforcing a set of rules that may not adequately protect participants.

A similar dangerous scenario arises when the state, by law or administrative regulation, has adopted an incomplete set of rules or a set of rules that does not outlaw the most ultra-hazardous techniques. The State of Iowa provides the most glaring example of this type of dangerous situation (as well as an example of many of the common problems that result when regulations are not modeled after those in Nevada and New Jersey).

b. *Iowa.* Iowa has long been an MMA hotbed.<sup>132</sup> Not only is the state known for turning out world-class wrestlers, but one of MMA’s most highly regarded training camps, Miletech Fighting Systems, is based out of Bettendorf, Iowa.<sup>133</sup> Yet, the administrative rules that have been adopted in Iowa are wholly inadequate. The Unified Rules have identified a list of thirty-one prohibited acts,<sup>134</sup> but Iowa’s administrative rules only prohibit the most basic acts in its list of thirteen fouls.<sup>135</sup> For example, the Unified Rules completely outlaw all strikes to the back of an opponent’s head.<sup>136</sup> In

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Colorado’s athletic commission has acted in a regulatory capacity over numerous MMA events, and major promoters in the industry, including the UFC, consider MMA a regulated sport in Colorado. See Colorado Department of Regulatory Agencies, <http://www.dora.state.co.us/boxing> (last visited Feb. 16, 2010).

131. 4 COLO. CODE REGS. § 740-1(10.009) (2006).

132. UFC 21 in 1999 and UFC 26 in 2000 were held in Cedar Rapids, Iowa, and there are numerous regional shows that routinely hold events all over the state.

133. See generally WERTHEIM, *supra* note 129, at 197.

134. NEV. ADMIN. CODE § 467.7962 (2001); see also N.J. ADMIN. CODE § 13:46-24A.15 (2010).

135. IOWA ADMIN. CODE r. 875-177.6(3) (2008). Iowa does have other vitally important safety precautions that Nevada has somehow managed to overlook, such as prohibiting corner men from wearing hats or smoking while at ringside. *Id.* r. 875-177.4(9)(d).

136. See, e.g., NEV. ADMIN. CODE § 467.7962(9); N.J. ADMIN. CODE § 13:46-

contrast, Iowa's rules only prohibit closed-fist strikes to the back of the head.<sup>137</sup> Applying the regulation's plain meaning, as courts likely would require,<sup>138</sup> the state appears to allow palm strikes to the back of an opponent's head which are capable of causing the same amount of harm as a fist strike. While an incomplete list of state mandated fouls is better than the choose your own fouls scenario in states like Colorado, incomplete prohibitions such as Iowa's still leave participants at an unnecessarily higher risk of injury.

Iowa also does not enforce the same drug testing, weight class, or round length requirements that the Unified Rules mandate. While Iowa tests for blood-borne diseases, Iowa does not test participants for drug abuse or use of performance-enhancing drugs.<sup>139</sup> Failing to prevent participants from competing while employing prohibited drugs puts those competitors and their opponents at risk.

Ignoring recognized safety benefits, Iowa allows participants with weight disparities of up to twenty pounds, and more than that with permission, to compete against each other even if the competitors weigh under 200 pounds.<sup>140</sup> The Unified Rules and medical experts recognize the important safety benefits of weight classes with no more than a fifteen pound weight difference at the lower weight classes and no more than a twenty pound difference under 205 pounds.<sup>141</sup> Unlike Iowa, the Unified Rules provide no exception to these requirements in order to ensure size parity between competitors and thus reduce the risk of injury.

Further, the Iowa regulations do not give notice to competitors regarding how long their match will last. The regulations state that "[e]ach fight shall consist of one 10-minute round. If a decision is not achieved, there shall be a one-minute rest period. One overtime round not to exceed five minutes shall follow."<sup>142</sup> Not only is there a longer first round than

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24A.15(10).

137. IOWA ADMIN. CODE r. 875-177.6(3).

138. See *District of Columbia v. Heller*, 128 S. Ct. 2783, 2829–30 (2008) (Stevens, J., dissenting); *Smith v. United States*, 508 U.S. 223, 242 (1993) (Scalia, J., dissenting) (“[W]e give nontechnical words and phrases their ordinary meaning.”); *State v. Royer*, 632 N.W.2d 905, 908 (Iowa 2001) (“[W]ords are presumed to be used in their ordinary and usual sense and within the meaning commonly attributable to them.” (citing *State v. Rohm*, 609 N.W.2d 504, 510 (Iowa 2000))).

139. IOWA ADMIN. CODE r. 875-177.5(11).

140. *Id.* r. 875-177.4(6).

141. NEV. ADMIN. CODE § 467.7956; N.J. ADMIN. CODE § 13:46-24A.1(a).

142. IOWA ADMIN. CODE r. 875-177.4(7).

under the Unified Rules, but under this provision it would be impossible for a competitor to know beforehand how long the contest would last. A competitor could not know before the contest whether a decision was going to be reached at the end of the initial allotted time and therefore could not know whether to train for a ten or fifteen minute match. Medical experts recognize that contests are safer when conducted according to the pre-determined round length and contest duration that are established by the Uniform Rules.<sup>143</sup>

Compounding these safety concerns is the fact that Iowa does not license commission-approved doctors to attend events. In other words, it is the responsibility of promoters to provide their own doctors.<sup>144</sup> Leaving this responsibility up to the promoter potentially leads to having less-qualified doctors at ringside. In an effort to cut down costs and increase convenience, it is likely that some promoters will hire anyone with a minimum level of medical expertise who is willing to work ringside for the lowest price. While it is true that promoter-provided doctors are subject to the approval of the commission,<sup>145</sup> there are no stated qualifying standards that proposed doctors have to meet. In contrast, states that follow the Unified Rules require ringside physicians to be certified in cardiopulmonary resuscitation or other advanced life saving procedures before they will even be considered for a license.<sup>146</sup>

In addition to failing to mandate the attendance of properly qualified, commission-licensed doctors, Iowa's administrative rules do not require that a member of the athletic commission be in attendance at MMA events—that requirement was repealed in 2007.<sup>147</sup> Removing this requirement creates serious doubts about the Iowa Athletic Commission's ability to enforce its rules and protect the safety of participants and the public. Iowa's problems were tragically displayed in a recent event in Shenandoah, Iowa. Mixed martial artist Zach Kirk suffered a paralyzing broken neck in a freak accident while attempting to take his opponent

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143. NEV. ADMIN. CODE § 467.7954; N.J. ADMIN. CODE § 13:46-24A.11.

144. IOWA ADMIN. CODE r. 875-177.2(4) (“The promoter is to provide all officials and ensure their attendance during the entire duration of all fights. The officials are subject to approval by the commissioner.”). The term “official” includes “a person who is employed as a referee, judge, timekeeper, or match physician for a boxing or wrestling match event.” IOWA CODE § 90A.1(3) (2009).

145. IOWA ADMIN. CODE r. 875-177.2(4).

146. NEV. ADMIN. CODE § 467.071(4).

147. IOWA ADMIN. CODE r. 875-177.9 (repealed 2007).

down.<sup>148</sup> Reports from the event reveal that there were no doctors or ambulances on hand to respond to the emergency. This incident illustrates the stark contrast between Iowa and other states that take the safety of participants seriously by requiring that at least one member of the athletic commission is present at events to ensure that rules are strictly enforced.<sup>149</sup>

In addition to the myriad safety concerns created by the regulations in Iowa, the state also demonstrates a number of other common deficiencies found in the regulations of states not using Nevada or New Jersey as models when crafting their regulations—namely, the failure to license neutral, athletic commission-provided referees and judges, and the use of archaic terminology in its rules.

The Iowa Athletic Commission, unlike other states,<sup>150</sup> does not license event referees or judges. Promoters, not the neutral athletic commission, are responsible for providing those officials.<sup>151</sup> It is also the promoters' responsibility to ensure that referees are familiar with the rules.<sup>152</sup> Not only does this raise questions about whether referees and judges are properly trained, it also raises doubts about the impartiality of officiating and judging by creating the prospect of match-fixing. When referees are directly compensated by promoters instead of through an athletic commission, promoters have the ability to influence the decisions that referees or judges make when officiating a contest. As stated in the Iowa Code, “[r]ulings or decisions of a promoter or an official are not decisions of the commissioner and are not subject to procedures under chapter 17A.”<sup>153</sup>

It is by no means a foregone conclusion that promoters, as a matter of common practice, will determine which competitor will win a close contest. However, the mere appearance of the ability to do so is enough to undermine public confidence, as well as the confidence of participants, in the fair outcome of matches. This is an unacceptable state of affairs when

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148. Mike Chiappetta, *Iowa Fighter Zach Kirk Suffers Broken Neck, Paralyzed During Fight*, MMA FANHOUSE, May 28, 2009, <http://www.mmfighting.com/2009/05/28/iowa-fighter-zach-kirk-paralyzed-during-fight/>.

149. See, e.g., NEV. REV. STAT. § 467.140 (2007) (“The Executive Director of the Commission, a chief inspector or a member of the staff of the Commission must be present at all weigh-ins, medical examinations, contests, exhibitions or matches, and shall ensure that the rules are strictly enforced.”).

150. See, e.g., NEV. ADMIN. CODE § 467.062.

151. IOWA ADMIN. CODE r. 875-177.2(4).

152. *Id.* r. 875-177.2(2).

153. IOWA CODE § 90A.4 (2009).

the public entrusts athletic commissions to keep contests honest and when the livelihood of the competitors themselves depends on the decisions made by referees and judges.

Iowa typifies another problem created when states do not use the Nevada and New Jersey regulations as models. Iowa's regulations are replete with incorrect, improper, and archaic terminology. For example, Iowa does not use the term "mixed martial arts." Rather, the state refers to the sport as "shoot fighting."<sup>154</sup> Other states make this mistake by using terms like "extreme fighting,"<sup>155</sup> or by confusing the Ultimate Fighting Championship for the name of the sport itself by using "UFC" and "ultimate fighting."<sup>156</sup> The use of these terms indicates the lack of a proper level of knowledge on the part of the lawmakers in those states. Additionally, archaic terms make finding the applicable rules harder for interested parties and creates confusion among MMA event promoters about the applicability of the rules.

A recent example from Canada illustrates the potentially dire consequences that can occur when there is confusion about the rules under which a contest is to occur due to the use of improper terminology in regulations. The regulations governing combat sports in Quebec, Canada refer to MMA as "mixed boxing."<sup>157</sup> "Mixed boxing" was defined as a "combat sport during which contestants of the same sex fight standing or on the mat; when they fight standing, the contestants use kickboxing techniques . . . when they fight on the mat, the only permitted submission

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154. See, e.g., IOWA ADMIN. CODE r. 875-177.1. The Iowa Senate recently passed a bill that would finally recognize the sport as "Mixed Martial Arts" instead of "shoot fighting." S.F. 2286, 2010 Leg. Res. Sess. (Iowa 2010), *available at* <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&menu=false&hbill=SF2286>. If signed into law, the bill would also extend Iowa's professional MMA regulations to amateur contests. *Id.* However, to do so would be to essentially extend a substandard set of regulations to a larger group of contestants. Instead, the Iowa Legislature should take this opportunity to completely overhaul Iowa's MMA regulations, adopt the Unified Rules and other changes discussed in this Note, and apply those changes to both professionals and amateurs.

155. MO. ANN. STAT. § 317.001 (West 2001), *amended by* MO. ANN. STAT. § 317.001 (West Supp. 2009).

156. See, e.g., 225 ILL. COMP. STAT. ANN. 105/7.5 (West 2007), *repealed by* 2008 Ill. Laws 95-593; IND. CODE § 25-9-1-4.5 (LexisNexis 2007), *amended by* IND. CODE § 25-9-1-4.5 (LexisNexis Supp. 2009); MO. ANN. STAT. § 317.001(2), *amended by* MO. ANN. STAT. § 317.001; UTAH CODE ANN. § 63C-11-302 (2008).

157. An Act Respecting Safety in Sports, R.S.Q., ch. II.1 (2010).

techniques are those described in this Chapter.”<sup>158</sup> At first glance, this definition would seem to adequately describe MMA under a modified definition of the Unified Rules. However, a subsequent section, which was also ambiguously worded, created some confusion by apparently forbidding opponents from taking each other down to the mat.<sup>159</sup> These ambiguities led to confusion among competitors at a recent event entitled “Titans Fighting.”<sup>160</sup> One of the competitors thought his match was being held under the Unified Rules, as the mixed boxing definition suggested, while the other competitor thought that they were competing under modified rules that proscribed takedowns to the mat, as suggested by the no-takedown provision.<sup>161</sup> When the first competitor took the other competitor down to the mat, spectators—also confused about the rules—began throwing debris into the ring and started to riot.<sup>162</sup>

Essentially the same confusion regarding the rules in the Canadian regulations also threatened to cancel UFC 97 in Quebec even though a previous event, UFC 83, had been held there under the same rules without incident.<sup>163</sup> The provincial athletic commission did not enforce its regulations the first time the UFC visited Quebec, and the UFC operated under the assumption that the Unified Rules governed.<sup>164</sup> However, before UFC 97 the commission decided to enforce its own regulations and stated that the UFC would need to change its rules before it would be allowed to operate there.<sup>165</sup> This created a large problem for the UFC. In addition to the large volume of tickets already sold at the event,<sup>166</sup> the UFC has a stated policy of only operating under the Unified Rules.<sup>167</sup> The crisis was averted only through an emergency meeting between the UFC and the Quebec Athletic Commission that concluded in an agreement to allow the

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158. *Id.*

159. *Id.* (“The following techniques used to initiate a take down of an opponent on the mat constitute fouls: . . . (2) using any part of the body other than the hands, arms, feet or legs, to make an opponent fall.”).

160. Ariel Shnerer, *James Thompson Responds to Near Riot at Titans Fighting*, FIGHT NETWORK, Feb. 8, 2009, [http://www.thefightnetwork.com/news/mma/2715/james\\_thompson\\_responds\\_to\\_near\\_riot\\_at\\_titans\\_fighting](http://www.thefightnetwork.com/news/mma/2715/james_thompson_responds_to_near_riot_at_titans_fighting).

161. *See id.*

162. *Id.*

163. The Canadian Press, *How the Deal Went Down*, SPORTS NET, Feb. 19, 2009, <http://www.sportsnet.ca/mma/2009/02/19/ufc-quebec-0/>.

164. *Id.*

165. *Id.*

166. *Id.*

167. *See supra* note 45 and accompanying text.

UFC to operate under the Unified Rules.<sup>168</sup>

To avoid the problems that arose in Canada and to ensure effectiveness and uniformity among states, state statutes and codes should be amended to more closely mirror the widely recognized terms used in New Jersey and Nevada.

D. *State of Affairs in States that Do Not Have Regulations*

Lack of state regulation does not mean that MMA events are not held in states that have not adopted, either statutorily or through the administrative process, regulations and procedures that govern the sport. On the contrary, events are being held in states that do not regulate the sport and even in states that have enacted bans.<sup>169</sup> In states that have not yet regulated MMA and have not enacted a ban, the rules and safety procedures are left in the hands of the event promoters to enforce without meeting state-mandated standards.<sup>170</sup> In states that have enacted a ban, like New York, underground events are held in isolated locations, and even fewer precautions are taken.<sup>171</sup> This is a dangerous situation for the public, the promoters, the competitors, the state, and MMA in general. Without state oversight, nothing compels promoters to implement any rules designed to keep competitors safe or meet any sufficient medical safety standards. Most often this means that promoters take shortcuts in an effort to cut costs. Common tactics promoters use to keep overhead costs down include: not requiring competitors to take exams to ensure they are medically fit to compete, not properly staffing events with doctors and emergency medical technicians, not carrying sufficient medical liability insurance, not having the proper number of inspectors to examine

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168. The Canadian Press, *supra* note 163.

169. See, e.g., Duffy, *supra* note 51 (regarding underground fights held in New York, which currently bans MMA); see also Abramson, *supra* note 59 (“[L]ocal athletes are forced to either fight in the 4[2] other states where the sport is legal or ply their trade on underground shows that are unregulated in New York. One such show in Brooklyn took place last weekend and two more in Long Island are set to go in the next 30 days.”).

170. Brian Murphy, *As Mixed Martial Arts Explodes, Is Minnesota Missing Out?*, ST. PAUL PIONEER PRESS, Nov. 18, 2007 (discussing events held in Wisconsin, which did not yet regulate MMA). “Wisconsin urge[d] promoters to follow the Nevada Athletic Commission’s unified rules but [did] not license promoters or oversee competition[.]” *Id.* Wisconsin has proposed legislation to regulate MMA. See S.B. 290, 2009 Gen. Assem., Reg. Sess. (Wis. 2009) (creating a legal framework for regulating boxing and MMA).

171. Duffy, *supra* note 51.

equipment or the competition area to ensure suitability, and not having qualified judges or referees to ensure a safe, proper, and fair outcome of the contest. Often in underground events, little to no safety equipment is used and no medical reports or precautions are required.<sup>172</sup> These types of conditions leave competitors with unnecessarily higher risk of injury in direct contradiction to the states' interests in the health, safety, and welfare of its citizens.

#### IV. ROUND THREE: MAKING THE CASE FOR STATE REGULATION

##### A. *Health, Safety, and Welfare*

States, through their police power, have the ability to protect the health, safety, and welfare of their citizens.<sup>173</sup> At a minimum, a state may protect the lives, limbs, and health of all persons in a state.<sup>174</sup> State regulation of MMA, not banning the sport, is the solution to the health, safety, and welfare concerns presented by the current state of affairs in states that have not yet acted to regulate the sport. States' legislatures that have enacted regulations have found that those regulations greatly improve the health and safety of MMA competitors by requiring medical testing, medical insurance, and the presence of physicians, emergency medical technicians, and ambulances at events.<sup>175</sup> By neglecting to enact regulations, states leave the health and safety of competitors in the hands of promoters who have incentives to take shortcuts to increase their profits

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172. *Id.*

173. *Gonzales v. Raich*, 545 U.S. 1, 66 (2005) (Thomas, J., dissenting) (discussing the States' traditional police powers to define the criminal law and to protect the health, safety, and welfare of their citizens).

174. *Hannibal & St. J.R. Co. v. Husen*, 95 U.S. 465, 470–71 (1877).

175. Agency Proposal, *Mixed Martial Arts Unified Rules of Conduct*, N.J. ADMIN. CODE § 13:46-24A (2002) (“The proposed new rules and amendment implement the strict regulation of mixed martial arts events in New Jersey. The proposed new rules will increase the public trust and confidence in the integrity of the sport as it exists in New Jersey. The health and safety of mixed martial arts competitors will be improved due to required medical testing, medical insurance and the presence of physicians, emergency medical technicians and an ambulance at each event.”); *see also* ARK. CODE ANN. § 17-22-206 (West Supp. 2009) (“The General Assembly finds and declares to be the public policy of this state that it is in the best interest of the public and combative sports that combative sports be subject to an effective and efficient system of strict control and regulation in order to protect the safety and well-being of the participants in combative sports matches and exhibitions and to promote the public confidence in the regulatory process and the conduct of combative sports matches and exhibitions.”).

at the expense of the welfare of competitors and the public. State regulation is the only way to ensure that adequate rules and safety precautions are in place to protect the health and safety of MMA participants.

State regulation also removes incentives for individuals to hold underground contests. Safe and legal events attract a larger number of people and, therefore, make legally regulated events more profitable for potential promoters. Put another way, the availability of profitable legal events makes holding unregulated matches unnecessary and illogical. Further, state regulations provide another avenue, in addition to traditional law enforcement means, to prosecute individuals who do promote unregulated events.<sup>176</sup> Absent state regulation, assault and battery charges are often not viable options to deter people from engaging in unregulated contests because most states recognize a defense for consensual sporting activities.<sup>177</sup> Therefore, regulation can provide additional penalties that might otherwise be avoided.<sup>178</sup>

Misinformed legislators who are opponents of MMA will argue that to completely protect the public, bans, instead of regulations, should be enacted to keep people from engaging in a sport that they still consider barbaric despite the new rules and procedures that have recently been enacted.<sup>179</sup> Despite evidence to the contrary, these opponents think that MMA is unsafe and that the sport's sole objective is to cause serious harm to another participant instead of demonstrating skills.<sup>180</sup> Legislators, even in states that have recently passed laws to regulate MMA, frequently introduce legislation to ban MMA despite a lack of evidence that state regulation has caused harm to the state in any way.<sup>181</sup>

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176. See Ryan Seals, *Fight Club Charges Are a First in N.C.*, NEWS & REC. (Greensboro, N.C.), Mar. 7, 2009, at A1, available at [http://www.news-record.com/content/2009/03/06/article/fight\\_club\\_charges\\_are\\_a\\_first\\_in\\_nc](http://www.news-record.com/content/2009/03/06/article/fight_club_charges_are_a_first_in_nc).

177. *People v. Samuels*, 58 Cal. Rptr. 439, 447 (1967) (“[C]onsent of the victim is not generally a defense to assault or battery, except in a situation involving ordinary physical contact or blows incident to sports such as football, boxing or wrestling.”).

178. See, e.g., NEV. REV. STAT. § 467.180 (2007) (“Any person who shall, directly or indirectly, violate any of the provisions of this chapter, or the rules or regulations of the Commission, shall be guilty of a misdemeanor.”).

179. Duffy, *supra* note 51 (presenting the statement of Assemblyman Bob Reilly calling the sport “brutal and violent”).

180. *Id.*

181. See, e.g., S.B. 688, 49th Leg., 1st Sess. (N.M. 2009) (proposing, but not passing, a prohibition on MMA contests).

These arguments ignore a groundbreaking study by Johns Hopkins University School of Medicine, which found that properly supervised contests governed by the Unified Rules—using mandated safety equipment and attended by trained referees and medical staff—are in some respects safer than other combat sports, including boxing.<sup>182</sup> The study found that due to the numerous ways an MMA contest can end—particularly by submission—and the extended periods of grappling with limited amounts of strikes to a participant's head, the knockout rates for MMA are noticeably lower than for boxing.<sup>183</sup> The study concluded that the lower number of knockouts suggests that MMA competitors are at a reduced risk of debilitating head injuries, such as traumatic brain injury.<sup>184</sup>

The findings of state legislatures and medical institutions like Johns Hopkins, indicate that a properly regulated MMA contest is sufficiently safe for individuals to engage in and that it does not necessitate a state ban in order to protect health, safety, and welfare.<sup>185</sup> On the contrary, MMA is only potentially dangerous to an individual's health when the state does not regulate—or regulates incorrectly<sup>186</sup>—aspects such as weight classes, rounds per match, safety equipment, and rules that prohibit the most devastating techniques.<sup>187</sup> Even Senator John McCain, who once labeled the sport human cockfighting and called for a uniform regulatory body, and George Pataki, the former governor of New York who vigorously pushed for a state's ban, have changed their stances regarding MMA now that it is properly regulated.<sup>188</sup>

### B. *Economic Knockout*

In addition to protecting the health, safety, and welfare of the public and participants, MMA regulation is a potentially large source of revenue for state and local governments regardless of the size of their markets.

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182. See Gregory H. Bledsoe et al., *Incidence of Injury in Professional Mixed Martial Arts Competitions*, 5 J. SPORTS SCI. & MED. 136, 139–41 (2006), available at <http://www.jssm.org/combat/1/18/v5combat-18.pdf> (noting that compared to boxing, MMA has a lower proportion of knockouts, despite having a higher rate of injury overall).

183. *Id.* at 140.

184. *Id.*

185. *Id.*

186. See *supra* notes 132–68 and accompanying text.

187. Bledsoe et al., *supra* note 182.

188. See *John McCain Softens Stance on MMA, Sports Betting*, 13 ACTION NEWS LAS VEGAS, Sept. 19, 2008, available at <http://www.ktnv.com/Global/story.asp?S=9037561>.

States that do not regulate MMA lose the opportunity to increase revenue through licensing and registration fees and taxes on merchandise, concessions, tickets, and pay-per-view sales.

The licensing and registration fees and various taxes discussed earlier in this Note provide a direct source of revenue for state regulatory bodies that can be used to fund regulatory bodies that oversee MMA and that can be deposited in city and state treasuries.<sup>189</sup> According to MMA groups, their events routinely break sports arena records for concession, merchandise, and ticket sales, all of which produce large amounts of revenue when taxed by the state.<sup>190</sup> For example, an August, 2007 UFC event at the Mandalay Bay in Las Vegas sold out despite an average ticket price of \$340.<sup>191</sup> Even with much lower ticket prices, state taxes on ticket sales can generate hundreds of thousands of dollars for state treasuries.<sup>192</sup> Additionally, MMA events produce large volumes of pay-per-view sales that can be taxed and used as another revenue source for governments.<sup>193</sup>

Furthermore, MMA events generate indirect economic activity in states that regulate it by increasing tourism, increasing consumer spending, and creating jobs. For example, March 2007's UFC event in Columbus, Ohio, created significant indirect economic benefits. The event produced the largest gate revenue in Nationwide Arena history, setting the North American record for highest attendance ever of an MMA event.<sup>194</sup> Approximately forty percent of people who attended that event came from outside of Ohio, which generated business for restaurants and hotels in Columbus.<sup>195</sup> The Ohio Athletic Commission estimated that "the single MMA event produced [eleven] million [dollars] in external economic activity for the city."<sup>196</sup> Studies have estimated that a large MMA event in a market of substantially similar size to Buffalo, New York, would produce \$1.7 million in event spending, \$1.4 million in total visitor spending, and

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189. See, e.g., TENN. CODE ANN. § 68-115-107 (Supp. 2008) (establishing a separate expense account funded by fees and taxes collected by the commission).

190. JULIE WOOD, MMA FACT KIT: STATE BENEFITS, <http://www.mmafacts.com/images/FE/chain226siteType8/site195/client/FACT%20KIT-STATE%20BENEFITS.pdf>.

191. *Id.*

192. *See id.*

193. *See generally* Wertheim, *supra* note 5.

194. Wood, *supra* note 192.

195. *Id.*

196. *Id.*

\$5.2 million in total economic activity for the local economy.<sup>197</sup> This translates into approximately \$30,000 in direct revenue benefits to the local government and \$320,000 of direct revenue to the state government.<sup>198</sup> This would be enough revenue to hire five new full-time police officers.<sup>199</sup>

An event in an even larger market, like New York City, would produce even greater economic activity and tax revenue for state governments.<sup>200</sup> A study estimates that a New York City event could bring \$5.3 million in event spending, \$1.4 million in total visitor spending, and \$11.3 million in total economic activity for the local economy.<sup>201</sup> Based on this information, a local government would benefit from approximately \$400,000 in direct revenue, and the state government would receive \$517,000 in direct revenue.<sup>202</sup> This would be enough to purchase textbooks for over 15,000 school children.<sup>203</sup>

Some states have argued that regulating MMA also results in the creation of jobs.<sup>204</sup> Proponents of MMA estimate that a single event in a smaller market like Buffalo would create the equivalent of fifty-seven new jobs,<sup>205</sup> and an event in a larger market like New York City would create as many as eighty-one new jobs.<sup>206</sup> States that do not regulate MMA lose out on these benefits to other states that do regulate the sport. At a time when state and local governments are increasingly cash-strapped and forced to cut back services, it is hard to ignore the revenue and economic boosts that regulated MMA events can bring to state budgets without raising taxes on citizens.

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197. HR&A ADVISORS, INC., UFC EVENT IMPACTS: ECONOMIC STUDY FOR NEW YORK STATE 11 (2008), available at <http://www.mmafacts.com/images/FE/chain226siteType8/site195/client/HR&A-ImpactStudy-11-10-08.pdf>.

198. *Id.* at 14.

199. *Id.*

200. *See id.* at 19.

201. *Id.*

202. *Id.* at 22.

203. *Id.*

204. *See, e.g.*, Agency Proposal, Mixed Martial Arts Unified Rules of Conduct, N.J. ADMIN. CODE § 13:46-24A (2002) (“The proposed new rules and amendment should result in the generation of jobs. The regulation and approval of mixed martial arts events in New Jersey should result in events being held in New Jersey. Therefore, all individuals associated with an event, such as promoters, contestants and staff will have the opportunity to work at events held in the State.”).

205. HR&A ADVISORS, INC., *supra* note 197, at 13.

206. *Id.* at 21.

C. *Disqualifying Federalization: Boxing's "Vicious Cycle" vs. Mixed Martial Arts' "Regulatory Cycle"*

Some may argue that the only avenue to ensure that states adopt the necessary regulations to protect the health, safety, and welfare of MMA participants is the adoption of federal regulations. Federalization of combat sports regulation is not a new concept. In 1996, Congress passed the Professional Boxing Safety Act (PBSA), which was later amended in 2000 by the Muhammad Ali Boxing Reform Act (Ali Act).<sup>207</sup> The Acts were precipitated by the failure of states to remedy boxing's long history of corruption, bribery, match fixing, exploitation of boxers, and connection to organized crime.<sup>208</sup> The Ali Act was meant to cure the contractual exploitation of boxers by their managers and promoters.<sup>209</sup> The PBSA was meant to address the safety concerns created by the common practice of unscrupulous boxing promoters jeopardizing boxer safety by forum shopping—looking for states with the most relaxed safety requirements—to keep overhead costs down and turn a greater profit at the expense of boxer safety.<sup>210</sup> Investigations by congressional committees uncovered evidence that states encouraged forum shopping because they had an economic incentive to adopt less stringent boxing regulations than neighboring states in order to attract more events and capitalize on the generated revenue.<sup>211</sup> In other words, there was a vicious cycle between states and boxing promoters: promoters had economic incentive to conduct events in the least-regulated state, and states had economic incentive to be the least-regulated state in order to attract events.<sup>212</sup> The net effect of this cycle was a decrease in boxing regulation enforcement in every state. Members of Congress became convinced that states were unwilling to address the safety concerns and other rampant problems of boxing, making federal legislation necessary to protect boxers and the public.<sup>213</sup> Proponents of federal government intervention may argue that states and MMA promoters will get involved in the same vicious cycle that befell boxing and thus will be incentivized to keep regulations inadequate. However, this argument cannot be supported by history or empirical

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207. 15 U.S.C. §§ 6301–6313 (2006) (current version).

208. John McCain & Ken Nahigian, *A Fighting Chance for Professional Boxing*, 15 STAN. L. & POL'Y REV. 7, 11–12, 18–19 (2004).

209. *See id.* at 20–21.

210. *See id.* at 16, 19.

211. *Id.* at 16 (citing 138 CONG. REC. S5663 (1992)).

212. *Id.*

213. *See id.*

evidence. In fact, the history of MMA shows that the nature of MMA lends itself to the creation of a regulatory cycle which increases regulations across states over time.<sup>214</sup>

Setting aside federalism concerns and the argument that it may be unconstitutional for Congress to regulate combat sports pursuant to its power under the Commerce Clause,<sup>215</sup> the vicious cycle of circumstances that led Congress to pass the PBSA and the Ali Act are simply not present in MMA. Unlike boxing, MMA does not have a history of corruption, bribery, match-fixing, connection to crime, or exploitation that would make Ali Act-esque federal intervention necessary.<sup>216</sup>

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214. See *supra* notes 53–59 and accompanying text. The sheer volume of state regulation of MMA is sharply distinguishable from the states' prior hesitancy to regulate boxing. Moreover, there is nothing to indicate that states will suddenly extract themselves from this regulatory relationship with MMA.

215. While a full discussion of this topic is beyond the scope of this Note and deserving of its own article, it is worth noting that the Supreme Court has found that Congress has the power to regulate unarmed combat sports pursuant to its Commerce Clause power. In *United States v. International Boxing Club of New York*, 348 U.S. 236, 241 (1955), the Court held that despite the fact that “a boxing match ‘is of course a local affair,’” it could be regulated due to the interstate nature of the business. The Court rested its opinion on “the allegation that over 25% of the revenue from championship boxing is derived from interstate operations through the sale of radio, television, and motion picture rights.” *Id.* However, in a well-reasoned dissent, Justice Minton argued that an exhibition of combat sports is distinct from “what others do with pictures they are allowed to take of a wholly local . . . exhibition by thereafter using the channels of interstate commerce to exhibit them.” *Id.* at 252 (Minton, J., dissenting). Because boxing exhibitions are entirely local, intrastate events, and because prior precedents had held: 1) “baseball was not trade or commerce . . . [because] ‘personal effort, not related to production, is not a subject of commerce,’” 2) “since the baseball game was an exhibition wholly intrastate, there could be no trade or commerce among the States,” and 3) the “traveling from State to State to play the game and all the details of arrangement were incident to the exhibition,” Justice Minton concluded that boxing, like baseball, was not trade or commerce. *Id.* at 251–52 (quoting *Fed. Baseball Club of Balt. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200, 209 (1922)). In light of Justice Minton's dissent, the Supreme Court's recent decisions constraining congressional power under the Commerce Clause in *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), and the persuasive reasoning of Justice Thomas's dissent in *Gonzales v. Raich*, 545 U.S. 1, 57 (2005) (Thomas, J., dissenting) calling for a re-examination of the so-called substantial effects test, it is possible that a future Supreme Court might correctly conclude that the federal regulation of unarmed combat exhibitions—specifically MMA—is unconstitutional.

216. The commentators who have called for the Ali Act's application to MMA often rely on the statements of rival promoters or disgruntled athletes as proof that there is contractual exploitation of participants by MMA promoters that warrants

Further, the rapid expansion of state regulation discussed in this Note is proof that states are not acting as though they are incentivized to purposefully keep MMA regulations lax.<sup>217</sup> It would be illogical for so many states to have adopted regulations in the last few years if state lawmakers thought that being the least-regulated state could make more revenue. Additionally, one would expect that if states were indeed incentivized to implement lax regulations in order to attract more events to their states, the most recently enacted regulations would be significantly less stringent than those enacted in the model states of Nevada and New Jersey. It would certainly have been possible for states to impose taxes and fees without also implementing the Unified Rules or standard medical precautions. On the contrary, the states that have most recently adopted MMA regulations have demonstrated a willingness to implement similarly stringent regulations to ensure participant and public safety. This willingness has been evidenced by the fact that the vast majority of states that have recently adopted regulations have implemented the Unified Rules and safety standards similar to those in Nevada and New Jersey.<sup>218</sup>

There is also no evidence that MMA promoters attempt to engage in

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federal intervention. *See, e.g.*, Geoff Varney, Note, *Fighting for Respect: MMA's Struggle for Acceptance and How the Muhammed Ali Act Would Give It a Sporting Chance*, 112 W. VA. L. REV. 269, 295, 299 (2009) (quoting Mark Cuban, who runs HDNet Fights, a competing promotion that has been in litigation with the UFC); *see also* Zuffa, LLC v. HDNet MMA 2008 LLC, 262 S.W.3d 446, 448 (Tex. Ct. App. 2008) (discussing fighter Fedor Emelianenko's lengthy contractual negotiations with the UFC). However, these individuals obviously have self-interested reasons for making these statements. In analogous situations, no one would take seriously a claim by the owner of the Chicago Bulls pronouncing the contracts of the Los Angeles Lakers to be coercive because the Lakers will not let Kobe Bryant also play for the Bulls at the same time. Similarly, no one would believe a claim by Kobe Bryant calling the Lakers' contracts exploitive because the Lakers will not allow him to also play for the Chicago Bulls. There has been no objective finding that any perceived contractual exploitation of MMA participants approaches the level of contractual abuse that has plagued boxing. It would be inappropriate to project boxing's problems on to MMA for the sole purpose of justifying federal regulation simply because one prefers federal supervision over state supervision. Lastly, while not a regulatory necessity, many states voluntarily govern the contractual agreements between participants, promoters, managers, and officials, thus making an added layer of federal interference unnecessary. *See, e.g.*, HAW. REV. STAT. § 440E-21 (2009); FLA. ADMIN. CODE ANN. r. 61K1-1.011(3) (2007); MD. CODE REGS. 09.14.03.02 (2005); MICH. ADMIN. CODE r. 339.261(5)–(7), 339.259(2) (2004); 38 NEB. CODE R. § 5-005 (Weil 2005); NEV. ADMIN. CODE §§ 467.102, 467.104, 467.112 (2007).

217. Knightly, *supra* note 55.

218. *See supra* Part III.C.1.

the type of forum shopping that prompted Congress to enact the PBSA. While there might be isolated incidents among smaller promotions,<sup>219</sup> there has been no showing that MMA promoters have engaged in the practice on a sufficiently wide-spread basis to warrant congressional intervention. If it were true that promoters thought they could make more money by conducting events in states with the least restrictions, one would expect Alaska or Wyoming—the only two states without some type of governing athletic regulatory body—to be inundated with events. However, most MMA events are held in states with the most stringent regulations.

While the history of boxing demonstrates that it lends itself to a vicious cycle of decreasing regulation, the history of MMA demonstrates that it lends itself to a regulatory cycle that actually increases regulation. MMA promoters, unlike their boxing counterparts, run toward regulation, not away from it.<sup>220</sup> While boxing promoters could only make a profit by avoiding regulation, MMA promoters learned early in the sport's history that avoiding regulation could lead to the enactment of bans which could kill the sport entirely.<sup>221</sup> Instead, MMA promoters learned that MMA can

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219. See, e.g., Jesse Holland, *Tim Sylvia vs. Ray Mercer Moved to Alabama to Escape Sanctioning*, MMA MANIA, Mar. 29, 2009, <http://www.mmamania.com/2009/03/29/tim-sylvia-vs-ray-mercer-moved-to-alabama-to-escape-sanctioning/> (moving main event to Alabama after the New Jersey Athletic Control Board refused to sanction the event); see also Loretta Hunt, *Sylvia-Mercer Goes MMA*, SHERDOG, June 11, 2009, <http://www.sherdog.com/news/news/Sylvia-Mercer-Goes-MMA-17922> (same). The main-event bout between Tim Sylvia, a former UFC heavyweight champion, and Ray Mercer, a former heavyweight boxing champion, was originally marketed as an MMA contest to be held in New Jersey. However, the New Jersey State Athletic Control Board refused to sanction the bout because it deemed Mercer unfit to compete on account of his lack of MMA experience. The event's promoter then moved the event to Alabama, which did not have any sort of regulatory body that could prevent the event from occurring. While at first glance this episode provides one example of forum shopping, it now provides further support for the regulatory cycle argument. As stated, Alabama was previously one of the few notorious states where boxing and MMA promoters could avoid regulations because the state lacked an athletic commission. Since the Sylvia-Mercer saga, the state has realized that it can attract more business by properly regulating combat sports than it could by continuing to host fugitive events as one of the few remaining holdout states without a commission. On May 21, 2009, Alabama took the first step toward regulating MMA by finally creating an athletic commission. ALA. CODE § 41-9-1021 (LexisNexis Supp. 2009). To date, the state has only created boxing regulations and has not yet promulgated MMA regulations; however, creating an athletic commission is the first step toward regulating the sport. It is expected that the state will adopt MMA regulations in 2010.

220. See *supra* note 41–48 and accompanying text.

221. See *supra* note 42 and accompanying text.

only be profitable when approved by the state.<sup>222</sup> Thus, MMA promoters are incentivized to seek out regulations that protect participants and the public. In turn, the states have learned that by regulating and taxing MMA they can capitalize on the sport's growing popularity and generate much-needed revenue.<sup>223</sup> Therefore, states are incentivized to enact proper regulations to attract promoters. Instead of lax safety precautions to entice promoters to choose one state over another, states enact favorable fee and tax structures to encourage promoters to hold events. In short, the market has shown states and promoters that, unlike the boxing promoters of yesterday, they can make more profit conducting a properly regulated event than they can by avoiding regulation. It is precisely this regulatory cycle that has fueled the rapid expansion of adequate MMA regulations, and it will continue to do so.

Any federal solution to the concerns raised in this Note regarding the need for states to implement the Unified Rules and adequate safety precautions would be outweighed by the loss of flexibility states need to retain in order to modify regulations to conform to the needs and abilities of individual states. Imposing a one-size-fits-all solution on states without taking into account local realities may be one reason that states have lacked consistency in complying with federal boxing standards, resulting in the well-recognized ineffectiveness of those regulations.<sup>224</sup> States are also simply in a better position to enforce regulations than the federal government.<sup>225</sup> Because both promoters and states are incentivized to create regulations, there is no reason to assume that the regulatory cycle will not eventually remedy those concerns.<sup>226</sup> Imposing a layer of federal regulations would be unnecessary and unduly burdensome.

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222. See *supra* note 42 and accompanying text.

223. See *supra* Part IV.B.

224. See McCain & Nahigian, *supra* note 208, at 23 (describing General Accounting Office report exploring lack of consistency across states in enforcing federal boxing regulations).

225. *Id.* (noting the absence of any Department of Justice prosecutions under the PBSA or Ali Act during the fiscal years 1996 through 2002).

226. It is noteworthy that recent attempts to strengthen federal boxing regulations did not attempt to include MMA. See Professional Boxing Amendments Act of 2003, S. 275, 108th Cong. (2003); Professional Boxing Amendments Act of 2002, S. 2550, 107th Cong. (2002). Also, the primary sponsor of those bills, Senator John McCain, has acknowledged that states have begun to properly regulate boxing. *SportsCenter* (ESPN television broadcast Sept. 16, 2008).

## V. CONCLUSION

State regulation has revolutionized MMA from a brutal spectacle into a legitimate and rising sport. As the long and illustrious history of the sport demonstrates, when it is not properly regulated it can pose a risk to participants and the public, often leading to calls for its prohibition. However, when properly regulated it is safe for participants and beneficial to state governments.

There are a number of ways that states have chosen to regulate MMA either administratively or statutorily. Regardless of the form that regulations have taken, the most effective regulations mirror those that are in place in Nevada and New Jersey. Those regulations are effective because they enforce the Unified Rules and contain a comprehensive set of medical testing and safety standards that are designed to protect the health and safety of the participants, as well as the public. Not only does state regulation protect the participants and the public, the fees and taxes associated with regulating the sport are also a large potential source of revenue and economic activity for cash-strapped state and local governments. Contrary to the arguments of misinformed legislators, states that choose to ban or ignore the sport not only miss out on a tremendous economic opportunity, but also create the exact same dangerous situation they claim to be preventing. In order to further legitimize the sport, ensure the safety of participants and the public, and capitalize on all the economic opportunities that the sport presents, all states must adopt comprehensive laws and administrative rules to regulate the sport of mixed martial arts.

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