

US House of Representatives – Energy and Commerce
Subcommittee on Digital Commerce & Consumer Protection
Hearing entitled “Perspectives on Mixed Martial Arts”

Written Statement of Randy Couture

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Chairman Latta, Ranking Member Schakowsky, and Members of this Subcommittee:

My name is Randy Couture. I am very pleased to be back and to participate in this 2nd informational hearing in connection with the proposed bill to expand the Muhammad Ali Act (“**Ali Act**”) - to apply to mixed martial arts (“**MMA**”) as well as to other combat sports. The views herein focus on addressing some current major issues in the sport of MMA, a sport that I have come to love so much and, unfortunately, certain parts of the business behind it, that I have come to hate just as much.

Although my Bio was previously submitted to this subcommittee, a couple of specific references - I have over 25 years of training in freestyle and Greco-Roman wrestling. I was a 6-time World Champion and Hall of Famer in the sport of MMA and in the Ultimate Fighting Championship (“**UFC**”). I served 6 years in the U.S. Army (1982-1988) attaining the rank of Sergeant in the 101st Airborne (air assault qualified). I graduated from Oklahoma State University in 1992 with a BA in foreign language and literature. I became a three-time Olympic team alternate (1988, 1992 and 1996), a semifinalist at the 2000 Olympic Trials, a three-time NCAA Division I All-American and a two-time NCAA Division I runner-up (1991 and 1992) at Oklahoma State University.

The following is a brief summary of some of the major issues that I currently see in MMA:

I. Mixed Martial Arts-Industry Overview.

I believe that the Majority’s Memorandum has done a pretty good job of providing a cursory description of some of the history of modern MMA. However, to add just a bit, it is a sport that involves world-class and Olympic athletes involved in all disciplines of martial arts, including wrestling, judo, jiu-jitsu, muay-thai, karate and boxing. The UFC is the operating trade name of Zuffa, LLC, a Nevada limited liability company (“**Zuffa**”).¹ Over 90% of all revenue generated in MMA is captured by Zuffa. Zuffa is the only promoter in MMA that is broadcast on pay-per-view, where a substantial amount of event income is obtained. The UFC broadcasts approximately in excess of 13-16 PPV events per year, and, in most years, consistently has 10 or more of the top 15 PPV events per year. The UFC also promotes approximately 24 additional events which are broadcast on the FOX family of networks and on its own streaming service, UFC Fightpass, which is a monthly subscriber based service.

The UFC has over 520 fighters under contract at any given time. Once signed to a UFC promotional agreement, the UFC retains sweeping ancillary rights to utilize the athlete’s likeness in perpetuity for nearly all commercial purposes. The roster churns as fighters are released, injured or retire, and new

¹ Although this particular structure has now changed given the \$4.2B sale in July of 2016 to WME/IMG (WME-IMG now named “Endeavor”).

fighters are signed.² Worldwide, there are thousands of professional mixed martial artists. Coercive contractual practices crippling the natural growth of MMA include, but are not limited to: (i) the use of exclusive and non-public contracts; (ii) the assignment of ancillary rights from the athlete to the promoter far beyond the term of the promotional agreement; (iii) champions clauses that prevent champions from ever becoming freely marketable; and (iv) secret discretionary payments that are utilized to keep the athletes subservient and silent.

For 2015, Zuffa reported annual revenue in excess of \$600 million, with over 63% of revenue event related (gate/PPV sales). Zuffa has also entered into lucrative TV licensing deals including a 7 year, \$832 million deal with Fox Networks, and a 5-year, \$232 million deal for broadcast rights in Brazil. Zuffa also has ownership stakes in a variety of other businesses including apparel, equipment, energy drinks and gyms, the UFC magazine, the UFC Fan Expo, UFC Fightpass (the company's streaming service) and the UFC.com website and online store. Zuffa also has "partnership" arrangements with numerous "media" companies. Zuffa controls the likeness rights of its athletes for merchandizing purposes, and has the only MMA video game franchise in a partnership with EA Sports.

Recently, Zuffa sold to a group controlled by WME-IMG for a reported purchase price of in excess of \$4Billion. It is the single largest sports property transaction in the history of American sports. Although the purchase price is astounding, given the ongoing requisite low percentage share of revenue with the athletes, I can say based upon recent experience that things have not improved from this sale. In fact, things may have worsened for the athlete. In particular, the debt load associated with this purchase is probably three (3) times the previous debt load – and to that end, Goldman Sachs (the lead banker in the sale) has twice been warned by federal regulators that the over-optimism in the projections of future income was far too speculative. Indeed, in the most recent debt/equity transaction, a non-institutional entity did the offering, likely to avoid additional regulatory scrutiny. *Translation for the fighters*, none of that enormous purchase price will trickle down to your pocket as the company now carries a far greater debt load.

II. Competitive Architecture in Sport of MMA.

In sport, competition and result in competition determines merit – not how loud you complain, how much you insult or how many people you offend (those are entertainment concepts). Unlike boxing, however, there is no real competitive architecture for MMA. Amateur programs are largely nonexistent and somewhat unorganized. MMA is also not an Olympic sport. Thus, athletes entering into MMA do not have the same "built-in" pedigree that boxers typically enjoy due to long-standing amateur programs as well as Olympic competition which serves to filter and test talent prior to turning professional. In MMA, outside of NCAA Division I and Olympic wrestlers, athletes turning professional have not been systematically ranked at any level.³ In contrast, amateur boxing and wrestling establishes credentials and merit in athletes who through competition, ascend rankings.

Merit is essential to all combat sports athletes who through competition in sport, ascend rankings and establish notoriety with the viewing public. In combat sports, value to athletes competing is obtained by ascending in the rankings through competition and later, winning titles. Once notoriety has been

² Although retirement typically "freezes" the contract.

³ Division I and Olympic wrestling is extremely useful, but does not directly translate to success in MMA. It frequently takes years for these wrestlers to obtain other skills necessary for success in MMA.

obtained, the professional boxer or kick-boxer may then enter into the market of competing promotions that may bid for his or her services, or the athlete may choose to promote themselves and hire third parties on a contract basis. These athletes retain the rank and title they have already obtained, which are independent of promotion. In contrast, MMA athletes do not have an organized and respected amateur system to establish merit. Unlike in boxing and kick-boxing, MMA promoters do not, and have not been required by the athletic commissions to utilize independent or objective rankings.⁴ In addition to the lack of independent rankings, MMA promoters also issue their own championship titles – and in fact, can take them away just as quickly as they award them.

Further, to even be considered to compete for these promotional titles, athletes are required to sign exclusive, long-term contracts removing these athletes (and would be competitors) from the competitive marketplace.

III. MMA Utilizes No Independent or Objective Rankings Methodology to Determine Merit.

Zuffa operates without any objective rankings system to determine who is in line for a title shot, and even internally, Zuffa does not announce any rankings of fighters. Previously, according to Dana White, “It’s a total conflict of interest, and in my opinion, it’s pretty easy to figure out who’s next in line for title shots and things like that. . . But we don’t make our own rankings. It wouldn’t be right.” Yet, the UFC awards titles and regularly states that in order to be considered the best, you must be in the UFC. However, after finalizing its television deal with Fox Sports, the UFC has recognized “rankings by FightMetric” who “will poll opinions” from 90 members of the media. Only fighters “currently active in the UFC” are included in the UFC rankings, the UFC is not obligated to follow the rankings in any manner, and the UFC alone selects who is included on the panel. Further, the rankings do not, at any time, dictate title bouts. The rankings, however, were apparently required by Fox Sports as they are important to “sell” MMA to the general public.

Fighters are hamstrung in their ability to negotiate fight purses as promotions, unlike in boxing, are not required to disclose to fighters the revenues earned from such bouts. Fairly recently boxer Chris Algieri invoked the Ali Act to obtain financial disclosures from his promoter to assist him in negotiating his purse. For no seemingly logical reason or good reason, fighters in other combat sports are not provided the same disclosures.

IV. Due to Lack of Independent and Objective Rankings Methodology, Title Shots are Not Dictated by Merit.

In MMA, no merit based system dictates when elite athletes obtain title bouts, if at all. Vitor Belfort, a veteran star of the UFC, stated the following in regards to what qualifies a fighter for a title match: “There’s not much I can say about what qualifies you for a shot at the title in the UFC. It hasn’t been happening much by merit, but by politics.” Similarly, after being passed over for a title match by Chael Sonnen, a fighter who had never competed as a light heavyweight, former champion and star Dan Henderson tweeted to Dana White: “I guess I should just quit training to win fights and to be exciting for the fans and just go to sh_t talking school.” Henderson continued by stating that giving Sonnen the title match “degrades the sport of MMA.” Ironically, Chael Sonnen himself recognizes that MMA as currently

⁴ Virtually all if not all individual sports, including golf, tennis, and NASCAR, recognize rankings methodologies that are independent of a particular event, promotion or venue.

operated is not a legitimate sport. According to Sonnen, you can be the best fighter in the UFC, and never obtain a title match. Finally, Sonnen stated that in MMA, there is “no competitive architecture” to determine who is best. Perennial contender Jon Fitch echoed these sentiments, stating:

“It’s impossible to tell. There’s no system for picking number one contenders. There’s no order, there’s no lineup, there’s no point system. It’s just whoever they feel they’re going to make the most money off of. That’s who gets the title shot. It kind of sucks, because in other sports there’s kind of a clear path; you do this, this and this, and you get this.”

V. Titles are Ceremonial and Require Strict Exclusivity.

Zuffa, by contract, deems its titles as “ceremonial” only. Thus, fighters have no property or “contractual” right to enforce their status as champions and may be stripped at any time. In fact, Dana White warns athletes frequently, “Remember, I cut a champion.” Likewise, worthy challengers have no means to obtain title bouts that they may have earned on merit. In order to compete for the UFC title, athletes must also be under exclusive contract to the UFC, and agree to the insertion of the “champion’s clause” which automatically extends the term of the promotional agreement for as long as a fighter holds the UFC title (which apparently is ceremonial and can be taken away at any time). Further, a fighter cannot retire or voluntarily sit out the remaining term of the promotional agreement as the UFC simply “tolls” the promotional agreement for the entire period of the “retirement” or refusal to compete. Zuffa champions (and all other athletes) will never compete in co-promoted events or in high profile matches promoted by a competing promoter.⁵ Zuffa systematically and intentionally operates a “closed” system by expressly prohibiting its champions (and virtually all other fighters) from competing for any other promotion. The Ali Act requires rankings to be based on merit, not contractual subservience. Standardized, objective rankings serve to increase public confidence in the sport, and means “new opportunities for honest boxers who are trying to fight their way up the rankings.” Additionally, the sport achieves “more integrity and respect” since boxing fans “will know that championship matches are being fought by true champions.” Indeed, the public would be outraged if Rob Manfred, the commissioner of baseball, simply replaced the Kansas City Royals in the World Series, or worse, kept them out of the playoffs because the New York Yankees bring higher ratings or more favorable contractual terms. A promoter’s ability to write fighters in and out of rankings arbitrarily serves to drastically reduce a fighter’s marketability and leverage. This practice is rampant in MMA, impugns the integrity of the sport, and serves to strip fighters of virtually all negotiating leverage at the time their marketability should be at its peak. As one observer testified before the United States Senate in connection with the earlier regulation of boxing:

“This is akin to forcing a professional tennis player or golfer to sign an exclusive, long term contract with the promoter of whatever event they were seeking to win. The athlete would then only be able to compete when the promoter approved, against only those opponents who also were forced to agree to terms with that promoter. In well organized major sports such as tennis and golf such a business practice would be strongly challenged and criticized as an unreasonable restraint of trade.”⁶

⁵ Other than the recent Mayweather-McGregor fight – which was, of course, in boxing.

⁶ In Tennis, if Wimbledon demanded exclusive contracts from all top tier tennis players early in the sport’s history, all other tournaments would be driven out of business or forced to accept minor league status. That is exactly what has happened in MMA, with the tacit approval of the athletic commissions. As a promoter, Zuffa by law should be

The effect of these contractual restraints is that champions are never free agents or open for bid while holding a title, and cannot voluntarily resign or relinquish the title. Athletes who do not agree to the UFC's terms are simply not signed, and then denigrated as inferior. Top-tier fighters who do not agree to Zuffa's contract terms are simply not provided title fights—regardless of merit. This model is intentionally utilized by the UFC for precisely this reason—it allows the UFC to solely determine merit which enables Zuffa to dictate terms and obtain contractual subservience. The UFC has used this structure to coerce, bully, and ensure that its brand remains paramount. In fact, the “promotional agreement” requires the athlete to provide promotional services to Zuffa, with no corresponding obligation of Zuffa to actually promote the athlete. Former UFC champion and prominent broadcaster Pat Miletich described these practices by stating:

“Coercive practices crippling the natural growth of mixed martial arts include, but are not limited to, (i) the use of exclusive and non-public contracts, (ii) the assignment of ancillary rights from the athlete to the promoter far beyond the term of the promotional agreement, (iii) champions clauses that prevent champions from ever becoming freely marketable, and (iv) overt threats and secret discretionary payments that are utilized to keep the athletes subservient and silent. Removal of these artificial and anti-competitive restraints will dramatically reshape the mixed martial arts industry. With the removal of these artificial restraints, substantial new investments from deep-pocketed investors will be made in this sport. These investors, currently sitting on the sidelines unable to effectively compete in a free-market system, will provide not only more opportunities and earnings power to the athletes, but also additional tax revenues and jobs to the citizens of the State of California. Such organic growth will benefit all stakeholders in the sport of mixed martial arts by increasing revenues in all industry segments.”

VI. The MMA Market Given This Structure.

Given this marketplace, athletes entering into MMA typically compete first in small, somewhat unorganized local promotions and are paid small sums of cash or paid by being given tickets to sell and splitting proceeds with the promoter. Next, athletes compete in regional promotions which may or may not have a television deal. These athletes, at the high end, earn \$6,000, and as low as \$500 on the end of the pay scale. After 10 to 15 fights, successful athletes seek to be signed by the UFC. The first deal an athlete signs with the UFC is typically a four (4) fight deal, with a two (2) year term. Compensation for the vast majority of these athletes first entering the UFC is \$8,000 to “show,” and \$8,000 to win. To “show” means the athlete makes weight and competes. If the athlete wins the first 2 or 3 bouts on their UFC contract, the UFC will typically offer the second promotional deal (often right before a scheduled bout to maximize leverage) which will in essence extend the promotional deal to cover six (6) fights (2-3 years), and increase purse levels to \$16,000-\$24,000 to show/win. If an athlete is highly successful and marketable over this time period, the UFC may offer a third promotional agreement which will include the “champion’s clause,” an increase in show/win pay, and maybe a negotiated PPV split for title or main event matches broadcast on PPV. Failure to agree to this clause ensures that the athlete will not compete against current contenders or obtain a title match. UFC promotional contracts are essentially non-

prohibited from issuing titles and requiring exclusivity. The same enabling statutes that govern boxing prohibit promoters from issuing titles. It should be noted, that just prior to purchasing the UFC, Lorenzo Fertitta was a commissioner of the Nevada State Athletic Commission, which also regulates boxing. Marc Ratner was previously the executive director of the Nevada State Athletic Commission.

negotiable, and exclusivity is strictly mandated. The UFC publicly announces they simply will not sign or allow you to compete against UFC athletes if you refuse exclusivity.

VII. Conclusions.

The Ali Act curbs exploitive business practices and protects honest competition and the integrity of sport. As stated in the legislative history of the Ali Act, an industry free of restraint and exploitive and unethical business practices will lead to increased competition, “and fair, open competition is key to any sport’s success.” It is time that all combat sports participants are treated fairly and consistently and granted the protections already afforded professional boxers.