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January 24, 2013

Via Certified Mail

The Honorable Andrew M. Cuomo
Governor of the State of New York
NYS State Capitol Building
Albany, NY 12224

The Honorable Eric T. Schneiderman
Attorney General of the State of New York
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

The Honorable Sheldon Silver
Assembly Speaker of New York State
Albany Office
LOB 932
Albany, NY 12248

The Honorable Cesar A. Perales
Secretary of State of New York
Department of State, Albany Location:
One Commerce Plaza, 99 Washington Ave
Albany, NY 12231-0001

The Honorable Dean G. Skelos
Majority Leader of New York State Senate
Legislative Office Building, Room 909
Albany, NY 12247

Re: New York Unconsolidated Laws § 8905-a

Dear Sirs:

We write on behalf of our client, the Association of Boxing Commissions (the "Association"), to address certain serious safety risks presented by New York Unconsolidated Laws § 8905-a (the "MMA Statute"). The MMA Statute effectively bans most professional MMA bouts. However, under the Office of the New York Attorney General's (the "NYAG") own construction of the MMA Statute, the provision also permits "amateur" MMA bouts to be held within New York State wholly without regulatory supervision or the enforcement of safety standards.

In a pending action related to the constitutionality of the MMA Statute, the NYAG has argued that the regulatory regime imposed by the MMA Statute promotes safety. In fact, New York State's choice to allow wholly unregulated MMA amateur bouts has created a grave safety

risk to both athletes and spectators not only within this State, but indeed throughout North America.

Similarly, with respect to “professional” combat sports, we write to urge the Secretary of State and the Governor to immediately implement regulations promulgated by the New York State Athletic Commission (“NYSAC”) – pursuant to its authority under the MMA Statute – that will permit the NYSAC to review and determine which private entities are properly vested with “exempt” status under the MMA Statute, entitling and enabling it to at least indirectly regulate certain professional combat sports that are already occurring in this State. Otherwise, these “exempt” organizations are sanctioning “professional” combat sports in New York with impunity.

A. The Association

The Association is a non-profit organization whose membership is open to athletic commissions in each of the States of the United States of America, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, any federally recognized Indian tribe which has formed a tribal organization to regulate professional boxing matches pursuant to 15 USC § 6312(b), and commissions and Indian tribes in Canada. The NYSAC is among the Association’s current 83 members.

A paramount goal of the Association is to promote safety in professional and amateur combative sports including, inter alia, professional and amateur mixed martial arts (“MMA”). To that end, the Association, among other things: (i) promotes uniformity in the health and safety standards applied by authorities charged with regulating MMA in jurisdictions throughout North America; (ii) maintains a computerized database used by all Association members to compile and share critical health and performance-related information regarding amateur and professional MMA bouts and athletes; and (iii) publishes and disseminates medical and training information, as well as model rules, respecting MMA.

B. The Action

On November 15, 2011, a group of plaintiffs filed an action in the United States District Court for the Southern District of New York challenging the constitutionality of certain provisions of the MMA Statute (the “Action”).¹ Plaintiffs’ challenge arises under, inter alia, the First and Fourteenth Amendments of the United States Constitution.

In seeking the dismissal of the Action, the NYAG has contended that New York’s legislature effectively banned professional MMA bouts to address the purported “serious risk of physical harm that [MMA] posed to its participants.” Mem. of Law in Support of its Motion to Dismiss [Doc No. 16] B.1. The NYAG has, however, also affirmed to the court that, even as it

¹ The Action is captioned as John Jones et al. v. Eric T. Schneiderman, in his official capacity as Attorney General of the State of New York, 11 Civ. 8215 (KMW)(GWG).

largely bans professional MMA bouts, the MMA Statute also exempts “amateur contests.” See NYAG’s Second Reply Mem. of Law [Doc No. 41] at 7. Indeed, in the Action, the NYAG has indicated that, in enacting the MMA statute, New York’s legislature sought to place “amateur” MMA wholly outside the scope of governmental and regulatory supervision. See NYAG’s Second Mem. of Law in Support of its Mot. to Dismiss [Doc No. 37] at 30 (stating that because “[t]he word ‘amateur’ appears nowhere in the statute,” amateur bouts are unambiguously legal in New York).²

As the NYAG concedes, however, the only difference between a professional and amateur MMA bout under New York law is whether the athletes are compensated. See NYAG Second Reply Mem. of Law [Doc No. 41] at 6. Accordingly, promoters are free to hold and profit from MMA bouts in this State, so long as they do not share any of their profits with the athletes. Moreover, per the express terms of the MMA Statute, the same athletes who compete in professional bouts in other jurisdictions (subject to regulatory supervision) can freely compete in (wholly unregulated) “amateur” bouts in the State of New York, as long as they do not receive compensation for their New York competitions.³

C. Practical Implications of the Government’s Construction of the MMA Statute

By enacting a law that permits wholly unregulated MMA bouts, New York’s legislature invited abuse by promoters, and risks to athletes and audience members, and those risks have been realized. Following the enactment of the MMA Statute in 1997, New York began to experience an upsurge of unregulated MMA shows. These shows qualify as “amateur” events under the MMA Statute because the promoters do not compensate the athletes – but promoters profit from the often large crowds of paying spectators they attract to the events. Recognizing that these wholly unregulated and unsupervised “amateur” events posed safety risks to both athletes and spectators, the NYSAC undertook efforts to shut them down, and promoters responded by undertaking efforts to conceal their events from the NYSAC and other governmental bodies.⁴

In recent years, however, responsible New York government officials began to make it clear that the MMA Statute leaves no room for regulating or barring any “amateur” MMA bouts, regardless of the gravity of the dangers they pose. First, the General Counsel to the New York Secretary of State opined that amateur MMA “appear[s] to be beyond the State Athletic

² See also NYAG’s Second Mem. of Law in Support of its Mot. to Dismiss [Doc No. 37] at 18-19 (“It thus appears that the reading of New York’s ban of combative sport as not including amateur events, contained in letters by the General Counsel of the State Department in March 2011 (i.e. recently but before this action commenced), Am. Complaint ¶ 170, or by the Legislature in avoiding a similar loophole in enacting the 2001 Alcoholic Beverages Law, Am. Complaint ¶ 165, was not, as plaintiffs contend, ‘flip-flopping;’ rather, it is what the statute says”).

³ The NYAG has indicated that a law prohibiting the serving of alcohol to spectators applies to amateur MMA bouts. See NY Alco. Bev. Cont. Law § 106(6-c).

⁴ See e.g., Am. Compl. [Doc No. 34] at ¶ 186.

Commission's current regulatory jurisdiction [(see Uncons. Laws § 8905)].” See Am. Compl. at ¶ 170. And (as explained) in its submissions in the Action, the NYAG thereafter confirmed that the MMA Statute renders amateur MMA shows wholly unregulated in New York State. As promoters began to receive confirmation that this State's legislature has given them the green light, the “amateur” shows that had largely been operating on an underground basis began to move out of the shadows.⁵ With the assurances provided by the NYAG and Secretary of State regarding the non-regulatory regime established by the MMA Statute, promoters now recognize that they are free to hold “amateur” MMA shows without any governmental oversight or interference, regardless of the degree of danger or risk their shows may pose.⁶

New York's choice to leave “amateur” MMA unregulated and unsupervised stands in stark contrast to the approaches of other jurisdictions. Far from leaving amateur MMA unregulated, other jurisdictions have generally adopted rules providing amateur athletes with greater safety-oriented protections, often based on standards and rules developed by the Association. For example, New Jersey has promulgated rules based on an Association model, providing that:

- approved shin guards with instep pads must be worn by contestants (there are no shin guards in professional MMA);
- there can be no more than three, 3-minute rounds (as opposed to up to five, 5-minute rounds in professional fights);
- elbow strikes are prohibited entirely;
- kneeing or kicking to the head of an opponent is prohibited; and
- there is no striking at all to the head of a downed opponent.⁷

Furthermore, virtually every other jurisdiction requires that promoters of amateur, as well as professional, MMA bouts participate in and utilize national databases designed to ensure and promote safety in the sport. See e.g., NJSACB Amateur Rules, supra n.7 at 1. These databases are used to identify, and screen out, athletes who have health or safety-related impairments such as subdural hematomas, irregular CT scans or MRIs, detached retinas, and/or irregular heartbeats – as well as athletes who have been suspended or are otherwise barred from competing. In addition, the nationwide databases maintain records of athletes' competition histories, intended to ensure that athletes are evenly matched and that they receive appropriate rest and recovery

⁵ See e.g., Am. Compl. [Doc No. 34] at ¶¶ 14, 134.

⁶ According to the Amended Complaint, at least one plaintiff has affirmatively sought government assistance so that it could safely promote an amateur MMA show and the request was denied. See Am. Compl. [Doc No. 34] at ¶ 134.

⁷ “A grounded fighter is any fighter who has more than just the soles of their feet on the ground. (i.e. could have one shin or one finger down to be considered a downed fighter).” See NJ State Athletic Control Board Amateur Mixed Martial Arts Rules (“NJSACB Amateur Rules”) at 11, available at <http://www.nj.gov/oag/sacb/docs/Amateur-Mixed-Martial-Arts-New-Jersey-effective-010110.pdf>.

periods between bouts.⁸

There is no requirement that athletes who compete in New York's unregulated and unsupervised "amateur" shows be screened by these databases – and the resulting risks to athletes are manifest. Moreover, there is nothing preventing MMA athletes from competing in "amateur" bouts in New York only days after competing professionally in other states and vice versa, conduct that is not permitted by regulatory bodies in other states. There likewise is nothing preventing professional athletes who are underage, over 40, or subject to medical suspension in other states from competing in New York as "amateurs," although they could not compete in professional or amateur MMA bouts in other jurisdictions.⁹

New York's choice to allow wholly unregulated "amateur" MMA bouts has placed not only athletes at risk, but their audiences and their opponents as well. The national databases used by Association members identify athletes suffering from communicable diseases such as Hepatitis B and C. Because there is no mandate that New York "amateur" promoters even make use of the Association databases, however, such athletes are free to compete in New York – and thereby place their opponents and even spectators at risk of infection. Furthermore, while the Association databases identify athletes who have been subject to suspension in other jurisdictions – including for the use of performance enhancing drugs or misconduct – these athletes are free to compete as "amateurs" in New York, potentially endangering their opponents in the process.

Moreover, the New York legislature's decision to sanction the holding of unregulated "amateur" MMA shows whose promoters are not required to participate in the database reporting systems has given rise to safety risks that extend far beyond the boundaries of New York – and indeed intrudes upon and poses a threat to the regulatory regimes of other states. For example, it is possible that events that occur in New York such as knock outs or concussions – as well as exposures to communicable diseases – will go unreported. Thus, athletes who pose serious safety risks to themselves or others can go on to compete in other states without any notice to promoters and regulators in such other jurisdictions. The risks to the athletes at issue – and to their opponents and spectators as well – are manifest. Without reliable record-keeping, it is also

⁸ The Association's model amateur rules, like its professional model rules, have weight classes and require random drug testing for contestants. In New York, there is no requirement that fighters are matched by similar weight (or even that they weigh in at all before a bout) and no requirement that a promoter subject contestants to drug testing – posing a risk to both athletes in a bout. In addition, there is no requirement that there be an on-site ambulance or other medical personnel in the event of serious injury, and there likewise is no requirement that contestants undergo pre-fight or post-fight medical examinations.

⁹ Pursuant to its mission, the Association has an official MMA record keeper database, mixedmartialarts.com, and an official boxing record keeper database, FightFax. These national databases assist commissions, *inter alia*, in evaluating fighter records to ensure even matchmaking in the licensing process. In addition, and in furtherance of its mission, the Association's official medical database for combative sports contestants is maintained by MedLic, LLC ("MedLic"). MedLic operates an online electronic health records database for the combative sports contestants and works with all U.S. Territories, North American Tribal Commissions and Canadian Athletic Commissions to ensure that each fighter has up-to-date electronic health records downloaded for quick and accurate access to expedite the licensing process in order to compete.

difficult, if not impossible, to determine how many bouts an MMA athlete has participated in – as is required to ensure that athletes are safely matched with athletes at their own skill levels, in whatever states they may be competing.

In sum, while the NYAG has defended the MMA Statute against constitutional challenge on safety grounds, New York’s regulatory (or rather, non-regulatory) scheme has actually established a serious risk of harm to MMA athletes and spectators in New York, and indeed throughout North America. Accordingly, the Association respectfully requests that New York follow its sister states by enacting a new regulatory regime for professional and amateur MMA that actually promotes, rather than undermines, safety.

D. The Inadequacy of Private Organizations Sanctioning Combat Sports in New York

The Association has previously expressed concern that amateur kickboxing and professional and amateur muay Thai competitions in New York State are not directly overseen by the NYSAC – as the Association believes they should be. Instead, the oversight of these combat sports competitions has been lodged with various private entities (i.e., exempt “Martial Arts” organizations as defined under the MMA Statute), who have, in many cases, failed to meet the health and safety standards that the Association believes are necessary. For example, athletes who are underage, overage, or under drug or medical suspensions in other jurisdictions have been permitted by such “exempt” organizations to participate in muay Thai and kickboxing competitions in New York. Importantly, the State of New York does not require or mandate that these exempt sanctioning organizations meet any health, safety, medical or reporting requirements.

In the absence of the direct regulation of all combat sports by the NYSAC – which the Association continues to believe is clearly appropriate – the Association submits that the NYSAC should be permitted to exercise its regulatory authority to determine which private organizations are properly vested with exempt status. In the absence of such ongoing oversight by the NYSAC, the risk of continued dangers to athletes and spectators is manifest.

While we understand that the MMA Statute grants the NYSAC the authority to promulgate regulations and that the NYSAC has circulated draft regulations pursuant to this authority – we also understand that the process of implementing these crucial regulations is currently stalled. We urge the Secretary of State and the Governor to complete the review process and implement regulations with the utmost expedition.

* * *

The Association wishes to express its appreciation for your consideration of this letter, and for your attention to the urgent issues of safety and the proper regulation of combat sport discussed herein. We trust that, working together, this State’s Executive and Legislative branches will make the changes necessary to address the critical issues the Association has identified.

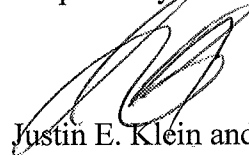
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To this end, if the Association can be of assistance or can provide additional information, please feel free to contact the undersigned.

Respectfully submitted,



Justin E. Klein and David R. Lurie

Cc: The Honorable Melvina Lathan
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JEK/bd