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✦ Court Calendars

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Suit Challenges Ban of Mixed Martial Arts

BY VICTOR LI

MIXED MARTIAL ARTS fighters Jon "Bones" Jones, Frankie "The Answer" Edgar, Brian "The All American" Stann, and Gina "Conviction" Carano are used to walking into a cage and using their fists, knees and legs to pummel opponents into submission. But to fulfill their dreams of fighting under the bright lights of Madison Square Garden, they have called on Morrison & Foerster partner Jamie Levitt and New York University School of Law professor Barry Friedman to duke it out with the state of New York.

On Tuesday, Bones and company joined the Ultimate Fighting Championship, retired fighter Matt "The Hammer" Hamill, and several amateur New York fighters, fans and instructors in filing a 105-page complaint in Manhattan federal court aimed at lifting a ban on live mixed martial arts that has been in place in New York since 1997. The suit names as defendants New York Attorney General Eric Schneiderman and Manhattan District Attorney Cyrus R. Vance Jr.

MoFo's Mr. Levitt and NYU's Mr. Friedman argue in the complaint

that the ban violates the fighters' First Amendment rights by blocking them from showcasing their skills and expressing themselves in public.

"Mixed martial arts are called 'arts' for a reason," Mr. Levitt said in an interview. "There is a special quality to a fighter's performance that is expressive and is protected by the Constitution."

The complaint cites fighters' unique entrances, messages and mannerisms, arguing they amount to a kind of theater. The complaint even compares MMA fights to dancing, noting that fighters exchange moves and countermoves in a way that's similar to capoeira, the Brazilian martial art that is considered a form of dance.

The plaintiffs argue that the original purpose of the ban was to protect fighters from being hurt and the public from being subjected to a sport that Arizona Senator John McCain famously called "human cock-fighting."

Citing medical studies and emphasizing that MMA has evolved into a heavily regulated sport, the plaintiffs claim that those arguments no longer hold water.

Additionally, the plaintiffs point

out that citizens of New York state have been exposed to violent messages from a wide range of other sources, including music, movies, network news and video games.

The video game comparison could be key to the plaintiffs' First Amendment challenge. They hope to extend the U.S. Supreme Court's recent decision in *Brown v. Entertainment Merchants Association*, 08-1448, which held that the First Amendment preempts state laws prohibiting minors from purchasing violent video games, to include public performances (NYLJ, June 28).

NYU's Mr. Friedman said the Supreme Court made clear that states could regulate very few types of speech, and portrayals of violence was not one of them.

"In any event, we think violence is not the message of MMA at all," Mr. Friedman said. "These are extraordinarily fascinating athletes who are extremely disciplined."

Mr. Friedman said Tuesday's suit is the first case in which professional athletes have asserted a First Amendment right to perform in front of a live crowd.

Mr. Schneiderman's office declined comment and Mr. Vance's office did not respond to a request for comment.

The UFC has lobbied for several years to lift the ban in the state Legislature. Critics of mixed martial



Jon "Bones" Jones, left, one of the plaintiffs in a suit challenging New York's ban on mixed martial arts, demonstrates his technique in a Denver match with Quinton "Rampage" Jackson. The suit compares mixed martial arts to dancing.

arts in New York, notably Assemblyman Bob Reilly, D-Latham, have decried the sport for glorifying violence and harming fighters. A recent Siena College poll showed that 55 percent of New Yorkers oppose lifting the ban.

According to MoFo's Mr. Levitt, the UFC will continue to lobby the Legislature as it litigates its First Amendment claims.

"There are serious constitutional issues being infringed," he said. "We haven't given up on [legislative efforts]. But in the interim, we need to protect the rights of the fans and fighters."

Marc Edelman of Barry University Law School, who is not involved in the case, surmised

that the plaintiffs' First Amendment arguments could take them all the way to Madison Square Garden.

"It's been established that the First Amendment extends to activities such as plays," he said. "If the UFC can make the argument that they're like a violent play, then they would be entitled to First Amendment protection the same way a video game would be."

Mr. Edelman also pointed out that the timing of the suit—in the midst of the National Basketball Association lockout saga—could

be a blessing for the plaintiffs.

"It's entirely possible that there is no NBA season this year," he said, leaving 41 open home dates at Madison Square Garden that would be available for alternative entertainment."

Victor Li, a reporter for The American Lawyer, an affiliate publication, can be contacted at vl@aim.com.

Online

✦ A link to the complaint is posted at nylj.com.

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