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AB1: Addressing the Hit Against America's Number One Sport

Lauren Hirota

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AB 1: Addressing the Hit Against America’s Number One Sport

*Lauren Hirota**

Code Sections Affected

Health and Safety Code §§ 124240, 124241, 124242, 124243 (new).
AB 1 (Cooper); 2019 STAT. CH. 158.

TABLE OF CONTENTS

I. INTRODUCTION 334

II. LEGAL BACKGROUND 336

A. Linking Football to Concussions: The Discovery of CTE 337

B. Negligence Suits Against Prominent Football Leagues 337

 1. *The National Football League Settlement* 338

 2. *Pop Warner Little Scholars, Inc. Settles First and Only Negligence Lawsuit* 338

C. Legislatures Implement Various Safety Procedures Regarding Concussion Management 339

 1. *Federal Laws* 339

 2. *State Laws* 341

 3. *California Laws* 341

III. CHAPTER 158 342

IV. ANALYSIS 343

A. California’s Power to Regulate Private Sport 344

B. Self-Regulation in American Sports 344

 1. *Historic Background of the “Hands-Off” Approach* 345

* J.D. Candidate, University of the Pacific, McGeorge School of Law, to be conferred May 2021; B.A., Philosophy & Political Science, San Diego State University, 2018. I would like to extend my sincerest gratitude to my family and friends for their love and support of me and my dreams—no matter their cost or attainability. I would also like to thank the Law Review staff and Board of Editors for their continued guidance and support throughout this article and beyond. Finally, I would like to dedicate this article to my late grandparents, Grandma May and Grandpa Arky, for instilling in me their tenacious work-ethic and drive. Were it not for their courage, perseverance, and love I would undoubtedly not be where I am today.

2. Self-Regulation in Olympic Sports	346
3. Self-Regulation in Intercollegiate and Interscholastic Sports	346
4. Self-Regulation in Professional Sports	347
5. California's Deference to Youth Sports Leagues	347
C. Analysis of Non-Interventionist Model in Sports: The Pros and Cons	348
1. Pros: Concussion Management Laws are Ineffective	348
2. Pros: Sports Leagues Already Regulate Themselves	349
3 Cons: The "Professionalization" of Youth Sports	350
D. The Future of Youth Sports in America: Continued Changes to Come	350
V. CONCLUSION	351

I. INTRODUCTION

On September 12, 2015, thirteen-year-old James Ransom suffered a head injury after colliding with another player during a youth football game in Ladera Ranch, California.¹ The hit was hard but not debilitating enough to raise concern.² James played on.³ After the game, James's father noticed dried blood around his son's ear and the symptoms of a concussion beginning to set in.⁴ Within days, James's temperament changed from sweet and amiable to aggressive and unpredictable.⁵ James began suffering from oculomotor nerve palsy in his left eye, prolonged dizziness, nausea, and thoughts of suicide.⁶ His family sought medical and psychiatric help, but their attempts at saving James's life were futile.⁷ On November 30, 2016, just fourteen months after the hit, James Ransom took his own life.⁸

1. *About James Henry Ransom*, JAMES HENRY RANSOM FOUND., <https://www.jameshenryransomfoundation.org/about> (last visited May 30, 2019) (on file with *The University of the Pacific Law Review*).

2. *Id.*

3. *Id.*

4. Ryan Kartje, *Ladera Ranch Family Pushes for Change in Youth Football After Loss of Son*, THE ORANGE COUNTY REGISTER (Apr. 30, 2018, 11:14 AM), <https://www.ocregister.com/2018/04/28/ladera-ranch-family-pushes-for-change-in-youth-football-after-loss-of-son> (on file with *The University of the Pacific Law Review*); JAMES HENRY RANSOM FOUND., *supra* note 1.

5. *About James Henry Ransom*, JAMES HENRY RANSOM FOUND., *supra* note 1.

6. *See Oculomotor Nerve Palsy*, THE FREE DICTIONARY BY FARLEX, <https://encyclopedia.thefreedictionary.com/oculomotor+nerve+palsy> (last visited June 20, 2019) (on file with *The University of the Pacific Law Review*) (defining "oculomotor nerve palsy" as an eye condition resulting from damage to the third cranial nerve and which restricts eye movement and muscle response); *About James Henry Ransom*, JAMES HENRY RANSOM FOUND., *supra* note 1.

7. *About James Henry Ransom*, JAMES HENRY RANSOM FOUND., *supra* note 1.

8. *Id.*

James's story is not uncommon.⁹ Studies show that during practice, football players aged 9–12 experience high-magnitude hits 8% of the time.¹⁰ Another study found that youth football players are twice as likely to develop mood and behavioral issues in the future than their peers.¹¹ Moreover, individuals suffering from a traumatic brain injury (“TBI”), caused by trauma to the head, are twice as likely to commit suicide than individuals without the condition.¹²

Recent studies, Hollywood films, and legislation discussing the connection between concussions and football are creating a frenzy over the popular American sport.¹³ While many fans attempt to turn a blind eye to the commotion, football's future is becoming less and less certain.¹⁴ Participation in youth programs dropped almost 20% after 2009, and many communities are replacing tackle football with programs such as flag football or “rookie tackle.”¹⁵ Class

9. See generally Ryan Kartje, *Law to Ban Tackle Football for California Youth Falls Short of Committee*, THE ORANGE COUNTY REGISTER (Apr. 30, 2018, 12:40 PM), <https://www.ocregister.com/2018/04/27/law-to-ban-tackle-football-for-california-youth-falls-short-of-committee> (on file with *The University of the Pacific Law Review*) (reporting on two mothers who both lost their sons to CTE).

10. See Catherine Thorbecke, *Children Who Play Football May Take More Hits to the Head Than Originally Thought, Study Finds*, ABC NEWS (Oct. 17, 2017, 8:17 AM ET), <https://abcnews.go.com/Health/children-play-football-hits-head-originally-thought-study/story?id=50519830> (on file with *The University of the Pacific Law Review*) (finding that, out of 45 football players, accumulatively, the players experienced over 7,500 hits throughout 30 practices with 8% of hits considered “high magnitude,” [defined as greater than 40 times the force of gravity]. The study additionally found that quarterbacks, running backs, and linebackers were the most susceptible to high magnitude hits).

11. Rick Maese, *Study Shows Playing Football Before Age 12 Can Lead to Mood and Behavior Issues*, THE WASHINGTON POST (Sept. 19, 2017), https://www.washingtonpost.com/sports/study-shows-playing-football-before-age-12-can-lead-to-mood-and-behavior-issues/2017/09/18/1b3ebc1c-9cac-11e7-8ea1-ed975285475e_story.html?utm_term=.c5fd4745f57 (on file with *The University of the Pacific Law Review*).

12. Kevin Kunsman, *Concussions, TBI Associated with Nearly Two-Fold Greater Risk of Suicide*, MD MAGAZINE (Aug. 14, 2018), <https://www.mdmag.com/medical-news/concussions-tbi-associated-with-nearly-twofold-greater-risk-of-suicide> (on file with *The University of the Pacific Law Review*).

13. See *What is CTE?*, BRAIN INJURY RESEARCH INSTITUTE, <http://www.protectthebrain.org/Brain-Injury-Research/What-is-CTE-.aspx> (last visited May 30, 2019) (on file with *The University of the Pacific Law Review*) (discussing Dr. Omalu's discovery of CTE in former NFL football players); CONCUSSION (Sony Pictures 2015); *California Youth Football Act: Hearings on A.B. 1 Before the Assemb. Comm. On Arts, Entertainment, Sports, Tourism, and Internet Media*, 2019 Leg., 2019–2020 Sess. (Cal. 2018) [hereinafter *1 Assembly Committee on A.E.S.T.I.M. Hearing*] (listing prior and related legislation on the topic of football safety, such as AB 379, AB 2108, AB 2800, etc.); see generally Noah Frank, *Bad Brains: Inside the Concussion Crisis*, WTOP (Aug. 29, 2017, 2:41 AM), <https://wtop.com/nfl/2017/08/whats-happening-to-footballs-brains/> (on file with *The University of the Pacific Law Review*) (“If there's one thing everyone WTOP spoke to for this series seems to agree on, it's that there is no uniform, simple fix for the crisis of brain injury in football.”).

14. See generally Steve Fainaru & Mark Fainaru-Wade, *For the NFL and All of Football, a New Threat: An Evaporating Insurance Market*, ABC NEWS (Jan. 17, 2019, 11:26 AM), <https://abcnews.go.com/Sports/nfl-football-threat-evaporating-insurance-market/story?id=60446104> (on file with *The University of the Pacific Law Review*) (quoting John Butler, Pop Warner's executive director, “People say football will never go away, but if we can't get insurance, it will.”).

15. Alex Pew & Danielle Shapiro, MD, MPH, *Football and Brain Injuries: What You Need to Know*, NATIONAL CENTER FOR HEALTH RESEARCH, <http://www.center4research.org/football-brain-injuries-need-know/> (last visited June 18, 2019) (on file with *The University of the Pacific Law Review*); see *FAQ What is Rookie Tackle?* USA FOOTBALL, <https://assets.usafootball.com/documents/rookietackle/faq.pdf> (last visited July 9, 2019) (on file with *The University of the Pacific Law Review*) (defining “rookie tackle” as a bridge game between flag football and 11-player tackle football as to safely introduce tackle football to younger players).

action lawsuits against popular football leagues, such as the Pop Warner youth league and the National Football League (“NFL”), perpetuate the hysteria.¹⁶ Alongside the influx of litigation, insurers are refusing to cover football programs; Members of the California Legislature have attempted a complete ban on the sport.¹⁷

Chapter 158 compels various safety regulations for youth tackle football programs, mirroring regulations AB 2127 enacted for high school and middle school programs in 2014.¹⁸ After numerous legislative brawls over youth football's viability, Chapter 158 is California's “Hail Mary” attempt at appeasing opponents of youth football while still keeping the sport afloat.¹⁹ Despite California's wish to walk the line, Chapter 158 fails to address the safety issues inherent to the sport and sets new precedent by regulating the “private” sport industry.²⁰

II. LEGAL BACKGROUND

In the past five years, California legislators have developed a series of bills regarding youth football safety and standards.²¹ Concerned parents, retired football players, and medical professionals are leading the movement to address the topic.²² The mass support for football safety reform is due to emerging science and increased publicity of stories like James's.²³ Section A examines Dr.

16. See generally Micheal Martinez, *Pop Warner Settles Concussion Suit Filed by Former Player Who Committed Suicide*, CNN (Mar. 9, 2016), <https://www.cnn.com/2016/03/09/us/pop-warner-concussion-lawsuit-settlement-player-suicide/index.html> (on file with *The University of the Pacific Law Review*) (“The [Pop Warner] settlement demonstrates how concerns about concussion-related brain damage have grown from the NFL to the youngest levels of football.”).

17. A.B. 2108, 2018 Leg., 2017–2018 Reg. Sess. (Cal. 2018) (as introduced on Feb. 8, 2018, but not enacted); see Fainaru & Fainaru-Wade, *supra* note 14 (discussing the increase in insurance companies unwillingness to insure professional football against head injuries since 2011).

18. See CAL. HEALTH & SAFETY CODE § 124240 (enacted by Chapter 158) (outlining similar requirements, such as limiting full-contact practices, to AB 2127); CAL. EDUC. CODE § 49475 (enacted by 2014 Stat. Ch. 165).

19. See *id.* (setting forth various protocols in concussion management and detection); *What is Hail Mary (pass)?*, SPORTING CHARTS, <https://www.sportingcharts.com/dictionary/nfl/hail-mary-pass.aspx> (last visited on July 14, 2019) (on file with *The University of the Pacific Law Review*) (defining “Hail Mary” as a very long, typically unsuccessful pass made in a desperate attempt to score late in a football game).

20. *Infra* Sections IV.A–B.

21. See *1 Assembly Committee on A.E.S.T.I.M. Hearing*, *supra* note 13 (listing prior and related legislation on the topic of football safety, such as AB 379, AB 2108, AB 2800, etc.).

22. See Kartje, *supra* note 4 (reporting on the pleads by a family for change in youth football after the death of their son due to a football-caused concussion); see also Elaine Schmidt, *Parents, Coaches, and Doctors Learn Ways to Prevent Concussions Among Young Football Players*, UCLA NEWSROOM (July 9, 2014) <http://newsroom.ucla.edu/stories/parents-coaches-and-doctors-learn-ways-to-prevent-concussion-among-young-football-players> (on file with *The University of the Pacific Law Review*) (discussing the presentations of Dr. Christopher Giza, director of the BrainSPORT program and a professor of neurosurgery at the David Geffen School of Medicine at UCLA, and Patrick Larimore, former UCLA football player, on concussions at 2014 UCLA conference).

23. *Infra* Section II.A–C.

Bennet Omalu's discovery of a degenerative brain disease called Chronic Traumatic Encephalopathy ("CTE") in 2002.²⁴ Section B discusses multiple lawsuits against the NFL and Pop Warner in response to Dr. Omalu's discovery.²⁵ Section C evaluates various state and federal responses regarding concussion management.²⁶

A. Linking Football to Concussions: The Discovery of CTE

In 2002, after conducting several autopsies on former NFL players, forensic pathologist Dr. Omalu discovered a degenerative brain disease called CTE.²⁷ During the postmortem examination of Mike Webster, former Pittsburgh Steeler, Dr. Omalu found that the constant head blows experienced by Webster caused microscopic injuries to the brain.²⁸ These minor injuries led to the accumulation of tau proteins in the cerebral tissue and, ultimately, permanent brain damage.²⁹ Dr. Omalu warned that indicators of CTE—such as mood disorders, depression, suicidal tendencies, and disinhibition—could manifest hours after a hit or decades later.³⁰

B. Negligence Suits Against Prominent Football Leagues

After to Dr. Omalu's discovery, the NFL's Mild Traumatic Brain Injury Committee denied any connection between football and CTE and demanded the renunciation of Dr. Omalu's research.³¹ Despite the substantial pressure the NFL placed on Dr. Omalu, he continued researching and raising awareness of the long-term consequences associated with America's number one sport.³²

24. *Infra* Section II.A.

25. *Infra* Section II.B.

26. *Infra* Section II.C.

27. *Dr. Bennet Omalu Bio*, BRAIN INJURY INST., <http://www.protectthebrain.org/Our-Team/Bennet-I-Omalu-M-D-.aspx> (last visited June 18, 2019) (on file with *The University of the Pacific Law Review*); *Doctor Behind 'Concussion' Wanted to 'Enhance the Lives of Football Players'*, NPR (Dec. 27, 2015, 5:16 PM), <https://www.npr.org/2015/12/27/460870529/doctor-behind-concussion-wanted-to-enhance-the-lives-of-football-players> [hereinafter *Doctor Behind 'Concussion'*] (on file with *The University of the Pacific Law Review*).

28. *Doctor Behind 'Concussion'*, *supra* note 27.

29. *Id.*

30. *Id.*; see Kristalyn Salters-Pedneault, PhD, *Disinhibition (Impulsivity) in BPD*, VERY WELL MIND (June 18, 2018), <https://www.verywellmind.com/what-is-disinhibition-425293> (on file with *The University of the Pacific Law Review*) (defining "disinhibition" as "reduced control over your impulses, or urges, which means being unable to stop, delay, or change ("inhibit") an action that it not appropriate for the situation you're in.").

31. See Mikayla Paolini, *NFL Takes a Page from the Big Tobacco Playbook: Assumption of Risk in the CTE Crisis*, 68, EMORY L.J. 608, 614–15 (2019) (on file with *The University of the Pacific Law Review*) (discussing the NFL's denial Omalu's work and subsequent orchestration of private studies claiming low concussion rates among NFL players).

32. See *id.* (discussing the NFL's denial Omalu's work and subsequent orchestration of private studies claiming low concussion rates among NFL players); Jim Norman, *Football Still Americans' Favorite Sport to*

1. *The National Football League Settlement*

Despite over 4,500 lawsuits against the league, the NFL denied the presence of CTE and other brain diseases in football players.³³ After consolidating the lawsuits into a class-action suit, retired NFL players argued the NFL breached its duty to protect its players' well-being.³⁴ The NFL maintained that its players assumed the "known, apparent, and reasonably foreseeable consequences of athletic participation."³⁵ Players fought back, accusing the NFL of denying and actively concealing the link between football and chronic neurological disorders—such as CTE.³⁶ Previous caselaw provides that courts may hold a sports league liable if the league fails to clearly convey the known dangers associated with the game.³⁷ The lawsuit settled in 2016 with the United States Supreme Court affirming the \$1 billion monetary award for affected players and their family members.³⁸ Despite the symbolic end to an almost decade-long dispute, the messy details of the settlement continue to make national headlines.³⁹ Courts continue to deny hundreds of claims for relief by victims and their families, allowing the NFL pay less than half of the total payout awarded to plaintiffs by the Court.⁴⁰

2. *Pop Warner Little Scholars, Inc. Settles First and Only Negligence Lawsuit*

In 2015, Wisconsin mother Debra Pyka sued Pop Warner—the nation's

Watch, GALLUP (Jan. 4, 2018) <https://news.gallup.com/poll/224864/football-americans-favorite-sport-watch.aspx> (on file with *The University of the Pacific Law Review*) ("football claimed the top spot [as American's most popular sport] in 1972 and has been the public's favorite ever since.").

33. Katie Moisse, *Youth Football Leagues Hope for Boost from NFL Settlement*, ABC NEWS (Aug. 30, 2013), <https://abcnews.go.com/Health/youth-football-leagues-hope-boost-nfl-settlement/story?id=20120881> (on file with *The University of the Pacific Law Review*).

34. Richard Weinmeyer, JD, MPhil, *Concussion-Related Litigation Against the National Football League*, AMA J. OF ETHICS (July 2014), <https://journalofethics.ama-assn.org/article/concussion-related-litigation-against-national-football-league/2014-07> (on file with *The University of the Pacific Law Review*).

35. See Paolini, *supra* note 31 at 626–27 (discussing the doctrine of assumption of risk as applied to sports torts).

36. See *id.* (discussing the doctrine of assumption of risk as applied to sports torts).

37. *E.g.*, *Nalwa v. Cedar Fair, L.P.*, 55 Cal. 4th 1148, 1152 (Cal. 2012) (holding that an individual assumes the risk associated with bumper car collisions at an amusement park); *The NFL Concussion Lawsuit*, LAWSHELF, <https://lawshelf.com/blog/post/the-nfl-concussion-lawsuit> (last visited June 20, 2019) (on file with *The University of the Pacific Law Review*).

38. *The NFL Concussion Lawsuit*, LAWSHELF, *supra* note 37.

39. See Dom Conentino, *The NFL Concussion Settlement Just Keeps Getting Worse and Worse*, DEADSPIN (May 17, 2019, 12:14 PM), <https://deadspin.com/the-nfl-concussion-settlement-just-keeps-getting-worse-1834651117> (on file with *The University of the Pacific Law Review*) (discussing the recent developments in the NFL lawsuit).

40. See *id.* (discussing that the total payout by the NFL for all concussion-based lawsuits so far is less than \$500 million).

largest youth football league—for negligence after her son committed suicide.⁴¹ Pyka argued that her son developed CTE during his four-year stint in youth football, and that the disease was a substantial factor of his death in 2012.⁴² She claimed Pop Warner was liable because the program failed to limit full-contact practices and properly train coaches in concussion protocol and helmet safety.⁴³ Pyka sought \$5 million in damages; however, Pop Warner settled the suit for \$2 million.⁴⁴ Despite the resolution, Pop Warner accused Pyka of waging “a public crusade to ban football.”⁴⁵ The settlement became the first and only lawsuit against Pop Warner but signified the growing concern over the game’s viability.⁴⁶

C. Legislatures Implement Various Safety Procedures Regarding Concussion Management

After the surge of litigation claiming safety oversight, football leagues began implementing their own changes to the sport.⁴⁷ Pop Warner made substantive revisions, such as eliminating the three-point stance, and the NFL banned numerous blocks and hits formerly permitted.⁴⁸ On the sidelines, federal and state legislatures began regulating the game’s various procedural aspects.⁴⁹ Section 1 discusses the federal government’s attempts to establish laws to prevent and manage concussions.⁵⁰ Section 2 reviews the groundbreaking state laws regarding the topic.⁵¹ Section 3 analyzes California’s laws, and attempted laws, that regulate concussion protocol and football safety.⁵²

1. Federal Laws

Although the United States Congress has not enacted any laws regarding

41. *Pyka v. Pop Warner Little Scholars, Inc.*, No. 3:2015cv00057 (W.D. Wis. filed Feb. 5, 2015).

42. *Id.*

43. *Id.*

44. *Id.*

45. Fainaru & Fainaru-Wade, *supra* note 14.

46. Josh Kosman, *Youth Football May Never Be the Same After This*, NEW YORK POST (March 8, 2016, 11:06 AM), <https://nypost.com/2016/03/08/pop-warner-football-settles-concussion-lawsuit/> (on file with *The University of the Pacific Law Review*).

47. Bob Cook, *More Pop Warner Safety Changes Come As The Battle For Football’s Soul Intensifies*, FORBES (Mar. 4, 2019) <https://www.forbes.com/sites/bobcook/2019/03/04/more-pop-warner-safety-changes-come-as-the-battle-for-footballs-soul-intensifies/#721f63087706> (on file with *The University of the Pacific Law Review*).

48. *Id.*; see *Health and Safety Rules Changes*, NFL, <https://operations.nfl.com/football-ops/nfl-ops-honoring-the-game/health-safety-rules-changes/> (last visited on July 13, 2019) (on file with *The University of the Pacific Law Review*) (referring to the various changes made to NFL football rules since 1985).

49. *Infra* Sections III.C.1–3

50. *Infra* Section III.C.1

51. *Infra* Section III.C.2

52. *Infra* Section III.C.3.

nationwide concussion management or safety, members have introduced legislation on the topic.⁵³ In addition, Congress has been taking steps to address brain injuries in the United States since the mid-1990s.⁵⁴ In 1996, President Bill Clinton signed the Traumatic Brain Injury Act (“TBIA”) into law.⁵⁵ Notably, the TBIA defined a TBI and allotted federal funds for states to research and improve TBI rehabilitation and prevention.⁵⁶ Congress reauthorized the TBIA in 2014, which allowed federal appropriations to continue throughout the 2019 fiscal year.⁵⁷

Congress also proposed the Concussion Treatment and Care Tools (“ConTACT”) Act in 2010 to address the “prevention, identification, treatment, and management of concussions.”⁵⁸ The bill—which did not pass the committee process—proposed a nation-wide concussion guideline for youth athletes.⁵⁹ It included a “return-to-play” protocol for purposes of post-concussion health, and the collection of concussion-related data among school-aged children.⁶⁰ After its 2010 failure, Congress reintroduced the ConTACT Act in 2013 but again rejected the bill.⁶¹

In January 2019, Representative Joyce Beatty introduced the Concussion Awareness and Education Act.⁶² The act, not yet enacted, would collect and disseminate data regarding brain injuries among youths to increase the awareness of sports-related concussions.⁶³ The Concussion Awareness and Education Act would establish a Concussion Research Commission dedicated to reviewing and recommending concussion-related findings.⁶⁴ The Concussion Research Commission would also recruit the help of entities such as national sports associations, trainers’ associations, as well as parents, coaches, and students to support their findings.⁶⁵ The findings would include data like the amount of concussions among individuals between the ages of 5–21, the cause of the

53. Elizabeth Etherton, *Systematic Negligence: The NCAA Concussion Management Plan and Its Limitations*, 21 SPORTS L. J. 1, 21 (2014) (on file with *The University of the Pacific Law Review*) (discussing the different legislation introduced by the United States Congress on concussion management).

54. *Id.* at 22.

55. *Id.*

56. *Id.* (citing Traumatic Brain Injury Act of 1996, Pub. L. No. 104-166, 110, Stat. 1445 (1996)).

57. *Traumatic Brain Injury Act*, BRAIN INJURY ASS’N OF AMERICA, <https://www.biausa.org/public-affairs/public-policy/traumatic-brain-injury-act> (last visited June 20, 2019) (on file with *The University of the Pacific Law Review*).

58. Etherton, *supra* note 53 at 22-23 (2014) (quoting Concussion Treatment and Care Tools Act of 2012, H.R. 1247, 111th Cong. (2010)).

59. *Id.* (quoting Concussion Treatment and Care Tools Act of 2012, H.R. 1247, 111th Cong. (2010)).

60. *Id.* at 23 (discussing Concussion Treatment and Care Tools Act of 2012, H.R. 1247, 111th Cong. (2010)).

61. Concussion Treatment and Care Tools Act of 2013, H.R. 3113, 113th Cong. (2013).

62. H.R. 280, 116th Cong. (2019).

63. *Id.*

64. *Id.*

65. *Id.*

concussions, and the injured individual's concussion history.⁶⁶

2. State Laws

In 2009, Washington became the first state to pass a law implementing a concussion protocol in sports.⁶⁷ The Lystedt Law, also known as the “shake-it-off law,” prevents youth athletes from prematurely returning to play after showing signs of a head injury.⁶⁸ Just one month after the passage of the Lystedt Law, Oregon passed Max's Law—a similar piece of legislation.⁶⁹ Max's Law implemented concussion management guidelines—such as the catchy “recognize, remove, refer, return,” protocol for all school districts in the state.⁷⁰ Since the passage of Max's and the Lystedt Laws, all fifty states and the District of Columbia have enacted laws implementing concussion procedures in youth and/or high school sports.⁷¹

3. California Laws

California has implemented several legislative measures to address concerns surrounding football safety.⁷² In 2014, Governor Brown signed AB 2127 into law.⁷³ AB 2127 limited full contact practices and required concussed student-athletes to complete a seven-day graduated “return-to-play” protocol.⁷⁴ Since the bill restricts full-contact practice time, Senator Joel Anderson called the bill “an overreach.”⁷⁵ Anderson and other bill opponents argued that the government should not regulate substantive aspects of football, such as full-contact practice and player conduct.⁷⁶ However, AB 2127 passed and took effect on January 15,

66. *Id.*

67. *Get a Heads Up on Concussion in Sports Policies*, CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/headsup/pdfs/policy/HeadsUpOnConcussionInSportsPolicies-a.pdf> (last visited June 22, 2019) (on file with *The University of the Pacific Law Review*).

68. *Id.*

69. *Id.*

70. *See* S. Res. 348, 75th Leg., 2009 Reg. Sess. (Or. 2009) (“Each school district shall ensure that coaches receive annual training to learn how to recognize the symptoms of a concussion and how to seek proper medical treatment for a person suspected of having a concussion.”).

71. *Concussion ToolKit for Psychologists*, AMERICAN PSYCH. ASS'N, http://www.ucdenver.edu/academics/colleges/medicalschoo/departments/pmr/documents/concussion_toolkit/laws/state.htm (last visited June 20, 2019) (on file with *The University of the Pacific Law Review*).

72. *See 1 Assembly Committee on A.E.S.T.I.M. Hearing*, *supra* note 13 (listing prior and related legislation on the topic of football safety, such as AB 379, AB 2108, AB 2800, etc.).

73. CAL. EDUC. CODE § 49475 (enacted by 2014 Stat. Ch. 165).

74. *Id.*

75. Patrick McGreevy & Eric Sondheimer, *New Law Restricts Full-Contact Football Practice for High School Teams*, LA TIMES (July 21, 2014, 8:06 PM), <https://www.latimes.com/sports/highschool/la-sp-high-school-football-20140722-story.html> (on file with *The University of the Pacific Law Review*).

76. *Id.*

2015.⁷⁷

Two years after AB 2127 passed, the Legislature passed AB 2007—also known as the Concussion Management in Youth Sports Act.⁷⁸ AB 2007 expanded AB 2127 and implemented several protocols to educate football coaches, parents, and athletes from twenty-seven different youth sports programs on concussion symptoms.⁷⁹ Mike Chisar, Government Affairs Committee Chair for the California Athletic Trainers' Association, claimed AB 2127 “place[d] California at the forefront of . . . concussion management at the youth sports level.”⁸⁰

Assembly Members Kevin McCarty and Lorena Gonzalez proposed AB 2108 in 2017, which sought to completely ban youth football for all children under the age of twelve.⁸¹ AB 2108 omitted all praise of youth football and aimed to eradicate the problems associated with the sport, such as TBIs.⁸² Despite the radical proposition, Assembly Member McCarty denied the bill was an overreach.⁸³ He maintained that he had “an obligation to protect children from dangerous, long-term injuries.”⁸⁴ In fact, several other states—including New York, Illinois, Maryland, and New Jersey—proposed similar bans during the same year.⁸⁵ However, AB 2108 and all other bills attempting to ban youth football met powerful public backlash and quickly failed.⁸⁶

III. CHAPTER 158

Chapter 158, also known as the California Youth Football Act, implements an extensive safety scheme for all youth tackle football programs in California.⁸⁷ Chapter 158 limits full-contact practices to thirty minutes per practice with no more than two full-contact practices per week.⁸⁸ Additionally, the California Youth Football Act also prohibits *all contact training* during the youth program's

77. *AB 2127 – Concussions and Head Injuries: Full-Contact Football Practices*, KINGSLEY BOGARD LLP (July 22, 2014) <https://kblegal.us/ab-2127-concussions-and-head-injuries-full-contact-football-practices/> (on file with *The University of the Pacific Law Review*).

78. CAL. EDUC. CODE § 49475 (enacted by 2014 Stat. Ch. 165); CAL. HEALTH & SAFETY CODE § 124235 (enacted by 2016 Stat. Ch. 516).

79. HEALTH & SAFETY § 124235 (enacted by 2016 Stat. Ch. 516).

80. *Id.*; *Governor Signs Concussion Management Measure Into Law*, CALIFORNIA ATHLETIC TRAINERS' ASS'N, <https://ca-at.org/governor-signs-concussion-management-measure-into-law/> (last visited June 20, 2019) (on file with *The University of the Pacific Law Review*).

81. A.B. 2108, 2018 Leg., 2017–2018 Reg. Sess. (Cal. 2018) (as introduced on Feb. 8, 2018, but not enacted).

82. *Id.*

83. Kartje, *supra* note 9.

84. *Id.*

85. *Id.*

86. *Id.*

87. *See* CAL. HEALTH & SAFETY CODE § 124240 (enacted by Chapter 158); Assembly Committee, Floor Analysis of SB 1, 2019 Leg., 2019–2020 Sess., at 1 (Cal. 2019).

88. HEALTH & SAFETY § 124240 (enacted by Chapter 158).

off-season.⁸⁹

Chapter 158 also implements various off-the field procedural regulations.⁹⁰ Chapter 158 requires youth football programs to organize divisions by relative weight, age, or a combination of weight and age.⁹¹ Additionally, coaches must conduct a ten-hour minimum of non-contact practice at the beginning of each season to acclimate players to equipment and tackle safety.⁹² Chapter 158 also requires coaches to attend yearly head injury training and complete a nationally-recognized tackling and blocking certificate.⁹³

IV. ANALYSIS

The California Youth Football Alliance hails Chapter 158 as a “nationwide model for best practices in youth football,” aligning California with seven other states regulating the sport.⁹⁴ However, just one year prior to the enactment of Chapter 158, the same alliance condemned the legislature for overstepping its authority in proposing AB 2108.⁹⁵ Parents, coaches, and fans across California united to oppose the bill banning tackle football for all children under the age of 12, quickly killing it.⁹⁶ Despite its milder appearance, Chapter 158 is no different.⁹⁷

California’s most recent attempt at appeasing everyone, in reality, appeases few.⁹⁸ Persons against youth football argue Chapter 158 lacks true initiatives to protect California’s youth.⁹⁹ Conversely, strong supporters of football argue that Chapter 158 exceeds the Legislature’s authority by regulating a parent and coach’s right to choose.¹⁰⁰ While Chapter 158 is an honest effort at keeping youth players safe, it neither exemplifies innovation in concussion management nor follows past precedent allowing private sports entities to self-regulate.¹⁰¹

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. CAL. HEALTH & SAFETY CODE § 124240 (enacted by Chapter 158).

94. *1 Assembly Committee on A.E.S.T.I.M. Hearing, supra* note 13 (statement by California Youth Football Alliance); Cindy Bowen, *Amid Growing Concern Over Head Injuries California Limits Full-Contact Football Practices*, THE WASHINGTON POST (July 22, 2014), <https://www.washingtonpost.com/news/early-lead/wp/2014/07/22/amid-growing-concern-over-head-injuries-california-limits-full-contact-football-practices/?noredirect=on> (on file with *The University of the Pacific Law Review*).

95. Kartje, *supra* note 9.

96. Kartje, *supra* note 9.

97. See Dionne L. Koller, *Putting Public Law into “Private” Sport*, 43 PEPP. L. REV., 681, 682–83 (2016) (on file with *The University of the Pacific Law Review*) (discussing the government’s “hands-off” approach to regulating sports and the new era of regulation via concussion management laws).

98. See generally *id.* at 716–18 (discussing the critical view of concussion management laws).

99. *Id.* at 719.

100. *Id.*; see McGreevy & Sondheimer, *supra* note 75 (discussing Sen. Joel Andersons rejection of similar bill, AB 2127, over concerns of legislative overreach in regulating full-contact practice time).

101. See generally *id.* at 716–18 (discussing the skeptical view of government regulation in sports); see

Section A evaluates California's right to regulate private sports, such as the leagues Chapter 158 would impact.¹⁰² Section B analyzes the United States' precedent of allowing American sports leagues to largely regulate themselves.¹⁰³ Section C analyzes whether this model of autonomy is laudable or even viable.¹⁰⁴

A. California's Power to Regulate Private Sport

The state's police power is the "power to govern—the inherent reserved power of the state to subject individual rights to reasonable regulation for the general welfare."¹⁰⁵ The state may regulate anything that aims to further the peace, safety, morals, health, or welfare of the public.¹⁰⁶ Police power is valid unless the court deems the law "unreasonable, arbitrary or capricious, and has no . . . substantial relation to the public health, safety, morals or general welfare."¹⁰⁷

Chapter 158 is undisputedly a valid exercise of California's police power.¹⁰⁸ Chapter 158 seeks to protect the state's youth football players from the severe and long-term effects of brain injuries.¹⁰⁹ However, despite its legitimate exercise of authority, Chapter 158 trailblazes a relatively new frontier: regulating the private sports industry.¹¹⁰

B. Self-Regulation in American Sports

The government's lack of intervention in the private sports industry draws similar comparisons with other burgeoning industries.¹¹¹ In 2019, the Federal Aviation Administration ("FAA") drew criticism after news broke that the agency delegated virtually unchecked authority to the Boeing Company to certify

McGreevy & Sondheimer, *supra* note 75 (discussing AB 2108 overreach into coaches and parents right to choose and coach).

102. *Infra* Section IV.A.

103. *Infra* Section IV.B.

104. *Infra* Section IV.C.

105. *Massingill v. Dep't. of Food & Agric.*, 102 Cal. App. 4th 498, 504 (2002).

106. *See id.* at 503 (2002) (holding that the air and water are essential to the safe operation of motor vehicle and therefore a law mandating the free issuance of such services at gas stations is a proper exercise of the state's policing powers).

107. *Id.* at 504 (2002).

108. CAL. HEALTH & SAFETY CODE § 124240 (enacted by Chapter 158); *see generally Massingill*, 102 Cal. App. 4th at 504 (2002) (holding that the air and water are essential to the safe operation of motor vehicle and therefore a law mandating the free issuance of such services at gas stations is a proper exercise of the state's policing powers).

109. HEALTH & SAFETY § 124240 (enacted by Chapter 158).

110. *See generally id.* (enacting mandates that regulate the private sports industry, such as youth football leagues, like Pop Warner football); *infra* Section IV.A–D.

111. *See* Brian Naylor, *Boeing's Not Alone in Companies That Government Agencies Have Let Self-Regulate*, NPR (Apr. 2, 2019), <https://www.npr.org/2019/04/02/709203191/boeings-not-alone-in-companies-that-government-agencies-have-let-self-regulate> (on file with *The University of the Pacific Law Review*) (discussing the self-regulation of Boeing aircrafts by the FAA).

its own 737 MAX jets.¹¹² The public has also chastised the Federal Railroad Administration and the Food and Drug Administration for allowing self-regulation within their agencies.¹¹³ While the public criticizes such government entities for their lack of supervision, some scholars argue that agencies simply lack the resources, expertise, or technology to probe fast-evolving industry standards.¹¹⁴

A similar dilemma faces the sports industry.¹¹⁵ American sports fans argue the precedent for allowing private sports associations to self-regulate should continue, while opponents contend that government intervention is key.¹¹⁶ Subsection 1 outlines the history of limited government intervention in American sports.¹¹⁷ Subsection 2 illustrates this same trend in Olympic sports.¹¹⁸ Subsection 3 analyzes the lack of government intervention in interscholastic and intercollegiate sports, and Subsection 4 discusses self-regulation in professional sports.¹¹⁹ Finally, Subsection 5 reviews California's historical deference towards the sports industry within the state.¹²⁰

1. Historic Background of the "Hands-Off" Approach

Unlike the 2019 FAA/Boeing incident, there is currently no government entity responsible for the over 21.5 million children playing team sports in America.¹²¹ Many scholars refer to America's youth and amateur sports structure as the "Wild West."¹²² Despite the nickname, the government has seemingly designed the chaotic nature of American sports.¹²³ The notion that governments should stay out of sports stems from the individualized, private, and voluntary

112. *Id.*; see Emily Stewart, *Delta's CEO says the Boeing 737 Max 8 Scandal Has "Traumatized" the Aviation Industry*, VOX (June 11, 2019), <https://www.vox.com/recode/2019/6/11/18657008/ed-bastian-delta-boeing-737-max-scandal> (on file with *The University of the Pacific Law Review*) (discussing the Boeing Company's, an American corporation that designs, manufactures, and sells airplanes, 737 MAX jet airplane's involvement in two crashes within a span of months).

113. Naylor, *supra* note 111.

114. *Id.*

115. *Infra* Sections IV.A–D.

116. See Koller, *supra* note 97 at 682 (2016) (discussing John McCain's belief that government should involve themselves in sports as little as possible); see McGreevy & Sondheimer, *supra* note 75 (discussing Legislators belief that concussion laws are an overreach by the state).

117. *Infra* Section IV.B.1.

118. *Infra* Section IV.B.2.

119. *Infra* Sections IV.B.3–4.

120. *Infra* Section IV.B.5.

121. Bruce Kelley & Carl Carchia, "Hey Data Data—Swing!," ESPN (July 16, 2013), http://espn.go.com/espn/story/_/id/9469252/hidden-demographics-youth-sports-espn-magazine (on file with *The University of the Pacific Law Review*).

122. *Id.*

123. See Koller, *supra* note 97 at 685–589 (discussing the popular American view that the government should stay out of the business of regulating sports).

nature of the industry.¹²⁴ Other scholars argue that the hands-off approach is due to American's "mystique, nostalgia, and romantic...cultural fixation" on sports that government officials refuse to tinker with.¹²⁵ The government's *laissez-faire* approach extends to amateur, interscholastic, intercollegiate, and even professional sports.¹²⁶

2. Self-Regulation in Olympic Sports

In 1977, President Ford created the Commission on Olympic Sports, encouraging the United States to rely on free enterprise—rather than federal regulations—to help finance amateur athletes.¹²⁷ This non-interventionist concept stemmed from American's distaste towards communist Olympic opponents during the Cold War.¹²⁸ Congress followed, creating the United States Olympic Committee—a federally chartered, non-profit, patriotic corporation—which recruited privately-incorporated National Governing Bodies to support the nation's Olympic athletes.¹²⁹

3. Self-Regulation in Intercollegiate and Interscholastic Sports

The federal government has also granted generous legal sovereignty to intercollegiate and interscholastic sports.¹³⁰ Since its inception in 1906, the National Collegiate Athletic Association ("NCAA") has regulated intercollegiate athletics with "tremendous judicial deference and goodwill."¹³¹ Courts have also denied constitutional protections to interscholastic athletes, maintaining that participation in athletics is a privilege, not a right.¹³² When disputes arise regarding internal sports issues—such as eligibility matters and rules of plays—courts typically defer to the sports bodies to manage themselves.¹³³

124. *Id.* at 689.

125. *See id.* at 685 (quoting James H. Frey & D. Stanley Eitzen, *Sport and Society*, 17 ANN. REV. SOC. 503, 503–04 (1991)).

126. *Id.* at 688.

127. Dionne L. Koller, *How the United States Government Sacrifices Athletes' Constitutional Rights in the Pursuit of National Prestige*, 2008 BYU L. REV. 1465, 1477 (2008).

128. Koller, *supra* note 97 at 689; Koller, *supra* note 127.

129. Koller, *supra* note 97 at 690.

130. *Id.* at 691.

131. *Id.* at 692.

132. *See* *Equity in Athletics, Inc. v. Dep't of Educ.*, 504 F. Supp. 2d 88, 100 (W.D. Va. 2007) (maintaining that the participation in interscholastic athletics was a privilege, thus the Fourteenth Amendment does not protect such a privilege).

133. *See generally* *Crane by Crane v. Ind. High Sch. Athletic Ass'n*, 975 F.2d 1315, 1319–20 (7th Cir. 1992) (holding there was no legal remedy for a student's ineligibility to participate in a sport program due to injury); *see also* *Bloom v. Nat'l Collegiate Athletic Ass'n*, 93 P.3d 621, 627–28 (Colo. App. 2004) (holding that a professional skier's inability to take paid endorsements while playing college football did not entitle him to injunctive relief).

4. Self-Regulation in Professional Sports

Traditionally, courts have been reluctant to substitute their own rationale for that of professional sports leagues.¹³⁴ Courts grant sports league commissioners “best interests of the sport” authority when regulating internal league affairs.¹³⁵ The autonomy sports commissioners enjoy surpasses the deference corporate board members and company presidents possess.¹³⁶

In *Charles O. Finley & Company v. Kuhn*, the Seventh Circuit Court of Appeals held that Bowie Kuhn—Major League Baseball’s (“MLB”) commissioner—denying club trades was not arbitrary or capricious because Kuhn did not violate any MLB rules.¹³⁷ The court observed commissioners have broad discretion to prevent actions that are not in the best interest of the sport, so long as the acts are in good faith.¹³⁸ The Seventh Circuit maintained that a decision by the court on the matter would be “beyond the competence and the jurisdiction of this court to decide.”¹³⁹

5. California’s Deference to Youth Sports Leagues

While the state legislature and courts can regulate youth sports, they are as reluctant as the rest of the nation to impose regulations on the industry.¹⁴⁰ California courts are particularly hesitant when holding sports leagues and voluntary entities liable in negligence suits.¹⁴¹ In *Balthazor v. Little League Baseball, Inc.*, a pitch injured a minor, and the family sued the baseball organization for not providing players with helmets equipped with face guards.¹⁴² The court held that, under the primary assumption of risk doctrine, a sports league only has a duty not to increase the risks inherent to the sport—not a duty to decrease them.¹⁴³ The court asserted that mandating organizations to provide equipment to avoid injuries inherent to the game would have “enormous social and economic consequences” on the sport.¹⁴⁴

134. Matthew J. Mitten, *How Is the Integrity of Sport Protected in the United States*, 19 TEX. REV. ENT. & SPORTS L. 89, 103 (2019) (on file with *The University of the Pacific Law Review*).

135. *Id.*

136. *Id.* at 104.

137. *Charles O. Finley Co., Inc. v. Kuhn*, 569 F.2d 527, 534 (7th Cir. 1978).

138. *Id.* at 539

139. *Id.*

140. See generally *Balthazor v. Little League Baseball, Inc.*, 62 Cal. App. 4th 47, 48–49 (1998) (denying relief to youth baseball player after a baseball hit him in face during a youth game).

141. See generally *id.* (1998) (denying relief to youth baseball player after a baseball hit him in face during a youth game).

142. *Id.* at 49 (1998).

143. *Id.*

144. *Id.* at 52 (1998).

C. Analysis of Non-Interventionist Model in Sports: The Pros and Cons

While the United States historically allowed the sports industry to primarily regulate itself, individuals often question the sensibility of such a structure.¹⁴⁵ This section analyzes the pros and cons of America's current autonomous sports industry and explores the viability of such a model in the future.¹⁴⁶ Section 1 analyzes the argument that concussion management laws are ineffective within the United States.¹⁴⁷ Section 2 discusses how sports leagues already predominantly regulate themselves without the help of the Legislature.¹⁴⁸ Section 3 outlines how the increasing professionalization of youth sports demands uniform regulation of programs—like Pop Warner—to protect the state's youths.¹⁴⁹

1. Pros: Concussion Management Laws are Ineffective

Critics of sports regulations argue Chapter 158, and other state mandates, are ineffective in preventing brain injuries from occurring.¹⁵⁰ While Chapter 158 and various other state laws address concussion management after receipt of injury, no one law seeks absolute preemption.¹⁵¹ Most laws, such as Washington's Lystedt Law and California's own Concussion Management in Youth Sports Act, mandate return-to-play protocols—not substantive changes to the game.¹⁵² Dan Comstock, professor at Ohio State University's Center for Injury Research and Policy, criticized the states' newly enacted laws.¹⁵³ "Not a single piece of any of these laws is going to keep a kid from getting a concussion in the first place," exclaimed Comstock.¹⁵⁴ Legislatures must mandate changes to the substance of the game—not just to the protocols after the fact—to be effective at preventing concussions.¹⁵⁵

Additionally, critics argue concussion laws may actually have an inverse effect on concussion safety.¹⁵⁶ Because concussion laws lack the ability to

145. *Infra* Section IV.C.3.

146. *Infra* Sections IV.C.1–3.

147. *Infra* Section IV.C.1

148. *Infra* Section IV.C.2.

149. *Infra* Section IV.C.3.

150. Koller, *supra* note 97 at 716.

151. See Maggie Clark, *Sports Concussion Laws Are a Headache for States*, GOVERNING (July 20, 2012), <http://www.governing.com/news/state/mct-sports-concussion-bills-headache-for-state-lawmakers.html> (on file with *The University of the Pacific Law Review*) (discussing the lack of legislative efforts addressing concussion prevention, but rather only management).

152. *Get a Heads Up on Concussion in Sports Policies*, CTR. FOR DISEASE CONTROL & PREVENTION, *supra* note 67; CAL. HEALTH & SAFETY CODE § 124235 (enacted by 2016 Stat. Ch. 516).

153. Clark, *supra* note 151.

154. *Id.*

155. See generally *id.* (discussing the inability of concussion management laws to prevent concussions).

156. Koller, *supra* note 97 at 717–18.

prevent brain trauma, critics claim that concussion laws may produce a false sense of safety among parents and players.¹⁵⁷ In return, this distortion may result in additional injuries and concussions among players.¹⁵⁸ However, persons in favor of concussion laws argue they achieve their primary objective—bringing awareness to concussions—and thus are effective.¹⁵⁹

2. Pros: Sports Leagues Already Regulate Themselves

Independent of government intervention, private leagues are already taking initiatives to make their sport safer.¹⁶⁰ Pop Warner spearheaded the change in 2012 by limiting full-contact drills to no more than twenty-five percent of practice time.¹⁶¹ USA Football, the umbrella organization to all amateur football leagues—includes Pop Warner—implemented the “Heads Up Football” program across all fifty states.¹⁶² The mandatory program integrated smart tackling techniques, equipment fitting, and coaching certification into youth and high school leagues—including Pop Warner.¹⁶³ In May 2016, Pop Warner announced that it would eliminate kickoffs—a method in football often responsible for concussions—in its three youngest divisions.¹⁶⁴ In addition to the changes at the youth level, the NFL has also implemented changes to make professional football safer.¹⁶⁵ Among various reforms, the NFL outlawed the three-man wedge block during kick-offs and any intentional helmet-to-helmet contact.¹⁶⁶ Critics of government intervention argue these internal changes are more effective in preventing concussions among players than government regulations.¹⁶⁷

157. *Id.* at 718.

158. *Id.*

159. Sungwon Kim and Denial P. Connaughton, *Legislative Efforts to Reduce Concussions in Youth Sports: An Analysis of State Concussion Statutes*, J. LEG. ASPECTS OF SPORTS 27, 162–186 (2017) (on file with *The University of the Pacific Law Review*).

160. See Jill Martin, *Pop Warner Eliminates Kickoffs*, CNN (May 12, 2016, 6:44 PM), <http://edition.cnn.com/2016/05/12/sport/pop-warner-football-eliminates-kickoffs/> (on file with *The University of the Pacific Law Review*) (reporting on Pop Warner’s policy banning kickoffs for its three youngest divisions).

161. *Id.*

162. Moisse, *supra* note 33.

163. *Heads Up Football for Youth Leagues and Clubs*, USA FOOTBALL, <https://usafootball.com/programs/heads-up-football/youth/> (last visited Aug. 10, 2019) (on file with *The University of the Pacific Law Review*).

164. Martin, *supra* note 160.

165. See Kevin Seifert, *What’s Really Changed in the NFL’s ‘Call to Action’ On Concussions*, ESPN (Sep. 21, 2018), https://www.espn.com/nfl/story/_id/24743994/really-changed-nfl-call-action-concussions (on file with *The University of the Pacific Law Review*) (discussing the various reforms that the NFL has implemented since their 2018 “call to action” on concussions).

166. See *id.* (defining a “wedge block” as a strategy used during a kickoff when three players link shoulder-to-shoulder and advance to block the cover team).

167. Koller, *supra* note 97 at 718.

3 Cons: The "Professionalization" of Youth Sports

Studies show that seventy percent of children who play youth sports quit by age thirteen due to "unpleasant sports experiences."¹⁶⁸ Scholars argue this dramatic drop in participation is due to the growing "professionalization" of youth sports in America.¹⁶⁹ With non-profit youth sports programs earning over \$5 billion in revenue each year, individuals argue Pop Warner and other youth leagues are now "big business."¹⁷⁰

Those opposing self-regulation of youth sports maintain the Legislature must draw a line between professional sports and youth and interscholastic sports.¹⁷¹ With youth football feeder programs becoming increasingly popular, competition and rivalry have replaced core values such as teamwork and personal growth.¹⁷² A statistic from the Center for Disease Control reveals medical professionals treat over 3.5 million children under the age of fourteen for sports-related injuries per year.¹⁷³ Proponents of government regulation argue that this influx in injuries summons a need for more federal and state intervention throughout youth sports.¹⁷⁴

D. The Future of Youth Sports in America: Continued Changes to Come

With Chapter 158 and various new laws taking effect, actors within the youth football sphere wonder what the future holds for the sport.¹⁷⁵ Despite sports leagues' previous autonomy, state and federal courts are beginning to hold them more accountable in concussion-related negligence suits.¹⁷⁶ Grieving mothers, Kimberly Archie and Jo Cornell, filed a lawsuit against the Pop Warner football league in 2016 after the CTE-related deaths of their sons, Paul Bright Jr. and Tyler Cornell, respectively.¹⁷⁷ In a landmark decision, United States District Court judge Paul Gutierrez ruled that the negligence suit would continue on to

168. Jordan D. Cox, *The Professionalization of Youth Sports in America*, BAYLOR DEP'T. OF AMERICAN STUDIES, 2 (Aug. 2011), https://baylor-ir.tdl.org/bitstream/handle/2104/8204/Jordan_Cox_masters.pdf?sequence=1&isAllowed=y.

169. *Id.*

170. Kelley & Carchia, *supra* note 121.

171. Koller, *supra* note 97 at 718.

172. James R. Andrews, *Why are There So Many Injuries to Our Young Athletes? Professionalization and Specialization in Youth Sports*, 40 BALTIMORE L. REV. 575, 577 (2010) (on file with *The University of the Pacific Law Review*).

173. *Id.* at 576.

174. *Id.* at 580–81.

175. Cook, *supra* note 47.

176. Ryan Kartje, *Pop Warner Facing 2020 Trial in Lawsuit Alleging Negligence, Wrongful Death*, THE OC REGISTER (July 26, 2018), <https://www.oregister.com/2018/07/26/pop-warner-facing-2020-trial-in-lawsuit-alleging-negligence-wrongful-death/> (on file with *The University of the Pacific Law Review*).

177. *Id.*

trial.¹⁷⁸ The trial, set for January 2020, will mark Pop Warner's first since the league's inception in 1929.¹⁷⁹ Despite the case's uncertain verdict, it signals a new movement towards holding sports leagues more accountable for the safety of its players.¹⁸⁰

In addition to courts holding sports leagues more responsible, California's Legislature has also proposed various measures that would impose greater regulations on leagues.¹⁸¹ Discussed previously, AB 2108 would have banned youth football for all players under the age of 12.¹⁸² Although the measure failed, its occurrence displays a slow but growing crusade against youth football in California.¹⁸³ Co-authors of AB 2108, McCarty and Gonzalez, have pledged their continued commitment to reforming youth football within the state.¹⁸⁴

While past regulations have predominantly dealt with protocols off the field, more recent bills—such as AB 2108, AB 2007, and Chapter 158—mandate substantive changes to the game.¹⁸⁵ These changes include restricting full-contact practice time and complete constraints on the ability to play the game based on age.¹⁸⁶ The Legislature's increased comfort in regulating the substance of youth and interscholastic football displays another growing trend: preventative regulations that may end with youth football's complete demise.¹⁸⁷

V. CONCLUSION

Stories like James Ransom's have kick-started a massive movement towards the reformation of youth football within California.¹⁸⁸ Chapter 158 continues this reform, implementing numerous regulations regarding concussion management

178. *Id.*

179. *Id.*

180. *See generally id.* (discussing the recent and unprecedented lawsuit against Pop Warner for negligence).

181. *See 1 Assembly Committee on A.E.S.T.I.M. Hearing, supra* note 13 (listing prior and related legislation on the topic of football safety, such as AB 379, AB 2108, AB 2800, etc.).

182. A.B. 2108, 2018 Leg., 2017–2018 Reg. Sess. (Cal. 2018) (as introduced on Feb. 8, 2018, but not enacted).

183. *See id.* (proposing the prohibition of tackle football for all children under the age of 12).

184. Kartje, *supra* note 9.

185. *See 1 Assembly Committee on A.E.S.T.I.M. Hearing, supra* note 13 (listing prior and related legislation on the topic of football safety, such as AB 379, AB 2108, AB 2800, etc.).

186. CAL. HEALTH & SAFETY CODE § 124240 (enacted by Chapter 158); CAL. HEALTH & SAFETY CODE § 124235 (enacted by 2016 Stat. Ch. 516); A.B. 2108, 2018 Leg., 2017–2018 Reg. Sess. (Cal. 2018) (as introduced on Feb. 8, 2018, but not enacted).

187. *See generally* A.B. 2108, 2018 Leg., 2017–2018 Reg. Sess. (Cal. 2018) (as introduced on Feb. 8, 2018, but not enacted) (proposing the complete ban of youth football for children under the age of 12); *see also* Kartje, *supra* note 9 (reporting on legislator McCarty and Gonzalez's plan to continue reforming football despite the failure of their co-authored bill, AB 2108).

188. *See* Kartje, *supra* note 176 (discussing the recent lawsuit going to trial in 2020 against the Pop Warner football league).

and safety.¹⁸⁹ Despite its good intentions, Chapter 158 fails to enact any groundbreaking protocols and breaks precedent by regulating the private sports industry.¹⁹⁰

Chapter 158 disrupts the government's traditional grant of sports' autonomy and symbolizes the growing trend towards government regulation of sports.¹⁹¹ While many individuals welcome the reform, ardent football fans argue concussion laws are ineffective and sports leagues are better equipped to regulate themselves.¹⁹² However, as the Boeing catastrophe displayed, unregulated industries can often foster unsafe environments.¹⁹³ Supporters of concussion laws argue that the growing professionalization of youth sports requires regulatory oversight.¹⁹⁴

Attempting to walk the line between both sides, Chapter 158 falls short.¹⁹⁵ Its regulations lack substantive changes that prevent concussions, while still managing to disrupt previous sports league deference.¹⁹⁶ Despite its tepid impact, Chapter 158 signifies the beginning of a long battle for youth football's survival.¹⁹⁷ With courts and legislatures more willing to hold football leagues accountable for failing to protect its players, the future of football hangs in the balance.¹⁹⁸ Despite Chapter 158's practical shortcomings, it begins an important dialogue on the balances between private regulations and public welfare.¹⁹⁹ Regardless of whether concussion safety or youth football prevails, in the end, one thing is for sure: James Ransom's death was not in vain.²⁰⁰

189. CAL. HEALTH & SAFETY CODE § 124240 (enacted by Chapter 158).

190. *Infra* Sections IV.A–B.

191. *See* Koller, *supra* note 97 at 716–18 (discussing the government's historical precedent of allowing the sports industry to regulate itself and the impact of concussion laws on this standard).

192. *Id.* at 719.

193. *See* Naylor, *supra* note 111 (discussing the self-regulation of Boeing aircrafts by the FAA).

194. Andrews, *supra* note 172 at 580-81.

195. *See generally* Koller, *supra* note 97 at 716–18 (discussing the critical view of concussion management laws).

196. *See generally id.* (discussing the skeptical view of government regulation in sports).

197. *See generally* A.B. 2108, 2018 Leg., 2017–2018 Reg. Sess. (Cal. 2018) (as introduced on Feb. 8, 2018, but not enacted) (proposing the complete ban of youth football for children under the age of 12); *see also* Kartje, *supra* note 9 (reporting on legislator McCarty and Gonzalez's plan to continue reforming football despite the failure of their co-authored bill, AB 2108).

198. *See generally* A.B. 2108, 2018 Leg., 2017–2018 Reg. Sess. (Cal. 2018) (as introduced on Feb. 8, 2018, but not enacted) (proposing the complete ban of youth football for children under the age of 12); *see also* Kartje, *supra* note 9 (reporting on legislator McCarty and Gonzalez's plan to continue reforming football despite the failure of their co-authored bill, AB 2108).

199. CAL. HEALTH & SAFETY CODE § 124240 (enacted by Chapter 158).

200. *About James Henry Ransom*, JAMES HENRY RANSOM FOUND., *supra* note 1.