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THROWING THE BOOK AT IRRESPONSIBLE COACHES: THE NEED FOR CONSISTENT PITCH LIMIT LAWS IN AMATEUR SPORTS

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I. INTRODUCTION

During the 2017 National Collegiate Athletic Association ("NCAA") Tallahassee Regionals, first-seeded Florida State University ("FSU") found itself in quite a bind. After losing the first game of the double-elimination tournament to fourth-seeded Tennessee Technological University ("Tennessee Tech") in the Friday night opening round, FSU was faced with the prospect of having to win four straight games over the next three days in order to advance to the next round of NCAA College World Series.[1] The very next day, longtime FSU head coach Mike Martin turned to his ace, left-hander Tyler Holton, against in-state rival University of Central Florida ("UCF").[2] Holton, who had started and played all nine innings in right field in the previous night's loss to Tennessee Tech, dazzled UCF to the tune of a complete game six-hitter, giving up just one run while striking out thirteen with zero walks while throwing 129 pitches.[3] Holton then moved back to right field for both games of a doubleheader the next day

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1. Curt Weiler, *Tennessee Tech Stuns Florida State in Tallahassee Regional Opener*, ORLANDO SENTINEL (June 3, 2017, 12:12 AM), http://www.orlandosentinel.com/sports/florida-state-seminoles/os-sp-fsu-tennessee-tech-20170603-story.html.

2. FLA. STATE BASEBALL, 2017 FLORIDA STATE BASEBALL: INDIVIDUAL GAME-BY-GAME FOR FLORIDA STATE (Aug. 28, 2017), http://seminolesweb-8b76.kxcdn.com/wp-content/uploads/2016/11/Holton2017.pdf; *Tyler Holton*, SEMINOLES, https://seminoles.com/sports/baseball/roster/tyler-holton (last updated July 2018).

3. FLA. STATE BASEBALL, *supra* note 2; *Tyler Holton*, *supra* note 2.

and for the regional finals that Monday night as FSU swept its way through the rest of the round and into the Super Regionals.[4]

The next season, Holton was on the mound for FSU's opening day game against Xavier University.[5] Over the offseason, Holton, now a redshirt junior, had been gaining serious buzz as a potential high draft pick in the upcoming 2018 Major League Baseball ("MLB") Amateur Player Draft, having been named the 129th best draft prospect prior to the season by *Baseball America*[6] and to several All-American Teams as one of the best left-handed pitchers in college baseball.[7] In this first start of the new season, however, Holton lasted just 4.2 innings before leaving the game with elbow discomfort.[8] Holton was later diagnosed with a torn ulnar collateral ligament ("UCL") in his throwing elbow and underwent Tommy John surgery, missing the entirety of the 2018

4. FLA. STATE BASEBALL, *supra* note 2; *Tyler Holton*, *supra* note 2. The rise of "two-way players" within amateur baseball—as incentivized by these players getting notoriety within the Major League Baseball ("MLB") draft—is another potential problem due to the additional wear-and-tear suffered by these players by pitching one day and playing in the field the next day. *See* Lindsay Berra, *Will 2-Way Star Ohtani Have Greater Injury Risk?*, MLB (Dec. 7, 2017), https://www.mlb.com/news/is-2-way-star-shohei-ohtani-an-injury-risk/c-263053072; *see also* Noah Frank, *Is Baseball's Two-Way Player Revolution Upon Us?*, WTOP (July 28, 2017), https://wtop.com/mlb/2017/07/is-baseballs-two-way-player-revolution-upon-us (noting a rise in two-way players selected in the high rounds of the MLB draft). Similarly, the use of position players to "eat" innings in blowouts is a growing trend within MLB—the league set a record with thirty-two position players' appearances in 2017 and had already broken that record in 2018 by July 24. Mike Axisa, *Why Position Players are Pitching at a Record Pace so Far During the 2018 MLB Season*, CBS SPORTS (July 24, 2018), https://www.cbssports.com/mlb/news/why-position-players-are-pitching-at-a-record-pace-so-far-during-the-2018-mlb-season; *see also* Chris Thompson, *Too Many Position Players Are Pitching Now*, DEADSPIN (July 24, 2018, 7:57 PM), https://deadspin.com/too-many-position-players-are-pitching-now-1827848833. This trend could translate to amateur baseball as well, leading to additional risk for players who are not used to that type of activity.

5. Wayne E. McGahee III, *Florida State Ace Tyler Holton Out for the Season*, TALLAHASSEE DEMOCRAT (Feb. 21, 2018, 2:26 PM), https://www.tallahassee.com/story/sports/college/fsu/baseball/2018/02/21/florida-state-ace-tyler-holton-out-season/356374002.

6. Carlos Collazo, *2018 Top 200 MLB Draft Prospects*, BASEBALL AM. (Jan. 12, 2018), https://www.baseballamerica.com/stories/2018-top-200-mlb-draft-prospects; *see also* Brian Foley, *2018 CBD Top 100 Countdown: 41. Tyler Holton (Florida State)*, C. BASEBALL DAILY (Dec. 22, 2017), http://www.collegebaseballdaily.com/2017/12/22/2018-cbd-top-100-countdown-41-tyler-holton-florida-state (naming Holton as the forty-first best college baseball player in the country prior to the 2018 season).

7. Kate Preusser, *2018 MLB Draft-Eligible Prospects: The ACC (FSU, Louisville, Clemson)*, LOOKOUT LANDING (Feb. 26, 2018, 12:00 PM), https://www.lookoutlanding.com/2018/2/26/16980796/2018-mlb-draft-eligible-prospects-the-acc-fsu-louisville-clemson. Holton had been draft-eligible as a redshirt sophomore following the 2017 season, but was not taken until the thirty-fifth round, presumably due to a stated preference to return to school for his junior season. Andrew Miller, *Nine FSU Baseball Players Selected in the 2017 MLB Draft*, TOMAHAWK NATION (June 14, 2017, 6:21 PM), https://www.tomahawknation.com/2017/6/13/15794346/florida-state-baseball-players-selected-2017-mlb-draft-drafted-taylor-walls-dylan-busby-cws-omaha.

8. McGahee III, *supra* note 5.

season.[9] Partially as a result of this injury, Holton was not drafted until the ninth round—279th overall—of the 2018 MLB Draft and later signed with the Diamondbacks for a $144,300 signing bonus—far less than the $422,100 slot value that he could have received had he been taken in accordance with his early 2018 ranking by *Baseball America*.[10]

Just a few months later, FSU and Coach Mike Martin ran into further scrutiny regarding the use of their pitchers when Coach Martin had freshman left-hander Drew Parrish come back in for the ninth inning in a regional game after throwing 109 pitches and sitting for a two-and-a-half-hour rain delay in the eighth inning.[11] But questionable pitcher use is not confined to Florida State. In game three of the 2018 College World Series Finals, Oregon State freshman pitcher Kevin Abel threw a 129-pitch complete game shutout to clinch the national championship for his Beavers just one day after throwing twenty-three pitches in an inning of relief in game two of the series.[12] In 2014, Washington state high school pitcher Dylan Fosnacht was asked by his coach to throw 194 pitches in fourteen innings pitched during a district tournament game.[13]

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9. *Id.* For an explanation on Tommy John surgery (a colloquial name for elbow ligament reconstruction surgery), see *infra* note 32.

10. Fletcher Keel, *FSU's Holton Sighing with Arizona Diamondbacks*, WCTV (June 7, 2018, 3:10 AM), http://www.wctv.tv/content/news/Holton-signing-with-Arizona-Diamondbacks-484727021.html; Ariya Massoudi (@AriyaMassoudi), TWITTER (June 23, 2018, 3:27 PM), https://twitter.com/ariyamassoudi/status/1010605213911314433?s=12; *see also* Jim Callis, *2018 Draft Bonus Pools, Pick Values*, MLB (May 27, 2018), https://www.mlb.com/news/2018-mlb-draft-bonus-pools-pick-values/c-269930084. Despite his unquestioned status as the team's ace prior to the season, Holton was the third FSU pitcher taken in the 2018 draft. Steven McCartney, *Raleigh Leads 7 Noles Taken in MLB Draft*, SEMINOLES (June 6, 2018), http://seminoles.com/raleigh-leads-7-noles-taken-in-mlb-draft. The two pitchers selected before Holton, Cole Sands and Andrew Karp, received signing bonuses of $600,000 and $200,000, respectively. Massoudi, *supra*.

11. John Harper, *Florida State Coach Mike Martin Should be Fired for Recklessly Bringing Ace Back After Two-and-a-Half-Hour Rain Delay*, N.Y. DAILY NEWS (June 4, 2018, 2:50 PM), http://www.nydailynews.com/sports/baseball/ny-sports-florida-state-harper-20180604-story.html. Parrish, who was throwing a shutout prior to the rain delay, surrendered two walks in the ninth inning followed by a walk-off home run that eliminated FSU from the regional and ended their season. Curt Weiler, *Drew Parrish, Florida State Walked Off On, Swept Out of Tallahassee Regional*, TALLAHASSEE DEMOCRAT (June 2, 2018, 7:39 PM), https://www.tallahassee.com/story/sports/college/fsu/baseball/2018/06/02/drew-parrish-florida-state-fsu-tallahassee-regional-ncaa-tournament-mike-martin-sweep/666224002.

12. Matt Eppers, *Freshman Kevin Abel Pitches Oregon State Past Arkansas to Win College World Series*, USA TODAY (June 28, 2018, 11:36 PM), https://www.usatoday.com/story/sports/college/baseball/2018/06/28/oregon-state-beats-arkansas-college-world-series-decisive-game-3/744310002. About a week earlier, Abel had thrown seventeen pitches prior to a four-and-a-half-hour rain delay, and then came back out when the game restarted to throw another forty-one pitches in Oregon State's 14-5 win over Washington. Mike Lopresti, *Oregon State's Abel Handles Weather Delay, Elimination Game with Poise*, NCAA (June 19, 2018), https://www.ncaa.com/news/baseball/article/2018-06-19/oregon-state-freshman-kevin-abel-weathers-four-hour-delay-steady.

13. Matt Bonesteel, *High School Pitcher is Totally Fine with Throwing 194 Pitches Over 14*

In fact, pitcher overuse is not even limited to baseball; softball pitchers are dramatically overworked even more so than baseball pitchers, in some instances leading to injuries even more severe than those for baseball players.[14]

While instances like these are often framed as "heroic" or "gutsy" efforts,[15] careless pitcher management has a serious effect on the arms of these young pitchers, oftentimes hurting their careers and costing them money both now and in the future.[16] According to medical research, overuse is generally seen as the most common cause of the ligament damage that leads to Tommy John surgery.[17] A recent study by researchers at the Ohio State University found that more than fifty percent of high school pitchers experienced pain in their throwing arms during a season.[18] However, within amateur baseball and softball there is

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Innings, WASH. POST (May 15, 2014), https://www.washingtonpost.com/news/early-lead/wp/2014/05/15/high-school-pitcher-is-totally-fine-with-throwing-194-pitches-over-14-innings/?utm_term=.adfa39d85395. Fosnacht's coach, Jerry Striegel, later told reporters he regretted allowing Fosnacht to throw so many pitches. Barry Petchesky, *High School Coach Now Regrets Letting His Pitcher Throw 194 Pitches*, DEADSPIN (May 15, 2014, 1:18 PM), https://deadspin.com/high-school-coach-now-regrets-letting-his-pitcher-throw-1576899798.

14. *See* Aaron Lear & Niraj Patel, *Softball Pitching and Injury*, 15 CURRENT SPORTS MED. REP. 336, 337 (2016); *see also* Kyle Newman, *Should Pitching Limits Be Implemented in High School Softball? Divided Stakeholders Weigh In*, DENV. POST (Oct. 19, 2017, 8:03 PM), https://www.denverpost.com/2017/10/19/pitching-limits-high-school-softball; Kara Yorio, *Lack of Softball Pitching Limits Can Lead to Injuries*, WASH. TIMES (Nov. 1, 2015), https://www.washingtontimes.com/news/2015/nov/1/lack-of-softball-pitching-limits-can-lead-to-injur; Mike Zacchio, *Softball Pitchers Could Face Arm Injury Due to Overuse*, LOHUD (May 31, 2015, 11:32 PM), https://www.lohud.com/story/sports/high-school/softball/2015/05/31/softball-pitchers-face-injury-due-arm-overuse/28289289; *infra* Part III.D.

15. *See, e.g.*, Christian Shimabuku, *College World Series 2018: Oregon State's Kevin Abel Delivers All-Time Pitching Performance*, SPORTING NEWS (June 28, 2018, 11:32 PM), http://www.sportingnews.com/mlb/news/kevin-abel-shutout-college-world-series-2018-oregon-state-arkansas-score-result-baseball/1v8992z5i5ocy1e0fwfrr2o5gv. *But see* Larry Brown, *Oregon State's Use of Freshman Pitcher in CWS was Borderline Abuse*, LARRY BROWN SPORTS (June 28, 2018), http://larrybrownsports.com/cbaseball/oregon-state-kevin-abel-pat-casey-abuse/451851; Matt Clapp, *Oregon State Freshman Kevin Abel Throws Approximately a Billion Pitches to Lead Beavers to CWS Title*, COMEBACK (June 28, 2018), http://thecomeback.com/ncaa/oregon-state-freshman-kevin-abel-throws-approximately-a-billion-pitches-to-lead-beavers-to-cws-title.html (criticizing Oregon State for their "extreme, and frankly abusive" usage of Abel during the tournament).

16. *See* Samuel J. Olsen II et al., *Risk Factors for Shoulder and Elbow Injuries in Adolescent Baseball Pitchers*, 34 AM. J. SPORTS MED. 905, 905-06 (2006); Kylie Urban, *Excessive Throwing Puts Baseball Players at Risk*, MICH. HEALTH LAB BLOG (Mar. 31, 2017, 7:00 AM), https://labblog.uofmhealth.org/industry-dx/excessive-throwing-puts-baseball-players-at-risk. *See generally* Glenn S. Fleisig et al., *Risk of Serious Injury for Young Baseball Pitchers: A 10-Year Prospective Study*, 39 AM. J. SPORTS MED. 253 (2011) (finding that pitching more than 100 innings in a year significantly increases risk of injury).

17. Chris Smith, *Bad Technique, Overwork Both Harmful for Young Pitchers*, GLOUCESTER TIMES (Nov. 29, 2011), http://www.gloucestertimes.com/sports/bad-technique-overwork-both-harmful-for-young-pitchers/article_c77cb06c-5efa-5250-a81d-54d1a77f09e1.html.

18. Tim Whelan, Jr., *Study: 50 Percent of High School Pitchers Report Pain in Throwing*

a crisis of motivation that can often lead to pitcher misuse; the "win-now" philosophy exhibited by many amateur coaches and the short timeframe that amateur pitchers stay with their teams before moving up the ranks often leads to little incentive for coaches to be careful with their young pitchers' arms.[19] While a growing chorus of the baseball industry and media—led by ESPN contributor and former Toronto Blue Jays scouting director Keith Law—has derided the practice, little has changed.[20]

There have been some efforts to assign liability for negligent and reckless overuse injuries, but these lawsuits have rarely worked out. For example, former Mississippi State University pitcher Forrest Moore sued his school, head coach John Cohen, and athletic director Mike Nemeth in 2011 claiming that overuse and negligence by the coaching staff contributed to an elbow injury.[21] The lawsuit claims Cohen tried to

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Arm, USA TODAY (June 7, 2018), http://usatodayhss.com/2018/study-50-percent-of-high-school-pitchers-report-pain-in-throwing-arm.

19. *See* Jeff Lasky, *Broken From Baseball: The Rise in Youth Baseball Injuries*, ABC 10NEWS (June 14, 2016, 4:40 AM), https://www.10news.com/longform/broken-from-baseball-the-rise-in-youth-baseball-injuries; Jack Perconte, *High School Baseball Coaching Strategies [Interview with Kyle Nelson]*, BASEBALL COACHING TIPS (Jan. 19, 2017), https://baseballcoaching.tips/high-school-baseball-strategies. While this Article focuses on amateur baseball in the United States, this tendency is not limited to American amateur baseball; pitcher overuse is extremely prevalent in Japanese amateur baseball to an even greater extent than in the United States. *See* Makoto Kosaka, *The Dark Side of the Koshien Dream*, JAPAN TIMES (Aug. 4, 2014, 9:32 AM), https://www.japantimes.co.jp/community/2014/08/04/voices/dark-side-koshien-dream; Jeff Passan, *A Teen Sensation, Insane Pitch Counts, a Nation's Obsession: Yes, Japan's Summer Koshien is Back*, YAHOO! SPORTS (Aug. 13, 2013), https://sports.yahoo.com/news/a-teen-sensation--insane-pitch-counts--a-nation-s-obsession-%E2%80%A6-yes--japan-s-summer-koshien-is-back-13322400 3.html; *see also* Ryan Gorman, *Japanese High School Pitcher Throws 709-Pitch, 50 Inning Shutout to Win Tournament Semi-Final*, AOL (Aug. 31, 2014, 3:26 PM), https://www.aol.com/article/2014/08/31/japanese-high-school-pitcher-throws-709-pitch-50-inning-shutout/20955045 (detailing a Japanese high school baseball game where the two pitchers each threw all fifty innings of the game, combining for 1398 pitches).

20. *See* KEITH LAW, *About the Author* to SMART BASEBALL & 20-21 (2017); *see also, e.g.*, Jeremy Cluff, *Arizona Wildcats Baseball Slammed Over Pitchers Use*, AZCENTRAL SPORTS (June 21, 2016, 12:04 PM), https://www.azcentral.com/story/sports/heat-index/2016/06/21/arizona-wildcats-baseball-slammed-over-pitchers-use/86182326; Keith Law, *Did Texas, BC Coaches Put Pitchers at Risk?*, ESPN (May 31, 2009), http://www.espn.com/blog/keith-law/insider/post/_/id/624; Keith Law (@keithlaw), TWITTER (Mar. 11, 2016, 4:14 PM), https://twitter.com/keithlaw/status/708446093051179008 (noting that Anthony Kay, a pitcher for the University of Connecticut, faced thirty-six batters in a single game); Keith Law (@keithlaw), TWITTER (May 4, 2018, 1:43 PM), https://twitter.com/keithlaw/status/992505137838153731 (noting that a twenty-two-year-old pitcher for SUNY New Paltz threw 155 pitches in a single night); John Royal, *ESPN's Keith Law's Goes for the Jugular, Calls Rice's Wayne Graham a Pitcher Killer*, HOUS. PRESS (May 13, 2013, 7:00 AM), http://www.houstonpress.com/news/espns-keith-laws-goes-for-the-jugular-calls-rices-wayne-graham-a-pitcher-killer-6733781.

21. Complaint at 16-17, Moore v. Miss. State Univ. (Miss. Cir. Ct. May 11, 2011) (No. 2011-0248-CVC); *see also* Matt Stevens, *The Point & Counterpoint of the Cohen/Forrest Moore Civil Suit*, DISPATCH (Dec. 7, 2011, 9:35 AM), http://www.cdispatch.com/msusports/

"prevent Mr. Moore the opportunity to play baseball" at Mississippi State University and that the coach broke NCAA rules by exceeding practice time limits.[22]

Despite the prevalence of criticism and medical studies showing the physical dangers of overuse, little legal research exists regarding the potential for liability for amateur baseball and softball coaches for overworking pitchers.[23] As such, this Article reviews the possibility of legal liability for amateur coaches and their employers who subject their pitchers to arm injuries and reviews the potential liability for organizations that fail to create adequate regulations to protect young athletes within their purview.[24] Part II of this Article provides a review of medical literature surrounding overworking young pitchers and shows the dangers of overuse for amateur athletes.[25] Part III will give an overview of the current state of pitch count regulations within amateur baseball at the Little League, High School, and Collegiate levels.[26] Part IV then explores the possibility of legal liability for overworking young pitchers.[27] Finally, Part V proposes new uniform pitch limit regulations that take into account best practices from current organizations and recommendations by medical researchers to best protect amateur

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article.asp?aid=14391.

22. Complaint, *supra* note 21, at 11; *see also* Response to Mississippi State University's First Motion for Summary Judgement at 1, *Moore* (Nov. 21, 2011) (No. 2011-0248-CVC). According to the case docket, as of June 28, 2018, Moore's case was awaiting an order on a motion for summary judgment by Mississippi State University ("MSU"). The last case update was a notice to the court on May 3, 2016, stating that mediation had failed. Letter from Bobby L. Dallas, Mediator, to Hon. Lee S. Coleman, Circuit Judge, Oktibbeha County (Apr. 29, 2016) (on file with author).

23. *But see* Marc J. Dobberstein, *"Give Me the Ball, Coach": A Scouting Report on the Liability of High Schools and Coaches for Injuries to High School Pitchers' Arms*, 14 SPORTS LAW. J. 49 *passim* (2007). While this research note covers many of the same topics as the current Article—albeit with a more limited focus on high school baseball—this Article will provide a more current perspective on the issue with updates on pitch count regulations since that article's publication. *See* James R. Andrews, *Why Are There So Many Injuries to Our Young Athletes? Professionalization and Specialization in Youth Sport*, 40 U. BALT. L. REV. 575, 581-82 (2011) (delivering a keynote address at an amateur sports law conference at the University of Baltimore School of Law); Timothy B. Fitzgerald, *The "Inherent Risk" Doctrine, Amateur Coaching Negligence, and the Goal of Loss Avoidance*, 99 NW. U. L. REV. 889, 915-16 (2005) (arguing that careless coaching decisions by amateur baseball coaches should not be covered under the inherent risk doctrine).

24. *See infra* Part IV. *See generally* Sam C. Ehrlich, *Gratuitous Promises: Overseeing Athletic Organizations and the Duty to Care*, 25 JEFFREY S. MOORAD SPORTS L.J. 1 (2018) (discussing negligence liability for overseeing athletic organizations, including the NCAA, high school athletic associations, and Olympic sport governing bodies, that promulgate and enforce safety rules for athletes).

25. *See infra* Part II.

26. *See infra* Part III.

27. *See infra* Part IV.

baseball pitchers from negligent and reckless decisions by their coaches.[28]

II. THE PROBLEMS WITH OVERWORKING PITCHERS

The medical community has long documented the relationship between overworking pitchers and the increased risk of arm injuries. Dating back to the mid-1990s medical professionals have been associating pitchers repetitively throwing large numbers of pitches with "accumulated microtrauma"; this is "believed to be caused by the large forces and torques exerted at the shoulder and elbow joint during pitching."[29] The repetitive motion associated with throwing predisposes baseball players to medial elbow instability, putting them at a higher risk for UCL injury than athletes in many other sports.[30] The advent of youth year-round baseball in the past three decades has come with an increased incidence of pitching-related injuries and surgeries, most notably involving the shoulder and elbow.[31] These injuries once associated with professional athletes, in particular former MLB pitcher Tommy John,[32] have become much more prominent in high school and college-age players, with some players experiencing injuries at the youth level.[33]

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28. *See infra* Part V.

29. Glenn S. Fleisig et al., *Kinetics of Baseball Pitching with Implications About Injury Mechanism*, 23 AM. J. SPORTS MED. 233, 236 (1995).

30. *See* Steven F. DeFroda et al., *Epidemiology of Elbow Ulnar Collateral Ligament Injuries Among Baseball Players: National Collegiate Athletic Association Injury Surveillance Program, 2009-2010 Through 2013-2014*, 46 AM. J. SPORTS MED. 2142, 2142 (2018).

31. *See Position Statement for Tommy John Injuries in Baseball Pitchers*, AM. SPORTS MED. INST. (Sept. 2016), http://www.asmi.org/research.php?page=research&section=TJpositionstatement.

32. *See Tommy John Surgery*, BASEBALL-REFERENCE (May 6, 2018, 2:11 PM), https://www.baseball-reference.com/bullpen/Tommy_John_surgery. Tommy John surgery was first performed in 1974 by Dr. Frank Jobe who estimated John's chance of ever pitching again at one in one hundred. *Id.* John would beat those odds to pitch again and would finish his career with 288 lifetime wins—164 of which came after his surgery. *Tommy John Stats*, BASEBALL-REFERENCE, https://www.baseball-reference.com/players/j/johnto01.shtml (last visited Feb. 3, 2019); *Tommy John Surgery*, *supra*.

33. Edmund Kenneth Kerut et al., *Prevention of Arm Injury in Youth Baseball Pitchers*, 160 J. LA. ST. MED. SOC. 95, 95-97 (2008). Many young pitchers have started to get Tommy John surgery proactively. One study found that thirty percent of coaches, thirty-seven percent of parents, fifty-one percent of high school athletes, and twenty-six percent of collegiate athletes felt that Tommy John surgery "should be performed on players without elbow injury to enhance performance." Christopher S. Ahmad, W. Jeffrey Grantham & R. Michael Greiwe, *Public Perceptions of Tommy John Surgery*, 40 PHYSICIAN & SPORTS MED. 64, 66 (2012). However, according to ESPN's Stephania Bell, this trend is generally based on the "misguided" reading of post-surgery success rates and performance metrics; stakeholders do not understand that in baseball medicine, the "standard definition of success" is merely returning to competition for one single outing. Stephania Bell, *What We've Missed About Tommy John Surgery*, ESPN (Apr. 9, 2015), http://www.espn.com/mlb/story/_/id/12648769/what-missed-tommy-john-surgery. Indeed, Tommy John himself has called the trend of young pitchers having the surgeries "appalling," and now

There are a variety of factors that have been associated with an uptick in pitcher arm injuries. Amongst the factors that have been associated with increased injuries of pitchers are higher pitch velocities coupled with younger ages of pitchers, and pitchers being a heavier weight.[34] Other factors, such as pitch-selection, have also been associated with UCL injuries with evidence of this being somewhat difficult to dissect given conflicting studies. For example, a 2016 study found that pitchers who throw more fastballs are at an increased risk for UCL injury.[35] This study found that for every one percent increase in fastballs thrown above the control group, who threw thirty-nine percent of their pitches as fastballs, there was a two percent increase in the risk of injury.[36]

On the other hand, a 2002 study found that half of the examined subjects experienced elbow or shoulder pain during the season.[37] The study found that throwing curveballs were associated with a fifty-two percent increased risk of shoulder pain and throwing sliders were associated with an eighty-six percent increased risk of elbow pain.[38] The researchers found a statistically significant association between the number of pitches thrown in a game and during the season with the rate of elbow pain and shoulder pain.[39] The sample, which examined 476 pitchers between ages nine and fourteen, was a comprehensive investigation of precursors to invasive surgeries like UCL or rotator-cuff reconstruction.[40]

Studies conducted by the sports medicine community have also begun to raise the alarm about the number of pitches being thrown and the length of youth seasons. Adolescents who competitively pitch more than eighty-five pitches per game, more than eight months out of a year,

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appears at speaking engagements with his son, sports chiropractor Tommy John III, trying to convince kids not to have the surgery. Stan Grossfeld, *Now Campaigning Against Tommy John Surgery: Tommy John*, BOS. GLOBE (June 11, 2018), https://www.bostonglobe.com/sports/redsox/2018/06/11/now-campaigning-against-tommy-john-surgery-tommy-john/6Ua1oABxkXq4KibVK3cS9J/story.html.

34. Peter N. Chalmers et al., *Fastball Pitch Velocity Helps Predict Ulnar Collateral Ligament Reconstruction in Major League Baseball Pitchers*, 44 AM. J. SPORTS MED. 2130, 2131-32 (2016) (finding that higher pitch velocities were the single largest predictor of pitchers needing Tommy John surgery amongst 1327 MLB pitchers).

35. Robert A. Keller et al., *Major League Baseball Pitch Velocity and Pitch Type Associated with Risk of Ulnar Collateral Ligament Injury*, 25 J. SHOULDER & ELBOW SURGERY 671, 673-75 (2016).

36. *Id.* at 673.

37. Stephen Lyman et al., *Effect of Pitch Type, Pitch Count, and Pitching Mechanics on Risk of Elbow and Shoulder Pain in Youth Baseball Pitchers*, 30 AM. J. SPORTS MED. 463, 464 (2002).

38. *Id.*

39. *Id.* at 464-65.

40. *Id.* at 464-67.

or with arm fatigue are several times more likely to require elbow surgery.[41] Poor pitching mechanics also appear to contribute to injury risk.[42] In fact, the movement towards single-sport specialization has received criticism in a variety of circles; single-sport specialized training is associated with additional stress being placed on specific muscle groups and ligaments.[43] "A baseball pitcher, for example, places more stress on his elbow and shoulder than the abdomen. He is more likely to suffer injuries to his arm than a nonspecialized pitcher because of the stress of training."[44] Additionally, the mere increase in repetitions elongating a season can increase the risk of injury associated with the practice.[45]

The medical community has a long history of raising concerns about youth baseball and injuries, with inning restrictions first being recommended in 1966.[46] In 1977, the recommendation was made that the focus should be on limiting the number of pitches thrown instead of the number of innings a pitcher was allowed to pitch.[47] By the 1990s, this was a consensus view of most experts who had examined the issue; innings were much less precise than pitches.[48] Despite this knowledge and the adoption by some organizations, including Little League Baseball and Softball, there are still many coaches who operate outside the recommendations, and many organizations who have turned a blind eye or display willful indifference to reasonable precautions that may prevent an athlete from having to undergo invasive surgery. In the following Part, we explore the current state of pitch count regulations across various states and organizations.[49]

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41. Glenn Fleisig et al., *Variability in Baseball Pitching Biomechanics Among Various Levels of Competition*, 8 SPORTS BIOMECHANICS 10, 17-20 (2009).

42. *Id.*

43. Jacob Bogage, *Sport Specialization Increases Injury Risk for High School Athletes, Study Finds*, WASH. POST (Jan. 25, 2017), https://www.washingtonpost.com/sports/highschools/sport-specialization-increases-injury-risk-for-high-school-athletes-study-finds/2017/01/25/49dcda1a-e24c-11e6-a453-19ec4b3d09ba_story.html?noredirect=on&utm_term=.ca946e7ceba8.

44. *Id.*

45. *Id.*

46. Adam Popchak et al., *Factors Related to Injury in Youth and Adolescent Baseball Pitching, with an Eye Toward Prevention*, 94 AM. J. PHYSICAL MED. & REHABILITATION 395, 396, 402 (2015).

47. *Id.* Little League Softball still uses an innings-limit rather than a pitch-limit despite this advice. *See infra* note 93 and accompanying text.

48. Popchak et al., *supra* note 46, at 396.

49. *See infra* Part III.

III. THE CURRENT STATE OF PITCH COUNT REGULATIONS

A. Little League Baseball and Other Youth Baseball Organizations

While several youth baseball programs exist within the United States,[50] the largest sponsor and organizer of youth baseball is Little League Baseball. Little League Baseball boasts over 6500 Little League programs in nearly ninety countries.[51] These programs are organized based on four different levels.[52] At the lowest level, the local Little League program solicits volunteers and, through its five- to twenty-five-member Board of Directors, is responsible for the day-to-day operations as governed by its constitution.[53] The second level, the District, organizes district tournaments and votes on worldwide Little League rules and regulations.[54] The third level, the Regional Level, is responsible for reviewing and approving local league constitutions and organizing regional tournaments.[55] Finally, the Little League Baseball International Headquarters oversees the nine districts and provides various services including the processing and payment of accident claims for injuries to young players.[56]

Little League Baseball proclaims itself as a pioneer in creating pitch count rules as an early adopter of the "Pitch Smart Program" created by MLB and USA Baseball that imposes strict pitching rules including pitch limits and required rest periods depending on age group.[57] Little League Baseball adopted these rules in 2006 and boasts itself as fully compliant with these guidelines as recognized by MLB and USA Baseball.[58] According to MLB and USA Baseball, other youth baseball organizations who are "fully compliant" with the Pitch Smart guidelines as of 2018 include Pony Baseball, Perfect Game, Baseball Factory, and the Reviving Baseball in Inner Cities ("RBI") program run by MLB.[59]

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50. *See Partners & Sponsors*, BASEBALL FACTORY, https://www.baseballfactory.com/about/partners (last visited Feb. 3, 2019). Other large youth baseball organizations include Perfect Game, Pony Baseball, the Babe Ruth League, and Cal Ripken Baseball. *See id.*; *see also List of Organized Baseball Leagues*, WIKIPEDIA, https://en.wikipedia.org/w/index.php?title=List_of_organized_baseball_leagues&oldid=841902132 (last visited Feb. 3, 2019).

51. *Structure of Little League Baseball and Softball,* LITTLE LEAGUE, http://archive.littleleague.org/learn/about/structure.htm (last visited Feb. 3, 2019).

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Pitch Smart Program*, LITTLE LEAGUE, https://www.littleleague.org/partnerships/pitch-smart (last visited Feb. 3, 2019).

58. *Id.*

59. *MLB, USA Baseball Recognize Pitch Smart Compliant Organizations*, USA BASEBALL

Under the Pitch Smart guidelines, players are broken up into five separate age ranges: ages eight and under, ages nine to twelve, ages thirteen to fourteen, ages fifteen to eighteen, and ages nineteen to twenty-two.[60] Players who are between seven- and eight-years-old are limited to fifty pitches per game, with required rest periods of one day for more than twenty pitches and two days for more than thirty-five pitches.[61] Nine- and ten-year-olds are limited to seventy-five pitches per game, with similar rest period requirements with the exception of a new requirement of a three day rest period for more than fifty pitches.[62] Eleven- and twelve-year-olds are limited to eighty-five pitches with a required four day rest period for more than sixty-five pitches, and both thirteen- and fourteen-year-olds and fifteen- and sixteen-year-olds are limited to ninety-five pitches with similar required rest periods.[63]

Table 1: Pitch Smart Guidelines[64]

AGE	DAILY MAX	REQUIRED REST (PITCHES)					
		0 Days	1 Day	2 Days	3 Days	4 Days	5 Days
7-8	50	1-20	21-35	36-50	N/A	N/A	N/A
9-10	75	1-20	21-35	36-50	51-65	66+	N/A
11-12	85	1-20	21-35	36-50	51-65	66+	N/A
13-14	95	1-20	21-35	36-50	51-65	66+	N/A
15-16	95	1-30	31-45	46-60	61-75	76+	N/A
17-18	105	1-30	31-45	46-60	61-80	81+	N/A
19-22	120	1-30	31-45	46-60	61-80	81-105	106+

While these guidelines represent a good attempt to curb the potential harm of overuse, research has shown that more research is needed. Researchers from Rady Children's Hospital and the University of California, San Diego in 2017 found that even with complete compliance with these rules, nearly half of the twenty-six participants had a documented magnetic resonance imaging ("MRI") abnormality and nearly one-third of players saw worsening of their

(Jan. 3, 2018), https://www.usabaseball.com/news/mlb-usa-baseball-recognize-pitch-smart-compliant-organizations/c-264205220?tid=216639934. Pony Baseball was a new addition to the list of fully compliant organizations in 2018, along with baseball scouting organization Prep Baseball Report. *Id.*

60. *Guidelines for Youth and Adolescent Pitchers*, MLB, http://m.mlb.com/pitchsmart/pitching-guidelines (last visited Feb. 3, 2019).

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

preseason MRI or had developed a new MRI abnormality.[65] These researchers recommended stricter enforcement of guidelines and limiting year-round play.[66]

Further, the Pitch Smart program itself is a set of guidelines, not firm, enforceable rules. No enforcement mechanism is outlined in the program's definition of "Full Compliance"; indeed the program's definition of a fully compliant program merely states that programs should "[f]ollow Pitch Smart guidelines pertaining to pitch counts and rest periods across all competitions" and "[r]ecommend that players, parents, and coaches adhere to all additional Pitch Smart guidelines" but does not give a definition of what "following" the guidelines actually means.[67]

As an example of what compliance under these rules may look like, per the Regular Season Pitch Rules for Little League Baseball, the scorekeeper is responsible for keeping track of pitches and "must provide the current pitch count for any pitcher when requested by either manager or the umpire."[68] The pitch count reporter is then required to inform the umpire-in-chief when a pitcher has reached their maximum number of pitches in a game.[69] If a coach does not remove the pitcher, the game may be played under protest.[70] But if the protest is allowed, there is no forfeiture or any other punishment for the coaches involved; the game is merely resumed from the point when the infraction occurred.[71] This means that if the game is allowed to continue due to a dispute over whether the pitch count regulations are followed or not, the pitcher still goes beyond the required limit and there is no true punishment for the coach or team for not following the rules.

However, these recommendations do not always work in practice. According to a 2012 study, while seventy-three percent of youth baseball coaches reported that they followed the recommendations, just fifty-three percent felt that other coaches in their leagues did the same.[72] Furthermore, just thirty-five to sixty-two percent of coaches surveyed

65. Andrew V. Pytiak et al., *Are the Current Little League Pitching Guidelines Adequate? A Single-Season Prospective MRI Study*, ORTHOPEDIC J. SPORTS MED., May 2017, at 1-7.

66. *Id.* at 7.

67. *Guidelines for Youth and Adolescent Pitchers*, *supra* note 60.

68. *Regular Season Pitching Rules*, LITTLE LEAGUE, https://www.littleleague.org/playing-rules/pitch-count (last visited Feb. 3, 2019) (describing pitching rules for both baseball and softball).

69. *Id.*

70. *Id.*

71. *Regular Season to Tournament: Rule Differences*, LITTLE LEAGUE, https://www.littleleague.org/university/articles/regular-season-to-tournament-rule-differences (last visited Feb. 3, 2019).

72. Joseph J. Fazarale et al., *Knowledge of and Compliance with Pitch Count Recommendations*, 4 SPORTS HEALTH 202, 203 (2012).

were able to accurately answer questions about the pitch count regulations, with worse scores at the older (eleven to twelve) age groups than at the younger (nine to ten) age groups.[73] As such, while the Pitch Smart guidelines are a valiant effort to raise awareness and promote positive action among youth baseball coaches, more is needed to protect the most vulnerable players from pitching overuse.

B. High School Athletic Associations

In 2017, the National Federation of State High School Associations ("NFHS") announced a new policy requiring each state to adopt guidelines to limit the number of pitches that can be thrown per game and dictate specific rest periods in between starts.[74] These pitch count limits per state range from allowing ninety-five pitches per game to 125 pitches per game with increasing required days of rest depending on the number of pitches thrown in a game.[75] Similar to Little League Baseball, some states also have different limits depending on age or grade.[76] For example, Florida imposes a 105-pitch limit for seventeen- and eighteen-year-olds, but a ninety-five pitch limit for athletes who are sixteen-years-old or younger.[77] Similarly, Arizona has a 105-pitch limit for upperclassmen (juniors and seniors), but a ninety-five pitch limit for lowerclassmen (freshmen and sophomores).[78]

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73. *Id.*

74. Bryce Woodall, *States Implement Pitching Restrictions in High School Baseball*, NAT'L FED'N ST. HIGH SCH. ASS'N (Apr. 6, 2017), https://www.nfhs.org/articles/states-implement-pitching-restrictions-in-high-school-baseball.

75. J.J. Cooper, *High School Pitch Count Rules By State*, BASEBALL AM. (Feb. 10, 2017), https://www.baseballamerica.com/stories/high-school-pitch-count-rules-by-state.

76. *Id.*

77. *Id.*; *see also* FLA. HIGH SCH. ATHLETIC ASS'N, FHSAA BASEBALL SPORT MANUAL 2017-2018 EDITION 4 (2017), https://www.fhsaa.org/sites/default/files/attachments/2010/09/15/node-170/1718_baseballl_manual_1.pdf.

78. Cooper, *supra* note 75; *see also* ARIZ. INTERSCHOLASTIC ASS'N, COMPLIANCE PROTOCOL FOR AIA POLICIES/PROCEDURES; ARTICLE 21.1.5 ARIZONA PITCH SMART GUIDELINE LIMITS (2016), http://aiaonline.org/files/16146/2018-baseball-coach-instructions-protocol-for-compliance-to-az-pitch-smart-guideline-limit.pdf. These guidelines were adopted in 2016. *Id.*

Table 2: High School Pitch Limits by State Examples[79]

STATE	GRADE/AGE	DAILY MAX	REQUIRED REST (PITCHES)				
			0 Days	1 Day	2 Days	3 Days	4 Days
Arizona	11th & 12th	105	1-30	31-45	46-60	61-75	76+
	9th & 10th	95	1-30	31-45	46-60	61-75	76+
California	All	110	1-30	31-50	51-75	76+	N/A
Florida	17-18 years old	105	1-30	31-45	46-60	61-75	76+
	16 & under	95	1-30	31-45	46-60	61-75	76+
New York	All	105[80]	1-30	31-65	66-95	96+	N/A
Texas	All	110	1-30	31-45	46-65	66-85	86+

As shown, high school pitch limit guidelines can vary wildly depending on the state. Some states, including Arizona, have comparably protective pitch limits, while other states, like New York, California, and Texas, allow pitchers to throw significantly more. Furthermore, the NFHS requirements do not affect all states. Some states, including Massachusetts, Connecticut, and Alaska, do not play under NFHS rules and thus still do not have pitch count limits.[81] Similarly, baseball is not a sanctioned sport in Montana, Wyoming, or South Dakota, meaning that there are effectively no pitch limits for those states either.[82]

Like Little League Baseball, the NFHS does not include suggested penalties within their pitch count policy recommendations. In their practical effect, even where strict pitch limits do exist the policies often do not have the enforcement power to actually push coaches to follow the rules. Some states do have strict penalties for pitch count violations;

79. Cooper, *supra* note 75.

80. *Id.* New York allows for up to 125 pitches during the playoffs. *Id.*

81. Brandon Chase, *High School Notebook: MIAA Elects to Pass on Statewide Rule for Pitch Counts in 2017*, METROWEST DAILY NEWS (Apr. 1, 2017, 9:01 PM), http://www.metrowestdailynews.com/sports/20170401/high-school-notebook-miaa-elects-to-pass-on-statewide-rule-for-pitch-counts-in-2017; Cooper, *supra* note 75. As Massachusetts high school baseball is played with MLB rules instead of NFHS regulations, they do not have to follow the NFHS pitch limit mandate. Brandon Chase, *NFHS Instates Baseball Pitch Count Rule, New Mandate Does Not Affect Massachusetts*, MASSLIVE (July 13, 2016, 3:47 PM), http://highschoolsports.masslive.com/news/article/-5356148525789265117/nfhs-instates-baseball-pitch-count-rule-new-mandate-does-not-affect-massachusetts. As of this writing, Massachusetts has still not passed any pitch limits for its covered sports.

82. Chase, *supra* note 81. Baseball is not sanctioned in Idaho either, but the state's athletic association still passed an innings limit in 2016. Michael Lycklama, *Pitch Counts Coming to Idaho High School Baseball in 2017*, IDAHO STATESMAN (July 21, 2017, 8:03 PM), http://www.idahostatesman.com/sports/high-school/article91188342.html.

for example, while California was established above as having rather lax pitch limits, their penalty for pushing pitchers past these limits is an automatic forfeiture of the game for each violation.[83] Oregon also penalizes each pitch limit violation with forfeiture, while Alabama both imposes forfeiture and adds a $250 fine for each violation.[84] The Kansas High School Activities Association imposes a suspension of the violating pitcher and coach, along with a game forfeit, but does not specify how long the suspension will be, preferring a more "case-by-case" approach where imposed suspensions can be as little as half of a game depending on the specifics of the violation.[85]

But not all states are as serious about policing violations. Texas' University Interscholastic League, for example, penalizes violations with a reprimand for the first violation, a public reprimand for the second violation, and forfeiture of the contest only for the third or later violation.[86] This allows coaches in that circuit to violate the rules twice before actually seeing any kind of cognizable penalties for their actions.

C. The NCAA and College Sports

As demonstrated by some of the anecdotes in the introduction to this Article, college baseball coaches are among the most egregious

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83. CALI. INTERSCHOLASTIC FED'N, ARTICLE 150 BASEBALL: PITCHING LIMITATION (Jan. 2015), http://www.cifstate.org/sports/baseball/rules/ARTICLE_150_Pitching_Limitation_-_Final_Version_for_Constitution.pdf.

84. OR. SCH. ACTIVITIES ASS'N, 2016 BASEBALL PLAN BOOK 6-7 (2016), http://www.osaa.org/docs/bbl/bblplan.pdf; *Athletic Handbook*, ALA. INDEP. SCH. ASS'N 108 (Dec. 7, 2016), http://aisaonline.org/uploads/files/2016-Revised-AISA-ATHLETIC-HANDBOOK.pdf; John Keilman, *IHSA Looks at Limit on Pitches Thrown in Baseball*, CHI. TRIBUNE (May 25, 2016), http://www.chicagotribune.com/news/local/breaking/ct-high-school-baseball-pitch-count-illinois-met-20160524-story.html. South Umpqua (Or.) High School was recently a recipient of such a penalty when on May 9, 2017, they had a junior varsity pitcher exceed the pitch count limit in one game and were subsequently forced to forfeit that game. Memorandum from Peter Weber, Exec. Dir. of the Or. Sch. Activities Ass'n to Superintendents, Principals and Athletic Director at 4.i (Sept. 12, 2017), http://www.osaa.org/docs/board/20170911summary.pdf; Sanne Godfrey, *OSAA Decisions to Impact Local High Schools*, NEWS-REV. (Sept. 14, 2017), http://www.nrtoday.com/sports/preps/osaa-decisions-to-impact-local-high-schools/article_3656c5ab-cbbf-59f5-81cc-8c8e78c5163b.html.

85. Taylor Eldridge, *KSHSAA Introduces New Pitch Count Restrictions*, WICHITA EAGLE (Dec. 1, 2016, 1:09 PM), https://www.kansas.com/sports/high-school/article118231218.html. Kansas's rule change came after three top-level teams violated the association's previous limit on innings in the previous year's playoffs, including a case where one pitcher threw 157 pitches over ten innings. *Id.* The pitcher and his coach were suspended for one game as a result of that violation with no game forfeit. Joanna Chadwick, *West Baseball Coach, Pitcher Suspended for One Game at State*, WICHITA EAGLE (May 21, 2016, 12:02 PM), https://www.kansas.com/sports/high-school/article79047657.html.

86. U. INTERSCHOLASTIC LEAGUE, CONSTITUTION AND CONTEST RULES § 29 (2017), http://www.uiltexas.org/files/policy/2017-2018-full-constitution.pdf.

abusers of pitchers in amateur baseball.[87] Indeed, certain college baseball coaches and programs—particularly Rice University and UCLA—have gained reputations of overworking pitchers, and pitchers who come out of those programs generally have short and injury-riddled careers in the professional leagues.[88] Pitcher overuse has long been a major problem in college baseball; according to *Birmingham News*, nineteen percent of pitchers on ten of twelve Southeastern Conference teams had elbow or shoulder surgery before or during college, and the rate of elbow surgeries performed by renowned sports surgeon Dr. James Andrews exploded from 95 between 1996 and 2000 to 351 between 2001 and 2005, and 327 between 2006 and 2010.[89]

But despite pitcher overuse reaching near-epidemic proportions in college baseball, neither the NCAA nor its member conferences have imposed pitch count rules for either regular season or postseason play. In fact, as of 2016, the NCAA was remarkably inconsistent at even reporting pitcher pitch counts per start; according to *The Hardball Times*, the NCAA did not report pitch counts for thirty-three percent of Division I outings.[90] Despite repeated calls for pitch count rules, the NCAA has given no indication that such a rule is under consideration, and it seems unlikely that such rules will be adopted in the near future.

D. Amateur Softball

While pitcher overuse is certainly a major problem within amateur baseball, these issues often pale in comparison to the workload experienced by pitchers in amateur softball. College softball players are routinely asked to pitch multiple days in a row and often are asked to

87. *See supra* notes 1-14 and accompanying text.

88. *See, e.g.*, Todd Boss, *Player Killers: What College Programs are Known for Hurting Pro Prospects?*, NAT'LS ARM RACE (June 29, 2015), https://www.nationalsarmrace.com/?p=10768; Royal, *supra* note 20; Gerald Schifman, *The Workloads of UCLA Pitchers*, FANGRAPHS (July 17, 2017), https://www.fangraphs.com/blogs/the-workloads-of-ucla-pitchers; John Sickels, *Rice University Pitchers in Professional Baseball*, SB NATION (Mar. 9, 2011, 6:00 PM), https://www.minorleagueball.com/2011/3/9/2040617/rice-university-pitchers-in-professional-baseball; *see also* Michael Baumann, *How Concern Over Pitcher Usage Can Actually Give College Coaches a Recruiting Edge*, GRANTLAND (Sept. 9, 2013), http://grantland.com/the-triangle/how-concern-over-pitcher-usage-can-actually-give-college-coaches-a-recruiting-edge.

89. Jon Solomon, *Health of College Pitchers' Arms Faces More Scrutiny, But Concerns Continue*, AL.COM (May 26, 2011), https://www.al.com/sports/index.ssf/2011/05/health_of_college_pitchers_arm.html. Auburn and Mississippi State did not participate in the *Birmingham News* survey and thus, were not included in the final tabulations. *Id.* MSU's decision not to participate is particularly notable given that former MSU pitcher Forrest Moore filed his lawsuit against MSU fifteen days prior to this article's publication. Complaint, *supra* note 21, at 17; *see also supra* notes 21-22 and accompanying text.

90. Gerald Schifman, *How Hard Are College Pitchers Worked?*, HARDBALL TIMES (Aug. 10, 2016), https://www.fangraphs.com/tht/how-hard-are-college-pitchers-worked.

pitch both games of doubleheaders as well.[91] While many softball commentators argue that, due to the different mechanics involved in throwing a softball against throwing a baseball, softball does not result in the same stress on a pitcher's shoulder; medical research on the topic has conclusively shown that pitcher overuse is still a major problem at all levels of amateur softball.[92]

Unsurprisingly, pitching rules for amateur softball lag far behind the rules adopted by comparable baseball organizations. Whereas Little League Baseball has detailed pitch count limits and rest guidelines based on age, Little League Softball merely prohibits teams from allowing players to pitch more than twelve innings in one day and requires one calendar day of rest if the player throws more than seven innings in one day.[93] Similarly, while the NFHS requires member states to promulgate pitch count limits for young baseball players, the organization has no such requirement for softball players.[94] Unsurprisingly—especially considering the routine 200-plus pitch counts racked up by college pitchers—the NCAA also has no pitch count limits for collegiate softball players.

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91. Graham Hays, *Rachel Garcia and UCLA Stray Way Off Script in Wild Walk-Off Win Over Ole Miss*, ESPNW (May 25, 2017), http://www.espn.com/espnw/sports/article/19465369/2017-ncaa-softball-tournament-ucla-bruins-top-ole-miss-rebels-wild-11-inning-game-take-game-1-super-regional (commenting on the 232 pitches thrown by UCLA pitcher Rachel Garcia over eleven innings of work, and arguing that such a workload "isn't wildly out of the norm for the sport").

92. Lear & Patel, *supra* note 14, at 337; Stephen W. Marshall et al., *Descriptive Epidemiology of Collegiate Women's Softball Injuries: National Collegiate Athletic Association Injury Surveillance System, 1988-1989 Through 2003-2004*, 42 J. ATHLETIC TRAINING 286 *passim* (2007); Tracey Romero, *Orthopedists Speak Out About Softball Pitching Limits*, ORTHOPEDICS (Oct. 31, 2017), https://ryortho.com/2017/10/orthopedists-speak-out-about-softball-pitching-limits.

93. *Regular Season Pitching Rules*, *supra* note 68. Little League Softball's reliance on innings for pitching guidelines rather than number of pitches is especially problematic, as the number of pitches per inning can vary wildly from inning to inning. *See supra* notes 47-48 and accompanying text. While twelve innings could hypothetically take as little as thirty-six pitches, such a low number is extremely unlikely. Assuming twenty pitches per inning and considering the fact that Little League Softball does not have staggered limits based on age like Little League Baseball, Little League Softball's innings limit could conceivably allow a coach to ask a seven-year-old softball player to throw 240 pitches in a single day—*nearly five times the limit for a comparable young baseball player*—with only one day of rest prior to the next 240 pitch outing. This estimate may even be conservative, as the number of pitches could be unlimited if a coach is not feeling compelled to take a pitcher out of a game for whatever reason.

94. Newman, *supra* note 14.

IV. IS THERE LEGAL LIABILITY FOR OVERWORKING YOUNG PITCHERS?

A. Negligence Generally

As it is unlikely that a coach would intentionally injure his or her player, any incurred liability for pitcher overuse would most likely fall under the tort of negligence.[95] According to *Black's Law Dictionary*, negligence is a "failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm" and generally denotes "culpable carelessness."[96] Negligence has four essential elements: a duty of care, a breach of that duty of care, proximate and actual causation, and an actual injury.[97] The first of these elements, the establishment of a duty of care owed by the defendant to the plaintiff, is generally seen by the courts as "an important note 'minimum threshold' that serves as a '*legal* requirement for opening the courthouse doors.'"[98]

B. Imposing Negligence Liability on Coaches

1. Proving a Breach of Duty

As the "minimum threshold" element to any negligence claim, the first step by any plaintiff-pitcher towards establishing liability for overuse by a coach or school is to show that the coach owed a duty of care to the players on his or her team.[99] This generally is not difficult.

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95. *See* Wattenbarger v. Cincinnati Reds, Inc., 33 Cal. Rptr. 2d 732, 735-38 (Ct. App. 1994) (alleging that the defendant professional baseball team "negligently allowed [plaintiff] to continue to pitch when they knew or ought to have knowwn [sic] that to continue would cause irreparable harm").

96. *Negligence*, BLACK'S LAW DICTIONARY (8th ed. 2004).

97. *See, e.g.*, Ileto v. Glock Inc., 349 F.3d 1191, 1203 (9th Cir. 2003).

98. Ehrlich, *supra* note 24, at 4-5 (citing McCain v. Fla. Power Corp., 593 So. 2d 500, 502 (Fla. 1992) (citation omitted)); *see* RESTATEMENT (SECOND) OF TORTS § 281(a) (1965); *see also* Maurer v. Cerkvenik-Anderson Travel, Inc., 890 P.2d 69, 71 (Ariz. 1994) ("To conclude there is 'no duty' is to conclude the defendant cannot be liable, no matter the facts."); Bily v. Arthur Young & Co., 834 P.2d 745, 760 (Cal. 1992) ("The threshold element of a cause of action for negligence is the existence of a duty to use due care toward an interest of another that enjoys legal protection against unintentional invasion."); Armstrong v. Best Buy Co., 788 N.E.2d 1088, 1091 (Ohio 2003); Centeq Realty, Inc. v. Siegler, 899 S.W.2d 195, 197 (Tex. 1995) ("The threshold inquiry in a negligence case is whether the defendant owes a legal duty to the plaintiff.") (citations and quotation marks omitted).

99. A school employing a negligent coach could be found vicariously liable for the coach's actions under the theory of respondeat superior, which provides that an employer, the "master," can be liable for the harms of the "servant" or employee. *Respondeat Superior*, BLACK'S LAW DICTIONARY (8th ed. 2004); *see* Avila v. Citrus Cmty. Coll. Dist., 131 P.3d 383, 392 (Cal. 2006) ("Schools and universities are already vicariously liable for breaches by the coaches they employ,

Even while duties owed by schools generally to their students has eroded, the California Supreme Court in *Avila v. Citrus Community College District* acknowledged that this development "has not limited the recognition that colleges and universities owe special duties to their athletes when conducting athletic practices and games."[100]

However, showing that a coach owes a duty of care within the context of pitcher overuse is decidedly more difficult. The California Supreme Court in the same case refused to assign a duty of care to a community college pitcher to not throw at an opposing batter's head, stating that the risk of getting hit with a pitch is an inherent risk of the sport—even when the batter is thrown at intentionally.[101] As the assumption of an inherent risk of a sport negates any duty of care owed by a defendant (coach or team) to a plaintiff (player), if arm injuries

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who owe a duty to their own athletes not to increase the risks of sports participation."); *see also, e.g.*, Green v. Pro Football, Inc., 31 F. Supp. 3d 714, 728 (D. Md. 2014) (citing Tomjanovich v. Calif. Sports, Inc., 1979 U.S. Dist. LEXIS 9282 (S.D. Tex. 1979)) (holding a professional basketball team vicariously liable when their player punched another player in an on-court fight). *See generally* Joshua D. Winneker & Sam C. Ehrlich, *Shake it Off: Potential Civil Liability of Handshake Lines*, 24 WIDENER L. REV. 131, 146-48 (2018) (discussing vicarious liability for schools who commit intentional torts during postgame handshake lines). However, public schools and school districts in most states cannot be found vicariously liable for their coaches' actions based on Eleventh Amendment sovereign immunity principles. *See infra* Part IV.B.3.

100. *Avila*,131 P.3d at 389; *see* Roya R. Hekmat, *Malpractice During Practice: Should NCAA Coaches be Liable for Negligence?*, 22 LOY. L.A. ENT. L. REV. 613, 620-22 (2002); Michelle D. McGirt, *Do Universities Have a Special Duty of Care to Protect Student-Athletes from Injury?*, 6 VILL. SPORTS & ENT. L.J. 219, 225-26 (1999); Edward H. Whang, *Necessary Roughness: Imposing a Heightened Duty of Care on Colleges for Injuries of Student-Athletes*, 2 SPORTS LAW. J. 25, 44-49 (1999); Andrew Rhim, Comment, *The Special Relationship Between Student-Athletes and Colleges: An Analysis of a Heightened Duty of Care for the Injuries of Student-Athletes*, 7 MARQ. SPORTS L.J. 329 *passim* (1996). Other states have adopted similar rules. *See* Kleinknecht v. Gettysburg Coll., 989 F.2d 1360, 1368 (3d Cir. 1993) (finding a special relationship between a student-athlete and his school because the student-athlete "was not acting in his capacity as a private student when he collapsed"); Davidson v. Univ. of N.C. at Chapel Hill, 543 S.E.2d 920, 927-28 (N.C. Ct. App. 2001) (finding a special relationship between collegiate cheerleaders and their school duty due to to the "considerable degree of control" that the school exerted over the cheerleaders compared to other students). *But see* Orr v. Brigham Young Univ., 960 F. Supp. 1522, 1528-29 (D. Utah 1994), *aff'd*, No. 96-4015, 1997 WL 143600, at *2-3 (10th Cir. 1997) (declining to view the relationship between a student-athlete and his school as a custodial relationship and thus not finding a heightened duty of care for the school to protect the student-athlete). For a historical look at the nature of schools' special relationships with student-athletes and the implications on the duty of care owed by those schools to those athletes, see generally Adam Epstein & Paul M. Anderson, *The Relationship Between a Collegiate Student-Athlete and the University: An Historical and Legal Perspective*, 26 MARQ. SPORTS L. REV. 287 (2016).

101. *Avila*, 131 P.3d at 391 ("Being *intentionally* hit is likewise an inherent risk of the sport, so accepted by custom that a pitch intentionally thrown at a batter has its own terminology: 'brushback,' 'beanball,' 'chin music.' In turn, those pitchers notorious for throwing at hitters are 'headhunters.'"). The same restriction applies to schools held vicariously liable for their coaches' actions.

caused by overuse are found to be an inherent risk of pitching, any plaintiff-pitcher's prima facie case would be dead on arrival.[102]

The question of whether pitcher overuse is an inherent risk of the sport has not yet been affirmatively decided by any court.[103] In *Wattenbarger v. Cincinnati Reds, Inc.*,[104] a pitcher trying out for the Cincinnati Reds was able to overcome the assumption of the risk defense proffered by the Reds by showing that the Reds's coaches asked him to keep throwing after he had informed the coaches that his arm had "popped," a common sensation for a pitcher when an arm tendon

102. *See, e.g.*, *id.* Generally, in order to overcome a successful assumption of the risk defense within sport, the plaintiff must show that the injury was a result of reckless or intentional conduct by the defendant, not just negligent. Geoffrey Christopher Rapp, *The Wreckage of Recklessness*, 86 WASH. U. L. REV. 111, 115, 122 (2008); *see, e.g.*, Morgan v. State, 685 N.E.2d 202, 208 (N.Y. 1997) ("Another important counterweight to an undue interposition of the assumption of risk doctrine is that participants will not be deemed to have assumed the risks of reckless or intentional conduct"); *see also* Joshua D. Winneker & Sam C. Ehrlich, *The Calm Before the (Court) Storm: Potential Fan Liability and the NCAA's Necessary Response*, 27 MARQ. SPORTS L. REV. 425, 444-46 (2017) (describing the relationship between assumption of the risk and sports when concerning negligent, reckless, and intentional actions by defendants). Plaintiffs could conceivably show that a coach was reckless if he forces a pitcher to throw an absurd number of pitches in a short amount of time or forces a pitcher to pitch with a known preexisting injury but, barring those extreme situations, going beyond negligence into the recklessness standard would likely be difficult in this context.

103. All three defendants in Forrest Moore's lawsuit against MSU have pled sovereign immunity as an absolute defense and did not argue assumption of the risk as an affirmative defense. *See, e.g.*, Defendant Mississippi State Univ.'s Memorandum in Support of its First Motion for Summary Judgment, Moore v. Miss. State Univ. (Miss. Cir. Ct. Dec. 5, 2011) (No. 2011-0248-CVC); Defendants John Cohen & Mike Nemeth's Memorandum in Support of their First Motion for Summary Judgment, *Moore* (Dec. 5, 2011) (No. 2011-0248-CVC); *see also supra* notes 21-22 and accompanying text. Another lawsuit from the early-2000s involving former North Mason (Wash.) High School pitcher Jason Koenig resulted in a jury ruling that Koenig's coach did not have enough information about the risk of high pitch counts when Koenig was injured in April 2001. Tom Wyrwich, *Jury Rules District Wasn't Negligent in North Mason High School Pitcher's Lawsuit*, SEATTLE TIMES (Mar. 19, 2008, 10:00 PM), https://www.seattletimes.com/sports/high-school/jury-rules-district-wasnt-negligent-in-north-mason-high-school-pitchers-lawsuit. Koenig had been asked to throw approximately 425 pitches in a sixteen-day period, including a 140-pitch, nine-inning loss in the team's last game of the season two days after throwing two innings in relief. *Id.* It is unknown whether the school district used assumption of the risk as a defense. The coach, Jay Hultberg, was not named in the lawsuit. *Id.*; *see also* Tom Wyrwich, *Former High School Pitcher Hopes Rules Are Changed to Protect Young Arms*, SEATTLE TIMES (Apr. 29, 2008, 12:16 PM), http://old.seattletimes.com/html/highschoolsports/2004379811_youngarms29.html.

104. 33 Cal. Rptr. 2d 732 (Ct. App. 1994).

tears.[105] In this case, the court wrote the following about arm injuries in baseball:

> There can be little question an arm injury such as that suffered by plaintiff is a risk inherent in the sport of baseball. Plaintiff was a pitcher. In baseball, the objective of a pitcher is to keep batters from reaching base. To do this, pitchers must be able to throw the ball with such accuracy and velocity and along such trajectories as will tend to inhibit batters from hitting it, or at least from hitting it safely. This activity naturally causes great strain on the pitching arm. The injury suffered by plaintiff, tearing away of bone and tendon due to tricep contraction, was a direct result of the natural strain caused by the pitching motion of the arm.[106]

As this passage indicates, arm injuries by themselves are clearly an inherent risk of the sport. However, *Wattenbarger* also shows that in situations where a coach knows of the risks of continuing to allow a pitcher to throw—including when the pitcher reports a "popping" in his or her shoulder—that coach can be liable for not immediately pulling the pitcher from the game. Given the wide scope of these discussions within the public zeitgeist, it is hard to imagine that coaches these days are unaware of the risks of pitcher overuse.[107] Similarly, while arm injuries may be an inherent risk of the sport, injuries related to overuse—which are increasingly being targeted and prevented by coaches and league administrators at all levels of baseball—could be seen by a court as no longer an inherent risk within the activity and instead a result only of coach negligence.[108] Indeed, at levels where leagues have adopted the Pitch Smart guidelines promulgated by MLB, these guidelines can be

105. *Id.* at 736-37; *see also* Mike Samuels, *Popping in the Shoulder of a Baseball Pitcher*, LIVESTRONG (July 18, 2017), https://www.livestrong.com/article/414217-popping-in-the-shoulder-of-a-baseball-pitcher (explaining what happens when a pitcher's shoulder "pops" and the orthopedic risks of continuing to pitch after hearing the pop).

106. *Wattenbarger*, 33 Cal. Rptr. 2d at 736 (citations omitted).

107. As mentioned in an earlier footnote, a school district was able to defend itself with evidence that the coach did not know the risks of pitcher use in an early-2000s case in Washington State. *See* Wyrwich, *Jury Rules District Wasn't Negligent in North Mason High School Pitcher's Lawsuit*, *supra* note 103; *see also supra* note 103. Given the differences in knowledge between 2001 and now, however, it is hard to imagine a similar defense working in today's baseball. *See* Mayall v. USA Water Polo, 909 F.3d 1055, 1068 (9th Cir. 2018) (finding that the plaintiff's complaint properly pled gross negligence in regards to the defendant's failure to implement a return-to-play concussion management policy, as the complaint successfully "allege[d] that the risks of repeat concussions had been well known for many years, and that a consensus for return-to-play protocols for dealing with athlete concussions has been well-established since 2002"); *see also infra* note 138.

108. Proving that an arm injury was related to overuse does create issues with the causation element as addressed *infra* Part IV.B.2.

used to show what coach actions are reasonable within the setting of a negligence claim; if a coach exceeds those limits, their conduct may no longer be seen as reasonable.[109]

Furthermore, it is important to remember that the assumption of the risk defense within sports has two other required elements beyond showing that the injury suffered by the plaintiff was an inherent risk to the sport: the defendant must also prove that the plaintiff had knowledge of the risks of the activity and that the plaintiff voluntarily consented to be exposed to those risks.[110] In the pitcher overuse context, one factor becomes critically important for a number of reasons: the age of a pitcher. While there is no firm court guidance to this effect, it stands to reason that a Little Leaguer cannot be held to assume the risk of throwing too many pitches both for the reason that the Little Leaguer is probably too young to understand the risks of pitching and too young to stand up to his or her coach when facing arm fatigue.

For example, the plaintiff in *Wattenbarger* was seventeen-years-old—legally a minor—and the court acknowledged that the plaintiff was "obviously anxious to please and impress the scouts" which caused him to "push his body beyond its capabilities."[111] Even then, the court was very hesitant to impose liability and they did so only on a very narrow basis, ruling that the "defendants owed a duty of care to protect participants from aggravating injuries during the tryout"[112] which is *not* the same as stating that the "defendants owed a duty to limit pitches."

One conceivable way that plaintiffs could look to file claims against irresponsible coaches and schools is through the use of the voluntary undertaking doctrine. Found in Section 323 of the Restatement of Torts, the doctrine imposes liability to those who "render services to another" but fail to "exercise reasonable care to perform his undertaking" that (a) increases the risk of harm, or (b) the harm is suffered because of the other's reliance on the undertaking.[113] For baseball coaches, a key part of

109. *See supra* notes 57-66 and accompanying text.

110. *See* Knight v. Jewett, 834 P.2d 696, 707-09 (Cal. 1992). *See generally* Azadeh Mohamadinejad et al., *Assumption of Risk and Consent Doctrine in Sport*, 55 PHYSICAL CULTURE & SPORT: STUDIES & RES. 30 (2012) (discussing the doctrines of assumption to the risk and consent within the sports context).

111. *Wattenbarger*, 33 Cal. Rptr. 2d, at 736-38.

112. *Id.* at 738. Of course, *Wattenbarger* was decided in 1994, at a time when knowledge of the dangers of pitcher overuse was just beginning to be understood within baseball. It is impossible to speculate how the court would have ruled today, though the fact that the defendant was a professional baseball team that almost certainly had more information about such risks likely went into the court's judgment.

113. RESTATEMENT (SECOND) OF TORTS § 323 (AM. LAW INST. 1965). This rule applies to any "who undertakes, gratuitously or for consideration, to render services to another," meaning that the rule applies both to those who are paid for services provided and to volunteers. *Id.*

the voluntary undertaking doctrine is the requirement that any duty "voluntarily assumed must be performed with due care or such competence as one possesses."[114] For example, in *Castro v. Chicago Park District*, a court ruled that a volunteer Little League president could be found liable for not ensuring that a park was safe from the risk of players getting hit with foul balls, given the strict control that the president had over league operations.[115] Similarly, in *Davidson v. University of North Carolina*, a court held that a school had assumed a duty of care to collegiate cheerleaders because it had "voluntarily undertook to advise and educate the cheerleaders regarding safety."[116]

Here, plaintiff-pitchers could conceivably find success by showing that reliance on the coach to be aware of the risks of pitcher overuse and act in the pitchers' best interest by removing them from the game before they ran the risk of becoming injured. This claim could be enough to even get past the nonfeasance rule, as "an 'essential element' of a nonfeasance claim is the plaintiff's reasonable reliance upon the defendant's promise to perform the essential service."[117] Alternatively—or in support—a plaintiff could point to the breadth of literature showing that the risk of injury is increased when pitchers are kept in the game past eighty-five pitches, especially when the pitchers play year-round.[118] While the doctrine does not remove a potential assumption of the risk defense,[119] it can provide plaintiffs the means to get past the "minimum threshold" required of any negligence claim.[120]

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114. Castro v. Chi. Park Dist., 533 N.E.2d 504, 508 (Ill. App. Ct. 1988).

115. *Id.* at 507-09. In this case, the league president had "characterized his association with the League as a 'dictatorship,'" and in this regard had control over most of the league's administrative operations, including scheduling, player registration, and veto power over the drafting of League rules. *Id.* at 507-08. Because of this self-appointed power, the court found that since the president had "selected a field that contained a dangerous condition, drafted and maintained veto power over rules that failed to protect the players on the bench from foul balls, and did not warn the players or coaches of the potential danger that existed," he personally owed a duty of care to the players to protect them from the risk of harm of foul balls. *Id.* at 509.

116. 543 S.E.2d 920, 929 (N.C. Ct. App. 2001).

117. Johnson v. Chi. Park Dist., 2013 IL App (1st) 122803-U, at ¶55 (Ill. Ct. App. 2013), http://illinoiscourts.gov/R23_Orders/AppellateCourt/2013/1stDistrict/1122803_R23.pdf.

118. *See* Fleisig et al., *supra* note 41, at 17-19; Kerut et al., *supra* note 33; Pytiak et al., *supra* note 65; *see also supra* Part II.

119. *See Davidson*, 543 S.E.2d at 926 ("We note that plaintiff asks this Court to hold that plaintiff's claim is not barred by the doctrines of contributory negligence or assumption of risk. However, . . . these issues are not properly before us on appeal.").

120. *See supra* note 98 and accompanying text.

2. Causation

While proving that coaches and schools breached an owed duty of care is difficult but not impossible, showing that this breach of duty was the cause of an injury suffered by the pitcher is a tall order. The element of causation within the negligence theory generally has two sub-elements: cause-in-fact (also called direct or actual cause) and proximate cause.[121] Cause-in-fact requires proof that the harm would not have occurred "but for" the defendant's allegedly negligent conduct.[122] Proximate cause, on the other hand, concerns whether the plaintiff's injury is a foreseeable and substantial result of the defendant's allegedly negligent conduct.[123]

A major problem with the causation issue when analyzing pitching injuries is that it is difficult to show that one outing over a pitch limit was the direct cause of a plaintiff's injury. In *Wattenbarger*, for example, the young Reds prospect trying out for the team had a relatively easy time showing this element because he had injured his arm while throwing and the team's coaches had him continue throwing after he had reported the "popping" sensation.[124] In the context of pitch counts, however, it is frankly impossible to show whether the purported negligence of one coach having a pitcher throw beyond a suggested pitch count was the direct cause of his injury or whether the injury was merely the result of normal wear and tear that is an inherent part of the sport. Unless a pitcher takes an MRI both before and after a game, it is extremely difficult to show conclusively that an injury was directly caused by one game's pitching load.

The medical literature cited in this Article may help provide this element, but likely not to the extent that a court would require. For example, one study cited above found that youth baseball players who pitch more than eighty-five pitches per game, more than eight months out of a year, or with arm fatigue are several times more likely to require

121. Clarence Morris, *Duty, Negligence, and Causation*, 101 U. PA. L. REV. 189, 189, 193-94 (1953); *see also* 50 State Sec. Serv., Inc. v. Giangrandi, 132 So. 3d 1128, 1149 (Fla. Dist. Ct. App. 2013) ("Causation consists of two distinct subelements: (1) the cause in fact, and (2) proximate cause.").

122. Morris, *supra* note 121, at 189, 193-94.

123. *Id.*; *see also* Palsgraf v. Long Island R.R. Co., 162 N.E. 99, 99, 102 (N.Y. 1928) (finding that a defendant cannot be liable to an unforeseeable plaintiff).

124. Wattenbarger v. Cincinnati Reds, Inc. 33 Cal. Rptr. 2d 732, 734, 736 (Ct. App. 1994). It must be noted that the *Wattenbarger* decision concerned only a summary judgment ruling, and thus the court only found that "issues of fact exist[ed]" as to whether the final pitch caused injury, as causation is generally a fact-based finding that can thus only be determined by a jury. *Id.* at 738. No subsequent history on the *Wattenbarger* case could be found by the Authors at the time of this writing to show that the plaintiff was or was not able to show causation, or whether the parties settled before trial and thus making that legal issue moot.

elbow surgery.[125] However, the cliché of "correlation does not imply causation" is just as applicable to the law as it is to general scientific principles; courts have generally found that correlation is "a necessary but not sufficient condition for causation."[126] While such research can be useful to show the dangers of pitcher overuse in a broad sense, it is unfortunately not of much help to show that one specific instance of overuse was the "but for" cause of injury, even in a particularly egregious incident.

The same problem lies with proximate cause as well. Even in the anecdote discussed in the beginning of this Article where FSU pitcher Tyler Holton was asked to throw a 129-pitch complete game in the middle of a weekend where he also started four games in right field and subsequently had to undergo Tommy John surgery, a full nine months had passed between the offending incident and Holton's diagnosis.[127] In between Holton's alleged overuse in the 2017 Regionals and opening day of the 2018 season, there could have been several intervening or superseding factors that more directly caused Holton's injury.[128]

As such, even if a plaintiff could adequately prove a breach of duty, proving causation would still be a challenge in any court case involving pitcher overuse and arm injuries. This is particularly true in this era of year-round baseball, which not only has led to an increased number of pitching-related injuries but also muddies the water for determining negligence liability by introducing a number of intervening factors into the analysis.[129]

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125. Fleisig et al., *supra* note 41, at 17-19; *see supra* note 41 and accompanying text.

126. Etherton v. Owners Ins. Co., 829 F.3d 1209, 1220-21 (10th Cir. 2016) (citing JOSEPH F. HEALEY, THE ESSENTIALS OF STATISTICS 350 (4th ed. 2015)); *see also* Tagatz v. Marquette Univ., 861 F.2d 1040, 1044 (7th Cir. 1988) ("Correlation is not causation."). *See generally* TYLER VIGEN, SPURIOUS CORRELATIONS, xi, 9, 63, 95 (2015) (humorously presenting a number of graphs with correlating variables that are clearly unrelated to each other; for example, showing a close correlation between "Number of people who drowned by falling into a pool" and "Films Nicolas Cage appeared in"); *Spurious Correlations*, TYLER VIGEN, http://www.tylervigen.com/spurious-correlations (last visited Feb. 3, 2019).

127. *See supra* notes 1-10.

128. *But see* Naidu v. Laird, 539 A.2d 1064, 1075 (Del. 1988) ("In the absence of any significant intervening cause, the temporal span [is] not sufficient to relieve [a defendant] of responsibility.").

129. *Wattenbarger*, 33 Cal. Rptr. 2d at 736 (acknowledging the inherent risks associated with pitching, especially the "great strain on the pitching arm").

3. Sovereign Immunity

Further complicating matters for potential litigants is the fact that any public school in this discussion would be protected from suit by sovereign immunity. Under most state sovereign immunity laws, public governmental entities like public schools and their employees are protected from tort claims against them so long as the public action that led to the plaintiff's claim is based on a discretionary function of government, rather than a ministerial function.[130] Applying this rule to coaches and other athletic personnel at a public school, the Kentucky Supreme Court in *Yanero v. Davis* found that while a coach may not be protected due to the discretionary nature of rule enforcement, athletic directors and the schools themselves who promulgate safety rules would be immune from suit.[131]

At the same time, some states' sovereign immunity laws would not allow for protection for schools in these instances. California's sovereign immunity law, for example, does not allow for sovereign immunity to apply to injuries incurred during school sports, including organized intercollegiate games.[132] New Jersey also allows for public vicarious liability "in the same manner and to the same extent as a private individual under like circumstances," meaning that if a New Jersey public school coach is found liable, like in *Yanero*, the school and school district could be found liable as well even if the school and district are found not liable on their own.[133] In general, however, sovereign immunity as a defense would be effective to restrict claims

130. Yanero v. Davis, 65 S.W.3d 510, 525-29 (Ky. 2001); *see* Edward F. Dragan, *Applying and Piercing Governmental Immunity in School Liability Cases*, EDUC. EXPERT (Oct. 23, 2014), http://education-expert.com/2014/10/applying-piercing-governmental-immunity-school-liability-cases ("Eleven states allow suits regarding nondiscretionary functions only; 39 states, including the District of Columbia, provide for discretionary action as an exception to the general rule of liability."). *See generally* J. Barton Goplerud, *Liability of Schools and Coaches: The Current Status of Sovereign Immunity and Assumption of the Risk*, 39 DRAKE L. REV. 759 (1989).

131. *Yanero*, 65 S.W.3d at 529. Governing athletic associations may also be protected if they are protected by the state as a government actor. *See infra* note 135 and accompanying text. Further, in some states the coach would also be protected; for example, in the Forrest Moore case Moore's former coach has offered sovereign immunity as a defense. Defendants John Cohen & Mike Nemeth's Memorandum in Support of their First Motion for Summary Judgment, *supra* note 103, at 2-3.

132. Avila v. Citrus Cmty. Coll. Dist., 131 P.3d 383, 390 (Cal. 2006) ("In the absence of any indication of such a legislative intent, we will not read section 831.7 as immunizing public entities from potential liability arising out of their oversight of school-sponsored activities. Thus, we conclude that school sports in general, and organized intercollegiate games in particular, are not 'recreational' within the meaning of the statute.").

133. N.J. REV. STAT. ANN. § 59:2-2 (2013); *see* Wright v. State of New Jersey, 778 A.2d 443, 467 (N.J. 2001) ("[A]s the Attorney General's commentary indicates, this section simply 'adopts the general concept of vicarious liability' by making '[a] public entity . . . [liable for] . . . [the torts] of [its] public employee [committed] within the scope of . . . employment.'").

regarding public school athletes to simply the coach, or completely bar claims altogether.

C. Imposing Negligence Liability on Overseeing Athletic Organizations

As mentioned earlier in this Article, overseeing athletic associations including high school athletic associations, leagues, and the NCAA have been incredibly inconsistent in regards to the rules promulgated to protect young athletes from overuse.[134] For instance, while some states athletic associations have adopted firm policies restricting pitches and mandating rest with strong penalties for violations, other states have much weaker policies, and the NCAA has no policy whatsoever. However, finding liability against such organizations for not creating sufficient policies to protect amateur pitchers is a tall order.

First, while high school athletic associations generally function as "quasi-governmental" organizations outside of direct government control, some states, including Kentucky, New Mexico, Texas, and Florida, have held their high school athletic associations as state actors immune from suit in the same way as public schools.[135] More critically, however, is the fact that courts in most states have refused to find that overseeing athletic associations owe a duty of care to their student-athletes in their rule-making function, finding that such organizations do not have a direct level of oversight necessary to effectuate an undertaking and, subsequently, an owed duty of care.[136] Such courts

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134. *See supra* Part III.

135. Isler v. N.M. Activities Ass'n, 893 F. Supp. 2d 1145, 1153-56 (D.N.M. 2012); Miulli v. Fla. High Sch. Athletic Ass'n, 998 So. 2d 1155, 1157 (Fla. Dist. Ct. App. 2008); Pierscionek v. Ill. High Sch. Ass'n, 2015 Ill. Cir. LEXIS 24, at *5-6 (Oct. 27, 2015); *Yanero*, 65 S.W.3d. at 530; Univ. Interscholastic League v. Sw. Officials Ass'n, 319 S.W.3d 952, 962 (Tex. App. 2010); *see also* Ehrlich, *supra* note 24, at 11-12 & n. 63. *But see* Coughlon v. Iowa High Sch. Athletic Ass'n, 150 N.W.2d 660, 662 (Iowa 1967); Wissel v. Ohio High Sch. Athletic Ass'n, 605 N.E.2d 458, 462 (Ohio Ct. App. 1992) (finding that their states' high school athletic associations are not public entities for the purposes of sovereign immunity). Ironically, the NCAA cannot be afforded similar protection despite claiming a large number of public colleges and universities as members thanks to what might be their crowning legal victory: the Supreme Court's refusal to deem the NCAA a state actor in *NCAA v. Tarkanian,* 488 U.S. 179, 198-99 (1988).

136. Ehrlich, *supra* note 24, at 16-32; *see* McCants v. NCAA, 201 F. Supp. 3d 732, 740 (M.D.N.C. 2016) (finding that the NCAA had not undertaken a duty of care to protect student-athletes' education simply by promulgating and overseeing eligibility rules requiring certain academic performance and by issuing statements discussing their "commitment . . . that it will protect the education and educational opportunities" of student-athletes); Lanni v. NCAA, 42 N.E.3d 542, 553 (Ind. Ct. App. 2015) ("Actual oversight and control cannot be imputed merely from the fact that the NCAA has promulgated rules and regulations and required compliance with those rules and regulations."). *But see* Schmitz v. NCAA, 67 N.E.3d 852, 867-69 (Ohio Ct. App. 2016) (allowing a lawsuit against the NCAA over concussions to proceed, ruling that the complaint adequately alleged a scenario where the NCAA voluntarily oversees and promulgates college

have generally looked to the Voluntary Undertaking doctrine outlined in Section 323 of the Restatement[137] and found that there was no increased risk of harm by the associations in creating their rules, despite some level of reliance by the student-athletes on that action.[138]

However, one commentator has argued that liability can still be imposed on these associations through Section 324A(b) of the Restatement, also known as the "Good Samaritan Doctrine," which "provides that those who 'render services to another which he should recognize as necessary for the protection of a third person or his things' may be liable to that third person for a 'failure to exercise reasonable care to protect his undertaking.'"[139] This legal theory was first established in the context of athletic associations in *Wissel v. Ohio High School Athletic Association* ("OHSAA"),[140] a case where a high school football player was rendered quadriplegic after a tackle, allegedly due to the poor manufacture of the football helmets offered by his school.[141] In *Wissel*, the Ohio Court of Appeals found no liability under Section 323—as alleged by the plaintiff—but instead found that liability could be effectuated under Section 324A by virtue that since the plaintiff was

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football safety rules, knew of the dangers of concussions, and "placed its economic interests over" the plaintiff's safety); Hill v. Slippery Rock Univ., 138 A.3d 673, 676, 679-80 (Pa. Super. Ct. 2016) (ruling that the NCAA could be found liable for not creating a rule requiring testing a Division II student-athlete for sickle cell trait when it had an existing rule requiring testing Division I student-athletes for the same trait).

137. *See supra* notes 113-20 and accompanying text.

138. *See* Mayall v. USA Water Polo, Inc., 174 F. Supp. 3d 1220, 1225, 1227-30 (C.D. Cal. 2016), *rev'd on other grounds*, 909 F.3d 1055 (9th. Cir. 2018); Mehr v. Fed'n Internationale de Football Ass'n, 115 F. Supp. 3d 1035, 1069 (N.D. Cal. 2015). The recent Ninth Circuit reversal of a later decision in *Mayall* may provide some guidance in a matter similar to *Wattenbarger*, as the district court decision was reversed in regards to USA Water Polo's alleged voluntary undertaking in failing to create adequate return-to-play policy to prevent secondary concussions. *Mayall*, 909 F.3d at 1066-68. Indeed, the court found that this failure could even constitute *gross* negligence, as the plaintiff's allegations "demonstrate that USA Water Polo was well-aware of the severe risk of repeat concussions and of the need to implement a policy to remove players from play after suffering a head injury." *Id.* at 1068. However, it may be difficult to find a comparable parallel within the pitcher overuse context unless a coach brought a player back in after an arm injury was discovered, which would thereby create the risk of a secondary arm injury. It is possible that a later court could use this precedent to find that coaches who are also "well-aware of the severe risk" was predicated solely on an amended complaint that limited the plaintiff's claims to secondary concussions, that application would be a misreading of this decision. *Id.* In fact, the Ninth Circuit even found that their case was "remarkably similar to *Wattenbarger*" and noted that "[t]he court's holding in Wattanberger [sic] rests on the primarysecondary [sic] distinction that is at the core of Mayall's case," thereby clearly indicating that their decision was solely limited to *secondary* injuries. *Id.* at 1063.

139. Ehrlich, *supra* note 24, at 38 (citing RESTATEMENT (SECOND) OF TORTS § 324A (AM. LAW INST. 1965)).

140. 605 N.E.2d 458 (Ohio Ct. App. 1992), *appeal dismissed per stipulation*, 595 N.E.2d 943 (Ohio 1992).

141. *Id.* at 461-62.

owed a general duty of care by his high school "in the conduct of its football program" and the school "allowed the conduct of its football games to be largely governed by the policies and decisions" of the OHSAA, a duty of care could be applied to the OHSAA because the association was "cognizant of the role they served and the degree to which their decisions were adopted."[142]

A similar line of thinking could be extended to high school athletics associations. By allowing high school athletic associations to dictate safety rules—including pitch count limits—it can be argued under Section 324A(b) that high schools have effectively passed on the duty of care that they owe to student-athletes to their athletic associations, and that by promulgating such rules the associations themselves have undertaken that owed duty of care.[143] However, while this theory could serve as an innovative way to impose liability on overseeing associations, it has never been tested outside of *Wissel*.[144] Furthermore, such a theory would at best be restricted to the thirty-six states that have adopted Section 324A in relevant part,[145] and would still require a showing of causation which, as established, is extremely difficult in the pitcher overuse context.[146]

Beyond this theory, options for pitchers to impose liability on overseeing associations for a failure to promulgate adequate pitch count rules are limited. Using theories like vicarious liability to attempt to show a master/servant relationship between a coach and the association would likely be limited only to the rare cases when a league employs its coaches.[147] Such a claim has already been found not to apply for volunteer coaches in youth baseball; however, as at least one court has found that the leagues do not have sufficient control over the coaches as required under the relevant section of the Restatement of Torts.[148]

Similarly, attempts to impose liability under landholder liability principles would also find a difficult road to success. The Illinois

142. *Id.* at 466; *see* Ehrlich, *supra* note 24, at 8-9.

143. Ehrlich, *supra* note 24, at 47-49.

144. *Id.* at 48-49.

145. Per Ehrlich, thirty-six states have expressly adopted Section 324A, two states have adopted similar common law rules, three have definitively rejected Section 324A, and the other states have either applied Section 324A as persuasive—but not binding—authority or have not yet addressed Section 324A in case law. Ehrlich, *supra* note 24, at 39-42.

146. *See supra* Part IV.B.2.

147. *See supra* note 99.

148. *See, e.g.*, Hills v. Bridgeview Little League Ass'n, 745 N.E.2d 1166, 1186 (Ill. 2000) (holding that the volunteer relationship between Little League coaches and the governing league "lacked sufficient elements of control to bring that relationship within the purview of section 317" and that the league "had no affirmative duty to control the coaches to curtail the criminal attack" that led to the lawsuit); *see also* RESTATEMENT (SECOND) OF TORTS § 317 (AM. LAW INST. 1965).

Supreme Court has called landholder liability for person-to-person injuries suffered on a baseball diamond a "narrow" theory, though that case involved a criminal assault by one team's coaching staff against another team's coach.[149] At the same time, Section 344 of the Restatement could provide some opening for pitchers attempting this type of claim against associations, as it holds possessors of land who hold that land open to the public for entry for businesses purposes subject to liability for accidental, negligent, or intentionally harmful acts of third persons by the failure to exercise reasonable care to "discover that such acts are likely done or likely to be done."[150] In this way, leagues could conceivably be held liable under this standard if they are aware that pitcher overuse is common on league-owned fields. However, this theory of law is entirely untested in the sports context, leaving a slim path for victory along this route.

D. Pitch Limits and Negligence Per Se

The final potential theory of law that could be used to hold coaches, schools, and leagues liable for pitcher overuse is negligence per se, a theory that allows the plaintiff to establish negligence "as a matter of law" by showing that the defendant committed a statutory violation in their actions injuring the plaintiff.[151] This allows a plaintiff to "substitute a statutory duty for the normal duty of care and a violation of that statute for the element of breach."[152] Generally speaking, negligence per se has two main elements: first, the plaintiff must be within the class of persons intended to be protected by the statute or law; and second, the plaintiff must have suffered harm of a sort that the statute or other law was intended to protect against.[153]

Conceivably, a pitcher could show that by breaking pitch count rules, coaches (and schools through vicarious liability) are per se liable for any harm caused through this theory. However, this theory's applicability to high school athletic associations regulations is extremely suspect. In *Chambers v. St. Mary's School*, the court held that negligence per se did not just apply to statutes, finding that where any "legislative enactment imposes a specific duty for the safety of others,

149. *Hills*, 745 N.E.2d at 1186-92.

150. RESTATEMENT (SECOND) OF TORTS § 344(a) (AM. LAW INST. 1965).

151. *Negligence Per Se*, BLACK'S LAW DICTIONARY (8th ed. 2004); *see* Osborne v. Montgomery, 234 N.W 372, 378-79 (Wisc. 1931) (defining negligence per se).

152. Faber v. Ciox Health, No. 2:16-CV-02337-STA-cgc, 2018 U.S. Dist. LEXIS 123156, at *17 (W.D. Tenn. July 24, 2018).

153. Jimenez v. Wells Fargo, Nat'l Ass'n, No. PWG-16-3721, 2017 WL 1230823, at *4-5 (D. Md. Apr. 4, 2017); *see* Chambers v. St. Mary's School, 697 N.E.2d 198, 200-01 (Ohio 1998).

failure to perform that duty is negligence per se."[154] However, the court in that case substantially limited application of this rule, finding that building codes just barely qualified, and that any administrative rules generally do not qualify, stating that "[o]nly those relatively few statutes which this court or the General Assembly has determined, or may determine, should merit application of negligence per se should receive such status."[155] As such, the imposition of this theory would require legislative action creating a statute designed to protect pitchers through state-wide pitch count rules.

V. PROPOSING NEW UNIFORM PITCH LIMIT REGULATIONS

A. The Need for a Model Pitch Count Limit Regulatory Scheme

As this Article demonstrates, more must be done to protect young amateur pitchers from overuse. Traditional methods of regulation have been inconsistent at best as deterrents against overuse, all too often producing guidelines and rules that are either too weak,[156] too easy to exploit,[157] or entirely nonexistent.[158] Further, given the difficulty of proving a negligence claim against a coach, team, school, or overseeing athletic association under current case law, the court system seems to be an unlikely option for young pitchers seeking relief as well. To truly get a handle on what has become an epidemic in amateur baseball, state legislators must step up to the plate and produce their own legislation to curb pitcher overuse.

The need for state-by-state legislation is two-fold. First, done correctly, state legislation will open the door to civil claims against liable coaches, schools, and overseeing athletic organizations by allowing pitchers and their families to conquer defenses like sovereign immunity and assumption of the risk. Any state legislation that would have any serious effect would waive sovereign immunity for these types of claims as required by the Eleventh Amendment to allow plaintiffs to sue public schools and public school employees.[159] State legislation creating liability for amateur baseball teams and personnel who overwork pitchers would also allow for claims based on negligence per

154. *Chambers*, 697 N.E.2d, at 201.

155. *Id.* at 203.

156. For example, Texas's policy that does not impose any actual penalty for overuse (aside from reprimands) until the third violation. *See supra* note 86 and accompanying text.

157. For example, Little League Softball's regulatory scheme that imposes innings limits rather than pitch limits. *See supra* note 93 and accompanying text.

158. For example, the NCAA's policy (or lack thereof). *See supra* Part III.C.

159. *See supra* Part IV.B.3.

se, making it much easier for plaintiffs to succeed in their claims.[160] Plaintiffs would still need to show causation in their negligence per se claim,[161] but the difficulty of proving this element would serve as something of a necessary guard against lawsuits by student-athletes who play year-round out of their own volition who then sue a coach who has them throw one pitch past the limit once in their entire career with that team and expect to recover the full costs of their injury.[162]

The second reason why state legislation is needed is to create deterrents to pitcher overuse that are both consistent and effective while allowing for compensation for young athletes who may be subject to lifelong chronic injuries as a result of the negligence of their coaches or other administrators. The risk of forfeiting one game and a small fine[163] may be enough of a deterrent to many coaches to not throw pitchers past their limits, but some coaches will still take the risk of these penalties hoping that the designated pitch reporter is not doing their job (or is absent from the game entirely) or that they can argue their way out of the penalty. Further, forfeiting one game and a $250 fine will likely not cause a school to take any serious action against the coach. On the other hand, the threat of a lawsuit would give pitch limit rules serious teeth, as schools and youth leagues would be extremely hesitant to risk a costly lawsuit and thus will force their coaches to adhere to rules or more than likely be instantly fired. Instead of just a game forfeit and a small fine, coaches would be risking serious money in legal damages and the loss of their coaching careers by overworking their pitchers—which aligns with the increased risks of lifelong medical costs and career-ending injuries that pitchers face when they take the mound past their limits.

Based on medical literature on the topic, the guidelines adopted by baseball organizations—in particular, the MLB-proffered Pitch Smart guidelines—are not sufficient to protect young pitchers from injury given the increase in year-round play by young amateur players.[164] However, these standards can serve as appropriate benchmarks for

160. *See supra* Part IV.C.

161. Faber v. Ciox Health, No. 2:16-cv-02337-STA-cgc, 2018 U.S. Dist. LEXIS 123156, at *17-18 (W.D. Tenn. July 24, 2018); *see supra* note 152 and accompanying text.

162. *See* Carter v. Atlanta & St. Andrews Bay Ry. Co., 338 U.S. 430, 434 (1949) (noting that negligence per se is merely "a confusing label for what is simply a violation of an absolute duty" and that "[o]nce the [negligence per se] violation is established, only causal relation is in issue").

163. Based on the strongest state high school athletic association penalty—Alabama's assigned penalty of game forfeiture and a $250 fine. *See supra* note 84 and accompanying text.

164. *See* Pytiak et al., *supra* note 65; *see also* Siddharth A. Mahure et al., *Disproportionate Trends in Ulnar Collateral Ligament Reconstruction: Projections Through 2025 and a Literature Review*, 25 J. SHOULDER & ELBOW SURGERY 1005, 1009 (2016) (reviewing the medical literature on UCL injuries for young pitchers and noting a 343 percent increase in UCL restoration surgeries despite efforts to curb pitcher overuse).

potential legislation so long as legislators also act to curb other risk factors like year-round play and the rise of two-way players, where pitchers like FSU's Tyler Holton are often asked to play in the field as soon as the day after throwing over 100 pitches.[165] While it is likely impossible to limit year-round play (even if banning "offseason" leagues was an option there is still no way to limit personal training), the Pitch Smart guidelines can easily be updated to require the days of rest to not just include future innings on the mound but any in-game play including play as a position player.[166]

Finally, any legislation to impose pitch limits on amateur baseball must also include strict reporting requirements with enough enforcement power to ensure that record-keeping is actually going on. Little League Baseball's use of a neutral scorekeeper is an effective model for this policy, and allowing coaches access to the pitch count numbers in-game and the ability to challenge and play games under protest if opposing teams allow pitchers to go over the limit could serve as enough of a deterrent against non-compliance in this regard.[167] However, states enacting legislation must also ensure that records are being kept beyond the game for reference and discovery should there be an issue later. While the states themselves are unlikely to want to take on the responsibility to keep these records, requiring leagues to keep records of pitch counts or risk taking on liability for injuries can serve as adequate incentives as leagues will be anxious to do everything possible to indemnify themselves from liability.

B. Barriers to Implementation

While in a perfect world legislation to codify pitch limits to protect young pitchers could pass and be successful, there are a number of barriers to implementation that suggest that such measures may not be practically possible in many cases. For one, legislatures likely will be loath to get involved in amateur sports, particularly for an on-field issue like pitcher overuse. Legislators will likely prefer to allow the organizations directly involved like the individual leagues and athletic associations to govern amateur baseball on their own terms.

Furthermore, legislation like the model legislation proposed in the previous Subpart would have the effect of creating liability for public schools and public athletic associations, creating a situation where damages for pitcher overuse injuries will come from already limited

165. *See supra* note 4 and accompanying text.
166. *See supra* notes 60-64 and accompanying text.
167. *See supra* notes 68-71 and accompanying text.

school budgets and taxpayer money. Players who opt to sue based on the new legislation may be seen as "robbing" the schools for injuries suffered due to their own participation in sports and possibly even their own actions in not challenging the coach and refusing to pitch past the legal limit. Along similar lines, there is still a lot of misinformation and doubt surrounding the medical data supporting pitch counts, and commentators, fans, coaches, and other stakeholders in the "let them play" brigade will likely fight any legislation that imposes pitch count as overreaching and not letting the coaches do their jobs.[168]

VI. CONCLUSION

As established in this Article, pitcher injuries caused by careless management and overuse has become an epidemic that currently has no easy legal solution.[169] Indeed, amateur baseball stands as a sharp contrast to professional baseball where young pitchers are essentially "babied" to protect their arms, particularly for rookies and in the low levels of the minor leagues.[170] The reason why this careful approach has not

168. *See, e.g.*, Sean Gregory, *One Dad's Quest to Reform Little League*, TIME (Aug. 11, 2015), http://time.com/one-dads-quest-to-reform-little-league (criticizing pitch limits, noting that few coaches follow them while proposing a "perfect game" exemption to Little League pitch count restrictions and arguing that "[a] good intention – protect arms from overuse! – can come with a steep cost: a singular accomplishment gets squashed"); Mike Hutton, *Purdue Recruit Austin Peterson Sees New IHSAA Pitch-Count Rule as Unnecessary*, CHI. TRIBUNE (Apr. 14, 2017), http://www.chicagotribune.com/suburbs/post-tribune/sports/ct-ptb-baseball-pitch-count-st-0415-20170414-story.html (quoting various high school pitchers and coaches in Indiana stating that the Indiana High School Athletic Association's new pitch count rule is overreaching); Steven Marcus, *Are Pitch Counts, Innings Limits Really Helping Pitchers?*, NEWSDAY (Oct. 1, 2016, 8:43 PM), https://www.newsday.com/sports/baseball/are-pitch-counts-innings-limits-really-helping-pitchers-1.12391521 (quoting baseball Hall of Famers Nolan Ryan and Tim McCarver stating that pitchers back in the day never needed pitch counts to remain effective and uninjured, while also discussing Sandy Koufax, whose famously short but highly successful career was derailed by arm injuries); Newman, *supra* note 14 (quoting an orthopedic surgeon who often talks to softball coaches who refuse to admit that players have shoulder injuries, despite the fact that the players themselves admit to frequently pitching through pain); Lanz Wheeler, *Pitch Counts in Little League and 5 Things to Consider*, BASEBALL THINK TANK, https://baseballthinktank.com/pitch-counts-in-little-league-and-5-things-to-consider (last visited Feb. 3, 2019) (arguing that hard pitch limits are ineffective as coaches must be flexible and take account the individual needs of each pitcher, thus putting the onus on the individual coach to decide what is best for each player).

169. *See supra* Parts III–IV.

170. *See, e.g.*, Thomas Harding, *Rockies Preaching Patience to Young Starters*, MLB (Jan. 31, 2018), https://www.mlb.com/news/colorado-rockies-protecting-young-arms/c-265618018; Bill Plunkett, *Dodgers Plan to Remain Cautious with Walker Buehler, Even in a Time of Need*, ORANGE COUNTY REG. (May 7, 2018, 7:50 PM), https://www.ocregister.com/2018/05/07/dodgers-plan-to-remain-cautious-with-walker-buehler-even-in-a-time-of-need; Jeff Sanders, *Padres Prospect Chris Paddack 'Better Now' As He Restarts Career in Lake Elsinore*, SAN DIEGO UNION-TRIB. (May 23, 2018, 5:45 AM), http://www.sandiegouniontribune.com/sports/padres/sd-sp-padres-chris-paddack-better-than-before-in-lake-elsinore-20180522-story.html.

translated to amateur baseball is simple: coaches simply do not have the incentive to protect their pitchers that professional teams have with protecting their "investment."[171] As such, it is clear that the coaches themselves cannot be trusted to protect the young arms under their care, and stringent regulation is needed to ensure that pitcher overuse does not happen.

The method of regulation used to effectuate change in this regard is still a matter of debate. State legislators may prefer to continue to allow the leagues and overseeing athletic associations to come up with their own pitch count guidelines and punishment schemes for non-compliance, but as shown here this leeway has yet to produce effective results.[172] Too many organizations still have policies that are too weak (or non-existent, in the NCAA's case)[173] and thus cannot help protect young pitchers from careless coaches, and—perhaps most importantly—their own competitive drive. Given the medical research showing a strong connection between overuse and injury, more must be done to curb this epidemic. If the leagues themselves cannot do it, perhaps it is time for the states to step in and create regulation that can actually help young pitchers.

171. *See supra* notes 17-20 and accompanying text.
172. *See supra* Parts III.A–D.
173. *See supra* Part III.C.

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