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**LIABILITY WAIVERS AND PARTICIPATION RATES IN
YOUTH SPORTS:
AN EMPIRICAL INVESTIGATION**

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INTRODUCTION

In this Article, we offer an empirical analysis of the relationship between liability waivers signed by parents and participation rates in youth sports. Specifically, we explore whether waiver enforcement is statistically associated with increased participation in youth sports. Our study finds no significant evidence of such a relationship.

The impetus for this investigation comes from an experience shared by parents all over the United States. A parent enrolls his minor child in a sports activity like a school team, club sport, skating party, or tennis camp. Organizers condition the child's participation on the parent signing a liability waiver in the organizers' favor, which often looks like this:

On behalf of myself and my child, I hereby
assume all risks related to participation in the
Academy . . . I further hereby, on behalf of
myself, my child and anyone claiming through

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myself or my child, do FOREVER RELEASE [provider's name redacted], its [employees, officers, and volunteers] from any cause of action, claims, or demands of any nature whatsoever, including but not limited to a claim of negligence which I, my child, or anyone claiming through myself or my child, may now or in the future have ... howsoever the injury is caused.¹

Legally, doctrinal reasons exist to doubt the enforceability of these releases. They are contracts of adhesion, and allowing those responsible for children's safety to disclaim duty to discharge those responsibilities reasonably is possibly unconscionable or against public policy.² Removing negligence liability presumably lowers youth sports providers' incentives to take safety precautions, thereby raising the likelihood youths will suffer sports-related injuries.

Despite these concerns, many courts enforce youth sports releases.³ Although these decisions could be justified on grounds of parental autonomy and freedom of contract, the primary argument favoring enforcement asserts that youth sports releases serve minors' interests, even at the cost of greater uncompensated

¹ Actual release signed by Author Yen on behalf of his son for participation in a soccer camp. Copy on file with Author Yen.

² *See* State ex rel. Dunlap v. Berger, 567 S.E.2d 265, 273 (W. Va. 2002) (adhesion contracts include all form contracts offered by one party on an all-or-nothing basis); Woodruff v. Bretz, Inc., 218 P.3d 486, 489 (Mont. 2009) (adhesion contract is a form contract to be signed by a weaker party with little choice about the terms); *see infra* Part I; *see also* RESTATEMENT (SECOND) OF CONTRACTS § 178 (AM. L. INST. 1981) (explaining a contractual term is unenforceable on public policy grounds when public policy outweighs interest in enforcement); RESTATEMENT (SECOND) OF CONTRACTS § 208 (AM. L. INST. 1981) (explaining an unconscionable contract or term may be unenforceable); Delta Funding Corp. v. Harris, 912 A.2d 104, 110-111 (N.J. 2006) (finding factors determining enforceability of an adhesion contract include unconscionability and public policy); Graham v. Scissor-Tail, Inc., 623 P.2d 165, 173 (Cal. 1998) (holding courts will deny enforcement of unconscionable adhesion contracts).

³ *See infra* Part I.

injury. Without enforceable waivers,⁴ youth sports providers may reduce their offerings or go out of business to avoid tort liability risks. Conversely, allowing youth sports providers to avoid liability increases youth sports opportunities, and youth sports participation by extension, which confers benefits on youths outweighing any increased risk of uncompensated injury.⁵

This policy argument might be right. However, it is plausible only if youth sports participation increases when courts enforce exculpatory agreements signed by parents. However, no prior study has tested whether enforcing youth sports releases has the hypothesized effect. The study described here therefore provides valuable information about the persuasiveness of arguments on either side of a split in contract and tort law.

We conducted our study by applying a linear mixed effects regression analysis⁶ to a dataset containing information about high school sports participation rates and the fifty states' law including the District of Columbia from 1988-2014. This allowed us to test for an association between enforcing youth sports releases and high school sports participation rates. Our analysis uncovered no statistically significant association.⁷ This

⁴ See *Zivich v. Mentor Soccer Club*, 696 N.E.2d 201, 205-07 (Ohio 1998) (mentioning concern for parental authority and freedom of contract to support decision enforcing youth sports release).

⁵ See *infra* Part I.

⁶ Regression analysis permits the study of a data set to see if the value of one aspect of the data (sometimes called a predictor or independent variable) can be used to predict the value of another (sometimes called the response or dependent variable). See Douglas S. Shafer and Zhiyi Zhang, *INTRODUCTORY STATISTICS* Ch. 10 (2012), available at <https://open.umn.edu/opentextbooks/textbooks/135>. A linear mixed effects regression analysis is one designed to accommodate challenges arising when variations in the dependent variable are explained by both the independent variable and random effects. See Andrzej Galecki & Tomasz Buzykowski, *Linear Mixed Effect Models Using R: A Step-by-Step Approach*, SPRINGER NAT. (2013); Tony Pistilli, *Using Mixed-Effects Models for Linear Regression*, available at <https://towardsdatascience.com/using-mixed-effects-models-for-linear-regression-7b7941d249b>; Section Week 8—Linear Mixed Models, available at https://web.stanford.edu/class/psych252/section/Mixed_models_tutorial.html.

⁷ See *infra* Part IIB. Enforcing states experienced marginally higher participation rates than states with no law on point (generally less than 1%), nonenforcing states experienced marginally lower participation rates than states with no law on point (generally less than

implies that the major argument given by courts for enforcing youth sports releases lacks empirical support.

The Article proceeds in five parts. First, the Article describes the law governing enforceability of youth sports signed by parents on behalf of children. Second, the Article sets forth the data and methodology on which our empirical study is based. This includes discussion about how ambiguities in state law complicate studying the association between enforcing youth sports releases and high school sports participation. Third, the Article acknowledges possible study limitations. Fourth, the Article discusses the study's results and possible implications. Finally, the Article concludes with thoughts about how courts should react to this study.

I. STATE LAW CONCERNING THE ENFORCEABILITY OF SPORTS LIABILITY WAIVERS SIGNED BY PARENTS ON BEHALF OF CHILDREN

State law varies considerably regarding the enforcement of youth sports releases signed by parents. Although state law is nuanced, the enforceability of youth sports releases generally depends on a state's specific pronouncements and, to a lesser extent, the state's law about releases signed by adults.

Most states enforce sports liability waivers signed by adults.⁸ Injured parties have often argued these waivers violate public policy, but courts have generally rejected these challenges by distinguishing essential services like medical services and public transportation from optional sports and recreational activities. Because people cannot afford to reject essential services, courts believe that allowing providers to disclaim liability is unfair, especially when removing the threat of tort liability might compromise public safety. By contrast, people can easily decide

1%), and enforcing states experienced marginally higher participation rates than nonenforcing states did (generally less than 1.5%).

⁸ See, e.g., *Schlobohm v. Spa Petite, Inc.*, 326 N.W.2d 920, 926 (Minn. 1982) (exculpatory clause in favor of gym and health spa provider not against public interest and therefore enforceable); *Chepkevich v. Hidden Valley Resort, L.P.*, 2 A.3d 1174, 1175 (Pa. 2010) (enforcing release in favor of ski operator); *Stelluti v. Casapenn Enter., LLC*, 1 A.3d 678, 695 (N.J. 2010) (enforcing release on behalf of fitness center).

not to play sports. Accordingly, it is arguably fair to give people a choice about absolving sports providers of liability as a condition of sports participation.⁹ This explains why courts generally enforce sports liability waivers signed by adults when those waivers demonstrate a clear intent to waive the provider's negligence. However, courts will not typically recognize waivers of gross negligence, recklessness, or intentional behavior.¹⁰

The general enforceability of adult sports liability waivers does not necessarily mean that state courts treat waivers signed by parents on behalf of minor children the same way. At the beginning of the study period in 1988, forty-two of the fifty-one states surveyed had no clear position on the enforceability of

⁹ See *Tunkl v. Regents of University of Cal.*, 383 P.2d 441 (Cal. 1963). *Tunkl* is a leading opinion in which the California Supreme Court refused to enforce an exculpatory agreement favoring a hospital. The court began with the premise, “[N]o public policy opposes private, voluntary transactions in which one party, for a consideration, agrees to shoulder a risk which the law would otherwise have placed upon the other party.” *Id.* at 101. However, the court then distinguished the case from ordinary cases because the agreement (one for medical care) was one “affecting the public interest.” *Id.* Exculpatory agreements affecting the public interest violate public policy because they frequently involve essential services like healthcare. Individuals unfairly face coercion when providers predicate essential services on waivers of liability, making enforcement of such bargains inappropriate. *Id.* See also *Vodopest v. MacGregor*, 913 P.2d 779 (Wash. 1996) (holding a preinjury agreement releasing medical researcher for negligent conduct violates public policy). For cases distinguishing recreational sports from essential services, see *Platzer v. Mammoth Mountain Ski Area*, 128 Cal.Rptr.2d 885, 889 (Cal. Ct. App. 2002) (“California courts have consistently declined to apply *Tunkl* and invalidate exculpatory agreements in the recreational sports context.”); *Chepkevich v. Hidden Valley Resort, L.P.*, 2 A.3d 1174, 1191 (Pa. 2010) (enforcing release in favor of ski operator because skiing is a “voluntary recreational activity”); *Stelluti v. Casapenn Ents, Enterprises, LLC*, 1 A.3d 678 (N.J. 2010) (enforcing release on behalf of fitness center). However, at least one state does not enforce exculpatory agreements at all. See *Hanks v. Powder Ridge Rest. Corp.*, 885 A.2d 734, 744-47 (Conn. 2005) (concluding exculpatory agreement in favor of ski area affects public interest and is unenforceable).

¹⁰ See RESTATEMENT (SECOND) CONTRACTS § 195(1) (AM. L. INST. 1981) (“A term exempting a party from tort liability for harm caused intentionally or recklessly is unenforceable on grounds of public policy.”).

youth sports releases, seven would not enforce them, and two had laws suggesting nonenforcement.¹¹ No state had laws suggesting or establishing enforcement. By the end of the study period in 2014, thirteen states did not enforce youth sports releases, six suggested nonenforcement, three suggested enforcement, eight enforced youth sports releases, and twenty-one had no clear law on the issue. Not surprisingly, state courts express sharply contrasting views about the law.

Courts refusing to enforce youth sports releases generally emphasize protecting minors, elevating their safety and compensation for injury over other policy goals. In the leading case *Scott v. Pacific West Mountain Resort*, a twelve-year-old boy suffered severe head injuries while skiing at a commercial ski resort.¹² He lost control while skiing on a race course laid out by the resort's ski school and apparently slid into a shack near the race course.¹³ When the boy sued the ski resort and the school, the defendants claimed a release signed by the boy's mother had absolved the defendants of responsibility.¹⁴ That release contained the following language:

For and in consideration of the instruction of skiing, I hereby hold harmless Grayson Connor, and the Grayson Connor Ski School and any instructor or chaperon from all claims arising out of the instruction of skiing or in transit to or from the ski area. I accept full responsibility for the cost of treatment for any injury suffered while taking part in the program.¹⁵

After concluding that the release was clear enough to give notice of an intended waiver, the Washington Supreme Court discussed the public policy implications of enforcing it.¹⁶ The court recognized that Washington generally enforced such exculpatory

¹¹ For purposes of this article, the authors will refer to the District of Columbia as a state.

¹² *Scott v. Pac. West Mountain Resort*, 834 P.2d 6 (Wash. 1992).

¹³ *Id.* at 8.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 9.

agreements, but emphasized that waivers signed by parents on behalf of minors required special consideration.¹⁷ In many jurisdictions, parents do not have the general authority to release their children's causes of action.¹⁸ In Washington, parents could not settle a child's claim without a hearing and court approval.¹⁹ The court worried that enforcing youth sports waivers might deprive a child of recourse against a negligent party to pay for care his or her parents could not afford.²⁰ Accordingly, the court rejected the argument the threat of liability would raise the cost of sports, finding no sufficient justification for allowing sports providers to absolve themselves of liability as a condition to sports participation.²¹

By contrast, courts enforcing youth sports releases often contend that negligence claims pose grave risks to the viability of youth sports. Allowing youth sport providers to absolve themselves of liability therefore increases the availability of youth sports. This argument implicitly assumes that the value of increased youth sports opportunities outweighs any risks of uncompensated injury accompanying youth sports releases. The leading case *Zivich v. Mentor Soccer Club* expresses this position.²² In *Zivich*, the seven-year-old plaintiff suffered injury when climbing on a soccer goal after practice.²³ The plaintiff's mother had signed a waiver in the defendant's favor, and the district court relied on the waiver to grant summary judgment against the plaintiff.²⁴ On appeal, the Ohio Supreme Court looked past the waiver's potential effects on child safety, focusing instead on tort liability's potential effect on individuals and institutions providing youth sports opportunities:

[F]aced with the very real threat of a lawsuit, and the potential for substantial damage awards, nonprofit organizations and their volunteers could very well decide that the risks are not worth the effort. Hence, invalidation of exculpatory

¹⁷ *Id.* at 11.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 11—12.

²¹ *Id.* at 12.

²² *Zivich v. Mentor Soccer Club*, 696 N.E.2d 201 (Ohio 1998).

²³ *Id.* at 203.

²⁴ *Id.* at 203—04.

agreements would reduce the number of activities made possible through the uncompensated services of volunteers and their sponsoring organizations. ... Accordingly, we believe that public policy justifies giving parents authority to enter into these types of binding agreements on behalf of their minor children.²⁵

This led the court to hold that waivers of the sort signed by the plaintiff's mother were valid, and the court upheld the lower court's ruling.²⁶

Other courts enforcing youth sports releases follow the reasoning expressed in *Zivich*, extending it for the benefit of public schools. In *Sharon v. City of Newton*, the Massachusetts Supreme Judicial Court wrote, "[t]o hold that releases of the type in question here are unenforceable would expose public schools, who offer many of the extracurricular sports opportunities available to children, to financial costs and risks that will inevitably lead to the reduction of those programs."²⁷ And, in *Hohe v. San Diego Unified School District*, the California Fourth District Court of Appeals wrote:

Hohe, like thousands of children participating in recreational activities sponsored by groups of volunteers and parents, was asked to give up her right to sue. The public as a whole receives the benefit of such waivers so that groups such as Boy and Girl Scouts, Little League, and parent-teacher associations are able to continue without the risks and sometimes overwhelming costs of litigation. Thousands of children benefit from the availability of recreational and sports activities. Those options are steadily decreasing-victims of decreasing financial and tax support for other than the bare essentials of an education. Every learning experience involves risk. In this instance

²⁵ *Id.* at 205.

²⁶ *Id.* at 208.

²⁷ *Sharon v. City of Newton*, 769 N.E.2d 738, 747 (Mass. 2002).

Hohe agreed to shoulder the risk. No public policy forbids the shifting of that burden.²⁸

II. TESTING THE EFFECT OF YOUTH SPORTS LIABILITY WAIVERS

The foregoing shows that an empirically testable proposition heavily influences the enforceability of youth sports releases. Put simply, courts enforcing those releases believe that doing so increases youth sports participation. We now describe how we tested this proposition.

A. CONSTRUCTION OF DATASET

1. *BASIC CONSTRUCTION*

We used three sources to construct the dataset used to test the relationship between enforcing youth sports releases and youth sports participation rates. First, we took participation figures compiled and reported annually by the National Federation of State High School Associations (NFHS).²⁹ The NFHS annually surveys its membership, state high school athletic associations for all fifty states and the District of Columbia, to gather the number of high school students who participate in sports in each state.³⁰ By relying on NFHS data, we have reconstructed total participation numbers in each of the fifty states and the District of Columbia for a twenty-seven-year period from 1988 to 2014. These numbers include participation by gender.

²⁸ *Id.* at 1565. Hohe v. San Diego Unified Sch. Dist., 224 Cal. App. 3d 1559, 1564 (Ct. App. 1990).

²⁹ Although “NFHS” is not a perfect acronym for “National Federation of State High School Associations,” it is the commonly used acronym for the organization. See NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS, <https://www.nfhs.org/who-we-are/aboutus> (last visited Sept. 25, 2020).

³⁰ *High School Participation Survey Archive*, NATIONAL FEDERATION OF STATE HIGH SCHOOL ASS’NS, (Aug. 28, 2019), <https://www.nfhs.org/sports-resource-content/high-school-participation-survey-archive/>.

Second, we used high school enrollment figures obtained from the National Center for Education Statistics (NCES).³¹ The NCES provides secondary school enrollment by state for all years under study. Accordingly, one can approximate the high school sports participation rate for each state in any year by taking the NFHS raw number and dividing it by the high school enrollment figure provided by the NCES.

Third, we compiled data derived from surveying the law of all fifty states and the District of Columbia. This required examining each jurisdiction to determine if the jurisdiction enforced, had not enforced, or had decided nothing about youth sports waivers from 1988 to 2014. For each year, each state was assigned one of the following codes, depending on the state of its law governing the enforceability of youth sports waivers signed by parents in the high school sports context:

- 2: Youth sports waivers unenforceable.
- 1: Law indicating that youth sports waivers would be invalid, but no definitive ruling.
- 0: No case or statutory law on point, or law so confusing that no conclusions can fairly be made.
- 1: Indication that youth sports waivers would be enforced, but no definitive ruling.
- 2: Youth sports waivers enforceable.

2. *CRITERIA AND PROCESS FOR CODING OF STATE LAW*

Setting the criteria for and assigning the codes for each state required nuanced judgments about the meaning of state law. We next describe the criteria used and the process for applying them.³²

For a state to be coded -2 or 2, we required clear state law about the enforceability of youth sports releases favoring high schools. Although state supreme courts sometimes provided

³¹ *Public school enrollment in grades 9 through 12, by region, state, and jurisdiction: Selected years, fall 1990 through fall 2027*, NATIONAL CENTER FOR EDUCATION STATISTICS (Jan. 2018), https://nces.ed.gov/programs/digest/d17/tables/dt17_203.30.asp.

³² A summary of the relevant law from all 50 states can be found in the Appendix to this article.

definitive rulings, we did not condition a -2 or 2 coding on a state supreme court ruling.³³ In a few cases, state legislatures settled the question.³⁴ In others, we accepted trial or intermediate appellate state court opinions on point because we believed such rulings would establish the law in a state until contradicted or overruled. We did not accept federal court opinions about state law on the grounds such opinions are predictions, not pronouncements, of state law.

-1 or 1 codings often followed nonbinding or unclear state law. Federal court decisions pronouncing state law and unpublished state court opinions received this treatment because these cases do not set binding precedent for future state court decisions. We also assigned -1 or 1 when decisions suggested outcomes without clearly deciding whether to enforce releases favoring high schools.

This ambiguity sometimes arose because courts sometimes make distinctions between for-profit entities and nonprofit or government entities like schools. In *Zivich*, the Ohio Supreme Court justified its decision in part by invoking the image of impecunious nonprofits who would be driven from providing youth sports opportunities by the fear of negligence liability.³⁵ This image arguably distinguishes nonprofits and government entities from for-profit entities. On the one hand, nonprofits and government actors, like schools, arguably provide youth sports for the public good. These entities might lack resources for damages or insurance because they do not seek or generate sufficient profit. Giving these entities a break from liability might therefore seem fair given their altruistic motives. On the other hand, for-profit entities provide youth sports to make money. They therefore earn enough revenue to pay for insurance, and their monetary motivations make them less deserving of relief from liability.

Although many reasons exist to doubt whether the distinction between non-profit/government and for-profit actors is

³³ See *Zivich v. Mentor Soccer Club*, 696 N.W.2d 201 (Ohio 1998); *Sharon v. City of Newton*, 769 N.E.2d 738 (Mass. 2002); *Hanks v. Powder Ridge Rest. Corp.*, 885 A.2d 734 (Conn. 2005).

³⁴ See COLO. REV. STAT. ANN. §13-22-107(3) (West) (“A parent of a child may, on behalf of the child, release or waive the child's prospective claim for negligence.”); Alaska Stat. Ann. §09.65.292 (2004) (West).

³⁵ *Zivich*, 696 N.E.2d at 205.

indeed valid,³⁶ some courts accept it. Accordingly, these courts raise the possibility that they would enforce releases favoring nonprofit and government entities, but not those favoring for-profit entities. This means that decisions against enforcing youth sports releases must be read carefully when the defendant is a for-profit entity.³⁷ In some cases, an opinion indicates that the court would not enforce releases regardless of the entity involved because parents simply lack the power to bind their children to youth sports releases.³⁸ In other cases, an opinion leaves open the

³⁶ The primary reason to doubt this distinction is that many nonprofits have resources comparable to for-profit entities. At the high end of the scale, U.S. Soccer is a 501(c)(3) corporation, with cash assets of over \$14 million and net assets of over \$145 million. See U.S. SOCCER, <https://www.developmentfund.ussoccer.com/#homepage> (last visited Sept. 26, 2020) (“U.S. Soccer is a 501(c)(3) nonprofit organization.”); 2019 Audited Financial statement of U.S. Soccer, available at *Financial Information*, U.S. SOCCER, <https://www.ussoccer.com/governance/financial-information> (last visited Sept. 26th, 2020). Smaller youth sports clubs may be organized as nonprofit entities, but they mimic for-profits’ behavior by charging significant fees to sports participants. Indeed, the *Zivich* defendant, Mentor Soccer Club, presently charges over \$900 for participants aged nine to fifteen. See *2017-18 Program Fees*, MENTOR SOCCER CLUB, <https://www.mentorsoccerclub.com/Default.aspx?tabid=31518> (last visited Sept. 26, 2020). And, in 2017, USA Today reported annual club fees (not including travel) of \$2,500 to \$5,000 for club soccer and up to \$6,000 for volleyball. See *Paying to Play: How Much do Club Sports Cost?*, USA TODAY (Aug. 1, 2017), <https://usatodayhss.com/2017/paying-to-play-how-much-do-club-sports-cost>. At the very least, these assets and revenue streams make many nonprofits fully able to purchase liability insurance. See *Youth Tackle Football Insurance*, Sadler Sports and Recreation Insurance, <https://www.sadlersports.com/football/> (last visited Sept. 26, 2020) (quoting tackle football insurance for under \$500 per team with coverage offered in all 50 states). See also ESPORTSINSURANCE, <https://www.esportsinsurance.com/> (last visited Sept. 26, 2020). Similarly, public school systems do not lack money and are fully able and do carry liability insurance.

³⁷ Decisions to enforce such releases do not present problems because nonprofit and government entities are considered more deserving of liability relief than for-profit entities. Therefore, a decision to enforce a release for a commercial entity surely means they would be enforced on behalf of nonprofits and government entities as well.

³⁸ See *Hawkins v. Peart*, 37 P.3d 1062, 1063-64 (Utah Sup. Ct. 2001), (“a parent has [no] authority to release a child's cause of action prior to an injury.”); *Scott v. Pac. W. Mt. Resort*, 834 P.2d 6, 12 (Wash.

possibility that a court would refuse to enforce youth sports releases only when the defendant is a for-profit entity.

For example, in *Kirton v. Fields*,³⁹ the Florida Supreme Court refused to enforce a release executed in favor of a commercial entity.⁴⁰ Such a decision might have indicated a -2 coding, but the court carefully phrased its opinion as applying only to “injuries resulting from participation in a commercial activity.”⁴¹ In so ruling, the court let stand the earlier case of case of *Gonzalez v. City of Coral Gables*,⁴² in which the Third District Court of Appeals enforced a youth sports release in favor of a fire department youth program operated by the City of Coral Gables.⁴³ In so deciding, the court characterized the youth program as “within the category of commonplace child oriented community or school supported activities for which a parent or guardian may waive his or her child's litigation rights in authorizing the child's participation.”⁴⁴ This left open the possibility that the court might decide differently if the release favored a government or non-profit entity, so we coded Florida as 1.⁴⁵

Similarly, in *Hojnowski v. Vans Skate Park*,⁴⁶ the New Jersey Supreme Court considered a release signed by a parent favoring a commercial skate park.⁴⁷ In ruling against enforceability, the court framed the issue narrowly, asking “whether New Jersey's public policy permits a parent to release a minor child's potential tort claims arising out of the minor's use of

1992) (en banc) (“We hold that to the extent a parent's release of a third party's liability for negligence purports to bar a child's own cause of action, it violates public policy and is unenforceable.”); Galloway v. State, 790 N.W.2d 252, 259 (Iowa 2010) (“[P]reinjury releases executed by parents purporting to waive the personal injury claims of their minor children violate public policy and are therefore unenforceable.”).

³⁹ 997 So.2d 349 (Fla. 2008).

⁴⁰ *Id.* at 358.

⁴¹ *Id.*

⁴² 871 So.2d 1067 (Fla. Dist. Ct. App. 2004).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ We recognized that we might be wrong about how opinions like *Kirton* would be understood by relevant actors and that future cases might come out differently. We therefore treated codings of 1 and -1 in different ways to see if our results were sensitive to alternate coding decisions. We found no such sensitivity. See *infra* Part IIB.

⁴⁶ 901 A.2d 381 (N.J. 2006).

⁴⁷ *Id.* at 383.

a *commercial* recreational facility.”⁴⁸ However, we coded New Jersey as a -1, as opposed to 0, in the wake of *Hojnowski* because an earlier 1970 trial court decision had found a release signed by a parent void against public policy.⁴⁹ Because that case made no distinction between for-profit and nonprofit or government entities, we read that case as justifying a -2 code. *Hojnowski* therefore represented a possible, but by no means definite, retrenchment from earlier law.

0 codings generally applied to states whose case and statutory law was silent on the youth sports release issue. However, we also assigned 0 to states with relevant, but confusing, law. For example, in Connecticut, from 1958 until 2002, the primary precedent regarding youth sports releases was *Fedor v. Mauwehu Council, Boy Scouts of America, Inc.*⁵⁰ In *Fedor*, the Connecticut Superior Court held a release signed by the plaintiff’s father as a condition of attending a boy scout camp void as against public policy. We coded Connecticut as -2 accordingly. Then, in 2002 and 2003, the Connecticut Superior Court issued two unpublished opinions enforcing releases signed by the plaintiffs’ parents.⁵¹ If these opinions had been published, they would have justified a 2 coding. However, we could not predict these cases’ effects because the relevant opinions were unpublished, so we coded Connecticut as 0. Interestingly, the Connecticut Supreme Court held all exculpatory agreements unenforceable for public policy reasons in 2005, suggesting that we were correct about the unpublished opinions’ weak precedential effect.⁵²

Similarly, in 1997, Hawaii enacted Hawaii Revised Statutes 663-1.54(b) to address the general enforceability of releases.⁵³ The statute states:

⁴⁸ *Id.* at 385 (emphasis added).

⁴⁹ *Fitzgerald v. Newark Morning Ledger Co.*, 267 A.2d 557 (N.J. Super. Ct. Law Div. 1970).

⁵⁰ *Fedor v. Manuwahu Council*, 143 A.2d 466 (Conn. Super. Ct. 1958).

⁵¹ *Fischer v. Rivest*, 33 Conn. L. Rptr. 119 (Conn. Super. Ct. 2002) (unpublished); *Saccente v. Laflamme*, 35 Conn. L. Rptr. 174 (Conn. Super. Ct. 2003) (unpublished).

⁵² *Hanks v. Powder Ridge Restaurant Corp.*, 885 A.2d 734, 741—42 (Conn. 2005).

⁵³ HAW. REV. STAT. § 663-1.54(b) (1997).

owners and operators of recreational activities shall not be liable for damages for injuries to a patron resulting from inherent risks associated with the recreational activity if the patron participating in the recreational activity voluntarily signs a written release waiving the owner or operator's liability for damages for injuries resulting from the inherent risks.⁵⁴

Importantly, however, “inherent risks” do not include those resulting “from the negligence, gross negligence, or wanton act or omission” of the defendant.⁵⁵

It is hard to know how a statute like this might affect the law going forward, and Hawaii has reported no case clarifying the matter. First, the statute protects “owners and operators of recreational activities” without elaborating on whether a high school falls within “owners and operators.”⁵⁶ Second, the statute excludes risks arising from the defendant’s negligence.⁵⁷ This exclusion arguably reduces a release’s value to practically nothing because defendants do not face liability for injuries not caused by negligence. However, risks inherent to a sport can be caused, or exacerbated, by a defendant’s negligence. For example, drowning is a risk inherent in surfing, but a surfing school can reduce drowning risks by taking reasonable precautions when taking students to the ocean. If a surfing student signs a liability waiver but drowns, does the release protect the defendant because drowning is an inherent risk of surfing? Or, does the release not protect the defendant if the plaintiff alleges the defendant failed to take reasonable precautions to reduce the risk of drowning? Finally, it is not clear whether a parent’s signature on a youth sports release would count as one voluntarily signed by the patron. These ambiguities made predicting how Hawaii courts might treat youth sports releases impossible, so we coded the state as 0.

⁵⁴ *Id.*

⁵⁵ HAW. REV. STAT. 663-1.54(c)(3) (1997).

⁵⁶ *Id.* § 663-1.54(b).

⁵⁷ *Id.* § 663-1.54(c)(3).

3. *CALCULATING HIGH SCHOOL SPORTS PARTICIPATION RATES*

We derived state high school sports participation rates from two sources covering 1988 through 2014: (1) the National Federation of State High Schools (NFHS) annual high school athletics participation survey⁵⁸ and (2) the National Center for Education Statistics (NCES) Elementary/Secondary Information System website.⁵⁹ The NFHS writes playing rules and offers guidance for high school sports⁶⁰ and is comprised of state athletic associations from all fifty states and the District of Columbia.⁶¹ Each year, the NFHS surveys its member associations about youth sports participation and publishes the results on both a national and state-by-state basis.⁶² We used the figures from these surveys as the number of youths participating in high school sports for each state in a given year, excluding numbers that seemed obviously incorrect.

The most common reason for exclusion was discrepancy in a state's reported data. The NFHS surveys generally offered three different sets of numbers: total participation, participation by gender, and participation by sport broken down by gender. In most cases, those numbers were consistent, with various categories' sums equaling total numbers. In some cases, the sums did not match, leading us to doubt the numbers' accuracy. Therefore, we set an arbitrary 0.1% limit as an acceptable discrepancy and excluded years with larger discrepancies.

⁵⁸ Available at *High School Participation Survey Archive*, NAT'L FED'N OF HIGH SCHOOL ASS'NS (Aug. 28, 2019), <https://www.nfhs.org/sports-resource-content/high-school-participation-survey-archive/>.

⁵⁹ *ELSi: Elementary/Secondary Information System*, INST. OF EDUC. SCI., <http://nces.ed.gov/ccd/elsi/> (last visited Sept. 19, 2020). We downloaded our information by using the ELSi Table Generator at <https://nces.ed.gov/ccd/elsi/tableGenerator.aspx>.

⁶⁰ *See About Us*. NAT'L FED'N OF HIGH SCHOOL ASS'NS, <https://www.nfhs.org/who-we-are/aboutus> (last visited Sept. 19, 2020).

⁶¹ *See id.*; *State Association Listing*, NAT'L FED'N OF HIGH SCH. ASS'NS, <https://www.nfhs.org/resources/state-association-listing> (last visited Sept. 19, 2020) (listing all fifty-one NFHS member state associations).

⁶² NFHS, *supra* note 30.

Reporting identical results in consecutive years provided the next most common reason for exclusion. For example, Georgia reported two-year pairs of identical results for 1989 to 1990, 1991 to 1992, 1993 to 1994, 1995 to 1996, 1999 to 2000, 2008 to 2009, and 2010 to 2011. Many other states had similar identical reports, both overall or for only one gender. We considered such coincidence extremely unlikely and suspect that this data pattern reflected clerical error or reuse of a prior year's figures in the absence of a completed survey in a given year. We responded by including only one repeating year in our dataset.

Smaller numbers of exclusions resulted from the removal of outliers and other oddities. We removed nine data points because the reported numbers varied significantly from the years before and after.⁶³ We also removed four years of data from Iowa because the numbers indicated participation rates over 100%.⁶⁴ We combined the raw participation numbers obtained from the NFHS with the NCES enrollment figures. Dividing the NFHS numbers by the total secondary school enrollment for each state approximated the fraction of high school students in each state participating in high school sports.

4. *CONTROLS*

We included 3 control variables. First, we controlled for year because participation rates unmistakably rise during the study, regardless of the law adopted by a given state.⁶⁵ This trend makes comparing observations from different years potentially inaccurate. Adjusting for year reduces the possibility of such error and was a significant predictor in our model.

⁶³ Candidates for such exclusion were initially identified with a three standard deviation rule. After, a visual inspection determined whether the potential outlier truly varied from the surrounding years. The data points removed were West Virginia 2007, Virginia 1990, North Dakota 1990, Oregon 1990 and 1999, Montana 2004, New Mexico 2006, Alaska 1990, and Arkansas 1991 and 2000.

⁶⁴ The removed years are 1989, 1991, 1992, and 2008. Participation rates of over 100% could possibly arise if many students in a state participated in multiple sports and were counted as separate individuals for each participation. We do not know if this happened.

⁶⁵ Only 7 states experienced falling participation rates over the course of the study: Colorado, Washington, Arizona, Idaho, Nevada, Oregon, and South Dakota.

Second, we controlled for median household income because wealth might affect sports participation rates. To do this, we used data reported by the US Census in 2018 dollars.⁶⁶ This control proved a significant predictor in our model.

Third, we controlled for the ratio of male to female participants to isolate the law affecting releases more precisely. Especially in the earlier years studied, the number of boys participating in sports far exceeded the number of girls. That gap decreased considerably in later years of study. The reasons for this decrease probably included changing attitudes towards girls' sports participation and Title IX, which prohibits discrimination on the basis of sex in educational institutions receiving federal funding.⁶⁷ We hypothesized that states with highly unequal participation would respond more strongly to Title IX and increase sports participation for girls more rapidly than states with relatively equal participation. Controlling for participation differences between genders allowed us to avoid confounding effects associated with gender, which proved significant.

⁶⁶ *Historical Income Tables: Households*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-households.html>. (last updated Sept. 8, 2020). Note also for 2013, two sets of figures were reported, which have been combined by the estimated population proportion for the two concurrent surveys. *Historical Income Tables Footnotes*, U.S. CENSUS BUREAU, <https://www.census.gov/topics/income-poverty/income/guidance/cps-historic-footnotes.html>. (last updated Sept. 4, 2020).

⁶⁷ See 20 U.S.C. § 1681(a) (“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”); 34 C.F.R. § 106.41(c) (requiring provision of equal athletic opportunity for members of both sexes). See also *McCormick ex rel. McCormick v. School Dist. Of Mamaroneck*, 370 F.3d 275, 286 (2d Cir. 2004) (applying Title IX to high school sports and noting “[t]he participation of girls and women in high school and college sports has increased dramatically since Title IX was enacted.”); *Ollier v. Sweetwater Union High School Dist.*, 858 F.Supp.2d 1093 (S.D. Cal. 2012) (applying Title IX to high school sports). For a description of Title IX’s influence on sports, see Dionne Koller, *Not Just One of the Boys: a Post-Feminist Critique of Title IX’s Vision for Gender Equity in Sports*, 43 CONN. L. REV. 401 (2010).

In addition to the three significant controls mentioned above, we initially controlled for state sovereign immunity and statutory damages caps because such law potentially obviates the value of releases for high schools. Accordingly, we conducted an additional fifty state survey to determine each state's sovereign immunity law throughout the study period. We coded and treated the results of the survey as a categorical variable in our analysis as follows:

- 2: No waiver of sovereign immunity
- 1: Partial, limited waiver of sovereign immunity
- 1: Partial, larger waiver of sovereign immunity
- 2: Complete waiver of sovereign immunity

However, we discovered adding sovereign immunity did not give us new statistically significant information. Accordingly, we followed standard statistical analysis practice and dropped it from the model.⁶⁸

We controlled for damage caps because states sometimes limit the amount a plaintiff may recover in a suit against high schools. This required yet another fifty-state survey, which resulted in a 1 coding if a state capped damages and 0 if a state did not. We decided against trying to code for variations in damage caps because differences among the states were subtle and numerous. We discovered here as well that adding damage cap information to our model did not yield valuable new information, so it too was dropped.

B. ANALYSIS

We used the foregoing data to test the effect of enforcing or not enforcing youth sports releases. The study's null hypothesis was that the law governing these releases does not affect youth sports participation rates. The study tested this hypothesis by measuring the relationship between various legal conditions (i.e., whether the state law was -2, -1, 0, 1, 2, or combinations thereof) and high school youth sports participation rates. The study conducted the analysis with R in a linear mixed effect multilevel

⁶⁸ R. Dennis Cook & Sanford Weisburg, *Applied Regression Including Computing and Graphics*, JOHN WILEY & SONS, INC. (2009).

model.⁶⁹ The response variable was the participation rate, and the predictors were the code assigned to each state's law in a given year, with one exception. For years in which a state's law changed, we did not assign the new code to the state until the following year on the theory it takes time before a population learns about changes in the law and adjusts its behavior.

Because codes -1 and 1 had associated ambiguities, we processed data associated with those codes in three different ways. In the first, we treated codes -1 and 1 identically to code 0. In the second, we excluded that data, including only data linked to state law codes -2, 0, or 2. In the third, we treated codes -1 as -2 and 1 as 2. We were unable to treat -1 and 1 as separate codes because the number of such data points was too small to provide statistical power.⁷⁰

We employed three methods to test how sensitive our analysis was to the coding decisions made about state law. By treating -1 and 1 codes as 0, we treated ambiguous cases as if they told the public nothing about the enforcement of youth sports waivers. This made sense because ambiguous signals about the enforceability of waivers are not likely to influence the behavior of youth sports providers. If a state tells youth sports providers it will or will not enforce waivers, those providers have every reason to arrange their affairs accordingly. However, if no law or ambiguous law exists, the reasons for adjusting behavior are smaller. It might make sense to change nothing until further clarification arrives.

By excluding data associated with -1 and 1 codes, we treated ambiguous cases as noise indecipherable to the general public that therefore ought to be ignored. This is potentially valuable not only because we are clear about what is being measured, but also because the policy debate about the value of enforcing youth sports waivers is expressed in cases that clearly decide whether to enforce waivers. Thus, ignoring states whose laws do not make a clear choice focuses our study on the precise policy dispute raised by the law.

Finally, by including -1 with -2 and 1 with 2, we covered the possibility that the public responded to ambiguous signals about enforcement or nonenforcement as if they were clear. We

⁶⁹ Andrzej Galecki & Tomasz Buzykowski, *Linear Mixed Effect Models Using R: A Step-by-Step Approach*, SPRINGER NAT. (2013).

⁷⁰ Thomas P. Ryan, *Sample Size Determination and Power*, JOHN WILEY & SONS, INC. (2013).

are not claiming these possible effects occur. We merely tested all possibilities in case they changed the strength of association between the enforceability of youth sports releases and youth sports participation rates.

All three data-handling methods indicated no statistically significant relationship between the enforceability of youth sports releases and high school sports participation rates. The principal results follow.

When codes -1 and 1 are treated as 0, the mean adjusted participation rate was 54.02611% in states with no law (i.e., states coded as 0). For states not enforcing youth sports releases, the participation rate fell to 53.61578%. For states enforcing the releases, the participation rate rose to 54.66165%. For the difference between states with no law and states not enforcing releases, the p value⁷¹ was 0.6086. For the difference between states with no law and states enforcing releases, the p value was 0.5068. And, for the difference between states not enforcing releases and states enforcing releases, the p value was 0.3877. These p values fall short of statistical significance at either a 0.10 or 0.05% significance level. Figure 1 summarizes these results.

⁷¹ The P value is a measure of how statistically likely a given observation (particularly an observation that varies from the null hypothesis) is if the null hypothesis is true. If this probability is high, statisticians interpret the observation as consistent with the null hypothesis. Intuitively, this means it is “no big surprise” to observe variances from the null hypothesis of this size. If the probability is small, statisticians interpret the observation as evidence (not proof) that the null hypothesis is false. Probabilities associated with such interpretation are labeled statistically significant. See Stephanie Glen, *P-Value in Statistical Hypothesis Tests: What is it?*, available at <https://www.statisticshowto.com/p-value/>; *P Values*, available at https://www.statsdirect.com/help/basics/p_values.htm; Amy Gallo, *A Refresher on Statistical Significance*, Harvard Business Review, February 16, 2016, available at <https://hbr.org/2016/02/a-refresher-on-statistical-significance>. For a textbook-style explanation, see Douglas S. Shafer and Zhiyi Zhang, *INTRODUCTORY STATISTICS* 356-363 (2012), available at <https://open.umn.edu/opentextbooks/textbooks/135>.

Figure 1
(-1 and 1 = 0)

	Change	Part %	P Value
No Law as "control"		54.02611	
Not Enforceable	-0.41033	53.61578	*0.6086
Enforceable	0.63554	54.66165	*0.5068
Not Enforceable as "control"		53.61578	
Enforceable	1.04586	54.66344	0.3877

*P-value represents test of difference from No Law as "control condition"

When data associated with codes -1 and 1 are excluded, the mean adjusted participation rate was 54.32471% in states with no law (i.e., states coded as 0). For states not enforcing youth sports releases, the participation rate fell to 53.37484%. For states enforcing releases, the participation rate rose to 54.91457%. For the difference between states with no law and states not enforcing releases, the p value was 0.3053. For the difference between states with no law and states enforcing releases, the p value was 0.5490. And, for the difference between states not enforcing releases and states enforcing releases, the p value was 0.2333. These p values fall short of statistical significance at either a 0.10 or 0.05 significance level. Figure 2 summarizes these results.

Figure 2
(-1 and 1 excluded)

	Change	Part %	P Value
No Law as "control"		54.32471	
Not Enforceable	-0.94987	53.37484	*0.3053
Enforceable	0.58716	54.91457	*0.5490
Not Enforceable as "control"		53.37484	
Enforceable	1.53702	54.91186	0.2333

* P-value represents test of difference from No Law as "control condition"

When codes -1 and 1 are treated as -2 and 2 respectively, the mean adjusted participation rate was 53.84683% in states with no law (i.e., states coded as 0). For states not enforcing youth sports releases, the participation rate rose to 53.93076%. For states enforcing the releases, the participation rate rose to 54.97869%. For the difference between states with no law and states not enforcing releases, the p value was 0.9138. For the difference between states with no law and states enforcing releases, the p value was 0.1747. And, for the difference between states not enforcing releases and states enforcing releases, the p value was 0.3281. These p values fall short of statistical significance at either a 0.10 or 0.05 significance level. Figure 3 summarizes these results.

Figure 3
(-1 = -2 and 1 = 2)

	Change	Part %	P Value
No Law as "control"		53.84683	
Not Enforceable	0.08393	53.93076	*0.9138
Enforceable	1.13186	54.97869	*0.1747
Not Enforceable as "control"		53.93076	
Enforceable	1.04793	54.97869	0.3271

* P-value represents test of difference from No Law as "control condition"

We also tested for sensitivity to the exclusion of outliers and the one-year delay in giving effect to a changed coding about a state's law. To do this, we repeated our analysis without the delay but with outliers excluded, with the outliers left in but retaining the delay, and without the delay and with outliers left in. All reruns found no statistically significant association between the enforceability of youth sports releases and high school sports participation rates.

III. LIMITATIONS

The study reported here finds no statistically significant relationship between the enforceability of youth sports releases and participation rates. Like all studies of this sort, it has limitations that should be acknowledged.

First, the study is observational, making it more prone to confounding factors that a tightly controlled experimental study might avoid. A hidden factor may exist, masking the effect of enforcing youth sports releases on youth sports participation rates. Similarly, the study's observational nature means that we could not control the nature and timing of youth sports release law changes. For example, state law varies in its details, and our grouping states into five coded categories may overlook statistically significant distinctions. Similarly, unpredictable events may have had consequences that amplified or diminished the effect of enforcing youth sports releases. This could happen if

a natural and unpredictable calamity like the recent COVID-19 pandemic caused many families to pull their children from high school sports opportunities when they would otherwise likely have participated.

Second, the study relies on data aggregated at the state level. A more fine-grained aggregation might uncover an overlooked effect in a subset of the statewide population. For example, perhaps enforcement of youth sports releases matters only to high schools in a few very wealthy communities. Their response to the law might get hidden if high schools in other communities do not care about whether youth sports releases can be enforced.

It would be ideal to conduct a study avoiding these limitations. However, we did not have access to data or methods that eliminated the relevant problems. Nevertheless, we still believe that our study has value and insight, even as we acknowledge its potential shortcomings.

IV. IMPLICATIONS

To the extent courts enforce youth sports releases in the belief that doing so increases youth sports participation, our study suggests that this belief is mistaken. Decisions to enforce youth sports releases should therefore be reconsidered and perhaps reversed.

There are, of course, nuances. High schools may appear indifferent to changes in the law concerning youth sports releases for two different reasons. First, high schools may not consider the threat of tort liability significant when deciding how extensive a sports program to offer. Second, perhaps high schools do not respond to changes in the law because they do not know what the law is. These possibilities have potentially different policy ramifications.

If high schools do not care about tort liability when making decisions about sports offerings, then it makes little sense to enforce youth sports releases in hopes of increasing high school sports participation. However, if high schools are ignorant about the law, then perhaps enforcing releases still makes sense because high schools might respond to the law as hypothesized if only they had better information. Thus, if states sent a clearer signal favoring the enforcement of youth sports releases, high school sports participation might rise.

Those who favor enforcing youth sports releases may find this second possibility intriguing, but further reflection shows this situation is unlikely to exist. Although high schools may be ignorant of the law, they would remain ignorant only if they did not consider that knowledge important. Assume for the sake of discussion that high schools are ignorant of the law and that enforcing youth sports releases would materially affect the provision of sports opportunities. High schools in this position would surely try to find out whether releases signed by parents actually offered protection from liability, and they would probably succeed in shedding their ignorance. To start, public high schools have access to this information. If nothing else, governments employ lawyers who could provide the requested guidance. Even private high schools can easily get legal assistance, as they probably have ongoing relationships with lawyers to handle the various legal problems associated with operating a school. Moreover, if the enforceability of youth sports releases genuinely mattered to high schools, they could easily undertake collective action to stay informed about the law. For example, state high school athletic associations or entities like NFHS would probably track the law and inform their members about changes.

The foregoing strongly implies that high schools do not consider the enforcement of youth sports releases materially important to the scope of their sports offerings. If high schools know the law and do not respond to it, then clearly the law matters little. And, if high schools are ignorant of the law and choose to remain that way, they probably do not consider the law important to their decision-making.

The generalizability of these conclusions to youth sports at large depends on whether high schools are a good representative for other youth sports providers. On one hand, high schools may not respond to tort liability the way other sports providers do. Unlike for-profit or even nonprofit youth sports providers, high schools, especially public high schools, do not sell youth sports opportunities into a marketplace. Instead, high schools offer sports as one component of an integrated educational program. This, along with the strong probability that high schools carry liability insurance regardless of whether they offer sports, might render high schools relatively insensitive to concerns about tort liability when it comes to offering sports. Perhaps high schools consider sports an important part of their educational program which should be cut only as a matter of last resort. Just as liability concerns do not stop high schools from giving students

opportunities to conduct potentially dangerous chemistry experiments, those concerns might not prevent high schools from offering sports.⁷²

On the other hand, most youth sports providers and high schools could respond the same way to tort liability. If such liability poses the existential threat hypothesized by *Zivich*, *Sharon*, *Hohe*, and other decisions enforcing youth sports releases, those financial consequences should matter to both high schools and other sports providers.⁷³ Moreover, if high schools are insensitive to changes in the law because they carry liability insurance, it is also likely other youth sports providers carry insurance. Thus, unless a significant percentage of youth sports providers do not carry coverage, or if the cost of that coverage is significantly cheaper for high schools, youth sports providers likely do not significantly alter what they offer in response to changes in the law.⁷⁴

Ideally, one would conduct another empirical investigation to see if other youth sports providers respond to tort liability as high schools do, but the authors could not find comprehensive sources of data. However, if other sports providers appear not to respond to the law concerning youth sport releases, it is likely that other providers do not consider tort liability a major

⁷² High schools are possibly also insensitive to tort liability because sovereign immunity or damages caps protect them. As noted earlier, we initially controlled for variations in state law related to these protections and found they did not affect the outcome of our study.

⁷³ *Zivich v. Mentor Soccer Club*, 696 N.E.2d 201 (Ohio 1998); *Sharon v. City of Newton*, 769 N.E.2d 738 (Mass. 2002); *Hohe v. San Diego Unified Sch. Dist.*, 274 Cal. Rptr. 647 (1990).

⁷⁴ Enforceable waivers' presence could theoretically affect insurance rates. However, insurance companies do not appear to offer discounts to entities that obtain waivers from participants. See SADLER SPORTS & RECREATION INSURANCE, <https://www.sadlersports.com/amateur/> (last visited Sept. 19, 2020) (published quotes do not alter premium quoted on the basis of waivers, although quotes do vary by risk of brain injury); *Quote*, ESPORTSINSURANCE, <https://quote.esportsinsurance.com/Quote/Create?sport=29> (last visited, Sept. 19, 2020) (quotes offered by state appear not to vary on the basis of whether youth sports waivers are enforced). This matches the personal experience of one author, Yen, who participated in getting insurance to cover a youth soccer event. None of the insurance quotes depended on whether the event obtained waivers from participants even though the state where the event was held, Massachusetts, enforces youth sports releases.

factor in their decision making. This is because, like high schools, ordinary youth sports providers who consider it important have easy opportunities to learn about whether youth sports releases are enforceable. For example, many sports have national, state, and private governing bodies that could easily monitor the law and notify members about the enforceability of youth sports releases.⁷⁵ Those operating sports facilities also have associations that could conduct similar monitoring,⁷⁶ with similar associations serving coaches.⁷⁷

CONCLUSION

States differ in the legal treatment of youth sports releases. Some enforce them, others do not, and still others have no clear law. Importantly, states disagree about the policy consequences of enforcing or not enforcing these releases. States refusing to enforce do so because they wish to guard against the social problems associated with uncompensated injuries suffered by youth athletes at the hands of negligent sports providers. States enforcing releases do so because they believe that enforcing releases lowers costs incurred by sports providers, resulting in

⁷⁵ Examples include: U.S. YOUTH SOCCER, <https://www.usyouthsoccer.org/> (last visited Sept. 19, 2020) (organized under auspices of U.S. Soccer and overseeing state governing associations); U.S. FIGURE SKATING, <https://www.usfigureskating.org/> (last visited Sept. 19, 2020) (national governing body of figure skating with individual club memberships); POP WARNER FOOTBALL, <https://www.popwarner.com/> (last visited Sept. 19, 2020) (nonprofit overseeing youth football and cheerleading opportunities at the local level); AMATEUR ATHLETIC UNION, <https://aausports.org/index.php> (last visited Sept. 19, 2020) (nonprofit promoting amateur sports with membership for clubs and organizer of numerous youth competitions).

⁷⁶ Examples include the US INDOOR SPORTS ASS'N, <https://usindoor.com/facilities/resources/> (last visited Sept. 19, 2020); U.S. ICE RINK ASS'N, <https://www.usicerinks.com/> (last visited Sept. 19, 2020); WORLD WATERPARK ASS'N, https://waterparks.org/web/wwa_show.aspx (last visited Sept. 19, 2020); and SPORTSPLEX OPERATORS & DEVELOPERS ASS'N, <https://www.sportsplexoperators.com/index.html> (last visited Sept. 19, 2020).

⁷⁷ Examples include the AMERICAN FOOTBALL COACHES ASS'N, <https://www.afca.com/> (last visited Sept. 19, 2020); NATIONAL GYMNASTICS COACHES ASS'N, <https://gymca.org/98942656> (last visited Sept. 19, 2020); and UNITED SOCCER COACHES, <https://unitedsoccercoaches.org/> (last visited Sept. 19, 2020).

increased youth sports participation whose benefits outweigh the costs of uncompensated injuries.

The study reported in this Article tests whether the hypothesized benefit of increased youth sports participation exists in high school sports. The study finds no statistically significant relationship between enforcing youth sports releases and participation rates. This finding significantly weakens the case for enforcing youth sports releases.

Of course, states have other reasons for enforcing youth sports releases. These possibilities include freedom of contract and respect for parental decisions made on behalf of minor children. The study of these possibilities lies outside the scope of this article, and courts enforcing youth sports releases have not relied heavily on these rationales for their decisions. Perhaps freedom of contract and respect for parental decision-making justify enforcement. However, this study questions whether the primary existing justification for such enforcement is true. We therefore believe that courts considering youth sports releases should hesitate before finding those releases enforceable.

APPENDIX:
**STATE LAW CONCERNING ENFORCEABILITY OF YOUTH
SPORTS RELEASES**

This appendix describes the law relied on to assign legal codes for each state used in the study. Each entry provides the coding assigned each state, followed by a summary of the relevant law.

ALABAMA:

1988-2009: 0

2010-2014: -1

In 2010, the Middle District of Alabama decided *J.T. ex rel. Thode v. Monster Mt., LLC* and identified the enforceability of youth sports releases as an issue of first impression for the state.⁷⁸ The case involved a negligence suit by a minor against a for-profit motocross park's owner.⁷⁹ In response, the defendants moved for summary judgment on the basis of a release signed by the minor's parents.⁸⁰ The court refused to enforce the release.⁸¹ The court cited Alabama law suggesting that parents lack the ability to waive a child's rights concerning personal injuries.⁸² The court also incorrectly noted "the few cases that have upheld a pre-injury waiver have made a point of emphasizing that the policy reasons for doing so are based on the fact of the defendant being a nonprofit sponsor of the activity involved, such as with school extra-curriculars."⁸³ We decided to code this decision as a -1 because (1) it is a federal decision, and (2) although the court recognized that some states enforce youth sports releases in favor

⁷⁸ *Id.* at 1326. *J.T. ex rel. Thode v. Monster Mountain, LLC*, 754 F.Supp.2d 1323, 1326 (M.D. Ala. 2010).

⁷⁹ *Id.* at 1323—24.

⁸⁰ *Id.* at 1325.

⁸¹ *Id.* at 1327.

⁸² *Id.* at 1327—28.

⁸³ *Id.* at 1328. This statement appears to overlook cases in which for-profit entities had successfully asserted preinjury releases before 2010. *See* *Platzer v. Mammoth Mountain Ski Area*, 104 Cal. App. 4th 1253, 1255 (2002); *Vokes ex rel. Vokes v. Ski Ward, Inc.*, 2005 WL 2009959 (2005); *Quirk v. Walker's Gymnastics & Dance*, 16 Mass L. Rptr. 502 (2003).

of nonprofits and schools, its citation to Alabama law did not incorporate this distinction. The court likely used this recognition to build confidence in the case's specific result and not to express a limit in Alabama law.

ALASKA:

1988-2003: 0

2004-2014: 2

In 2004, the state enacted Alaska General Statute §09.65.292, which explicitly allows parental waivers of negligence.⁸⁴

ARIZONA:

1988-2014: 0

We found no case law directly on point. Article 18, section 5 of the Arizona Constitution provides that assumption of risk is always a jury question, even if it is express contractual assumption of risk.⁸⁵ This does not affect the substantive enforceability of a youth sports release, although it appears to eliminate using such a release at summary judgment.

ARKANSAS:

1988-2014: -1

In the 1987 case *Williams v. United States*, the Eastern District of Arkansas considered a claim for personal injury suffered by a 16-year-old boy at an Air Force base swimming pool.⁸⁶ The court held that a release form signed by the parent did not relieve the government of liability because it was “against the sound public policy of Arkansas.”⁸⁷

⁸⁴ ALASKA STAT. §09.65.292 (2004).

⁸⁵ ARIZ. CONST., Art. 18 §5 (providing “The defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact and shall, at all times, be left to the jury.”).

⁸⁶ *Williams v. United States*, 660 F.Supp. 699, 700 (E.D. Ark. 1987).

⁸⁷ *Id.* at 703.

CALIFORNIA:

1988-1989: 0

1990-2014: 2

California clarified its law in 1990 with *Hohe v. San Diego Unified School District*, in which an intermediate appellate court enforced a release signed by a student's parent in favor of a public school.⁸⁸ As noted in the main text, *Hohe* is a leading opinion supporting the enforceability of youth sports releases.

COLORADO:

1988-2002: 0

2002: -2

2002-2014: 2

In 1997, the Tenth Circuit enforced a release favoring a commercial entity in *Brooks v. Timberline Tours, Inc.*⁸⁹ However, the opinion was not sufficient to merit a 1 because it did not directly opine on the question of releases signed by parents on behalf of minors and was issued by a federal, not state, court. In 2002, the Colorado Supreme Court refused to enforce a release favoring a commercial entity on public policy grounds.⁹⁰ The court cited *Scott v. Pacific West Mountain Resort*, where the Washington Supreme Court held that parents lack the ability to waive their children's rights preinjury.⁹¹ We therefore interpreted *Cooper* as moving Colorado to -2. However, this condition lasted one year. In 2003, the state enacted C.R.S. §13-22-107 which permits parental waivers.⁹² This changed the state's coding to 2.

⁸⁸ *Hohe v. San Diego Unified Sch. Dist.*, 224 Cal. App. 3d 1559, 1568 (1990). *See also* *Platzer v. Mammoth Mountain Ski Area*, 104 Cal. App. 4th 1253, 1255 (2002) (enforcing release in favor of commercial ski operator).

⁸⁹ *Brooks v. Timberline Tours, Inc.*, 127 F.3d 1273, 1276 (10th Cir. 1997).

⁹⁰ *Cooper v. The Aspen Skiing Co.*, 48 P.3d 1229 (Colo. 2002).

⁹¹ *Scott v. Pac. W. Mountain Resort*, 834 P.2d 6, 11 (Wash. 1992) ("to the extent a parent's release of a third party's liability for negligence purports to bar a child's own cause of action, it violates public policy and is unenforceable").

⁹² .COLO. REV. STAT. §13-22-107(3) ("A parent of a child may, on behalf of the child, release or waive the child's prospective claim for

CONNECTICUT:

1988-2002: -2

2002-2004: 0

2005-2014: -2

In 1958, the Connecticut Superior Court refused to enforce a release in favor of the Boy Scouts of America in *Fedor v. Mauwehu Council, Boy Scouts of America*.⁹³ We used this opinion to assign a -2 as of 1988. In 2002, the unpublished opinion in *Fischer v. Rivest* enforced a release in favor of USA Hockey, the Connecticut Hockey Conference, and the City of Norwich.⁹⁴ This case was followed by *Saccente v. Laflamme*, another unpublished opinion in which the Superior Court enforced a release.⁹⁵ Because *Fischer* was an unpublished opinion, we interpreted it as creating doubt about the state of the law, not an authoritative holding in favor of enforcement. We therefore assigned a 0. This uncertainty continued through 2004, when two other unpublished opinions from the Superior Court refused to enforce releases.⁹⁶ Then, in 2005, in *Hanks v. Powder Ridge Restaurant Corp.*, the Connecticut Supreme Court rejected all exculpatory agreements as violating public policy.⁹⁷ This resulted in a coding of -2.

negligence.”). See also COLO. REV. STAT. §13-22-107(1)(a)(VI) (“It is the intent of the general assembly to encourage the affordability and availability of youth activities in this state by permitting a parent of a child to release a prospective negligence claim of the child against certain persons and entities involved in providing the opportunity to participate in the activities.”).

⁹³ *Fedor v. Mauwehu Council, Boy Scouts of Am., Inc.*, 143 A.2d 466 (Conn. Super. Ct. 1958).

⁹⁴ *Id.* at 1. *Fischer v. Rivest*, 33 Conn. L. Rptr. 119, 2002 WL 31126288, at *15 (Aug. 15, 2002).

⁹⁵ *Saccente v. Laflamme*, No. CV0100756730, 2003 WL 21716586 (Conn. Super. Ct. July 11, 2003).

⁹⁶ *Ehrenrich v. Mohawk Mountain Ski Area*, No. CV030090988S, 2004 WL 3090681 (Conn. Super. Ct. Jan. 30, 2004); *Laliberte v. White Water Mountain Resorts*, No. X07CV030083300S, 2004 WL 1965868 (Conn. Super. Ct. Aug. 2, 2004).

⁹⁷ *Hankes v. Powder Ridge Restaurant Corp.*, 885 A.2d 734, 741 (Conn. 2005).

DELAWARE:

1988-2014: 0

We found no law on point.

DISTRICT OF COLUMBIA:

1988-2014: 0

We found no law on point.

FLORIDA:

1988-1997: 0

1998-2003: 1

2004-2007: 2

2008-2014: 1

Florida courts do not clearly answer whether they would enforce exculpatory agreements signed by parents in favor of high schools. In the 1998 case *Lantz v. Iron Horse Saloon, Inc.*, the Florida District Court of Appeal enforced a release in favor of a commercial entity without considering whether a guardian had authority to execute it.⁹⁸ Although this decision is logically consistent with enforcing such releases in favor of high schools, we assigned a 1 because consideration of the precise issue was too thin to provide adequate guidance.

In the 2004 case *Gonzalez v. City of Coral Gables*,⁹⁹ the Florida District Court of Appeal enforced a release in favor of a city after school program.¹⁰⁰ In so ruling, it distinguished the city's situation from commercial activities that could insure against loss. This implied that Florida law would no longer enforce releases favoring commercial entities, but would do so for releases favoring nonprofit or governmental entities.¹⁰¹ Because *Gonzalez* provided a more specific analysis of the precise issue being analyzed, we assigned a code of 2 beginning in 2004.

⁹⁸ *Lantz v. Iron Horse Saloon, Inc.* 717 So.2d 590, 590-92, (Fla. Dist. Ct. App. 1998)

⁹⁹ 871 So.2d 1067 (FL 3d DCA 2004).

¹⁰⁰ *Gonzalez v. City of Coral Gables*, 871 So.2d 1067, 1067—68 (Fla. Dist. Ct. App. 2004).

¹⁰¹ *Id.*

Finally, in the 2008 case *Kirton v. Fields*, the Florida Supreme Court refused to enforce a parentally-signed release in favor of a commercial entity.¹⁰² However, the court explicitly left open what it would decide in a noncommercial activity case, even if the overall language of the opinion casts doubt on the enforceability of youth sports releases generally.¹⁰³ We therefore interpreted *Kirton* as leaving the *Gonzalez* result intact, but in some doubt, and coded Florida as a 1.¹⁰⁴

GEORGIA:

1988-2014: 0

No law is directly on point.

HAWAII:

1988-2014: 0

We found no law on point. Hawaii Statutes §663-1.54 permits waivers, but is limited to releases involving “any person who owns or operates a *business* providing recreation activities to the public.”¹⁰⁵ Thus, the statute does not affect releases favoring high schools. Additional complications concerning this statute are discussed in the Article’s main text.¹⁰⁶

IDAHO:

1988-2014: 0

We found no law on point.

¹⁰² *Kirton v. Fields*, 997 So.2d 349, 350 (Fla. 2008).

¹⁰³ *Id.* at 350.

¹⁰⁴ We note, in 2010, Florida amended FLA STAT. §744.301(3) to read, “[N]atural guardians are authorized, on behalf of any of their minor children, to waive and release, in advance, any claim or cause of action against a commercial activity provide . . . from an inherent risk in the activity.” FLA STAT. §744.301(3) (2020). This statute partially overrules *Kirton*, but it applies only to commercial activities, leaving open the question of how releases favoring government and nonprofit entities would be treated. Furthermore, because the statute permits releases only for risks “inherent” in an activity, it is unclear how the statute affects releases involving risks inherent in an activity but exacerbated by a sports provider’s negligence.

¹⁰⁵ HAW. REV. STAT. § 663-1.54 (2020).

¹⁰⁶ See *supra* notes 53-55 and accompanying text.

ILLINOIS:

1988-2003: 0

2004-2014: -2

In 1994, the Appellate Court of Illinois, Second District decided *Meyer v. Naperville Manner Inc.*¹⁰⁷ The case involved a minor injured in a horseback riding accident.¹⁰⁸ The court held that parents lack the authority to release a child's cause of action before injury.¹⁰⁹ This changed the coding of Illinois from 0 to -2.

INDIANA:

1988-2005: 0

2006-2011: 1

2012-2014: 2

In the 2006 case of *Stowers v. Clinton Cent. School Corp.*, the Indiana Court of Appeals appeared to consider releases signed by parents enforceable.¹¹⁰ In *Stowers*, the plaintiffs were parents suing for the wrongful death of their son, who collapsed during a high school football practice.¹¹¹ A jury found for the defendants.¹¹² On appeal, the plaintiffs argued the trial court erred by admitting a release form signed by the plaintiff's mother. The release acknowledged the risks of playing football and held the defendants harmless of responsibility for injury.¹¹³ The plaintiffs further argued that the trial court erred by failing to instruct the jury that the release in question did not absolve the defendants of responsibility for negligence because the release had no language specifically referring to negligence.¹¹⁴ The court ruled the trial court was in error. In so ruling, the court stated that Indiana public policy does not disfavor exculpatory agreements. However,

¹⁰⁷ *Meyer v. Naperville Manner, Inc.*, 634 N.E.2d 411 (Ill. App. Ct. 1994).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 414—15.

¹¹⁰ *Id.* at 749. *Stowers v. Clinton Cent. School Corp.*, 855 N.E.2d 739, 749 (Ind. Ct. App. 2006).

¹¹¹ *Id.* at 743—44.

¹¹² *Id.* at 745.

¹¹³ *Id.* at 748.

¹¹⁴ *Id.* at 749—50.

because the release signed by the mother did not refer to negligence, it did not affect the case at hand.¹¹⁵ The court reversed and remanded for a new trial.¹¹⁶

We interpreted *Stowers* as an ambiguous signal in favor of enforcing releases that merited a coding of 1. The court behaved as if a properly drafted release would be enforceable, but the release's validity was not the issue litigated. The question was whether the release was admissible, and if so, in what form. This prevented us from concluding that *Stowers* established the enforceability of youth sports releases.

A clearer signal arrived in 2012. In *Wabash County Young Men's Christian Ass'n, Inc. v. Thompson*, the minor plaintiff was injured during a softball game while sliding into second base.¹¹⁷ In response, the defendant moved for summary judgment, arguing that a release signed by the plaintiff's mother released the defendant from liability. The release in question applied to "injury or medical expenses incurred while participating in practice or playing in a game," and did not specifically refer to the defendant's potential negligence.¹¹⁸ The Indiana Court of Appeals concluded that the release form was valid.¹¹⁹ Although the release did not mention the defendant's possible negligence, the court found that the release still affected risks "inherent in the nature of the activity," even if the defendant's negligence exacerbated those risks.¹²⁰ Thus, the release applied to the plaintiff's claim because the risk of being injured while sliding into second base is part of softball.¹²¹ We interpreted this as a sufficiently clear signal that youth sports releases are enforceable and changed the code to 2.

¹¹⁵ *Id.* at 749.

¹¹⁶ *Id.* at 749—50. The court also affirmed other rulings by the trial court not relevant to the enforceability of youth sports releases.

¹¹⁷ *Wabash Cty. Young Men's Ass'n, Inc. v. Thompson*, 975 N.E.2d 362, 363 (Ind. Ct. App. 2012).

¹¹⁸ *Id.* at 364.

¹¹⁹ *Id.* at 366.

¹²⁰ *Id.* at 366—67.

¹²¹ *Id.* at 367.

IOWA:

1988-2009: 0

2010-2014: -2

In 2010, the Iowa Supreme Court held in *Galloway v. State* that “preinjury releases executed by parents purporting to waive the personal injury claims of their minor children violate public policy and are therefore unenforceable.”¹²² This changed Iowa from 0 to -2.

KANSAS:

1988-2014: 0

We found no law on point.

KENTUCKY:

1988-2014: 0

We found no law on point.

LOUISIANA:

1988-2014: -2

In 1985, Louisiana passed Civil Code Article 2004, which provides, “Any clause is null that, in advance, excludes or limits the liability of one party for intentional or gross fault that causes damage to the other party. Any clause is null that, in advance, excludes or limits the liability of one party for causing physical injury to the other party.” Therefore, Louisiana was coded as a -2 for the entire study.¹²³

¹²² *Galloway v. State*, 790 N.W.2d 252, 259 (Iowa 2010).

¹²³ See *Ramirez v. Fair Grounds Corp.*, 575 So.2d 811 (La. 1991) (interpreting Article 2004 as invalidating preinjury waivers generally).

MAINE:

1988-2014: -2

In *Doyle v. Bowdoin College*, the court mentioned in a footnote that a parent cannot release a child's cause for action.¹²⁴ *Rice v. American Skiing Co.* confirmed this understanding of Maine law in 2000.¹²⁵ Therefore, Maine is coded as a -2 for the entire duration of the study.

MARYLAND:

1988-2012: 0

2013-2014: 2

In 2013, *BJ's Wholesale Club, Inc. v. Rosen* dealt with the enforceability of an exculpatory clause executed by a child's parent for the purpose of getting the child access to a play structure at a BJ's Wholesale Club.¹²⁶ The Maryland Court of Appeals held that the release was enforceable and rejected any distinction between for-profit and nonprofit entities.¹²⁷ Therefore, Maryland is coded as a 2, starting in 2013.

MASSACHUSETTS:

1988-2001: 0

2002-2014: 2

In the 2002 case *Sharon v. City of Newton*, a student was injured during cheerleading practice, and the student's parent had signed a waiver releasing liability on the student's behalf.¹²⁸ The Massachusetts Supreme Judicial Court enforced the release,

¹²⁴ *Doyle v Bowdoin College, Me.*, 403 A.2d 1206, 1208 (Me. 1979).

¹²⁵ *See Rice v. American Skiing Co.*, No. Civ.A.CV-99-06, 2000 WL 33677027, at 4* (Me. Super. Ct. May 8, 2000).

¹²⁶ *BJ's Wholesale Club, Inc. v. Rosen*, 80 A.3d 345, 346 (Md. 2013).

¹²⁷ *Id.* at 359 ("The distinction between commercial and noncommercial entities, however, is without support in our jurisprudence; we have upheld the legitimacy of exculpatory agreements in commercial settings against adults and the policy arguments upon which we have validated or invalidated exculpatory clauses know no such distinction.").

¹²⁸ *Sharon v. City of Newton*, 769 N.E.2d 738, 741 (Mass. 2002).

writing, “To hold that releases of the type in question here are unenforceable would expose public schools, who offer many of the extracurricular sports opportunities available to children, to financial costs and risks that will inevitably lead to the reduction of those programs.”¹²⁹ Therefore, Massachusetts is coded as a 2 from 2002 going forward.

MICHIGAN:

1988-2009: 0

2010-2014: -2

In 2010, *Woodman ex rel. Woodman v. Kera LLC* held that a liability waiver signed by a father on his child’s behalf is unenforceable.¹³⁰ This changed Michigan’s coding to -2 beginning with 2010.

MINNESOTA:

1988-2008: 0

2009-2014: 1

In *Moore v. Minnesota Baseball Instructional School*, the Minnesota Court of Appeals enforced a youth sports release.¹³¹ The opinion was unpublished so its weight is questionable. Therefore, Minnesota is coded as a 1, starting in 2009.

MISSISSIPPI:

1988-2014: 0

We did not find law directly on point. However, in *Quinn v. Mississippi State University*,¹³² the Mississippi Supreme Court encountered a release signed by a parent but did not directly rule on the issue. Instead, the court held that the plaintiff’s tort claim was barred by both sovereign and qualified immunity.¹³³ The

¹²⁹ *Id.* at 109—10.

¹³⁰ *Woodman ex rel. Woodman v. Kera LLC*, 785 N.W.2d 1, 5 (Mich. 2010) (“[T]he Michigan common law rule is clear: a guardian, including a parent, cannot contractually bind his minor ward.”).

¹³¹ *Moore v. Minn. Baseball Instructional Sch.*, No. A08–0845, 2009 WL 818738, at *6 (Minn. Ct. App. Mar. 31, 2009).

¹³² *Quinn v. Miss. State Univ.*, 720 So.2d 843 (Miss. 1998).

¹³³ *Id.* at 852.

court held that the release was relevant only to the plaintiff's breach of implied contract action.¹³⁴ We did not interpret this case as making a sufficiently clear statement about enforceability of releases to change the coding from 0.

MISSOURI:

1988-2014: 0

We found no law on point.

MONTANA:

1988-2008: -2

2009-2014: 0

Montana's operative law was largely statutory. In 1895, the state enacted MT Statutes § 28-2-702, providing that contracts exempting a person from responsibility for "fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent, are against the policy of the law."¹³⁵ This language suggests that youth sports releases are unenforceable. Indeed, in 1986, the Montana Supreme Court interpreted §28-2-702 to apply only to: "(1) fraud; (2) willful injury to the property or person of another; (3) negligent or willful violation of law."¹³⁶ The term "violation of law" included breaches of statutes, constitutions, case law, and common law, making the statute apply to releases of common law negligence.¹³⁷ Thus, Montana was coded as -2 at the start of the study period.

In 2009, Montana enacted MT ST 27-1-753. This statute allowed "a written waiver or release entered into prior to engaging in a sport or recreational opportunity for damages or injuries resulting from conduct that constitutes ordinary negligence or for risks that are inherent in the sport or recreational opportunity." However, these waivers could still be challenged "on any legal grounds."¹³⁸ This language apparently supersedes §28-2-702's blanket prohibition against sports releases. However, no case has used this provision to enforce a release. Furthermore, we did not know whether the Montana Supreme Court would find youth

¹³⁴ *Id.*

¹³⁵ MONT. CODE ANN. § 28-2-702 (West 2020) (enacted 1895).

¹³⁶ *Miller v. Fallon Cnty*, 721 P.2d 342, 346 (Mont. 1986).

¹³⁷ *Id.*

¹³⁸ MONT. CODE ANN. § 27-1-753(3)(d) (West 2020).

sports releases signed by parents problematic. Accordingly, we coded Montana as a 0 starting in 2009.

NEBRASKA:

1988-2014: 0

We found no law directly on point.

NEVADA:

1988-2014: 0

We found no law directly on point.

NEW HAMPSHIRE:

1988-2013: 0

2014: -1

We found no law directly on point from 1988 through 2013. In 2014, a Massachusetts federal district court interpreted New Hampshire law as not enforcing youth sports releases.¹³⁹ We therefore changed the New Hampshire coding to -1 in 2014.¹⁴⁰

NEW JERSEY:

1988-2006: -2

2007-2014: -1

In *Fitzgerald v. Newark Morning Ledger Co.*,¹⁴¹ a New Jersey Superior Court held that a parent cannot waive a child's tort claim in advance.¹⁴² Here, the father signed a release as a condition to allow his infant son to go on a trip sponsored by the

¹³⁹ *Harrigan v. New England Dragway, Inc.*, No. CV 13-10132-JCB, 2014 WL 12589625, at *6 (W.D. MA Jan. 2, 2014) (stating no controlling authority exists on the whether a parent can bind a child to an exculpatory agreement).

¹⁴⁰ In 2017, after the study period, a New Hampshire Superior Court opinion found youth sports releases unenforceable. *See Perry v. SNH Dev.*, No. 2015-CV-00678, 2017 N.H. Super. LEXIS 32, at *16 (Sept. 13, 2017).

¹⁴¹ *Fitzgerald v. Newark Morning Ledger Co.*, 267 A.2d 557 (N.J. Super. Ct. Law Div.1970).

¹⁴² *Id.* at 108.

defendant.¹⁴³ The court found this agreement void against public policy.¹⁴⁴ New Jersey was therefore coded as -2 at the beginning of the study.

In the 2006 case of *Hojnowski v. Vans Skate Park*,¹⁴⁵ the New Jersey Supreme Court held that a parent cannot bind a minor child to a preinjury waiver of liability.¹⁴⁶ The court framed the issue somewhat narrowly, especially given *Fitzgerald*, as “whether New Jersey’s public policy permits a parent to release a minor child’s potential tort claims arising out of the minor’s use of a commercial recreational facility.”¹⁴⁷ This left open what the court might have decided if the defendant had been a non-profit or government entity. Granted, the language and rationale of the opinion suggest that the non-profit situation would be handled the same way. But to be conservative, we coded New Jersey as -1 starting in 2006.

NEW MEXICO:

1988-2014: 0

We found no law directly on point.

NEW YORK:

1988-2014: -2

In the 1978 case of *Santangelo v. City of New York*,¹⁴⁸ the Supreme Court refused to bind a child to a release signed by the child’s father in suit against the Greater New York City Ice Hockey League, Inc. This decision was reinforced in *Alexander v. Kendall Cent. School Dist.*, where the Supreme Court stated “a minor is not bound by a release executed by his parent.”¹⁴⁹ We

¹⁴³ *Id.* at 105—06.

¹⁴⁴ *Id.* at 107—08.

¹⁴⁵ *Hojnowski v. Vans Skate Park*, 901 A.2d 381 (N.J. 2006).

¹⁴⁶ *Id.* at 383 (“a parent may not bind a minor child to a pre-injury release of a minor’s prospective tort claims resulting from the minor’s use of a commercial recreational facility.”).

¹⁴⁷ *Id.* at 386.

¹⁴⁸ *Santangelo v. City of New York*, 411 N.Y.S.2d 666 (App. Div. 2nd Dept. 1978).

¹⁴⁹ *Id.* at 897. *Alexander v. Kendall Cent. Sch. Dist.*, 221 A.D.2d 898 (App. Div. 4th Dept. 1995).

therefore coded New York as -2 for the entire duration of the study.

NORTH CAROLINA:

1988-2010: 0

2011-2014: 1

In 2011, the Eastern District of North Carolina enforced a waiver in favor of a Navy Junior ROTC program.¹⁵⁰ The court identified no controlling precedent and stated that parents generally lacked the power to bind their children to exculpatory agreements.¹⁵¹ However, the court considered school or community programs different and enforced the release.¹⁵² We therefore changed North Carolina's coding to 1 in 2003.

NORTH DAKOTA:

1988-2002: 0

2003-2014: 2

In the 2003 case of *Konrad v. Bismarck Park District*, the North Dakota Supreme Court enforced a release signed by a child's mother for an after-school care program operated by the Bismarck Park District.¹⁵³ We therefore coded North Dakota as 2 beginning in 2003.

OHIO:

1988-1997: 0

1998-2014: 2

In 1998, the leading case *Zivich v. Mentor Soccer Club* enforced a release signed by a mother in favor of a nonprofit soccer club.¹⁵⁴ This resulted in our assigning a code of 2 beginning in 1998.

¹⁵⁰ *Kelly v. U.S.*, 809 F.Supp.2d 429 (E.D. N.C. 2011).

¹⁵¹ *Id.* at 435—47 (“The parties agree that there is no controlling precedent.”).

¹⁵² *Id.*

¹⁵³ *Konrad ex rel. v. Bismarck Park District*, 655 N.W.2d 411 (N.D. 2003).

¹⁵⁴ *Zivich v. Mentor Soccer Club, Inc.* 696 N.E.2d 201 (Ohio 1998).

OKLAHOMA:

1988-2014: 0

We found no law directly on point.¹⁵⁵

OREGON:

1988-2014: 0

Oregon did not clarify its law concerning releases until the study period's end. In *Bagley v. Mt. Bachelor, Inc.*, the Oregon Supreme Court held an anticipatory release unenforceable as a violation of public policy and unconscionable.¹⁵⁶ This case was decided on December 18, 2014, a date so late that it could not have affected behavior during the study period. We therefore left Oregon coded as 0.

PENNSYLVANIA:

1988-1997: -1

1998-2014: -2

In the 1987 case *Simmons by Grenell v. Parkette Nat'l Gymnastic Training Center*, the Eastern District of Pennsylvania refused to enforce a release signed by a parent in favor of a gym.¹⁵⁷ This made Pennsylvania a -1 at the study period's beginning. In the 1998 case *Shaner v. State System of Higher Ed.*, the Court of Common Pleas adopted *Simmons*, stating “[u]nder Pennsylvania law, parents do not possess the authority to release the claims or potential claims of a minor child merely because of the parental relationship.”¹⁵⁸ This changed the state to -2.

¹⁵⁵ One year after the study, the Western District of Oklahoma predicted that Oklahoma courts would not enforce exculpatory agreements for children signed by parents. See *Holly Wethington v. Swainson*, 155 F.Supp.3d 1173 (W.D. Ok. 2015).

¹⁵⁶ *Bagley v. Mt. Bachelor, Inc.*, 340 P.3d 27, 30 (Or. 2014).

¹⁵⁷ *Simmons v. Parkette Nat'l Gymnastic Training Center*, 670 F. Supp. 140 (E.D. Pa. 1987).

¹⁵⁸ *Shaner v. State Sys. of Higher Educ.*, 40 Pa. D. & C.4th 308, 312—13 (Com. Pl. 1998), *aff'd*, 738 A.2d 535 (Pa. Commw. Ct. 1999).

RHODE ISLAND:

1988-2014: 0

Rhode Island law on youth sports releases is unclear. In the 1978 products liability case *Julian v. Zayre Corp.*, the Rhode Island Supreme Court cited to RI G.L. 1956 (1969 Reenactment) § 33-15-1(a), which provided releases by parents are valid if under \$1,000.¹⁵⁹ This statute was amended in 1992 to apply to releases up to \$10,000.¹⁶⁰ The statute's language is unclear because the dollar figure's existence implies that the claimant's injury already occurred and can be valued. If a court were to agree, the provision could not apply to youth sports releases executed before injury. We could not find case law clarifying this ambiguity or ruling on youth sports releases' enforceability. Therefore, Rhode Island is coded as a 0.

SOUTH CAROLINA:

1988-2014: 0

We found no law directly on point.

SOUTH DAKOTA:

1988-2014: 0

We found no law directly on point.

TENNESSEE:

1988: 0

1989-2014: -2

In the 1989 case *Childress v. Madison County*, the Tennessee Court of Appeals refused to enforce a release signed by the plaintiff's mother.¹⁶¹ The plaintiff was twenty-years-old and

¹⁵⁹ *Julian v. Zayre Corp.*, 388 A.2d 813 (R.I. 1978).

¹⁶⁰ R.I. GEN. LAWS §33-15.1-1(b) ("A release given by both parents or by a parent or guardian who has the legal custody of a minor child or by a guardian or adult spouse of a minor spouse shall, where the amount of the release does not exceed ten thousand dollars (\$10,000) in value, be valid and binding upon the minor.").

¹⁶¹ *Id.* at 6-8. *Childress v. Madison County*, 777 S.W.2d 1, 708 (Tenn. Ct. App. 1989) ("The law is clear that a guardian cannot on behalf

suffered from a developmental disability.¹⁶² The court considered him the equivalent of a child, writing, “The law is clear that a guardian cannot on behalf of an infant or incompetent, exculpate or indemnify against liability those organizations which sponsor activities for children and the mentally disabled.”¹⁶³ Therefore, Tennessee is coded as a -2 beginning in 1989.¹⁶⁴

TEXAS:

1988-1992: 0

1993-2014: -2

In the 1993 case *Munoz v. II Jaz, Inc.*, the Texas Court of Appeals held parents do not have authority to waive their children’s claims.¹⁶⁵ The plaintiff was a child injured at an amusement park after her older sister had signed a release.¹⁶⁶ The court resolved the case by deciding that, even if the older sister had the legal authority to sign on behalf of the parents, the parents lacked the authority to waive the child’s claims.¹⁶⁷ We therefore changed Texas’ coding to 2.

of an infant or incompetent, exculpate or indemnify against liability those organizations which sponsor activities for children and the mentally disabled.”) *See also* *Rogers v. Donelson-Hermitage Chamber of Commerce*, 807 S.W.2d 242, 245 (Tenn. Ct. App. 1990) (citing *Childress* with approval); *Blackwell v. Sky High Sports Nashville Operations, LLC*, 523 S.W.3d. 624, 632 (Tenn. Ct. App. 2017) (re-affirming *Childress* and noting difference between Tennessee law and California law).

¹⁶² *Childress*, 777 S.W.2d at 2.

¹⁶³ *Id.* at 7—8.

¹⁶⁴ *See also* *Rogers v. Donelson-Hermitage Chamber of Commerce*, 807 S.W.2d 242, 245 (Tenn. Ct. App. 1990) (citing *Childress* with approval); *Blackwell v. Sky High Sports Nashville Operations, LLC*, 523 S.W.3d. 624, 632 (Tenn. Ct. App. 2017) (reaffirming *Childress* and noting difference between Tennessee law and California law).

¹⁶⁵ *Munoz v. II Jaz, Inc.*, 863 S.W.2d 207, 210 (Tex. App. 1993).

¹⁶⁶ *Id.* at 208.

¹⁶⁷ *Id.* at 209—10.

UTAH:

1988-2000: 0

2001-2014: -2

In the 2001 case *Hawkins ex rel. Hawkins v. Peart*, the Utah Supreme Court considered an eleven-year-old child's action for injuries suffered in a horseback riding accident.¹⁶⁸ The court ruled a waiver signed by the child's mother unenforceable, writing, "a parent has [no] authority to release a child's cause of action prior to an injury."¹⁶⁹ Therefore, we changed Utah's coding to -2 in 2001.

VERMONT:

1988-2014: 0

We found no law directly on point.

VIRGINIA:

1988-1991: 0

1992-2014: -2

Before 1992, Virginia law exhibited conflicts that prevented us from determining the law governing youth sports releases. In the 1890 case *Johnson's Adm'x v. Richmond and Danville R.R. Co.*, the Virginia Supreme Court refused to enforce an adult's apparent liability waiver in favor of a railroad company.¹⁷⁰ However, in the 1977 case *Barnes v. Crysstal Plaza*, the Virginia Circuit Court enforced a release signed by an adult in favor of an amusement facility, while recognizing that exculpatory agreements involving "infants" might be treated differently.¹⁷¹ Therefore, we coded Virginia as 0 to start.

In the 1992 case *Hiatt v. Lake Barcroft Community Ass'n, Inc.*, the Virginia Supreme Court held an adult's preinjury release

¹⁶⁸ *Id.* at 1063—64.

¹⁶⁹ *Id.* at 1066 (quoting *Scott v. Pac. W. Mountain Resort*, 834 P.2d 6, 10—12 (Wash. 1992)).

¹⁷⁰ *Johnson's Adm'x v. Richmond & D.R. Co.*, 11 S.E. 829 (Va. 1890).

¹⁷¹ *Id.* *Barnes v. Crysstal Plaza*, 11 Va. Cir. 442 (Va. Cir. Ct. 1977).

void because it was against public policy.¹⁷² The court cited *Johnson's Adm'x* favorably and stated the law had not changed.¹⁷³ We therefore changed Virginia's coding to -2 in 1992.

Hiett is weakened somewhat in *Elswick v. Lonesome Pine International Raceway*, where the Virginia Circuit Court of Appeals enforced a release in the context of auto racing because auto racing is an inherently dangerous activity.¹⁷⁴ However, we did not think this was enough to change the effect of *Hiett* overall.

WASHINGTON:

1988-2014: -2

In the 1988 case *Wagenblast v. Odessa Sch. Dist.*, parents sued to invalidate waivers public school districts required them to sign for their children to play sports.¹⁷⁵ The Washington Supreme Court ruled the waivers unenforceable because they violated public policy.¹⁷⁶ Because *Wagenblast* applies directly to high schools, we coded Washington as -2 for the entire study period. In 1992, the Washington Supreme Court, sitting *en banc*, strengthened the *Wagenblast* result in the leading case *Scott v. Pacific West Mountain Resort*, which is described in this Article's main text.¹⁷⁷

WEST VIRGINIA:

1988-2003: 0

2004-2014: -1

In the 2004 case *Johnson v. New River Scenic Whitewater Tours*, the Southern District of West Virginia considered a wrongful death action on behalf of 14-year-old girl.¹⁷⁸ The court

¹⁷² *Id.* *Hiett v. Lake Barcroft Cmty. Ass'n*, 418 S.E.2d 894, 896 (Va. 1992).

¹⁷³ *Id.*

¹⁷⁴ *Elswick v. Lonesome Pine Int'l Raceway, Inc.*, No. L99-89, 2001 WL 1262224, at *2 (Va. Cir. Ct. Jan. 9, 2001).

¹⁷⁵ *Wagenblast v. Odessa Sch. Dist.*, 758 P.2d 968, 969 (Wash. 1988).

¹⁷⁶ *Id.* at 975.

¹⁷⁷ See *supra* notes **Error! Bookmark not defined.**-21 and accompanying text.

¹⁷⁸ *Johnson v. New River Scenic Whitewater Tours*, 313 F.Supp.2d 621, 623-24 (S.D. W. Va. 2004).

held a release signed by chaperone on a rafting trip unenforceable under the provisions of a statute that applied specifically to rafting.¹⁷⁹ The court considered whether a parent could agree to indemnify a defendant for damages resulting from negligent injury to a child, concluding West Virginia courts would not enforce such agreements.¹⁸⁰ Although this case does not hold all youth sports releases unenforceable, we thought its language and tenor was enough to change West Virginia's coding to -1.

WISCONSIN:

1988-1995: 0

1996-2014: -1

Wisconsin was difficult to code. Before 1996, no case law about enforcing youth sports releases existed. In 1996, the Wisconsin Supreme Court decided *Yauger v. Skiing Enterprises, Inc.*¹⁸¹ *Yauger* involved wrongful death action brought by the parents of an eleven-year-old girl who died in a skiing accident.¹⁸² In its defense, the defendant claimed that a release signed by the decedent's father barred any claim.¹⁸³ The trial court granted summary judgment for the defendant, and the plaintiffs appealed.¹⁸⁴ On appeal, the Wisconsin Supreme Court identified a single issue, public policy, and it refused to enforce the agreement because it did not sufficiently signal that the defendant waived negligence.¹⁸⁵ The court did not consider whether parents had the legal authority to waive tort claims on behalf of their children.

Yauger can be read to affect only the proper drafting of releases. This interpretation implies that the Wisconsin Supreme Court would have enforced the agreement in *Yauger* if the release had contained clearer language. However, prior case law about the enforceability of exculpatory agreements creates the impression that the Wisconsin Supreme Court is reluctant to enforce such

¹⁷⁹ *Id.* at 627—28.

¹⁸⁰ *Id.* at 631—33.

¹⁸¹ *Yauger v. Skiing Enter., Inc.*, 557 N.W.2d 60, 65 (Wis. 1996).

¹⁸² *Id.* at 61.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 63.

agreements, even when the agreements appear to waive negligence.¹⁸⁶

Thus, we decided that *Yauger*, along with other Wisconsin case law, indicated a lean against enforcing exculpatory agreements, including youth sports releases. We therefore changed Wisconsin to a -1 starting with 1996. And indeed, in the 2005 case *Atkins v. Swimwest Family Fitness Center*, the Wisconsin Supreme Court again refused to enforce a release even though it stated that the decedent agreed “to assume all liability for myself without regard to fault.”¹⁸⁷

WYOMING:

1988-2014: 0

We found no law directly on point.

¹⁸⁶ See *Arnold v. Shawano Cnty. Agr. Soc.*, 330 N.W.2d 773, 779 (Wis. 1983) (showing where an exculpatory agreement might be unenforceable even though it specifically waived negligence), *overruled on other grounds by* *Green Springs Farms v. Kerston*, 401 N.W.2d 816, 821 (Wis. 1987); *Richards v. Richards*, 513 N.W.2d 118, 123 (Wis. 1994) (showing an exculpatory agreement unenforceable for reasons of public policy even though court believed the contract waived negligence).

¹⁸⁷ *Atkins v. Swimwest Family Fitness*, 691 N.W.2d 334, 340 (Wis. 2005). There is one Court of Appeals decision refusing to enforce a youth sports release, but it is unpublished. See *Osborn v. Cascade Mountain, Inc.*, 259 Wis.2d 481 (App. Ct. Wis. 2002) (exculpatory agreement signed by parent enforceable). Given the contrary leanings of the Wisconsin Supreme Court and the unpublished status of this opinion, we chose not to give it weight in our analysis of state law.