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The changed perception and subsequent state laws that permitted college athletes to engage in name, image, and likeness (NIL) opportunities represent a historic evolution in the collegiate sport system. Utilizing a critical lens, a policy discourse analysis was conducted to examine how a public policy debate progressed and influenced the accepted norms and practices of college athletics given the significance of NIL. Collected data included policy documents, legislative committee hearings, and semi-structured interviews with seven championing legislators in the states of Florida, Texas, and Tennessee. Primary themes in the analysis were Policy Learning, Government Intervention in Sport, Unclear Understandings, and Fairness and Mistreatment of Athletes that encapsulate the complex NIL policy process. The results allow for several practical considerations to be presented for college athletics stakeholders, and sport in general, along with future research needs. This discourse analysis illustrates why it can be expedient for sport organizations to remain persistently engaged in the policymaking process, given the long-term and sizeable impact government affairs can have on sport.

Keywords: public policy; college athletics; policymaking; sport policy; policy learning; lobbying

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Sport organizations, including those in college athletics, are affected both positively and negatively by the decisions of government. In 1944, the Servicemen’s Readjustment Act, also known as the G.I. Bill, enabled numerous young adults to resume both their educational pursuits and collegiate athletic careers following their service in World War II (Reimann, 2004). Then in 1972, Title IX of the Education Amendments Act opened doors of opportunities and consequences for women in sport. In particular, since the enactment of Title IX, female sport participation has increased while female leadership representation has decreased (Taylor & Wells, 2017). As a result, institutions that support intercollegiate athletics must learn to work with government to capitalize on the benefits they obtain, and to curtail any possible negative impacts that may stem from government action (Berg, 2021). Sport organizations often maintain dialogue and lobby governments on various matters affecting their operations and stakeholders (Seifried & Smith, 2011). The presence and absence of constructive government relations has been evident as dozens of state governments created and enacted name, image, and likeness (NIL) legislation. NIL signifies college athletes being able to earn compensation for a third-party’s use of their name, image, or likeness for marketing purposes. This new policy approach was historic as it countered long-standing policy by the National Collegiate Athletic Association (NCAA) and enabled college athletes to be financially compensated through marketing agreements that would no longer jeopardize their eligibility at their university.

Under a federalist form of government, the United States (U.S.) government is authorized to direct national policy on certain issues. Absent the federal government having national legislation in place, such as the sanctioning of NIL in college athletics, the 50 state governments may produce their own policies in areas that are not granted exclusively to the federal government. Thus, in this analysis the term “state” refers to any of the 50 federated states in the U.S. rather than a national government or country. Additionally, the actions taken by state governments toward NIL are significant and a notable case study given a long-standing preference in the U.S. for limited government involvement in most organizations and industries, especially sport (cf. Chalip & Johnson, 1996; Sparvero et al., 2008).

The fact that NIL gained entry onto the legislative agenda in most U.S. states is an emblematic substantiation of how valued college athletics are in the eyes of the public and its elected officials (Patti & Dear, 1975; Yanow, 2000). A large majority of policy issues never receive legislative consideration in the U.S.. Sport is challenged in this regard because it is often viewed as less crucial than priorities that voters view as more urgent for government to address, such as infrastructure, education, crime, and social services (cf. Kingdon, 1995). As Kingdon described, there is a “policy window” during which policy topics often have a brief period to advance on the policy agenda. In the case of NIL, it was not a single focusing event that compelled government action. Rather, the issue gained legislative consideration through the gradual accumulation of knowledge and perspectives. This included the evolution of college athletics, the natural political process that includes elections and public opinion polls, stakeholder lobbying, and the outcomes of several notable judicial decisions, such as the unanimous U.S. Supreme Court ruling in *NCAA v. Alston* (2021) (Berg & Chalip, 2013; Houlihan, 2009; Houlihan & Green, 2008).

The changing perception of opportunities for athletes to be compensated represents a significant evolution in the college athletics policy discourse. While policy processes are multifaceted and dependent on the interaction of various institutions, stakeholders, and contexts, they merit further examination because often when policies are adjusted they are not incrementally altered (Baumgartner et al., 2009; White, 1994). Indeed, when policy changes

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occur the results are substantial alterations to the environment in which interested stakeholders can operate. New policies for NIL are no exception; thus, further examination is merited. Additionally, policy change in a federalist form of government is less likely to be controlled by any single institution or stakeholder (Berg & Chalip, 2013). Thus, while policy change renders significant adjustments to the environment in which interested stakeholders can operate, change is much less predictable than in a unitary system of government (Baumgartner & Jones, 1993). The purpose of this study is to better understand the sociopolitical context in which the historic NIL policy change was created in multiple states and what stakeholders were engaged to influence the policy structure.

Based on previous policy discourse analysis of sport (e.g., Berg & Chalip, 2013), it is likely that the states that passed NIL policies earlier influenced other states’ NIL policies crafted later. This exemplifies the concept of policy learning where policymakers regularly canvass the actions of other governments or sport governing bodies to justify new legislation or generate ideas (Rose, 1991; Houlihan & Green, 2008). Policy learning has been shown to be especially relevant to policymaking for sport (Berg & Chalip, 2013; Houlihan, 2009), which is understandable given that U.S. states compete against each other and measure themselves with one another on numerous policy topics, such as economic development (cf. Grady, 1987), health care reform (cf. Stream, 1999), and preventing childhood obesity (cf. Dodson et al., 2009). The success of a state’s college athletic departments and the well-being of its athletes appears to be no different competitively as a policy issue, which has precedent in intercollegiate sport (Watterson, 1995). If other states are achieving more ideal results, the choice of not taking any action is often infeasible due to the political costs of inaction (Berg & Chalip, 2013; Houlihan, 2009). However, it is critical to note that the practice of policy learning does not guarantee that the NIL policies learned from other states will be successfully or positively applied due to a multitude of factors that constrain how well a policy can be adapted to a new context (Rose, 1991). Thus, the effectiveness of NIL policies and the impact they may have on college athletes could vary across states.

NIL’s Policy History

While college athletes earning compensation through NIL opportunities had been discussed for many years prior, significant momentum toward sanctioning NIL across college athletics commenced when California became the first government or sport governing body to craft policy on the topic (Cocco & Moorman, 2022; Wohlwend, 2021). The California legislation passed in September 2019. However, the policy would not be enacted and allow NIL opportunities for college athletes in the state until January 1, 2023. The actions taken in California significantly influenced the consideration and formulation of NIL policy in dozens of other states, including the three states featured in this study: Florida, Texas, and Tennessee. Florida, specifically, generated a higher level of urgency for other states determining their NIL policy when it passed NIL legislation in June 2020. Unlike the California NIL policy that would not be implemented until the start of 2023, the Florida legislation permitted college athletes to earn NIL compensation starting on July 1, 2021. Subsequently, in June of 2021 Texas crafted and signed its NIL policy into law, which had a July 1, 2021 implementation date like Florida. Around the same period as Texas crafted its legislation, Tennessee considered and signed into law its NIL policy in May of 2021. The Tennessee NIL policy was not set to be enacted until January 1, 2022, still a full year before the original California legislation would go into effect.

During the temporal period of state legislatures creating and implementing NIL policy, significant judicial rulings concerning college athletics had been issued or were anticipated.
While there are many judicial rulings that have impacted the collegiate sport system and athlete compensation (cf. Erber, 2023; Jessop et al., 2023), the rulings in *O’Bannon v. NCAA* (2015) and *NCAA v. Alston* (2021) were particularly crucial against the backdrop of NIL discourse developing across the country. Over the lengthy judicial process for both cases, the NCAA and stakeholders who opposed athlete compensation opportunities argued that enacting NIL policies would conflict with the concept of amateurism, impair competitive balance, prevent the integration of academics and athletics, and alter the distinctiveness of the college sport product (Howe et al., 2023; Jessop et al., 2023). However, in both cases the courts ruled against the NCAA, which has not often occurred historically (Corr et al., 2023a), and conferred that NCAA policies on amateurism and benefits permitted to athletes were in violation of antitrust law (Jessop et al., 2023). As Vanberg (2001) explained, court rulings depend on a legislative or administrative response to have an effect. This means that significant court rulings concerning athlete compensation were not, by themselves, going to generate a structure for NIL in college athletics until a policymaking body created a statute for it. There is also a relationship between legislative behavior and anticipation of a judicial decision (Vanberg, 2001). Ferejohn and Weincast (1992) explained that judicial decisions are inherently political and affect policy outcomes because such rulings can enhance the power or influence of stakeholders who are in the majority position on a topic.

Combined with the abovementioned court opinions, the passage or consideration of NIL legislation in dozens of states significantly influenced the NCAA to issue an interim policy permitting college athletes across the country to participate in NIL agreements starting on July 1, 2021. The NCAA’s interim NIL policy will likely persist until a uniform law is passed by the federal government or a permanent policy is crafted and ratified by NCAA membership. While the NIL laws passed in many states have received ample media attention and commentaries from scholars, limited empirical research of various NIL issues has been put forth. In the early years of NIL implementation, empirical studies have included examinations of athletes’ perceptions of their NIL value and the institutional support they receive (Corr et al., 2023b), the NIL earnings potential of community college athletes (Cocco & Moorman, 2022), consumers’ perceptions of NIL (McCall et al., 2023), the NIL value of college athletes’ social media profiles (Kunkel et al., 2021), and the personal branding approaches of female college athletes (Hawkins-Jedlicka et al., 2023). With the exception of Howe et al.’s (2023) analysis of the NCAA’s official statements on NIL, there has been nominal empirical study of the policy discourse and processes that enabled NIL to become an accepted and sanctioned norm in college athletics.

### Theoretical Framework

Critical theory is a suitable framework for policy discourse analysis as it guides researchers to focus on how power relations are denoted, contested, and changed in society. There are many benefits of a critical approach, as Frisby (2005) explained, including discernment of taken-for-granted knowledge and the complicated relationships between local representations of power and the wider contexts in which they are set. Furthermore, a critical lens generates findings of how disproportionate power relations and partial communication can benefit certain stakeholders (Howe et al., 2023). Critical theory has been demonstrated to be beneficial to sport policy analysis by clarifying the dominant social meanings ascribed to sport, which guide the policies that ensue (Berg & Chalip, 2013; Chalip, 1995, 1996). Like the approach used by Sam (2003), sport policies can be better comprehended by critically examining the policy discourse and process rather than solely examining the written policies *post facto*. This paper offers a case study within three states of how a public policy debate progressed and
influenced the accepted norms and practices of college athletics given the significance of NIL. Further, this analysis illustrates why it can be expedient for institutions that support intercollegiate athletics to monitor sociopolitical contexts and remain persistently engaged in the policymaking process, given the long-term and sizeable impact government affairs can have on sport.

Method

Procedures and Participants

Most policy issues, including new NIL policies for college athletics, are complex phenomena which necessitate the use of multiple methodological techniques to accurately evaluate (Steckler et al., 1992). The data were collected from the entire policymaking process in the states of Florida, Texas, and Tennessee, which began when each state’s respective NIL bill was formally filed or introduced during the legislative session until it was signed into law by the governor. Thus, Florida’s legislative process for the initial NIL law started in October 2019 and concluded in June 2020, Texas’ started in March 2021 and ended in June 2021, and Tennessee’s initiated in February 2021 and finished in May 2021. These states were selected because together they allow examination of the ways that NIL policy and the discourse about NIL in college athletics progressed across the U.S. after the first NIL legislation was crafted in California. As Costigliola (2004) asserted, by assessing the word choices of relevant stakeholders that describe their perceived reality, researchers can understand what has been assumed, emphasized, and ignored in a policymaking process.

The research team noted similarities among Florida, Texas, and Tennessee. This included a Republican governor and Republican control of both chambers of the state legislature. However, NIL legislation received overwhelming bi-partisan support in all three states and NIL policy was sanctioned in many other states that did not have the same political party hegemony. Before major conference realignment shifts occurred, all three states contained multiple institutions that were members of the Power Five conferences (i.e., Atlantic Coast Conference, Big 10, Big 12, Southeastern Conference, Pacific 12) and had sizeable enrollments and alumni bases. Thus, NIL was a pertinent policy issue in each state.

Initial data to explore the legislative process were collected beginning in late 2021 from legislative policy documents. Since interviews and committee hearings are often a snapshot in time, documents, as secondary data, enable historical context and the course of sociopolitical change to be more fully understood as a step in triangulating the data and determining how a policy topic evolved (Hoeber, 2023; Murchison, 2010). Incorporating archived documents into a discourse analysis has been shown to be a useful tool for the study of other sport policy topics, such as Olympic boycott decisions (Berg et al., 2012) or the postseason format for NCAA Division I football (Seifried & Smith, 2011). Various policy documents are publicly accessible and were collected through each legislature’s online archive. The documents were reviewed to understand how the topic of NIL was initially legitimized to gain entry onto the policy agenda and how the discourse may have evolved as NIL advanced through the legislative process and new drafts of the bill were written. Documents included the final NIL bill signed into law, earlier drafts of the NIL legislation, bill analyses or summaries commonly distributed to legislative committees or all legislators, and, in Texas, witness lists for committee hearings. Eleven policy documents were each collected from Florida and Texas while two were collected from Tennessee. The language in the collected documents was also compared across the three states to determine how each state’s approach to NIL was similar or distinctive.
Following the review of documents, each state’s legislative committee hearings discussing NIL were examined. With modern technology, many governments now archive committee hearings through recorded video that are publicly accessible online. Such data permitted the authors to download the entire discourse record and repeatedly review the policy discussions during the legislative process. These data also present researchers with the additional benefit of obtaining a more precise understanding of the social interaction, such as body language and tone of voice, between stakeholders in the policy process to better contextualize the discourse. Contrary to only analyzing written records, one of the primary benefits of recognizing the context of the social interaction through audiovisual data is that it helps prevent misinterpretation of the discourse, such as differentiating between which statements may have been delivered with humor or sarcasm versus others that were offered with seriousness.

Each committee hearing relevant to NIL legislation in each state was viewed with notes made detailing the context of the discourse. Only portions of the committee hearings relevant to the NIL legislation were viewed, as most states’ legislative committees will deliberate on numerous policy topics in a single hearing. Three committee hearings averaging 26 minutes of discussion on the NIL legislation from Florida were viewed along with two committee hearings averaging 52 minutes from Texas and four committee hearings averaging 11 minutes from Tennessee. As explained by White (1994), Sam (2003), and Costigliola (2004), for both the documents and committee hearings the researchers gave systematic attention to how NIL and the modern collegiate sport system were framed in each state, what stipulations were added or removed from the NIL legislation, and what issues were and were not discussed by relevant stakeholders throughout the policymaking process. Such an analytic approach not only attempts to have an accurate understanding of the discussions that took place during the temporal period the legislation was considered, but also who the key stakeholders were and their historical experiences in order to more systematically establish what enabled the policy change to take place (Hall, 2001; Scollon, 2008).

The analysis of policy documents and committee hearings permitted the researchers to collect interviews with policymakers, as the primary data originating from this study. Upon completing the review of committee hearings and policy documents, sufficient data had been acquired to conduct a policy discourse analysis, as the research team reached a point when there were diminishing benefits for reviewing each additional committee hearing or document and new information was no longer generated through these data (Bradshaw et al., 2017; Weiss, 1994). However, for more in-depth and critical insight, additional data were collected through semi-structured interviews with legislators in Florida, Texas, and Tennessee. See Appendix for the interview guide.

Both the documents and committee hearings were deemed as secondary data that were essential to develop relevant interview questions and later contextualize and verify the primary data featured in the final analysis. A total of 23 policymakers, who sponsored or co-sponsored NIL legislation in their respective state, were invited to participate in the study, as these legislators championed NIL advancing on the policy agenda. The legislators were contacted via email and phone to solicit their participation. Seven policymakers (N = 7) confirmed their agreement to participate themselves or through a member of their staff. All seven interviewed legislators were male. Five were White and two were Black. Interviews were conducted via phone or Zoom and ranged from 12 to 46 minutes with an average time of 28 minutes. While the participating policymakers made many public comments as key figures in crafting the NIL legislation, to encourage candor and more accurate data each participant was assigned a pseudonym and only the location of their state (i.e., Florida, Texas, Tennessee) and date of interview are disclosed in the reporting of the results.
Analysis

Discourse analysis enables language to be studied to distinguish the prominent values in the sociopolitical culture, the pivotal issues during the policymaking process, and the subsequent policy produced due to how the policy issue is framed. Fundamentally, the purpose of discourse analysis is not to forecast future policy formation, arrive at general truths, or predict behavior, but rather to introduce new perspectives and generate new information that will assist participants of the policy process in understanding context in a more systematic way (White, 1994). It can be beneficial and extended to sport as there are numerous policy topics of significant interest to sport stakeholders beyond the sanctioning of NIL in college athletics (e.g., sport gambling regulation, addressing deviant behavior among sport stakeholders, the use of sport for international relations). The ideas and rhetorical claims found in the policy discourse are prudent to study because not only do they represent the goals of stakeholders and prevailing values of the public, but also because they affect the public’s understanding, approval, trust, and interest regarding policies (Sam, 2003). Whether in sport or other fields, discourse analysis is helpful for comprehending the policy process and the role of involved stakeholders, thereby potentially facilitating recruitment of more participants and improving policy process outcomes (Chalip, 1995, 1996). Discourse analysis also exposes which policy participants were able to realize the power to define the meaning of the policy issue in a particular sociohistorical setting, which aligns with a critical theory lens (Howe et al., 2023).

Narrative and interpretive methods were utilized to analyze the data for this policy study. These techniques have been beneficial for previous analysis of other sport policies (Berg & Chalip, 2013; Chalip 1995, 1996). Narrative policy analysis leads researchers to recognize the prevailing story that emerged from all other stories in the policy discourse, identifies other narratives being expressed that challenge the prevailing story, evaluates all narratives to generate a metanarrative for the policy discourse, and then reveals if or how the metanarrative alters the policy topic in such a way that it is more adaptable for the involved stakeholders (Roe, 1994). By ascertaining the beliefs or political strategies that were vital in the policy discourse, such a method can offer new understanding of the policymaking process that stakeholders may not have previously considered (Bridgman & Barry, 2002; Hampton, 2009; McBeth et al., 2007). Analysts using narrative methods operate with the awareness that there is a high degree of uncertainty and complexity for most policy issues. Therefore, policymakers often cannot assert with validity they are arguing with complete truth. Rather, policymakers often have limited time to decide on an issue and cannot wait for absolute certainty. As Roe (1994) noted, narrative policy analysts are less interested in why stakeholders have their beliefs and more focused on what they believe and the effects or outcomes that result from those beliefs.

Interpretive policy analysis functions with the premise that all who participate in the policymaking process, including researchers, cannot be entirely objective because of various beliefs, values, and backgrounds brought to the discourse (Hoeber, 2023). As a result, policy can often be argued through the lens of beliefs and values rather than facts (Kingdon, 1995; Yanow, 2000). Discourse analysis unveils certain stakeholders’ sociopolitical power through their capacity to cast meanings and accepted knowledge of the policy issue, which shapes the rules that govern their conduct (Berg & Chalip, 2013; Hall, 2001). With different stakeholders’ views brought to the policy discourse, the purpose of this study is not to determine which view or approach to NIL legislation was superior. More exactly this analysis was done to identify the narratives that were prominent during the policymaking process that framed why and how the historic change brought by NIL was enabled, which may have not been previously considered. It is not NIL itself that is of foremost concern, but the meanings attached to NIL and its effect on
college athletics and athletes, the beliefs that result from those meanings, and the legislation produced, outside traditional NCAA governance, to oversee particular conduct (Hall, 2001).

By utilizing an interview guide, the broad questions asked by the authors enabled rich qualitative data to be collected and triangulated with the other sources of data resulting in a more thorough and credible discourse analysis of NIL policies (Patton, 2002). Building off previous policy research (e.g., Berg & Chalip, 2013; Houlihan, 2009) and using the collected data from the legislative record, the researchers were able to more quickly focus on relevant concepts and the issues that were most important to participants in the policy process (Royse et al., 2010). However, the authors were also attentive to new or unexpected findings emerging from the data as these can be the most revealing results in some research (Murchison, 2010).

Employing QSR International’s NVivo 12 software, two researchers independently identified patterns and selected themes through a comprehensive and detailed coding process of the transcribed interviews (Braun & Clarke, 2006; Howe et al., 2023). Such an approach entailed reading each interview in its entirety, assigning initial codes for issues or ideas offered in interview responses, determining which codes, based on frequency, were prominent or exceptions in the discourse, collapsing the initial codes into recurrent subthemes, and then identifying the primary themes that weaved throughout the data (Hoeber, 2023; Seifried & Smith, 2011). Employing an interpretive group strategy, four other researchers then challenged the two coding researchers’ interpretation of the data (Woolf et al., 2016; Yin, 2014). This approach established four prevailing themes in the policy discourse. Each member of the research team was asked to review the preliminary results and offer ideas or perspectives that may have been originally overlooked in the discourse data, including disconfirming or contradictory statements from NIL stakeholders (Hoeber, 2023; Howe et al., 2023). While disagreement among the researchers did not occur often, such instances resulted in the team discussing the content in question until clear understanding and agreement was determined. This peer review practice increases the trustworthiness of the analysis (Berg et al., 2018; Berg & Warner, 2019; Berg et al., 2021; Braun & Clarke, 2006; Patten, 2014). When disconfirming or contradictory statements were identified in the discourse, the research team reassessed the data to determine how often similar statements were made by other stakeholders. If no other stakeholders expressed the same thought, the statement was deemed an outlying view in the discourse. If other stakeholders held a related view, the perspective was incorporated into the analysis and the frequency of codes using NVivo were altered, which eventually influenced the primary themes and subthemes identified.

This policy discourse analysis, it is important to note, used data that are part of the public record and contain on-record statements by state legislators and other participants throughout the policy process. In many policy processes, there are often private discussions and off-record statements that shape the ensuing outcome of the policy, and the establishment of NIL is no different (Scollon, 2008). However, the discourse used in this analysis still encapsulates the influential narratives that warranted the legislative attention given to NIL and the reasoning for its subsequent legalization. The anonymous and confidential semi-structured interviews with key policymakers corroborated the public or on-record statements from stakeholders in all three states to triangulate the results of the analysis.

**Results**

Being mindful of context and how the discourse on NIL in college athletics progressed over time and across states, four overarching themes were identified following data analysis. A total of 16 subthemes were placed within the prevailing themes, which are presented in Figure 1.
The four primary themes found in the policy discourse were: Policy Learning, Government Intervention in Sport, Unclear Understandings, and Fairness and Mistreatment of Athletes. The described narratives that follow, along with selected quotes for illustration, are representative of the prevalent discourse that took place in the three featured states of Florida, Texas, and Tennessee, and help to encompass the process and context of how NIL came into existence through the actions of state governments. While all three categories of data are presented in the results, as original data from this study, the interviews are predominately featured when illustration is needed. To ensure anonymity, interview participants’ pseudonym, state, and date of interview are provided when quoted. For instances when committee hearings and policy documents are referenced, the real names of individuals are provided since those data are part of the public record.

**Figure 1.**
Data Coding

**Policy Learning**

The concept of policy learning was evident throughout the policy discourse in each state. The desire for a state’s college athletic departments to avoid a competitive disadvantage with what other states’ universities were allowed to practice in the context of NIL significantly influenced this sport issue being given a place on the legislative agenda and its eventual sanctioning. In both legislative hearings and the semi-structured interviews, policymakers frequently referenced other states’ NIL legislation that had been passed or at least considered to justify the NIL legislation they championed. All seven legislative sponsors interviewed noted...
Creating NIL Policy

this issue to explain the need for the NIL laws. For example, Gary, a Texas legislator, explained the competitive factor in why his state passed an NIL policy stating, “The fact is that other states were beginning to do name, image, and likeness legislation, allowing students to be able to, obviously, get compensated for the use of their name, image, and likeness…And so competition, number one” (October 13, 2022). Appearing before the House Higher Education Committee (2021), Representative Jim Murphy, who sponsored and championed the legislation in the Texas House chamber, explained “We have looked… at other states and what they’ve done, and we are really ahead of the game in the sense of protecting our athletes.” Mike, a Tennessee legislator, discussed the concern about his state being at a disadvantage if it did not have NIL legislation:

Well, and it was on the radar. It was out there. And of course, early states like California and Florida sort of started the ball rolling. And so, yeah, it’s when one state starts, the other states have to look around and say, ‘Boy, we can’t get behind the curve on this one’. (March 23, 2022)

Exhibiting the Avoiding Competitive Disadvantage subtheme, the discourse analysis revealed policymakers’ awareness of potential costs, such as less competitive success for their state’s athletic departments, if no action was taken.

As NIL legislation was increasingly discussed and sanctioned in more states, it became challenging for other states’ policymakers to resist passing their own NIL law, which was captured in the Majority Influence subtheme. As one of the earliest states to consider and approve NIL legislation, the discourse in Florida mainly referenced the original NIL legislation passed in California. As NIL progressed through the policymaking process in Texas, two sponsoring legislators, along with two key witnesses, repeatedly mentioned more states’ NIL legislation, particularly in California and Florida, to justify and structure their NIL bill. The discourse in Tennessee was notable in that the original NIL law in California was minimally noted. Rather, in the Tennessee committee hearings, two sponsoring legislators often referenced the NIL policies in southeast states, including Florida, Georgia, Mississippi, Alabama, and Arkansas. As more states in the southeast region of the U.S. approved or contemplated NIL policy, Tennessee policymakers were compelled to act on NIL since their state’s universities most often competed against universities in those nearby regional states. Brent, who championed the Tennessee NIL bill, described the conversations he had with some of the state’s universities:

The universities were opposed to my 2020 legislation, but then they were actually the impetus of the 2021 legislation… And I think also, thankfully, we were able to—myself and others were able to convince universities that they were going to be at a strategic disadvantage if they did not put name, image, and likeness legislation in place. (February 9, 2022)

Tennessee legislators and several of the state’s universities, which had significant input in the final NIL bill, were mindful of the proximate disadvantage they risked as NIL laws became more common in the U.S.. Policy learning was ubiquitous in the NIL discourse.

Government Intervention in Sport

Six subthemes fell under the primary theme of Government Intervention in Sport that illustrates how the involvement of government officials produced a profound shift in college athletics. All seven interviewed policymakers admitted that their views toward the necessity of
NIL legislation evolved over time alongside changes in college athletics (i.e., Position Changes in NIL subtheme). Specifically, they most often pointed to the lucrative commercialization of collegiate sport in the Power Five conferences and the escalating salaries of coaches and administrators that altered their views of amateurism and what should be the accepted norms at this competitive level.

For the interviewed legislative sponsors, all seven were further compelled to act because there was negligible belief that an effective national NIL policy would be passed by the federal government or the NCAA, which was emphasized in the National NIL Policy subtheme. Two sponsoring policymakers in Florida initially began crafting NIL legislation with the purpose of spurring the NCAA to formulate a nationwide policy for all its members. Appearing before the Senate Education Committee (2020), Senator Debbie Mayfield, who sponsored and championed the bill in the Florida Senate chamber, noted “Part of this bill is really to push the NCAA to make those rules and decisions… Our thought is the more states that pass this type of legislation it’s going to force them to make those decisions.” However, when NIL legislation was considered a year later, two sponsoring policymakers in Texas and three in Tennessee believed that a uniform, national policy could only be created by the federal government, and the NCAA was unwilling or incapable of effectively addressing the issue. Robert, a Texas legislator, explained why NIL legislation was crafted in his state:

And there was always this looming consideration that [the U.S.] Congress might advance a bill, the House might. There was talk. There were authors. There were concepts. We had no confidence in that at all… Texans kind of naturally have this attitude of don’t wait on anyone to do it; do it yourself. And that’s how I was raised. (August 26, 2022)

Additionally, unlike in Florida, policymakers in Texas and Tennessee were able to reference the *NCAA v. Alston* (2021) case to further legitimize the new NIL policy. While *NCAA v. Alston* was not decided until June 21, 2021, it had received significant media attention and was argued before the U.S. Supreme Court on March 31, 2021. At the same time, NIL policy was in the middle of the Texas and Tennessee legislative processes and policymakers seemingly anticipated the U.S. Supreme Court ruling against the NCAA, which it eventually did unanimously. Two sponsoring legislators in Texas and three in Tennessee recurrently referenced *NCAA v Alston* to legitimize their NIL bills. For example, Senator Brian Kelsey, a sponsor of the NIL legislation in Tennessee, explained before the Senate Finance, Ways, and Means Committee (2021):

Number one, currently before the United States Supreme Court is a case called the Alston case, in which most legal scholars are predicting that the NCAA will lose that case and not be able to prevent legislation exactly like this. So, that’s one change from years past.

*O’Bannon v. NCAA* (2015) was also noted in the Tennessee discourse to argue that NIL legislation was overdue. Hence, the discourse analysis unveiled that state policymakers viewed permitting NIL opportunities for athletes as a necessary modernization of college athletics.

Data analysis identified the key stakeholders who were actively engaged in the Florida, Texas, and Tennessee policymaking processes. In all three states, sponsors of the legislation noted that several of their state’s most prominent universities offered input regarding how NIL would be structured in their state (i.e., Lobbying or Engagement by Universities subtheme). Similar to legislators’ views changing on NIL under the concept of policy learning, the leadership at many universities were opposed or reluctant to support a new NIL policy in previous years. However, once it became evident that NIL policy was progressing across the
U.S., the university leaders in these states accepted the reality of NIL and offered feedback to government officials for what they preferred be included in the final NIL law. Paul, a Tennessee policymaker, noted how involved and influential the state’s universities were:

So, this legislation was largely precrafted through the cooperative efforts of the universities in the state. So, public and private universities worked on this legislation long before it was ever filed in the legislature. And so, the universities themselves developed the parameters of the legislation, and it was filed in that form. (January 27, 2022)

As another example, in Texas the athletic directors at both Texas A&M University and the University of Texas were recognized as key witnesses to provide input during committee hearings in both the House (House Higher Education Committee, 2021) and Senate (Senate Higher Education Committee, 2021) as the NIL policy advanced through the legislative process. Privately, policymakers had direct conversations with athletic directors and head coaches, in some cases, or corresponded with a set of key university officials, such as an office of government affairs or external relations.

While the interests of the state’s universities were represented, especially those with the most well-resourced athletic departments, noticeably absent in the policy discourse was engagement by the NCAA. Two sponsoring policymakers in Tennessee and one in Texas mentioned negligible dialogue with anyone representing the NCAA and no one appeared at any committee hearings, in all three states, to speak on behalf of the association, which resulted in the Lack of Policy Engagement by NCAA subtheme. This seemed to be a significant reason for the Low Regard for NCAA subtheme, which displayed the negative view many policymakers had of the NCAA. Brent, a Tennessee policymaker, expressed his frustration with the NCAA:

Legislators like myself and states like Tennessee, to pass the NIL legislation and pushed it for several years before that, really pulled the NCAA kicking and screaming into this new era of college sports. And I think that the NCAA is losing relevance every year and largely it’s in part because they refuse to treat athletes with the respect that they are due. (February 9, 2022)

Russ, another sponsor of the Tennessee legislation, conveyed his lack of trust toward the NCAA:

But it also was a catalyst to the NCAA to say that we don’t necessarily follow your authority. You may bully your member institutions, but you’re not going to bully the state legislature of the state of Tennessee. We know right from wrong, and we believe this is the right thing to do, and that’s what we’re going to do. So, we were there to provide motivation for the NCAA to treat this issue as it needed to be treated, and if they suddenly have that moment of clarity to where they want to produce a national policy. And I would hope that it would be without [the U.S.] Congress, but I don’t trust the NCAA any further than I can throw them. (November 23, 2021)

Policymakers were cognizant that their NIL bills would take power and control away from the NCAA and the NCAA does not have any authority over state governments. All seven interviewed legislators seemed to feel further justified in passing the policy because they reasoned that their NIL law would supersede any policy passed by the NCAA. Additionally, six interviewed policymakers noted that they were long-time fans of college athletics and supported their state’s athletes in their leisure time (i.e., Policymakers as Fans subtheme). For many years
they had monitored the opportunities allowed to college athletes and NCAA governance. Consequently, they observed issues in college athletics they disagreed with and, in their fanship, were enthusiastic to address as elected officials.

**Unclear Understandings**

The third theme, Unclear Understandings, encapsulated how there were many issues of uncertainty deemed acceptable by most stakeholders that did not legitimize further delay of NIL policy creation and implementation. There was ambiguity in the wording of the NIL legislation regarding what entity would ensure each state’s universities adhered to the parameters of the law, as revealed in the Ambiguous Enforcement subtheme. Six interviewed policymakers explained that they expected self-monitoring or peer-policing to be adequate for enforcement and that if they observed a problematic trend the state government could take additional action to further regulate NIL. Robert, a Texas legislator, stated “…We’re for local control unless it’s local out of control, and we’re watching it every day” (August 26, 2022). As another example, Russ, a Tennessee policymaker, rationalized:

> It’s primarily going to be enforced by the NCAA enforcement division and the other member institutions. They’ll be the first to whistle blow when someone is engaged in an unscrupulous activity. We certainly didn’t want to create another bureaucratic expense to the taxpayers of Tennessee to monitor this. (November 23, 2021)

Each university was tasked with implementing the NIL policy to benefit their athletes (i.e., Implementation Left to Universities subtheme) and the policymakers found it difficult to believe that state institutions would violate state law. The political culture of limited government also justified the ambiguous enforcement of NIL. Paul, a Tennessee legislator, described the political philosophy underpinning the unclear enforcement of NIL activity:

> … The way Tennessee law works in many different industries is we are a state that generally operates an industry that is willing to self-regulate. We’re more than happy to have an industry regulate itself with minimal state oversight, versus heavy-handed regulatory schemes enforced by state employees. (January 27, 2022)

When unintended negative outcomes from NIL were discussed in the policy discourse, stakeholders often acknowledged that there could be some, but the positives from allowing NIL opportunities for college athletes outweighed the negatives that could arise. Six of the interviewed sponsors stated that they could always amend the legislation if needed to protect the interests of universities or athletes. These last two views emerged through the Positive Intended and Unintended Outweigh Negative Unintended and Amend the Legislation if Needed subthemes.

**Fairness and Mistreatment of Athletes**

The final theme, Fairness and Mistreatment of Athletes, signified how the policymakers who advanced NIL legislation agreed that it was morally or ethically correct to allow college athletes the same rights to pursue economic opportunities as anyone else, as evident in the Economic Freedom subtheme. Alan, a Florida legislator, explained a motivation for him championing NIL policy:

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It was all about accessing the free market and allowing intercollegiate athletes to be treated the same as other college students from the standpoint of that they could earn a living outside of anything that they’re doing in sports… So really, to me, it was inequity in how college students were treated versus college athletes. (August 15, 2022)

Brent, a Tennessee legislator, believed the long-standing prohibition of NIL activity in college athletics resulted in mistreatment of athletes:

Well, I first started looking into these issues actually back in 2011, because I felt that this was an issue of fairness and that certain athletes were being mistreated… We’ve got to treat these student-athletes just like we treat all other Americans, and that is not as people who generate money only for the university and the coaches and the administrators but as individuals who can generate funding for themselves as well. (February 9, 2022)

This quote also represents how all seven interviewed sponsors noted they monitored issues affecting NIL for several years prior to drafting and passing their state laws.

In addition to perceiving that NIL would result in more economic freedom for college athletes, six interviewed policymakers believed that financial gain, even if marginal, would help alleviate stress that affects college athletes’ overall well-being (i.e., Athlete Well-Being subtheme). Mike, a Tennessee legislator, articulated a view shared by other policymakers in committee hearings and interviews regarding the importance of economic well-being:

But a whole lot of these athletes are struggling and their families are struggling. So just an opportunity for them to be able to exhale in terms of not having to produce all of the funds that go with college. There’s a lot more than books and tuition. (March 23, 2022)

Policymakers regularly discussed the benefits to college athletes beyond financial gain, such as personal development or education, that would occur by participating in NIL activities, as represented by the Development subtheme. Personal development opportunities often cited included college athletes learning about entrepreneurship through their NIL partnerships or financial literacy workshops. Also in line with the Policy Learning theme and indicating the borrowing of ideas from other states, Florida (Senate Bill 646, 2020), Texas (Senate Bill 1385, 2021), and Tennessee (House Bill 1351, 2021) all mandated their universities offer college athletes financial literacy training as part of the new NIL law. Russ, a Tennessee legislator, reasoned that these educational experiences would benefit all college athletes long-term and assist with athlete retention at the collegiate level:

They’re going to learn about taxes. They’re going to learn about financial responsibility, which we did have elements of that in our bill… I think we’re seeing there’s much desire that this will serve as an athlete retention program so that for those who may have real financial hardships at home they’re not driven into the leagues as quickly as they would be just to earn a paycheck. And I hope that this provides the ability for folks to stay in school a little more. (November 23, 2021)

While college athletes’ economic freedom was a central motivation for NIL legislation, other stakeholder interests, primarily those of the state’s universities, were prioritized, which resulted in the Limits to NIL Freedom subtheme. For example, limits were explicitly placed in
Texas and Tennessee regarding prohibited categories of endorsement that college athletes could not promote, such as adult entertainment, alcohol, tobacco, or gambling entities. Two sponsoring policymakers in Florida also discussed this issue and deemed each university having the ability to overrule such endorsement activity through the contracts it has with its athletes. Mike, a Tennessee legislator, expressed a common sentiment in the discourse:

> So, if they’re out there advertising things that really aren’t appropriate for our children, then it just doesn’t make sense. As I say, all money is not good money. And sometimes we have to make the decision for that student-athlete. And so, again, there’s just guardrails. We just want to make sure—we’re going to give you a wide range of things, of people that can approach you, but there are certain things that are just off limits…So, a little bit of paternalism in the law, but with the recognition that while we want to allow student-athletes more freedom than they’ve had in the past, they’re still college students. (March 22, 2023)

Thus, all three states permitted each institution to constrain a college athlete’s NIL activity that conflicted with the university’s values, policy, or existing marketing partnerships (House Bill 1351, 2021; Senate Bill 646, 2020; Senate Bill 1385, 2021). Paul, another Tennessee legislator, conceded that some aspects of the NIL legislation did not rationally align with other state regulations. For instance, he noted that state universities were allowed to decide if they would serve alcohol at their athletics events, a crucial source of revenue, but the athletes would not be allowed to partner with alcohol-related entities. Reasoning that most policies are imperfect when attempting to balance the interests of multiple stakeholders, he accepted such a contradiction given the greater benefits NIL policy would provide college athletes for the first time.

**Discussion**

The discourse analysis revealed more similarities than differences amongst the three states, which is why the above results are presented by theme rather than chronologically as each state passed its NIL legislation. There were some notable differences, however. While absent in Florida, the citation of the *NCAA v. Alston* (2021) case was common in Texas and Tennessee. This influenced views of NIL policy (e.g., Position Changes on NIL subtheme) and bolstered the sociopolitical power of stakeholders who supported college athletes having NIL opportunities (Ferejohn & Weingast, 1992). Vanberg (2001) primarily focused on legislative noncompliance with judicial ruling, but this case study of NIL offers one example of how an anticipated judicial ruling could further legitimize and perhaps motivate legislative stakeholders to move forward with a new policy.

Indeed, the outcomes of previous or anticipated court decisions concerning college athletics were a factor affecting the creation and implementation of NIL policy (Erber, 2023; Ferejohn & Weingast, 1992). Additionally, while California, as the most populated state and first state to permit NIL opportunities for college athletes, was cited in the Texas discourse, it appeared to be more influential to Florida policymakers acting a year earlier. Given the numerous other states that passed NIL laws, it is likely that Florida would have still passed a NIL policy, as revealed in the Majority Influence subtheme. However, the discourse indicated a sense of urgency was created when the largest state passed the first NIL bill and Florida policymakers compared their state, as the third most populated, with California.

This discourse analysis offers a case study of how a public policy debate progressed and influenced the accepted norms and practices in college athletics given the impact of NIL.
Legislation regarding NIL is more than college athletes simply receiving government permission to participate in marketing partnerships with third-party entities. Countering long-established policy that prevented participation in such activity, the changed perception that college athletes should be permitted to engage in NIL opportunities represents a profound and historic transfer of power in the policy discourse, as revealed through a critical lens. Further, the results highlight the significance of policy learning, including its continued relevance to sport policy (e.g., Berg & Chalip, 2013; Houlihan, 2009). When contemplating sport legislation, this discourse analysis exhibits that state legislatures borrow legitimizing rhetoric from each other.

As NIL materialized as a timely policy issue and more legislatures permitted marketing opportunities for college athletes, states compared themselves with one another not only to justify giving the issue legislative attention, but also in deciding the parameters and directives that would be implemented by each university. For instance, in examining the original NIL laws in Florida, Texas, and Tennessee, the legislative language is similar across these three states, which suggests the borrowing of ideas or phrasing for the NIL policy. Electing to rely on universities to implement and monitor NIL (i.e., Implementation Left to Universities subtheme), also similar across all three states, was likely selected to avoid the creation of additional state bureaucracy and the negligible costs incurred by the state, which often appeals to policymakers (Kingdon, 1995). Such an implementation approach aligns with a historically entrenched preference for limited government involvement (cf. Chalip & Johnson, 1996; Sparvero et al., 2008). While not feasible for this study, future researchers can evaluate the implementation and enforcement of NIL policy, which would help inform future policy choices. NIL is nonetheless a case of how significant public policy can be for sport when government officials intervene and why stakeholders should monitor evolving sociopolitical contexts to inform their engagement in the policymaking process.

In a federalist form of government, a policy victory achieved or a major piece of legislation passed in one state can snowball into additional states passing the same policy because they routinely monitor policy ideas in other places. Contrary to the judicial system, with differing court levels and appeals processes that resulted in both O'Bannon v. NCAA (2015) and NCAA v. Alston (2021) taking several years to be decided, the case of NIL demonstrates how rapidly new legislation can be created when a policy window opens (Kingdon, 1995). In all three states, once the original NIL bill was filed, or given a place on the policy agenda, it merely took a few months for policymakers in the state legislatures to navigate the legislative process and pass historic laws impacting the collegiate sport system. Even though many policymakers stated they had considered NIL for years, the expedient creation of the original NIL law may have later influenced the necessity for most states to adjust their NIL policy. Policymakers in this study were aware of this possibility (i.e., Amend the Legislation if Needed subtheme). Regardless, numerous stakeholders in college athletics and other sport contexts can leverage early legislative victories to incrementally expand the favored policy outcome across the country by highlighting the advantages other states may achieve. Berg and Chalip (2013) found that state economic benefit was particularly salient in the sanctioning and regulation of mixed martial arts.

While there are eventual local and statewide economic implications stemming from a commercialized intercollegiate sport system and other perspectives on college athlete compensation, this discourse analysis revealed that NIL was mainly argued through the lenses of college athletes’ economic well-being (i.e., Economic Freedom, Athlete Well-Being, and Development subthemes) and avoiding the perception that a state’s athletic departments were no longer competitive. This represents the interdiscursivity often found in public discourse in which multiple viewpoints are expressed but one argument emerges as more salient (Scollon, 2008). Few other policy issues receive the media attention that college athletics, or sport in general,
receive. Therefore, media coverage of NIL debates, unrestrained by borders or a state not having a NIL law in place, enabled policy comparisons between state governments, which was seen in Florida, Texas, and Tennessee all referencing earlier NIL legislation that had been passed or considered in other states.

The political costs of inaction and not addressing a perceived competitive disadvantage for states’ athletic departments compelled policymakers to envision new regulatory measures that would drastically alter college athletics. It is critical to note that policymakers who participated in this study realized their state’s universities would not gain a competitive advantage by having NIL policy in place, but would avoid a competitive disadvantage by not having NIL legislation in place, as exhibited in the Avoiding Competitive Disadvantage subtheme. This is comparable to the rhetoric often stated in the facility arms race in college athletics. While a new or upgraded facility may result in added publicity or a boost in recruiting, such benefits are short-lived until competitors inevitably upgrade or construct their more modern facilities in subsequent years. Policymakers recognized that gaining a competitive advantage and avoiding a competitive disadvantage are not synonymous.

It is expedient for sport organizations to remain persistently engaged in the policymaking process, given the long-term and sizeable effect government affairs can have on sport, including college athletics. The NCAA seemingly focused the vast majority of its legislative and legal efforts at the federal level but were noticeably absent in the three states examined in this study (i.e., Lack of Policy Engagement by NCAA subtheme). This was notable given that the NCAA and its member institutions, as Howe et al. (2023) detailed, have a history of using rhetoric to manage narratives, preserve power, and limit college athlete autonomy. The NCAA and many other stakeholders, including multiple policymakers in this study as displayed in the National NIL Policy subtheme, desire a federal NIL policy. However, crafting such legislation, deciding what entity will be able to effectively regulate it nationally, and generating support from policymakers may be a far more challenging and complicated task than attempting to change policy one state at a time in a federalist form of government. In June 2023, with no NIL legislation receiving significant consideration on the federal policy agenda, the NCAA distributed a memo to its member institutions stating that they should follow NCAA NIL policy even if certain actions are permitted under their state NIL law (Williams, 2023). Such a communication conflicts with the position of championing legislators in this study, who were confident state law would legally prevail over any NCAA policy or enforcement attempt.

The absence of the NCAA at the state level, outside of releasing public statements as NIL policy progressed (cf. Howe et al., 2023), enabled the universities in each state to be the most mobilized and influential stakeholder group. Baumgartner et al. (2009) described how it is uncommon to have imbalanced mobilization for a policy topic, but the universities in all three states held an advantageous position since there was no mobilized opposition, or a differing view. As revealed in the Lobbying and Engagement by Universities subtheme, state universities were able to achieve a significant form of sociopolitical power in the current historical period by obtaining legislation favoring their interests. By recognizing sociopolitical contexts and the likelihood of NIL policy creation, universities were able to convert from being opposed to NIL to effectively lobbying for NIL parameters they most preferred.

The policy discourse of NIL is another example in sport of how the influence of specific groups and the status of an issue are dynamic, rather than static, and college athletics stakeholders can proactively help direct the policy under which they operate (Berg, 2021; Berg & Chalip, 2013). This is why various lobbying groups, despite infrequent success, recognize the importance of new policy formulation, anticipate policy windows to open, and persistently engage policymakers (Baumgartner et al., 2009; Berg & Chalip, 2013; Kingdon, 1995). Such
consistent efforts operate from the premise that while present policy implementation, such as NIL, will limit later policy options, future sport policies are not predetermined or inevitable (Houlihan, 2009; Houlihan & Green, 2008). The discourse of NIL and state governments’ creation of initial NIL policies have defined the topic and ruled out or limited what stakeholders can do moving forward (Hall, 2001; Howe et al., 2023). Specifically, the discourse that led to the sanctioning of NIL has ruled out ever going back to a pre-NIL collegiate sport system and limited what actions the NCAA can take toward athlete compensation without regulation from the federal government.

In many empirical studies it is crucial to not just analyze what is in the data, but also what is not in the data. For a critical discourse analysis, it is essential to question which stakeholder groups do not have a voice. While universities were heavily involved in NIL policy creation, the discourse analysis revealed that the college athletes themselves had minimal participation or representation, which has been noted by other researchers (Cocco & Moorman, 2022; Seifried & Smith, 2011). This raises the question of how NIL laws would have differed if college athletes, who are supposed to be the central stakeholders in intercollegiate athletics, had more prominent input when the policy was formulated. Moving forward, researchers who are able to collect data directly from college athletes and provide detailed analysis of their experience with NIL will offer a significant contribution to the literature that is pertinent not only to scholars, but policymakers, athletic administrators, and other relevant stakeholders in the NIL discourse.

From a policy standpoint, the platform of sport can be double-edged. As the Policymakers as Fans subtheme noted, almost all the key policymakers who championed NIL policy noted their sport fandom. Sport can often provide an advantageous platform that is helpful for generating revenue, supporting charitable efforts, and other benefits. However, that platform utilized by sport stakeholders, including those in college athletics, may also attract additional scrutiny from policymakers that are not found in other industries. For example, policymakers may have to serve on committees and vote on legislation that regulate numerous other industries, such as insurance, healthcare, or lumber, but they are likely not attending or viewing events related to those industries during their leisure time. This issue has significant implications for sport stakeholders and public policy.

Additional research is needed to more clearly establish the conditions in which policymakers place importance on sport policy and subsequently take action. Berg and Chalip (2013) were correct to note there are numerous examples throughout history in which policymakers viewed sport as less urgent than other policy areas, such as education, public safety, or environmental regulation, and therefore placed other issues on the policy agenda rather than sport. However, the data for this NIL discourse analysis present one case of policymakers’ fandom motivating them to place sport on the policy agenda and create new legislation, especially once it was clear other states had passed or considered NIL policy. As a related example, evidence indicates that some judges, commonly expected to be impartial, have been influenced by their collegiate sport fandom in how they preside over a court (Corr et al., 2023a). While there is a need to identify the circumstances in which a policy window opens for sport and why policymakers are motivated to address a sport policy issue, future research will likely continue to demonstrate the consequential impact government can have on sport, as seen with NIL in college athletics.

**Conclusion**

This discourse analysis sought to capture viewpoints of policymakers and other engaged stakeholders as NIL laws were created across the U.S. With how critical context can be in
analyzing policy, the research team understands how essential it is to avoid overgeneralizations in the analysis and therefore an in-depth examination of NIL legislation in multiple states was employed. Furthermore, the research team was cognizant that the policy environment in each examined state is distinct and, thus, it is necessary to avoid oversimplification in the analysis. As a limitation, this research was not longitudinal in design to chronicle evolving positions or emerging issues that were originally unforeseen when the policy was crafted. During the period this study was conducted and written, many state governments, including Florida, Texas, and Tennessee, amended their original NIL legislation. Once again policy learning served as a critical justification for amending NIL policy as states monitored updated legislation in other states and sought to avoid a competitive disadvantage. Thus, opportunities will exist for researchers to examine future NIL policy, which will likely be significantly different from the current foundational setting.

Future research may also benefit if data can be collected from more diverse stakeholders who have a voice in NIL policymaking. For example, all seven championing legislators interviewed for this study were male and college athletes had little noticeable input in the discourse. A wider range of stakeholders that have more opportunities to provide input may stimulate significant alterations to NIL moving forward. Additionally, during both committee hearings and interviews for this study, policymakers alluded to private or off-record discussions they had with NIL stakeholders, especially athletic directors and head coaches. As a limitation, it is not feasible to know the substance of those conversations and how they may have influenced policymakers’ views or actions in championing NIL in their state. This is a common challenge for most policy issues (Scollon, 2008). As previously noted, those who participate in the policymaking process cannot be completely objective and this applies to researchers studying a policy topic (Hoeber, 2023). It is acknowledged that the analysis may be influenced by the biases of the researchers, such as previous study of issues in college athletics or experiences as a college athlete, which applied to over half of the research team.

Given the complexity of passing federal legislation on any issue in the U.S. and the continued relevance of policy learning, including for issues affecting sport, it is not inconceivable that such a state-by-state legislative approach may be used in the future to address a significant topic in college athletics. This is further likely if the NCAA, as an association, cannot reach agreement on how to govern an issue that receives unending scrutiny, including from many policymakers who are fans of college athletics in their state and monitor NCAA policies. As NIL has demonstrated, policy ideas only need to originate in one state before they are capable of proliferating elsewhere.

References


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Creating NIL Policy


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Appendix

Semi-Structured Interview Guide

1. What would you describe as the impetus for creating a policy for Name, Image, and Likeness (NIL) in your state?
2. What was your earliest role with NIL? How did you start your involvement with NIL policy in your state?
3. What benefits do you believe NIL has allowed student-athletes? What unintended outcomes have you observed or foresee?
4. How has NIL affected athletic administrators’ stress as another significant issue to manage? How has NIL affected student-athletes’ stress levels?
5. What strategies did you use to ensure effective implementation of the NIL policy or that student-athletes were prepared for NIL opportunities?
6. How do you see the introduction of NIL, and the application of NIL by athletic departments, impacting student-athlete decisions on where to attend and participate both through initial school choice and the transfer portal?
7. How is the enforcement of the NIL policy handled in your state? What entity ensures that it is followed by universities, athletes, and other stakeholders across the state?
8. What, if any, categories of endorsement are prohibited in this state? If so, why?
9. Should a national and permanent NIL policy be passed by the NCAA, how would NIL be handled if there was a conflict with the state’s NIL law?
10. What changes, if any, would you make to NIL policy in your state or across college athletics to benefit student-athletes and college athletics as a whole?