

# Neoliberal Policy and Equity on Campus: A Comparative Administrative Study of Name, Image, and Likeness (NIL) and College Athletics<sup>1</sup>

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This research analyzes NIL policy to determine its fit within the neoliberal policy framework and assesses its intersection with equity. Systemic and administrative factors within college athletics contribute to the NIL landscape. Disparities in earning potential are a natural product of market-based policies. Earnings and valuations by race and gender show equity ramifications. A comparative analysis of NIL policies and university websites and interviews shows a shift toward the neoliberal approach, providing targeted administrative mandates while promoting market capitalism within college athletics. As a result, NIL policy's neoliberal tendencies have a significant impact on social equity.

Name, image, and likeness (NIL) policy is an emerging administrative challenge. NIL itself is not new. Every person has the ability to make money from their NIL through agreements they can strike with a company. The process of NIL is simply profiting from the use of name, image, or likeness through deals such as endorsing a product or allowing pictures to be used in a for-profit venture for which the student-athlete receives compensation. Prior to 2019, the NCAA prohibited student-athletes from profiting or receiving professional compensation in an effort to preserve amateurism. Debates surrounding this policy expanded in the past three decades as media rights deals exploded and started earning institutions millions of dollars in compensation.

In 2019, California began the diffusion of state NIL laws that allow student-athletes to profit from their NIL while competing in college sports. Similar policies were passed at a rapid pace with 30 states taking action driven by the connection of civic pride, college athletics, and sponsorships entering the policy landscape by the spring of 2023 and the state of Utah taking up the issue in 2024 (Colvin and Jansa 2024; Lovell and Mallinson 2023). A majority of these laws were passed in 2021 with six states addressing NIL through executive order

or by adding provisions into state budgets. Alabama has since repealed the law overseeing NIL and Georgia's NIL law has sunset. In March 2024, North Carolina's governor rescinded the executive order addressing NIL.

These NIL policies created ethical challenges that caused administrators to pause due to a lack of initial knowledge of the policies before bureaucrats became more comfortable with implementing and expanding on the policies (Lovell and Mallinson 2023). However, these same NIL policies opened opportunities for student-athletes to earn income that could sustain them. As is detailed in the following section, NIL deals are brokered at both large and small scales with athletes earning anywhere from seven figures to modest returns in the \$1,000 to \$2,000 range. Conceptually, the process of NIL takes place between entities external to higher education, such as collectives, agents, and companies seeking athletes to represent their product or business, and student-athletes themselves. Athletes commonly strike these deals themselves, or work with agents when allowed, and are completed in an endorsement-type deal. Examples of these NIL deals involve athletes providing a service such as signing merchandise for a fee that a collectibles broker will then sell or participating in television or radio commercials for

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local businesses. Another example is NIL collectives which represent a group of alumni or boosters that will connect an athlete with an endorsement or charitable opportunity in exchange for a flat endorsement. As noted with these examples, there is not a uniform look to NIL deals, which makes it difficult to oversee and regulate. One common restriction is that pay-for-play is prohibited in a vast majority of state laws. As policy implementers and analysts review NIL, the overlap between NIL deals and the performance and recruitment of athletes has been a significant debate within and outside college athletics.

NIL policies were created with minimal regulations by the college athletics governing body, the National Collegiate Athletic Association (NCAA). The landscape of NIL has been set by NCAA regulations and the resulting state policies focus more on marketization of college sports than administrative goals associated with public policies driven by equity and accessibility concerns, such as those associated with higher education. In the absence of oversight and regulation, there has been a space created for sport capitalism and competition to influence administrative activity. This was heightened in 2022 when the NCAA passed a regulation to allow for university representatives, such as coaches, to directly instruct student-athletes on how to increase their NIL opportunities and advocate for collectives (NCAA.org 2023).

The barriers regarding NIL are shifting quickly with Virginia passing a law in April 2024 allowing institutions to participate in the compensation of student-athletes through NIL by compensating athletes directly. Virginia's new law contradicts NCAA regulations creating administrative conflicts with state policy. While Virginia's expansion of NIL has been signed into law, it blurs the line with pay-for-play, which is prohibited by most state laws and brings into question how NIL deals are defined. This work highlights the equity issue as institutions take a more central role in NIL while needing to comply with federal policies, such as Title IX, that regulate how athletes are treated.

As NIL expands, court rulings and legal challenges have surfaced. Some have filed lawsuits to recoup damages for former and current athletes who were unable to monetize their NIL and their position as employees with labor rights (*House v. NCAA* 2021; *Johnson v. NCAA* 2021). In 2023, female athletes at the University of Oregon brought a suit placing the connection

between Title IX and NIL directly in the crosshairs of the legal system (*Schroeder et al v. University of Oregon* 2023). This suit is discussed later in this article; it clearly challenges any division between fair treatment policies and NIL opportunities and alleges that this burden is on the institution. In March 2024, a Tennessee judge filed a temporary injunction prohibiting the NCAA from investigating potential recruiting violations associated with using NIL. This created challenges for policy implementation with the most prevalent being the application of NIL among different groups of athletes.

NIL serves as a case study of how state agencies and officials face administrative challenges that are a result of hands-off, or neoliberal, policies that are situated within the public administration literature. This introduces a question of specific equity-based policy challenges within a neoliberal policy. To provide this context, this work examines NIL through the lens of sport capitalism, which has a connection to neoliberalism. Advancing this discussion, this research looks at the impact NIL has on equity as a ramification of NIL as a product of sport capitalism in a landscape where states and universities are focusing more on civic pride and athletic and financial advantages and less on social impacts.

This research builds from the assumption that the differences between gendered sports are systemic and connected to external focuses, such as media and TV coverage that are influenced by institutions. Making this link, the goal is to analyze state NIL policies from the perspective of the neoliberal lens to better understand the impact on social equity. This research will address whether these policies have a relation to gender and Black, Indigenous, and other people of color (BI-POC) equity issues associated with the gap in earning potential that results from the interaction with capitalism. It also assesses systemic or administrative influence and the level of responsibility.

To conduct this exploratory analysis, a comparison of state laws and institutional websites for social equity is conducted to determine if these laws and administrative practices align in how they 1) recognize equity, 2) determine the level of administrative and practice mandates, and 3) if administrative action exists. Interview data from nine respondents who work in the NIL space are presented to add context to how administrators and third-party representatives view the connection between NIL and equity and where the pressing issues are seen.

This work aims to first provide a theoretical analysis of NIL policies and their place within the neoliberal framework. The goal of this work is to identify potential equity issues associated with NIL policy and provide foundational views from those in the field and a review of the current laws to support future research. Understanding if NIL fits the traditional or an advanced view of neoliberalism will help scholars and administrators grasp functions of the policy within an accepted framework in public administration. Second, this research aims to frame the debate regarding equity and how administrative activities, past and present, contribute to the advancement of these disparities. Identifying the policy and administrative responses to equity and NIL provides a necessary view of a landmark higher education policy and its normative impact on comparative state policies and regulations.

### Examining Sport Capitalism Within the Neoliberal Landscape of NIL

NIL has a connection to neoliberal policy (Lovell and Mallinson 2023). The term neoliberalism is often used to conceptualize policies that lean conservative with a connection between individual virtue and choice and has been extended to include policies that have a reduction in bureaucratic activity within education research (Friedman 1955; Hayek 1973; Harvey 2005; Venugopal 2015). Venugopal (2015) cites this as a compression of social and political norms and claims that the state and bureaucracy are redirected to serve capitalist means rather than citizen desires.

For the purpose of this research, Connell's (2010, 2013) application of neoliberalism is used. Connell's research defines a policy as neoliberal if the economic agenda leads to social transformation that is carried out by stepwise institutional arrangements. There is a twist in applying it to NIL policy, however, as Connell's approach is blended with the small government approach that requires intervention and requires that bureaucratic standards be created to advance the standing and competitiveness of the state's universities while protecting financial, academic, and, in many cases, moral standards (Wacquant 2012). Bureaucratic nudging, originating in behavioral public administration, supports this application by presenting the concept of practical influences from systemic processes and regulations that guide behavior and decision-making (Kasdan 2019).

These systemic guidelines are part of the requirements used to determine if NIL is a neoliberal policy in its practical application. There is also a connection between capitalism and corporate culture when it comes to sports (Andrews and Silk 2018). The focus on revenues is justified by the need to support other athletics as a whole (Blinder 2021), which leads to competing values between monetary gain and academic and equality endeavors (Shulman and Bowen 2001). NIL is an area that expands our view of how economic resources can create positive opportunities for college athletes while also having negative ramifications in the matter of exploitation of marginalized populations (Chen 2022). Chen (2022) points to a resistance to focus on sport and its overlap with capitalism. There is a history of sport and capitalism being intertwined, as there is a pattern of connection between sport and how societies have transitioned to capitalism and the challenges of class and social conflict that have been connected to games (Collins 2013). That history has continued to the contemporary landscape and has led to the global consumer (Smart 2007) and a sport culture that is made of leaders making decisions to meet capitalist goals at the professional level (Gwartz and Spence 2020). Lovell and Mallinson (2023) discuss the connection between policy implementation and university objectives associated with winning. Their analysis expands on Gwartz and Spence's interviews that suggest that college sports and NIL are driven by desires to win. Using NIL to do so alters the policy goals of the institution. This returns to Chen's argument, which is framed within the neoliberal context by discussing sport management and capitalism and highlighting where sport overlooks the impact on personal welfare or social consciousness when decisions are made that prioritize financial incentives.

Continuing the discussion of financial resources, there are negatives regarding the marketing and exploitation of Black student-athletes and college sports' disproportionate reliance on their skill to generate massive revenues while devaluing their academic and social experiences (Comeaux 2015; Gayles et al. 2018; Jayakumar and Comeaux 2016; Kennedy and Power 2010). Gayles and colleagues (2018) view systemic issues with race and the exploitation of Black athletes through the lens of neoliberalism. They connect it to sport capitalism that removed bureaucratic authority.

This is the policy theory space for NIL. There is an intersectionality between race and gender as the two are intertwined in the literature. However, there are differences between the experiences of white women and women of color (Kreitzer and Smith 2018; Park 2022a, 2022b).

For this research, systemic mechanisms are contextualized as policy allowances or rules that allow for action and control of an interaction between the government or citizens and the free market. These mechanisms provide access for discretion in some cases and restrictions on bureaucratic activities in others. One example of these mechanisms in NIL is found in state policies that restrict student-athletes from engaging in NIL activity if there is a licensing conflict with a deal at the institutional level. For example, Virginia's law stipulates that an institution can prohibit NIL use if there is a conflict with existing institutional agreements (see Virginia 2022 SB 223, Section G). The law allows universities to override sponsor or logo usage if the student-athlete agrees to a deal with a competing apparel company while the student is representing the institution. Another example is Georgia's law that requires a portion of NIL deals to be withheld from the student for tax and savings purposes (see Georgia 2021 HB 617, Article 13, Section 4 B(i)). While not technically under the oversight of universities and states, NIL collectives and their interests overlap with athletics and their intentions to serve male versus female sports. This is another branch of systemic mechanisms at play between the genders. Finally, in Texas, university officials are not allowed to offer counsel to student-athletes regarding the fairness of the deal they are entering into with a company (Texas 2021 SB 1385, Section 2, Clause 4 (i)). Bureaucratic responsibility in NIL has been limited to compliance and specific oversight that is associated with protecting the state and institution in areas of conflict of interest (Lovell and Mallinson 2023).

### Equity and NIL

Diving into NIL, equity is a frontline issue. As noted in the previous section, race and college sports have been a significant issue due to the imbalance between compensation, focus, resources, and the revenues made on sports that feature a majority of Black athletes (Comeaux 2015; Gayles et al. 2018; Jayakumar

and Comeaux 2016; Kennedy and Power 2010). Data on NIL from Opendorse.com (2022, 2023), a third-party marketing company that tracks NIL deals and collaborates with institutions on marketing athletes, show that college football, which has a majority of Black athletes, dominates the landscape and accounts for 47% of deals to college athletes. Despite female athletes having an advantage in social media earning potential, data provided by Opendorse.com (2023) reported that 77.1% of NIL money is paid to male athletes.

ON3.com (2023), a company that operates in the NIL market, ranks the NIL value of athlete-based performance (62% factor in NIL), influence (14% factor in NIL), and range of followers and exposure (20% factor in NIL). Their metric produces an aggregated value of what an athlete can earn in the NIL marketplace. Student-athletes who are of color are represented well within these rankings. Of the top 100 valuations overall, 68 are persons of color and 64 are Black. Eight female athletes appear on the list and three are persons of color. College football's top 100 valuation list has 84 Black athletes.

Among comparable male and female sports, such as basketball, baseball, and/or softball, the data suggests a disparity. Basketball has systemic inequities that result from the amount of traditional media and TV coverage the sport enjoys while baseball and softball are more comparable. As shown in Table 1, female student-athletes do well in what are considered non-revenue-generating sports, due in large part to their advantage in social media (Cocco and Moorman 2022). These social profiles are cultivated by the student-athletes and have modest returns. When looking at basketball, men's value in the NIL market is much higher. There is also a higher presence of persons of color in the men's rankings as compared to women. Comparing baseball to softball, sports that do not have a high overall NIL profile, softball players have the advantage overall. College baseball is at a disadvantage as many of the most high-profile players are drafted directly to Major League Baseball and do not play college sports. In contrast, in basketball, male players must be 19 years of age to be drafted and many default to entering the college ranks and engaging in NIL deals. Still, softball players have a higher valuation when the systemic exposure tied to media and platforms is more equal than what occurs in basketball.

**Table 1. NIL Valuations by Race and Gender**

Sport	Persons of Color (Total)	Average Valuation (Top 25)	Minimum Valuation (Total rank)
College Football	68 (100)	\$1,250,560	\$367,000 (100)
Men's Basketball	90 (100)	\$603,280	\$90,000 (100)
Women's Basketball	65 (100)	\$253,440	\$18,000 (100)
Softball	7 (24)	\$32,244	\$13,200 (24)
Baseball	5 (24)	\$15,929	\$7,200 (24)
Men's Golf	1 (5)	\$13,000	\$5,100 (5)
Women's Golf	7(10)	\$20,920	\$7,100 (10)
Men's Lacrosse	0 (22)	\$12,954	\$5,000 (22)
Women's Lacrosse	0 (17)	\$10,423	\$5,100 (17)

Note: These data and valuations are based on data provided by on3.com, accessed at <https://www.on3.com/nil/rankings/>

### NIL and Title IX

The NIL value data presented above is a result of capitalism's impact on college athletics. Persons of color, namely Black student-athletes, are benefitting—at least at the top—from NIL thanks in large part to college football and men's basketball. Evans and Knepper (2023) highlight the differences in gender treatment within the administration of sport. Their work highlights the systemic and traditional barriers that exist for female athletes and how they and their sports are viewed socially as compared to the view of male sports. This work sheds light on the systemic barriers to exposure through media and contracts as well as the social constructs that have stark differences in how male and female athletes are seen. In their book on Title IX, Druckman and Sharrow (2023) make the case that there are barriers between equity and college sports that derive from the uneven opportunities afforded different athletes and sports due to television, revenues associated with sport capitalism, and systemic benefits for male sports.

From a gender perspective, there is a stark contrast between and within genders regarding race. This leads to concerns regarding the disparity of systemic treatment and opportunity between male and female athletes that is consistent with differences in resources that led to Title IX (Anderson and Cheslock 2004; Anderson, Cheslock, and

Ehrenberg 2006; Lee and Won 2016; Thelin 2000). Title IX is a federal policy that mandates equitable treatment across state and institutional lines. It is also regulated by the federal government and through offices located on every campus. Title IX does not just govern athletics; it is geared to any equity and discrimination practices on college and university campuses. Within sports, it does not ensure female athletes get the same treatment or items as their male counterparts. Title IX codifies bureaucratic expectations and actions to ensure equitable treatment for male and female athletes. This means that a university does not have to spend the same amount on equipment between sports because the needs may be different and come with different costs. Institutions must ensure that those in male and female sports have the same access to the advantages of being a college student-athlete. An example of this is equal scholarships despite the sports not generating equal revenue.

Another aspect that impacts gender equity is the actions of booster-led NIL collectives that broker or provide endorsement opportunities to student-athletes. Opendorse.com (2023) reports that there are over 250 collectives nationwide and only 34% have provided NIL opportunities to female athletes. These collectives are composed of alumni with connections to sports and universities that are informal, meaning that, by most state laws, they cannot have a direct affiliation with universi-

ties. The informal connection between these collectives and university sports programs is difficult to quantify. The case being brought by the Oregon female athletes that is referenced in the introduction attempts to make this case. The suit is based, in part, on the assumption that Title IX requires universities to offer all student-athletes equal treatment and access that includes access to publicity. Their case claims that this is inequitable and the connection between universities and NIL collectives and opportunities violates these policies.

Jessop and Sabin (2021) suggest that the lack of a specific connection between institutional involvement and separation of administrative action from the creation of these deals between student-athletes and third-party entities is dissimilar to Title IX. Their findings are valid and provide a grounding that is supported by the traditional views of administrative responsibility. The Drake Group (Zimbalist 2023), an advocacy group for legislative change, sent a letter to the legislative policy council to advocate for bureaucratic standards and requirements that would restrict institutional alignment with collectives and third parties that contradict the intent of Title IX where NIL is concerned. The allowance of coach involvement and the publicity challenges in the Oregon case create overlaps between these collectives and institutions. Informal behaviors and compliance from universities to engage these collectives provide a means for analyzing gender equity within NIL.

## Methodology

The goal of this work is to identify the presence of equity issues within the NIL policy landscape and to use the views of those involved to provide a foundation for future research. The secondary data on NIL valuations in the previous section shows there are equity disparities that exist. How states address NIL and the disparities that result are a matter of administrative mandate and discretion. Addressing the challenge requires administrators to examine policy in an effort to implement laws that are neoliberal and that limit administrative power and mandates.

This work uses the interpretivist approach to explore NIL and its impact on social equity through the points of view of those experiencing it, which allows for a deeper understanding of the policy (Alharahsheh and Pius, 2020; Ospina, Estev, and Lee 2018). Specifically, this work uses multiple analyses to understand the cur-

rent state of NIL policy and to offer an initial view of how those policies impact individuals. This information is then used to offer an exploratory view of the policy landscape. The coding structure is derived from this theoretical foundation to identify themes that lead to a better understanding of these experiences.

Three approaches are used to produce the results of this article. The first is a content analysis of state bills to provide results on the common clauses and unique policy designs from state to state. This analysis involved collecting the 31 original NIL policies passed by states and coding them for common themes. Table 2 provides a breakdown of all states that have active NIL legislation or have taken executive action.

The coding structure for these state laws and executive actions was created using deductive coding structures to provide a data set that addressed these topics. Coding was conducted by the researcher and is presented in Table 3. Overall, 11 themes were initially coded and four are included in this analysis: equity, institutional activity, reporting/oversight, and level of oversight. Equity was coded as being present when there was a direct and extended clause or clauses that addressed specific populations and how they were to be addressed within NIL policy. The remaining three codes define the level of bureaucratic responsibility that universities must assume with these policies.

Second, interviewees participated in the study anonymously and much is done here to protect their confidentiality due to the nature of their work. College football is categorized into several divisions. The first is Division I, which has the Football Bowl Subdivision (FBS), where teams play in a four-team playoff and subsequent bowl games, and the Football Championship Subdivision (FCS) where teams play in a 16-team playoff. The FBS is broken down into conferences by institutional affiliation with the largest athletic programs (based mostly on football) considered a “Power 5” or now a “Power 4” with the dissolution of the PAC-12. These conferences dominate the television revenues for major sports. The remaining FBS conferences are “Group of 5” conferences that are the mid or lower tiers of Division I college athletics and make less revenue. FCS programs, along with those competing at Divisions II and III, make significantly less revenue. NIL is far more prevalent and has higher contract amounts for student-athletes at the Power 5 level but the Group of 5 student-athletes are still significantly involved in NIL. This is less true moving down the pyramid from FCS to Division III.

**Table 2. States That Passed or Proposed NIL Laws**

States with NIL Laws	Year of Passage	States That Have Proposed NIL Laws
Arizona	2021	Delaware
Alabama*	2021	Hawaii
Arkansas	2021	Iowa
California	2019	Kansas
Colorado	2020	Massachusetts
Connecticut	2021	Minnesota
Florida	2021	New Hampshire
Georgia*	2021	New York
Illinois	2021	Rhode Island
Kentucky**	2021	Utah
Louisiana	2021	Vermont
Maine	2022	Washington
Maryland	2021	
Michigan	2020	
Mississippi	2021	
Missouri	2021	
Montana	2021	
Nebraska	2020	
Nevada	2021	
New Jersey	2020	
New Mexico	2021	
New York	2021	
North Carolina	2021	
Ohio**	2021	
Oklahoma	2021	
Oregon	2021	
Pennsylvania**	2021	
South Carolina	2021	
Tennessee	2021	
Texas	2021	
Virginia**	2021	

Note: \* Repealed or sunset.

\*\* Executive order or budget line item.

Of the nine interviews conducted for this research, two interviewees worked at large public institutions with a high level of athletic participation in a Power 4 Conference. Three participants worked for state universities that participated in the FBS at the Group of 5 and Division I level. One participant worked at an FCS and Division I level. Two worked at a Division II university. The final participant worked as an ad-

viser to many institutions. All interviewees worked at public institutions. All nine interviewees discussed the same topics and the interviews worked from the same semi-structured script. Interviews were coded thematically for this work and there was a consistent focus on the equity and applicability of NIL to all athletes. As the conversations progressed, they prompted questions regarding the systemic challenges that NIL intro-

**Table 3. Results of Coding for Equity and Administrative Power in State NIL Laws**

Code	Frequency	Description
Equity*	4	The law mentions gender/race/income equity within its verbiage.
Contract	29	The law provides guidance on the processes and bounds of contracts for students.
Institutional Activity*	26	The law provides directions for universities and colleges regarding their role in NIL.
Sponsor Restrictions	19	The law restricts the type of products or activities that a student-athlete can engage in.
Tax	3	The law provides directives regarding how NIL profits will be taxed.
Reporting/Oversight*	15	The law provides clear instructions for how institutions are to report and oversee NIL activities, i.e., how to complete and file contracts.
Level of Oversight/ Instruction*	18	The law provides guidance in the role of the institutions in overseeing NIL deals and their ability to cancel or approve contracts.
Pay for Play	23	The law addresses using NIL to pay student-athletes for attendance at a university or as a reward for their play.
Third-Party Authority/Roles	23	The law addresses how third parties (i.e., collectives and agents) are to be treated, overseen, and what level of interaction the university can have with them.
State/University Logo	18	The law provides guidance in how state sponsored institution's logos can be used in NIL activity.
Other	11	The law provides other guidance that impacts the university and student-athlete that has significance on their activities in sports, academics, and NIL.

Note: \* Included in this analysis.

duced and the landscape of college athletics in relation to dealing with those issues. Comments included in this analysis are those that were coded for themes associated with issues of equity, and questions about equity among genders or how NIL law overlaps with Title IX. All nine addressed the topic at some level, however, with six interviewees addressing it at a deeper level based on their experiences.

The second analysis is a comparative case study of two universities in each of the four states that originally had equity statements in their NIL policy. One of these four states is North Carolina, whose governor rescinded the executive order on NIL. North Carolina's executive order had been enacted to quickly address NIL in the state and was in place for several years. Data provide insight into how states addressed equity and NIL. Anal-

ysis of websites for these institutions consisted of coding material found on their NIL pages.

Websites were selected as the method of information to analyze as they serve as the public-facing mechanism for universities and compliance offices. They promote the actions of these universities and reflect how they are complying with NIL policy. They also provide insight into their direction regarding student-athletes. Content analysis of these websites is combined with interview data from nine people on the topic of NIL policies. Institutions in the study were selected because of their profile in athletics and because they have a significant NIL presence. Institutions included in this analysis are the University of Connecticut,<sup>2</sup> University of Georgia<sup>3</sup> Georgia Tech University,<sup>4</sup> University of Mississippi,<sup>5</sup> Mississippi State University,<sup>6</sup> University of North Carolina,<sup>7</sup>

2. <https://nil.uconnhuskies.com/>

3. <https://georgiadogs.com/sports/2021/8/2/nil>

4. <https://ramblinwreck.com/wp-content/uploads/2023/02/GT-NIL-Policy-7.8.2021.pdf>

5. <https://givetoathletics.com/nil-home-page/>

6. <https://hailstate.com/feature/nil>

7. <https://goheels.com/sports/2022/12/7/name-image-and-likeness.aspx>

**Table 4. States with Equity Statements and the Selected Institutions**

State	NIL Policy Equity Language	Universities Selected
Connecticut	No provision of this section shall be construed to . . . (5) require an institution of higher education to take any action in violation of the Discrimination Based on Sex and Blindness Act, 20 USC 1681, et seq., as amended from time to time. (HB. 6402, 2021, Sec. 14, Art. 10, D.V.)	University of Connecticut
Georgia	The postsecondary educational institution shall provide for the implementation of the provisions of this paragraph in a manner that does not discriminate against or treat differently individuals based upon race, gender, or other personal status protected by federal or state law. (HB 617, 2021, Sec. 1, Art. 13, B.V.)	University of Georgia and Georgia Tech University
Mississippi	Nothing in this act shall be interpreted to modify any requirements or obligations imposed under Title IX of the Education Amendments of 1972 (20 USC 1681 et seq.). (SB 213, 2021, sec. 4, clause 16)	University of Mississippi and Mississippi State University
North Carolina	Whereas, permitting student-athletes to earn compensation from their use of their name, image, and likeness may have a substantial impact on the student-athletes competing in both revenue and non-revenue generating sports; and Whereas, in particular women's sports have been historically overlooked in both the professional and amateur field; and Whereas, although female student-athletes receive significantly less traditional media exposure and opportunities than their male counterparts, their social media reach and network are comparable to that of male student-athletes, and thus have similar potential endorsement values; and Whereas, it has been shown that allowing student-athletes to monetize their name, image, and likeness would allow female athletes, in particular, to take advantage of their potential endorsement value and as a result alleviate the gender imbalance in regard to the exposure and marketization of intercollegiate sports; and Whereas, institutions' policies permitting student-athletes to obtain compensation for their name, image, and likeness shall accordingly be consistent with Title IX of the Education Amendments of 1972. (Exec. Order No. 223, 2021)	University of North Carolina–Chapel Hill and North Carolina State University

and North Carolina State University<sup>8</sup> and are indicated in Table 4.

While neither gender equity nor sport capitalism were an intended topic of these interviews, comments about them arose at a consistent level and, therefore, were included in the resulting data set. Excerpts from these interviews are included to advance the understanding of the approach and integration of gender and NIL policies. The participants in this study are from institutions in states with NIL policies. However, not every state that a participant works in has an equity statement. The interview pool was recruited via insti-

tutional email in a purposive sampling technique (Etikan et al. 2016; Campbell et al. 2020) to ensure that respondents were from states with an NIL policy and have expertise to address the topic at hand.

### **Results: State Law Comparisons and Responses of Universities on Gender Equity**

Analyzing state NIL policies reveals the approach that states took regarding NIL policies and provides insight into how administrative and policy goals fit into sport capitalism. Findings also suggest the role that equity

8. <https://gopack.com/sports/2022/8/2/alpha-name-image-likeness-program.aspx>

played in the creation of these policies. While lack of an equity statement does not mean states do not value it, the lack of a statement does imply a lower level of engagement with, and recognition of its role in, policies that deal with free market, sport capitalism, and equity issues. The understanding and role universities play in complying with Title IX and its directives contribute to the value, or lack thereof, placed on equity.

Within these policies and executive orders, a majority have two general clauses that abdicate state responsibilities in these areas. The first general clause indicates institutions are not able to participate in creating deals for individual student-athletes as long as the students' deals are compliant with state policy. The second general clause found in these laws is that no institution or regulatory body can restrict the ability of student-athletes to broker and profit from an NIL deal. Recent legislative pushes led by universities in Washington and other states have attempted to expand the influence and level of guidance an institution can give a student-athlete. This is yet to be widespread in the NIL landscape. These two general clauses provide cover for states as they allow for a hands-off approach and place institutions in a strictly regulatory role. This is not connected with Title IX, where institutions are given specific guidelines and regulatory oversight to ensure equity. While Title IX is not directly covered in state laws—equity and the access that these laws and the NIL landscape affords athletes—create a crossover. A potential issue could be NIL collectives that are supported by coaches or administrators being predominantly male athlete focused. These clauses do show a distinct and limited amount of administrative power that favors capitalism being supported by administrative actions.

Coding results are listed in Table 3 and show that this rulemaking power is granted to institutions but is associated with policy compliance, institutional alignment regarding sponsorships, and conflicts of financial agreements, academic standards, and morality clauses regarding products that are or are not allowed. Findings show a presence of institutional activity, reporting/oversight, and the level of oversight instruction. These three codes, respectively, address the roles that universities can take regarding NIL, what the rulemaking and reporting power is for the universities, and the definition of the use of their oversight power. Data show there is a limited approach to institutional administrative authority regarding NIL.

Coding showed that the most common policy power granted to administer NIL is associated with financial literacy, requiring that contracts not contradict the state and university's current market deals and their academic and moral codes, and that there is a specific type of activity the universities are required to report. Most of the institutional concern is connected to a student-athlete striking an individual deal with a competing brand from the university's. For example, if an athlete signs a deal with a different apparel company than the university has a deal with, that introduces a conflict that has to be resolved. There are minimal incidences of penalties for universities or student-athletes regarding not following NIL policy nor are there directives regarding the state reporting procedures or transparency. Many of the NIL policies are associated with empowering student-athletes to engage in sport capitalism and ensuring athletic competitiveness of the university's athletic programs.

Of the 31 states that have passed NIL policies, four recognized a need to address equity at some level within their state laws. The four states that have equity statements in their laws are: Connecticut, Georgia, Mississippi, and North Carolina. These statements are generally vague regarding state policies. Of the 31 policies and executive orders coded, three are executive orders including North Carolina, which like Ohio and Kentucky took action outside the legislative process. These executive orders were coded along with state laws.

As shown in Table 4, of the four states that addressed equity, North Carolina's executive order provided the most detail and attention. The executive order references disparity regarding the revenue gaps between male and female sports and "overlooked" sports. Specifically, the executive order addresses the disparity of female athlete's traditional media exposure and their increased earning potential via social media and the role that monetizing that presence can play in NIL. The executive order advocates for NIL approaches that allow for market capitalization of these social media skills. The executive order also addresses the glaring stature of college football and basketball as the biggest revenue sports and the impact NIL policies have on race and calls for measures from the state to ensure no disadvantages. Finally, the executive order makes specific reference to Title IX and the responsibility of the state to uphold mandates of that statute. These are progressive statements that are, in part, present because of the administrative and political nature that executive orders

play. Executive orders allow for more leeway to expand administrative mandates.

Comparing North Carolina's executive order approach to the three state policies presents a stark contrast. While the executive order takes up a significant amount of space to address equity, the type of policy-making allowed with executive orders is different from legislative policy. Instead of being constrained by the need to pass the language of the bill in an open legislative process, executive orders carry significant administrative weight and are more direct. Mississippi, Georgia, and Connecticut are far more muted in their approach, in large part due to these constraints.

Mississippi's Section 4, Clause 16 references that no NIL action shall contradict Title IX requirements or obligations. Georgia references equity in accordance with the state's financial requirements that require pooling portions of NIL revenue from current athletes to be distributed to athletes who played at the institution prior to NIL through an escrow account. Student-athletes are not required to contribute more than 75% based on university guidelines. Equity is addressed by a provision that no populations based on race, gender, or sexual orientation be restricted from benefiting from this escrow account. Finally, Connecticut's NIL law states there can be no contradiction to the Discrimination Based on Sex and Blindness Act, which protects marginalized populations from being discriminated against in contracts brokered with the state.

These provisions are muted. In fact, Mississippi, Connecticut, and Georgia address gender equity in a way that does not directly impact NIL contracts. However, the mention of it guides universities to address equity in some fashion, be it protection or compliance with other laws in the state that address issues of gender equity. In comparison, the remaining states provide only general guidance regarding equity and NIL.

One practice that has resulted is that early policy implementation was associated primarily with com-

pliance. From the web analysis below, that has shifted as the policy has aged. Marketing and connecting student-athletes to collective opportunities and improved branding has become a central focus of the public facing implementation of NIL. Looking at seven institutions in these four states, ones with significant NIL presences, there is little translation from these policies to administrative action where equity, especially gender equity, is concerned. The seven institutions included in the analysis are the University of Connecticut,<sup>9</sup> University of Georgia,<sup>10</sup> Georgia Tech University,<sup>11</sup> University of Mississippi,<sup>12</sup> Mississippi State University,<sup>13</sup> University of North Carolina<sup>14</sup> and North Carolina State University.<sup>15</sup>

Equity is not consistently the center of NIL information. The University of Connecticut and Mississippi State University do not have a statement dedicated to equity and NIL, but they do put their diversity and inclusion programs and committees front and center on their athletics websites. The University of Georgia, Georgia Tech University, and the University of Mississippi do not have a diversity, inclusion, or equity presence on their athletics or NIL websites.

Direct connections to equity are present for only two university websites, both in North Carolina, which also has the strongest statement in its executive order. Both state universities have direct statements of varying degrees. North Carolina State University has by far the strongest statement, which is included on their NIL website prominently. First, North Carolina State University includes a commitment to diversity and inclusion and then includes its athletics department policies on inclusion. These are by far the most powerful equity statements. The University of North Carolina publishes their NIL institutional policy that includes a concluding statement. No other university selected has a dedicated statement on NIL and equity. The overall lack of attention to equity on these public-facing websites creates room for analysis regarding

8. <https://gopack.com/sports/2022/8/2/alpha-name-image-likeness-program.aspx>

9. <https://nil.uconnhuskies.com/>

10. <https://georgiadogs.com/sports/2021/8/2/nil>

11. <https://ramblinwreck.com/wp-content/uploads/2023/02/GT-NIL-Policy-7.8.2021.pdf>

12. <https://givetoathletics.com/nil-home-page/>

13. <https://hailstate.com/sports/2021/6/23/mississippi-state-nil-for-businesses.aspx>

14. <https://goheels.com/sports/2022/12/7/name-image-and-likeness.aspx>

15. <https://gopack.com/sports/2022/8/2/alpha-name-image-likeness-program.aspx>

the view and role it plays in how these institutions approach their departments and NIL. While websites are not designed to be a complete representation of the department or policy implementation approach, they do provide access to the direction and focus of these departments and institutions.

### Results: Contextualizing NIL and Equity

The data reported in this section results from a larger interview project that focused on the administrative impacts of NIL on compliance and higher education administration. All nine interview participants addressed the topic of NIL policy and stated in some fashion that the state laws provide them with the ability to take specific actions and, importantly, avoid specific actions. Within the interviews, the context of the discussions and the levels of NIL engagement were clearly different due to the different levels of resources, expenditures, and the focus on the goals of the institution and its athletic programs. However, the same questions were asked of all nine participants and the responses had a significant amount of overlap when discussing the administrative impacts of NIL policies and actions, as well as the way those laws and executive actions affect athletes and issues, such as equity. Because responses were extremely similar regardless of institutional affiliation, results were aggregated because the level of resources and individual NIL compensation was not the intended topic. Similarities in the answers led to the conclusion that salience had been achieved.

The first underlying theme that offers context for this topic is the utility of NIL policies as regulatory “cover” for administering NIL policies. One respondent joked that there are “no NIL experts.” Another noted that the lack of clarity in the policy made them uneasy as they like to have answers to questions when they crop up and the complexity of the regulations and policies made that difficult.

These are extremely complex issues. It’s certainly an area where there’s just an intense amount of pressure. We now have a lot of information that’s coming in, that we need to kind of translate for various different audiences in terms of education, and how we relay this information to our student-athletes, to our coaches, to our staff. (Anonymous interview #1, 2022)

The connection made between the priority on institutional and administrative compliance suggests that administrative goals supersede student-athlete well-being. Further, there is consensus among these interviewees that the role of the university is to guide and educate athletes without blurring the lines that deal with the ramifications of NIL deals.

Potential disparities in the roles and earnings of student-athletes in different sports are present within the NIL policy implementation arena and were noted within the interviews. Most notably, the discussions were between revenue and non-revenue-generating sports. When discussing equity, respondents mentioned that it was a topic that they hoped could be addressed moving forward. Race disparity was not mentioned as often as disparities in gender. The context provided by these participants suggests that gender equity is a topic that is outside their scope of influence but one that overlaps with Title IX:

It is a gender equity [matter]. I think it is a Title IX thing at the end of the day. I work very closely with them, also working with our senior women’s administrator, making sure that we are hitting all of our Title IX metrics, all of our things like that. Look at [the] agreements . . . I think this is where the intersection between NIL and Title IX goes. We don’t want to ever create the impression that we’re favoring one group or the other. Whether it’s through a collective, whether it’s through just independent means; how does that go into the calculation of “what about the underrepresented groups,” which you know 99 times out of 100 I’ve found is usually, you know, the female side of things. How is that being calculated? I’m not sure if it is right now, because most institutions like to say, you know, we keep an arm’s length from it. (Anonymous Interview #7, 2023)

One aspect that was addressed in the interviews is the role that institutional behaviors have in creating disparities with gender and how this connects to Title IX. Male athletes, especially in football and basketball, are profiting from NIL at a higher rate than female athletes despite the data presented earlier showing that the latter are far better at generating NIL opportunities via their social profiles.

You've got gender disparity from a Title IX perspective. The issue is what opportunities is the school providing? So, the men's football players end up making more than the women's volleyball players on its face. That's not an issue. But if the school is promoting [sport-based collectives, saying] "Hey, donate money so that we can put money in the pockets of those football players, but not the volleyball players," to me, that's an issue. (Anonymous Interview #6, 2023)

The advantage provided to male football and basketball players comes from the role and attention they receive from the televising of games and major events as well as the sports coverage in traditional media. There is a connection between the universities and how these deals are created through conference cooperatives and not just traditional but also social media efforts.

Unquestionably. I mean, if we look at the course of athletics over the last 40 or 50 years, the men's basketball team was on TV more. So then, when social media came around, the men's basketball team was able to get more followers [on] social media than the women's basketball . . . the tail wags the dog. That's why the men's basketball student-athletes should have more followers on average than the women's team, because of their increased exposure from TV [and] from media coverage and from social media. (Anonymous Interview #8, 2023)

Takeaways from these interviews suggest that compliance officers view their role as being more policy and compliance-centric. This aligns with their position within the institutions. As the bureaucrats with the closest connection to NIL, they offer a direct view of how NIL policy is conceptualized from an implementation perspective. They also offer a view that gender equity is a topic of discussion and there is evidence that, from an implementation standpoint, the product or externality of it associated with NIL is a relevant policy and administration topic.

## Discussion

The goals of this research are (1) to provide an exploratory examination of how NIL policies are an expansion of sport capitalism within the neoliberal policy realm

and (2) to begin exploring the impact the policy has on equity in college sports, specifically between male and female student-athletes. NIL has characteristics that warrant its inclusion in the neoliberal policy typology (Lovell and Mallinson 2023), especially when using the definition that neoliberal policies connect to social agendas (Connell 2010, 2013). When boiling that down, NIL has a connection to a corporatist culture using sport and its revenues. This article provides an initial view of how sport capitalism serves as a bridge between neoliberalism and NIL to explain the impact of corporate influence (Andrews and Silk 2018; Chen 2022; Gayles, et al. 2018; Kasdan 2019). Guidance from the NCAA allowing university involvement with collectives and marketing efforts reduces distancing between the administrative side of NIL and a capitalist intent.

Further, this work offers an initial exploration of equity within a college sports landscape that is guided by the prevalence of NIL and sport capitalism. The policy that guides equity in college sports is Title IX, a federal policy that requires equal access to opportunities for all student-athletes. NIL includes actions that are guided by state policies or by NCAA regulations that must reconcile with Title IX requirements. According to interview data included in this analysis, there is evidence of challenges within the NIL, college sport, and sport capitalism landscapes. Interviewees spoke of a systemic influence regarding gender disparity due to the focus of TV and media on revenue-generating sports such as college football and basketball. The disparity in opportunities that result from that systemic involvement, as well as the NCAA regulations (NCAA.org 2022) allowing involvement with collectives, provides evidence that universities are contributing to these inequities in, at the very least, informal ways.

### *Theoretical Applications*

The neoliberal tendencies of sport capitalism create challenges for an activity that is connected to higher education and is governed by federal law that requires equal access for all groups. In essence, a law that is connected to sport capitalism and neoliberalism, which suggests less government or regulatory intervention, requires increased action to ensure compliance with the letter of the Title IX law and to eschew gender equity issues. Analysis of NIL policies and interview data sets the stage for understanding the levels of regulation and government intervention to ensure compliance. Uniquely, the

neoliberal and capitalist nature of these policies opens the door for more restrictive policies, potentially at the federal level. This is being advocated by U.S. Senator Ted Cruz in an attempt to regulate NIL by restoring the power of the NCAA (Whyno 2024). As noted in the introduction, Virginia is further putting NIL under the neoliberal microscope allowing institutions to compensate student-athletes with NIL directly. If gender equity issues prompt federal action, these state NIL policies could have a long-term counter-productive approach to opportunities for student-athletes within a policy structure that is driven by sport capitalism and guided or nudged by government oversight and administration.

Theoretically, this work suggests that sport capitalism expands on NIL's space as a neoliberal policy (Lovell and Mallinson 2023). NIL exists within Connell's (2010, 2013) neoliberal explanation due to the step-wise nature that state policies and NCAA regulations provide to oversee the process of NIL. While there is a question regarding the extent to which the NCAA can regulate NIL activities that are deemed to be products of the free market, the existence of federal policy and the oversight the body has over the sports that NIL is connected to suggests that NIL is situated among neoliberal typologies. This is especially the case where the political influences over NIL policies have created new policies and administrative activities (Kasdan 2019).

There have been interventions from universities and the NCAA to guide the impact of NIL (Wacquant 2012). The level of these interventions varies from state to state. Some states provide direct and significant oversight power in areas such as contracts, team involvement, and the requirement to provide education on financial literacy. These results show that instead of abdicating institutional awareness and the roles of market forces, there is evidence of blending bureaucratic activity and capitalist intentions, which is still within the neoliberal theory. As U.S. states and the NCAA push for institutional ability to implement NIL in various ways that include the potential for directly paying athletes, these connections to the typologies become more important. Their importance increases because as these implementation pushes continue, sport capitalism and neoliberal theories become more applicable at the same time that oversight of policy and regulation decreases.

A relationship between theory and practice that comes out of this discussion is the connection between sport capitalism and public policy. Within the sport

management literature, sport capitalism attempts to connect the intentions of policy and governance with motives to generate revenue (Andrews and Silk 2018; Blinder 2021; Chen 2022). NIL introduces the debates within sport capitalism into the administration of policy. It does this by transferring the debates surrounding decisions and actions made for the betterment of sport and revenue into the government landscape.

Higher education is closely associated with college athletics. The university and college systems use athletic scholarships to offer student-athletes the benefit of education in return for their participation in sports, some of which generate revenue for the institution. As those revenues have grown, the concept of exploitation has become more prevalent, which has been discussed significantly in terms of the disparity for Black athletes (Comeaux 2015; Gayles et al. 2018; Jayakumar and Comeaux 2016; Kennedy and Power 2010). Introducing sport capitalism into the neoliberal and policy landscape shows a connection between capitalist intent and administrative decision-making that deals with a public goal (Gwartz and Spence 2020) and expands our view of neoliberal policies creating social and community clashes within public policies.

Institutional awareness of the connection between sport capitalism and policy suggests a level of corporate influence on universities (Andrews and Silk 2018; Chen 2022; Gayles et al. 2018). While the power that universities use to guide NIL activity through bureaucratic action varies from state to state, the general clauses that confirm free market rights and protection from government or regulatory impediments suggest that the ability of individual student-athletes trumps the bureaucratic mission. This creates a challenge when institutions attempt to serve social equity. Within neoliberal policy landscapes, it is difficult to attend to these types of requirements without altering the free market approach. This research recognizes this challenge and suggests that the neoliberal nature of a policy can complicate serving social equity standards.

### *Practice Implications*

The data included in this work indicates the minimal presence of equity statements in NIL policies and on university websites. This indicates a reduced level of motivation for universities to address equity. Results of the content analysis of state bills show a lack of attention paid to equity. As noted in the literature review on

sport capitalism (Andrews and Silk 2018; Chen 2022; Gayles, et al. 2018), there is a clear connection between sports and the free market. As the data in the results section points out, there is little institutional power within state NIL laws to oversee or regulate these engagements. In the absence of oversight directives, market forces have taken over.

A targeted and focused level of administrative intervention is present but is directed at maximizing access to the free market as long as the state and university are not compromised. This is a key takeaway that shows how sport capitalism impacts public policy and higher education. NIL and the associated policy implementation focus on capitalist activities and minimize ramifications directly related to the institutions and state while maximizing access to the market for student-athletes.

In November 2023, the NCAA acknowledged this connection by suggesting a new subdivision of athletic programs that would include universities and colleges willing to offer direct NIL payments to college athletes (Murphy 2023). Under this proposal, these institutions would still compete with other schools athletically, but would commit to paying all athletes a minimum of \$30,000 per year for NIL activities, such as using their images in advertising. It is important to note that institutions would be able to raise this number depending on their resources. However, the per-athlete payout would be the same. Offering these funds to each athlete would total between an estimated \$7 to 10 million dollars a year at minimum. This would, presumably, reduce the role of collectives and allow more equitable payouts between players. There is no indication whether this would classify athletes as employees or give them access to unionization in states that allow it.

### ***Equity Issues***

The results of this analysis show initial evidence that NIL policy leads to issues with social equity, especially where gender is concerned. This focus is emboldened by the presence of systemic characteristics that guide the capitalist activities associated with NIL. These include the disparity in television revenue between sports and the different levels of media coverage between sports, specifically between male and female events. These system characteristics are negotiated and extended by the universities and regulatory bodies that govern college sports (Druckman and Sharrow 2023; Evans and Knepfer 2023). This is not to say that equity disparities are

the goal of these actions. On the contrary, this suggests that policy activity is guided by sport capitalism that has negative ramifications and calls into question compliance with Title IX standards and requirements. NIL value data provided by Opendorse.com (2022, 2023) show that these market forces create a natural level of inequity between gender earning potential similar to those found with race and inequality in college sports (Comeaux 2015; Gayles et al, 2018; Jayakumar and Comeaux 2016; Kennedy and Power 2010). However, persons of color are not as impacted as female athletes according to this analysis. This exploratory work shows signs that NIL has an impact on equity and advanced work is needed regarding race. Especially, there is a need for research that explores this policy and its impact on equity beyond earnings and branches into issues with free speech that are consistent with those experienced by professional athletes. Moving forward, this work will expand into two areas. The first deals with the impact of NIL deals on student-athletes' willingness to voice their social and political views via social media. Part of the connection made in this article is that sport capitalism is a primary factor for NIL. That work will measure the impact of sport capitalism on political and policy activity. The second expansion of this work will look at gender disparities in athletics, how NIL impacts the roles of different athlete groups, and how the public views this. Framing NIL within the sport capitalism landscape and drawing the connections to NIL provides the foundation for expanding the concept with regard to policy and its implementation by institutions, states, and regulatory bodies that are working to address or abdicate NIL issues regarding equity.

Research in this new policy area suggests that a lack of direct institutional involvement with NIL would buffer the policy from overall equity requirements associated with Title IX (Jessop and Sabin 2021). This is problematic. First, this article asserts that gender equity issues do not require direct institutional involvement to exist and require activity. Concerns made clear by the Drake Group (Zimbalist 2023) regarding informal connection to collectives provide grounds that gender equity issues can arise from market forces despite the efforts of state policies and universities. There is also a connection between systemic activities in college athletics that connect university activity to factors, for example, TV deals for revenue and sports coverage brokered by the universities and conferences, which create

the environment for gender inequity (Druckman and Sharrow 2023). These discrepancies are inherent and present in NIL despite the neoliberal approach taken by the states. There is little in the way of addressing the effect of capitalism and corporate influence on college sports and the requirements for gender equity that have been present in college athletics since 1972 and the passage of Title IX (Anderson and Cheslock 2004; Anderson, Cheslock, and Ehrenberg 2006; Lee and Won 2016; Thelin 2000). Including the competitive nature of collectives and sports, there is an arena created by the policy and its lack of oversight directives that opens the door to further gender disparity in college athletics.

Ramifications of the disparity between male and female student-athlete earnings presents inequities consistent with those that prompted Title IX action. While there is a “firewall” between institutions and NIL, how this impacts their roles and responsibilities in ensuring equity remains a question. State-to-state analysis of NIL policies shows that only four states address social equity within their policy, and only North Carolina’s executive order does so at a significant level. The comparative case study of universities shows that the four states that directly address gender equity to some level do not see this consistently being placed at the forefront of NIL information and framing by their institutions. Only North Carolina State University has a clear connection to the state policy’s attention to equity. This lack of direct attention paid to gender equity suggests that there is a gap in addressing the policy mandates set by these four NIL policies.

To further this context, interview data show early evidence that compliance officers and third-party actors are aware of the ramifications of NIL and how they impact gender equity but are not prepared to expand their role or take an ethical risk. This supports the concept that administrations in these states lean toward a neoliberal policy and that, despite evidence of earning disparities, there is no attention paid to the policy product or externality of gender inequity. Responding to this policy landscape and the regulations that allow for direct involvement with NIL opportunities and collectives will expand the role of universities in NIL. This increased involvement will mean the universities are no longer focusing only on compliance but will use administrative mechanisms to increase competitiveness for athletes and marketing acumen for student-athletes.

## Conclusion

Equity is an area to observe within the NIL policy landscape. This article provides an early view that there are equity issues associated with NIL in college athletics. As discussions of federal legislation persist and a move for direct compensation of athletes by institutions that will redefine NIL, this work provides an exploration of the early impacts of these policies on equity issues.

Limitations of this study begin with the small sample size of the interview sample. Interviews with nine people working in the NIL space and web analysis of seven institutions are not, and are not meant to be, representative of all institutions. Institutions have different levels of athletics and have higher support in different sports. The selection of the cases is not meant to be representative and similar in specific or all sports; instead, they are selected for their propensity for a high NIL profile. Furthermore, the small sample size ( $n = 7$  universities,  $n = 9$  total interviews) is directly correlated to the feasibility and intentions of this study. Focusing on these seven universities and data from nine interviews provides the most manageable route to generate transferable results regarding how equity is addressed by universities heavily involved in NIL (Dion 1998). Another limitation is that there are no open public records of individual NIL deals in any state. Finally, there is a limited amount of public-facing information that can be found on websites. These websites are often used as gateways for public information to pacify state requirements, as seen in Title IX. Instead of viewing this as a limitation, this article considers this approach as a tool to analyze how directly active universities are regarding addressing equity and their initial level of policy alignment with their state’s NIL policy.

The connection that state universities make between their responsibilities with NIL and gender equity will be important to track regarding how universities view their administrative responsibilities. The design of these policies and the resulting administrative decisions by universities show a connection between directives that are designed to achieve neoliberal goals and administrative activity. This can be applied to any policy area that has a connection to capitalism that requires implementation. Future research will continue to evaluate the progress of NIL where policy implementation and equity are concerned.

Studies that focus on the student-athlete perspec-

tive are needed to gauge the equity impacts that the administrators in this study speak to in these interviews. Studies that can drill down on the impacts between those in the BIPOC communities who make up most college athletes and the disparities between male and female athletes are needed to expand on this exploratory work. Also, there is research needed on the institutional and systemic challenges that NIL has created and the connection between market-exploitation and NIL. At current, these results and data suggest that NIL policies are not addressing gender equity and are framed in the neoliberal framework with an inclusion of limited and direct administrative responses in the areas of protecting university and state mandates and interests.

## References

- Alharahsheh, Husam Helmi, and Abraham Pius. 2020. "A Review of Key Paradigms: Positivism vs Interpretivism." *Global Academic Journal of Humanities and Social Sciences* 2 (1): 39–43.
- Anderson, Deborah J., and John J. Cheslock. 2004. "Institutional Strategies to Achieve Gender Equity in Intercollegiate Athletics: Does Title IX Harm Male Athletes?" *American Economic Review* 94 (2): 307–311. <https://doi.org/10.1257/0002828041301515>
- Anderson, Deborah J., John J. Cheslock, and Ronald Ehrenberg. 2006. "Gender Equity in Intercollegiate Athletics: Determinants of Title IX Compliance." *Journal of Higher Education* 77 (2): 225–250.
- Andrews, David L. and Michael Silk. 2018. "Sport and Neoliberalism: An Affective-Ideological Articulation." *Journal of Popular Culture* 51 (2): 511–533.
- Anonymous Interview Participant #1 Conducted November 2022.
- Anonymous Interview Participant #6 Conducted February 2023.
- Anonymous Interview Participant #7 Conducted March 2023.
- Anonymous Interview Participant #8 Conducted March 2023.
- Blinder, Alan. 2021. "NCAA Chief, Pressured by State Laws, Pushes to Let Athletes Cash In." *New York Times*. May 8. <https://www.nytimes.com/2021/05/08/sports/ncaabasketball/ncaa-endorsements-mark-emmert.html>
- Campbell, Steve, Melanie Greenwood, Sarah Prior, Toniele Shearer, Kerrie Walkem, Sarah Young, Danielle Bywaters, and Kim Walker. 2020. "Purposive Sampling: Complex or Simple? Research Case Examples." *Journal of Research in Nursing* 25 (8): 652–661. <https://doi.org/10.1177/1744987120927206>
- Chen, Chen. 2022. "Naming the Ghost of Capitalism in Sport Management." *European Sport Management Quarterly* 22 (5): 663–684.
- Cocco, Adam R., and Anita M. Moorman. 2022. "Untapped Potential: An Examination of Name, Image, and Likeness Earnings Estimates for Community College Athletes." *Journal of Issues in Intercollegiate Athletics* 15 (1): 256–271
- Collins, Tony. 2013. *Sport in Capitalist Society: A Short History*. Routledge.
- Colvin, Roshawn, and Joshua M. Jansa. 2024. "Athletic Competition Between the States: The Rapid Spread of Name, Image, Likeness Laws and Why It Matters for Understanding Policy Diffusion." *Policy Studies Journal* 52 (2): 451–468. <https://doi.org/10.1111/psj.12522>
- Comeaux, Eddie. 2015. "Innovative Research into Practice in Support Centers for College Athletes: Implications for the Academic Progress Rate Initiative." *Journal of College Student Development* 56 (3): 274–279. <https://doi.org/10.1353/csd.2015.0029>
- Connell, Raewyn. 2010. "Understanding Neoliberalism." In *Neoliberalism and Everyday Life*, edited by Susan Braedley and Meg Luxton, 22–36. McGill-Queen's Press.
- Connell, Raewyn. 2013. "The Neoliberal Cascade and Education: An Essay on the Market Agenda and Its Consequences." *Critical Studies in Education* 54 (2): 99–112.
- Dion, Douglas. 1998. "Evidence and Inference in the Comparative Case Study." *Comparative Politics* 30 (2): 127–146.
- Druckman, James N. and Elizabeth A. Sharrow. 2023. *Equality Unfulfilled: How Title IX's Policy Design Undermines Change to College Sports*. Cambridge University Press.
- Etikan, Illker, Sulaiman Musa, and Rukayya Alkassim. 2016. "Comparison of Convenience Sampling and Purposive Sampling." *American Journal of Theoretical and Applied Statistics* 5 (1): 1–4.
- Evans, Michelle and Hillary J. Knepper. 2023. "Women's Sports and Public Administration: Intertwined Paths to Social Equity." *Administrative Theory & Praxis* 46 (4): 383–404. <https://doi.org/10.1080/10841806.2023.2282920>
- Friedman, Milton. 1955. "The Role of Government in Education." *Economics and the Public Interest* 2 (2): 85–107.
- Gayles, Joy, Eddie Comeaux, Ezinne Ofoegbu, and Sara Grummert. 2018. "Neoliberal Capitalism and Racism in College Athletics: Critical Approaches for Supporting Student-Athletes." *New Directions for Student Services* 163: 11–21. <https://doi.org/10.1002/ss.20266>
- Georgia Tech University. *Georgia Tech Athletics NIL Guidelines*, accessed March 26, 2023. <https://ramblinwreck>

- com/wp-content/uploads/2023/02/GT-NIL-Policy-7.8.2021.pdf
- Gwartz, Evan, and Kirsty Spence. 2020. "Conscious Capitalism and Sport: Exploring Higher Purpose in A Professional Sport Organization." *Sport Management Review* 23 (4): 750–763. <https://doi.org/10.1016/j.smr.2019.09.002>
- Harvey, David. 2005. *A Brief History of Neoliberalism*. Oxford University Press.
- Hayek, Friedrich. 1973. *Economic Freedom and Representative Government*. Wincott Foundation.
- House v. NCAA*. 545 F. Supp. 3d 804 (N.D. Cal. 2021)
- Jayakumar, Uma, and Eddie Comeaux. 2016. "The Cultural Cover-Up of College Athletics: How Organizational Culture Perpetuates an Unrealistic and Idealized Balancing Act." *Journal of Higher Education* 87 (4): 488–515. <https://doi.org/10.1353/jhe.2016.0022>
- Jessop, Alice, and Joe Sabin. 2021. "The Sky Is Not Falling: Why Name, Image, and Likeness Legislation Does Not Violate Title IX and Could Narrow the Publicity Gap Between Men's Sport and Women's Sport Athletes." *Journal of Legal Aspects of Sport* 31 (2): 253–288. <https://doi.org/10.18060/25602>
- Johnson v. NCAA*. Civil Action 19-5230 (E.D. Pa. Dec. 28, 2021)
- Kasdan, David Oliver. 2019. "Nudging the Neoliberal Agenda: Administrative Opportunities in the Deregulated State." *Public Administration Review* 79 (3): 439–442. <https://doi.org/10.1111/puar.13045>
- Kennedy, Margaret, and Martin J. Power. 2010. "The Smokescreen of Meritocracy: Elite Education in Ireland and the Reproduction of Class Privilege." *Journal for Critical Education Policy Studies* 8 (2): 223–248.
- Kreitzer, Rebecca J., and Candis Watts Smith. 2018. "Reproducible and Replicable: An Empirical Assessment of the Social Construction of Politically Relevant Target Groups." *PS: Political Science and Politics* 51 (4): 768–774. <https://doi.org/10.1017/S1049096518000987>
- Lee, Young-joo, and Doyeon Won. 2016. "Applying Representative Bureaucracy Theory to Academia: Representation of Women in Faculty and Administration and Title IX Compliance in Intercollegiate Athletics." *Journal of Diversity in Higher Education* 9 (4): 323–338. <https://doi.org/10.1037/a0039727>
- Lovell, Darrell, and Daniel J. Mallinson. 2023. *Name, Image, and Likeness Policies: Institutional Impacts and States Responses*. Routledge.
- Mississippi State University. *Name, Image and Likeness for Business*, accessed March 26, 2023. <https://hailstate.com/feature/nil>
- Murphy, Dan. 2023. "What to Expect for NIL, Title IX with Proposed NCAA Rule Changes." ESPN.com, December 6. [https://www.espn.com/college-sports/story/\\_/id/39056505/ncaa-rule-changes-nil-paying-athletes-title-ix-charlie-baker-faq](https://www.espn.com/college-sports/story/_/id/39056505/ncaa-rule-changes-nil-paying-athletes-title-ix-charlie-baker-faq)
- NCAA.org. 2023. "DI Board Approves Clarifications for Interim NIL Policy," accessed March 27, 2023. <https://www.ncaa.org/news/2022/10/26/media-center-di-board-approves-clarifications-for-interim-nil-policy.aspx>
- North Carolina State University. 2023. "Alpha—Name, Image and Likeness Program," accessed March 26, 2023. <https://gopack.com/sports/2022/8/2/alpha-name-image-likeness-program.aspx>
- On3.com. 2023. "College Football NIL Rankings," accessed March 22, 2023. <https://www.on3.com/nil/rankings/player/college/football/>
- Opendorse.com. 2022. *NIL Data Center*, accessed November 21, 2022. <https://biz.opendorse.com/>
- Opendorse.com. 2023. "Cashing In: Women's Sports and NIL Success," accessed March 23, 2023. <https://biz.opendorse.com/wp-content/uploads/2023/01/NIL-and-Women-in-Sports.pdf>
- Ospina, Sonia M., Marc Esteve, and Seulki Lee. 2018. "Assessing Qualitative Studies in Public Administration Research." *Public Administration Review* 78 (4): 593–605. <https://doi.org/10.1111/puar.12837>
- Park, Sanghee. 2022a. "The Construction of Social Inequity and the Role of Public Bureaucracies." *Journal of Policy Studies* 37 (4): 1–15.
- Park, Sanghee. 2022b. "Gendered Leadership During the COVID-19 Pandemic: How Democracy and Representation Moderate Leadership Effectiveness." *Public Management Review* 24 (11): 1802–1823. <https://doi.org/10.1080/14719037.2021.1937294>
- Schroeder et al v. University of Oregon*. F. 6-23-cv-1806 (Ore. Dec. 1, 2023)
- Shulman, James L., and William G. Bowen. 2001. *The Game of Life: College Sports and Educational Values*. Princeton University Press.
- Smart, Barry. 2007. "Not Playing Around: Global Capitalism, Modern Sport and Consumer Culture." *Global Networks* 7 (2): 113–134. <https://doi.org/10.1111/j.1471-0374.2007.00160.x>
- Thelin, John. 2000. "Good Sports? Historical Perspective on the Political Economy of Intercollegiate Athletics in the Era of Title IX, 1972–1997." *Journal of Higher Education* 71 (4): 391–410. <https://doi.org/10.1111/j.1471-0374.2007.00160.x>
- University of Connecticut. 2023. "Name, Image, and Likeness at UCONN," accessed March 26, 2023. <https://nil.uconnhuskies.com/>
- University of Georgia. 2023. "NIL at UGA," accessed March 26, 2023. <https://georgiadogs.com/sports/2021/8/2/nil>

- University of Mississippi. 2023. "Next Level," accessed March 26, 2023. <https://givetoathletics.com/nil-home-page/>
- University of North Carolina. 2023. "Name, Image and Likeness," accessed March 26, 2023. <https://goheels.com/sports/2022/12/7/name-image-and-likeness.aspx>
- Venugopal, Rajesh. 2015. "Neoliberalism as Concept." *Economy and Society* 44 (2): 165–187. <https://doi.org/10.1080/03085147.2015.1013356>
- Wacquant, Loïc. 2012. "The Punitive Regulation of Poverty in the Neoliberal Age." *Criminal Justice Matters* 89 (1): 38–40. <https://doi.org/10.1080/09627251.2012.721980>
- Whyno, Stephen. 2024. "Sen. Ted Cruz Says There's a 50-50 Chance of Congress Passing College Sports Legislation This Year." Associated Press. March 12, 2024. <https://apnews.com/article/ted-cruz-ncaa-89a48feb0848e50707d24f9868326263>
- Zimbalist, Andrew. 2023. "Request for Issuance of Title IX Athletics Guidance Applying Existing Obligations in the New Commercialized Arena of Intercollegiate Athletics Including Reiteration of Guidance Relating to Promotion, Publicity, Financial Aid and Recruiting Inequities," accessed February 2, 2023. <https://www.thedrakegroup.org/wp-content/uploads/2023/01/FINAL-Drake-Letter-to-OCR-1-10-23-1.pdf>

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