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Cash Rules Everything Around Me: The Expansion of NCAA Name, Image, and Likeness Policy Among the States

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Name, image, and likeness (NIL) policies have expanded rapidly in the United States in the past three years. Since the state of California passed a law allowing college student athletes to profit off their NIL, 41 states have either adopted or proposed similar legislation. Politics, the presence of high-level football programs, revenue, and geography have shaped this rapid expansion that has significant effects on higher education administration. Using survival analysis, this article explains the expansion of NIL policy and finds the key factors leading to its rapid diffusion. We find that the significant drivers of NIL adoption include high level NCAA football and the political motives of the state adopting that contributes to civic pride. The major findings suggest that this focus on football and its connection to civic pride and resulting political decisions creates opportunities and challenges for higher education.

Keywords: NIL Policy, Policy Diffusion, Political Decision Making, Civic Pride and Sports

Name, image, and likeness (NIL) is a burgeoning topic for higher education administrators, athletes, and fans. The acronym has become as hot a topic in college athletic circles as a national championship matchup. It signifies the ability for a student athlete to profit off their name, image, or likeness. In June 2021, a Supreme Court ruling (*NCAA v. Alston*, 2021) was delivered unanimously that college athletes' education-related compensation could not be restricted by any governing body. The court's ruling enabled the logical next step of allowing athletes to profit from their NIL without compromising their amateur status. Since that ruling, states and institutions, including the National Collegiate Athletic Association (NCAA), have scrambled to pass and administer NIL policies that benefit a host of actors in the policy arena. A year after the Supreme Court's ruling, all involved are still trying to get a grasp on how this policy has evolved.

This paper seeks to understand the rapid path of NIL policy diffusion among the American states. By the spring of 2022, 41 states had introduced some type of NIL policy and 30 states passed a law. These policies range from very detailed bills with specific mandates regarding agent activity, reporting, and oversight to states that simply made NIL for college athletes allowable with little to no guidance on administration. We aim to understand the administrative, political, and athletic conditions that led to states' decisions to pass NIL laws.

Within the sport policy literature, decision-making is discussed primarily regarding nation-states and how they connect to sports (Grix, 2010, 2016; Grix & Houlihan, 2014; Houlihan, 1997). Within this research there is a connection between how individuals view their sports teams and how they view their connection to their location or city. There is evidence in this research that sports can increase a community's public profile and perception of worth, while the lack of sports or being seen as something less than professional or successful can have a negative impact on these views.

We argue that the approval of NIL policy seeks to bolster civic pride and activity from college sports. In this paper we are applying these same concepts of connection and decision-making to U.S. states as they have the autonomy to make decisions related to NCAA athletics and NIL policy. To this point, there is no research on how NIL policy pertaining to college athletes expanded in the United States. This gap in knowledge exists due to the relative newness of this policy and needs to be examined to identify what factors are influencing its expansion. Understanding what is impacting state legislative decisions in this area will also bring researchers closer to assessing the policy ramifications on higher education administration and student-athletes.

It is our intent to provide context on the path of NIL expansion and to provide an analysis of the factors that led to its diffusion. It is our hypothesis that the traditional factors of diffusion do not apply to this innovation. This is at least in part due to its rapid adoption (Boushey, 2010) over the course of just four years. This left little time for policy learning, at least in the initial adoption stage. It also means that commonly identified regional and ideological patterns of adoption are less likely. Instead, NIL spread in a rapid and scattershot manner. Additionally, NIL policy is different from many innovations studied by diffusion scholars in that, while it has significant economic ramifications, there are also considerable social externalities. It is thus neither neatly an economic nor a social policy, whereas many policies previously included in diffusion studies fit more neatly into these categories (Mallinson, 2021a). In fact, we argue that the social benefits of civic pride are central to this policy innovation's diffusion, and we consider both social and economic determinants in modeling its spread.

Accordingly, we have selected a set of factors that blend common diffusion indicators such as politics and geography with unique indicators such as the number of Football Bowl Subdivision (FBS) institutions, athletic revenue, percentage of athletes among undergraduates, and football revenue. Also unusual in diffusion research, we model both NIL bill introduction in state legislatures and adoption. Bill introduction is included because states have been working on NIL policies since 2019, two years before the Supreme Court's ruling. The NCAA's passive post-*Alston* approach to NIL, and states' power to regulate education has led to a hodgepodge of NIL rules. We find evidence of a linkage between college sports, namely football, and political decisions, but not through revenues. The connection to football increases as the level of competition rises. We argue that this is because of the connection football has to civic pride and its effect on policy making, in this case, NIL adoption. The impact of this factor is distinct from common causes of diffusion like geography and political ideology. We believe this is a significant finding as it offers evidence that diffusion can happen rapidly for unique reasons that connect to policy salience and public opinion.

There is a deep literature showing that sports and civic pride are connected. We build on that literature by examining how this connection can impact policy diffusion and potentially speed up the process. By understanding how policies such as NIL can spread rapidly, we add an understanding of how sports and politics interact within this policy arena and build a foundation for future research regarding the administrative impacts of policies with such rapid diffusion.

The Current Landscape of NIL

NIL is not new. Individuals have been able to profit from their NIL for decades. This has been the avenue that social media influencers, athletes, and artists, among others, have used to sign endorsement deals with corporations and other sponsors. This paper focuses on the application of this avenue of compensation to college athletes. Prior to 2019, the NCAA had classified college athletes as amateurs unable to profit beyond educational compensation received in terms of tuition, books, and support (Eckenrod & Nam, 2021). While student-athletes could not be compensated for their role in sports, *institutions* have turned college athletics into a multi-billion-dollar industry, which prompts cries of exploitation and ethical concerns (Beech, 2021; Miller, 2012). This led to arguments that universities were exploiting athletes for financial gain.

NIL in the Courts

The argued exploitation of college athletes was challenged for the first time in earnest in 2013 when Ed O'Bannon, a former basketball player at the University of California Los Angeles (UCLA), won a U.S. Supreme Court case regarding compensation for use of NIL or other personal product (*O'Bannon vs NCAA*, 2015). In the O'Bannon case, the court found that the NCAA could not restrict athletic compensation, but then profit from their NIL for products such as video games and claim that educational compensation was enough. *O'Bannon vs NCAA* set the stage for NIL policies as it questioned the ability of the NCAA to restrict the right of athletes to engage their NIL profitability.

In 2019, California was the first state to adopt an NIL law, the *Fair Pay for Fair Play Act*, which restricted the NCAA's ability to inhibit an athlete's capitalization of their NIL. Since California's policy passed, 29 states have passed similar legislation or executive orders and 12 others have introduced legislation. NIL reached a critical point in 2020 when a Supreme Court case, *Alston vs. NCAA*, was accepted in October and heard in March 2021. The case originated, however, in 2014 when players contended that NCAA rules limiting educational compensation violated antitrust laws. The challenge asserted that the rule of reason in antitrust legislation that leads to procompetitive effects—which can be used to restrict compensation to adjust for a market failure (Newman, 2019)—was a violation of antitrust law. This ruling came in spite of the fact that the NCAA has long used procompetitive effects to restrict compensation for athletes.

The Supreme Court found that the NCAA must adhere to the *Sherman Antitrust Act*, which restricts antitrust activity, despite the NCAA's claim that they functioned like professional sports and do not adhere to antitrust laws in totality. The court ruled the NCAA is not the same as a professional sports league, as those entities collectively bargain with players associations to provide compensation for use of likeness and create anti-competitive pay rules that govern player movement and contracts. The NCAA does not collectively bargain with its players, meaning that the anti-competitive pay rules that professional sports leagues follow do not apply to college (Editors, 2021). In June 2021, the Court gave a unanimous decision, 9–0, removing the NCAA's ability to restrict educational compensation. In response to the Court's ruling, the NCAA passed a policy soon after opening NIL up to being governed under state law, to coincide with several state laws that were already in effect or passed shortly after *Alston*.

While a narrow decision, *Alston* opened the door for a redefinition of student-athletes. One of the results was allowing for athletes to be compensated for their likeness. A second result was the space created for state laws to govern student-athlete compensation, which is magnified by the absence of a federal law. States were actively pursuing laws that allowed for athlete compensation beyond educational benefits prior to the *Alston* decision, so the case simply accelerated the expansion of those laws. While the *Alston* decision expanded the landscape, it was not the only influence on NIL policy expansion. It should be noted that five states passed

laws granting NIL rights to athletes before October 2020, three more passed laws prior to the March 2021 oral arguments, and 17 states passed laws within 45 days of the decision with one additional law passed in 2022.

The NCAA adopted a loose policy regarding NIL and clearly stated that according to the *Alston* ruling, their policy does not supersede that of the states. The NCAA has four criteria for NIL agreements:

- Individuals can engage in NIL activities that are consistent with the law of the state where the school is located. Colleges and universities may be a resource for state law questions.
- College athletes who attend a school in a state without an NIL law can engage in this type of activity without violating NCAA rules related to name, image, and likeness.
- Individuals can use a professional services provider for NIL activities.
- Student-athletes should report NIL activities consistent with state law or school and conference requirements to their school (Hosick, 2021).

The NCAA's open policy took criticism as it offered little in the way of oversight (Dellenger, 2021a). The original regulation left compliance officers with little guidance on how to address potential issues with violations and reporting that is customary within NCAA rules. Instead of direct solutions or penalties for actions, the NCAA abdicated to state laws and only offered minimal guidance, which left administrators without the rulemaking cover necessary to carry out the policy (Lovell & Mallinson, in press). The ramifications of this approach remain unclear. In October 2022, the NCAA increased their role by allowing school officials to engage with collectives, for example allowing a coach to speak at an event or promote donations to a collective, as well as promoting NIL activities (Durham, 2022). Again, the ramifications of this stance still need to be researched, but it offers context to the original intentions of NIL policy adoption.

NIL in the States

State NIL laws vary in depth and complexity. Some states target competing sponsorship deals that the athlete's institution already has while others provide little to no guidance. Based on various state laws, athletes have opportunities to engage an agent, previously banned by the NCAA, but only for purposes of NIL deals. Most states have provisions that an athlete's NIL must clearly be written to provide compensation only for sponsorship and not for play. States have been murky on the oversight and administrative mandates that institutions must follow, leading institutions to have different procedures regarding certifying and overseeing athlete deals. Some argue that NIL deals are a 'new currency' (Brandley, 2022) for college sports and will drive student decisions and create a professional system where 'collectives,' which are groups of alumni, can pool money and reach deals with players without the consent of the institution (Carrasco, 2021; Vertuno, 2021).

NIL in Institutions of Higher Education

The disparity in approaches among institutions of higher education is presently difficult to capture as some institutions take active roles to court NIL deals while others are taking a strict construction view and removing themselves from these dealings (Bromberg, 2021). The University of Texas, for example, has set up a program, Leverage, that provides guidance on branding, financial and opportunity management, and what athletes can do according to Texas law (University of Texas at Austin, 2022). Brigham Young University's (BYU) football team receives full tuition for all players, including walk-ons, in return for wearing a sponsor's patch for Built Brands on practice helmets and having athletes participate in sponsor events. This deal was developed under the guidance of the university (Jackson, 2021). BYU also struck

a deal for all female athletes to earn up to \$6,000 for promoting SmartyStreets (Carrasco, 2021). BYU and the University of Texas acted quickly and have developed specific roles in advancing opportunities for their athletes. Other schools, especially those at lower levels of competition, do not have this infrastructure.

On the national level, individual deals were quickly struck for athletes who were able to capitalize on their social media platforms (Cocco & Moorman, 2022; Kunkel et al., 2021), as these athletes were adept at branding themselves. Early deals saw women players, such as University of Connecticut basketball player Paige Bueckers, capitalize on their Instagram, Twitter, and other social media profiles. According to Cocco and Moorman (2022), a woman athlete has a higher average earning potential (\$51 per post) than a man (\$47 per post) on social media. Notably, 69.3% of the activities compensated for by NIL deals are social media related (Opendorse, 2022). Athletes at bigger universities with higher profiles have more earning potential (Kunkel et al., 2021). Further, the top earners by conference are mostly powerful programs with large profiles: Big 10, Big 12, Big East, SEC, and PAC-12 (Opendorse, 2022). The average Division I athlete makes \$3,711 in NIL money while Division II and III athletes average \$204 and \$309 annually, respectively (Opendorse, 2022).

Real time data on NIL deals offer a mixed picture regarding gender equity. While women have a better social media earning potential, they are far behind in NIL compensation. As of 2022, 73.5% of NIL money was going to men athletes (Opendorse, 2022). There is concern that Title IX standards will not be upheld for NIL; however, related challenges to NIL policies are difficult as the compensation is not paid by universities (Jessop & Sabin, 2021). There is also a significant disparity between football earnings and other sports. Football accounts for 49.9% of total NIL compensation and 29.3% of NIL activities. The next closest to football in these categories are men's basketball (17%) and baseball (8%) respectively.

Sports, Civic Pride, and College Athletics

Sports has traditionally been used as a political platform, whether by cities, states, or nations (Abrams, 2013; Houlihan, 1997). From U.S. Olympians protesting the Nazi regime (1932) and civil rights (1968) through Mohammed Ali using his platform as a boxer to advocate in the 1960s and 1970s to Colin Kaepernick kneeling during the national anthem to recognize social injustice, there are many connections between sports and politics. These examples show the individual side of sports and politics. Also important is how politicians react to these politics. Politicians from presidents to mayors have used sports to connect to the public, raise money, show strength, and align with local, state, or national civic identity (Abrams, 2013; Nathan, 2013). As Abrams (2013) suggests, sport is such a significant political tool because it has become one of the best avenues for communal activity and social cohesion. Managing cultural identities through sport is useful as it can overcome differences between groups with different heritages as society builds cohesion through integrating sports into formal education and politics (Houlihan, 1997). Much of the discussion of sports and politics revolves around the concepts of civic pride and economic benefit; usually with the focus being on professional sports.

Civic Pride

Civic pride is a term used by urban geographers to encompass how emotions and connections to local identity are formed and impact decisions on policy, sociology, culture, and politics (Armstrong & Hognestad, 2003; Collins, 2016, 2019). The term civic pride is nebulous as it can include several factors. In this manuscript, we focus on the concept that civic pride is the product of social connection to common foundations and views that manifest in civic action and can result in political activity on policy in ways that support the community and civic

mission as well as use comparative or competitive feelings to enhance local political gain (Collins, 2016).

Civic pride consists of social identity, civic bonds such as connecting via sports, and political motives and the connection and inclusion of these concepts provides a foundation for understanding how sports influences politics. Individuals with common goals for sports invest in the perception of their community and location, in college affiliation, and seek to be seen positively and avoid being seen as ‘minor league’ or ‘middle of the road’ (Delaney & Eckstein, 2006, 2007, 2008, 2010; Kim & Manoli, 2022). Applying this example, a state such as Alabama, where the University of Alabama is a college football superpower, reacts to regulatory decisions by the NCAA to relax NIL statutes and repeals their law to keep from being at a disadvantage against rival schools in states with fewer policy restrictions or no NIL policy. This example shows that policies can be dictated by regional competitors to maintain status or positioning. The overall assumption is that sport, especially college sports in some areas of the country, has a significant impact in how communities and states form their identity. This is a needed framework to understand how NIL is being discussed and approved by state legislatures. College sports bonds and local pride are directly connected to politicians’ policy decisions.

Individuals have several influences that construct their social identity. Social learning theory suggests that these identities can be a result of the groups and influences that a person seeks out (Tajfel & Turner, 1979). Enticed by inclusion and belonging, individuals seek acceptance and identification within a group that has shared interests. Sports serves as a common medium for this identification as it provides a group of connected and committed individuals who find acceptance and support. These groups become stronger because of their shared connection and their comparison to other groups.

We apply Tajfel and Turner’s (1979) social identity theory to civic pride and its connection to sports in the area of NIL. Social identity theory argues that individuals define their identity in part by the groups and connections that they make. Sports are a prime example of that happening as the team gives individuals a central focus and shared support system to coalesce around. We expand this into college athletics and apply the same concepts to higher education due to the enhanced connection that alumni behavior and connections to university affiliations provide individuals seeking group acceptance (Drezner, 2018; Stephenson & Bell, 2014) with an additional connection to how students and alumni feel about college sports (Boyle & Magnusson, 2007). Sport fans connect their identity to their team based on history or position (Boyle & Magnusson, 2007; Gilal et al., 2022), behavior of the athletes (Fink et al., 2009), and branding (Watkins, 2014).

Rees and colleagues (2015) suggest that four factors emerge from social identity in sports. For our work, the concepts of leadership and behavior are most integral. Leadership and behavior are influenced by sport connections and bring out central focuses of connection and decision-making. We extend that to the behavior of politicians who seek to continue their connections to their self-selected sport and alumni groups and use those bonds to build political favor with their decisions to pass NIL legislation. We argue that this connects to the concept of civic pride as NIL offers perceived competitive advantages that can improve the view and position in the college sports landscape of certain programs. It also allows for an increase in perception of how the public supports college athletes. We acknowledge that this is not the only way that politicians can support college athletics; however, it is a popular and notable one that offers a significant amount of cache with the sports related public.

Sports can be used by governments to foster political identity by capitalizing on connections between citizens they expect to participate, and the teams they root for (Green & Houlihan, 2016; Grix, 2010, 2016; Houlihan, 1997). Such an identity can be very strong when talking about college sports involving alumni who have an inherent connection to their institutions.

The social connection of sports in rural towns is driven by high school teams or by colleges such as the University of Iowa in Iowa City, Iowa or the University of Texas in Austin, Texas (Nathan, 2013). Notably, Republicans and Democrats tend to prefer different sports, with the former preferring dominant sports such as football, baseball, and basketball while the latter are open to sports that are specialized such as soccer (Woods, 2022). The types of civic bonds that develop are debatable, considering there is no guarantee that the sport bond will translate beyond supporting the team (Grix, 2016; Harris & Houlihan, 2016). However, when connecting sport bonds and civic connection to politics, the soft power that emerges can be significant if it builds on that support for policies, like NIL, that connect to them directly (Grix, 2016).

Civic pride is the general term used to address the emotional or social impact that unifying events and local symbols, like a sports franchise, have on a local community (Burns, 2014; Groothuis et al., 2004; Groothuis & Rotthoff, 2016; Kalich, 1998). Part of the local pride or social identity of a community is the pride and attachment shown to the sports team (Burns, 2014). The study of sport policy is mostly associated with nations and suggests that civic pride or political connections with sport are determined by local or state factors instead of there being a set of generalizable effects (Haut et al., 2017). Burns (2014) identifies the connection between sports and social identity in a case study about the impact that the 2010 Super Bowl winning season for the New Orleans Saints had in the recovery from Hurricane Katrina that was still going four-and-a-half years after the storm. Whether a professional team or college team, these entities foster a sense of communal belonging and connection.

Where college teams are concerned, there is a significant connection to alumni who are among the public and among government officials (Heere & Katz, 2014). Football culture and history have a direct connection to how the university is viewed and how current students and alumni feel about their institution's quality (Roy et al., 2008; Smith, 2009). Alumni fealty becomes a source of pride and connection that can manifest itself into accepting the rivalrous/excludable nature of sports and supporting public funding despite it. This sense of connection to the institution through sports produces a sense of belonging and can play a role in sport-related policy decisions. Thus, we expect that states with more NCAA Football Bowl Series (FBS) teams were likely to adopt NIL policies more quickly.

Another important connection we make from this literature is that these connections to sports and college continue for legislators. This is an underexplored area of research, but there is evidence that political advocacy is connected to policy (Dar, 2012; Weerts et al., 2010), evidenced by legislative behavior. In Louisiana, state representative John Stefanski (Republican) noted that keeping up with NIL was imperative if 'they' wanted to see Alabama college football head coach Nick Saban upset on the sideline (Johnson, 2022). In Alabama, the impetus of passing, and then repealing, an NIL law from the legislator's standpoint was to make sure the University of Alabama and Auburn University did not fall behind other states where recruiting, especially in college football, was concerned (Cason, 2021; Lawrence, 2022; Lyman, 2022). These examples show a connection between alumni status and policy approaches when it comes to NIL and have direct connections to college football's impact being central to state lawmaker thinking. We recognize this needs to be explored more, but we believe the connection is valid and substantial enough to serve as a theoretical linkage for our argument.

Economics

Like professional sports, college athletics puts economic pressure on local politics. Much work has been done on sports stadium funding and political decisions. The underlying current of that work is corporate partnerships captured in corporate welfare theory (Bennett, 2015; Milke & Veldhuis, 2010) and political pressure through urban renewal and the benefit of financing explained in urban regime theory (Euchner, 1993; Lekakis, 2018; Saito, 2019;

Schimmel, 2012). Each suggests that finance and political connections have a significant impact on how politicians allocate funds and address potential policy decisions.

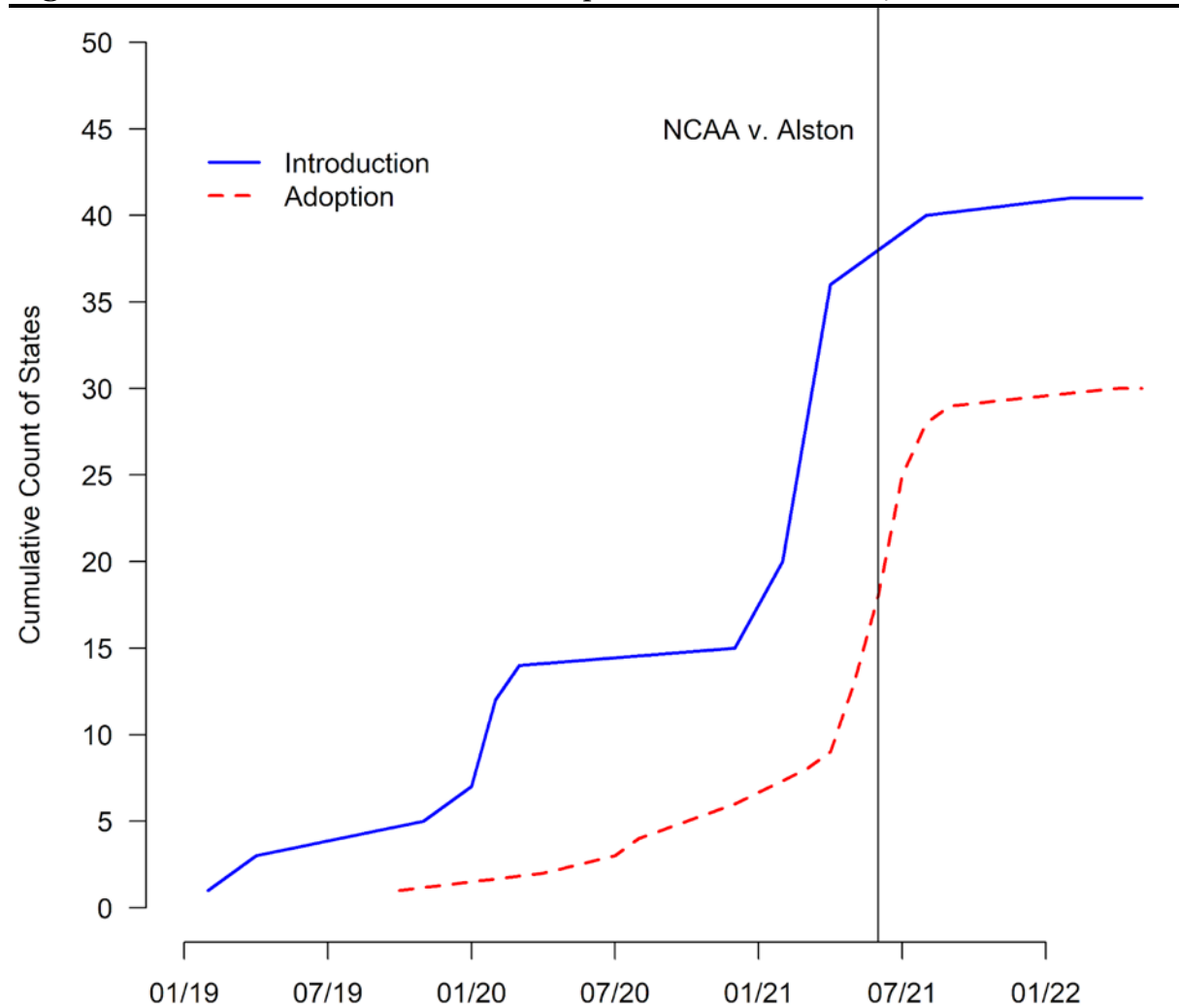
In general, sport is believed to have an inelastic demand, meaning that the desire to consume the sport does not drop when the price associated with it rises (Grix, 2016). The inelastic nature of sports, which is quite applicable to college sports when considering specific costs such as donations to alumni associations, capital projects, and now NIL collectives, is important for our discussion as it suggests a context to test the impact of policy, political, social, and administrative costs on the spread of NIL policy. The connection between college sports and money can be tracked and connected to political decisions. Revenues to be gained from television rights deals for universities can be as low as \$400,000 or as much as \$55 million a year depending on conference affiliation (On3 Staff, 2021). Gaining access to these funds can be a driving force for boards of trustees and political officials in states that have connections to universities and want to see athletics departments maximize revenue.

One example that shows this connection took place in 1994 when the Southwest Conference (SWC) disbanded. The SWC consisted mainly of Texas institutions, both public and private. When the conference disbanded, four teams would join schools from the Big 8 conference to form the Big XII. The potential television rights for schools in the Big XII would be in the \$20 to 30 million range while schools left out would fend for themselves in smaller conferences. The early thought was that the University of Texas, Texas A&M University, University of Houston, and Texas Tech University would be the four schools to go. All were public and the move had to be approved by their boards of trustees. Texas Governor Ann Richards, a Baylor University alumna, and Bob Bullock, former lieutenant governor and Baylor and Texas Tech alumni, stepped in and used their political prowess to put Baylor in the Big XII (The Editorial Board, 2021; Watkins, 2016). The political problem was that Baylor is a private school and would replace a public institution (the University of Houston). In the two decades since, Baylor has received television rights fees ranging between \$20 and 33 million while Houston has toiled in conferences making between \$300,000 and \$10 million a year. This decision offers evidence that politics can be influenced by sports and there is a connection to civic pride. In this case, funding was a significant factor in a political decision over conference reshuffling. Thus, we expect general athletic revenue in a state, and football-specific revenue, to influence the decision to adopt an NIL law. To examine how both social and economic factors shape the adoption of NIL, we rely on the theory and methodology of policy innovation and diffusion.

Rapid Policy Diffusion

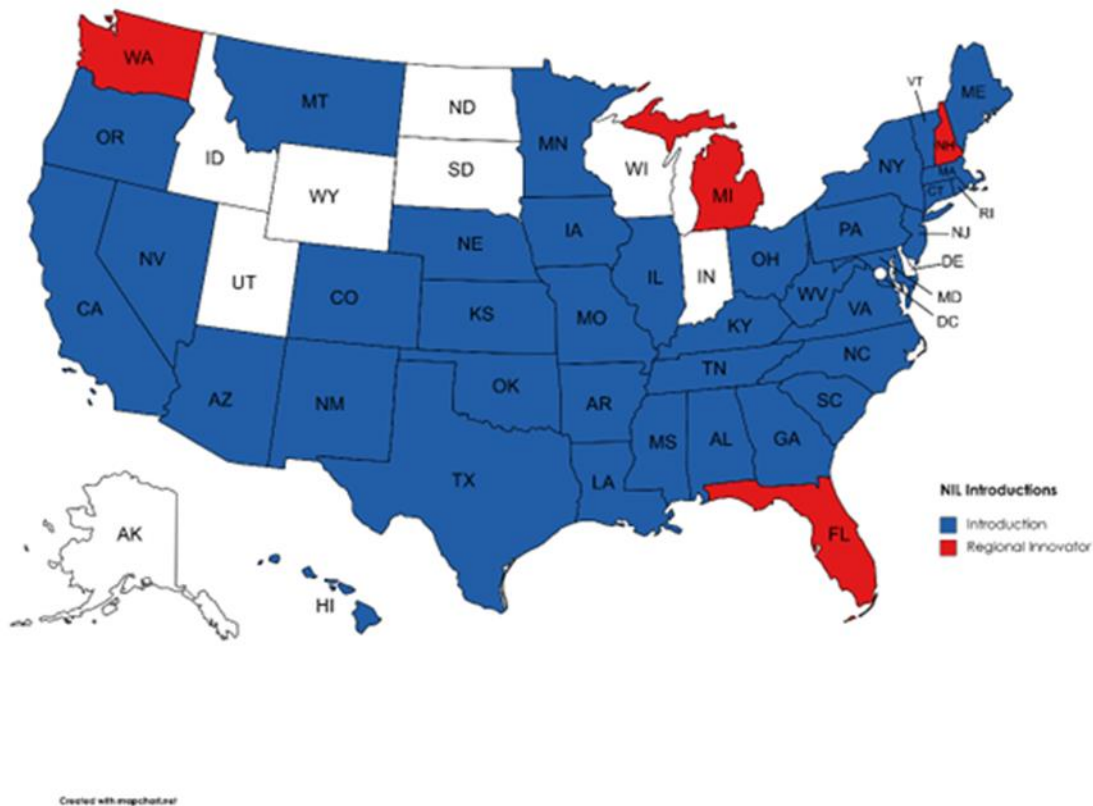
Grix et al. (2018) claim that there is a need for administrative theory to be used to examine sport policy from a policy perspective. To that end, we use the diffusion of innovations (Rogers, 2003) as the key theoretical lens for our analysis of state NIL adoption. Much of the policy diffusion literature focuses on a specific set of mechanisms that drive innovation adoption: learning, competition, emulation, and coercion (Graham et al., 2013). There is also a strain of literature that uses the policy as the unit of analysis and examines why some policies spread quickly, while others spread slowly (Boushey, 2010). Some policies, like Old Age Assistance, spread to all the states in a few years. Others, like early voting, trickle out over several decades (Mallinson, 2016). While a typical plot of cumulative adoptions over time will have an s-shape (Gray, 1973), rapid adoptions look more like an r (Boushey, 2010). There are linkages between the rate and mechanism of adoption. Most critical for this analysis is that rapid, r-shaped, adoptions are less likely to be driven by the slower policy learning process and are instead a response to competitive or ideological (i.e., imitative) pressures (Boushey, 2010).

There is evidence that the characteristics of policies affect how quickly they diffuse (Mallinson, 2016; Menon & Mallinson, 2022; Nicholson-Crotty, 2009). Particularly, a policy's salience and complexity act like gas and brake pedals in a car (Karch, 2007). If a policy is receiving a great

Figure 1. Cumulative Introductions and Adoptions of NIL Laws, 2019–2022

deal of public attention (i.e., it is highly salient), policymakers will make it a priority to capture related electoral advantages from their responsiveness in adopting it. If a policy is simple, it can be more easily copied from state to state than a technically complex one that requires adaptation to the state's unique context. NIL policies have the characteristics of the fastest diffusing policies. Over the last three years, and especially considering the *Alston* case, they have become quite salient. They are also very simple. In fact, NIL spread faster than 94% of the 682 policies from the State Policy Innovation and Diffusion database (Boehmke et al., 2020).¹ Additionally, the cumulative introduction curve for NIL certainly has an r-shape, and the adoption curve also shows a rapid, but plateauing, clip of activity (see Figure 1).

We argue that NIL stands apart from many policies previously examined in policy diffusion studies because it exists at the intersection of economic and social policy. Diffusion studies have tended to focus on innovations like lotteries and methods of taxation (economic policies) and morality (social) policies (Mallinson, 2021a). NIL is more like cannabis policy in that it lies at the intersection of both (Ferraiolo, 2007; Hannah & Mallinson, 2018). Unlike cannabis, however, NIL is not a stigmatized policy, and it has been prompted, instead of resisted, by federal action (i.e., the *Alston* decision). In fact, its high salience and relatively lower complexity helped to push it rapidly across the states. Thus, we expect that regionalism is not a factor in this policy's diffusion. Instead, internal factors like civic pride (as measured by football) and economics are more likely drivers. Our aim is thus to examine how both economics and politics contributed to the rapid spread of this policy innovation.

Figure 2. States with NIL Bill Introductions, 2019–2022

Methods and Data

To test our expectations regarding the adoption of NIL legislation by the states, we have assembled a dataset that includes the dates of both the first introduction of an NIL law in a state's legislature and the date it was adopted either by law or executive order. Between September 2019 and January 2022, 41 states saw NIL legislation introductions and between February 2019 and March 2022, 30 states adopted an NIL law. Of those 30, all but two were adopted through the normal legislative process. Kentucky and Ohio adopted an NIL law via executive order, with the neighboring states doing so within days of each other. Washington was the first state to introduce NIL legislation, but California was the first to adopt it. Maine was the last state to both introduce and adopt, doing so in 2022.

Figures 2 and 3 show the states that introduced and adopted NIL legislation, respectively. Also shown in the figures are the regional leaders of both introduction and adoption. Each was the first state within the four Census regions to introduce and/or adopt. Michigan and Florida are consistent regional leaders in the Midwest and South, but while New Hampshire led in introduction in the Northeast and Mid-Atlantic States, New Jersey was the first adopter. Florida and California tend to be regional leaders in policy innovation (Desmarais et al., 2015), but innovators vary by policy (Gray, 1973).

Analysis Method

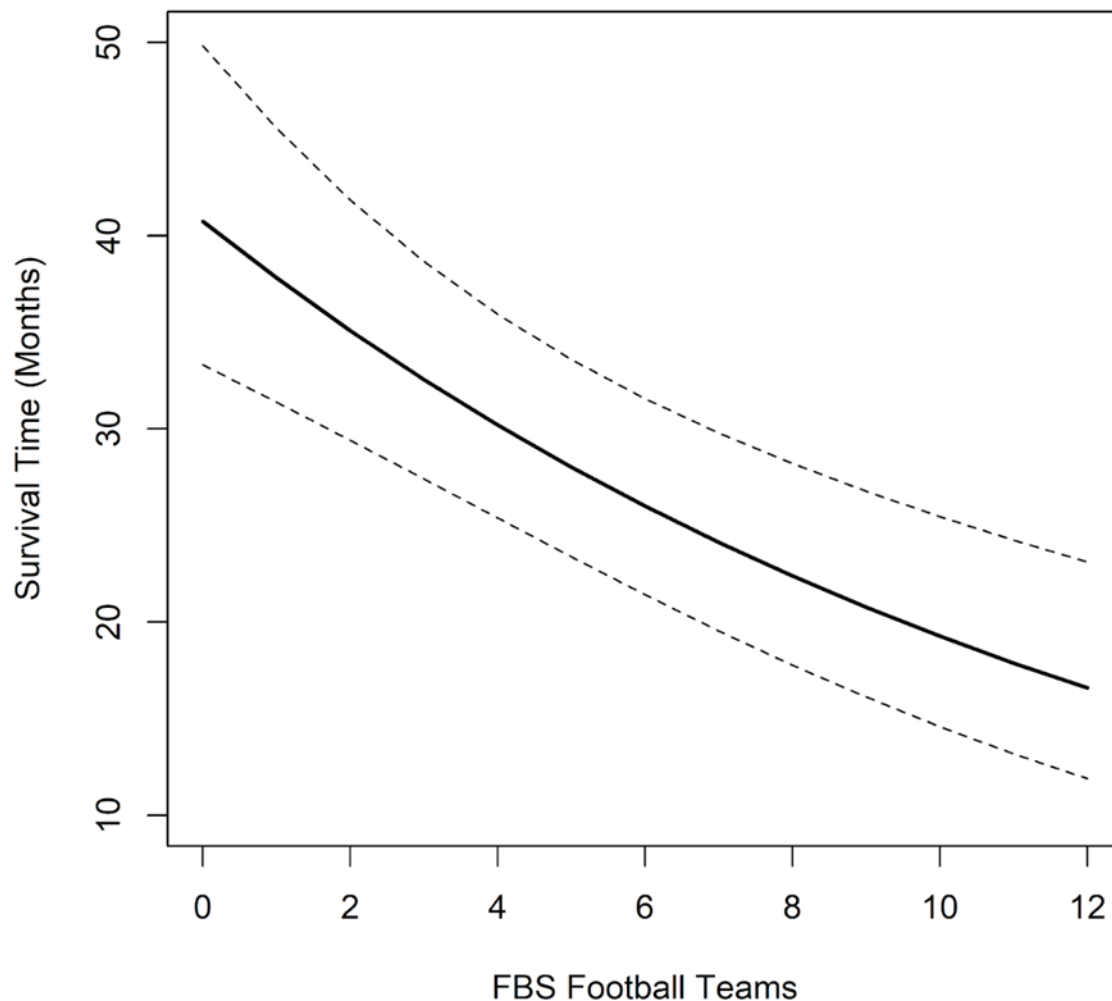
The dependent variables used in our analyses are indicators of whether (1) or not (0) a state has introduced or adopted an NIL law. We model these different actions separately. We chose to use a Weibull distributed accelerated failure time (AFT) model.² The analysis was conducted in R using the survival package (Therneau & Grambsch, 2000). There are 50 observations in



We capture the effects of civic pride, economics, and regional diffusion using several independent variables. We use the count of NCAA *FBS Teams* in each state as a proxy for expected sports-related civic pride.³ While we recognize that other sports like basketball and baseball, as well as individual athletes, also receive NIL endorsements and foster pride, FBS football is the major driver of NIL deals. We also include *Participation*, which is the percentage of undergraduates in each state that participate in an NCAA sport. Importantly, we use the unduplicated counts of athletes in this measure drawn from the U.S. Department of Education’s Equity in Athletics Data Analysis (EADA) dataset from the 2019 survey year.^{4,5}

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Figure 4. Predicted Number of Months Without an NIL Policy Adoption across the Number of FBS Football Teams



Note: Drawn using the All NCAA School Revenues model that includes Total Revenues.

Division I FBS and FCS schools. Finally, we narrow to just FBS schools. At each stage, the two variables are measured the same. It is simply the included set of schools that winnows. Revenues are also drawn from EADA.

Finally, to test diffusion and political effects we include measures of *Neighbor Adoption* and *Government Ideology*. *Neighbor Adoption* is a measure of the proportion of contiguous neighboring states that have adopted an NIL law prior to the year a state is observed (either adopting or being censored) (Berry & Berry, 1990).⁶ *Government Ideology* measures the ideology of each state's elected officials using Berry and colleague's revised NOMINATE ideology score (Berry et al., 1998; Berry et al., 2010). It is a liberal-conservative scale, meaning increasing values reflect increasing conservatism.

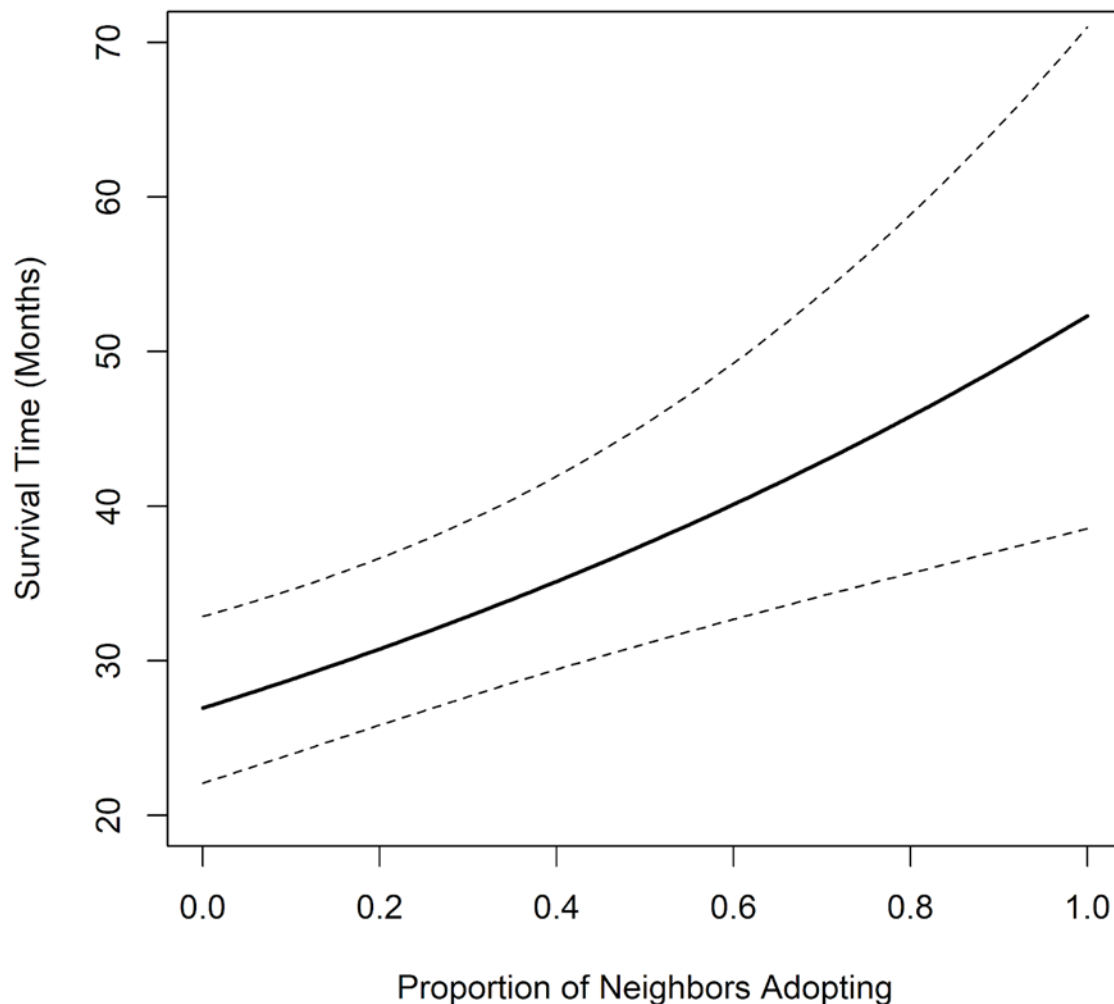
Table 1. Results of NIL Introduction Models

	All NCAA Schools Revenues	All NCAA Football School Revenues	FBS and FCS School Revenues	FBS School Revenues
Total Revenue	1.01 [0.86, 1.20]	1.00 [0.87, 1.15]	0.92 [0.83, 1.02]	0.92 [0.81, 1.04]
Football Revenue	0.90 [0.71, 1.15]	1.00 [0.79, 1.27]	0.91 [0.78, 1.06]	0.92 [0.79, 1.07]
FBS Teams	0.92 [0.88, 0.97]	0.95 [0.90, 0.99]	0.94 [0.90, 0.99]	0.94 [0.89, 0.99]
Participation	0.98 [0.94, 1.02]	0.98 [0.95, 1.01]	0.99 [0.93, 1.07]	1.04 [0.88, 1.24]
Government Ideology	0.99 [0.98, 0.99]	0.99 [0.99, 0.99]	0.99 [0.98, 0.99]	0.99 [0.98, 0.99]
Neighbor Adoption	3.06 [1.89, 4.96]	3.42 [2.21, 5.29]	3.31 [2.16, 5.09]	2.78 [1.78, 4.34]
N	50	50	50	50
Bold $p < 0.05$, hazard ratios reported with 95% confidence intervals in brackets.				

Table 2. Results of NIL Adoption Models

	All NCAA Schools Revenues	All NCAA Football School Revenues	FBS and FCS School Revenues	FBS School Revenues
Total Revenue	0.94 [0.87, 2.03]	0.99 [0.90, 1.08]	0.98 [0.89, 1.07]	0.92 [0.85, 0.99]
Football Revenue	0.87 [0.75, 1.03]	0.92 [0.78, 1.09]	0.97 [0.86, 1.11]	0.92 [0.83, 1.03]
FBS Teams	0.93 [0.90, 0.96]	0.94 [0.90, 0.97]	0.94 [0.91, 0.97]	0.93 [0.90, 0.96]
Participation	1.02 [0.80, 1.02]	1.02 [0.99, 1.05]	1.03 [0.98, 1.09]	1.05 [0.94, 1.18]
Government Ideology	1.00 [0.98, 1.01]	1.00 [0.99, 1.00]	1.00 [0.99, 1.00]	1.00 [0.99, 1.00]
Neighbor Adoption	1.94 [1.37, 2.76]	1.99 [1.40, 2.81]	2.00 [1.43, 2.80]	1.88 [1.34, 2.62]
N	50	50	50	50
Bold $p < 0.05$, hazard ratios reported with 95% confidence intervals in brackets.				

Figure 5. Predicted Number of Months Without an NIL Policy Adoption across the Proportion of Contiguous Neighbors Who Have Adopted

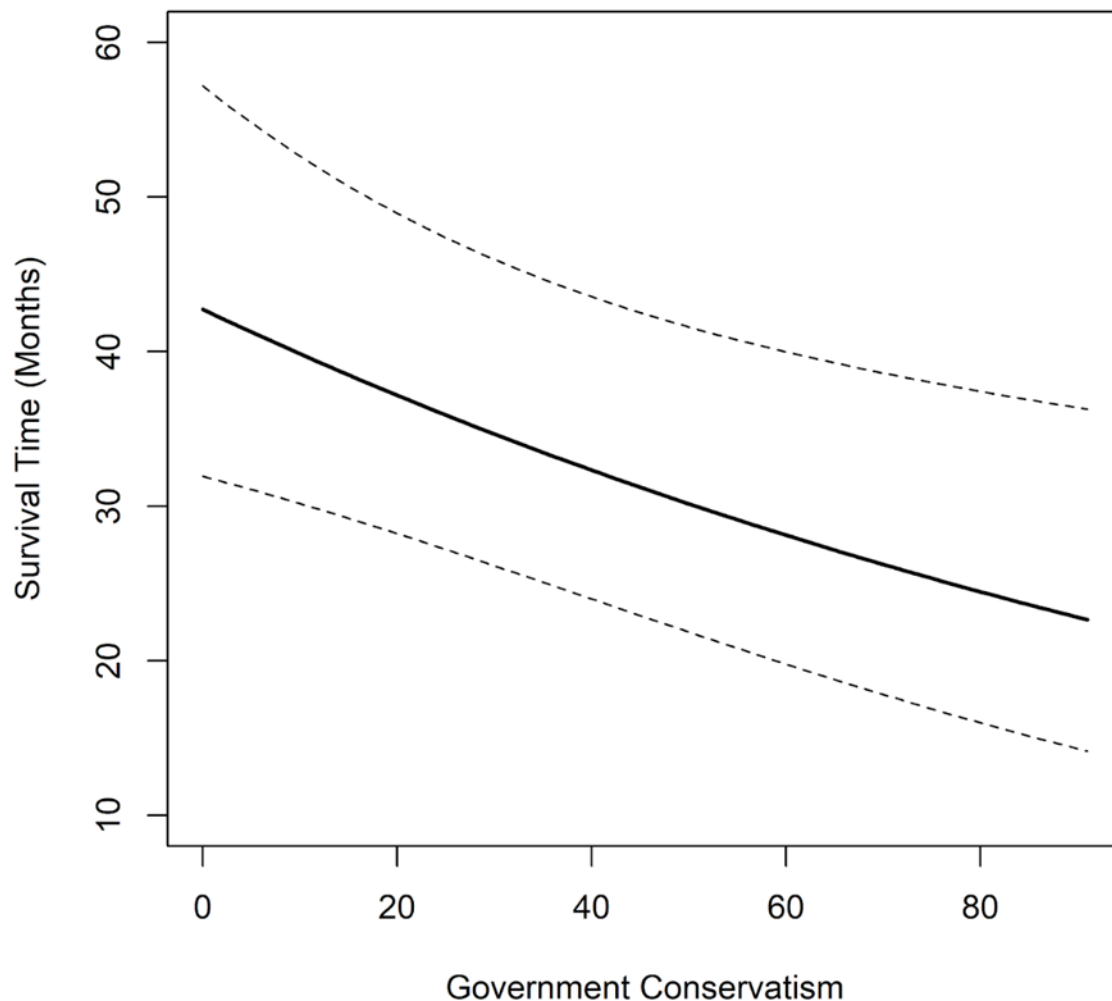


Note: Drawn using the All NCAA School Revenues model that includes Total Revenues.

Results

Tables 1 and 2 present the results for NIL bill introductions (Table 1) and adoptions (Table 2). The results are presented as hazard ratios (with 95% confidence intervals in brackets). A hazard ratio greater than 1 represents a factor that lengths, or slows, adoption. Thus, a hazard ratio below 1 represents a factor that increases the pace of adoption. There are four pairs of models that differ based on how *Total Revenue* and *Football Revenue* are calculated. Two results are firm across both the introduction and adoption models: the presence of *FBS Teams* in a state and *Neighbor Adoptions* are consistent predictors of both. Namely, the more FBS teams in a state, the greater the hazard of adopting an NIL law. Figure 4 depicts the considerable effect that FBS teams have on the length of time that a state goes without adopting an NIL policy. Moving from no FBS teams to the maximum observed 12 FBS teams in a state substantially speeds up the adoption of an NIL policy. States with no FBS teams are predicted to last over 40 months (the entire observed period) without a policy, whereas the

Figure 6. Predicted Number of Months Without an NIL Policy Introduction as Government Conservatism Increases



Note: Drawn using the All NCAA School Revenues model that includes Total Revenues.

predicted survival time drops to 16 months at the maximum of 12 FBS teams. In short, the more FBS teams a state has, the faster they adopt an NIL law.

The negative result for *Neighbor Adoptions* in both introduction and adoption is perplexing, however. As Figure 5 illustrates, moving from no neighbors with an NIL law to all of one's neighbors having one substantially slows the adoption of an NIL law. The same occurs for introductions. This is the *reverse* of what is commonly expected in diffusion studies. In this case, because NIL diffused so rapidly and essentially in a scattershot pattern across the country, the states that have not yet adopted by March 2022, and certainly the small handful that did not have an introduction, were surrounded by neighboring states that had. This does not mean that non-adopting states will not adopt in the future. NIL is roughly in the middle of a standard diffusion lifecycle (Mallinson, 2021b). But it means that, for the observed period, non-adopters are surrounded by adopters (which is quite clear in Figure 2), and the pattern of policy spread appears to not be contingent on geography.

While our indicator of civic pride, *FBS Teams*, has consistent effects, there is almost no evidence that revenues matter for NIL adoption. The only model where they do is when only FBS and FCS schools are used to calculate revenue, and then only for *Total Revenue*. In this case, an increase in total athletic revenues by \$1,000 per undergraduate student increases the pace of NIL adoption by 8%. However, this single significant result should be considered with caution, as it could have occurred by chance.

Finally, *Government Ideology* only affects NIL bill introduction. For each 1 unit increase in conservatism, the pace of introducing an NIL bill increases by 6% to 7%. Figure 6 better illustrates this relationship, given that Berry et al.'s ideology score ranges from 0 to 100. Moving from the least to most conservative state reduces the time before NIL policy introduction by 20 months.

Discussion

This article presents an explanatory analysis of the major effects contributing to the rapid diffusion of NIL policy in the United States. NIL policy has proven to be a significant shift in higher education in several areas, including athletics, treatment and classification of students, and administration (Brandley, 2022; Carrasco, 2021; Newman, 2019; Vertuno, 2021; Wakefield et al., 2021). This work focuses on the interaction of politics, sports, and policy to address the expansion of NIL policy (Burns, 2014; Groothuis et al., 2004; Groothuis & Rotthoff, 2016; Kalich, 1998). In this study we found that the presence of major college football plays a significant role in NIL introduction and adoption, but not the concomitant revenues. Also, we find that political ideology had a significant impact on the introduction of NIL policies but not adoption (Abrams, 2013; Nathan, 2013; Woods, 2022). Finally, neighbor state adoptions have the opposite effect on NIL adoption. This fits with the expectation that a policy as highly salient and technically simple as NIL diffuses in a rapid and scattershot fashion.

While there is no clear-cut fixed event that precipitated NIL adoption, the *Alston v. NCAA* Supreme Court decision is the closest we have. The fact that nearly half of the adoptions occurred within 45 days after the decision is noteworthy. However, our analysis of both introduction and adoption shows how states can act *in anticipation* of significant exogenous shocks. Specifically, the surge in adoptions occurring around the *Alston* decision was preceded by a surge of introductions in those states around the time of oral arguments. It was in March 2021 that members of the Supreme Court “ripped into the NCAA system” and “took the NCAA to task” in a manner that commentators believed signaled that the NCAA would ultimately lose the case (Dellenger, 2021b, n.p.). The introduction and adoption timing patterns are consistent with states acting in response to an expectation of a new legal landscape for student athlete compensation.

These results are significant in a few ways. First, these findings indicate that college football can be a driving force in political decision making (Grix, 2016; Harris & Houlihan, 2016; Haut et al., 2017; Houlihan, 1997). Based on the sport politics, social identity, and civic pride literature, as well as actions like those noted in the construction of the Big XII, we believe there is a substantial connection to the public and to the alumni in legislative bodies who see the need to act on their institution's behalf. Football's role as a significant predictor is an important finding as it confirms a general view of the role of the sport as a source of civic pride (Abrams, 2013; Boyle & Magnusson, 2007; Drezner, 2018; Fink et al., 2009; Gilal et al., 2022; Groothuis et al., 2004; Groothuis & Rotthoff, 2016; Kalich, 1998; Nathan, 2013; Rees et al., 2015; Stephenson & Bell, 2014; Tajfel & Turner, 1979; Watkins, 2014) and the impact it has on decision making, but also defines the depth of that influence—being that it extends to the political components of higher education and confirming its role within a growth coalition framework. Extending this to policy, the implication confirms that public salience forces states into entering policy arenas regardless of their ideology or past actions. This implication

suggests that if there is a strong enough connection between a policy and public views, in this case the connection between college football and civic pride, there will be action that transcends traditional patterns of policy diffusion.

Second, the findings represent the desire to rush policy in hopes of achieving a positive public outcome from a political perspective. As indicated here, the number of FBS football programs is the biggest factor among states that adopted NIL. It is reasonable to assume that this decision making prioritizes the benefits of sport over university administrative structure and other aspects of the higher education landscape. As expected, football is the driving force when considering the urban regime and civic pride impact of college athletics on policy decisions. These theories suggest that economics can be set aside in political decision making if sports provide a viable connection to perceived social and civic growth (Grix, 2016). Prior findings suggest that most political decisions involving sports (e.g., professional stadium funding) do not lead to economic gain (Bennett, 2015; Euchner, 1993; Lekakis, 2018; Mason et al., 2017; Milke & Veldhuis, 2010; Saito, 2019; Schimmel, 2012). The lack of economic consideration in sports-related decision making is repeated in NIL policy.

Theoretical Implications

Herein we argued that sports policy diffusion is likely different from other policies commonly studied by diffusion researchers. Specifically, we contend that many sports-related policies, like NIL, represent an intersection between economic and social policy. Sports could be viewed as principally an economic concern, but one with substantial social externalities. We thus presented civic pride as both an outcome of sports culture and a factor pushing NIL policy. While other studies have examined policies at this intersection, they tend to have strong morality components (e.g., cannabis and gaming). NIL is not saddled with types of stigma associated with these policies. Moreover, the *Alston* decision helped push the diffusion of this innovation, whereas policies like cannabis liberalization and sports betting have been hampered by federal law. Though, that changed for sports betting with another key Supreme Court case: *Murphy v. NCAA*. *Murphy* likewise cleared the way for rapid legalization of sports betting in the states. The rapid adoption of high salience and low complexity policies is more likely to produce rapid emulation between states rather than considered policy learning.

We in fact find that here. The traditional measure of interstate competition and policy learning, neighbor adoptions, has a *negative* effect on NIL adoption. Meaning, as one's neighbors adopted the policy, states were less likely to adopt. We argue that this is due to the rapid and scattershot nature of NIL adoption. Meaning, states that remained non-adopters by December 2022 are likely to be surrounded by neighbors who have already adopted the policy. Meaning, there was more likely rapid national emulation than regional learning or competition. Anecdotal actions by adopting states provide support for the argument that states are only now undergoing policy learning. Specifically, some states like Alabama have actually abandoned their NIL laws. Others have modified them to address myriad unconsidered challenges. For example, in 2023 Missouri revised its law to expand the role of coaches in NIL deal negotiations (Matter, 2023).

Our findings also support the theory that a policy's characteristics influence how it expands (Mallinson, 2016; Menon & Mallinson, 2022; Nicholson-Crotty, 2009). While regional leaders can usually be seen as path setters in policy diffusion (Desmarais et al., 2015), the rate of introduction and adoption associated with this case suggests that the more rapid the action the less significant geographic and neighbor influence is on the decision to introduce or pass the policy. Introductions and adoptions happened so quickly and widely regarding NIL policies that it was unlikely that states were or are watching neighbors and rather viewing the policy in totality. This does comport with the fact that NIL policies are not technically complex and there is the existence of a significant exogenous shock pushing this innovation (i.e., the *Alston* decision). These data also provide support that the more engaged the public is on an

issue related to civic pride, the quicker the policy will expand and that there is a significant relationship between these mechanisms, or influences, and a shift from a standard s-curve of slower adoption to the r-curve of rapid adoption (Boushey, 2010; Gray, 1973; Mallinson, 2016).

In the case of NIL, this shift had more to do with the presence and political support of FBS football programs and less to do with the level of revenue. Finally, while less often innovators (Boehmke & Skinner, 2012; Gray, 1973), conservative states were quicker to introduce this innovation than liberal ones. It was not until later in the adoption stage that liberal states caught up.

Limitations

There are limitations to what we have found. We cannot definitively prove that the *Alston* decision is what caused the rapid spread of NIL policies. Though, we argue that the evidence is convincing. Additionally, the model does not directly capture civic pride or pride specifically generated by college football. For this we rely on past work that supports this theoretical expectation. This study, like many diffusion studies (e.g., Hannah & Mallinson, 2018) captures the spread of NIL policy in one snapshot of time. While introduction and adoption activity has slowed substantially, both are likely to continue. Such later adoptions are more likely subject to policy learning than the rash of adoption activity captured here. This means that future analyses may find different influences for adoption as later adopters act (Mallinson, 2021b).

Conclusion

Our analysis shows how quickly the policy landscape has changed for states, higher education administrators, and those studying sport policy and politics. NCAA policy has long been insulated from change due to their control over student-athlete classifications. NIL policy and the understanding that political and public salience can remove this administrative power is important as the field examines what is sure to be an avalanche of policy in this area. For example, 17 states have already passed legislation allowing high school students to benefit from their NIL. These changes are taking place as the quick expansion of this policy has emboldened states with strong connections between sports and civic pride to take action that traditionally would not have been accepted within these policy arenas.

The intent of this study is to offer an explanatory analysis that offers insight into the diffusion of NIL policies and its unique determinants (e.g., football revenue). We examine both policy introduction and adoption to determine if there is alignment between the determinants of two different stages of the policy process. What we found is that there are unique connections between NIL policy adoption and college football as a source of civic pride. Further, college football has a defined role in this rapid diffusion and as an indicator of political influence. Finally, it is important to note the finding that economics is not a driving factor in the spread of NIL policy, which is unique considering the amount of attention paid to these revenues. We believe this work offers a platform to expand into further analysis of NIL policy as it offers opportunities to study a policy that has a unique political dynamic. Political decision-makers and higher education administrators can use an understanding of this dynamic to shape how they view and respond to NIL policy. While this work provides an understanding for the rapid nature of NIL policy introduction and adoption, there is room to examine the impact it has on the practical application and administration of the policy in real time.

From this work we believe that researchers can offer future studies that examine the administrative impact of NIL policy and the rapid nature of its expansion. Also, there is a case to be made to study the predictors and factors that have led 9 states *not* to introduce NIL policy and 20 states to not pass a policy. College sports and its associated revenue has an impact in

most states as a multi-billion-dollar industry. Analyzing whether the inaction is associated with administrative patience, politics, or economic views would advance the understanding of how policy expands.

Notes

1. Determined using Menon and Mallinson's (2022) updated speed measure.
2. The Cox proportional hazards model has gained prevalence in policy diffusion research (Mallinson, 2021a) because it does not require the same model corrections to account for duration dependence (Beck et al., 1998; Buckley & Westerland, 2004), however our data violated the proportional hazards assumption. Thus, we chose an AFT model instead.
3. Appreciating that NCAA Division 1 college basketball is also a driver of substantial institutional and civic pride, we also measured the number of such basketball teams in each state. We included this measure in our introduction and adoption models, but the counts of FBS teams and basketball teams are too highly correlated ($r(48)=0.80, p<0.001$) and the sample size is too small to effectively parse out their independent effects. Given the importance of FBS football to both NIL policymaking and subsequent NIL deals, we include only its measure in the results reported herein. Full results can be obtained from the reproduction R script and data.
4. <https://ope.ed.gov/athletics/#/>
5. We examined Google Trends searches for “college basketball” and “college football” as additional measures for capturing civic pride, per DiGrazia (2017). Neither produced statistically significant results, nor did they change our results in Table 1, so they are not reported here. The analyses are included in the reproduction R script.
6. Note that we also estimated the models with an alternative measure of regional diffusion using the proportion of states in each Census region that had adopted previously, but the results did not change.

Data Availability Statement

Reproduction data and script can be found at <https://doi.org/10.7910/DVN/PWU1UC>.

Disclosure Statement

The authors declare that there are no conflicts of interest that relate to the research, authorship, or publication of this article.

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