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**HIGHWAY TO NIL PODCAST: NCAA PRESIDENT CHARLIE BAKER'S NIL COMMENTS  
RECORDED 04/18/23**

**Cal Stein:**

Hello and welcome back to *Highway to NIL*, the podcast series that discusses legal developments in the name, image, and likeness or NIL space. NIL of course affects colleges and universities all over the country, particularly those in division one athletics. And in this podcast series we delve deep into the current NIL rules impacting colleges and universities and their compliance departments. My name is Cal Stein and I'm a litigation partner at Troutman Pepper. I come to you today with my colleague and fellow Highway to NIL host Chris Brolley to discuss some comments that the NCAA President Charlie Baker recently made about NIL. We have all been waiting patiently to see how the NCAA is going to approach NIL under President Baker's leadership. And these comments, which he made during two interviews he gave in March, may provide us the first glimpse into the NIL policy, directives, and priorities of his administration.

We hear at *Highway to NIL* have listened to the interviews and we've pulled out some of what we believe are the most important quotes from President Baker. Today, we will not only share those quotes with you, but we will analyze them to see what they may be able to tell us about the future of NIL under President Baker. But before we do that, Chris, it's actually been a while since we've been in the studio together for one of these, so let's get reacquainted with the audience. You want to introduce yourself?

**Chris Brolley:**

Yeah, sure. Thanks Cal. As you said, my name is Chris Brolley. I am a health sciences litigation associate in the firm's Philadelphia office, and I do some work with higher education institutions on compliance and all things NIL.

**Cal Stein:**

Thanks Chris. And of course, as I mentioned, my name is Cal Stein, I'm a litigation partner at Troutman Pepper. I represent colleges and universities including in internal investigations and state and federal enforcement actions and lawsuits. And I've also been advising them on any number of topics including most recently name, image, and likeness questions. With that, let's start our discussion. And Chris, I know we're eager to get into the details of what new president of the NCAA Charlie Baker had to say and what we can glean from those comments. But first, let's provide some context including starting with a question that many listeners may be asking, particularly those who unlike me are not from Massachusetts. And that question is who is Charlie Baker? The reason I say that many people might be asking that if they're not from Massachusetts is because those of us like me, who live in and around Boston and in Massachusetts are quite familiar with Charlie Baker because he is of course the former governor of Massachusetts.

He was a Republican governor here for two terms and he was very well liked. I personally was a big fan of what he did. But beyond that, he's also a former college athlete having played JV basketball at Harvard, after which he had a long career in state government. As I mentioned, he was very well liked, very well respected, had great ability to build coalitions, working across the aisle and really getting things done. All character traits that I think will help him as the newly minted president of the NCAA. In addition to a career in state politics, Charlie Baker also ran businesses here in Massachusetts. He was

the CEO of Harvard Vanguard, which is a Massachusetts based physician group and also its parent company, Harvard Pilgrim Healthcare, which is a health benefits organization. He also served on the board of Beth Israel Deaconess Medical Center, one of the top hospitals in the entire country.

So this is a man who has really had a diverse experience in terms of both state government and private business. And those experiences are the ones he will draw on as the new NCAA President. As I mentioned, he was a two-term governor here in Massachusetts starting in 2015, and he was extremely popular until he became the new NCAA President this past December. So that's who Charlie Baker is. Now let's get into what he has said about NIL since taking over as the NCAA president and today we are going to focus on his comments from two interviews in particular, both of which took place in March, which of course is the month every year where the NCAA thanks to March Madness takes center stage for almost everyone in this country. And the two interviews we're going to reference today are a March 7th interview he did with Andy Katz and a March 23rd interview he did with CBS during one of the broadcasts associated with the NCAA tournament.

Let's talk about why we're so focused on these two interviews, why they are important. Well, they're important because Charlie Baker's tenure as NCAA President is still new. We don't know what he's going to do about anything, let alone something like NIL that is still in its nation stages. Charlie Baker is coming to the NCAA from Massachusetts State politics. It's not even like he was working for the NCAA or in college athletics at all before taking this position. So we really have very little to go on in terms of deciphering what his position is going to be on NIL, what policies is going to favor, which he will oppose what his NIL priorities are going to be. So when he speaks during these interviews, we would all be advised to listen and listen carefully because that's all we really have to go on for now.

What can we learn from these comments? Now, what we're not going to do today is analyze every specific comment he made about NIL. What we think is more important and what makes more sense is to look at what he said as a whole and then pick out some themes that have emerged and really to see what he is emphasizing, what he is repeating. And this is, in our opinion, the best way to extrapolate the NCAA policies and priorities that should emerge under his leadership. So let's now dive into the two interviews I mentioned and start talking about some of the themes that have emerged. And the first theme is that Charlie Baker has some serious concerns about NIL generally. The first quote I want us to discuss goes directly to his concerns and it actually utilizes a phrase we have heard others use to describe the world of NIL, the Wild West.

Still, to me it feels very meaningful and very significant to hear that phrase being uttered by the new NCAA president. So here's what Charlie Baker said specifically during his interview with Andy Katz. He said, "The other thing I heard a lot about, and this is mostly from the adults coaches and presidents and athletic directors is the Wild West of NIL. One AD in particular said that the only thing that's true about NIL is that everybody's lying. And that just creates, in my opinion, huge issues for student athletes and families." It's quite a quote. Chris, what do you think?

**Chris Brolley:**

Actually, I want to go back to something you had mentioned regarding Governor Baker's time now as a new president NCAA. I think it's important and instructive going forward that he's in politics. He's by trade a politician and he took over for former President Mark Emmert who was involved with institutions. So I think he may bring some fresh perspective, some fresh ideas to all issues regarding the NCAA, but also with the NIL. Regarding his comment about the Wild West, I think it's either he's listening to our podcast and our webinars because that's a phrase that we've been uttering or he's just simply

repeating what everyone's been saying for the last couple of years. I think it is interesting coming from the new NCAA president, actually. I think Baker, he's acknowledging the reality of the current situation and is possibly subtly hinting at some big changes during his tenure as president.

As we've discussed at length in season one and season two, the NCAA has released several guidelines and clarifying guidelines and a number of states have passed NIL legislation, but there does not appear to be one governing body enforcing these rules. We can argue whether the NCAA's punishment of the University of Miami and the women's basketball team was an NIL violation. But in reality, the lack of oversight I think is a general concern for all stakeholders, whether it's the schools, the athletes, the parents, the collectives, the businesses, and I think his comment about the Wild West is he understands while this benefits student athletes regarding NIL, something needs to be done and something needs to change.

**Cal Stein:**

Yeah. You're quite right Chris. And the point about Charlie Baker coming to this job from politics is a really important one. One of the other things that we heard over and over and over in some of these interviews from him is that he is coming into this position as president of the NCAA and his first priority, at least according to him, is to listen to what stakeholders are telling him. So for him to say on the one hand, "Look, I'm showing up with a blank slate. I want to listen. I want to listen to my constituents, I want to listen to my member institutions." That is a very politician like approach. But then to counteract that with a statement like this one saying that, "NIL is the Wild West and that everybody's lying about it," I think that makes it even more jarring, even more important to listen to the words and to figure out what does that mean for him.

I mean, it's one thing for us to sit on a podcast and say it's the Wild West and speculate about what institutions are doing. It's quite another for the NCAA president to say it. And I think to your point, Chris, it's very consistent with some of the things we have seen from the NCAA in terms of hiring more enforcement staff and beefing up the enforcement rules, including the charging standard, flipping that around to make it easier to perhaps to charge some of these NIL violations. It's all very consistent and I think pretty interesting coming from the new NCAA president. Now, one question I had is regarding the comment that he made, that one AD told him that everybody's lying to me. That sounds like perhaps a little bit of an exaggeration. I'm not sure why any AD at a member institution would come running up to the new president and say, "Hey. Let me give you my unvarnished thoughts on NIL in this manner."

But once again, I'm not sure it even matters. I have no reason to believe that Mr. Baker is lying, but even if he's exaggerating slightly, the fact that he chose to put it that way, the fact that he chose to call upon that experience in this interview with Andy Katz, I think is pretty important. And I think one can interpret that as a signal from Charlie Baker that he is concerned that he has genuine concerns about NIL, and he views it as something of an untoward component perhaps of collegiate athletics, a component that perhaps incentivizes lying, incentivizes dishonesty, not just from some people or some schools, but as he said from everyone, that is surely a significant comment, at least in my book.

**Chris Brolley:**

And let's just say that some AD told him that everyone is lying. I don't think that's a fair statement. It's a wholesale blanket statement. Everyone in NIL is lying. Maybe some schools are being a little more creative than others and how they're structuring their collectives or their funds and facilitating NIL deals between student athletes and these businesses or collectives. But I just think it's not fair to be making a

general statement that everyone is lying. I think that does more harm than good. The website on three, which reports on college athletics had a story today about NIL collectives and the implications of 501(C)(3)s given tax season right now and the end of the story, they interview an NIL collectives executive director who said, "This is no longer the Wild West, it's just the west now." And I quote, "This is our new normal and we either adapt or die."

And I think that we're seeing a lot of that now. And I think it's not necessarily lying, it's just getting ahead of what the rules are at the moment. We'll discuss this in a little bit, but there's no federal legislation whether or not that will matter. And I think the schools are just trying to get ahead of the NIL laws and trying to help their student athletes as best as possible within the guidelines. I just didn't think it was fair to say if that's a true statement, that everyone is lying.

**Cal Stein:**

Yeah. I think that's a good point, Chris. And it actually segues very nicely into the next quote that I want to read from Charlie Baker that we're going to talk about, and this is the next quote, and this is from the CBS interview. He said, "The biggest challenge with NIL right now is what I call a consumer protection one. There are no roles, there is no transparency, there's no accountability, there are no standards. And we're putting student athletes and families in a rough position because of that." An interesting quote, the first thing I thought of was as a lawyer, I'm like, what is consumer protection? Well, when I think of consumer protection, I think of state statutes that prevent businesses from making misleading advertising claims and things like that, protecting the people who are consuming goods and services from the claims of those who are making and providing the goods and services.

I'm not sure that's exactly on point here. Who would the consumers be? I'm not entirely sure, but what I do think is clear from this quote is that Charlie Baker is very concerned about protecting student athletes and their families. And I think he's getting at something else here that you just referenced, Chris. I think what he's getting at here is the notion that we need to level the playing field for some of these member institutions. And that's why he's using words like transparency and accountability and standards. I think what he's looking to avoid is the situation where the lack of rules and the lack of accountability around NIL ends up resulting in rule breakers perhaps being rewarded rather than punished, and those who follow the rules ending up falling behind.

And that goes to your point, Chris, about, well, is everybody lying? Are only some people lying. That comment almost feels like a little bit of sour grapes from someone who feels they're following the rules and as a result of other people not following the rules, they can't keep up. And I wonder if that's one of the themes that Charlie Baker is getting at here with his focus on transparency and accountability.

**Chris Brolley:**

Yeah. I wouldn't necessarily agree that consumer protection is the biggest NIL challenge right now. I think there's a myriad of challenges that we know about and that maybe we don't know about. But I do think it speaks to what many schools, families, kids, student athletes that they feel, like you said, lack of transparency on all sides of the equation I think. The contracts aren't being made public, so other student athletes or collectives or institutions even navigating this NIL landscape, they don't know what they don't know.

And on the side of the student athlete, many may be being taken advantage of. So I think what he's trying to really get at is, I think you touched on it a bit before, is making sure there's no predatory behavior. So I think he's trying to really reign that in and just make things a little bit more transparent.

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And I think just giving enough information to all sides so that everyone can make an informed decision going forward.

**Cal Stein:**

Yeah, good point. And again, a nice segue into the next quote, which comes from the Andy Katz interview. And I found this one really, really interesting, although maybe flow under the radar a little bit. This is what Charlie Baker said about hearing from schools. He said, "Boy, I'll tell you the noise coming from the schools about the lack of any accountability or transparency around NIL is pretty intense." And I'll tell you, Chris, the reason I like this one the most or one of the most is because this struck me as a real politician, politically savvy, comment. Because what's he talking about here? What he's saying is that his constituents, the schools, the institutions that comprise the NCAA, they're the ones who want more rules. They're the ones who want more accountability. So if that comes, it's not coming from him, it's coming from the schools, it's coming from the institutions that really hired him. And it's a really smart move. I think it's a savvy move that puts an interesting spin on what we all expect will be some additional enforcement activity under his administration.

**Chris Brolley:**

I agree with that. I think it's fair to say it's not a controversial statement, but people, schools, student athletes, wherever it may be, people want to follow rules, people want to have some guidance, some rules that are put out there so everyone knows exactly what's going on, not unlike the current situation, but there's just a smattering of different rules. It's a patchwork of state laws. It's NCAA, NIL intern policy. So a lot of schools, from our experience, people are guessing they're looking to other schools for guidance instead of looking to the NCAA or the other states.

I think there are some schools that certainly would prefer less transparency as they may benefit from the lack of transparency. But I think all schools just want to make sure schools, parents, students, families, just want to make sure that they're following the rules. Because if one rule is broken by a student athlete, that could affect the school. If the schools don't have proper accounting measures and aren't keeping track of NIL deals, then they get dinged for some enforcement action. And we know that Charlie Baker, he has the ear of all these universities. So I do think there are schools that want some rules in place so they know what to follow instead of looking to other schools for guidance.

**Cal Stein:**

Yeah, it's a good point. And again, fits in with this theme of maybe wanting to level the playing field a lot when we're talking about noise, and that's his word noise coming from schools about NIL and the lack of accountability and transparency, call me crazy, seems realistic to me that there could be schools out there that are following the rules and following behind complaining and generating noise that we need more accountability. Seems less realistic to me that some of the schools that perhaps are being more aggressive and taking advantage of the lack of regulatory landscape are making noise about wanting rules or less accountability. We'll have to see what happens there.

Let's move to the next theme from some of Charlie Baker's comments. And that theme is that he would very clearly like some help in this NIL rulemaking endeavor, but he isn't necessarily going to count on it. You mentioned Chris, some reference to federal lawmaking or federal rulemaking, and let me read this quote from Charlie Baker from the Andy Katz interview. He said, "I would love to see the feds, and I think we as an organization need to work on this too, coming up with what I would describe as some

transparency and accountability standards around NIL." Okay. So again, we're talking transparency. We're talking accountability. But here he's saying he'd love to see the feds give some help. And I actually question whether Charlie Baker really thinks the feds i.e the US Congress is going to help him with federal NIL legislation. Charlie Baker is a smart guy. He's been in politics for a long time. I think he knows that the US Congress isn't about to pass anything into law anytime soon, let alone taking up something like NIL legislation.

And while federal legislation might make Charlie Baker's life easier, because he would not have to be the tip of the spear and acting and implementing comprehensive regulations on NIL to get accountability and transparency, conversely, would federal legislation over collegiate sports really be beneficial to the NCAA member institutions? I mean, my reaction is almost certainly not. Laws that would be enforceable by federal agencies are worse yet federal prosecutors all over the country, that might not be such a good thing for institutions. So what's Charlie Baker's game here? Why is he talking about help from the feds if it's not realistic and really wouldn't be all that helpful? I'm not totally sure, but maybe we can speculate on that. Chris, I don't know if you have any thoughts.

**Chris Brolley:**

I think you hit on the head. I mean, I'm not entirely sold either. I don't think that it'll really affect the current NIL landscape. May make some things more uniform and consistent, which people, schools and athletes want but I still think we're going to be seeing the same issues that we're seeing before federal legislation. Lack of transparency for one. I do think one thing's for sure we will see more enforcement actions. I think that's what Charlie Bakers may be hinting at. I don't think he's counting on federal NIL legislation, but I'm not sure if he's waiting for it either. Take a look at the NCAA interim NIL rules, that one page document, it still says that the NCAA will continue to work with Congress to develop a solution that will provide clarity on a national level.

And it's been since 2021. We're in 2023 now, and we're still waiting for that clarity. So I'm not really sure that he expects them to pass something anytime soon. But maybe this could be a signal. He was a politician. He has the ear of Washington. Maybe he could push them along. And we're seeing some of that. Congress is holding hearings at the moment and there could be something in the near future, but I'm not really sure if federal legislation will really affect or impact the NIL landscape or the issues with the NIL laws that we're seeing today.

**Cal Stein:**

Yeah. No, that's right. Now I've got another quote here that I'm going to read, and then I'm going to offer a possible explanation for some of this, and I'll be interested to hear your take on that, Chris. But let me read this next quote again from the Andy Katz interview. Charlie Baker said, "I think we should be running our own track on what we think consumer protections for student athletes and families should look like at the same time we're talking to Congress. If Congress ends up doing something that has more weight, I suppose, than what the NCAA and its members could do on their own. But I think both of these conversations will inform the other." Okay. So very clearly he's referencing, again, talking to Congress, hoping for something from Congress, but not counting on it, doing his own track with the NCAA.

And here's a thought on what his game might be here. Is it possible that what Charlie Baker's really getting at here is he's hinting at the possibility of federal legislation to try to grease the wheels for his own NCAA comprehensive policy on accountability and transparency. He clearly wants that, and perhaps he's looking at the challenges ahead of getting the entire NCAA to agree to those types of changes in the

bylaws. So by suggesting federal and congressional intervention, he's making that prospect look more and more attractive because in reality, he's right about one thing, which is that federal legislation would have, and to use his words, more weight. There are NCAA bylaws that can only go so far. NCAA does not have subpoena power the way a federal law enforcement agency would. So there are certainly some things that can be done by federal law that the NCAA can't do on its own. And maybe, just maybe by raising that possibility, Charlie Baker is making comprehensive NCAA legislation on the matter look more and more attractive to the member institutions.

**Chris Brolley:**

I agree with that. When he suspected that Congress could do something with more weight, I've listened to that mostly as something to do with enforcement. We've talked about this at length today, previous episodes, the states have been doing a pretty good job of enacting legislation and creatively expanding the NIL space, but the laws are effectively toothless until a state AG or regulatory body actually enforces the laws. So I think everything is on the table right now, and I do think he's trying to create or craft some NCAA NIL legislation, some plan to, like we've been talking about, to have more transparency, to have more guidelines and not the guidelines that we've been seeing, but something with a little more teeth. And I think that goes hand in hand with enforcement actions.

**Cal Stein:**

Okay. So let's now turn to the third theme that I think emerged from these interviews, and that is that Charlie Baker is not just coming with problems. He's coming with some solutions. He's got his own ideas on what he would like to see implemented regarding NIL. And Chris, I'm going to read this last quote from the Andy Katz interview, which has a few things in it, and then maybe we can tick them off one at a time. So here's the quote. He said, "For example, there probably ought to be a uniform standard contract. You probably ought to have to register your contracts. You probably ought to have to get certified to be an agent. There's a whole bunch of things we can do here to make it more accessible and accountable to the kids and families who are participating in NIL."

All right. So let's actually talk briefly about each of those, starting with his idea that there should be a uniform contract. And my first question is how would that even work? NIL money is different from athlete to athlete. The NIL services are different athlete to athlete. And even putting aside the logistics, there's an argument to be made that NIL can and would be most effective if it operates in as close to a free market as it could. And this to me seems like it could run counter to that. And that's before you even get into the comparisons of standardized NIL agreements, starting to sound like schools paying players like they're employees, which may be on the horizon one day, but isn't right now. So I don't know if you had any different reactions, Chris, I'd be interested to hear what you thought.

**Chris Brolley:**

I think you touched on it a bit. I think as long as these contracts do not include some market cap on NIL earnings, then I think it benefits all parties, especially the student athletes. And interestingly enough, he was actually asked if these standard contracts or the uniform standard contracts would include some market cap, and he vehemently denied that they would. So I think that's a good starting point because you know that this is to benefit the student athletes to have them be paid what the market dictates. And I think to put it bluntly, it would be a terrible idea to put some cap on that. So as long as these standard

contracts do not have a market cap on their earnings, and I think it could be good for all parties involved.

**Cal Stein:**

Let's turn now to his second idea, some contract registration requirement, whether that would be a good thing or a bad thing for student athletes. And this one makes a lot of sense to me at least. He talks about transparency. What better way to create transparency than to make every student athlete who is doing an NIL deal disclose the terms of those deal, whether it's public or just to the institution or just to the NCAA, some level of disclosure and transparency there would perhaps level the playing field a little bit for student athletes and their families by giving them more information. I can't help but recognize, it would also combat something he talked about, and we mentioned earlier, what he thinks is lying that's going on by individuals involved. Disclosing NIL contracts would certainly do that, but I'm not sure if this is all that realistic of a proposal, although the NCAA certainly could require it.

**Chris Brolley:**

I'm definitely all in on this idea. I think like you said, it would be more transparent people, student athletes will be able to see the deals others are getting. They would be able to put in actual dollar figure on fair market value. That's been some ambiguous term that we've thrown around in previous episodes. How do you define fair market value? There's some websites that do have some algorithms that look at number of followers on social media. The amount of money they're making, et cetera, et cetera. So I think conversely, we may see businesses or collectives reign in what they're spending on these players. It may actually level the playing field for men's and women's sports, these collectives or businesses maybe paying a star football player millions while a women's basketball player, only a few thousand. So I think having some transparency would allow for some equality between men's and women's athletics.

**Cal Stein:**

That's a great point, a really great point, Chris. And maybe one that is changing my mind about this idea that Charlie Baker had in and of itself. I'll throw one other thing out there in terms of this idea of disclosing agreements. As we know, the big requirement is that these deals can't be used as an inducement. I wonder what the impact on enforcement would be if you had institutions and athletes having to disclose these deals. It's a lot easier to push the envelope, shall we say. When you have confidence that these agreements, these numbers, the payments, it's all going to remain hidden. If you knew, for example, that it was going to be disclosed or there was the possibility that was going to be disclosed, I wonder what impact that would have on the size of these deals and what impact that would have on the NCAA's ability to enforce them via this anti inducement requirement.

The last thing he suggested was agent certification, which I don't think is a very controversial idea. I think it's a good one. I think everyone would benefit from it. So I don't think we need to spend much time on that. But let me ask one final question here, which is these ideas that Charlie Bakers suggested, do you think, Chris, they would actually lead to more accountability? And if so, accountability by who? Would it be schools? Would it be collectives? Would it be agents? Would it be student athletes? Would it be everybody? What's your take on that?

**Chris Brolley:**

I do think so, and maybe this is an easy cop out answer, but I think all stakeholders, schools, collective agents, student athletes, I think his comments, if they were to come to fruition in a perfect world, if they were all implemented and we were able to see all these things, I do think everybody would benefit. It would actually lead to more accountability from all parties. Everyone involved in NIL, which we know, as we've discussed, there's a lot of different entities and a lot of different parties that are involved in NIL. So it's maybe an easy answer, but I think yes, it would lead to more accountability from everybody, from all parties.

**Cal Stein:**

Yeah. I think I agree with you. I mean, bringing these NIL arrangements, these NIL deals, these NIL relationships, bringing them all out into the cold light a day, it's almost like how could it not have that impact? Whether there are other effects that come from it, whether some of the deals are chilled, whether the amount of money is chilled, those are other aspects of it. But for someone who is very focused on accountability and transparency, I tend to think that Charlie Baker's on the right path here. Whether he can actually get any of it implemented, that remains to be seen.

And with that, we are out of time for our discussion here today, so I want to bring it to a conclusion. Chris, good to be back in the studio with you. I want to thank you for joining me here. I want to thank everyone for listening. If anyone has any thoughts or comments about this series or about this episode, please contact me directly at [callan.stein@troutman.com](mailto:callan.stein@troutman.com) or contact Chris directly at [christopher.brolley@troutman.com](mailto:christopher.brolley@troutman.com). You can subscribe and listen to other Troutman Pepper podcasts wherever you listen to podcasts, including on Apple, Google, and Spotify. Thank you for listening and stay safe.

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