

**HIGHWAY TO NIL #2603: EXECUTIVE ORDER - APRIL, 2026**  
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**0:00:06.6 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 I athletics. 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 Locke. I am coming to you today with my partner in crime, Mike Lowe, to discuss a major piece of news impacting colleges and universities that dropped late on April 3rd, to be specific. Of course, I'm talking about President Trump's executive order titled "Urgent National Action to Save College Sports." The name itself, I think, represents accurately the entire tone of the executive order, which does, in fact, suggest significant urgency on the part of President Trump and the actions that he took through the executive order.

**0:01:14.6 Cal Stein:** Frankly, it's not all that surprising that President Trump took this action through an executive order. It's something that he has taken an interest in and he has not been shy about that at all. Consistent with that interest and the urgent nature of the executive order, it is chock-full of content. Today, we are going to walk through some of the key parts of the executive order and give our reactions and thoughts on

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how it is going to impact colleges and universities and others involved in college sports. But before we dive in, Mike, you want to introduce yourself, even though I think most people already know you?

**0:01:54.4 Mike Lowe:** I'm happy to introduce myself again. For those who don't know me, who haven't listened to the program or read our NIL Revolution blog, my name is Mike Lowe. I'm a partner in the litigation group along with Cal. Just like Cal, part of my practice includes NIL, all things NIL, including representing a Division I conference in connection with NIL. This is a big deal, as Cal mentioned, and it's something we thought was worthy of a very quick podcast. Let's have at it, Cal.

**0:02:24.8 Cal Stein:** All right, sounds good. Well, look, we're not gonna be able to go through the entire executive order. It's just not possible in the time that we have. But we're gonna go through what I think and what we think are the key pieces. Let's start at the beginning, which is the Section 1 titled "Purpose and Policy". Let me read a little bit from that section as kind of an opening and we can talk a little bit about it, Mike. This is, to me, I think, one of the key pieces of that opening section. President Trump in the executive order writes, "Amid pressure, the rules governing pay-for-play, eligibility, and other aspects of college athletics have been substantially loosened through a number of judicial rulings. Additional rules that could institute order and consistency in these systems have been nullified by some state legislatures that are incentivized to advantage their own states' universities in the competitive market for student-athletes by

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minimizing barriers to recruitment. This chaotic state of affairs has undermined competition, reduced opportunities for student-athletes, and jeopardized support for the current range of college athletics, particularly women's and Olympic sports."

**0:03:39.5 Cal Stein:** "Fair competition cannot occur without a consistent set of rules concerning pay-for-play or player eligibility that cannot be endlessly relitigated in court." Let's pause there, because to me, this is a really important passage that I think shows the underpinnings of why President Trump is doing that. It's a focus on, in my view, fairness and what President Trump and many, he is certainly not alone, perceive to be unfairness in the current state of affairs, the, "chaotic state of affairs" as he describes it, and particularly unfairness to women student-athletes and Olympic sport student-athletes. Mike, do you read it the same way?

**0:04:26.4 Mike Lowe:** I do read it largely the same way. But there's parts of this that I think we really have to look at and understand the perspective, because most of what's written there really is what the conferences and what the institutions believe and what most of us believe. But if you're looking at it from the perspective of the student-athletes that are making the money, this sort of open opportunity to bounce around and maximize their worth is what they want. I do agree with you that stuff needs to be done, that it is chaotic, and that there is unfairness among the different institutions and among the different conferences and among the different states. I think it's a really good starting point for the administration to take.

**0:05:17.4 Cal Stein:** Wouldn't you say, Mike, that there's unfairness even within a singular institution across sports and across different teams and programs? I think in many ways that is the underpinning of the "Purpose and Policy" section here. He focuses on women's sports and Olympic sports. While I fully agree there are many, many college athletes, men's and women's college athletes, who have made a good deal of money with this wild, wild west open state of affairs where they could jump from school to school and NIL deal to NIL deal and go to the highest bidder, I think one of the things that this executive order gets at is the collateral damage that type of situation can cause for the athletes and the programs who don't have those opportunities, who can't as easily jump from school to school taking in all the opportunities, all the offers, and just go to the highest bidder.

**0:06:14.6 Mike Lowe:** Yeah, you're right about that. But again, what does it come down to? Whose perspective are we looking at this from? Ultimately, a lot of what drives the NIL money is the revenue-generating sports. You could say, yes, it's unfair to the non-revenue-generating sports or the Olympic sports that don't generate much, if any, money. But is that really unfairness? As opposed to would it be unfair to the athletes in the revenue-generating sports to say that you don't get the same wide-open opportunities that you're enjoying right now? I'm not taking a position on it. I'm just saying it is partly a matter of perspective. But from the perspective of the institutions and the conferences, there is chaos. There is something that needs to be done, and that's

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something I think anyone would agree with when you're looking at it from that perspective.

**0:07:09.6 Cal Stein:** Well, that's a great segue into the next part of that first section where President Trump talks about exactly that. Here's what he says. He says, "Absent a comprehensive national solution, therefore, the escalating financial demands to succeed in football and basketball, combined with the significantly loosened rules governing eligibility, transfers, and pay-for-play schemes, may force curtailment of women's and Olympic sports and may even jeopardize the overall financial well-being of universities with which the federal government has important financial relationships." He goes on, "Without a national solution to protect the future of competition and opportunity in all college sports, it is possible that the largest college football programs will be forced to seek stability through a negotiated solution that may result in the withdrawal of financial and other resources from women's and Olympic sports. The Congress is strongly encouraged to expeditiously pass legislation that satisfactorily addresses these issues, but further delay is not an option given what is at stake." Let's unpack that last part, actually, the encouragement of Congress to actually pass legislation. Mike, we've talked a lot about this. There are some bills floating around. Are we any closer to any sort of national legislation on this issue?

**0:08:32.9 Mike Lowe:** Well, we haven't been, but this may start, to use a football analogy, advancing the ball on that. I think this is the right statement for the President to

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make if the goal here is to get Congress to act. Without opining on the accuracy of the statement, I think it's something that if you want to say to Congress, "Look, you guys have to act," then you need to make a statement like this where you're effectively saying everything else is in jeopardy, including women's sports, because that implicates Title IX, which would be a reason for Congress to get involved.

**0:09:07.5 Cal Stein:** I completely agree. I think this is a strong statement and a statement that is needed. In fact, I'm going to give President Trump even more credit in this executive order because he doesn't just say, "Congress, you need to act and you need to act quickly." He says that in the first section and then goes on in later sections, which we're gonna talk about right now, to give what I would argue is a little bit of a roadmap for what he thinks that Congress ought to take up in that legislation. Let's explore that a little bit. We're going to start now in Section 3 of the executive order, which is the definition section. This is actually an interesting way to structure it. But I think the way President Trump in this executive order defines certain terms gives us a lot of insight. Let's start with the first key term that he defined, which is "improper financial activities." This is how he defines that term. He says, "Improper financial activities means the following actions taken by a federally-funded higher education institution, including its officers, agents, affiliates, or representatives: One, intentionally devising or participating in a fraudulent name, image, and likeness scheme. Two, knowingly accepting contributions, financial or otherwise, from persons who intentionally devise or participate in a fraudulent NIL scheme."

**0:10:32.7 Cal Stein:** "Three, using federal funds for NIL or revenue-sharing payments or for any type of payment or benefit to a coach, assistant coach, general manager, recruiter, or other person engaged in coaching or managing an athletic team. And four, tortiously interfering with a contract between a student-athlete and another federally-funded higher education institution, including a scholarship agreement." Certainly, President Trump is focused on apparently fraudulent NIL schemes. But the one that really caught my eye, Mike, and I'm interested if it was the same for you, was the last one, the tortious interference.

**Mike Lowe:** Yes.

**Cal Stein:** Because that's something we've talked a lot about and has been a huge issue. What's your reaction there?

**0:11:15.8 Mike Lowe:** Yeah, that's a very strong statement, and that's the one that is interesting because what is going on in the world of college sports now is that the focus is on tampering. The focus is on the schools that want to get the big player going after that player prior to the entry into the transfer portal. President Trump is calling them out and basically saying, "This is gonna be something that we view as an improper financial activity."

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**0:11:48.2 Cal Stein:** Yeah. I mean, we've been talking about this for a while. We've been talking about tampering. We've been talking in some of these cases where a high-profile quarterback gets poached by another school, and the school that he's leaving wants to take legal action. There's really not a realistic path to get an injunction to prevent him from playing for the new school. What recourse do they have? Tortious interference. It's something we've talked about. I'm just gonna ask it, Mike. Do you think that this is a plea or a direction by President Trump to Congress to say, "You need to put in place some sort of rule or some sort of law that would prevent this"? Or maybe it's to the NCAA to say, "You need a rule, a better rule that would prevent this"?

**0:12:31.6 Mike Lowe:** Cal, I think this is really directed to Congress because, as you know, we've talked about this over and over again that some kind of legislation is urgently, urgently needed. The reason for that, I think, is the basis for all the rulings that favor the student-athletes have been on antitrust grounds. It makes sense because if you look at all the NCAA rules that are being invalidated or being enjoined from being enforced, it's all on antitrust grounds. It's all based on the court saying, "Well, this rule effectively is an unfair restraint of trade on this student-athlete's ability to earn the money they could get for their NIL." The only way you're going to get some kind of binding resolution here that actually stands up is if you have legislation, much like you have for Major League Baseball where they have an antitrust exemption. Congress needs to act. That's the only way the litigation will stop. I think viewed from that perspective, what the president here is saying is, "Congress, you need to act. And here

are the things you need to address," and the tortious interference is one of them.

Because look, right now, what can these schools do to your point, if their athlete gets poached?

**0:13:54.4 Mike Lowe:** They're not employees, so you can't get an injunction preventing them from going to play for another school. All you could do as the school that's losing that student-athlete is you can demand that the other school pay you back for whatever NIL deal you had in place, what your damages are. Then obviously the NCAA could impose some kind of a sanction on the team that did the poaching, penalizing them in some way. But ultimately that'd probably get challenged by the school too or by the athlete. So, you need legislation.

**0:14:25.4 Cal Stein:** Yeah, no, I think you're exactly right there. Well, let's talk about the other piece of this, which I mentioned, which is these fraudulent NIL schemes. I actually think the way President Trump defines that term is pretty indicative of where he's going with this as well. He says, "Fraudulent NIL scheme means a scheme to pay for goods or services, including NIL services, above the actual fair market value of those goods or services in connection with a student-athlete's participation in intercollegiate athletics, including through the use of collectives or similar entities." Then he goes on to say, "The term does not include, among other things, it does not include fair market value compensation provided for the NIL rights of a student-athlete by a third party not affiliated with the athletic department of a higher education institution for a valid

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business purpose that is related to the promotion or endorsement of goods or services provided to the general public for profit, and that is not tied to participation in the athletic program of a particular higher education institution at rates and terms commensurate with compensation paid to individuals with NIL rights of comparable value who are not student-athletes." There is a lot to unpack there, but there are a lot of phrases in that definition that we have heard before. Fair market value.

**0:15:48.3 Mike Lowe:** Well, wait, Cal, I'm sorry to interrupt you, but there's a clause that you left out at the end of that when you said, "who are not student-athletes." It reads, "who are not student-athletes at the applicable higher education institution." The way I read that is you would look to the NIL that student-athletes at other higher education institutions are getting to determine fair market value.

**0:16:12.1 Cal Stein:** No, you're actually exactly right, and I should have read that. But it still comes back to all of these concepts that we've heard and that I think everyone has really been grappling with. Fair market value, valid business purpose, rates and terms commensurate with compensation paid to others. All of this sounds good, but in your view, does this definition of fraudulent NIL scheme, does that really get us any closer to understanding or drawing lines about what is and is not permissible?

**0:16:46.1 Mike Lowe:** No, no. This is all touchy-feely. This whole fair market value thing is touchy-feely because it's subject to argument. It's subject to somebody's view of

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what is fair, what someone else's NIL is worth, and it would be contested. If there's an adverse determination that a deal was not fair market value, that's gonna be fought, and who makes a decision on it? I mean, there's so many unanswered questions. Does this fall back to the CSC, the College Sports Commission, to make the determination? To me, it doesn't add much to this executive order.

**0:17:24.5 Cal Stein:** I completely agree. I'm really glad you said that because I read this, I read it again and again and again, just looking, searching for something that gives a little bit more teeth, a little bit more definitiveness to what is and isn't permissible. Quite frankly, I just couldn't find it. I hope eventually we get there. Okay, let's move on to Section 4 of the executive order titled "Protecting Women's and Olympic Sports and Preserving Higher Education Financial Responsibility," which in and of itself I think is a very interesting title for a section. But really what I found interesting about this section are all of the things that President Trump is directing other people, other agencies, other governing bodies to do. Let's go through a couple of those. First, the executive order says this. It says, "Agency heads that contract with or provide grants to higher education institutions shall, shall, as appropriate, evaluate violations of the applicable lawful and operative interstate intercollegiate athletic governing body rules in effect as of August 1, 2026 concerning the following to determine whether they are a cause so serious or compelling in nature to affect the present responsibility of the recipient."

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**0:18:48.2 Cal Stein:** These are the issues. These four things are the issues that President Trump is directing these agency heads to look into. Number one, eligibility limits. Number two, transfers between institutions. Number three, revenue sharing permitted between higher education institutions and student-athletes. Number four, permissible and improper financial activities. Now, I'm not exactly sure what President Trump is actually directing these, quote, agency heads to do, but what I think I am sure about is these four things that he lists here are probably the four things that he cares most about or that he is most concerned about within college sports and threatening college sports. What do you think?

**0:19:32.5 Mike Lowe:** Yeah, I think you're right about that. I think two of these are, in my view, the biggest issues right now, the eligibility limits and the transfers. Because no matter what your perspective on this is, ultimately, even if you're taking the perspective that the student-athlete should be able to maximize their NIL, the money has to come from somewhere. The money is being paid based on the value of the product and the student-athlete's contribution to that product. Part of what's going on in college sports today, in my view, is that it's become such a free-for-all with the constant bouncing from one school to another of these top athletes every single year that you don't have any consistency in the roster anymore, which to me affects the fan base. Maybe it hasn't affected it yet, but I think there's a danger, a real danger, that if this continues to get worse, that you start to lose support for these sports from the fans, who are the ones that are willing to spend the big money to buy the tickets, who are the ones that are

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buying the gear, which means then the networks that are paying the big money for the contracts to air these games ultimately will start paying less and less, which means the money that the student-athletes can make from their NIL would be reduced.

**0:20:55.5 Mike Lowe:** I think it's in everyone's interest to have a framework that works more fairly, that works for the fans, that works for the athletes, and that works for the institutions and the conferences. In my personal view, the ruling that effectively got rid of the requirement to sit out a year when you transfer, that was the one that really turned this into the wild, wild west. Because now the student-athletes, they can just bounce without having to do that. It's literally like, let me see who's gonna pay me the most money – and I use that term, pay me the most money – it's more legally accurate to say compensate me the most for my NIL, right? That's why they're ostensibly bouncing from school to school.

**0:21:38.5 Cal Stein:** Yeah. Euphemisms aside, I think I completely agree with you on that, and I agree with every point that you just made. I think it again dovetails nicely into the next section. Here's what the executive order says next. I think in many ways this is the most important section of the executive order because it most clearly signals the policy decisions that President Trump believes, that this administration believes, and that he, I think, is signaling ought to be adopted in whatever rulemaking occurs. Here's what he says next. Here's the next direction that he gives. He says, "The interstate intercollegiate athletic governing body for higher education institutions should update or

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clarify its rules before August 1, 2026 to adequately protect opportunities for scholarships and collegiate athletic competition in women's and Olympic sports, including by establishing the following." These are the things that I think he is really focused on. Number one, age-based eligibility limits under which participation in college athletics is permitted for no more than a five-year period, with limited exceptions for military service, missionary service, and other periods of absence from participation that are in the public interest, and professional athletes cannot return to college athletics.

**0:23:01.1 Cal Stein:** Let's actually pause there because let's talk about these age-based eligibility limits. What's your view on that, Mike? This is something that I think they've been dancing around, and quite frankly, courts have been creating some issues with these eligibility rules, including most recently a U.S. circuit court ruling that even eligibility rules are commercial in nature and are therefore subject to antitrust laws. What do you think of what President Trump is suggesting here?

**0:23:29.1 Mike Lowe:** I like it. I mean, honestly, Cal, this is something that I believe in personally. There is a need to account for the fact that college sports weren't meant to be professional sports, right? They were meant to be a stopping place for athletes on their journey through life. You've got to remember there are high schoolers coming up behind all these college athletes, and without any kind of restrictions on how long a college athlete can continue to play and now be compensated for their NIL, then what happens to the athletes who come behind them? What do they do? Where are their

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opportunities? When you look at it from that perspective, to me, having an age-based eligibility limit is also something that makes a lot of sense, and it dovetails in with the five-year rule. We've talked about, you and I, on this program and I believe in our blog posts, how crazy it could be if you don't have some sort of a time limit or a number of years. Student athletes can stay in school and pursue degree after degree after degree and continue to play for the school 10 years, making NIL money the whole time, taking opportunities away from others who come behind them.

**0:24:51.5 Mike Lowe:** Unless there's some sort of legislation, in my view, to your point about the antitrust issues, that's gonna continue to be the impediment to a rule by the NCAA or any other intercollegiate governing body. If you don't have legislation, you can't get around the antitrust problems, and you're still left with the risk that a court somewhere in some district will rule against you. If one court does it in one district, how does that now play out with schools in the other districts? The NCAA basically then has to sort of level the playing field in response to that one district court ruling. Federal legislation is needed, and I agree with what President Trump is suggesting here.

**0:25:38.0 Cal Stein:** I'm in full agreement. You know, I'm in full agreement, as you said. We've talked a lot about it. I still think there's gonna be a college football quarterback who tries to stay in college for 10 years because he can make millions of dollars in revenue sharing and NIL money on the college level and not at the NFL level. But this type of eligibility limit would certainly address that. Let me talk and I'm going to

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paraphrase the next one because I don't want to spend all our time reading from this, but there were a couple other things in this section that President Trump hit on. The next one is transfer-related rules, which would allow student athletes to transfer once during a five-year period with immediate playing eligibility. Doesn't say anything about non-immediate playing eligibility. You could potentially transfer again under President Trump's view while sitting out a year, and one additional time if they obtain a four-year degree. This goes, I think, directly to one of the things you were talking about, Mike, which is we are in a situation now where it is really, really difficult because student athletes are transferring year after year after year. What do you think about that?

**0:26:44.1 Mike Lowe:** It's one proposal, and I think some proposal needs to be adopted by the Congress.

**0:26:49.3 Cal Stein:** Do you think it goes far enough? Do you think it goes far enough?

**0:26:52.5 Mike Lowe:** I mean, I don't think there's enough detail, Cal. Honestly, I don't think there's enough detail here to really give an opinion on whether it goes far enough because what does this mean? One additional such time if the student athlete obtains a four-year degree. Does that mean after the fourth year they could stay and play another year of college football while they're not taking classes? It's unclear to me, and I don't really have a personal issue with transferring once without having to sit out a year.

Maybe a better solution would be if you want to transfer again, you have to sit out a year. I don't know. But something's needed.

**0:27:27.1 Cal Stein:** That's what it used to be, right? That's what it used to be. A couple of other things that I'll just mention here that President Trump identified in the section: medical care for student athletes for intercollegiate athletic-related injuries. I think that's something that's gonna have broad support. Implementation of revenue sharing. We've spent a lot of time talking about that. Prohibition on the use of federal funds by higher education institutions for NIL or revenue sharing payments or coaching or athletic compensation. Again, these are all things I think that have broad support. Prohibition on improper financial activities regarding student athletes. This one I found very interesting: a national student athlete agent registry and reasonable protections for student athletes from excessive agent commissions. This, I think, goes directly to some of the consumer protection things we've heard from Charlie Baker and from others. But I would suggest, again, it's a good idea and one that's gonna have broad support but probably suffers from what you were talking about a moment ago, which is a lack of specificity, at least at this level.

**0:28:35.0 Mike Lowe:** Yeah, I would agree with that last point. Look, ultimately, this is an attempt by President Trump to get the ball moving, again, to use another sports analogy, and to get the Congress to do something. Will it work? Remains to be seen. You know the Congress, I mean, how much has been getting done?

**0:28:54.5 Cal Stein:** Right. Fair point.

**0:28:56.1 Mike Lowe:** But maybe something will get done.

**0:28:58.2 Cal Stein:** Fair point. Okay, so let's jump ahead to Section 5. This is the last thing that I think we'll talk about here today. But it's a direction from President Trump to the Attorney General, of course. Interesting timing insofar as it comes mere days after he fired the current Attorney General, before the new Attorney General is gonna assume the responsibilities. But this is what it says: "The Attorney General shall take appropriate measures to further meritorious actions to invalidate state laws that conflict with interstate collegiate athletic governing body rules and discriminate against out-of-state commerce or unduly burden or impede interstate commerce in violation of the Constitution, impair a contractual relationship in violation of the Constitution, or are otherwise invalid under federal law." To me, this is revealing something that I think has really, really irked President Trump, which is state laws. He mentioned it, you may recall, way back at the beginning in that opening section. He seems really irked by these state laws that conflict, in particular state laws that seek to give in-state institutions a competitive advantage. Here he is directing his new Attorney General to take appropriate measures to actually litigate, to invalidate state laws that conflict with, I suppose, NCAA rules. What do you make of this, Mike?

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**0:30:39.0 Mike Lowe:** This is another one of those components of this Executive Order that I think are really too vague to have a lot of teeth at this point. I get the idea. It's a warning shot to the state legislatures to say, look, I'm concerned about this. But to be fair, I don't think the state laws that are passed are discriminating against out-of-state commerce. I haven't seen one. I mean, just because you pass a law in a particular state that allowed, for example, going back before the House settlement, there were state laws that were being passed that permitted NIL payments from institutions, let's say. At the time, that was not yet the rule of the NCAA. But certain states were saying, "This is how we want to view it." I don't think that was discriminating against other states, or at least you could make the argument it wasn't because other states could pass similar laws. What does this mean, that it would unduly burden or impede interstate commerce? I don't know what that means, and I don't think the Attorney General would really know what that means. I don't think this section has a lot of teeth yet. Now, maybe when and if it turns into legislation, it would be a little more clear.

**0:31:53.7 Cal Stein:** Yeah, you raise a bunch of good points. I wonder if this isn't, as you said, less a direction to the Department of Justice and the Attorney General to litigate as much as it is a shot at state legislatures, basically telling them, "Hey guys, cut it out, okay? Cut it out. We need uniform rules here. And you all, you individual states passing your own laws is not helping the situation." Even if, as you note, Mike, the laws that have been passed aren't necessarily exactly what the President is saying here, this, to me, seems like a shot at state legislatures to say, "I'm on the case. We need the

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Congress to pass laws, and we need the NCAA to pass rules that apply to everyone."

That's really a theme that I think we see time and time again throughout this entire Executive Order.

**0:32:51.5 Mike Lowe:** Couldn't agree with you more.

**0:32:53.0 Cal Stein:** Look, with that, we're out of time here today. I want to bring this discussion to a conclusion, although I'm sure we're gonna spend more time discussing this Executive Order as it develops and as some of these individuals, agencies, and entities that the President has made directions to actually start taking action to update rules and institute litigation, perhaps. I really want to thank you, Mike, for joining me today, and I want to thank everyone for listening. If anyone has any thoughts or any comments about the series or about this episode, please feel free to contact us directly. You can subscribe and listen to other Troutman Pepper Locke podcasts wherever you listen to podcasts, including on Apple, Google, and Spotify. Thank you for listening and stay safe.

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