

Women Collegiate Athletes and NIL: Why They Should Finish Eligibility Instead of Going Pro



Photo Source: Pete Nakos, *Angel Reese, Caitlin Clark's On3 NIL Valuations soar following Final Four*, On3NIL (April 4, 2023)

By: Sarah Grossman

Intro: Angel Reese and Caitlin Clark Go Viral

Last year both Angel Reese and Caitlin Clark went viral after the NCAA Women's Championship Game had 9.9 million viewers.¹ With this new-founded fame, both girls' NIL valuations exploded, each becoming some of the highest-paid NIL athletes in all of college athletics.² There are many other female faces of NIL at the moment: Olivia Dunne of LSU gymnastics, Flau'jae Johnson of LSU basketball, and Paige Bueckers of UConn basketball make up the rest of the top five female NIL earners from 2023.³ For Angel and Caitlin in particular, the impact of both women's explosive seasons begs the question: should college athletes – particularly female athletes – finish their eligibility, or should they join professional teams before their eligibility expires?

¹ See Pete Nakos, *Angel Reese, Caitlin Clark's On3 NIL Valuations soar following Final Four*, On3NIL (April 4, 2023) <https://www.on3.com/nil/news/angel-reese-caitlin-clark-on3-nil-valuation-soar-iowa-hawkeyes-lsu-tigers-ncaa-title-game/> (describing the background to the virality of Angel and Caitlin as they dominated the tournament). Caitlin Clark helped Iowa defeat the first-seed South Carolina, scoring 41 points and providing her teammates with eight assists. Reese helped LSU defeat Virginia Tech, the team's first Final Four Win after six attempts to make the Championship.

² See Joe Pompliano, *How Caitlin Clark and Angel Reese Became NIL's Biggest Stars*, HuddleUp (Aug. 23, 2023) <https://huddleup.substack.com/p/how-caitlin-clark-and-angel-reese> (explaining the rise to fame for both athletes and the immediate impact of the Championship game in NIL deals). Both women have made millions in NIL deals since their Championship game and rivalry began, and the money has continued to come in the form of brand deals for both of them. Angel has signed almost 30 NIL deals which include partnerships with companies such as Amazon, Raising Cane's McDonald's, Mercedes-Benz, and more. In August, Angel's valuation was ranked fifth among all college athletes. Caitlin has signed massive deals as well with companies such as Nike, Goldman Sachs, and Bose. Caitlin's valuation is not as high as Angel's but she has made over \$1,000,000 in NIL deals since the tournament.

³ See On3NIL, *On3 Women's NIL 100* (last updated Oct. 4, 2023) <https://www.on3.com/nil/rankings/player/womens-nil-100/> (valuing NIL athletes and updating earnings every Wednesday).

Policy Background: The NCAA and Name Image and Likeness

In NCAA v. Alston, the Supreme Court of the United States affirmed the holding of both the District Court and Ninth Circuit decisions, holding that the NCAA's rules limiting education-related compensation violated section 1 of the Sherman Act.⁴ Legal scholars argue that the Alston decision, which was released on June 21, 2021, issued a warning to the NCAA, causing it to release its NIL Interim Policy on July 1, 2021.⁵ NIL policies allow for student athletes to receive income through brand deals and endorsements using their name, image, and likeness.⁶ Prior to the Interim Policy's debut by the NCAA, states had already begun to create and enact legislation which would allow students to engage in NIL activities.⁷ A development shown through the creation of NIL is that female athletes have been at the forefront.⁸ Further, female athletes are seen by many as some of the biggest beneficiaries of NIL, along with Division I football players.⁹ Sports fans even consider NIL the turning point for women's growth in sports.¹⁰

Analysis: Female Athletes Face Tough Decisions

Angel and Caitlin are unable to enter the WNBA draft until 2024, as the WNBA requires four years of college athletics before entering the draft.¹¹ Although commentators may find the WNBA rule controversial, Angel has been vocal that she is fine with the rule, as she is making more money through NIL than she would in the league.¹² Reese stated she is in no rush to go to

⁴ See *Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141 (2021). (explaining how the Congress created the Sherman Act and gave courts the enforcement power of a policy of competition with the belief that market forces "yield the best allocation" of the country's resources and it was violated by agreeing to limit and restrict compensation for student-athletes at colleges and universities). In his concurrence, Justice Kavanaugh addresses that the opinion is only to prevent the rules restricting education-related benefits athletes receive and thus does not address the legality of the NCAA's remaining compensation rules. His concurrence arguably left the NCAA wary, as days after *Alston* was decided, the NCAA adopted its policy allowing student-athletes to benefit from NIL opportunities.

⁵ See Theresa Loscalzo and Monica Matias, *Legal Framework for NIL One Year after NCAA v. Alston – Next Steps for Universities*, JDSupra (May 11, 2022) <https://www.jdsupra.com/legalnews/legal-framework-for-nil-one-year-after-6571507/> (describing the Alston decision and its presumed impact on the changes at the NCAA level towards NIL). The interim policy stated that college athletes can use NIL activities consistent with the law of the state in which their school is located, and if their school's state had no written law, students could still engage in NIL paid endorsements without harming their athletic eligibility.

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See *id.*

¹⁰ See Chase Garrett, *The Role Of NIL In Empowering Women In College Sports*, Icon Source (Feb. 2, 2022) (publishing opinion of how female athletes are now able to share their stories with the advent of NIL)

¹¹ See Isabel Gonzalez, *Why Caitlin Clark and Angel Reese are not in the 2023 WNBA Draft*, CBS Sports (Apr. 12, 2023) <https://www.cbssports.com/womens-college-basketball/news/why-caitlin-clark-and-angel-reese-are-not-in-the-2023-wnba-draft/>

¹² See Dan Canova, *LSU's Angel Reese: 'Money I'm making is more than some in the league'*, The NIL Deal (Apr. 6, 2023) <https://www.nildealnow.com/lsu-angel-reese-no-rush-go-pro-money-making-more-some-league/> (explaining Reese's struggles with the newfound fame after the 2023 tournament success).

the league, acknowledging the money she makes through NIL is more than what some of the highest paid athletes in the WNBA make as a salary.¹³

Currently, Jackie Young is the highest-paid WNBA player and she makes \$252,450 a year.¹⁴ This makes Jackie not only the highest paid WNBA player in the league currently, but the highest-paid WNBA player of all time.¹⁵ Angel Reese's earnings over triple what Jackie Young currently makes through her NIL deals.¹⁶ Angel's earnings show how NIL deals are causing college athletes, who are eligible to enter professional sports, to stay in college for longer than they may have planned.¹⁷ With pay transparency such as seen here, female athletes are able to recognize that they are better off staying in the college scene, especially when they have successful teams.

Some college NIL stars have decided to forego their extra year of eligibility and enter the WNBA draft such as Diamond Miller of Maryland, Haley Cavinder of Miami and Zia Cooke of South Carolina.¹⁸ These stars can still benefit from NIL deals as they enter the league.¹⁹ However, with viewership for women's college athletics rising, the WNBA is not seeing the same rise.²⁰ The WNBA has said it is vying for expansion, but that will not be until 2025.²¹ Thus, it would make sense that many such as Angel and Caitlin are in no rush to go pro, as their money and stardom remains in the college athletics sphere.

Impact/Conclusion: Even Male College Athletes May Want To Finish Eligibility

Female athletes are not the only athletes who may prefer NIL money over professional money, even though the salary compared to NIL money earned is not as stark. For example, Southern California superstar quarterback Caleb Williams has been non-committal about entering the NFL

¹³ See *id.*

¹⁴ See Andrew Buller-Russ, *20 Highest-Paid WNBA Players in 2023*, Sportsnaut (Sep. 13, 2023) <https://sportsnaut.com/highest-paid-wnba-players/>

¹⁵ See *id.*

¹⁶ See Richard Ekka, *Angel Reese Towers Over the Highest Paid WNBA Player Jackie Young Thanks to Her NIL Earnings*, Sports Manor (Apr. 8, 2023) <https://sportsmanor.com/nba-news-angel-reese-towers-over-the-highest-paid-wnba-player-jackie-young-thanks-to-her-nil-earnings/> (explaining that Reese makes just about \$876,000 a year in NIL deals)

¹⁷ See *id.*

¹⁸ See Dan Stack, *Angel Reese, Caitlin Clark star on The NIL Deal's NCAA Tournament All-NIL team*, The NIL Deal (Apr. 14, 2023) <https://www.nildealnow.com/angel-reese-caitlin-clark-the-nil-deal-ncaa-tournament-all-nil-team/> (describing top NIL women's basketball earners and their decisions on staying in college or moving on to the WNBA)

¹⁹ See *id.*

²⁰ See Susan Shaw, *Why the WNBA Should Capitalize On NCAA Women's Basketball Success And Expand*, Forbes (May 12, 2023) <https://www.forbes.com/sites/susanmshaw/2023/05/12/why-the-wnba-should-capitalize-on-ncaa-womens-basketball-success-and-expand/?sh=26f07df46f30> (explaining that the college athletes are going to eventually enter the WNBA and will be starting with hundreds of thousands of followers and millions made from NIL). The idea is that the WNBA should capitalize off of the NCAA successes and use these NIL players to expand viewership. The author hopes that when these players who have exploded due to NIL finally join the WNBA, their fans will follow their growth and progression, which will only add WNBA viewership.

²¹ See *id.*

draft in 2024.²² Most of Caleb's willingness to stay in college is because NIL money is consistently lucrative and if he ends up at an NFL team without cap space to pay him, he would not be able to negotiate a rewarding second contract.²³ Thus, Caleb may benefit from waiting for a different team with the first overall pick to draft him than the number one overall pick in 2024.²⁴

If Caleb Williams, who has potential to enter a league where top quarterbacks are making well above \$200,000,000 for their second contracts, it seems obvious why female athletes want to stay where guaranteed money is.

Female professional athletes make less than men in almost every sport.²⁵ However, college athletics are allowing women to gain notoriety more than in the professional world.²⁶ With that notoriety comes NIL sponsorships and earnings that are harder to achieve currently in professional sports. Therefore, women using their NIL stardom until they are finished eligibility is not surprising, and should be encouraged.

²² See Josh Edwards, *Caleb Williams and his father non-committal about QB entering 2024 NFL Draft: Could he actually return to USC?*, CBS Sports (Sep. 3, 2023) <https://www.cbssports.com/nfl/draft/news/caleb-williams-and-his-father-non-committal-about-qb-entering-2024-nfl-draft-could-he-actually-return-to-usc/#:~:text=Williams%20may%20return%20to%20school,his%20life%20and%20his%20choice>.

²³ See *id.*

²⁴ See *id.*

²⁵ Olivia Abrams, *Why Female Athletes Earn Less Than Men Across Most Sports*, Forbes (June 23, 2019) <https://www.forbes.com/sites/oliviaabrams/2019/06/23/why-female-athletes-earn-less-than-men-across-most-sports/?sh=168633ca40fb> (describing the gender pay gap in professional sports and which sports suffer less from this gap)

²⁶ Katie Lever, *'I Would Not Have As Many Opportunities': How NIL Is Helping Women College Athletes Bypass Barriers*, Global Sports Matters (Sep 27, 2022) <https://globalsportmatters.com/business/2022/09/27/opportunities-nil-women-college-athletes/> (describing how NIL allows female athletes some power and security when they do not have the same resources on campus as male athletes)