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To Put it Bluntly: A Criticism of Social Equity Cannabis Licensing Schemes

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INTRODUCTION

It is no secret that there is a substantial disparity in the cannabis industry between those suffering from the substance's illegality and those prospering from its legalization. In this space, the rich are getting richer while the poor are getting poorer. The same society that disproportionately punished Blacks and Latinos for consuming, growing, and selling cannabis is now rewarding a new class of white entrepreneurs for the same conduct.

To put it in perspective, consider the following real-life anecdotes. Ferrell Scott, a loving father of two, was driving to his son's football practice in 2008 when police pulled him over.¹ A court had issued a warrant for his arrest pertaining to his indictment on marijuana charges from February 2007.² Scott was found guilty of conspiracy to possess and intent to distribute more than 2,000 pounds of cannabis in 2008.³

Scott used a big rig truck to haul and sell cannabis because he could not make enough money to pay his family's bills from hauling legal freight.⁴ Unfortunately, because he was previously arrested and convicted on two occasions in the 1980s for drug possession and distribution, Scott's 2008 conviction was his "third strike."⁵ When offered a plea deal in exchange for providing his co-conspirators' names, he refused and went to trial where he was convicted and received a life sentence.⁶ After Scott spent thirteen years incarcerated, President Donald Trump

¹ Eileen Rivers, *Nation's failed weed war turned many into prisoners and others into moguls*, USA TODAY (Sept. 4, 2019), <https://www.usatoday.com/in-depth/opinion/lifers/2019/09/04/pot-weed-war-marijuana-prison-life-sentence-lifers/2057276001/>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

commuted his sentence in January 2021.⁷ Scott spent more than a decade away from his family, during which he missed out on precious time with his children, including watching his son play professional football and his daughter raise three children of her own.⁸

Now meet Kevin Murphy, former CEO and Founder of Acreage Holdings.⁹ Murphy is a former Wall Street money manager who made a career in the cannabis market in 2011 while Scott spent his days incarcerated.¹⁰ Like Scott's son, Murphy played professional football for a short time.¹¹ He eventually launched his finance career and created Acreage Holdings, "one of the largest vertically integrated, multi-state operators of cannabis licenses and assets in the U.S."¹²

While maintaining his position on the Board at Acreage, Murphy launched Viridescent Capital Partners in 2020 and announced the closing of more than \$125 million on its mREIT in 2021.¹³ Suffice it to say, he is a highly successful cannabis industry mogul who is profiting immensely from its legalization. To Murphy's credit, he does acknowledge the importance of providing resources to disparately impacted communities.¹⁴

Though Scott and Murphy have cannabis and football in common, they experienced drastically different lives after becoming involved in the same industry. Unfortunately, Scott was

⁷ Charles Scudder, *Two Texans serving long prison sentences for drug crimes are among those whose terms Trump commuted*, THE DALLAS MORNING NEWS (Jan. 20, 2021), <https://www.dallasnews.com/news/politics/2021/01/20/backed-by-dallas-church-leaders-texan-serving-a-long-drug-sentence-is-among-those-commuted-by-trump/>.

⁸ Rivers, *supra* note 1.

⁹ Acreage Holdings, Inc., *Acreage Holdings Names Peter Caldini, Former President Pfizer North America Consumer Healthcare, as CEO*, GLOBENEWSWIRE (Dec. 18, 2020), <https://www.globenewswire.com/news-release/2020/12/18/2147749/0/en/Acreage-Holdings-Names-Peter-Caldini-Former-President-Pfizer-North-America-Consumer-Healthcare-as-CEO.html>.

¹⁰ Tom Hymes, *Changing the Game: Acreage CEO Kevin Murphy's Play for the Future*, MG MAG. (Oct. 1, 2019), <https://mgretailer.com/business/acreege-ceo-kevin-murphy-game-changer/>.

¹¹ *Id.*

¹² *Id.*

¹³ Andrew Ward, *Acreage Holdings Founder Kevin Murphy Launches \$125M Cannabis REIT*, BENZINGA (June 8, 2021), <https://www.benzinga.com/markets/cannabis/21/06/21479090/viridescent-capital-partners-announces-the-launch-of-cannabis-mreit-viridescent-realty-trust>.

¹⁴ *Id.*

sentenced to a life behind bars while Murphy was guaranteed a life of success. The injustice presented clearly illustrates how systemic treatment of different individuals involved in cannabis-related businesses can impact lives. There is an immediate need for governments to enact social equity reforms to close the gap in the industry and attempt to right some of the wrongs resulting from a blatantly racist drug control history.

Despite the recent movement towards decriminalizing and even legalizing cannabis in many states, a great opportunity divide persists between minorities and white people in the cannabis industry. As business is booming, the communities negatively impacted by decades of harsh treatment remain unable to participate in the above ground market and reap the benefits of a product for which they have been disproportionately punished. As a result, states are now implementing cannabis-related social equity programs to provide people of color and those with marijuana offenses the opportunity to participate in the industry.¹⁵ States and municipalities have taken various approaches, including prioritizing minority businesses for licensing applications and barring license transfers for a set number of years. Unfortunately, such programs have not yet yielded their intended results and workarounds persist. Thus, the federal government must mandate a successful social equity program before it legalizes cannabis.

This paper proceeds in four parts. Part I explains social equity and its importance in this context. Part II examines the different approaches recreational cannabis legalization jurisdictions have taken to attempt to promote social equity. Part III addresses some of the flaws and abuses in

¹⁵ Robert Hoban, *The Critical Importance of Social Equity In The Cannabis Industry*, FORBES (Aug. 31, 2020), <https://www.forbes.com/sites/roberthoban/2020/08/31/the-critical-importance-of-social-equity-in-the-cannabis-industry/?sh=45b74fd81a6d>.

these existing social equity licensing schemes. Part IV concludes the paper by exploring schemes that have positive outcomes and advancing additional proposals to achieve social equity.

I. WHAT IS SOCIAL EQUITY?

A. *An Uneven Playing Field*

On June 17, 1971, President Richard Nixon famously announced the “War on Drugs” by declaring that “America’s public enemy number one [was] drug abuse” which required “a new, all-out offensive.”¹⁶ This War resulted in mass incarceration and had a dramatically disparate effect on Black and brown men.¹⁷ In 1980, there were 50,000 people in prison for nonviolent law offenses, and by 1997 there were over 400,000.¹⁸ Today, nearly half of federal prisoners are detained due to federal drug charges and the United States holds more incarcerated people than any other country.¹⁹ The imprisonment rate in 2018 for Black men was 5.8 times that of their white counterparts.²⁰ Black people are also 3.64 times more likely to be arrested for marijuana possession than white people.²¹ Drug-war driven mass incarceration has negatively impacted Black families in a variety of ways, as individuals with drug convictions are discriminated against in the employment and housing markets as well as often prevented from voting.²²

¹⁶ Benjamin T. Smith, *New Documents Reveal the Bloody Origins of America’s Long War on Drugs*, Time (Aug. 24, 2021), <https://time.com/6090016/us-war-on-drugs-origins/>.

¹⁷ Brian Mann, *After 50 Years of the War on Drugs, ‘What Good Is It Doing For Us?’*, NPR (June 17, 2021), <https://www.npr.org/2021/06/17/1006495476/after-50-years-of-the-war-on-drugs-what-good-is-it-doing-for-us>.

¹⁸ *A History of the Drug War*, DRUG POL’Y ALL., <https://drugpolicy.org/issues/brief-history-drug-war> (last visited Mar. 1, 2022).

¹⁹ Mann, *supra* note 16.

²⁰ E. Ann Carson, *Prisoners in 2018*, U.S. DEP’T OF JUSTICE 1 (Apr. 2020), <https://bjs.ojp.gov/content/pub/pdf/p18.pdf>.

²¹ *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*, ACLU 29 (2020), https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf.

²² German Lopez, *Was Nixon’s war on drugs a racially motivated crusade? It’s a bit more complicated.*, VOX (Mar. 29, 2016), <https://www.vox.com/2016/3/29/11325750/nixon-war-on-drugs>.

In 1994, over twenty years after Nixon began the “War on Drugs,” his domestic policy adviser John Ehrlichman revealed the truth behind the campaign.²³ Ehrlichman told a journalist that the administration “knew [it] couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, [it] could disrupt those communities.”²⁴

The “War on Drugs” was not the beginning of the government’s disparate treatment of minorities. States first regulated drug use during the end of the nineteenth and beginning of the twentieth centuries, conspicuously around the same time that Mexicans fled to the United States to escape the Mexican Revolution.²⁵ Drug prohibitionists directed xenophobic sentiments toward immigrants by claiming drinking and consuming drugs were “foreign” activities.²⁶ Cannabis was known to be consumed heavily in Mexican prisons and soldiers’ barracks so the propagandists drew an association between cannabis, immigrants, and danger.²⁷

Politicians started using the term “marijuana” or “marihuana,” which they claimed caused violent behavior, to more strongly associate it with Mexican people.²⁸ Harry J. Anslinger, the founding Commissioner of the Federal Bureau of Narcotics, advanced this prejudiced association with cannabis and violent Black and Latino individuals by spewing a racist rhetoric about the harmful effects of cannabis.²⁹ Americans believed the anti-immigrant drug propaganda directed at Mexicans because it coincided with the Great Depression—a time when many feared immigrants

²³ *Id.*

²⁴ *Id.*

²⁵ Michael Vitiello, *Marijuana Legalization, Racial Disparity, and the Hope for Reform*, 23 LEWIS & CLARK L. REV. 789, 797 (2019).

²⁶ Olivia B. Waxman, *The Surprising Link Between U.S. Marijuana Law and the History of Immigration*, TIME (Apr. 20, 2019), <https://time.com/5572691/420-marijuana-mexican-immigration/>.

²⁷ Vitiello, *supra* note 25.

²⁸ *Id.* at 797-98.

²⁹ *Id.* at 800.

were undercutting wages and “stealing” their jobs.³⁰ While only seventeen percent of the United States population is currently Hispanic, fifty percent of federal drug cases are brought against Hispanic people.³¹ In New York City, Latinos are arrested almost four times as often as white people for cannabis crimes.³² Cannabis possession is also the fourth most common cause of deportation.³³

The over arrest and disproportionate conviction of minorities is a long-standing staple of the American drug war. Those with such convictions may be denied housing, educational grants, and scholarships and experience an average thirty percent decrease in lifetime wages.³⁴ They may also lose the right to vote or possess a firearm.³⁵ The children of incarcerated individuals are at higher risk for anxiety and substance abuse disorders and may face hurdles themselves, including felony charges, incarceration, not completing high school, becoming a parent before adulthood, and being socially isolated.³⁶ The negative impact of the War on Drugs has surfaced in all of these ways, holding back those most affected from entering the legal market for cannabis.

B. *A Budding Industry*

Cannabis is one of the fastest-growing industries in the United States.³⁷ As of January 2022, eighteen states have legalized cannabis for recreational use and another thirty-eight have legalized

³⁰ *Id.*

³¹ *Latinxs and the Drug War*, DRUG POL’Y ALL., <https://drugpolicy.org/latinxs-and-drug-war> (last visited Mar. 29, 2022).

³² *Id.*

³³ *Id.*

³⁴ Janessa Bailey, *Seeds of Change: Strategies to create an equitable cannabis industry*, LEAFLY 24 (2021), <https://leafly-cms-production.imgix.net/wp-content/uploads/2021/06/25091621/Leafly-2021-white-paper-Seeds-Of-Change-by-Janessa-Bailey-1.pdf>.

³⁵ *Id.*

³⁶ Elizabeth J. Gifford et al., *Association of Parental Incarceration With Psychiatric and Functional Outcomes of Young Adults*, JAMA (2019), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2748665>.

³⁷ Will Yakowicz, *Where is Cannabis Legal? A Guide to All 50 States*, FORBES (Jan. 10, 2022), <https://www.forbes.com/sites/willyakowicz/2022/01/10/where-is-cannabis-legal-a-guide-to-all-50-states/?sh=319047d8d19b>.

medical cannabis.³⁸ The legal market is projected to bring in \$43 billion by 2025.³⁹ New Jersey alone anticipates raking in \$2 billion before 2025.⁴⁰

Unfortunately, the white male dominated industry is not representative of the population. 70% of executives at the fourteen largest publicly traded cannabis companies in the United States and Canada are white men, while only 7% are Black.⁴¹ Additionally, less than 2% of cannabis businesses are Black-owned.⁴²

The racial divide trickles down to every level of the business. White cultivators account for 96% of cannabis farms, while Black cultivators only own about 35,000 of the nation's two million farms.⁴³ In Massachusetts, just 1.2% of cannabis business are owned by racial minorities and in Illinois zero of eighty-nine dispensaries are minority owned.⁴⁴ With the growth potential in the legal cannabis market, there should be plenty of opportunity for all to share a slice of the pie. The industry's white male dominance is inequitable. It is unjust that this new wealth is not benefitting the people who have and continue to suffer disparately due to cannabis prohibition.

C. Roadblocks

³⁸ *Id.*

³⁹ Iris Dorbian, *Legal Cannabis Market Projected To Rack Up \$43 Billion By 2025*, FORBES (June 18, 2021), <https://www.forbes.com/sites/irisdorbian/2021/06/18/legal-cannabis-market-projected-to-rack-up-43-billion-by-2025-says-new-study/?sh=25077cb036b4>.

⁴⁰ Jeff Smith, *New Jersey prepares to launch \$2 billion recreational cannabis market*, MJ BIZ DAILY (Mar. 14, 2022), <https://mjbizdaily.com/new-jersey-prepares-to-launch-2-billion-recreational-cannabis-market/>.

⁴¹ Jeremy Berke & Yeji Jesse Lee, *Top executives at the 14 largest cannabis companies are overwhelmingly white men, an Insider analysis shows*, BUSINESS INSIDER (Jun. 30, 2021), <https://www.businessinsider.com/cannabis-industry-diversity-executives-are-white-male-insider-inequity-analysis-shows-2021-6>.

⁴² Bailey, *supra* note 34.

⁴³ Megan U. Boyanton, *Entrepreneurs of Color Fight for Fair Share of Legal Weed Wealth*, BLOOMBERG LAW (Nov. 30, 2021), <https://news.bloomberglaw.com/banking-law/entrepreneurs-of-color-fight-for-fair-share-of-legal-weed-wealth>.

⁴⁴ Courtney Connley, *Cannabis is projected to be a \$70 billion market by 2028—yet those hurt most by the war on drugs lack access*, CNBC (Jul. 1, 2021), <https://www.cnbc.com/2021/07/01/in-billion-dollar-cannabis-market-racial-inequity-persists-despite-legalization.html#:~:text=In%202017%2C%2081%25%20of%20marijuana,of%20the%20war%20on%20drugs>.

Even when legislators implement social equity programs, there are many barriers to above ground cannabis market entry. First, many states do not allow individuals with prior drug felonies to own cannabis businesses or partake in them in other ways.⁴⁵ Thirty-four of the thirty-six medical and fourteen of the eighteen adult-use cannabis licensing schemes bar applicants from licensure due to specific convictions.⁴⁶ Only four medical and five adult-use schemes, on the other hand, exempt specific cannabis convictions.⁴⁷

Second, the costs of acquiring the resources necessary for licensure applications are substantial. Twenty-three states require a secured premises prior to obtaining a license.⁴⁸ It is difficult for those with drug convictions to acquire the economic resources to start a business.⁴⁹ White people can generally access funding more easily and, because white families have ten times the net worth of black families, they are often able to obtain financing from relatives.⁵⁰ Further, racial bias may make it more difficult for Black-owned businesses to obtain investments than their white counterparts.⁵¹

The federal ban on cannabis also serves as an obstacle because it restricts the ability to acquire funding through financial institutions, barring entrants into the market from securing loans. In sum, because minority participants often do not have the financial means to enter the legal market, they are forced to remain in the underground market, where they risk arrest.⁵²

⁴⁵ Daniel G. Orenstein, *Preventing Industry Abuse of Cannabis Equity Programs*, 45 S. ILL. U. L. J. 69, 79 (2020).

⁴⁶ MINORITY CANNABIS BUS. ASS'N, MCBA NATIONAL CANNABIS EQUITY REPORT 4 (2022), <https://mjbizdaily.com/wp-content/uploads/2022/02/National-Cannabis-Equity-Report-1.pdf>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Orenstein, *supra* note 45, at 79.

⁵⁰ Benjamin Goggin, *Black People Face Big Barriers Entering the Legal Weed Industry*, VICE (Sept. 20, 2018), <https://www.vice.com/en/article/yw4pkw/weed-industry-equity-black-business>.

⁵¹ Amiah Taylor, *Black cannabis entrepreneurs account for less than 2% of the nation's marijuana businesses*, FORTUNE (Apr. 26, 2022), <https://fortune.com/2022/04/26/black-cannabis-entrepreneurs-marijuana-businesses-marijuana-laws/>.

⁵² Vitiello, *supra* note 25, at 818.

D. How to Level the Field

The purpose of social equity programs is to account for the disproportionate impact cannabis criminalization has had on particular individuals and communities by encouraging those folks to participate in the market.⁵³ Impacted communities should have the opportunity to participate in an industry estimated to hit \$100 billion in sales by 2031.⁵⁴ Only fifteen of the thirty-six states that have legalized cannabis for either medical or recreational use have social equity programs.⁵⁵ Although California was the first state to legalize medical cannabis in 1996, no states incorporated a social equity plan into their schemes until 2018.⁵⁶ Social equity frameworks aim to reduce barriers to entry, corporate abuse, and population health risks.⁵⁷ Programs may do so by providing access to financing and educational resources or by giving preference to people impacted by cannabis criminalization.⁵⁸

The Minority Cannabis Business Association defines four foundations of social equity.⁵⁹ The first is equitable industry, which involves providing access to opportunities and resources to minorities to promote their inclusion and success.⁶⁰ The next is equitable communities to empower communities affected by cannabis criminalization by investing in them, providing social programming, and ensuring corporate responsibility.⁶¹ Equitable justice helps restore basic rights to those with certain offenses and reduce arrests and incarceration for non-violent cannabis

⁵³ Orenstein, *supra* note 45, at 81.

⁵⁴ Yakowicz, *supra* note 37.

⁵⁵ MCBA NATIONAL CANNABIS EQUITY REPORT, *supra* note 46, at 31.

⁵⁶ *Id.*

⁵⁷ Orenstein, *supra* note 45, at 93.

⁵⁸ *Id.* at 81.

⁵⁹ MCBA NATIONAL CANNABIS EQUITY REPORT, *supra* note 46, at 2.

⁶⁰ *Id.*

⁶¹ *Id.*

offenses.⁶² Lastly, equitable access guarantees immigrants, veterans, seniors, and disabled people access to safe legal products without risking loss of benefits or immigration status.⁶³

II. APPROACHES TO SOCIAL EQUITY LICENSING PROGRAMS

States such as Connecticut, New York, and New Jersey have pledged to prioritize applications for social equity applicants based on, but not limited to, the following criteria: previous cannabis convictions, income, state residency, impacted neighborhoods, and minorities, veterans and women.⁶⁴ By including applicants with prior convictions, programs provide a route to the legal market and restorative justice.⁶⁵ Most states use the federal poverty level or median income over a specified period to set their income criteria.⁶⁶ Median income levels are a better representation of net income in a given area because they account for the cost of living and community income in specific jurisdictions.⁶⁷

Implementation of state residency requirements sometimes includes those impacted while avoiding explicit race classifications.⁶⁸ Some states have a narrower residency requirement based on qualifying neighborhoods.⁶⁹ Prioritizing licenses is impactful especially in urban areas because retailers, distributors, and manufacturers are often concentrated and zoning restrictions can limit opportunities.⁷⁰ Giving preference to those in impacted neighborhoods provides community members a new perspective because they can then witness opportunities for themselves and their

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 15.

⁶⁵ *Id.* at 10.

⁶⁶ *Id.* at 11.

⁶⁷ *Id.*

⁶⁸ *Id.* at 12.

⁶⁹ *Id.* at 13.

⁷⁰ Orenstein, *supra* note 45, at 82.

neighbors firsthand.⁷¹ It also results in equity licensees locating businesses within those communities.⁷²

A few states prioritize applications for women-owned and veteran-owned businesses. The share of ownership of cannabis companies in certain markets is lower than the overall proportion of women-owned companies.⁷³ Women may be discouraged from starting a business because they lack access to capital.⁷⁴ Women-owned businesses tend to receive less funding and fewer resources than male business owners.⁷⁵

Veterans have a higher rate of incarceration than the general population.⁷⁶ Nine percent of veterans who returned from service in Iraq or Afghanistan reported being arrested.⁷⁷ Veterans incarcerated for drug-related offenses received sentences that were on average one year longer than non-veterans incarcerated for the same reasons.⁷⁸

Some states reserve a certain percentage or set aside a defined number of licenses for impacted groups.⁷⁹ New York announced plans to set aside at least one hundred retail licenses for applicants convicted of a cannabis-related offense and applicants whose relatives were convicted of those offenses.⁸⁰ Connecticut will award 50% of all licenses to social equity applicants.⁸¹

⁷¹ *Id.* at 89.

⁷² *Id.*

⁷³ Eli McVey, *Women & Minorities in the Cannabis Industry*, MARIJUANA BUSINESS DAILY (2019) (explaining that, in Massachusetts, the rate of women-owned cannabis companies is approximately one quarter of the rate of women-owned companies overall).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Healing a Broken System: Veterans and the War on Drugs*, DRUG POL'Y ALL. (Nov. 2012), https://drugpolicy.org/sites/default/files/DPA_Healing%20a%20Broken%20System_Veterans%20and%20the%20War%20on%20Drugs_November%202012_Final_0.pdf.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ MCBA NATIONAL CANNABIS EQUITY REPORT, *supra* note 46, at 15.

⁸⁰ Jesse McKinley & Grace Ashford, *New Yorkers With Marijuana Convictions Will Get First Retail Licenses*, N.Y. TIMES (Mar. 9, 2022), <https://www.nytimes.com/2022/03/09/nyregion/marijuana-sellers-licenses-hochul.html>.

⁸¹ MCBA NATIONAL CANNABIS EQUITY REPORT, *supra* note 46, at 15.

Alabama holds one quarter of all licenses and one fifth of integrated licenses in its medical market for minority-owned businesses.⁸² Both New York and Massachusetts have specific classes of licenses that are only available for social equity applicants.⁸³

Other states, such as Michigan, Arizona, Connecticut, Illinois, and Massachusetts, offer fee waivers and reductions.⁸⁴ Application fees range from \$250-\$125,000, but are lower in states with lotteries, where they range from \$250-\$10,000.⁸⁵ Connecticut and Illinois reduce application fees by 50% for social equity applicants.⁸⁶ Massachusetts entirely waives social equity application fees.⁸⁷ Some states also provide grants, microloans, and no- or low-interest loans for social equity applicants or licensees.⁸⁸

Colorado, Massachusetts, and other states are building programs to train individuals impacted by the War on Drugs to obtain licenses.⁸⁹ Colorado's Marijuana Enforcement Division allows individuals who meet the eligibility criteria for a Social Equity License to participate in an Accelerator Program.⁹⁰ The Program partners the licensee with an existing business which serves as a "host" by providing capital and/or technical support to the licensee.⁹¹ The social equity licensee can operate as an "Accelerator Store, Accelerator Manufacturer and Accelerator Cultivator" at the same or a different location than the Accelerator-Endorsed Licensee.⁹²

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 16-17.

⁸⁵ *Id.* at 16.

⁸⁶ *Id.* at 17.

⁸⁷ *Id.*

⁸⁸ *Id.* at 18.

⁸⁹ *Equity, Diversity and Inclusion is a Priority for the State of Colorado*, COLO. DEP'T OF REVENUE, <https://sbg.colorado.gov/med/social-equity> (last accessed Mar. 2, 2022); *Equity Programs*, MASS. CANNABIS CONTROL COMM'N, <https://masscannabiscontrol.com/equity-programs/> (last visited Mar. 2, 2022).

⁹⁰ *Social Equity: Equity, Diversity and Inclusion is a Priority for the State of Colorado*, COLO. DEP'T OF REVENUE SPECIALIZED BUSINESS GROUP, <https://sbg.colorado.gov/med/social-equity> (last visited Apr. 1, 2022).

⁹¹ *Id.*

⁹² *Id.*

Massachusetts implemented a four-track training program designed to address each applicant's particular "interest in the cannabis industry, current skill set, and/or desired outcomes."⁹³ The four tracks are Entrepreneur, Core, Entry, and Ancillary.⁹⁴

Some social equity frameworks restrict eligibility and control of the business. In New York, licenses distributed to social equity applicants cannot be transferred for three years except to another approved social equity applicant.⁹⁵ In Illinois, non-qualifying parties may purchase the license after five years.⁹⁶ If they do so earlier, they must pay the waived fees and remaining balance on loans and grants.⁹⁷ The purpose of such a restriction is to ensure that an investor does not plan a sale of a license immediately upon the company's qualification for the license.⁹⁸ In Illinois, at least one individual who lives in a disproportionately impacted area must have at least 51% ownership and control of the business to qualify as a social equity applicant.⁹⁹

III. FLAWS AND ABUSES IN SOCIAL EQUITY PROGRAMS

A. *Practice What You Preach*

Some states that have pledged to employ social equity programs are already struggling. Legislators emphasize the importance of integrating social equity into their jurisdiction's regulatory scheme to ensure the bills are passed. Then, once the tax money begins pouring in, they seem to forget about the promises they made to their constituents.

⁹³ *Equity Programs*, MASS. CANNABIS CONTROL COMM'N, <https://masscannabiscontrol.com/equity-programs/#economic-empowerment-applicants> (last accessed Apr. 2, 2022).

⁹⁴ *Id.*

⁹⁵ Luis Ferré-Sadumí, *New York Legalizes Recreational Marijuana, Tying Move to Racial Equity*, N.Y. TIMES (Mar. 31, 2021), <https://www.nytimes.com/2021/03/31/nyregion/cuomo-ny-legal-weed.html>.

⁹⁶ 410 Ill. Comp. Stat. Ann. § 705/7-25(a) (2018).

⁹⁷ *Id.*

⁹⁸ Orenstein, *supra* note 45, at 95.

⁹⁹ 410 Ill. Comp. Stat. Ann. § 705/1-10 (2018).

For example, New Jersey adamantly emphasized social equity when advancing cannabis legalization, but, during the first round of licensure in January 2022, zero of the fifty-six licenses were granted to Black-owned businesses.¹⁰⁰ Connecticut similarly preached the importance of its social equity program, but is charging three million dollars for licensing fees for social equity cultivators, thereby creating a preclusive barrier to entry for those applicants.¹⁰¹ The Virginia Senate recently introduced a bill to amend the state’s recreational legalization law by eliminating the allocation of thirty percent of the state’s cannabis tax revenue to a cannabis equity investment fund, instead, distributing it to the State’s general fund.¹⁰²

Some programs have faced logistical issues. The Oakland, California social equity program pairs established businesses with new equity licensees to provide a temporary rent-free premises.¹⁰³ Allegedly, some of the established businesses are breaching the agreements after receiving program benefits, leaving the equity businesses with no resources.¹⁰⁴ When Los Angeles initially launched its equity program, less than twenty of the first one hundred businesses given preferential licenses were Black-owned.¹⁰⁵ Los Angeles also experienced a technical glitch that

¹⁰⁰ Benjamin M. Adams, *New Jersey Congressman Claims Not One Cannabis License Issued to Black-Owned Businesses*, HIGH TIMES (Jan. 31, 2022), <https://hightimes.com/news/new-jersey-congressman-outraged-that-not-one-cannabis-license-issued-to-black-owned-businesses/>.

¹⁰¹ Jeff Smith, *Connecticut’s \$3 million fee for social equity cannabis grower permit raises obstacles – and eyebrows*, MJBIZDAILY (Feb. 3, 2022), <https://mjbizdaily.com/connecticut-3-million-fee-for-social-equity-cannabis-grower-permits-raises-obstacles/>.

¹⁰² Lewis Koski, *Social Equity Policies Could Shape Diversity in the Legal Cannabis Industry*, FORBES (Mar. 22, 2022), <https://www.forbes.com/sites/lewiskoski/2022/03/22/social-equity-policies-could-shape-diversity-in-the-legal-cannabis-industry/?sh=996d4d118390>.

¹⁰³ Orenstein, *supra* note 45, at 83.

¹⁰⁴ *Id.*

¹⁰⁵ Sam Levin, *‘This was supposed to be reparations’: Why is LA’s cannabis industry devastating black entrepreneurs?*, GUARDIAN (Feb. 3, 2020), <https://www.theguardian.com/us-news/2020/feb/03/this-was-supposed-to-be-reparations-why-is-las-cannabis-industry-devastating-black-entrepreneurs>.

allowed candidates to submit their retail store applications early.¹⁰⁶ Moreover and notwithstanding the escalating legalization of cannabis in the states, arrest disparities continue to persist.¹⁰⁷

B. Issues with Priority and Quotas

Licensing schemes that prioritize categories of individuals face constitutional ramifications that arise when the state treats distinct groups of people differently. A Detroit ordinance granted preferential treatment to individuals who lived in the city for at least ten years prior to applying for specific types of licenses.¹⁰⁸ An applicant who did not qualify under this provision and intended to apply for a retail license challenged the provision's constitutionality.¹⁰⁹ The United States District Court for the Eastern District of Michigan held that the ordinance unconstitutionally discriminated against applicants who did not live in the city for the specified period of time, violated the fundamental right to interstate travel and intrastate travel, and impeded interstate commerce.¹¹⁰ The Detroit residential limitation failed rational basis scrutiny because it was not rationally related to its stated purpose of remedying the harm done to Detroit residents by the War on Drugs.¹¹¹ The ordinance did not target individuals who were victimized by the Drug War. The ordinance favored privileged wealthy applicants who had never been impacted by cannabis criminalization over residents that had been greatly affected but had not lived in Detroit long

¹⁰⁶ Sophie Quinton, *Black-Owned Pot Businesses Remain Rare Despite Diversity Efforts*, PEW (Jan. 15, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/01/15/black-owned-pot-businesses-remain-rare-despite-diversity-efforts>.

¹⁰⁷ ACLU, *supra* note 21, at 34.

¹⁰⁸ *Lowe v. City of Detroit*, 544 F. Supp. 3d 804, 806 (E.D. Mich. 2021).

¹⁰⁹ *Id.* at 806.

¹¹⁰ *Id.* at 814.

¹¹¹ *Id.*

enough.¹¹² Other states have had similar problems with residential requirements and preference provisions.¹¹³

Social equity programs with stated quotas also risk constitutional challenges. Prior to 2018, Ohio law required that fifteen percent of all medicinal cannabis licenses be awarded to minority applicants.¹¹⁴ This provision was later deemed unconstitutional on its face and stricken from the statute.¹¹⁵ The plaintiff cannabis company demonstrated that the legislature failed to compile and review enough evidence relevant to the medical cannabis industry to support the finding of a compelling governmental interest when enacting the statute.¹¹⁶ The statute was also not narrowly tailored to support such an interest.¹¹⁷

Anticipated legal challenges are present in other categories of prioritized applications. The purpose of social equity cannabis licensing schemes is to give communities that have been directly negatively impacted by cannabis prohibition access to the emerging legalized markets. It is thus unclear why women applicants are prioritized.¹¹⁸ While there is evidence that women are disproportionately inactive in the industry, there is no correlation between this disparity and the War on Drugs or the criminalization of women due to cannabis. There is some limited evidence that the number of women incarcerated for drug offenses has exponentially increased. Between 1978 and 2014 it grew 800 percent.¹¹⁹ While fifty percent of men are in federal prison for drug

¹¹² *Id.*

¹¹³ *E.g.*, *NPG, LLC v. City of Portland*, No. 2:20-cv-00208-NT, 2020 LEXIS 146958 (D. Me. Aug. 14, 2020).

¹¹⁴ Ben Sheppard, *Going for the Green: Social Equity in the Recreational Cannabis Industry*, 8 LINCOLN MEM'L U. L. REV. 280, 305 (2020).

¹¹⁵ *Pharmacann Ohio, LLC v. Williams*, No. 17-CV-10962, 2018 WL 7500067 (Ohio Ct. Com. Pl. Nov. 15, 2018).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Lewis Koski, *Social Equity Policies Could Shape Diversity In The Legal Cannabis Industry*, FORBES (Mar. 22, 2022), <https://www.forbes.com/sites/lewiskoski/2022/03/22/social-equity-policies-could-shape-diversity-in-the-legal-cannabis-industry/?sh=996d4d118390>.

¹¹⁹ *Women, Prison, and the Drug War*, DRUG POL'Y ALL. 1 (May 2018), https://drugpolicy.org/sites/default/files/women-and-the-drug-war_0.pdf.

offenses, over sixty percent of women in those facilities are there for drug offenses.¹²⁰ Much of the unfairness in this context, however, is deeply connected to race and not sex. Black women are almost twice as likely as white women to be incarcerated.¹²¹ Latinas are more than twenty percent more likely to be incarcerated than their white counterparts.¹²² Thus, it is evident that a program that gives preferential treatment to all women could face a serious legal challenge.

C. Too Little, Too Late

Early adopters of recreational cannabis failed to implement social equity licensing schemes at inception, so their markets are already saturated.¹²³ Ten years after legalizing recreational cannabis, Washington state legislators are attempting to enact a social equity plan.¹²⁴ The Washington House introduced a bill in 2022 to increase the number of business licenses and reserve them for those impacted most by the War on Drugs.¹²⁵ The last time the state increased the number of cannabis retail licenses was in 2016 and it has issued no new producer or processor licenses since 2013.¹²⁶ Opponents of the bill do not want more cannabis businesses because they feel there will not be enough competition in the industry.¹²⁷ They believe that the market is in danger of destabilization if flooded with even more participants.¹²⁸

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ Dede Perkins, *Where Are We Now? Social Equity in the US Cannabis Industry*, CANNABIS INDUS. J. (Oct. 5, 2021), <https://cannabisindustryjournal.com/featurearticle/where-are-we-now-social-equity-in-the-us-cannabis-industry/>.

¹²⁴ Melissa Santos, *Adding pot shops to improve social equity hits snag in WA Legislature*, CROSSCUT (Feb. 14, 2022), <https://crosscut.com/politics/2022/02/adding-pot-shops-improve-social-equity-hits-sna-g-wa-legisla-ture>.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

When Washington legislators legalized recreational cannabis, officials focused on processing license applications quickly.¹²⁹ This benefitted entrepreneurs with existing capital.¹³⁰ Social equity was an afterthought, and the failure to implement such a system has clear consequences. While over four percent of Washington’s population is Black, only about one percent of businesses are majority-owned by Black individuals.¹³¹

Colorado also legalized recreational cannabis in 2012, which created a \$2.2 billion industry.¹³² While social equity was not incorporated into the Colorado scheme, many are now concerned with the industry’s lack of diversity.¹³³ For example, the Denver Social Equity Program was launched to create equity for historically underserved individuals.¹³⁴ The program limits new licenses for the next five years to social equity applicants.¹³⁵ The difficulty with the scheme is that the market is supersaturated and there is a rule prohibiting more than one cannabis business from existing within one thousand feet of another or closer than one thousand feet to schools, day care centers, recreation centers, and drug treatment centers.¹³⁶ In addition, seventy percent of the city is in a residential zone ineligible for commercial businesses.¹³⁷ So, while states that were early entrants into the cannabis industry seek to create more opportunities for social equity, those efforts would have more effectively served the community if they were incorporated from the start.

D. Barriers to Entry

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Tatiana Flowers, *Denver wants to open the marijuana industry to those most impacted by the drug war. Some say it came too late.*, THE COLORADO SUN (Mar. 1, 2022), <https://coloradosun.com/2022/03/01/denver-wants-to-open-the-marijuana-industry-to-those-most-impacted-by-the-drug-war-some-say-it-came-too-late/>.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

Even though social equity programs are intended to alleviate some of the hardships of starting a cannabis business, applicants must still overcome financial barriers to entry.¹³⁸ Massachusetts has a strong social equity scheme but, given the difficulties of starting a cannabis business, the Commonwealth has had almost no Black or Latino applicants.¹³⁹ As mentioned above, expensive licensing fees may deter applicants who cannot afford to pay for an application that does not even guarantee a business license. Besides the application fees, applicants face legal costs, insurance, space rental, marketing, taxes, and security expenses.¹⁴⁰ Once established, businesses may need to pay taxes as high as forty percent.¹⁴¹ These start-up costs deter those interested in the industry and encourage investment in the underground market, where it could cost as little as one hundred dollars to grow a plant and start sales.¹⁴²

Due to federal cannabis prohibition, it is difficult to raise capital without the ability to obtain a loan from financial institutions. The widening racial wealth gap in America makes it more difficult for those who identify as a minority to acquire capital resources.¹⁴³ Many entrepreneurs are funding their startups through private capital, often asking friends and family members to invest, while those in impoverished communities do not have the same access to wealthy associates.

Many states with elaborate social equity schemes forbid applicants with felonies from participating in the cannabis industry.¹⁴⁴ This exclusion seems to undermine the entire purpose of these programs, which is to remediate the communities and lives destroyed by the War on Drugs.

¹³⁸ David McNew, *Black entrepreneurs struggle to join legal weed industry*, NBC NEWS (Feb. 11, 2020), <https://www.nbcnews.com/news/nbcblk/black-entrepreneurs-struggle-join-legal-weed-industry-n1132351>.

¹³⁹ *Id.*

¹⁴⁰ Goggin, *supra* note 50.

¹⁴¹ Taylor, *supra* note 51.

¹⁴² Goggin, *supra* note 50.

¹⁴³ Sheppard, *supra* note 114, at 300.

¹⁴⁴ Goggin, *supra* note 50.

Thirty-four of thirty-six medical programs and fourteen of eighteen recreational programs disqualify applicants with certain felony convictions from participating in the industry.¹⁴⁵ Individuals cannot get a license in Alaska, Colorado, Maine, and Nevada if they have a felony conviction.¹⁴⁶ Colorado and Maine do place time limits on their exclusions by only limiting licensure to those who have been convicted of such offenses in the last five or ten years.¹⁴⁷

E. *Hacking the System*

Applicants ineligible for social equity programs have found ways to control social equity licenses. One method is to provide funding for a social equity application and run the business while maintaining another person's name on the license. In Ohio, the medical cannabis program required equity applicants to own a majority interest in the business.¹⁴⁸ A state investigation revealed that one company that claimed to be fifty-one percent owned and controlled by a Black woman was actually led by a wealthy white male co-founder who served as CEO.¹⁴⁹ The company was involved in a lawsuit and settled, agreeing to pay a large sum of \$500,000 to the Ohio database used to track controlled substance prescriptions and medical cannabis purchases in the state.¹⁵⁰

Another way for predatory investors not qualified for social equity to reap the benefits of a social equity program is by prearranging with a qualifying social equity licensee to purchase the license once the business is formed.¹⁵¹ While the application may be accurate at the time of

¹⁴⁵ MCBA NATIONAL CANNABIS EQUITY REPORT, *supra* note 46, at 37.

¹⁴⁶ Sheppard, *supra* note 114, at 300.

¹⁴⁷ *Id.*

¹⁴⁸ Orenstein, *supra* note 45, at 94-95.

¹⁴⁹ *Id.* at 95.

¹⁵⁰ Jackie Borhardt, *Harvest to pay \$500,000 to settle Ohio medical marijuana dispensary ownership dispute*, CINCINNATI ENQUIRER (Mar. 6, 2020), <https://www.cincinnati.com/story/news/2020/03/06/harvest-pay-500-000-settle-ohio-medical-marijuana-dispensary-ownership-dispute/4829684002/>.

¹⁵¹ Orenstein, *supra* note 45, at 95.

submission, the changeover in ownership defeats the purpose of social equity programs. Thus, it is important for jurisdictions to limit sales or transfers for a specified period of time.¹⁵²

F. *Businesses May Take a Hit*

Social equity applicants may face even more challenges after acquiring a license. First, there is concern that once owners successfully establish their businesses, neighbors who do not want them in their vicinity will drive them out. Residents may threaten licensees by bringing private nuisance tort lawsuits, especially when businesses are in urban areas where properties are near one another. Claims under the Racketeer Influenced and Corrupt Organizations Act may be valid because cannabis is still illegal under federal law.¹⁵³ Where landowners can prove a decline in property value resulting from racketeering activity such as cultivating or selling cannabis, the business may be liable for damages.¹⁵⁴ The litigation and judgments could result in detrimental financial losses for the business owners who worked hard to get licenses. Because federal law preempts state law, there is nothing local governments can do to protect these businesses.¹⁵⁵

Additionally, due to the long history of arresting cannabis offenders, law enforcement officials in some areas have not yet adjusted to the practice of protecting legal cannabis companies.¹⁵⁶ Last year in Oakland, California, business owners claim the police did not arrive at the scene of a string of robberies.¹⁵⁷ There are also issues with insurance companies denying

¹⁵² *Id.*

¹⁵³ *Safe Sts. All. v. Hickenlooper*, 859 F.3d 865 (10th Cir. 2017).

¹⁵⁴ *Id.* at 891.

¹⁵⁵ U.S. Const. art. VI, § 2.

¹⁵⁶ Michael Corkery, *Oakland Cannabis Sellers, Once Full of Hope, Face a Harsh Reality*, N.Y. TIMES (Mar. 15, 2022), <https://www.nytimes.com/2022/03/15/business/cannabis-dispensaries-oakland.html>.

¹⁵⁷ *Id.*

claims that should have been covered by policies, which business owners are attributing to racial discrimination.¹⁵⁸

IV. SOLUTIONS

Many of the fallacies and abuses of social equity systems have been described above. There are, however, reforms that could help provide resources to those most impacted by the War on Drugs. Key components of such programs should include funding and employment opportunities. Raising capital appears to be one of the most significant challenges for applicants to overcome, and, therefore, programs need to address that issue.

One way to provide funding to applicants who cannot access capital is by allocating taxes collected from cannabis sales to them in the form of loans.¹⁵⁹ New York Governor Kathy Hochul announced the creation of a \$200 million public-private fund to support social equity applicants.¹⁶⁰ The fund will provide capital and start up financing to those applicants who could not secure it elsewhere.¹⁶¹

New Jersey has also pledged to use tax money raised from cannabis sales for social equity.¹⁶² The state's Cannabis Regulatory Commission is holding hearings to determine how the state should allocate those revenues.¹⁶³ One Newark resident suggested forming grants or no-

¹⁵⁸ *Id.*

¹⁵⁹ Zack Budryk, *New Jersey lawmakers include 'social equity' tax in marijuana legalization bill*, THE HILL (Dec. 2, 2020), <https://thehill.com/homenews/state-watch/528389-new-jersey-lawmakers-include-social-equity-tax-in-marijuana-legalization>; Kyle Jaeger, *New York Governor Announces \$200 Million Marijuana Fund To Promote Industry Equity*, MARIJUANA MOMENT (Jan. 5, 2022), <https://www.marijuanamoment.net/new-york-governor-announces-200-million-marijuana-fund-to-promote-industry-equity/>.

¹⁶⁰ *Jaeger, supra* note 159.

¹⁶¹ *Id.*

¹⁶² Suzette Parmley, *N.J. residents sound off on where weed tax dollars should be spent*, NJ.COM (Mar. 7, 2022), <https://www.nj.com/politics/2022/03/nj-residents-sound-off-on-where-weed-tax-dollars-should-be-spent.html>.

¹⁶³ *Id.*

interest loans with the funds to help those who lack the means to enter the industry.¹⁶⁴ Another idea is to invest tax money collected back into impact zone municipalities to assist programs more narrowly tailored to the communities' needs.¹⁶⁵

If states afford social equity applicants the opportunity to acquire funding, those applicants will be able to start from the same position as others who have access to capital. Many applicants require such resources because the War on Drugs directly impacted them. For example, an applicant who wants to start a business but has a spouse who has been incarcerated for years for a minor cannabis offense and, as a result, struggled to support his or her single-parent household could be afforded access to a social equity fund providing a start-up loan that would otherwise be impossible for that individual to obtain.

To ensure that funding goes to those most in need, states should implement a screening process similar to the Free Application for Federal Student Aid (FAFSA) which is used for student loans and financial aid. To receive aid, students fill out a FAFSA form with basic financial information which schools then use to determine which financial packages they are eligible for.¹⁶⁶ Cannabis programs could require social equity applicants to fill out a financial form including how much capital they have access to, current assets, and expected need. The government could allocate the social equity fund after assessing these applications. Providing applicants access to capital without the need to rely on investors allows them financial independence to run their businesses.

Successful social equity programs must also ensure that social equity funding is managed by private investors who do not control the licensing process. As such, states should bar sales or

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *What is the Student Aid Report (SAR)?*, FED. STUDENT AID, <https://studentaid.gov/help/sar> (last accessed Apr. 25, 2022).

transfers of social equity licenses for a specific number of years. They should also impose stringent requirements and audit cannabis businesses to ensure that the applicant is responsible for the duties and delegations that are required of a majority owner. States could create a checklist of nondelegable duties to minority or outside owners including, but not limited to: high level decision making, managing operations and structure, and strategizing. If a company that qualified as a social equity business is found to violate these requirements, the regulatory authority should immediately suspend that business's license and impose fines.

Successful social equity licensing programs should also provide job opportunities. Jurisdictions can facilitate social justice job opportunities by appointing individuals with cannabis-related offenses to positions on regulatory boards in companies and in government. This would, of course, depend upon the severity of their offenses because as discussed earlier there are restrictions in many jurisdictions regarding certain felony convictions. Those individuals with past histories in the industry may be able to provide valuable guidance based upon their previous hands-on experience manufacturing, distributing, and/or selling cannabis. They may be in a position to provide legislators useful information about how the business operates. Because of restrictions barring those with certain convictions from obtaining government jobs, an exception could be created to permit those convicted to form consulting firms for governmental agencies to hire as advisors.

Regulatory authorities could also set a quota of social equity hires for all cannabis businesses, regardless of whether social equity applicants operate them. This would allow people impacted by criminalization to profit directly from legalization. In addition, it would promote diversity in the workplace and enable people to advance their careers in the above ground market, rather than force them to resort to unlawful sales.

Another way to provide impacted individuals opportunities in the industry is by organizing cooperatives, particularly for cultivation facilities. In California, farmers are uniting to gain a greater market share and pool their resources.¹⁶⁷ Doing so may spread marketing expenses among members and cut insurance costs.¹⁶⁸ It also can allow cultivators to combine finances to build a processing facility to serve its members, which they might not otherwise be able to afford to do if they are operating individually.¹⁶⁹ This could provide a viable solution for those who do not have enough funding to operate a business on their own, but who want to get started in the industry. It also can create a sense of community in an impact zone devastated by the War on Drugs, enabling people to work together and profit from the industry without sacrificing their entire life savings or taking a gamble in the industry.

One challenge of cooperatives is that many impacted areas are urban, so it may be difficult to find suitable cultivation sites. However, issuing cooperative licenses can create opportunities in urban areas that would not otherwise exist because of the lack of rural property. For example, it may be too costly for an individual to acquire real estate such as rooftop space or a small plot of land, however pooling together a smaller sum of money from multiple people could prove to be a more feasible solution.

CONCLUSION

With the impending federal legalization of cannabis, it is vital for state and local regulatory schemes to include social equity licensing provisions that best serve the local communities and individuals impacted by the War on Drugs. The federal government is responsible for the

¹⁶⁷ Bart Schaneman, *Smaller California marijuana farmers form co-ops to save on costs, compete with large growers*, MJ BIZ DAILY (May 22, 2019), <https://mjbizdaily.com/smaller-california-marijuana-farmers-form-co-ops-save-costs-compete-large-growers/>.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

devastation of targeted communities; thus, it has a duty to ease some of the burdens. There are many significant factors for legislators to consider in enacting new legislation, and they should closely examine the programs implemented in the legalization states to better understand the successful concepts and programs that have promoted social equity thus far.