



# UNDERSTANDING SOCIAL EQUITY

Compiled by Chris Nani

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# Preface

*Chris Nani*

Social equity programs, a recent innovation of the cannabis industry, are programs that seek to remediate and help individuals, families, and communities harmed by the War on Drugs. In 2017 I began researching social equity programs and to my dismay found there was little, if any, research available on social equity programs and how they're created. Consequently, the lack of guidance or any information on why social equity programs succeed or fail has led many programs to repeat the same mistakes of their predecessors and severely weakened those program's chances of survival.

I developed the Social Equity Assessment Tool (S.E.A.T.) in 2018 and began using it in 2019 to better understand programs. My first case study was Los Angeles' social equity program. It concluded that the program would fail because of possible corruption, lack of transparency, and a severely under-resourced agency tasked with creating, implementing, and enforcing their social equity program. Since then, I have been able to speak with regulators and advocates across the country about designing and implementing social equity programs.

My experience with the general lack of knowledge about social equity programs was further validated when I started asking other major thought leaders and organizations about their views on how social equity programs are faring. Collectively, we agree they can be improved by educating regulators and policymakers. Our goal is not to implement change overnight, but rather, to start a larger conversation about social equity. We believe by collectively bearing our thoughts on social equity programs we can be a resource and reference for drafters of social equity programs.

Our goal can further be defined into four objectives:

- Educate regulators on what social equity programs are and their importance.
- Why certain criteria should be used to define social equity applicant eligibility.
- An analysis of prior social equity programs.
- Key factors for social equity programs.

*Understanding Social Equity* is a compilation of viewpoints from various authors with diverse backgrounds. From attorneys, policy analysts, and journalists to advocates, business owners, and social equity applicants, my goal was to provide as many perspectives as possible – some of which may conflict with other authors to provide regulators a wide range of respected opinions about social equity programs. Together, we believe this compilation can be used as a guide for drafters and regulators when determining minute details about how they would like to create or improve their social equity program. The authors of this compilation only represent viewpoints expressed in their individual work.

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# Social Equity Challenges

Constitutional challenges and developing accurate metrics are two of the most pressing issues for social equity programs. Any government action, such as creating social equity programs, is subject to scrutiny to ensure it's constitutional and effective. Constitutional challenges commonly arise when individuals feel their rights have been breached, there is disproportionate treatment, or when taxpayer money is used. Secondly, to determine if a program is effective metrics must be made to measure against. The cannabis industry has little in the way of social equity research. To date, the only metric developed to gauge social equity programs is [S.E.A.T.](#) or the social equity assessment tool.

## Constitutional Challenges

*Emily Burns*

The topic of social equity has become an increasingly popular topic as states look to implement legalization and accompanying regulations, but the constitutional law implications of these programs remains unknown. At the outset, it is important to understand that the legal landscape with respect to cannabis-related social equity programs remains largely unknown, as there have been few legal challenges resulting in binding, precedential opinions at the state level.

Although the Equal Protection Clause of the 14<sup>th</sup> Amendment was enacted in order to eradicate racial discrimination against minority groups, this same provision has been used to challenge the constitutionality of race-conscious, remedial measures designed to compensate individuals from past discrimination in the cannabis industry.

*Maryland*

When Maryland enacted medical cannabis reform legislation, authorizing the issuance of cultivation, processor, and dispensary licenses pursuant to state-mandated criteria, the legislature required the Maryland Medical Cannabis Commission (MMCC) to “actively seek to achieve racial, ethnic, gender, and geographic diversity when licensing [growers, processors, dispensaries]” to the extent permitted by federal and State law.

However, the Maryland Medical Cannabis Commission (“MMCC”) decided not to allow for consideration of race and ethnicity in the scoring process in response to an opinion letter drafted by the Maryland Attorney General’s Office of General Counsel. The opinion was provided in response to a request from Maryland Delegate Christopher West, who asked the Attorney General’s Office whether the consideration of diversity in terms of race and ethnicity would subject the state of Maryland to litigation for violation of the Equal Protection Clause of the United States Constitution.

The letter to Delegate West indicated that the state of Maryland could not consider race or ethnicity in the licensing process without a disparity study to determine the existence and extent of racial and ethnic minority discrimination in the medical cannabis industry. The letter prompted the state of Maryland to hire a diversity consultant for purposes of conducting a disparity analysis that would provide sufficient legal basis for diversity considerations in the license application and scoring process.

### *Ohio*

The state of Ohio went further than Maryland in regards to their social equity initiatives by requiring 15% of cultivator, processor, and testing laboratories licenses to be awarded to economically disadvantaged groups, which included Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians. After failing to obtain a license, Pharmacann, LLC filed a lawsuit against the Ohio Department of Commerce, claiming that the race-conscious set-aside legislation was unconstitutional as a matter of federal and state law.

The Ohio Court of Common Pleas ultimately granted summary judgment in favor of Pharmacann, LLC, because the Ohio legislature failed to compile and review sufficient evidence related to the medical cannabis industry to support the finding of a strong basis in evidence for a compelling government interest to exist. Additionally, the Court indicated that even if race-based remedial measures were supported by a strong basis in evidence, the Ohio legislation was not narrowly tailored in a manner that was consistent with Supreme Court jurisprudence. The Ohio case sparked concerns among diversity and inclusion advocates throughout the country, as lawmakers sought to avoid future legal challenges that would render social equity provisions unconstitutional as a matter of federal and state law.

### *Legal Challenges*

Although the legal challenges to social equity provisions are intimidating to state agencies and lawmakers, it is important to understand that these legal issues are not settled as a matter of law. Rather, the various constitutional law implications of social equity programs remain unknown—and that is a great thing for those dedicated to ensuring diversity and inclusion in the cannabis industry.

To be clear, there is no federal or state law prohibiting the use of race-conscious measures or policies that specifically benefit members of a specific racial or ethnic group. If a state enacts race-conscious legislation, that law specifically prohibits individuals outside of the identified racial and ethnic groups from competing for certain programs or opportunities. The United States Constitution prohibits discrimination against any individual on the basis of race or ethnicity, so race-conscious measures have been challenged by individuals who were excluded from participating in the race-conscious program on the basis of their race or ethnicity.

There are a number of Supreme Court cases that address the constitutionality of race-conscious measures, but it should come as no surprise that the Supreme Court has never had the

opportunity to address the use of race-conscious measures specific to the state-governed cannabis license application process.

However, the Supreme Court has distinguished cases involving private sector discrimination (i.e. de facto discrimination) from state-sanctioned discrimination (i.e. de jure discrimination), which consists of prior state laws and policies that discriminated against individuals on the basis of race or ethnicity, although most of these laws targeted African American individuals. In *J.A. Croson v. City of Richmond*, the United States Supreme Court explained that findings of “prior discrimination by the government unit involved” can be evidence of a compelling government interest.

The *Croson* majority opinion specifically stated: “If the city [of Richmond] could show that it had essentially become a “passive participant” in a system of racial exclusion practiced by elements of the construction system, we think it clear that the city could take affirmative steps to dismantle such a system.” Justice O’Connor further noted “It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars do not serve to finance the evil of private prejudice.”

It is important to understand that the *Croson* decision did not prohibit race-conscious measures but required that set-aside contract programs are pursued by legislative bodies with goals that are “important enough to warrant use of a highly suspect tool.” The Court explained that classification based on race carries a danger of stigmatic harm so race-conscious programs must be reserved for remedial settings in order to prevent notions of racial inferiority and politics of racial hostility.

Unlike the immediate case involving the provision of a limited number of Maryland medical cannabis licenses, the facts of the *Croson* case did not involve anything even approaching a prima facie case of a constitutional or statutory violation by anyone in the Richmond construction industry. However, the opinion stated “where gross statistical disparities can be shown, they alone in a proper case may constitute prima facie proof of a pattern or practice of discrimination.” If discriminatory exclusion is identified through statistical analysis, the relevant government unit would have a compelling interest in preventing its tax dollars from assisting these organizations in maintaining a racially segregated industry.

#### *Disadvantaged Business Enterprises*

The federal Department of Transportation Disadvantaged Business Enterprise (“DBE”) program defines race-neutral means as “outreach, technical assistance, procurement process modification—measures which can be used to increase opportunities for all small businesses, not just DBEs, and do not involve setting specific goals for the use of DBEs on individual contracts. Contract goals, on the other hand, are race-conscious measures.”

The awarding of contracts to DBEs is not necessarily race-conscious because a DBE that has “proven in the past it does the best or quickest work...or submitted the lowest quote,” has

obtained the subcontract through race-neutral means. The federal guidance manual for DBE programs specifically notes that race-neutral DBE participation includes, but is not limited to, the following: DBE contracts *obtained through customary competitive procurement procedures*; DBE participation *in a contract that does not carry a DBE goal*; DBE participation exceeding a contract goal; and DBE *subcontract awarded without consideration of the firm's DBE status in making the award*. The DOT guidance also states that outreach and training programs designed for DBEs are not automatically race-conscious measures simply because they only allow DBE participation and inclusion.

Courts like the United States Court of Appeals for the District of Columbia have concluded that the term “socially disadvantaged” is race-neutral because it permits individuals of any race to qualify as socially disadvantaged if they have been subjected to racial or ethnic prejudice or cultural bias. In a 2016 case, the Court found the definition of social disadvantage does not amount to a racial classification because it limits the field to certain racial groups or racial groups in general, and there is no presumption that a member of any particular group is socially disadvantaged based solely on their membership in that group.

### *Closing Thoughts*

The Supreme Court has previously acknowledged the distinction between affirmative action programs subject to strict scrutiny and cases involving remedies for clearly determined constitutional violations. If there has been a judicial determination of a constitutional violation, this serves as a predicate for the formulation of a remedial classification. The Supreme Court has acknowledged the validity of racial preferences in cases of constitutional or statutory violations resulting in identified, race-based injuries to individuals held entitled to the preferences.

The Supreme Court has specifically noted that judicial, legislative, and/or administrative findings of constitutional or statutory violations provide a “substantial” government interest in preferring members of the injured groups at the expense of others, since the “legal rights of the victims must be vindicated.” Further, there is a profound difference between governmental actions that are racist and governmental actions that seek to remedy the effects of prior racism or to prevent neutral government activity from perpetuating the effects of such racism.

A classification which aids persons who are perceived as members of a relatively victimized group at the expense of other innocent individuals is permissible only when there are judicial, legislative, or administrative findings of constitutional or statutory violations. After such findings have been made, the governmental interest in preferring members of the injured groups at the expense of others is substantial, since the legal rights of the victims must be vindicated. Further, public bodies that have engaged in racial discrimination cannot satisfy compliance with the Equal Protection Clause simply by ending the unlawful acts and adopting a neutral stance.



In other words, race-neutral remedies are inadequate if consequences of past discriminatory acts influence or control present decisions. A race-neutral measure and/or program is designed to assist all small businesses and/or increase opportunities for all small businesses. In contrast, a race-conscious program or measure is specifically focused on assisting only disadvantaged business entities and typically includes specific goals for DBE participation in the awarding of contracts (i.e. set-aside contracts).

# Tracking Social Equity

*Douglas A. Berman*

Chris Nani, in the first sentence of his preface to this volume, defines social equity programs as those that “seek to remediate and help individuals, families, and communities harmed by the War on Drugs.” Behind this crisp definition of social equity programs stands a series of complicated questions about just **who** should be the focal point for remediation and help and **how** these programs should be oriented and assessed. By starting to unpack these questions, we can begin to appreciate just why these programs are so important in principle and so challenging in practice.

The War on Drugs has been a societal disaster, and calculating its continuing harms is even harder than taking stock amidst a natural disaster. Some criminal justice metrics provide a partial accounting of the carnage: over a million people are arrested every year in the United States for drug possession; hundreds of thousands are incarcerated and millions more are under community supervision or are saddled with drug-related convictions. Even minor drug convictions can create lifetime difficulties; federal law alone creates over 500 collateral consequences limiting access to employment, occupational licenses, housing, education, and other opportunities.

Drug war programs like stop-and-frisk and asset forfeitures produce intangible traumas and tangible deprivations not just for justice-involved individuals, but also for families, friends and communities. Studies have documented profound, generational drug war “casualties” that include diminished employment and family cohesiveness, poorer educational attainment and health outcomes for children, and greater financial and housing insecurity.

Though it is hard to measure fully the drug war’s myriad harms, it is easy to identify who disproportionately suffers from drug enforcement policies and practices. Reports document that African-Americans are four times more likely to be arrested on marijuana charges than white peers, and they make up nearly 30 percent of all drug-related arrests though accounting for only 12 percent of all substance users. Disparities are even more severe as to who is incarcerated for drug offenses: nearly 80 percent of people serving time for a federal drug offense are African-American or Latino, and people of color make up 60 percent of those serving time for drug charges in state prisons.

Amidst this sea of inequitable drug war harms, social equity programs necessarily confront challenges in assessing and prioritizing those needing help and deserving remediation. Because equity efforts in cannabis reform laws or in industry initiatives cannot possibly redress all past harms, difficult questions arise as to the proper focal points for reform efforts: e.g., should only individuals with cannabis convictions, or anyone subject to any harms from drug prohibitions, be beneficiaries? Should broader communities, particularly communities of color subject to disproportionate enforcement, be the main concern for social equity programs rather than just specific justice-involved individuals?

The issues are front and center in laws and proposals for criminal record expungement. Problematically, there is little data in any jurisdiction on the nature and number of persons with past cannabis arrests or drug convictions, and no metrics exist for calculating just how past convictions create current hardships for individuals and families. Still, with anecdotes and growing empirical data showing expungements having significant positive impact for people with prior convictions, many advocates rightly view record expungement to be a critical remedial element of modern cannabis reform. But how ambitious should expungement efforts be and how can they be effectively evaluated?

In the era of big data, where employers and landlords use private parties to search online for criminal records, more proactive remedial efforts may now be essential. It can be dangerously easy to celebrate expunged convictions as a marker of equity's success; but if expungement efforts are not tangibly improving lives—perhaps because many justice-involved individuals confront many other legal and social barriers — these efforts could prove a modest and relatively hollow achievement.

These challenges grow as we consider other social equity programs and proposals. Laws and initiatives focused on providing preferential licensing considerations, or dedicated funding and business support, or employment assistance, necessarily have limits on just how many persons can be eligible for and can receive benefits. With stakes high and resources scarce, extra pressure attends the question of whether to prioritize the needs of specific drug war victims (such as formerly incarcerated individuals) or to make eligible a broader cohort of community members (such as all people residing in a region disproportionately affected by drug laws).

Moreover, given the enduring trauma that can follow criminal-justice involvement, equity programming must be ever mindful that persons harmed by the drug war may not be eager for involvement in a new cannabis industry. With many social equity programs built around cannabis activities, persons who may need and deserve meaningful remediation from drug war harms may remain unseen if they are eager to stay distanced from the cannabis space.

These challenging issues, which must be thoughtfully considered when creating any social equity programs, persist for effectively monitoring and assessing these programs once operational. Without clear and well-defined goals for preferential licensing or employment, it is impossible to determine whether and how social equity programs are succeeding. Early social equity programs have been perceived as not living up to expectations, but this may be partially a function of too much being expected at the outset and of too little sound forecasting of what

should be expected in the future. And because moneyed interests and politically connected actors can often find ways to seize any government program advantages, the implementation of social equity programs must be carefully monitored to ensure they deliver meaningful benefits to their intended beneficiaries.

These substantive challenges suggest an institutional response: jurisdictions should always couple social equity programs with an administrative infrastructure to help implement and

assess these programs on an on-going basis. A dedicated institution, which can be funded by taxes and other revenues generated by cannabis reforms, should be tasked with proactively working on and evaluating policies and practices related to social equity programs.

Encouragingly, an Ohio initiative that had been planned for a 2020 vote included a provision creating a “Commission on Expungement, Criminal Justice, Community Investment, and Cannabis Industry Equity and Diversity” which was to be given 25% of the revenue raised from a state cannabis sales tax. Though this proposal may not reach voters this year, it serves as a great example of the kind of structural change needed to tackle the critical complexities that attend any effort to remediate and help individuals, families, and communities harmed by the War on Drugs.

# Unpacking Social Equity

Social equity is a novel concept that has yet to have a standard definition. As social equity programs evolve, so does our understanding of what they are, why social equity matters, and why now is the right time for social equity programs. Furthermore, in this chapter the history of cannabis will be used to help illustrate the basis of social equity programs along with multiple perspectives on social equity programs from authors across the U.S. Below, questions are bolded and author names are italicized to differentiate responses per question.

## **What Is Social Equity?**

*Cedric Haynes*

‘Social equity’, ‘social justice’, and ‘disproportionately impacted community’ are terms that are now frequently used in publications and conversations regarding cannabis. In a broader context, these terms are all used to either define communities that were harmed by the ‘War on Drugs’, policies to provide relief stemming from the ‘War’, or the resources that are given to these communities to lower barriers and facilitate entry into cannabis marketplaces. ‘Social equity’ is the term most frequently used of the three, but what does it really mean?

At a very basic level, ‘equity’ is defined both as “the quality of being fair or impartial” or “the value of shares issued in a company”. I believe that both interpretations are applicable to “social equity”, but to truly round out the concept, one needs to first understand how failed policies have unfairly affected distinct demographics within our society, creating the disproportionately impacted communities that deserve fairness and ownership-share of cannabis marketplaces.

To truly understand the potential impacts of the ‘War on Drugs’ to disproportionately impacted communities, we must first understand how a cannabis arrest or conviction can erect barriers in a person’s life even in the present-day, not to make light of the severe toll that physical incarceration has already taken. Specifically, and as examples, a cannabis arrest or conviction can affect housing, education, and career prospects.

Shelter is one of the most basic and important necessities for everyone's livelihood. Those who qualify to receive federal assistance by way of housing are amongst the most underserved and vulnerable populations. Specifically, to qualify for federal rental housing assistance, you must be classified as low-income, elderly, or disabled. As policies currently stand, and as evidenced by the recent threats of eviction to public housing tenants in Illinois, these populations can be evicted from their homes based on medical or recreational cannabis use- even if legalized at the state level.

While a college degree is not the only indicator to how successful or stable a person will become, a degree has generally been regarded as one of the keys (though certainly not the only route) to a successful and stable life. Data shows that individuals with college degrees are more likely to

be employed, own a home, and earn more, on average, than individuals without a college degree. However, the overwhelming majority of college educations are not free, and according to the National Center for Education Statistics, the cost of tuition has risen across all higher-learning institutions spanning back decades. Were it not for federal financial aid, I personally would not have been able to afford to attend college. A cannabis conviction incurred while receiving federal financial aid could have revoked my eligibility to receive federal financial aid, and I would not have been able to finish my education.

Employment, and the ability to support oneself, are essential to livelihood- shelter, food and the provision of care are all dependent upon income. Unfortunately, even in states that have legalized medical and/or recreational cannabis, a failed drug test or cannabis arrest can lead to the denial of an employment opportunity- or being fired from a current job. These outcomes directly jeopardize a person's stability and livelihood.

Why so much focus on these chosen areas of impact? Take into account that the previous three concepts are so interwoven into our basic human necessities and ambitions. Consider the very real personal, familial and financial costs associated with arrests, the judicial system, and confinement stemming from the 'War on Drugs'. Understand that the over policing associated with that 'War' disproportionately targeted black individuals and certain communities. Realize that the concepts of systemic oppression and community marginalization were purposely ingrained in the 'War on Drugs', and thus, cannabis.

A "disproportionately impacted community" is more than the definition granted to a particular demographic or geographic boundary created by a city or state to designate where and to whom resources are provided. Disproportionate impact is more than the basis for being granted a license or an opportunity to participate in any aspect of a cannabis industry. Although the context here is cannabis, disproportionate impact is bigger and more complex than the connotation and connection to the plant.

Disproportionate impact is the recognition that through failed or absent policies and over-policing, entire communities were marginalized in multiple aspects of their lives, severely affecting socio-economic status and upward mobility . Social equity is understanding that, in fairness, it is right to ensure that disproportionately impacted communities receive the resources necessary to participate in these marketplaces, and have the opportunity to own cannabis businesses.

Social equity is the recognition that as cities, states, and operators prospect and reap the rewards of owning or fostering cannabis businesses– the staggering majority of owners are white. Headlines detail the once-in-a-lifetime financial boon of cannabis daily, and while operators are given the opportunity to profit via legalization, blacks are still more than 3.5 times likely to be arrested for cannabis, though cannabis use amongst blacks and whites are nearly identical, and blacks compose only 13-14% of the population. In essence, blacks are over 3.5 times more likely to have barriers erected in many aspects of their lives because of

cannabis, and therefore less likely to have the capital and resources necessary to enter and compete in marketplaces that are being driven by cannabis.

In summation, yes— social equity is about ownership and career opportunities, resources and aid in breaking into an industry that is built on the very plant responsible for marginalization— but it should also be about conceptualizing and taking strides toward making disproportionately impacted communities whole again. Social equity should not only be about lowering barriers to entering the cannabis industry, but also lowering and removing barriers that continue to disproportionately impact these communities in general.

I believe that the Social Equity Analysis Report commissioned by the City of Los Angeles says it best— ‘social equity’ is the promotion of “equitable ownership and employment opportunities in the commercial cannabis industry to decrease disparities in life outcomes for marginalized communities and to address disproportionate impacts of past cannabis enforcement in those communities”.

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*Chris Nani*

Social equity is an amorphous term that does not have an agreed upon definition. Individuals may use the term to refer to the specific act of earmarking cannabis licenses for social equity applicants while others may more broadly use it to refer to helping communities and individuals harmed by the War on Drugs. Regardless, as an industry, we have come to the conclusion that the laws and regulations that once governed how we treat cannabis were overly harsh, systemically racist, and have caused generational harms.

Those same laws and regulations still exist and are enforced in a minority of states, but, as cannabis use becomes normalized, so do the laws and regulations surrounding it. Social equity is one of the first responses to legalization, if not in tandem with legalization. It is not perfect. But, social equity calls for justice and fairness. For example, one glaring issue is individuals with prior cannabis convictions should not be incarcerated while others become millionaires off the same activities.

Social equity is a response to the initial and ongoing injustice many see, including myself, with ownership within the cannabis industry. The injustice, grossly disproportionate ownership, has caused rise for concern and has delayed legalization efforts in states such as Illinois and New York. In both states, social equity advocates opposed legalization because they felt there were inadequate provisions addressing social equity. States such as Colorado, the pioneer of the cannabis industry, is owned almost entirely by white males with the exception of one African-American woman.

Social equity does not advocate for redistributing licenses. It does not call for taking away licenses from others. Social equity calls for a percentage of new licenses to be set aside for

individuals who have been harmed by the War on Drugs. The War on Drugs is a well-documented failed drug initiative from the Nixon administration that targeted and devastated minority communities, specifically African-Americans were arrested for cannabis offenses at a rate of three to eight times the amount whites were for the same offense according to data from the ACLU.

Furthermore, admitting as an industry that the War on Drugs was wrong is a powerful force propelling social equity and the industry above any other. A unique aspect of the cannabis industry is how new it is. Because there are no existing rules, entrepreneurs, and policymakers must trailblaze a path. Social equity is emerging as a component of legalization in what was once an afterthought or considered too progressive for the cannabis industry. Social equity is more than afterthought for legalization, it should be essential to any new Act. Social equity is more than providing proportional representation, it is explicitly acknowledging the wrongdoings of past policies and starting a conversation on how to remedy past harms and make fair policies to prevent future injustices as well.

While social equity is still in its infancy, the term will remain fluid. However, a common theme that permeates every concept and definition of social equity is justice and fairness. Advocates want justice for those harmed by the War on Drugs. It is ludicrous individuals still are incarcerated for decades due to non-violent possession of cannabis. It is even more infuriating to watch another individual perform the same activity ten years later and reap millions of dollars while their counterpart remains incarcerated.

Secondly, social equity demands fairness. It demands those same individuals who have been harmed by the War on Drugs receive a proportional seat at the table. Some states, such as Alaska, prohibit any cannabis owners from having a prior felony. A part of the industry does come from pre-legalization and it is inherently unfair to prohibit those individuals who operated and created the industry before it was legalized from reaping the benefits of a legalized market.

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*Richard Ng*

The concept of social equity is not a new concept. Discussions held as far back by Aristotle and Plato highlight the importance of equity as a type of justice that may “go beyond the written law” and can evolve as a practice. The ideals of justice and equality were the cornerstones of the origin of the United States as colonists who were driven by political and social injustices drafted in the Declaration of Independence that “all men are created equal”.

Over the decades in the United States, particularly in the 1960s and 70s the context was focused on racial injustice and civil rights. These social inequities highlighted the vastly differing experiences different American’s had with government and institutions based on their specific identity groups. This put the spotlight on the importance of public administrators and, under the guidance of Dwight Waldo, the defining figure in modern public administration, a



movement was established for public administrators to use their discretion to enforce and influence policy as opposed to adhering to the laws of the land which at time may be regressive.

What spawned from the modern public administration movement were many technical definitions and concepts for equity. Black's Law Dictionary states, "[equity] denotes the spirit and the habit of fairness, justness, and right dealing which would regulate the intercourse of men with men – the rule of doing to all others as we desire them to do to us." and Rawl's theory of "justice and fairness". As these definitions started to expand and evolve the value system of justice and fairness became ubiquitous. Adler defined social equity as "equal treatment to which all are entitled by virtue of being human" while Falk described equity as "impartiality, fairness, and justice."

As the definition of equity and social equity started to evolve it was inevitable that the concept would be applied to public rights, access, and redistribution policy. The modern definition that guides public administrators from the National Academy of Public Administration (NAPA) defines social equity as "The fair, just and equitable management of all institutions serving the public directly or by contract, and the fair and equitable distribution of public services, and implementation of public policy, and the commitment to promote fairness, justice, and equity in the formation of public policy". Understanding the history and evolution of these definitions and concepts of equity and their applications to race and gender, including sexual and gender identity, economic status, physical and mental disabilities are vital to understanding how social equity is defined in the cannabis industry.

In the cannabis industry the social equity policies that are created and implemented by various government agencies on the State and local levels are addressing the inequities that were created by the enforcement of Federal and State policies on low income communities during the War on Drugs era. If one was to apply the current definition of social equity that is used to by public administrators and apply it specifically to cannabis then a definition specifically related to the cannabis space could read:

"Cannabis Social Equity is the active commitment to fairness, justice, and equality in the formulation of public policy, distribution of public services, implementation of public policy, and management of all institutions focusing on cannabis enforcement and oversight of the cannabis industries. Public administrators, including all persons involved in public governance around cannabis enforcement and oversight of the cannabis industry should seek to prevent and reduce inequality and injustice based on significant social characteristics and to promote greater equality in economic opportunities, access to services, procedural fairness, quality of services and social outcomes."

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*Eric Range*

For decades, failed public policy has created harsh social economic conditions in urban and rural communities. Ill-conceived policies like ‘stop and frisk’ and ‘mandatory minimums’ were locally enforced as a part of the prosecution of a federal “War on Drugs”. To see the impact of these policies one need only to examine the despot social conditions which continue to plague urban and rural communities: high unemployment, high incarceration rates and deteriorating infrastructure. Further, the lasting mental effects of over-policing and abuse of power manifest themselves into a deep mistrust and even hatred of law enforcement. Consequently crime increases, real estate becomes devalued, tax bases disappear and homelessness soars.

These social conditions become the scape goat and excuse for the lack of public and private investment necessary to jump-start economic development in these communities. Any conversation about social equity policy must begin with an acknowledgment of failed public policy which have led to dismal social conditions.

Prohibitionist policies permeate nearly every aspect of social life including housing discrimination, predatory mortgage lending, employment and wage discrimination for previously incarcerated individuals, and most notably the justice system itself in its disproportionate adjudication of the “War on Drugs”. Compounded by decades of failed economic policies, the prosecution of prohibition demolished the middle class and severely stifled the economic mobility of communities of color. These policies have undeniably tilted the balance of economic dominance away from individuals and the communities they reside in, toward the interest of several major industrial sectors: the prison industrial complex, health care/insurance providers, and the pharmaceutical industry.

Using a firm understanding of prohibitionist policies as the catalyst to the social conditions evident in urban and rural communities, we can develop an understanding of social equity. First, let’s explore the goal of social equity and its policies specific to the cannabis industry, which I believe is, to create economic inclusion in the cannabis industry for communities and individuals who bore the brunt of the negative impact of prohibition. Secondly, it is important to understand that equity by definition is in contrast with equality, and seeks to unequally distribute resources to the areas of greatest need. Stated differently, social equity requires us to recognize the inherent unfairness in public policies which led to unequal social conditions causing us to focus our efforts and resources on correcting those conditions.

This framework thus justifies the implementation of specific policies, programs, and earmarked resources aimed at correcting social ills which are the conditions of failed prohibitionist policies. Unfortunately the current conversation surrounding social equity in the cannabis industry has primarily focused on leveling the playing field for individuals, from communities disproportionately impacted, to enter the industry as owners. While this is absolutely necessary, it unfortunately misses the mark, as demonstrated by the failed social equity program models attempted in states and municipalities across the country.

There are many issues that must be cared for in this model in order to achieve the program's intended goals. Though frustrating, failure at this stage should not be looked upon negatively. As we continue to experiment with several different models we will undoubtedly learn more about what works and what does not. It is important to note however, that our efforts will only yield actionable insights if we are deliberate and honest in our evaluation and assessment of social equity policies.

Further, if we are to be as impactful as we hope, it is vital that we expand the conversation and our attention beyond business ownership in the space. As explained above, prohibitionist policies permeate all aspects of social life and so must the breadth and depth of the social equity policies we deploy. In fact, we must begin to view social equity through the much broader lens of economic development and redevelopment.

# Why Does Social Equity Matter?

*Richard Ng*

In order to appropriately discuss the development of a legal cannabis industry, it is crucial to reflect on the history and evolution of the concept of equity, why it is a concern for public administrators, and examples of negative consequences from the War on Drugs and current policies that can be both caused and rectified by the government agencies.

It is important that any stakeholder, individual, organization, business, government agency that is part of the cannabis community or is participating in the legal cannabis industry understand the historical consequences of the criminalization of cannabis. The negative impact on the lives of families and individuals that were arrested for cannabis-related crimes sparked a civil rights movement that created the foundation for what the legal cannabis industry is built on today.

Referring back to the value system of justice and fairness that is at the core of social equity, public administrators must design policies and programs that help restore the livelihood that was taken from communities impacted by the War on Drugs. It is the responsibility of public administrators to develop social equity programs as well as identify and reference the social inequities and injustices from the War on Drugs to show how their programs are working.

In reality, public administrators must understand that they are bound by the rule of law to implement regulations that may not adhere with the concepts of social equity. An example of this would be business taxes. Business taxes and fees in the cannabis industry are highly regressive and go against all concepts of social equity.

The binding nature of the law, however, does not preclude administrators from recognizing that the taxes they collect are regressive and trying to change this condition through legitimate methods. Without an awareness of or concern for social equity, and the historical context of the War on Drugs, administrators might simply follow the letter of the law or fail to question whether the law should be changed.

The concern for social equity can also guide public administrators in their duties. Having a commitment to inclusion and social equity are indispensable for truly sustainable development of an equitable cannabis industry. As the cannabis community strives to create an equitable and sustainable cannabis industry it is crucial that all cannabis stakeholders and specifically public administrators, ask “What do we want the future of cannabis to look like?”

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*Natalie Papillion*

America currently sits at a crossroads when it comes to cannabis. Medical marijuana is legal in thirty-three states, eleven of which have also legalized cannabis for adult-use. And, given the fact the number of legal states seems to grow every quarter, politicians and industry leaders

expect full federal legalization in the coming years. These are exciting developments. After over a half-century of misguided drug policies, the country is well overdue for a more sensible approach to marijuana.

That said, the momentum behind marijuana legalization—coupled with the meteoric growth of the legal cannabis industry—has also highlighted the ways marijuana prohibition has fueled mass incarceration and devastated low-income communities of color. And to add insult to injury, the spoils of this new “Green Rush” are overwhelmingly flowing to wealthy, well-connected and/or disproportionately white interests—and leaving the communities who bore the brunt of prohibition-related policing in the first place behind.

There’s something so viscerally unjust about the fact a handful of wealthy, well-connected, disproportionately white business people will make millions of dollars doing the **very same thing** we’ve jailed generations of black and brown men for. It’s imperative that members of the public—alongside our elected officials—come together to demand that legalization is accompanied by policies and programs aimed at repairing the harms of the War on Drugs.

This confluence of factors has laid the groundwork for a groundswell of support for social equity initiatives—programs and policies that ensure communities disproportionately harmed by the drug war are able to access economic opportunities in the legal cannabis industry. These efforts include legal measures to expunge low-level marijuana-related convictions, as well as policies that help people from disproportionately impacted communities access economic opportunities in the industry (most social equity programs are focused on facilitating minority ownership of cannabis businesses by giving entrepreneurs from disadvantaged backgrounds prioritized access to cannabis business licenses).

Given the sordid history and devastating social consequences of marijuana prohibition, it’s imperative we have a once-in-a-lifetime opportunity—as well as an ethical obligation—to ensure we’re creating a diverse, equitable and sustainable legal cannabis industry.

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*Akele Parnell*

Social equity matters because the War on Drugs was a war on people, and specifically, Black and Latinx people. It was never about drugs, public health, or safety. The War on Drugs was about power—political power, racial power, and economic power. It was about how power could be won, and how it could be maintained. And, this objective was made clear by its founders. At a press conference on June 18, 1971, Richard Nixon formally launched the War on Drugs, declaring drug abuse “public enemy number one”. His administration’s actual motivations for declaring the War on Drugs remained ostensibly hidden for decades. However, in a 1994 interview in Harper’s Magazine, John Ehrlichman, former domestic policy chief for President Richard Nixon, revealed what many people of color had argued decades— that the real purpose of the War on Drugs was to destabilize Black communities and suppress progressive political power:

“The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or black people, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”

But racism shaped drug policy long before the launch of the drug war. Although often overlooked, the racist motivations behind the campaign to criminalize cannabis were made clear from its inception. In the 1930s, Harry J. Anslinger, the first Commissioner of the Federal Bureau of Narcotics, led a virulently racist campaign to criminalize cannabis citing its influence on Blacks and Latinx persons:

“There are 100,000 total marijuana smokers in the U.S., and most are Negroes, Hispanics, Filipinos, and entertainers...marijuana causes white women to seek sexual relations with Negroes...the primary reason to outlaw marijuana is its effect on the degenerate races...Reefer makes darkies think they’re as good as white men.”

Anslinger’s campaign was successful and in 1937, Congress passed the Marijuana Tax Act outlawing the sell and possession of marijuana. Over time, cannabis laws become increasingly harsh with drug criminalization coalescing into an official drug war, initially under President Nixon and then again under President Ronald Reagan in the 80s. Overall drug arrests increased significantly with marijuana arrests accounting for nearly 80% of the growth in drug arrests in the 1990s. And by the 2000s, the majority of drug arrests in the U.S. were for marijuana, and almost all were for simple possession.

Today, the enforcement of drug laws remains a top priority for law enforcement agencies. The American Civil Liberties Union noted that in 2018, police made more arrests for marijuana than for all violent crimes combined. And although data shows that Blacks and Whites use cannabis at roughly the same rates, Blacks account for the overwhelming majority of cannabis arrests. This racial disparity is shockingly pronounced in places like Illinois and D.C., where Blacks are roughly 8x more likely to be arrested for cannabis than Whites. Yet, the significance of cannabis to the War on Drugs extends far beyond the criminal penalties for the plant itself. The alleged presence or smell of cannabis has been widely used a pretext for traffic stops, police searches and seizures and civil rights violations for nearly a century.

The War on Drugs, with marijuana as its weapon of choice, was waged mercilessly in Black and Brown neighborhoods for decades, leaving socially and economically devastated communities in its wake. Federal, state, and local governments have spent trillions of dollars tracking down and incarcerating drug offenders in low-income communities of color while simultaneously cutting funding for education, housing, healthcare, and development. The drug war has torn countless families apart and deprived millions of Black and Latinx Americans’ of access to jobs, education,

healthcare, housing, citizenship, and the right to vote, thereby compounding racially disparate harms in ways that are impossible to quantify. Indeed, the prohibition of cannabis and other drug laws have been used as weapons of mass destruction in Black and Latinx communities.

Now as the nation begins to de-escalate the War on Drugs, starting with the legalization of marijuana, we carry a moral obligation to make social equity the focus of legalization. Social equity is the principle that every person, regardless of their background or identity, is entitled to fair and just access to resources and opportunities. This principle must be advanced through public policy and should govern the administration and distribution of resources and services in society. Social equity is realized when an individual's background and/or identity has no impact, positive or negative, on their access to resources and opportunities in society.

Social equity requires that marijuana legalization center those most harmed by the War on Drugs—Black and Latinx persons—just as criminalization centered their exploitation. Marijuana legalization is and has always been a racial justice issue, and cannabis prohibition is an almost century long civil and human rights violation. In order for cannabis policy to be just and equitable, it must focus on repairing the racially disparate harms of the War on Drugs and the creation of economic opportunities and benefits for Black and Latinx communities.

Thus far, most legalization efforts have failed to center social equity. And the majority of the wealth and economic opportunities generated by legalization have gone to wealthy white entrepreneurs—those whose racial and economic privilege shields them from the scourges of the War on Drugs. Meanwhile, for people of color, the harms of the drug war—entrenched socio-economic inequities and widespread collateral consequences—continue to serve as nearly insurmountable barriers to ownership and meaningful participation in the industry.

Without a course of correction, legalization will continue to recreate and reinforce the racial injustices of the War on Drugs. This must change, and it can. But to do so, all new and existing cannabis policies must center racial equity and industry leaders must adopt robust social equity plans of their own. This will not happen without a push from the most powerful public and private stakeholders to make social equity the chief goal of marijuana legalization nationwide. The story of marijuana legalization is still being written. And the policy decisions that legislators and industry leaders make in the coming months and years will determine its conclusion.

# A Brief History of Cannabis

*Chris Nani*

The United States has a history of xenophobia and racism as a response to foreigners, immigrants, and those that are somehow different based on the color their skin. As far back as the 1850s, when Chinese immigration was strong because of work opportunities, the U.S. enacted the Chinese Exclusion Act. The Act required Chinese businesses and individuals to register for special permits to work and travel. At one point, Congress went as far as restricting Chinese immigrants to fifteen per ship or vessel. The Act remained in effect until 1943 when U.S. war strategist decided it would increase war morale to repeal the Act.

## *The Start of Prohibition*

Similar, to the Chinese Exclusion Act's purpose, the first laws targeting cannabis were meant to restrict and limit access to cannabis before weaponizing it against minorities. Initially regulated under the 1906 Pure Food and Drug Act, cannabis was classified as a "dangerous drug" and states began to classify cannabis as poison in the 1910s. Just as cannabis was shifting from a regulated drug sold at pharmaceuticals to fall out prohibition, the Great Depression was beginning.

The 1910 Mexican Revolution created a large influx of refugees and immigrants from Mexico to the United States. Many refugees found jobs near the U.S.-Mexico border working in agriculture. Because alcohol was also prohibited in 1920 due to the Eighteenth Amendment, cannabis was actually cheaper to buy. Consequently, workers would smoke cannabis during their breaks and after work as a way to relax. Cannabis became associated with Mexican immigrants, a group that was "taking jobs" from Americans. As the Great Depression caused record-breaking unemployment and economic chaos, Americans sought to point the finger at outsiders accusing them of taking jobs and resources.

The growing national xenophobia coupled with an economic depression helped spur the criminalization and eventual prohibition of cannabis. The Uniform State Narcotic Drug Act, drafted in 1925, was created to give police powers to states. States would now be able seize illegal drugs and prosecute those found guilty of violating the Act. Further pushing cannabis into the realm of criminality, the Marihuana Tax Act of 1937 made all possession of cannabis illegal without a medical or industrial purpose.

In connection with laws attempting to outlaw cannabis, the head the Federal Bureau of Narcotics, Harry J. Anslinger, continuously advocated for prohibiting cannabis pushing unsubstantiated racist claims as justification for prohibition. To quote Anslinger:

"There are 100,000 total marijuana smokers in the US, and most are Negroes, Hispanics, Filipinos and entertainers. Their Satanic music, jazz and swing, result from marijuana usage. This marijuana causes white women to seek sexual relations with Negroes, entertainers and any others."



Anslinger did not hide his disdain for minority communities, satanic jazz music, or cannabis. In fact, a quick Google search will show multiple quotes from Anslinger in Congressional hearings, public appearances, and in writing all demonstrating his outspoken behavior and attitude towards minorities and cannabis.

### *The War on Drugs*

Although not officially starting until 1971, the War on Drugs began much earlier when laws were created to ensure harsh minimum sentences for cannabis possession. The Boggs Act of 1952 and Narcotics Control Act of 1956 both contributed to the initial basis of drug sentencing by requiring all first time cannabis possession offenses to serve a minimum of two to ten years with a fine up to \$20,000. For the next two decades, cannabis slowly became demonized and associated with criminality. In 1969, the Supreme Court ruled the Marihuana Tax Act was unconstitutional and repealed it. Congress immediately responded with the Controlled Substances Act of 1970, the current Act regulating cannabis.

The Controlled Substances Act classified all drugs into a schedule with Schedule I drugs being the most dangerous and Schedule IV requiring a prescription. Schedule I drugs are deemed to have a high potential abuse and no accepted medical use. Schedule I drugs include heroin, LSD, peyote, and cannabis. Immediately after the enactment of the Controlled Substances Act, cannabis arrest went from under 100 per 1,000 arrest to 450 per 1,000 arrest. The trend dipped at its lowest in 1990 with 300 per 1,000 arrest but has since skyrocketed to 850 per 1,000 arrest in 2007 according to the FBI Uniform Crime Reports.

The Controlled Substances Act was the official declaration of war against drugs and was helmed by President Richard Nixon. Nixon was an aggressive president and pushed for tougher drug laws, mandatory minimums, and the infamous “three strikes” policy which created minimum twenty-five year terms for repeat offenders. The Comprehensive Crime Control Act of 1984, pushed by Nixon, targeted cannabis and revised definitions of terms such as distribution, possession, and intent. History has shown none of these measures helped combat the spread of narcotics from cartels or illegal organizations. However, the data has proven the War on Drugs has targeted communities of color and devastated families for generations.

In addition to Nixon’s push for tough drug law sentencing, he also wanted to right that cannabis was an evil substance that could corrupt the youth. In 1970, Nixon created the Shafer Commission, a non-partisan commission led formed of doctors, lawyers, and led by a former state governor, Raymond P. Shafer. The commission was tasked with determining the harm cannabis caused and recommendations for how to address it nationally. The report came back in 1972 stating cannabis harms were limited if any and recommended descheduling cannabis from the Controlled Substances Act. Nixon was furious and attempted to bury the report after it did not support his supposition.

The Controlled Substances Act did have one carve out for allowing scheduled drug use. A scheduled drug could be used if it was a medical necessity. In 2001, a medical marijuana

cooperative in Oakland California was sued by the United States. The U.S. claimed the cooperative was violating the Controlled Substances Act by providing medical cannabis to terminally ill patients and those that were seriously ill. Upon a hearing by the Supreme Court, the Court found cannabis had “no currently accepted medical use” and denied the medical necessity defense to the cooperative.

However, a landmark decision in 2005 changed the legal landscape. While states were legalizing state programs, such as California and Colorado, had been in existence in a legal grey zone. At the state level, their programs were considered legal but the federal government still deemed them illegal and many medical cooperatives feared federal raids and prosecutions daily. This source of conflict came to a boil in *Gonzales v. Raich* (2005). The case revolved around cannabis grown, processed, and sold exclusively in California under the protection of California’s medical marijuana program. The Supreme Court found the federal government still had jurisdiction to prosecute because the California grown cannabis *could* have an impact on the illicit market. *Gonzales* effectively gave the federal government free reign to come after any cannabis business, legal or not.

### *Modern History*

*Gonzales* was the leading legal guidance for four years before the Ogden Memorandum was issued in 2009. The Ogden Memo simply advised U.S. attorneys not to prosecute compliant medical cannabis programs, yet after its release federal raids of compliance medical cannabis businesses increased. The Ogden Memo did little to help because it was vaguely written and did not provide protections for cannabis businesses.

The Cole Memo, introduced in 2013, directed federal resources be used to prevent the spread of cannabis to minors, diversion to illegal states, and to prevent cartels and organized crime. The Cole Memo did not tell federal law enforcement to not prosecute legal cannabis businesses, but it did state that businesses that maintained compliance with their state programs were not a priority. The Cole Memo prioritized protecting minors and stopping illegal drug trafficking. The Cole Memo supplemented the Ogden Memo and helped provide some confidence to the cannabis industry that as long as it remained compliant with state laws and regulations they would not be federally prosecuted or raided.

Support for the cannabis started gaining national approval in the 2000s and in 2014 the Rohrabacher-Farr amendment was introduced and passed by Congress. The amendment protects individuals from federal prosecution as long as they remain compliant with their state program and brought massive relief to an industry that still operated in a legal grey zone. Immediately after its passage, the Justice Department attempted to prosecute individuals stating the amendment did not actually protect individuals but only applied to the actual state government bodies. The full text reads as follows:

“None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado,

Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.”

In sum, the Department of Justice attempted twice to circumvent the amendment claiming it did not protect individuals. In the first case, the judge, U.S. District Judge Charles Breyer, wrote the Department of Justice’s interpretation of the amendment “defies language and logic” and “tortures the plain meaning of the statute”. After the first attempt, the original drafters of the amendment, Dana Rohrabacher and Sam Farr, responded to the Department of Justice by stating “As the authors of the provision in question, we write to inform you that this interpretation of our amendment is emphatically wrong.” The Department of Justice’s second attempt to cripple the amendment also failed with similar results and was heavily condemned by Congress and the public as an overreach of their authority.

Things appeared to be improving at a significant pace for the cannabis industry until 2018 when then-acting Attorney General Jeff Sessions rescinded the Cole Memo effectively ending guidance from both it and the Ogden Memo. Cannabis operators now worked across the nation in the majority of states and were shocked at the sudden change of policy. Without guidance from the memos, federal prosecutors were now once again free to prosecute cannabis businesses at their discretion. At this time, it appears the majority of federal prosecutors are not targeting cannabis businesses and the amount of federal prosecutions for cannabis-related offenses has fallen significantly.

# Why Is Now The Right Time for Social Equity Programs?

*Chris Nani*

Social equity programs belong at the inception of any newly formed cannabis program for two big reasons. One, the well documented history of the War on Drugs to disenfranchise, arrest, and destroy communities of color is undisputed. Social equity programs serve as *one* way to help individuals and communities harmed by the War on Drugs. To acknowledge our past is to take responsibility and years of harsh drug law sentencing and brutal policing policies have created deep scars that cannot be healed without explicit acknowledgement and actions.

Secondly, social equity programs serve as a bridge from the legacy market to the legal market for operators. The legal cannabis industry is very new and many growers, manufactures, and businessmen have roots from the legacy market. To this day, states without legalization still have operators working in clandestine locations because the cannabis market cannot be legislated away, much like the alcohol industry continued covertly throughout prohibition. If a grower can't work in a regulated industry because of a cannabis conviction, where else can they take their services?

The War on Drugs did tremendous harm. As anecdotal evidence, I interviewed Tony Suggs— a social equity applicant eager to win a license as part of my case study for Los Angeles' social equity program. Tony's past involved cannabis convictions early in his life. During his incarceration, he wasn't able to earn income, participate in the cannabis industry, or develop new skills. At the same time Tony was incarcerated, MedMen, a cannabis company, began selling cannabis and earning millions of dollars. To reiterate, Tony was serving time for the same activity a newly formed multi-state conglomerate was doing but had a very different outcome. While Tony sat in his cell, others gained cannabis experience and profited from California's boom.

Social equity programs seek to help remediate this discrepancy by helping individual's like Tony through expunging cannabis convictions, providing assistance through the licensing process, and reducing fees and expenses social equity applicants have to pay. While this is not exhaustive, social equity programs are important because they help expediate the recovery process from the War on Drugs, even if slightly. Social equity programs are necessary because they are an explicit government acknowledgement of the harm the War on Drugs has caused to communities of color, serve as a bridge into the regulated industry for legacy operators, and help restore the rights of the individuals harmed.

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*Natalie Papillion*

The momentum behind marijuana legalization has resulted in a groundswell of public and political support for social equity initiatives. That said, we must all be aware that there's real urgency around the issue— any delay in passing and implementing these policies and programs

threatens the long-term health and viability of social equity initiatives around the country. Here are ten reasons I believe now is the time for social equity programs.

1. **There's heightened public awareness around the failure of America's War on Drugs.** There's broad consensus—amongst both the general public and America's political class—that marijuana prohibition has not only failed to curb cannabis use and stop crime, it's also been a key driver of the racial and economic inequities the country currently faces.
2. **We're in a watershed moment for criminal justice reform.** A national reckoning with the failures of the War on Drugs—as well as the devastation brought about by mass incarceration—has resulted in a groundswell of bipartisan political support for broad-based criminal justice reforms, including an end to marijuana prohibition. We should take advantage of these shifting sentiments to advocate for restorative justice and social equity programming.
3. **The rise of progressive politics.** The conversation around income inequality now occupies a central role in America's public and political consciousness. Not only has this forced the nation to reckon with the discriminatory policies that continue to increase the country's racial wealth gap, it has led to growing public demands for policies that work to rectify these historical injustices.
4. **Growing public appetite for social equity initiatives.** Across the country, cannabis industry lobbyists—including former House Speaker John Boehner, who now occupies a lucrative seat on the board of publicly traded cannabis company Acreage Holdings—have worked to sell through legalization legislation by painting a picture of opportunity and prosperity for all. Industry reps pledged legal marijuana would become a much-needed economic engine in the disproportionately urban, low-income and/or minority communities that were most harmed by cannabis criminalization in the first place. However, recent events have worked to expose the industry's dirty little secret; despite all the talk of a brand-new, radically-inclusive industry, 80% of legal cannabis companies are controlled by white men. And it goes beyond bad optics. The industry's homogeneity has spurred widespread interest in programs and policies that aim to help communities realize the diverse and equitable industry they were promised.
5. **The increased efficacy of social equity programming.** More and more states and municipalities have rolled out social equity initiatives over the past few years. The proliferation of these programs allow us to access robust data sets related to the successes (and failures) of current social equity initiatives—as well as recommendations as to how we could improve these programs. Now that legislators, industry leaders and policy people are able to leverage these insights, they're in a much better position to create more efficient, impactful social equity programs (as well as improve existing initiatives).

6. **The cannabis industry is facing mounting public and political pressure.** The breathless media coverage that accompanied the early days of this emerging industry has been replaced by more measured, comprehensive (and oftentimes critical) reporting on cannabis industry antics. This increased scrutiny has forced cannabis companies to search for ways to demonstrate they're responsible members of the business—and broader civic—community. Showing support for social equity programs is a strategic way for a cannabis company to convey to politicians, regulators, and consumers that they're behaving as good corporate citizens.
7. **The maturation of the cannabis industry.** Many cannabis companies now have the financial and operational resources required to support more robust social impact initiatives. And given how crowded the cannabis marketplace currently is, creating a social impact program is a smart way for a company to differentiate themselves from their competitors—as well as to appeal to new, mission-driven customers.
8. **The potential impact of federal legalization on the legal status of social equity initiatives.** Most politicians and industry experts now agree the U.S. is on the cusp of federal legalization. When that does happen, social equity programs will likely fall under the fed's regulatory purview. As evidenced by the recent rulings in Ohio and Maryland, this increased scrutiny could result in state-run social equity programs being deemed unconstitutional. That said—while no court has directly opined on the issue, many policy experts predict federal courts would allow a state's (previously made) licensing decisions to stand on precedent. Avoiding this legal limbo is one reason why state legalization is so important. In order to safeguard social equity programs, we must pass (and implement) social-equity focused legislation before the clock runs out.
9. **The likely impact of federal legalization on the success of social equity entrepreneurship.** Even if federal courts do find in favor of state-administered preferential licensing processes, the end of federal prohibition could still have a devastating impact on the survivorship rate of social equity businesses. Federal legalization would remove many of the barriers to entry cannabis companies are currently facing (access to banking services, 280E, etc). This loosened regulatory environment will only incentivize larger, more sophisticated players to enter the already hyper-competitive legal cannabis landscape. Without discounted and/or preferential licensing programs already in place, the increased influence of these well-capitalized cannabis companies may make it all but impossible for small and mid-sized social equity businesses to enter—and succeed—in the industry.
10. **The expected impact of federal legalization on the sustainability of social equity businesses.** We're already seeing large, well-financed companies start to sideline small-scale and/or social equity businesses. And—as if this increased competition doesn't make it hard enough for social equity businesses—easier access to banking services and interstate commerce would allow these larger cannabis companies to operate even more efficiently. This shift could see cannabis prices plummet. Social equity-focused

legalization legislation is one way states can work to ensure these large corporations don't completely drive out craft-scale production and 'mom and pop' retailing. That said—for reasons explained earlier—it's crucial we ensure these initiatives are in place prior to federal legalization.

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*Ryan Rapaport*

As more states enact medical and adult-use cannabis legislation, advocates and regulators of the cannabis industry have yet to find a “one-size-fits-all” approach to help address social equity. While a growing number of states have included social equity provisions in their cannabis programs, they're each approaching the issue through different avenues.

The goal of these projects would seem simple: build programs for the people and their businesses by creating a pathway to the legal cannabis industry; people who were previously disadvantaged due to criminal records, gender, race, and socioeconomic status. But of the growing number of initiatives that have been implemented to date, none have been deemed successful.

So I am asked, why would now be the right time for communities to embrace social equity?

“This national, multi-billion dollar cannabis industry has potential to be exponentially larger than it currently is today,” says Andrew Fariior, Managing Partner of Digital Venture Partners. “Cannabis is transitioning from the classification as an illicit drug to being deemed an essential business by states and municipalities in times of crisis.” With much of the program structuring already well underway, it would seem that there should be opportunities for qualified applicants.

Any new industry gives a better opportunity for ownership than established industries but no one should be sitting idle waiting given the long term outlook. While there are many relevant reasons that social equity programs have been troubled to date, this is the time to take action as a community of people passionate about bettering the industry Shanita Penny, a consultant and policy leader in social equity puts it best: “The undeniable effects of the drug war are hampering equity in the industry, but together, we can address and repair the harms caused by discriminatory enforcement of marijuana laws and ensure access to and diversity in the emerging legal cannabis industry.”

*Time to Be Heard*

As cannabis legalization spreads across the country, at least ten governors have gone so far as to put language ending marijuana prohibition in their annual budget requests. Others have used their State of the State speeches to pressure legislators to act on cannabis reform including Wisconsin, Virginia, U.S. Virgin Islands, Vermont, South Dakota, Rhode Island, New

York, New Mexico, Illinois, Connecticut, and Colorado. This is a direct result of many people's struggle for cannabis rights and years of advocacy. Social equity advocates can take advantage of these avenues by actively participating in public discussions and speaking to their appointed politicians at the community, state, and national policy levels. "Most of the challenges we face are legislative." Seun Adedeji, CEO of Elev8 Cannabis, one of the youngest African American men to receive a cannabis license. "For example, most banks are not willing to work with cannabis businesses as a federally illicit business, either as their account holder or lender." As a result, Seun's team was forced to overcome this by finding smaller credit unions who are willing to work with them for a higher fee. While the cost is high, he sees the stability as worthwhile.

Reform for issues like banking, small business loans, and lending in general are being effectuated every day by organizations like the National Cannabis Industry Association, NORML, The Drug Policy Alliance, the Minority Cannabis Business Alliance, and more. These are participation based programs that give advocates a direct line to the political and educational wings of cannabis. Adedeji adds, "As an industry, the NCIA has been doing a great job on lobbying for equal treatment for cannabis businesses, so we're hopeful that both access to banking and fair taxation will be available for social equity businesses in our industry in the coming years."

#### *Time to Hold Organizations Accountable for Social Equity*

The competition between illicit versus regulated markets need to be addressed, and not the way it is currently being done. I don't believe there will be much to disturb the illicit market unless programs are created to provide a pathway for previous illicit market entrepreneurs to enter the legal market. As multistate operators look to spread their influence, they should look to the communities that support them by entering into business relationships with social equity businesses, where they exist. By relying on the cues of the community, not only will they be benefiting from cross collaboration with social equity business, but also giving back jobs, education, and quality products. That also means that states must have funded programs to create realistic pathways to enter the regulated market for legacy illicit market actors operators.

There are an increasing number of different models available from states such as Massachusetts, which has led on attempting to prioritize social equity during license application processes, and Illinois which made such social equity a key point in their legislation to create a legal market and application process. Meanwhile, there are still industry groups such as the Minority Cannabis Business Association, which has published recommendations for state regulators intent on incorporating social equity requirements into their licensee applications.

In order to effectively position people to succeed in communities disproportionately impacted by the war on drugs, the operators who are paying into funds for dispersal into the community need to make sure that there are future programs being created that focus on providing significant and immediate economic benefits. While there are many social equity incubators,



accelerators, and models of support being built to help, programs alone will not result in the desired outcomes.

An opportunity exists now to bridge the consumer and social equity brands gap. A great example lies in former NBA player-turned co-founder and CEO of Viola Brands, Al Harrington. His team is the largest multi-state minority owned cannabis company in the United States. It is important to point out that Al, other professional athletes, and cannabis industry advocates also had success while working with the Congressional Black Caucus to take a hard look at licensing policies and the lack of equitable diversity in the awarded licenses. During an interview with MGRetailer, Al spoke to his responsibility to work towards uplifting communities, “I think our people just have to wake up and realize in this situation it’s one of those things where you really should support brands that have people that look like you, because I really feel like cannabis is a way of reparations for the black community,” he continues. “So, our goal as a company is to empower and uplift the community, to be a resource and an on-ramp for other black entrepreneurs to actually get into the cannabis space safely.”

Within this context, it should be a requirement of multi state operators to create a diverse community of businesses. And equally, constituents should hold legislators to a standard of opportunity to become engaged by actively inquiring about program offerings, providing detailed feedback for improvement, and creating a list of organizations committed, or perhaps, not committed to social equity.

### *Time to Incubate Social Equity Businesses*

By highlighting current efforts, this is the time for proponents of social equity to hold larger organizations accountable and allow the industry to foster improved initiatives. Most current programs for social equity provide an incubation option where training, resources, and technical expertise are available in exchange for a percentage of equity. Many also provide seed capital in the form of grants and loans to graduates of such programs. And, other incubators have launched after being sponsored by venture capital and private equity funds who specialize in the cannabis interest.

While still in its infancy, programs similar to Oakland’s Incubator program could provide a lot of value. With the Oakland program helping to make it easier to find partners and has reportedly started showing modest results. The program was touted for being one of the first in the country to attempt to repair damage that befell minority communities, and other cities, including San Francisco and Los Angeles, have followed Oakland’s lead.

With some early success, this is the right time to reflect and reiterate programs to provide more funding and more mentorship channels. “You give a poor person with no money a license, what am I going to do with the license?” Alphonso “Tucky” Blunt told the San Francisco Chronicle. Blunt is a former felon who alongside his partner Brittan Moore, founded Blunts + Moore as one the first social equity applicants in Oakland to open their retail store. But he also points to a

consistent theme of lack of funding and education. “Where am I going to go find a building? Educate those same people, who you give licenses to, educate them how not to sign their life away to lenders.”

With expungement and legal reform happening as it pertains to cannabis, businesses should start prioritizing the employment of formerly incarcerated people in all cannabis-related community outreach, tracking, and employment training programs. A good standard being set by groups like ECO Cannabis in Oakland, are recommending a hiring target of 50% for workers who have been impacted by the War on Drugs and/or would qualify as Social Equity license applicants.

Elsewhere, companies like Viola have taken to their own to build up Social Equity by offering their own program: Viola Cares. Alongside its strategic alliance with Root & Rebound, Viola will produce a first-of-its-kind toolkit designed specifically for people with cannabis-related convictions. Dustin Heiman, Head of Brand Development feels an obligation to the community to give back: “Here at Viola we are becoming a voice and a platform that’s facilitating conversations in the community to increase representation with providing an incubation program to begin to create employment opportunities, educational opportunities and over-expanding the diversity in the cannabis industry.” A ten plus year cannabis entrepreneur, Dustin knows what it’s like to get through the day-to-day grind and believes a more inclusive cannabis industry is what makes it one of the best places to work: “This industry is for everyone and we need diverse minority representation at the forefront of this rapidly growing cannabis community.”

Incubation for social equity can extend into non-plant touching business opportunities on the ancillary side as well. Outside of growing and selling cannabis, there are more than 100 additional ways to break into the industry, for example incubator programs like Merida Capital’s i2 accelerator happening in partnership with the MCBA. The three-month i2 program includes access to: MCBA-Merida executives, connections and networking opportunities with a consistent, high-level mentorship, and training from experts in and outside of the cannabis industry.

Alex Henry is a co-founder of JIFF, a data-driven retail platform that curates bespoke cannabis recommendations. He went through the i2 accelerator and spoke to his experience having access to channels of mentorship: “For a lot of these incubators, you are going to get what you’re willing and able to take out of it. Some of it requires you doing your due diligence and spending time to tap into the network of those who are providing mentorship.” He also spoke to the access to feedback and review he had, having the ability to pitch his business and gain a competitive advantage when vying for fundraising. Despite the varying levels of success for social equity business leaders who have gone through these incubators, cannabis industry advocates must lean into the conversation around incubating those businesses by mentoring, funding, and providing access to business resources.

### *Why Now?*

While slow and steady might win this race, it is time to take advantage of the early success, and more so failures, of social equity programs. While the concept of social equity is designed to level the playing field for those disadvantaged by the War on Drugs, the process can be hard, lengthy, and seemingly impossible. Without starting down this path, few will have the willpower to put in the rigorous work and take the high risks required to succeed in the cannabis industry. But for entrepreneurs interested in social equity business, taking that first step down that path as someone who refuses to be excluded from the industry will be the ones to reap the burgeoning opportunities that are to come. It's time to take that step today.

# Criteria to Qualify Social Equity Applicants

Los Angeles, Oakland, Sacramento, San Francisco all have social equity programs. So do states like Massachusetts, Illinois, Michigan, and Pennsylvania. None of these programs are identical and some would argue they are all very different. Regardless, social equity programs must have social equity applicants to function. Who decides who is eligible and why? What criteria should be used? This chapter does not state how programs should be made but rather states common criteria used to grant eligibility for social equity programs. Not every program uses income based eligibility, but every program does use cannabis convictions and residency as part of their criteria. As criteria evolves for social equity programs, we hope they continue to focus on the original mission, helping those harmed by the War on Drugs.

## Cannabis Convictions

*Chris Nani*

In every social equity program, the first qualifying factor to determine if an individual qualifies as a social equity applicant is if they have a prior qualifying cannabis conviction. The cannabis conviction must always be non-violent but otherwise it varies by state. Some states require the individual applying to have the conviction while others states permit an individual to apply if a member of their immediate family has a qualifying cannabis conviction. Secondly, the type of conviction determines if the individual is eligible. For example, individual A convicted of intent to distribute five grams of cannabis (think of two joints) to an underage friend would not qualify as a social equity applicant while individual B convicted of possession of thirty grams of cannabis would be eligible. The reasoning behind individual B being eligible while A is not lies in their motive. Individual A was convicted of attempting to sell cannabis illegally to a minor while individual B was convicted for possession.

Cannabis convictions are used as a qualifying factor for social equity applicants because they are the most direct way to determine if an individual was harmed by the War on Drugs. Alluding back to “What Is Social Equity?”, it is helping the individuals and communities harmed by the War on Drugs. A criminal conviction and incarceration are both tangible harms with lasting detrimental effects. Criminal convictions are grounds for denying an individual housing, employment, higher education, firearm ownership, retirement plans, insurance, immigration status, the ability to travel, the right to vote, and jury service. Furthermore, incarceration can cause or exacerbate mental health conditions in addition to the physical dangers found in every prison such as beatings or rape. According to the American Psychological Association half of prisoners have some mental health condition and it estimates 10-25% have serious mental health illnesses that remain largely untreated while incarcerated.

With the loss of civil rights and opportunity coupled with the physical and mental toll of the criminal justice system, individuals with cannabis convictions have a serious and legitimate claim they were and are continuously harmed by the War on Drugs. The costs of having a

criminal conviction extends far past the time spent incarcerated. A criminal conviction remains on an individual's criminal record for the remainder of their life and is accessible by anyone unless it is sealed or expunged. Both methods require the assistance of an attorney, are costly, and time intensive. Because a cannabis conviction is placed on an individual's criminal record, the individual will always be harmed if and until they can have it sealed or expunged.

Although there is controversy surrounding what types of cannabis convictions should and should not be allowed as qualifying cannabis convictions, each state has developed their own method to determine what convictions should be permitted. Localities and states have generally followed the below rules when determining what cannabis conviction should be permitted to qualify an individual including:

1. The cannabis conviction must be non-violent.
2. The cannabis conviction does not include any element of diversion.
3. The cannabis conviction involved only low quantities of cannabis, regardless of the form.
4. The cannabis conviction, even if non-violent, did not occur contemporaneously or in close timing to a disqualifying offense such as a violent crime.
5. The cannabis conviction must have occurred before legalization.

Looking further into each rule, a valid justification is required for each rule if these rules are to be used to qualify and disqualify individuals from social equity programs based on their cannabis conviction.

*1. The cannabis conviction must be non-violent.*

Non-violent offenses will always be a foundational qualifier because regulators and policymakers alike want to ensure their cannabis programs are primed for success as much as possible. The stigma surrounding a cannabis conviction in general still heavily exists and is cause for some regulators to be hesitant in permitting any individual with a conviction to operate in the industry. A non-violent cannabis conviction additionally informs regulators that the individual did not attempt to harm or hurt another individual during their offense. Non-violent cannabis offenses generally include some form of possessing cannabis, drug paraphernalia, or attempting to purchase cannabis in an unregulated market.

A non-violent offense is different from a violent offense in that possession of five grams of cannabis could be used for a plethora of reasons such as for medication, anxiety, or recreational purposes while a violent offense by nature must have caused or intended to cause harm or damage. An argument could be made that cannabis possession cannot be violent because possession does not cause harm or damage; however, the scope of a violent offense is expansive. Anytime a deadly weapon, force, or aggression is used in an act and the individual is possessing cannabis it can be considered a violent cannabis offense. The laws and regulations of each state make it difficult to state generalities, and, depending on the prosecutor, a simple possession offense can be argued and morphed into a greater more severe offense.

*2. The cannabis conviction does not include any element of diversion.*

Diversion is providing cannabis bought from a state-compliant dispensary to underage minors or transporting said cannabis across state lines and providing it to anyone, even if it's from one legal state to another legal state. Cannabis regulations require individuals to be over twenty-one to purchase, consume, and possess cannabis in adult use states. By providing cannabis to anyone under the state mandated age requirement, diversion occurs. The second form of diversion, interstate commerce, occurs when cannabis from Colorado is sold in Georgia for example. All cannabis regulations require cannabis to be grown, process, sold, and consumed within the state. By diverting legal cannabis to illicit sources, an individual commits diversion – an offense that immediately disqualifies an individual from any social equity program.

Regulators, policymakers, and the cannabis industry generally agree that any individual who has been convicted of diversion should not be permitted to apply for cannabis licenses, including qualifying for a social equity program. Diversion is taken seriously because of the harms it causes. It reduces the legitimacy of the industry and demonstrates poor decision-making skills by the offender. Social equity programs are meant to help individuals and communities harmed by the War on Drugs.

*3. The cannabis conviction involved only low quantities of cannabis, regardless of the form.*

Social equity programs are meant to help those harmed by the War on Drugs. Going back to the principles of justice and fairness, possession of small amounts of cannabis is legal in the majority of states. In no state is unlicensed distribution of cannabis permitted, but since the majority of states recognize possession as benign when states do open their newly legalized markets possession is considered an eligible offense for social equity programs. It's unjust to punish an individual for an act (possession) when the act is now legal. Small possession offenses should therefore always be permissible as a qualifier for social equity applicants. However, all fifty states continue to persecute unlicensed distribution of cannabis and therefore there is no unjust act since all the states are applying the same standard of justice to an individual whether they illegally distributed ten kilos of cannabis in 1990 or 2020.

Secondly, law enforcement does not discern a difference between flower, edibles, liquids, tinctures, dermal patches, pills, capsules, or lozenges. It's all considered cannabis and there is no equivalency scale. While some states are adapting their laws to reflect the difference, many still do not have equivalency scales. Ten grams of concentrates and ten grams of flower may be treated the same in a state making both eligible as a qualifying offense for social equity programs. Regulators should reconsider how they treat cannabis since its potency greatly varies depending on the form. A tincture or concentrate while small will deliver greater potency than flower if they both are of equal weight.

4. *The cannabis conviction, even if non-violent, did not occur contemporaneously or in close timing to a disqualifying offenses such as a violent crime.*

Individuals that do qualify with an eligible cannabis conviction may nevertheless be denied status as a social equity applicant because of additional offenses levied against them. Was the person arrested with a handgun? Did they push an officer? In both scenarios, prosecutors could allege there was a deadly weapon or violence in conjunction to the cannabis offense. Because of the relatively small size of social equity programs, regulators have to be very selective in the applicants they take and any violent offense will not be tolerated.

As per regulators, they want to see their social equity programs succeed and the applicants flourish. While a violent offense is not indicative of future behavior, regulators continue to use it as a disqualifier. A possible solution would be to revise the standard to bar applicants with violent offenses within the last [X] amount of years. For example, regulators could look at an applicant's entire criminal record to determine qualifying cannabis convictions and only consider violent offenses that occurred within the last five years as compared to their lifetime. People change and should be given the opportunity to show they've changed or they will return to the legacy market where they are welcomed.

5. *The cannabis conviction must have occurred before legalization.*

Social equity programs are meant to help those harmed by the War on Drugs. Legalization decriminalizes cannabis, making it lawful to possess, distribute, and use cannabis. A cannabis conviction post-legalization does not count because there is no injustice. Cannabis laws are reformed post-legalization and are not nearly as reprehensible as pre-legalization laws which can include decades of incarceration and hefty fines. In comparison, most states with legalization only fine individuals post-legalization a small fine.

It would be an insult to those harmed by the War on Drugs to see applicants with only post-legalization convictions receive social equity licenses. Those that have been harmed by the War on Drugs have undergone immeasurable pain and damage because of their convictions. The amount of harm caused by a fifteen year sentence compared to a fifty dollar fine are very different. One effectively destroys a portion of an individual's life while the other is a minor inconvenience comparatively. There is also a legal market to operate in and willfully operating outside of it is not the same as operating prior to legalization.

# Residency

*Eli McVey*

Residency requirements, broadly speaking, are used to award rights or privileges to residents of a state in favor of non-residents. Residency requirements are often used in fields such as higher education to offer scholarships or discounted tuition rates to in-state residents. In the commercial cannabis industry, residency requirements are a relatively common occurrence.

Many states that have legalized recreational or medical marijuana have included requirements that marijuana license holders – and in some cases, investors – be residents of the state in which they’re operating or investing. For example, in Alaska’s adult-use cannabis industry, all persons with a direct or indirect financial interest in a cannabis business must reside in the state - no opportunities exist for out-of-state residents to profit from the sale of recreational marijuana.

These requirements are justified as a way to ensure safety in the industry and provide a leg-up to in-state residents by preventing larger, more sophisticated and well-funded businesses from outside the state from swooping in and reaping all the economic benefits of cannabis legalization.

## *Social Equity in the Cannabis Industry*

The concept of social equity in the cannabis industry has been explained in-detail in previous chapters, but a summary of the idea warrants restating here.

A truly equitable cannabis industry understands that in order to achieve equality it has to develop policies for and distribute resources to differently situated members of society, leveling the playing field such that all individuals are equally likely to benefit from the commercial cannabis industry. The result of an equitable cannabis industry is equality in cannabis business ownership rates by race, gender or any other demographic characteristic.

And though laws and regulations governing the cannabis industry are not overtly discriminatory, they have systematically disadvantaged groups of people – namely racial minorities. Some of these practices include:

- Preventing individuals with a prior drug conviction from working in or owning a marijuana business.
- Requiring large amounts of liquid capital - often in the six to seven-figure range – just to apply for a cannabis business license.



## *Social Equity and Residency Requirements*

In order to advance the interests of disadvantaged individuals seeking to enter the commercial cannabis industry, there first must be a mechanism by which policymakers can identify said disadvantaged individuals. This is where residency requirements and social equity programs come together.

There is evidence that certain geographic areas have been inordinately affected by high rates of arrest and incarceration for cannabis and other drug crimes as a result of state and federal drug policy. Members of these communities – which are often communities of color - suffer from emotional, psychological, and financial harms as a result of such arrests or incarcerations. Thus, the geographic location of one’s primary place of residence is a predictive indicator of whether an individual is at a disadvantage when it comes to their ability to participate in the commercial cannabis industry.

The widely-adopted term for the convergence of these two distinct concepts - social equity and residency requirements – is “disproportionately impacted area” (DIA). Where traditional, in-state residency requirements are sweeping and semi-indiscriminate, DIA’s are precise and multi-faceted. DIA’s are residency requirements applied at the community and neighborhood levels instead of the state level - a Swiss Army knife instead of a machete.

To be clear, DIA’s are still a type of in-state residency requirement, but more targeted and nuanced. An individual that lives in a DIA in Massachusetts, for example, would not qualify as a social equity applicant in Illinois.

### *Disproportionately Impacted Areas*

Several states and municipalities with social equity programs are using DIA’s to identify individuals that live in communities most affected by the War on Drugs, including – among others – Illinois, Massachusetts, Los Angeles and San Francisco. In some social equity programs - like Los Angeles - DIA’s are defined simply as areas with high rates of cannabis arrests and enforcement. In order to qualify as a social equity applicant, an individual may have to live in a DIA and meet some other criteria, such as having a prior cannabis-related arrest or making less than certain amount of income.

In Illinois, DIA’s are classified as areas of the state with high rates of cannabis-related law enforcement and – by one or more metrics - are also experiencing a form of economic hardship. A DIA can be an all-encompassing term that incorporates considerations like poverty and high rates of cannabis-related law enforcement into its’ creation or solely by arrest and/or

incarceration metrics, requiring individuals to meet other, separate conditions – like qualifying as low-income – to be eligible for a social equity program.

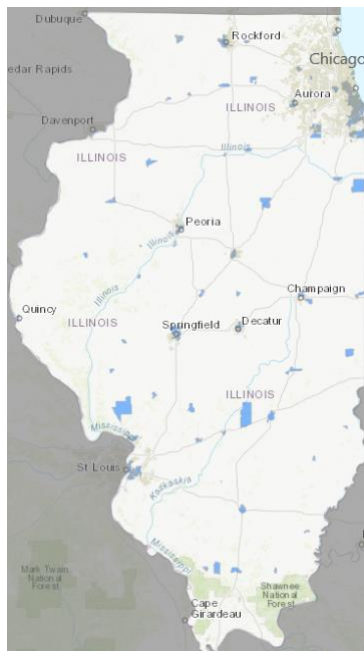
Though there are variations in how regulatory bodies define DIA's, the core idea is the same: Promote equitable business ownership and employment opportunities in the cannabis industry in order to decrease disparities in life outcomes for marginalized communities and address the disproportionate impacts of the War on Drugs.

*Example: Disproportionately Impacted Areas in Illinois*

Illinois – the most recent state to legalize adult-use cannabis – has made the use of DIA's central to its' social equity program. In Illinois, individuals can qualify as a social equity applicant by proving that, for five of the past ten years, they lived in a DIA. Illinois classifies DIA's as a census tract or comparable geographic area that has high rates of arrest, conviction and incarceration related to the sale, possession and use of cannabis, and meets at least one of the following criteria:

- Has a poverty rate of at least 20%.
- 75% or more of the children in the area participate in the federal free lunch program.
- At least 20% of the households in the area receive assistance under the Supplemental Nutrition Assistance Program.
- Has an average unemployment rate that is more than 120% of the national unemployment average.

In total, 683 census tracts in Illinois were designated as DIA's, home to approximately two million people. The map below shows what this looks like in practice, with the sporadic patches of light blue indicating areas of the state classified as a DIA.



## *Benefits and Drawbacks of Residency Requirements in Cannabis Industry Social Equity Programs*

Identifying individuals eligible to participate in cannabis industry social equity programs is a fraught endeavor. No matter what parameters are established for qualifying an individual to participate in a social equity program, some who should qualify will be left out and some that shouldn't qualify will. The fact of the matter is that people of color are significantly more likely to have been harmed by cannabis prohibition laws and enforcement.

However, using race-based criteria - such as requiring a certain percentage of licenses be awarded to businesses owned by racial minorities – is a non-starter. This was tried in Ohio's medical marijuana market and ultimately found unconstitutional. Illinois designed its social equity program to be race-neutral so that it withstand constitutional scrutiny.

But the use of residency requirements, specifically DIA's, are very adept at identifying communities that have borne the brunt of the War on Drugs, and thus a strong, predictive indicator of individuals in need of additional resources and policy considerations to have equal access to the opportunities offered by cannabis legalization. Although living in a DIA does not mean that an individual has been personally harmed by cannabis prohibition, it's a significantly more likely scenario compared to someone living outside a DIA and therefore a great tool lawmakers have when it comes to identifying potential social equity applicants.

There are some considerations policymakers should keep in mind:

- There can be unintended consequences of combining residency requirements with other criteria, such as the requirement that an individual live in a DIA and not make more than a certain amount of income or have a prior cannabis-related arrest. This limits the prospective pool of social equity applicants from a community, barring those that are likely the most qualified to run a successful cannabis business.
- Creating all-encompassing DIA's - like in Illinois where a DIA has been both disproportionately impacted by cannabis prohibition and suffers a form of economic hardship - can create edge cases where an individual may qualify for a social equity program based on where they live, though they're not truly in need of additional assistance. For example, data used to create DIA's may not reflect rapidly-gentrifying urban areas, unintentionally offering social equity status to those least in need.

## Income Based

*Richard Ng*

It is important that public administrators design and implement cannabis social equity policies that consider levels of income inequality as a qualifier for social equity applicants. This is important because as the cannabis industry evolves it becomes an equity tool within a city to address how to close the gaps in key areas such as unemployment, education, and inclusion on a local level. A low level of income inequality can reflect the exclusion or displacement of low-income residents, or an overall lack of opportunity in cities.

Public administrators must assess the negative impact on communities as a result of the policies that were implemented during the War on Drugs era. The policies that required the enforcement of the usage of cannabis as a crime as opposed to a mental or a physical health issue had significant effects on families, many losing parents, relatives, that setback generations to come economically. There have been many studies that show that children with incarcerated parents are three times more likely to suffer from learning disabilities and anxiety.

These children are most likely to drop out of school which makes it more difficult to get a job, perpetuating the cycle of economic despair leading to a higher level of economic inequality. Specifically related to the capital side of the cannabis industry, public administrators must look at the individuals that were and have been participating in the unregulated market to support their families and livelihood must not be punished any more for their activities and must be included in the process of transitioning into the regulated market.

For public administrators that are looking to implement cannabis social equity policies to manage the participation in the cannabis industry there is a two pronged approach that could be taken as to why to include income inequality as a qualifier for social equity applicants:

1. Prioritizing the community over corporations in the cannabis industry.

This refers to administering more services and resources to the entrepreneurs and business owners that are currently participating in the unregulated market.

The California Cannabis Industry Association (CCIA) defines the unregulated markets as: “A group, entity, operator, enterprise or interactions that is not currently sanctioned because that activity, or those persons, are not in possession of local and state permits or the activity is outside of what is permitted. Activity outside of the regulated supply chain for whatever reason. Unregulated can be because of an unwillingness, inability based on resources, know-how or location. Unregulated includes subcategories that includes operators who have no intention of being regulated, dry areas where there is not a path to a permit, and under resourced or under informed. “

These entrepreneurs come directly from the most marginalized communities within a city. It is the responsibility of the city to be stewards of these entrepreneurs and not put the interest of large corporations over their livelihoods.

## 2. Inclusion in the cannabis industry.

Another lens for public administrators is to look at income inequality and its role in inclusion in the cannabis industry. Inclusion in this analysis would refer to the opportunity for all residents—especially those most marginalized—to contribute to and benefit from the economic prosperity of the cannabis industry. Public administrators must use the cannabis industry as an equity tool in municipal management and by identifying the inequalities in income level they will create more business opportunities for jobs and entrepreneurship development.

The formula for qualification for a social equity applicant if the city is not looking at data that consist of poverty, spatial segregation, housing affordability and homeownership, and educational attainment, by income and race. This data can be captured through the creation of indices if they are not collecting this data already.

Rising income inequality creates economic, social, and political challenges and risks leaving more people behind in a constantly evolving economy. The resulting inequality of opportunities can then have a negative impact on economic performance and well-being. Inequality can also fuel protectionist sentiments.

A high level of inequality also raises political challenges because it breeds social resentment and generates political instability. People will no longer support the growing free cannabis market if they feel that they are losing out while a small group of winners profit such as large corporations. The end result is these corporations get richer and richer and the communities and entrepreneurs that are the residents of a city get left behind. This is why it is important for public administrators to include income inequality as a qualifier for social equity applicants.

# Existing Social Equity Programs

The few social equity programs that exist offer a glimpse into how various regulators have approached social equity. The novelty of creating a new government program unlike any program created is one cause for the drastic differences in how social equity programs have fared. In California, Oakland and Los Angeles enacted social equity programs in 2017 paving the way for future cities and states. Followed by Massachusetts in 2018 and soon to be Illinois, these four programs were selected to highlight the successes, differences, and challenges of social equity programs.

## Los Angeles

*Cedric Haynes*

In 2017, existing and newly forming cannabis marketplaces looked to the City of Los Angeles (the City) in anticipation of the largest regulated cannabis marketplace in the world. Many wondered how the rules and infrastructure would be set up and which aspects would be prioritized. Community groups, advocacy organizations, and current/prospective business owners weighed in to the Mayor's Office, Councilmembers, and at listening sessions convened by the City. Mayor Garcetti's intentions for Los Angeles's cannabis marketplace were evidenced through his statement for and nomination of Cat Packer as the first Executive Director of the city's Department of Cannabis Regulation. It was also a nod to how complex regulating a marketplace as large as the one contemplated at the time would be, as well as a commitment to equity.

"Taxing and regulating legal cannabis in Los Angeles will be a complex process — we need someone leading the effort who understands and can navigate those nuances," said Mayor Garcetti. "Cat's experience makes her an excellent fit for this new role. I am confident that her work will help us implement new regulations in a way that is fair and equitable for all of our communities, respects our neighborhoods and raises valuable new revenue for City services."

Prior to becoming executive director, Packer served as the California Policy Coordinator for the Drug Policy Alliance (DPA), whose mission is to "advance those policies and attitudes that best reduce the harms of both drug use and drug prohibition, and to promote the sovereignty of individuals over their minds and bodies." After solidifying her position as an advocate for individuals and communities harmed by the 'War on Drugs', Packer was approved to lead the process of creating a complex regulatory system that offers opportunities and restoration to said communities.

### *The Analyses*

Prior to the passage of the ordinances governing Los Angeles's cannabis marketplace in December 2017, the City commissioned a report to promote ownership and employment

opportunities for communities disproportionately impacted by the War on Drugs. Specifically, this report was tasked with defining what ‘social equity’ would mean for the City of Los Angeles. To lay the foundation, the report includes an extensive and detailed history of the War on Drugs’ impact on communities and concentrated areas of over-policing. During the information gathering phases, the City held various engagements throughout communities to gather feedback and sentiment to include within the analyses. The report highlighted the racial disparity in arrests, noting that while Black people only made up 9.6% of the City’s population, they totaled 40% of all cannabis arrests.

Ultimately, the methodology for identifying areas eligible for support from the City’s social equity program, settled on the following;

1. Identify disparities
2. Map arrest hotspots
3. Map low income populations
4. Map overlay of poverty/arrest data
5. Identify potentially eligible districts

Additionally, the report compiled information and recommendations for various aspects for the programs implementation, including the identification and inclusion of ways to lower barriers to entry, as well as strategies to ensure the inclusion of communities in the policy making process.

### *The Los Angeles Social Equity Program*

From the information compiled in the report and input during the legislative process, the City implemented the following policies for its social equity program.

#### Tiers for Eligibility

**Tier 1** - A Tier 1 Social Equity Applicant shall meet the following criteria at time of applying for a License: 1. Low Income and prior California Cannabis Arrest or Conviction; 2. Low Income and a minimum of five years' cumulative residency in a Disproportionately Impacted Area. A Tier 1 Social Equity Applicant shall own no less than a 51 percent Equity Share in the Person to whom the License is issued. A Tier 1 Social Equity Applicant shall receive the following benefits: 1. business, licensing and compliance assistance; 2. expedited renewal processing; 3. the potential for fee deferrals if the City Council adopts a fee deferral program; and 4. access to an Industry Investment Fund if established.

**Tier 2** - A Tier 2 Social Equity Applicant shall meet the following criteria at time of applying for a License: 1. Low Income and a minimum of five years' cumulative residency in a Disproportionately Impacted Area; or 2. a minimum of 10 years' cumulative residency in a Disproportionately Impacted Area. A Tier 2 Social Equity Applicant shall own no less than a 33 1/3 percent Equity Share in the Person to whom the License issued. A Tier 2 Social Equity Applicant shall receive the

following benefits: 1. business, licensing and compliance assistance; and 2. expedited renewal processing.

**Tier 3** - A Tier 3 Social Equity Applicant, prior to issuance of a License, shall enter into a Social Equity Agreement with the City to provide capital, leased space, business, licensing and compliance assistance for a period of three years to Persons who meet the criteria to be a Tier 1 Social Equity Applicant or Tier 2 Social Equity Applicant. If a Tier 3 Social Equity Applicant is eligible for Temporary Approval, it shall enter into a Social Equity Agreement with the City by August 1, 2019, or the date DCR determines it is eligible for Temporary Approval, whichever is later. A Tier 3 Social Equity Applicant shall provide a Tier 1 or Tier 2 Social Equity Applicant access to property with no rent and with prorated utilities for a minimum of three years.

### Licensing Phases

The application and licensing processes adopted by the City contemplated three phases.

Phase 1 - This phase was created to give priority licensing to existing medical marijuana dispensaries operating within the City before the passage of the regulations in December 2017. These businesses were supposed to have been operating in compliance with prior rules governing medicinal cannabis dispensaries within the City.

Phase 2 - This phase licensed businesses conducting non-retail activities to supply Phase 1 businesses.

Phase 3 - Phase 3 is the licensing of new cannabis businesses, and includes the implementation of the licensing scheme contemplated for social equity businesses. This phase consists of multiple 'rounds', notably with 2 rounds focusing on new storefront retail businesses and subsequent rounds for other license types. To date and of focus, the City is still within the first round of application processing, with the second round pending.

- Round 1- The first round was designated for 75 Tier 1 applicants and 25 Tier 2 applicants, totaling 100 retail storefronts eligible for further processing. Applications in this phase were evaluated on a first come, first evaluated basis that began on September 3, 2019. Requirements also included a completed lease or deed for a properly-zoned location.
- Round 2- This round allots for 150 retail storefronts, and also requires Tier 1 and Tier 2 qualification, but has no upfront property requirements.

### *Policy Outcomes*

The City prioritized an equitable industry at the outset via its choice of leadership and due diligence in evaluating, understanding and codifying social equity policies. However the City's rollout of the phases associated with the Social Equity Program have provided cautionary and real-time examples of how intentions and diligence can be mired in confusion and frustration associated with implementation. There are potential licensees who have been severely adversely



affected related to the implementation of the City's application process for social equity qualified candidates.

### Round 1 Application Process, Audit and Lawsuit

In Spring 2019, the City set September 3, 2019 at 10:00am as the date and exact time that individuals would be able to access and start submitting applications. The City required pre-vetting of candidates to ensure compliance with Tier 1 and Tier 2 social equity criteria in advance of the start of the application process, leading to about 1,600 applicants eligible to participate in the process, of which about 800 prospective businesses applied (including test and duplicate applications).

The City used the Accella Application Platform for individuals to upload and ultimately submit the applications. Again, the applicants were evaluated on a first-come, first-evaluated basis, with the initial 100 businesses receiving approval to operate. Shortly following the opening of the application window, allegations of impropriety began to manifest, largely detailing the belief that individuals were able to access the application submission platform before the process began at 10:00am. These allegations dominated news outlets and public comment periods of the City Council and Los Angeles Cannabis Regulation Commission meetings. Subsequently, Mayor Garcetti ordered the application round to be halted while commissioning an independent audit to determine if individuals were indeed eligible to access the application portal before applicants believed the window of opportunity had opened.

Ultimately, the audit found that 226 applicants accessed the application platform before 10:00am, with 14 individuals starting applications before the launch time. The findings have casted doubt on the legitimacy of the application process for Round 1 as a whole, though the report found that the City conducted appropriate mitigation processes. As a result, the Social Equity Owners and Workers Association filed a lawsuit against the City in April 2020, imploring the City to vet all applications turned in during the process, or initiate a completely new application mechanism so that all applicants have a fair and transparent opportunity to be evaluated. To this date, confusion still remains as to how the City will move forward regarding applicants and licenses associated with Round 1. Until it is settled, Round 1 and Round 2 are in flux.

There are prospective applicants who are still holding onto and paying for the property agreements that were required under this application phase. Through March 2020, organizations composed of individuals that actually entered the application process estimated that they had collectively spent over \$8 million dollars on rent and holding fees in connection with the ongoing round. Importantly, these individuals through criteria requirements, were low-income individuals.

Notably, the Department of Cannabis Regulation has submitted recommendations to the City Council to make substantive changes to the social equity program to shore up eligibility criteria and application process. Some of these recommendations are reflected below, and a fulsome list

can be found in the Department's letter to City Council, April 10, 2020 re: Performance Audit and Review of the Department of Cannabis Regulations' Phase III Round 1 Licensing Process.

### *Policy Recommendations*

#### Staffing

- Ensure that staffing levels are commensurate with the size and scope of the cannabis marketplace contemplated within the jurisdiction.

#### Analyses

- Commission an analysis of the contemplated jurisdiction to define what 'disproportionate impact means' for said jurisdiction. Ensure the analysis includes and incorporates feedback from data relevant to the enforcement of policies associated with the War on Drugs, and provide a mechanism to recurrently vet disproportionately impacted areas.
- Community feedback is critical to ensuring that these policies are made considering all applicable lenses.

#### Application Process

- Consider granting 'by-right' licenses to social-equity businesses. Los Angeles has set aside hundreds of licenses to ensure that they go to individuals who have been adversely affected by the War on Drugs.
- Directly provide or vet entities that can help potential social equity applicants with barriers associated with entry into cannabis marketplaces, including access to capital, application assistance, real estate acquisition, education, compliance and legal services.
- Create processes to pre-vet individuals to ensure they are eligible for the social equity program.
- Determine a date-certain on which to adjudicate cannabis applications and make this date is clear to all applicants via community outreach. Barring unforeseen circumstances, this will allow applicants to plan around dates when resources must be used.
- Use merit-based or lottery systems, or a combination thereof to evaluate applications. Ensure that criteria and processes to ensure consistency, transparency and fairness are clearly enumerated within ordinances and communicated to the public.
- Pew Research polling details the digital divide that exists between Blacks, Hispanics and Whites. First-submitted application processes conducted via the internet may inherently favor individuals who have access to the best infrastructure, and not those who are well qualified.

- Do not use ‘first-evaluated, first-granted’ processes when opening the application process. This will favor individuals with the best infrastructure and highest speed internet, which may not reflect on the quality of the candidate.

#### Property Requirements

- Do not require a lease (or other high-capital requirements, if they can be avoided) as a part of the cannabis application process for social equity applicants, especially if the individuals include low-income as a part of eligibility criteria. Instead, continue to require only business, security, and proposed floor plans.
- Provide provisional licenses to successful applicants that include a finite time period to secure a properly-zoned premises. This will grant those who receive provisional approval more leverage with property owners who wish to secure a higher price per square foot because of the cannabis boom. The alternative creates an atmosphere where property owners may gouge prospective applicants, or make predatory deals because of the necessity of the lease for a completed application. Additionally, in this scenario, any funding secured and spent for an unsuccessful application is completely lost.

# Oakland

*Richard Ng*

The Oakland Cannabis Social Equity Permitting Program was launched in 2017 with the intent “to promote equitable business ownership and employment opportunities in the cannabis industry in order to decrease disparities in life outcomes for marginalized communities and address the disproportionate impacts of the war on drugs in those communities.” (Oakland Ord. No. 13425, § 2.)

Oakland’s program focuses on racial and economic disparities amongst its communities referring to the “Equity Analysis and Proposed Medical Cannabis Ordinance Amendments” which were created by the Department of Race and Equity and the City Administrator’s Office’s Special Activity Permits Division as one of its main studies. The 71-page report focuses primarily on race and marijuana related law enforcement, and examines the various causes of the racial disparities and barriers to racial equity. The national War on Drugs is specifically referenced as one of the leading root causes that explains the “deeply problematic” different cannabis arrest rates for white and black people in Oakland.

An Equity Applicant is an Oakland resident:

- with an annual income at or below 80% of the Oakland Average Median Income and
- either has a cannabis conviction received in Oakland or
- has resided, for ten of the last twenty years, in police beats that experienced a disproportionately higher amount of cannabis-related law enforcement.
- All other applicants are considered General Applicants.

The Social Equity Permitting Program is housed within the City Administrator’s Office’s Special Activity Permits Division. There are several components that make up the Social Equity Permitting Program:

The City of Oakland required a minimum of half of all permits to be issued to Equity Applicants during the initial permitting phase. Under the Equity Incubator Program, a General Applicant provides an Equity Applicant with:

- three years rent-free space to operate their business. This space must be at least 1,000 ft<sup>2</sup> and may be located either at the General Applicant’s place of business or in another location in zones approved for cannabis activity.
- In turn, the General Applicant receives permitting priority, relative to other General Applicants.

The City of Oakland also provides technical assistance to its Equity Applicants through a technical assistance consulting group. Example of some of the technical assistance services include:

- License application support

- One on one business development and consulting
- Legal assistance
- Technical assistance workshops
- Community events
- Technical Assistance website
  - <https://makegreengo.thinkific.com/>

There is a loan and grant program that offers both grants and 0% interest four-year loans to Oakland verified Equity Applicants who fulfill the program criteria. The Equity Loan Program consists of public funds and repayments will be needed to make loans to equity applicants in the future. Accordingly, loan applicants must undergo a due diligence process and loan amounts will be disbursed in the following Tiers that are designed to help loan applicants build sustainable businesses.

- Tier 1 – Establish the Business. Loan amount – Up to \$5,000
- Tier 2 – Get Compliant. Loan amount – Up to an additional \$10,000; cumulative \$15,000.
- Tier 3 – Open the Business. Loan amount – Up to an additional \$15,000; cumulative \$30,000
- Tier 4 – Start Operations. Loan amount – Up to an additional \$20,000; cumulative \$50,000
- Tier 5 – Grow the Business. Loan amount – Up to an additional \$50,000; cumulative \$100,000. Tier 5 is only available to businesses that are either 100% owned by equity qualified individuals or businesses that match the City’s loan amount with an equal-sized loan from a third-party.
- Tier 6–Expand the Business. Loan amount: up to an additional \$25,000; cumulative \$125,000. Tier 6 is only available to businesses that are either 100% owned by equity-qualified individuals or businesses that match the City’s loan amount with an equal-sized loan from a third-party.
- Loan Program website
  - <https://www.elevateimpactoakland.com/>

### *Licensing Overview*

On January 31, 2018 Pursuant to the Oakland Municipal Code, the city administered eight retail licenses with four mandated to go to Social Equity Applicants. The remaining four licenses were open to general applicants and also social equity applicants via a scored process. Of the four licenses that were not mandated for social equity applicants:

- Three of the four permits are Oakland-owned businesses
- Two of the four are equity-owned businesses
- 90% of all employees will be Oakland residents
- 50% of all employees will be formerly incarcerated, current Oakland residents
- 50% of product will be sourced from equity businesses

- 29 equity businesses will be provided free rent and security for three years by these dispensary permit recipients

Combined with the four permits selected via public drawing on January 31, 2018, this means that six of the next eight new dispensary permits will be equity-owned businesses and seven of the next eight will be Oakland-owned businesses. The City will administer eight more retail licenses in FY 2020 that will follow the same process and mandated requirements bringing the total of retail licenses to sixteen.

In addition to dispensary permits, Oakland has an ongoing permit application process for cannabis businesses other than dispensaries, including growers, manufacturers, distributors, testing laboratories, and transporters. To date, the City has received more than 600 applications for non-dispensary permits; more than half of which are equity applicants. Currently more than 90 equity and 90 general applicants have received temporary licenses from the State of California to conduct commercial cannabis activity.

#### *Equity Program Tax Relief*

In December 2019 Oakland's City Council unanimously approved an Equity Program Tax Relief program that would provide incentives in the form of tax discounts to businesses that supported the cannabis social equity program. The tax relief includes the following for larger cannabis businesses:

- 0.5% tax discount for 30% of workforce consisting of equity target population.
- 0.5% tax discount for 25% of essential staff consisting of equity target population.
- 0.5% tax discount for 20% managerial staff consisting of equity target populations.
- 0.5% tax discount for 25% of equity brands on retail shelves.
- 0.5% tax discount if all staff earn at least \$25/hour without health benefits or \$20 an hour with health benefits (only applies if business also earns at least one target population staffing incentive in the same year).
- 0.25% tax discount if 80% of staff are full time (only applies if business also earns at least one target population staffing incentive in the same year).
- 1.5% tax discount for businesses under \$2M in gross receipts for incubating beyond 3 years; this 1% for businesses over \$2M Incubation incentive applies for one equity business incubated only.

#### *State Funding for Oakland's Social Program*

In October 2019, the California Bureau of Cannabis Control (BCC) announced the recipients of the local equity grant funding which is to be used for commercial cannabis equity programs that focus on inclusion and support of persons or communities that were negatively disproportionately impacted by cannabis criminalization. Grant funds were to be used to provide assistance and services to local equity applicants and licenses. The City of Oakland was awarded \$1,657,201.65

In April 2020, California Officials from the BCC and the Governor's Office of Business and Economic Development disbursed \$30M in grant funding to support equity business development. The City of Oakland was awarded \$6,576,705

At this time of publication, it has not been made known to the public how these funds will be allocated.

# Massachusetts

*Ryan Rappaport*

The current state of the Massachusetts social equity program is a complicated story. Granted that in the nascent cannabis industry there has been persecution across many communities, there are communities in Massachusetts that have been disproportionately harmed by the past prohibition of cannabis. Unsurprisingly, a report by the ACLU in 2018 found there were sharp racial disparities in arrests in Massachusetts, even though white people and black people had similar rates for using and selling marijuana.

So when the Cannabis Control Commission (or CCC) unveiled its social equity program in June of 2018, it was heralded as a way to give back to the communities that were impacted. The program intended to help people who've been impacted by the war on drugs to work in the now-legal cannabis industry. "Social Equity Program participants are on their way to opening their own legal cannabis businesses in Massachusetts," Cannabis Control Commissioner Shaleen Title said. "Although achieving a state license could never redress the harm caused by the War on Drugs, I am proud our agency has delivered a program that moves toward fairness by providing tools applicants need to succeed in the Commonwealth's highly competitive marijuana marketplace. We are excited to see what the future holds for these entrepreneurs."

The Massachusetts program was one of the first statewide programs of its kind in the country to offer training, public forums, and legal guidance. The CCC has also differentiated different types of social equity, one track focuses on economic empowerment for Massachusetts residents in an area of disproportionate impact for at least five of the past ten years with an income that does not exceed 400% of the Federal Poverty Level.

The second track focuses more strongly on those who have been disproportionately affected, mainly blacks and Latinos as per the arrest numbers in Massachusetts. Those with a past drug conviction and residence in Massachusetts for at least the preceding twelve months; or someone who is married to or the child of a person with a drug conviction and residence in Massachusetts for at least the preceding twelve months are given priority. And minorities in Massachusetts were 3.3 times more likely than whites to be arrested for cannabis possession in 2014, despite similar consumption rates, according to the American Civil Liberties Union. And a 2015 report found the median net worth for minority families in Boston was just \$8 compared to \$247,500 for whites.

One initially heralded part of the program lies in the CCC creating educational resources with different educational tracks. These tracks are based on an applicant's specific interests in the cannabis industry, their current skills, and the outcomes they are seeking to gain from the program.

These different tracts are categorized as follows:

- Entrepreneur: Those seeking licensure and ownership.



- Core: Those interested in cannabis careers at Marijuana establishments at the managerial and executive level.
  - Core Experienced Candidates (2-6 years)
  - Core Professional Candidates (7+ years)
- Re-Entry & Entry: Those interested in entry-level positions within Marijuana Establishments.
  - Re-entry level Candidates (re-entering society)
  - Entry-level Candidates (0-2 years)
- Ancillary: Those with existing skills that are directly transferable to working with or supporting cannabis businesses. Inventors and developers of new cannabis accessories and tools.
  - Trade Professionals
  - Managerial Professionals

But given the progressiveness of this legislation, it's far from sunshine and lollipops. "It is the hardest thing I have ever had to do," says Jeff Bellino, co-founder of Hidden Hemlock alongside his brother Greg Bellino, who were applicants in the microbusiness program. He adds, "As someone who has spent much of my professional engineering career literally writing license applications and licensing approvals, these last three and a half years have been trying."

Unfortunately, for a number of different reasons the progress in Massachusetts social equity has been slow. Since the first cannabis retailers in Massachusetts opened in November 2018, the industry has been dominated by large, well funded, multi-state operators (or MSOs). The vast majority of which are owned by white men and corporate, multistate syndicates. As a result, there have been accusations of corruption and favoritism.

As of November 2019, just one of the state's 184 marijuana CCC's social equity program business licenses had gone operational and only eleven had been applied for. The commission has offered both expedited reviews and additional assistance through its program to prospective businesses run by women, people of color, and veterans, as well as people who either themselves have past drug arrests or reside in or were hired from areas with high cannabis arrest rate.

The state is struggling to meet its program goals for several reasons. Many cities and towns haven't prioritized social equity. And just as businesses owned by social equity applicants face challenges raising capital and navigating local approvals, they are doing so while competing with well-funded companies with expensive lobbyists and consultants. "Most of the challenges we face are legislative," says Seun Adedeji, CEO of Elev8 Cannabis, a multistate operator in Oregon with applications in Massachusetts and Illinois. "For example, most banks are not willing to work with cannabis businesses, either as their account holder or lender. We've overcome this by finding smaller credit unions who are willing to work with us for a fee. The cost is high, but the stability is worth it."

And many municipalities are dragging their feet in their process and approving businesses, making it hard for entrepreneurs without access to capital to wait on the sidelines. Unfortunately, Massachusetts lawmakers declined to approve a measure, requested by the CCC, to establish no-interest loans issued by the state for disadvantaged entrepreneurs. “We strut around with our chests out like, ‘We’re the first state to do equity,’ but it’s far from being the vision that we thought it was going to be,” Horace Small, of the Union of Minority Neighborhoods, told the Boston Globe.

And while equity entrepreneurs say these efforts are helpful, it’s still a challenge to compete because officials are moving slowly. With all of the uncertainty in this process, applicants are often stuck having to pay for the storefronts where they’re hoping to do business. And when there are investors involved with these businesses, applicants are stuck trying to reset expectations because they are in peril of losing funding given the delays and barriers.

“A lot of equity applicants across the state are in this limbo waiting — you’re paying rent, you have no idea when it’ll end or what it’s going to look like,” Kobie Evans of Pure Oasis, the first economic empowerment applicant to win a license, says to the Boston Globe. After several CCC meetings have been cut short by protests in 2020, the Cannabis Control Commission has provided platforms to hear more from the frustrated marijuana business applicants.

And finally on March 2020, almost four years after Massachusetts voters legalized recreational cannabis, Boston has its first adult-use cannabis store: Pure Oasis, opened its doors in Dorchester to dozens waiting in line. It was the first cannabis retailer owned by people in the state’s social equity and economic empowerment program. This grand opening marked a milestone in Massachusetts’ effort to use some of cannabis legalization’s windfall to rectify racial and social inequities. “This is part of why we did this — we set out on this journey a long time ago to show people who look like us that if you work hard and you persevere, then success is soon to come,” co-owner Kevin Hart of Pure Oasis told the Boston Globe.

Amidst all of this, there is a silver lining. Massachusetts has created programs for funneling all delivery and cannabis cafe licenses to small businesses and people in the social equity programs. The progressive Social Equity legislation, with respect for all of its hardships applicants have faced, has influenced other progressive legislation in places like Illinois.

And legislators like Boston Mayor Martin J. Walsh, are making efforts to improve this process. In March 2020, he appointed five members to a board, that will issue recommendations on which marijuana companies should receive local licenses and advise Walsh’s office on cannabis regulation and policy. And though the formation of this group is a response to the criticism that Boston’s previous process for choosing pot operators has been slow and confusing, therefore giving an advantage to better-connected and wealthier firms, it is seen as a small step in the right direction.

This program is not perfect. It has taken over four years for some social equity and economic empowerment applicants to even get their review meetings. But applicants remain hopeful like

Jeff Bellino: "My brother Greg and I are thrilled that the CCC has offered licensing options and priority status for microbusiness owners like ourselves. Without programs like this, it would be far too difficult to enter the market and compete with the large, well-funded, out of state companies."

There is still a journey ahead but it seems like everyone is working together to make this a successful program. Time will tell who will arise as successful participants and if this was indeed as impactful as the original legislation intended.

# Illinois

*Akele Parnell*

On June 25, 2019, Illinois Governor J.B. Pritzker signed into law the Illinois Cannabis Regulation and Tax Act (the “CRTA” and the “Act”), making Illinois the 11<sup>th</sup> state to legalize recreational marijuana. The law has been hailed as “the most equity-centric” and “progressive cannabis law in the nation,” the “first to incorporate reparations – the dream of the legalization movement,” and the “biggest step forward in social and criminal justice reform anywhere in the country.” In addition to legalizing the possession, use, production, and sale of recreational marijuana for adults over 21, the CRTA provides for the expungement of upwards of 700,000 minor cannabis records, allocates a quarter of the tax revenue from recreational cannabis sales and licensing fees to a reinvestment program for communities most harmed by the “War on Drugs,” and provides significant licensing preferences and funding to social equity businesses.

The crowning achievement of the CRTA is its establishment of a social equity program designed to create a legal cannabis industry that is equitable, diverse, and accessible to those most adversely impacted by the War on Drugs in Illinois. Under the program, qualifying applicants for cannabis business licenses that are sufficiently owned by or employ adversely impacted persons are deemed social equity applicants. Social equity applicants receive priority in the application process for new cannabis business licenses: dispensaries, craft growers (small-scale cultivation facilities), infusers, and transporters. In addition, the program provides eligible social equity applicants with access to grants, loans, and 50% fee-waivers for application and licensing fees.

The CRTA defines social equity applicant as an applicant for a cannabis business license that is an Illinois resident that meets one of the following criteria:

1. An applicant with at least 51% ownership and control by one or more individuals who have resided for at least five of the preceding ten years in a Disproportionately Impacted Area;
2. An applicant with at least 51% ownership and control by one or more individuals who:
  - i. Have been arrested for, convicted of, or adjudicated delinquent for any offense that is eligible for expungement under the Act; or
  - ii. Is a member of an impacted family; [or]
3. For applicants with a minimum of ten full-time employees, an applicant with at least 51% of current employees who:
  - i. Is a member of an impacted family; [or]
  - ii. Currently reside in a Disproportionately Impacted Area; or
  - iii. Have been arrested for, convicted of, or adjudicated delinquent for any offense that is eligible for expungement under the Act or member of an impacted family.

The benefits of social equity applicant status are quite significant and include: 1) a 20% bonus in the application scoring process for cannabis business licenses, 2) a waiver of half of all application, license, and surety bond fees, 3) eligibility for access to loans and grants from the state's \$30 million Cannabis Business Development Fund, 4) access to technical assistance and support provided by the Illinois Department of Commerce and Economic Opportunity (DCEO), and 5) eligibility to participate in a state-approved cannabis business incubator or sponsorship program.

Given the sheer number of Illinois social equity applicants and the level of competition from general applicants, the point value of social equity applicant status is almost indispensable in the license application process. For example, the Illinois Department of Financial and Professional Regulation (IDFPR) will rank applicants for dispensary licenses using a 250-point scoring system and assign points based on the following ten criteria:

- Suitability of Employee Training Plan (15 points)
- Security and Record Keeping (65 points)
- Business Plan, Financials, Operating Plan, and Floor Plan (65 points)
- Knowledge and Experience in Cannabis or Related Fields (30 points)
- **Status as a Social Equity Applicant (50 points)**
- Labor and Employment Practices (5 points)
- Environmental Plan (5 points)
- Illinois Owner (5 points)
- Status as a Veteran (5 points)
- Diversity Plan (5 points)

As shown above, 20% of the total number of points that an applicant can receive is reserved for social equity applicants. This makes social equity applicant status the third most important aspect of an application after core operational criteria – security and record keeping (26%) and business plan, financials, operating plan, and floor plan (26%). And, unlike the two previous criteria, points for social equity applicant status are awarded on binary basis—either you qualify and receive all the points, or you do not, and you receive none of them. Similarly, the licensing process for all new cannabis business licenses reserves 20% of the total number of points available for social equity applicants on a binary basis, thereby virtually ensuring that all new licenses for cannabis business will go to social equity applicants.

Social equity applicant status can also makes the application and licensing process half as expensive. Qualifying social equity applicants are eligible for a 50% waiver of 1) the \$5,000 cannabis business application fee, 2) the \$5,000 infuser license fee, \$10,000 transporter license fee, \$40,000 craft grower license fee, and \$60,000 dispensing organization license fee to purchase a license upon award, and 3) the surety bond premiums which may be \$1,000 per year, per bond. In each case, eligibility for a fee waiver is subject to an income and license cap for the applicant and its owners.

In addition, social equity applicants are eligible to participate in a state-approved incubator program which will include a \$100,000 loan from a host licensee (existing dispensary operator) and at least one year of mentorship services on how to run a cannabis business similar to that of the host licensee. Lastly, social equity applicants are eligible to be selected to participate in a state-approved sponsorship program and receive an interest-free loan of at least \$200,000 from an existing dispensary operator. In both cases, the terms of the loans will be more favorable than commercial loans or other private debt financings. And the mentorship services may be even more valuable than the loans given the expertise that the host licensee has developed during its years of operations.

To fund the Illinois social equity program, the CRTA creates a Cannabis Business Development Fund that will provide startup and operating capital to qualifying social equity businesses. The fund started out with \$12 million transferred from the state's medical cannabis program. Fees collected from existing medical operators who pay to transition to recreational sales before January 1, 2021 and payments made as a result of transfers of licenses by social equity applicants will be deposited into the fund which is expected to grow the fund to \$30 million. Funds from the Cannabis Business Development Fund must only be used for the following:

1. To provide low-interest rate loans and grants to social equity licensees to help them start and operate their businesses;
2. For administrative costs related to the provision of low-interest loans and grants;
3. To pay for outreach to social equity applicants;
4. To conduct research concerning the participation of minorities, women, veterans, or people with disabilities in the cannabis industry; and
5. To assist with job training and technical assistance to residents of DIAs.

The CRTA's social equity program was specifically designed to benefit communities that were disproportionately impacted by the War on Drugs, but it is still too early to judge its effectiveness. In many ways, the program goes further than social equity programs in other states, but it is far from perfect. Conceptually, there may be more ideal ways to design a social equity program, such as a race-based application point system or a set aside of licenses for African American and Latinx applicants. However, despite the practical and ethical merits of race-based criteria and numerical targets, such measures invite constitutional challenges, and courts are likely to invalidate them.

When the State of Ohio reserved fifteen percent of its medical cannabis cultivation licenses for businesses owned or controlled by racial minorities, the measure was ruled to be unconstitutional under state and federal law. Given the legal challenges inherent in effecting race-conscious remedies for the drug wars race-specific harms, the most legally viable way for state and local governments to promote racial equity in the industry appears to be the adoption of a social equity program that provides licensing benefits, funding, and resources to business from DIAs. This approach will inevitably prioritize predominantly Black and Latinx communities, though not exclusively. And in doing so, new licenses can be reserved for businesses that are connected to disproportionately impacted communities and those who have suffered directly from the enforcement of marijuana laws.

# Key Factors for a Successful Social Equity Program

From Los Angeles to Boston, cities and states are slowly beginning to create and experiment with social equity programs. The difficulty in creating a successful social equity program is that it has to be tailored to the specific jurisdiction. While common factors have emerged in social equity programs, others factors, such as removing property as an initial requirement, have not proliferated social equity programs but are deserving of discussion. Many factors exist that impact successful social equity programs such as the leadership and budgets. While not all factors are explored, below are some factors our authors wish to highlight.

## Merit Based Licensing

*Chris Nani*

Social equity programs should award licenses based on a merit approach when there are limited licenses. Currently, social equity programs have developed multiple ways to select applicants. In Los Angeles, it was the first one hundred to electronically submit their application. In Illinois, it was part of the general application process while in Massachusetts it was a separate merit based licensing process.

Programs that have enacted first come, first serve approaches risk ruining the credibility of their program because the winners may not truly reflect the local community and there is a high probability cheating, manipulation, or otherwise fraudulent activity that will occur during the licensing process. Los Angeles' social equity program promised to license the first one hundred social equity qualified applicants that submitted applications.<sup>1</sup> The application cycle opened on September 3, 2019 and, by the end of October public outcry of corruption and cheating were rampant.

Marijuana Business Daily reported "Hundreds reportedly appeared Thursday for the city's Cannabis Regulation Commission meeting, where allegations of corruption, incompetence, and basic unfairness were leveled at city officials, including Cat Packer, the head of the L.A. Department of Cannabis Regulation (DCR)." The charges of corruption levied against DCR arose from video evidence as well as documents showing fourteen applicants had accessed the online portal submission before it had opened to the public at large. Further audits showed 226 applicants were able to sign in fourteen seconds before the official submission time.

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<sup>1</sup> It's important to note all applicants were required to show proof they had secured property for their proposed dispensary as part of the application. This requirement singularly cost applicants millions of dollars.

The third-party audit conducted by Sjoberg Evashenk Consulting found neither incident gave a significant advantage to either group. The audit further found no corruption noting that DCR's unclear instructions were cause for some to believe they could not access the online portal until the official submission time stating DCR "created potential for confusion regarding the starting line."

In addition to the time sensitive nature of submitting applications for Los Angeles, those that had fiber optic cables, or high speed internet, had an insurmountable advantage over their competition. Because the application process was based on submission times, MSOs and well resourced applicants secured high speed internet to guarantee their connectivity would be faster. Los Angeles received hundreds of applications within the first few minutes of officially going live. If your application was not amongst the first few, months of hard work and securing a property were rendered fruitless.

In contrast to Los Angeles, other programs, like Massachusetts, have instituted a merit based approach. While a merit based approach has its own flaws, it is currently the preferred method. Merit based means applications are weighed using a set rubric by trained graders and licenses are given to the highest scoring applicants. The merit based approach reviews applicants business plan, security, and experience amongst other things and seeks to award licenses to applicants who demonstrate they are the most prepared operators.

Unlike a first come, first serve approach, merit based cycles accept applications for a fixed duration of time and do not take into account the time of submission. Additionally, merit based cycles seek to provide greater transparency and will normally provide information on how they will be scoring applications, how points will be distributed, and when decisions will be announced. Illinois wrote their scoring process into the regulations and provided multiple follow up FAQs to their scoring process for their first round of adult use retail licensing.

However, merit based approaches favor MSOs and other established businesses due to their experience and pre-established standard operating procedures that allow them to apply in multiple states at once with relative ease. The merit based approach may favor MSOs, but it also provides more time for social equity applicants than other methods to develop their application and find assistance if needed.

The merit based approach has many unanswered questions regulators continue to struggle with. Should all individuals harmed by the War on Drugs be treated the same or should severity matter for application purposes? How should applications be graded? Social equity programs are still in a feeling out process, but, in order to better support communities, regulators should create merit based licensing approaches over random or time based ones because they present a more fair opportunity for social equity applicants where applicants are measured on their overall application instead of their access to resources.



## Separate Licensing Processes

*Chris Nani*

Social equity programs should have licenses earmarked specifically towards social equity applicants. Without dedicating licenses specifically to social equity applicants, cannabis programs run the common risk of being dominated by multi-state operators (MSOs). For example, Illinois incorporated social equity into their general licensing process. The result—MSOs became qualified as social equity applicants to remain competitive in the licensing phase, a predictable outcome. An unintended consequence however is that true social equity applicants, individuals harmed by the War on Drug, were forced to either join an MSO or risk being left behind.

As explained in the Illinois case study, social equity status accounted for 20% of the total eligible points for any Illinois cannabis application, providing a powerful incentive for companies to find creative solutions to become social equity applicants. The most prominent way MSOs qualified as social equity applicants in Illinois was by hiring social equity qualified employees. However, a critical difference between hiring and being a social equity applicant is ownership. MSOs that hired qualified employees will enjoy the fruits of their labor in exchange for a paycheck. Those employees may be terminated at any point while the revenue generated will leave the local community and flow to investors within MSOs.

While it may not be readily apparent, the problems created by having social equity included as a component in one general cycle center around ownership and competition. Social equity programs that do not mandate ownership remain with those harmed by the War on Drugs greatly reduce the efficacy of their program's mission – restoring and building generational wealth in areas of disproportionate impact. When licenses are awarded in one general cycle, social equity applicants must compete with experienced MSOs, which are large companies that include application writers, consultants, and lobbyist all trained to increase their company's chance of winning a license.

The compounding result is two-fold. Social equity applicants face an extremely difficult challenge of winning a license in a general cycle and those that do wish to remain competitive during the licensing process must make deals with MSOs or investors for financial aid and/or technical assistance in exchange for equity.

Before a cannabis dispensary may operate, it must first be licensed. Licensing cycles are only open for a few months at most, can require upwards of \$25,000 per application in fees and services, and are competitively graded based on prior operating experience, accomplishments, and the complexity of their standard operating procedures. MSOs are best prepared to apply in new markets because they have resources to monitor legislation, prepare applications ahead of time, and the resources and experience to consistently score highly on applications.

In comparison, social equity applicants are disadvantaged individuals seeking ownership in the cannabis industry. Normally, they do not have vast sums of financial capital or teams of professionals at their disposal. Some social equity applicants may be able to find private funding, but at high interest rates or for large chunks of equity. Others may find they can hire consultants and professionals to bolster their application, but also at a similar price. For social equity applicants to remain competitive in a general licensing cycle, they must be willing to sell or barter a significant portion of their equity.

For social equity programs to reach their intended goal, they must provide fertile ground for social equity applicants to grow. A separate licensing process, exclusive to social equity applicants, would provide greater benefits to local communities because ownership, and consequently generational wealth, would be built in those communities. By earmarking social equity licenses, regulators could impose restrictions in ownership similar to Los Angeles.

Tier I social equity applicants, the individuals who qualify the company as a social equity applicant, are required to maintain at least 51% equity in the company initially in Los Angeles' social equity program. By regulation, individuals cannot sell or contract their rights away to their base equity of 51%. This ensures wealth remains with the individual(s) harmed by the War on Drugs and are not extorted by third parties or investors.

In addition to retaining ownership, separate licensing programs help level the playing field for applications because social equity programs provide tutorials, workshops, and free resources to social equity applicants to help them craft applications and learn what they need to do to submit a complete application. Social equity organizations, like Minorities for Medical Marijuana, have also aided applicants and many organizations will host their own free events in states with open licensing cycles. While a separate licensing process does not remove MSOs from the equation, it does remove a few of their advantages.

Fees are waived or reduced, making it easier for social equity applicants to submit applications, and free services and resources are provided to help applicants understand what is required. Perhaps more importantly, separate licensing programs can provide greater scrutiny to how ownership is distributed. It's common for licensing agencies to request an organization chart detailing the equity breakdown of the company and any agreements that provide control or ownership to third parties.

By creating bright line rules and standards, regulators can quickly verify if a company (1) qualifies as a social equity applicant, (2) has accurately reported their equity breakdown, and (3) no extraneous dealings exist that could jeopardize the status or equity of the applicant. Separate licensing cycles can be opened, closed, and graded contemporaneously. Greater oversight can also be devoted as the scope of the licensing process can be broken into general applicants and social equity applicants. While a separate licensing process will not prevent licenses going to MSOs or crafty application writers, it will help retain ownership within the communities harmed by the War on Drugs and reduce the experience and resource discrepancy between MSOs and mom & pop applicants.

# No Property Requirement

*Cedric Haynes*

*“... [I’m a] social equity applicant. I’m one of the [applicants] that worked hard to comply and follow the rules of this program. But now my partners and I have been up for almost six months since registration in September... Before that we worked for over a year to find and secure a location, make investments in the lease and improvements to our space. My partners and I have invested tens of thousands of dollars. If we don’t get open soon, I figure we will lose this investment altogether...”*

- *Public Comment from Phase 3 Round 1 Social Equity Applicant for Storefront Retail Licenses, Los Angeles Cannabis Regulation Commission public meeting, March 5, 2020*

Social equity programs in cannabis marketplaces across the United States are being created and implemented with goals that include helping individuals disproportionately impacted by the ‘War on Drugs’ to obtain a share of said marketplaces as owners. This help is necessary- while headlines refer to the cannabis sector as the new “gold rush”, entire communities are still reeling from the adverse effects of cannabis prohibition. More, the black community- which is multiple times more likely to have barriers erected affecting their very livelihoods and prospects for prosperity due to cannabis prohibition, only represent 4% of cannabis business founders and owners. Disproportionately impacted communities, often defined to include a low-income economic status, are more susceptible to high barriers to entry into cannabis marketplaces, chief of which is access to capital for the application process and general startup costs.

## *The “Green Tax”*

The ‘green tax’ is a term used to describe the price markup of many products associated with starting and maintaining a cannabis business, including legal, compliance, accounting, and real estate services. The markup exists because of the projected financial growth of legal cannabis marketplaces in the United States (\$13 billion over the next 5 years), the nascent nature of the industry, and the inherent liabilities associated with aiding a cannabis business. The reality is that startup costs are extremely expensive, ranging anywhere from low six-figures to multiple-millions of dollars depending on the location and type of cannabis business. The legal, compliance, and mandated fees associated with the application process alone will compose a significant portion of these costs. Prospective license holders must submit compelling cannabis applications because of the limited number of licenses available in most markets.

Because of the federal prohibition on cannabis, the lack of federal policy allowing cannabis banking, and the risk of financially ‘aiding and abetting’ federally illegal activity, banks beholden to the Federal Deposit Insurance Corporation (FDIC), which provides them insurance, are unlikely to provide resources to cannabis businesses. This leaves prospective cannabis business owners largely reliant on personal assets, familial wealth or private investors for large sums of startup capital. The vacuum created by the lack of capital has the potential to be filled by nefarious

entities. Disproportionately impacted communities, by definition, are less likely to have access to capital in general.

*“It seems that the biggest hustle in [Los Angeles] is [to] squeeze the social equity candidate out of money... either they want a piece of your business, or they want to go up on your rent, but that’s the new hustle...”*

### *Real Estate as a Startup Cost*

Zoning processes are used by city planners to plan for infrastructure and the orderly development of a jurisdiction, and to ensure that compatible land uses are situated in suitable locations. Cannabis businesses across the United States are subject to stringent zoning standards, often with large radius restrictions around schools, parks, residential areas and other cannabis businesses. This limits the amount of properties that exist in areas that are properly zoned. The effect of the resulting squeeze of suitable property locations, coupled with the sector’s financial growth projections and inherent risk, create an atmosphere where the price per square foot for a cannabis business can be many times the price per square foot for a non-cannabis business.

Every regulated cannabis business type will require the leasing or ownership of property in which to operate. Whether delivery, storefront retail, or cultivation, the business must operate within a physical property- whether owned or leased. If a leasing agreement or ownership of a physical property is mandated for an application to be deemed completed, the fees associated with the application become additional capital barriers to individuals who have been designated as ‘disproportionately impacted’. Worse, if these expenditures are mandated, then any capital spent on rental or leasing agreements become complete losses if a license is not granted. Further, without a date-certain for city or state approval or denial of an application, or unexpected circumstances that requires a pause during the adjudication phase, lease-holders can be left to continue to pay leasing fees indefinitely, or lose the opportunity to receive a license.

*“... We need your help. We are in a crisis. It’s been over six months since we applied... estimates indicate we [the applicant pool] have spent over \$8 million on rent and holding fees... This is unsustainable for social equity applicants who already have access to very limited resources. Approximately a quarter of us do not have the capital to last another 90 days. I’ve gone through all of my savings and retirement fund because I thought this would be a way for me to retire, but all of this has been held up.”*

### *Los Angeles and Chicago*

The comments dispersed through this document are all attributable to individuals who applied during Phase 3, Round 1 of Los Angeles’s licensing scheme. Their testimonies are examples of the unintended policy consequences that stem from requiring applicants from disproportionately impacted communities to include “a copy of an executed lease agreement with proof of a deposit or property deed for its business premises” as a part of their application. Troublingly, the individuals allowed to apply during this particular process had to fit within Tiers

1 or 2 of Los Angeles' social equity program qualifications, both of which mandate "low income" as a qualifier. The Phase 3 Round 1 application process opened on September 3, 2019, while the comments are from March 5, 2020. Due to concerns stemming from multiple breaches of the City's electronic application processes, the process was halted while an audit was conducted by order of Mayor Garcetti. Conversely, the City of Chicago has divided the City into seven geographic cannabis districts, and will allow for the securing of property within those districts after licenses are provisionally awarded.

#### Policy Considerations:

- Determine a date-certain on which to adjudicate cannabis applications and make this date clear to all applicants via community outreach.
- Do not require a lease as a part of the cannabis application process for social equity applicants. Instead, continue to require business, security, and proposed floor plans.
- Provide provisional licenses to successful applicants that include a finite time period to secure a properly-zoned premises. This will grant those who receive provisional approval more leverage with property owners who wish to secure a higher price per square foot because of the cannabis boom. The alternative creates an atmosphere where property owners may gouge prospective applicants, or make predatory deals because of the necessity of the lease for a completed application. Additionally, in this scenario, any funding secured and spent for an unsuccessful application is completely lost.
- If a lease is deemed a necessity for a completed application, directly provide capital assistance or vet and designate trusted lenders. Issue guidance detailing reasonable interest rates and sound loan education so that social equity applicants do not fall victim to capital providers looking to take advantage of the applicant's designation in a predatory manner.
- Assist prospective licensees in understanding and preparing for any build outs and inspections necessary for the property to be up-to-code. Reduce or remove any fees associated with inspections by city or state entities.
- If able, incentivize or mandate property owners in the most desirable and highly trafficked areas to accommodate prospective social equity businesses. This can be accomplished by provisioning a ratio of licenses across all zones between social equity and general cannabis businesses.

#### *Closing*

Disproportionately impacted communities are commonly defined as geographic areas where cannabis prohibition has been disproportionately enforced, the individual or an immediate family member has been directly impacted by a cannabis offense, and/or income and economic factors. It is less than ideal to qualify a person as disproportionately impacted (and therefore eligible for

a social equity program), recognize the financial barriers associated with starting a cannabis business, and then require the individual to enter into and subsidize a leasing agreement as a mandated portion of the application process. Though a physical property is required to operate a regulated cannabis business, it does not have to be mandated during the application process. Each barrier that a state or local government can lower or delay will alleviate the financial burdens associated with applying for and owning a cannabis business.

# Mentorship

*Brandon L. Wyatt & Todd Hughes*

Less than 40 years ago, the government of Atlanta adopted sweeping and bold economic development policies to stabilize the city's economy and expand business and job opportunities. This model is applicable today in the award of over a Billion dollars of federal and state funding to minority business entrants. Through the examination of the history of the City of Atlanta program, there are multiple key insights and considerations that exist pervasively regarding the disparities facing minorities entering the cannabis market.

Then-mayor Maynard Jackson, Jr., the first African American mayor of a major United States city, championed the Equal Economic Opportunity (EEO) Program, opening municipal procurement to the more than half of the business population previously locked out of city business due to discriminatory policies and practices based on race and gender. His leadership changed the economic fabric of the city for black people, other minorities, and women and set a standard for business mentorship.

Through years of study and diligence, the City of Atlanta has found that African American, Female, Hispanic, and Asian American owned businesses have suffered the effects of racial and gender discrimination in both public and private markets, resulting in the disproportionate award of contract dollars to non-minority or non-female businesses.

Fast forward two generations, Atlanta continues to combat the systemic effects of a developing protected activity and EEO landscape, the City has adopted the findings and conclusions of the Executive Summary of Dr. Ian Ayres and the findings and conclusions of the 2015 disparity report prepared by Keen Independent Research, LLC.

“Although not perfect, the City of Atlanta model reverses the centuries-old history of discrimination against women and African Americans in business and seeks to empower them to succeed and contribute as employers, taxpayers and civic leaders.”

- Shirley C. Franklin, Former Mayor, City of Atlanta, Georgia.

The study which created the Equal Economic Opportunity Program uncovered two very distinct barriers to the success of minorities within business.

## *Institutional / Structural Injustice*

Institutional or structural injustice is a characterization of institutional racism as structurally constructed differential access to societal opportunities, goods, and services can be applied to the characterization of institutional workplace injustice. This injustice is “normative, sometimes legalized” and “structural, having been codified in our institutions of custom, practice, and law, so there need not be an identifiable perpetrator”. Institutional injustice can persist even after levels of individual injustice have lessened in a society.

### *Interpersonal Injustice*

At the individual/interpersonal level, workplace injustice can be intentional or unintentional and encompasses acts of commission and omission. Studies have documented a range of such unfair practices faced by vulnerable workers, from isolating or excluding socially/economically disadvantaged workers from workplace events and activities to subjecting them to overtly hostile actions and behaviors (e.g. being subjected to insults and jokes related to one's race/ethnicity). Studies suggest that African-American and other racial/ethnic minority workers are more likely to report being targets of derogatory comments and having their work duties and activities made difficult by others. Within the business and workplace context, interpersonal injustice is often executed at the hands of individual actors with a widespread influence.

### *Combating Injustice with Mentorship*

"The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."

– Supreme Court Chief Justice John Roberts

Decades of injustice cannot be cured by solely setting aside business opportunities or “ratios” for minorities. Simply stated, a businessperson who has been devoid of meaningful access to participate in a market, will reasonably lack the experience to succeed in the market without assistance and opportunity to educate themselves on the internal dynamics of the market. As a result of these still relevant truths, the City of Atlanta engaged upon a mission to create a Mentor-Protege program which would help ensure that seasoned businesses would offer support to new minority market entrants.

Decades of psychological research have demonstrated that the most insidious form of racial bias is actually implicit and subconscious. Moreover, research has consistently shown that such racial bias--termed "implicit racial bias" by psychological literature is capable of affecting conscious behavior and exists independently of individuals' conscious and explicit beliefs about racial equality.

Many entrepreneurs and small business owners need access to skills, but often-training initiatives are not focused enough on their actual needs and time constraints. More, when left to open market competition there is little assurance or guidance for the success of minority entrants against seasoned veterans, even if there were no implicit bias or discrimination. Considering, the City codified a requirement for all contract recipients to include: a minority entrant, mentorship, required business development ratios with minority entrants, submission of all corporate documents, and quarterly reporting. Even more, the City established an office to oversee compliance, which was revolutionary at the time.

The City of Atlanta Office of Contract Compliance is responsible for monitoring SBE participation levels on projects throughout the duration of a contract. Contractors violating contract provisions regarding SBE participation are subject to sanction.



More, the Office of Contract Compliance is empowered to investigate, including on-site investigation if necessary, African American, Asian Pacific American, Hispanic American, and female business ownership arrangements beyond formal documents submitted by such businesses. During the term of the contract the mentor and protégé businesses must each provide to the Office of Contract Compliance a quarterly summary of the mentor skills provided to the protégé, which shall include:

- The time spent between mentor and protégé businesses in furtherance of the mentor-protégé relationship.
- The nature and extent of managerial, technical, financial and/or bonding assistance provided.

The level of effort required to properly engage remedial measures for a discriminatory market has been well versed and documented. There is a prevailing need for each state and the federal government during cannabis legalization to lean toward the existing mentor protege programs, legal frameworks, and establishment of statutory compliance agencies is imperative. To go against this notion would cause the loss of over forty years of case law and expert guidance regarding eliminating barriers for minority business entrants.

#### *Mentorship Without Financial Resources*

Academic research has found that minority business owners, and women in general, are more risk averse than men, especially when taking on financial risk. More has been discovered that female business owners are less likely to engage in risky business ventures and tend to minimize risk in their business operations. This is consistent with a growing body of research that suggests women are more risk averse than men along a number of dimensions.

Despite positive statistics indicating the resoundingly positive financial habits of women owned businesses, minority-owned businesses are approximately three times as likely to be denied loans as are comparable nonminority businesses. Financial considerations and inability to obtain capital, are true barriers for all minority business owners.

From multiple disparity reports and studies, access to and use of financing for business start-up and subsequent operations were found to be key in explaining differences between women- and men-owned businesses. The fact that women-owned firms have lower levels of financial capital both at start-up and at later stages helps explain why their business outcomes are typically lower relative to men-owned firms. These statistics increase exponentially in disparity if the woman owned business is also a member of a racial minority.

#### *The Role of Incubators and Accelerators*

Over the last decade entrepreneurial startup activity has increased significantly with estimates ranging from 300 to over 2,000 business incubators and accelerators, spanning six continents. Through all of this startup activity, entrepreneurs of color in the United States remain underrepresented and continue to have lower rates of entrepreneurship than their white

counterparts. The Annual Survey of Entrepreneurs shows that minorities own 19.8% of all businesses in the United States and only 5.3% of these businesses have paid employees.

For cannabis-based businesses the percentage of minority ownership is much lower. According to Marijuana Business Daily's 2016 report, minorities own 4.7% percent of all cannabis businesses. Minority-owned in this context means that the companies are at least 51% owned by minorities. This statistic is broken down by ethnicity, race, disability, and veteran status showing further disparities.

Unfortunately, barriers to entry remain and continue to impede minority progress in the cannabis industry. States are not relaxing arduous licensing processes, stringent compliance regulations, high taxes, and steep capital requirements. One could posit that limited opportunities for experience and mentorship, specifically for minorities in cannabis, can lead to a lack of the critical knowledge, network and capital necessary to startup and sustain business.

According to the Grand View Research Inc's analysis on the industry, the global legal cannabis market size is expected to reach USD 73.6 billion by 2027. This is due to the growing adoption of cannabis as a pharmaceutical product for treating severe medical conditions, such as cancer, arthritis, and Parkinson's disease and Alzheimer's disease among other neurological conditions. Moreover, increasing need for pain management therapies along with the growing disease burden of chronic pain among the elderly and the opening of more recreational markets is expected to boost the product demand.

Given the opportunity to participate in this market expansion, minority-owned companies could significantly benefit from the economic potential of the industry and begin the process of mending the wounds caused by the war on drugs. Thus, it is imperative for policymakers to consider the role of state-funded programs such as inclusive incubators and accelerators as practical tools for social equity.

### *Best Practices*

The measurable impact incubators and accelerators have on business performance varies widely— not all programs are created equal. There is also a lack of substantial empirical evidence on the efficacy of these programs, but qualitative studies show promise. A Nesta research survey of incubator and accelerator participants shows that 66% of respondents consider incubators and accelerators as significant or vital to their success. In any case, it is worthwhile to evaluate key components of successful and failed programs and explore lessons learned to help better inform decisions.

“Learning-by-doing is vital to the process of scaling ventures, and the point of accelerators is to accelerate that process. In this way, founders compress years' worth of learning into a period of a few months.”

- Brad Felds, Co-Founder, TechStars

Incubators and accelerators are typically used to facilitate innovation in a particular industry. Most incubator and accelerator programs create an ecosystem for accelerated education and immersion. They allow for the cultivation and transfer of tacit knowledge. Over a short duration, participants are commonly granted access to peers and mentors, as well as given technical assistance, business skills development, and opportunities to obtain financing. These programs show great promise in supporting minority businesses and establishing a strong foundation for scaling.

Two key factors emerge from the research as best practices that future programs should consider. The first is establishing a clear framework for mentor engagement over the duration of the program. Second, create an ecosystem for fundraising.

### *Mentor Engagement*

Bone et al. concluded that mentoring, and the network provided by the mentors, is one of the most valuable elements of an accelerator. Furthermore, Cohen proclaims that what she calls “mentor overload”, an intense period of communications with different mentors generating conflicting opinions, leads to the transfer of tacit knowledge. Ultimately, founders began to break down their preconceptions about their businesses and strategy and start to find common themes between apparently contradictory mentor feedback. This mentor overload allows founders to expedite the process of learning lessons from experienced entrepreneurs, which leads to a transfer of wisdom. More, mentorship is necessary for anyone that desires to enter the cannabis space. Ownership of a plant-touching company requires a unique set of characteristics, experience, and sometimes even luck.

### *Financing*

The second factor that incubator and accelerator programs provide to entrepreneurs is the establishment of an ecosystem that results in opportunities for fundraising and obtaining financing. Most accelerators not only provide an initial stipend, they also convene an assortment of angel investors and business owners in order to cultivate relationships for later investment or acquisition. This is even more relevant to business owners in the capital intensive cannabis industry.

Steve Hawkins, executive director of the Marijuana Policy Project suggests that Equity provisions may help make licensing more possible, but if people don’t have the capital to actually operationalize, they may win a license and later discover that they lack sufficient resources to get their business up and running.

Financing from incubator and accelerator programs and their investors can provide the bridge needed for minority entrepreneurs to successfully matriculate the startup phase of business. One caveat is that these programs, especially state-funded programs, should incorporate protections and technical assistance to minimize the impact of predatory lending and investment. Programs should establish evaluation criteria and checklists for entrepreneurs to leverage in assessing financing options.

### *Acceleration in Practice*

In 2019, the Minority Cannabis Business Association and EntreVation, a Washington, DC-based business accelerator, partnered with private equity firm Merida Capital Partners to empower and fast-track the development of sizable minority businesses in the burgeoning cannabis sector. The program was called the Industry Inclusive (i2) Accelerator. The program resulted in five minority-owned businesses receiving over \$500,000 in capital infusions and obtaining meaningful executive mentorship from partnering organizations. Winner, Luis Angel Vega, mentioned that his company, Wepa Farms, has increased revenue by 10x since participating in the program. Another winner, Chef Swan of CannaBistro, was able to open a second restaurant location in Atlanta, Georgia and Sammie Rogers, of Michigan, was able to kick off a plant touching cannabis training program that helps educate people eager to obtain careers in the space. This one program significantly impacted underserved communities and has provided a framework for public and private organizations to mimic. More, entrants to the i2 Accelerator program only gave up no more than 3% equity in their businesses in exchange for financing, as well as the opportunity to network with the broader private equity community.

Similarly, programs such as the Hood Incubator are working to increase the participation of Black and Brown communities in the legal cannabis industry. Their main focus areas are community organizing, policy advocacy, and economic development. Multi-state operators are also supporting minority business owners. Cresco Labs' SEED (Social Equity and Education Development) initiative is designed to ensure that all members of society have the skills, knowledge, and opportunity to work in and own businesses in this industry. The SEED program was initiated in Illinois to support social equity applicants in navigating the startup process.

Lastly, the State of Maryland developed training programs that educated the community on business ownership in the cannabis industry with the Educational and Business Development Training Program, established by the Natalie M. LaPrade Medical Cannabis Commission Reform Act. The General Assembly established the grant program to provide training and assistance to small, minority, and women business owners and entrepreneurs interested in becoming licensed as a medical cannabis grower, processor, or dispensary. The goal of this grant opportunity was to reduce barriers to entry into the medical cannabis industry faced by small, minority-, and women-owned businesses. The grant program is one manner in which the Maryland Medical Cannabis Commission actively sought to encourage and promote participation by diverse groups in the Maryland medical cannabis industry.

These programs have laid the foundation for business incubation and acceleration in cannabis, but more work is required to truly remedy the damage caused by the war on drugs and enable further diversity in the industry. Furthermore, policymakers should explore public-private partnerships to facilitate social equity and find ways to incentivize legacy operators to join the regulated market through funded mentorship programs. Much more research, passion, and execution is required to truly remedy the harms caused by prohibition of cannabis, specifically for the people most impacted from faulty policies of old.

# Business Incubators

*Jessica F. Gonzalez, Esq.*

“We all have possibilities we don’t know about”

– Dale Carnegie

Entering the cannabis industry is quite unlike opening a business in an established industry with precedent. The maps are still being prepared, the roads are still being paved and the guideposts are temporary. At the core of social equity programs should be the very real thought that without education, without access to capital, and without access to an incubator program, social equity applicants are walking a barely chartered, unpaved road with unreliable guideposts. For these reasons, states must take on the responsibility to offer (1) cannabis business education, (2) capital, and (3) incubator/mentorship programs. For the purposes of this section, I will focus on incubator programs and their ability to reveal possibilities through ongoing mentorship.

As Dale Carnegie stated: “We all have possibilities we don’t know about. We can do things we don’t even dream we can do.” After working with multiple startup companies looking to get involved in the cannabis space, having my own startup firm centered on cannabis, and being an instructor at a cannabis licensing bootcamp, I have witnessed firsthand what lack of proper guidance leads to. Without guideposts and a knowledgeable tour guide comes discouragement, despair and disappointment.

Learning about how to start and manage a cannabis company through books, presentations, webinars etc. is one thing, but being able to learn from an experienced cannabis operator whose responsibility it is to look over the launch and viability of your business is another thing. Everyone’s perspective derives from their personal experiences and sometimes those personal experiences create limitations. Incubator programs with built in mentorship reveals possibilities (both positive and negative) to social equity applicants who may not be able to see all the opportunities and challenges littered along the way.

## *Highlights of an Incubator*

An incubator is a company that assists startup companies in their initial stages typically in return for equity in the startup company. Incubator programs vary in their execution but for the most part, incubator programs provide mentorship, education, comradery, business development, access to investors, access to capital, and, in some cases, a low-cost workplace. Incubator programs have been around since the late 1950’s but didn’t fully have their day until the 1980’s during the tech boom.

Now there are various incubators in the U.S. and around the world geared towards assisting startup companies in various industries. Every business owner needs assistance when they’re getting up and running, especially given the unforgiving nature of owning a company. According to reports, 90% of startup companies fail (with varying lifespans) and about 10% of startup

companies fail within their first year. Regardless of industry, failure and survival rates across all industries tend to be the same.

### *Access to Professional Services*

Though these statistics are discouraging, they highlight the exact reason cannabis incubators are necessary for social equity applicants. Given the nascent nature of the cannabis industry, startup cannabis companies bear an enormous amount of scrutiny at the state level to comply with state laws and regulations or risk federal interference. With higher stakes comes higher costs, and, without proper guidance, comes a higher probability of loss. To begin preparing an application for a state cannabis license, a startup company must have a team of service professionals to properly advise them and that comes in the forms of lawyers, accountants, consultants, etc. Not only is financial capital important but human capital as well.

An entrepreneur who has never started a company may not even know where to begin looking for these professional and the process of searching and pursuing professional services can also come at a high cost. Incubator programs can help bridge this gap by providing startups with access to a vast network of vetted experienced professionals with a track record of successfully assisting startup companies. While I encourage each company to do their own due diligence on the professionals it works with, incubators can help facilitate introductions to professionals best suited for its goals. In addition, by virtue of the company's involvement with the incubator program, professionals are more likely to take the company on as clients because the company has been vetted prior to its induction to the incubator program. Just like any other industry, there are smoke and mirrors and the last thing any company should do is gamble with its service providers.

### *Access to Investors*

In addition to human capital, incubators also assist in connecting startups to investors. Cannabis companies do not have the luxury of being able to apply for a bank loan and are explicitly cut off from traditional funding mechanisms. This leaves cannabis companies only one avenue of funding and that is private investors. Raising capital can take months to years and in such a high risk industry where profits are years away from being realized (shoutout to 280E), how can a start up company with little to no experience in the cannabis industry convince investors to invest in their company?

The lack of traditional avenues of funding coupled with the reality that only 1% of Black founders received private funding and only 1.8% of Latino founders received private funding in the past five years, while a staggering 77% of private investments were allocated to white founders paints a bleak picture for social equity applicants who are typically people of color. As such, social equity applicants must make do without the automatic presumption of competence typically afforded to white founders.

Once again, the pursuit of private investors is both timely and costly and can take an endless amount of time if a company has no experience garnering investments, which social equity applicants typically do not. Incubator programs can assist in bridging this gap as well by connecting startups to investors they have relationships with, helping to level the playing field. Incubators can also assist with business plan, pro formas and in fine tuning the investor pitch. A pretty business plan and promising financial projections are no doubt necessary but without a tailored pitch and a well thought out narrative, a company may find that their pitch falls on deaf ears.

According to Forbes, important considerations such as the time of year, detailedness of the data and value of a pitch deck are the strongest factors affecting the amount of funding a company receives. Given that 82% of businesses in 2018 went under due to cash flow problems, garnering investments is crucial for any company but even more so for social equity applicants that are commonly overlooked.

### *Experience and Mentorship*

Every state that has legalized cannabis for medicinal or adult use purposes is betting on the longevity and success of the cannabis industry. In order to maximize the probability of success, states heavily weigh the experience of the applicant looking to apply for a state cannabis license. Let us think about that catch-22—how is a social equity applicant supposed to have experience operating a cannabis business in a state that recently legalized cannabis?

It therefore comes as no surprise that experienced multi-state operators have enormous advantages when it comes to conquering state licenses. Social equity applicants are not equipped with experience but are instead *applying* for the *chance* to gain such experience in a regulatory scheme that favors experienced operators. Without experience on their side, the uphill battle becomes even steeper for social equity applicants.

Incubators can assist with this catch-22 in two ways: (1) providing access to experienced partners and (2) providing ongoing mentorship. According to the Harvard Business Review, experience alone does not make a team successful, but soft skills such as “entrepreneurial passion” and “shared strategic vision” are required as well. By forming a “we” with the incubator, social equity applicant’s have a higher chance of succeeding with a proper guide to walk the shaky ground of the cannabis industry. Due to an incubator’s experience, it can showcase a solid vision of the path that lies ahead and marker the challenges and opportunities likely to reveal themselves along the way.

As John Crosby stated, “Mentoring is a brain to pick, an ear to listen, and a push in the right direction.” Anticipation is always the strongest competitive advantage a company can have, but the ability to anticipate what comes next comes with experience. In an industry that is constantly in flux, given the state and federal interplay, attempting to figure out what happens next is not an easy feat by any means. Therefore, as the dynamic nature of the cannabis industry persists, the art of pivoting becomes essential. A proactive approach will always beat a reactive approach

and for social equity applicants the ability to know when to pivot can mean the difference between the success or death of their company.

Since incubators typically take equity in the companies they choose to incubate, they are heavily invested in ensuring the company succeeds. Mentorship is built into the model of incubators and, for social equity applicants, mentors with experience running successful cannabis operations can mean the difference between the success or death of their cannabis operation. Awarding a license to a social equity applicant does not guarantee that they will succeed but by providing ongoing mentorship via an incubator program, the chances of success greatly increase.

According to the National Business Incubation Association, companies nurtured in a business incubator have a survival rate of 87% compared with 44% of unassisted companies. For any new startup and for cannabis social equity applicants especially, they do not know what they do not know. Experienced mentors provided by incubators are able fill the void of the unknown and make visible the blind spots startup companies are unable to see. By constantly assessing how the company is moving, incubators provide a foresight that is invaluable to how a company responds to external factors.

Without sugar coating, the cannabis industry is hard and unforgiving. While it's an industry primed to be one of the leading industries in the world, at the moment it is still a high risk hyper competitive industry muddled with conflicting state and federal laws that makes anticipating the state of the cannabis industry all the more difficult. By establishing social equity programs, states need to bear in mind that they are asking individuals to trust in a system that has historically ignored and undermined their presence. DIY is not an option for social equity applicants who already have unique hurdles to overcome such as racial bias, prior convictions, low-income and lack of education as a result of the criminalization of cannabis that affected their generation and the generations before them.

Social equity applicants need access to funding, access to education, technical assistance, and of course ongoing mentorship. This cocktail of necessities increases the chances that social equity applicants will be able not only to survive in such a laborious industry but thrive. After shouldering the burden of the criminalization of cannabis, social equity applicants deserve a place where their business can be nurtured. Without such a nest to test out their wings, these companies will find that their wings were clipped from the beginning.