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The Ethics and Economics of Social Equity in the Cannabis Industry: Making a "Compelling" Case for Constitutional, Impactful, and Sustainable Inclusivity Programs in Ohio and beyond

Lauren Devine
University of Dayton

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Cover Page Footnote

Thank you to my Comment Advisor, Angel Hierrezuelo, for his constructive feedback. Additionally, thank you to my faculty advisors, Professors Ericka Curran and Christopher Roederer, for their guidance in focusing my research and challenging me to think more critically about what a successful social equity program might look like. Further, thanks to those who have been working and advocating for equity in this industry—most specifically, to my mentors, advisors, and colleagues, Dr. Tiffany Bowden and Ms. Rachael Ardanuy, Esq.—for their support and contributions to this Comment based on personal experiences and respective expertise. Next, thanks to my family and friends for their love and support. Finally, thank you to Brendan for being a constant sounding board and for providing love, support, companionship, compassion, and all the other things I have needed to do this work and to be a human, generally.

THE ETHICS AND ECONOMICS OF SOCIAL EQUITY IN THE CANNABIS INDUSTRY: MAKING A “COMPELLING” CASE FOR CONSTITUTIONAL, IMPACTFUL, AND SUSTAINABLE INCLUSIVITY PROGRAMS IN OHIO AND BEYOND

*Lauren Devine**

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* J.D., University of Dayton School of Law, *cum laude*; President, UDSL Cannabis Law Society; B.F.A., Syracuse University, *magna cum laude*. Thank you to my Comment Advisor, Angel Hierrezuelo, for his constructive feedback. Additionally, thank you to my faculty advisors, Professors Ericka Curran and Christopher Roederer, for their guidance in focusing my research and challenging me to think more critically about what a successful social equity program might look like. Further, thanks to those who have been working and advocating for equity in this industry—most specifically, to my mentors, advisors, and colleagues, Dr. Tiffany Bowden and Ms. Rachael Ardanuy, Esq.—for their support and contributions to this Comment based on personal experiences and respective expertise. Next, thanks to my family and friends for their love and support. Finally, thank you to Brendan, for being a constant sounding board and for providing love, support, companionship, compassion, and all the other things I have needed to do this work and to be a human, generally.

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*“Inclusion is not a matter of political correctness. It is the key to growth.”
Rev. Jesse Jackson¹*

I. INTRODUCTION

When the Ohio legislature legalized medical marijuana with House Bill 523 on September 8, 2016, the language of chapter 3796 of the Ohio Revised Code “instructed [the] Ohio Department of Commerce to issue certain licenses to medical marijuana cultivators, processors, and testing laboratories.”² Within the enumerated criteria by which licenses could be awarded, chapter 3796.09(C) of the Ohio Revised Code further directed the department to issue at least fifteen percent of cannabis business licenses “to entities that are owned and controlled by . . . members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians.”³ Within the context of the section, “owned and controlled” meant “that at least fifty-one per cent of the business, including corporate stock,” was owned by “persons” belonging to one or more of the listed racially distinct groups; and that person had “control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to their percentage of ownership.”⁴

This provision presumptively arose out of the department’s attempt to promote social equity—that is—“justice and fairness within social policy” as the nascent medical marijuana program was implemented.⁵ Such programs

¹ *Jesse Jackson Quotations*, QUOTE TAB, <https://www.quotetab.com/quotes/by-jesse-jackson/4> (last visited May 30, 2022).

² *Pharmacann Ohio, LLC, v. Ohio Dept. Com. Dir. Jacqueline T. Williams*, No. 17-CV-10962, 2018 WL 7500067, at *3 (Ohio Com. Pl. Nov. 15, 2018); *see* OHIO REV. CODE ANN. § 3796.09(C).

³ OHIO REV. CODE ANN. § 3796.09(C).

⁴ *Id.*

⁵ Robert Hoban, *The Critical Importance Of Social Equity In The Cannabis Industry*, FORBES (Aug. 31, 2020, 8:09 PM), <https://www.forbes.com/sites/roberthoban/2020/08/31/the-critical-importance-of-social-equity-in-the-cannabis-industry/>.

typically aim to “ensure that people of color, and those with marijuana offenses prior to legalization” have equitable access to the “opportunity to participate, meaningfully,” in the “burgeoning” cannabis industry; however, Ohio’s initial effort to leverage chapter 3796.09(C) of the Ohio Revised Code to ensure inclusivity was ultimately meaningless.⁶ Even though many applicants who qualified under the “economically disadvantaged group” specification had already relied on this provision in deciding to pursue licensure, the provision was tossed out before all licenses could be awarded.⁷

On November 15, 2018, a state trial judge presiding over the Franklin County Court of Common Pleas held that chapter 3796.09(C) of the Ohio Revised Code was “unconstitutional on its face pursuant to 42 U.S.C. § 1983 and Article I, Section 2 of the Ohio Constitution.”⁸ Essentially, “Ohio’s use of racial preferences in the award of state medical marijuana cultivation licenses violated the Equal Protection Clause[s]” of the United States and the Ohio Constitutions.⁹ In its defense, the Ohio Department of Commerce argued there was a “compelling government interest in redressing past and present effects of racial discrimination . . . where the State itself was involved.”¹⁰ However, the court reasoned that there was “not a strong basis in evidence supporting the . . . conclusion that remedial action [was] necessary to correct discrimination within the medical marijuana industry.”¹¹

The court’s reasoning in *Pharmacann* begs the question: what *would* substantiate a “strong basis in evidence” that it *is* “necessary” to correct the wrongful discrimination that proliferates the medical marijuana industry? Due to the decades of complete cannabis prohibition that existed in the United States until the late 1990s to the early 2010s, it seems naive that the court did not factor the relatively brief history of the legal, regulated cannabis industry into its rationale. Objectively, how could the government have presented

⁶ *Id.*

⁷ This information was learned by the author through personal experience in dealing with cannabis business applicant clients in Ohio.

⁸ *Pharmacann Ohio, LLC, v. Ohio Dept. Com. Dir. Jacqueline T. Williams*, No. 17-CV-10962, 2018 WL 7500067, at *3 (Ohio Com. Pl. Nov. 15, 2018).

In December 2017, Plaintiff . . . received a final [application] score that would have otherwise qualified it to receive one of the twelve provisional [medical marijuana cultivation] licenses. Yet, Plaintiff was denied a provisional license, while Defendants Harvest Grows, LLC, and Parma Wellness Center, LLC, were awarded provisional licenses due to the control of the defendant companies by one or more members of an economically disadvantaged group, as described in R.C. §3796.09(C). On June 5, 2018, Plaintiff filed its intervening complaint, seeking equal protection under the law pursuant to 42 U.S.C. §1983 and Article I, Section 2 of the Ohio Constitution.

Id. at *1 (citations omitted).

⁹ Robert Mikos, *UPDATE: State Judge Holds Use of Race in Ohio Medical Marijuana Licensing Unconstitutional*, VANDERBILT U.: MARIJUANA L., POL’Y, AND AUTH. (Nov. 20, 2018), <https://my.vanderbilt.edu/marijuanalaw/2018/11/update-state-judge-holds-ohio-medical-marijuana-licensing-system-unconstitutional/>.

¹⁰ *Pharmacann*, 2018 WL 7500067, at *4.

¹¹ *Id.* at *6.

a “strong basis in evidence” when that evidence was drawn from an industry that was merely in its infancy in Ohio and in other states and had only existed for a few decades, *at most*? As this Comment will discuss, there is no lack of evidence to substantiate the history of discrimination and disproportionate economic harm done to members of the disadvantaged groups identified in chapter 3796.09(C) of the Ohio Revised Code and other marginalized groups due to the failed War on Drugs.¹² But, in light of the court’s ruling in *Pharmacann*, it seems clear that an effective social equity program must be based on qualifications and criteria beyond solely those which could come under the “strict scrutiny” standard of review, like race.¹³

Despite the shortcomings of chapter 3796.09(C) of the Ohio Revised Code and the impotence of most other states’ social equity programs, with enough research-driven resolve, Ohio and other states can effectively implement a social equity program that is inclusive, impactful, and legally sound. Using the constitutional issues that arose in *Pharmacann* as a springboard, this Comment examines social equity and inclusion programs that have emerged with the evolving cannabis industry in three sections. Section I provides background for this Comment in an overview of the history of cannabis regulation in the United States and its entanglement with socioeconomic and race-based discrimination. Section II analyzes and evaluates various states’ social equity and inclusion programs within the cannabis industry, and Section III proposes a legal, effective, and sustainable model for a cannabis social equity program that Ohio—and other states—could adopt. Finally, Section IV provides a conclusion for the assertions made throughout.

¹² For a more in-depth discussion of the intersectionality of discrimination, cannabis prohibition, criminalization, and disparate economic impact, see generally Mathew Swinburne & Kathleen Hoke, *State Efforts to Create an Inclusive Marijuana Industry in the Shadow of the Unjust War on Drugs*, 15 J. BUS. & TECH. L. 235 (2020); Michael Vitiello, *Marijuana Legalization, Racial Disparity, and the Hope for Reform*, 23 LEWIS & CLARK L. REV. 789 (2019); Steven W. Bender, *The Colors of Cannabis: Race and Marijuana*, 50 U.C. DAVIS L. REV. 689 (2016); David V. Patton, *A History of United States Cannabis Law*, 34 J.L. & HEALTH 1 (2020); and Florence Shu-Acquaye, *Medical Marijuana: Implications of Evolving Trends in Regulation*, 46 U. DAYTON L. REV. 25 (2020).

¹³ “Strict scrutiny” evolved out of a footnote in the 1938 *Carolene Products Co.* case and is the highest and most stringent standard of judicial review that courts apply in cases where the question is whether a constitutional right, such as equal protection, should be waived in order to serve the government’s interest. See *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938) (“There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth.”); see also *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring) (stating that schools can address diversity concerns and “bring[] together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race. These mechanisms are race conscious but do not lead to different treatment based on a classification . . . defined by race, so it is unlikely any of them would demand strict scrutiny to be found permissible.”). Kennedy’s concurrence in *Seattle Schools* suggests that race-conscious laws may not be subject to strict scrutiny when considered in totality with several other factors. *Id.* at 798.

II. BACKGROUND: A BRIEF HISTORY OF THE BIASED UNDERPINNINGS OF CANNABIS REGULATION IN THE UNITED STATES

A. *Early Twentieth Century Prohibition by the States*

In the early twentieth century in the United States, social perception of cannabis and its applications began to shift significantly.¹⁴ While hemp fibers and cannabis extracts had been widely used for textiles and their medicinal efficacy in treating a plethora of ailments, smoking cannabis as a recreational activity was not introduced into American culture until the early decades of the 1900s.¹⁵ Immigrants to the United States who sought refuge during the conflict of the Mexican Revolution brought with them the “practice of smoking marijuana leaf in cigarettes or pipes,” and soon, the use of the Spanish-derived word “marijuana” increased as the “preferred . . . more exotic alternative to the familiar words hemp and cannabis.”¹⁶ Compounded by the subsequent social unrest and mass unemployment that occurred during the Great Depression, the association of immigrants with recreational cannabis smoking led to cannabis prohibition legislation, which stemmed from “anti-Mexican xenophobia.”¹⁷ At this time, concurrent with the onset of alcohol prohibition, anti-marijuana laws were seemingly “uncontroversial” and “between 1914 and 1925, twenty-six states passed laws prohibiting the plant . . . [without] public outcry or even legislative debate.”¹⁸

B. *The Marijuana Tax Act and Federal Prohibition*

The movement toward federal prohibition began in the early 1930s after a prominent New Orleans doctor blamed a string of robberies on “‘muggle-heads’—as pot smokers were called” at the time.¹⁹ The media and law enforcement alike demonized cannabis use with sensationalized depictions of addicted schoolchildren and stories of “killers . . . smok[ing] cannabis to ready themselves for murder and mayhem.”²⁰ Led by the infamously racist Harry Jacob Anslinger, an appeal to Congress was made for

¹⁴ See generally Stephen Siff, *The Illegalization of Marijuana: A Brief History*, ORIGINS: CURRENT EVENTS IN HISTORICAL PERSPECTIVE (May 2014), <https://origins.osu.edu/article/illegalization-marijuana-brief-history>.

¹⁵ See, e.g., *Id.*; *Marijuana*, HISTORY, <https://www.history.com/topics/crime/history-of-marijuana> (Oct. 10, 2019); *Marijuana Timeline*, PBS: FRONTLINE, <https://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html> (last visited May 30, 2022).

¹⁶ Siff, *supra* note 14; *Historical Timeline: History of Marijuana as Medicine—2900 BC to Present*, BRITANNICA: PROCON.ORG, <https://medicalmarijuana.procon.org/historical-timeline/> (May 12, 2022).

¹⁷ See Siff, *supra* note 14.

¹⁸ *Id.*

¹⁹ Brent Staples, *The Federal Marijuana Ban Is Rooted in Myth and Xenophobia*, N.Y. TIMES (July 29, 2014), <https://www.nytimes.com/2014/07/30/opinion/high-time-federal-marijuana-ban-is-rooted-in-myth.html>.

²⁰ *Id.*

federal prohibition.²¹ At the time, Anslinger and others wrongly argued that cannabis “caused insanity[.]. . . pushed people toward horrendous acts of criminality[.] . . [and] was fiercely addictive.”²² Apparently swayed by this narrative, Congress enacted The Marijuana Tax Act of 1937, “the first federal [United States] law to criminalize marijuana nationwide.”²³ After the Act’s passage, hemp for industrial purposes became the only authorized use of cannabis.²⁴

Cultivation of industrial hemp continued through World War II and into the 1950s.²⁵ Despite testimony made by a reputable researcher during a 1951 effort to re-examine and walk back Congress’s restrictions on cannabis, surprisingly stricter measures ensued.²⁶ Even though cannabis was no longer perceived as addictive, it was instead relabeled as a “gateway drug” and “a ‘steppingstone’ to heroin addiction,” setting the social narrative that would pave the way for the “War on Drugs,” discussed further herein.²⁷

C. 1960–80s: The Nixon Administration, “The War on Drugs,” and “Just Say No”

In the 1960s, social perception of cannabis shifted, with the image of stereotypical cannabis smokers changing from racial minorities to white college students.²⁸ Youths of the 1960s seemed primed to rebel against the more conservative values of prior generations, as they were fueled by opposition to the War in Vietnam, an appreciation of free-thinking music,

²¹ *Id.*; Laura Smith, *How a racist hate-monger masterminded America’s War on Drugs*, TIMELINE (Feb. 27, 2018), <https://timeline.com/harry-anslinger-racist-war-on-drugs-prison-industrial-complex-fb5cbc281189>; Robert Solomon, *Racism and Its Effect on Cannabis Research*, 5 CANNABIS CANNABINOID RSCH., no. 1, 2020, at 2–3.

²² Staples, *supra* note 19.

²³ *Id.*; *Marijuana*, *supra* note 15.

²⁴ *Marijuana*, *supra* note 15. “Hemp” and “cannabis,” though referred to in different colloquial terms and commonly thought of as different plant species, are in actuality two names for the same plant for the “Cannaceae family.” Sian Ferguson, *Hemp vs. Marijuana: What’s the Difference?*, HEALTHLINE (Aug. 27, 2020), <https://www.healthline.com/health/hemp-vs-marijuana>. The distinction is a solely legal one, based respectively on the tetrahydrocannabinol (“THC”) content of the flowers. *Id.* “THC is one of many cannabinoids, or chemicals found in the cannabis plant . . . primarily responsible for the ‘high’ associated with cannabis.” *Id.* Because THC content varies among cannabis plants with some strains bred to be more potent than others, legally, “hemp” refers to “cannabis that contains 0.3 percent or less THC content by dry weight” while “marijuana” or “cannabis” refers to cannabis that has more than 0.3 percent THC by dry weight.” *Id.* “Hemp” grows very quickly and is therefore a useful and sustainable plant for producing industrial products such as textiles, animal feed, plastics, paper, clothing, and food products. *Id.*

²⁵ *Marijuana*, *supra* note 15.

²⁶ Staples, *supra* note 19. “Dr. Harris Isbell, director of research at the Public Health Service Hospital in Lexington, Ky., disputed the insanity, crime and addiction theories, telling Congress that ‘smoking marijuana has no unpleasant aftereffects, no dependence is developed on the drug, and the practice can easily be stopped at any time.’” *Id.*

²⁷ See *Marijuana*, *supra* note 15; Staples, *supra* note 19. For a discussion on “The War on Drugs” itself, see Bryan Mann, *The Drug Laws That Changed How We Punish*, NPR (Feb. 14, 2013, 3:04 AM), <https://www.npr.org/2013/02/14/171822608/the-drug-laws-that-changed-how-we-punish> (discussing the creation and enforcement of “draconian” drug laws disproportionately impacted (and continues to impact) American minority communities and represents the effect of the systemic injustice these policies represent and what current social equity initiatives attempt to remedy).

²⁸ See Siff, *supra* note 14; Staples, *supra* note 19.

the “hippie” counter-culture, and “the freedom born from an excess of material wealth and time.”²⁹ Smoking cannabis seemed harmless and fun to youths of the time, who were realizing that the laws and penalties against it were disproportionately severe.³⁰ As the use of cannabis on college campuses reached seemingly “epidemic” proportions by the mid-1960s, prohibitionists and legislators alike suddenly questioned punishing young, white, middle-class college students with the same harsh penalties that applied to minorities.³¹

Nixon effectively “exploited and perpetuated white resentment over integration and civil rights” by linking drugs and crime to poor communities and minorities.³² Amidst political pressure and discord, the Nixon administration signed the Controlled Substances Act of 1970.³³ The Act effectively repealed the Marijuana Tax Act and listed cannabis as a Schedule I narcotic alongside drugs such as heroin, lysergic acid diethylamide (more commonly known as LSD or acid), and ecstasy, deemed to have “no medical use and a high potential for abuse.”³⁴ Between 1965 and 1970, while “hippie activists [and the] mainstream voices of *Life*, *Newsweek*, and *Look* magazines questioned why the plant was illegal at all,” cannabis-related arrests at the state level “increased tenfold.”³⁵ Horrifyingly, this effect was seemingly intentional or at least foreseen by some in power within the Nixon administration.³⁶ John Ehrlichman, a former domestic policy chief for Nixon, stated in a 2016 interview, “We knew we couldn’t make it illegal to be either against the [Vietnam] war or black, 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.”³⁷

Conflicting views persisted into the mid-1970s; anti-drug programs like Drug Abuse Resistance Education, better known as “D.A.R.E.,” labeled cannabis a “gateway drug,” while the Nixon administration willfully ignored a report prepared by The National Commission on Marihuana and Drug Abuse that concluded that “the actual and potential harm of use of the drug is

²⁹ Siff, *supra* note 14.

³⁰ *Id.*

³¹ *Id.*; Staples, *supra* note 19.

³² Katharine Neill Harris & William Martin, *Persistent Inequities in Cannabis Policy*, 60 JUDGES’ J., no. 1, Winter 2021, at 9, 10.

³³ See *Marijuana*, *supra* note 15; Siff, *supra* note 14.

³⁴ 21 U.S.C. § 812(c)(10) (the most updated version of the CSA, relating to schedules of controlled substances); *Marijuana*, *supra* note 15.

³⁵ Siff, *supra* note 14.

³⁶ See Harris & Martin, *supra* note 32.

³⁷ *Id.* (quoting Dan Baum, *Legalize It All: How to Win the War on Drugs*, HARPER’S MAG. (Apr. 2016), <https://harpers.org/archive/2016/04/legalize-it-all>).

not great enough to justify intrusion by the criminal law into private behavior, a step which our society takes only with the greatest reluctance.”³⁸

This was a pivotal time in the history of cannabis criminalization and “drug” criminalization, more generally.³⁹ For example, harsh laws backed by New York’s Republican governor, Norman Rockefeller, in the 1970s had an “unexpected and troubling” impact.⁴⁰ After the passage of the sentencing laws, New York prosecutors began to notice that although “[w]hite people were using a lot of drugs . . . and committing a lot of crimes . . . the people being arrested and sent to prison under the Rockefeller laws came almost entirely from poor black and Hispanic neighborhoods.”⁴¹ The spread of these harsh laws and accompanying sentences led to a massive spike in the incarcerated population in America, the impact of which was disproportionately felt by minorities and poor communities, mainly people of color.⁴² Furthermore, in 1973, the formation of the Drug Enforcement Administration (“DEA”) gave rise to the “law enforcement orientation toward cannabis policy”⁴³

The persistent anti-cannabis legislation of the Nixon administration was followed by a brief softening during the Carter administration until Reagan’s presidency.⁴⁴ “Reagan had opposed decriminalization of marijuana as governor of California and, as president, showed no sympathy for drug use or users.”⁴⁵ During the 1980s, amidst fear of dissent against “law and order” and the rise of crack cocaine use, Congress passed multiple pieces of punitive anti-drug legislation.⁴⁶ The Reagan administration further promoted “drug testing to ensure that schools and workplaces remained ‘drug-free’ . . . [and] spearheaded an extensive anti-drug media campaign.”⁴⁷ As part of this campaign, First Lady Nancy Reagan unveiled her “Just Say No” slogan that would proliferate at anti-drug rallies, in public service announcements, on

³⁸ NAT’L COMM’N ON MARIJUANA & DRUG ABUSE, REP. NO. 1: MARIJUANA: A SIGNAL OF MISUNDERSTANDING 176 (1972), available at <http://www.druglibrary.org/schaffer/Library/studies/nc/nmenu.htm>; see Siff, *supra* note 14; Staples, *supra* note 19.

³⁹ See Mann, *supra* note 27.

⁴⁰ *Id.* (“Rockefeller launched his campaign to toughen New York’s laws at a press conference in January 1973 . . . call[ing] for something unheard of: mandatory prison sentences of 15 years to life for drug dealers and addicts—even those caught with small amounts of [cannabis], cocaine or heroin.”).

⁴¹ *Id.*

⁴² See *id.*; Charlotte Resing, *Marijuana Legalization Is a Racial Justice Issue*, AM. C.L. UNION (Apr. 20, 2019, 8:45 AM), <https://www.aclu.org/blog/criminal-law-reform/drug-law-reform/marijuana-legalization-racial-justice-issue>; 1 LAST PRISONER PROJECT, CRIMINAL-INJUSTICE: CANNABIS & THE RISE OF THE CARCERAL STATE (2020) <https://irp-cdn.multiscreensite.com/08efa45c/files/uploaded/Criminal-Injustice%3B%20Cannabis%20%26%20The%20Rise%20of%20the%20Carceral%20State-Part%201%3B%20Policing.pdf>.

⁴³ Patton, *supra* note 12, at 14.

⁴⁴ Siff, *supra* note 14 (“By 1977, the use of the drug seemed so commonplace and the fears so archaic that President Jimmy Carter called for the decriminalization of marijuana. As Carter pointed out in a message to Congress in 1977, anti-marijuana laws cause more harm to marijuana users than the drug itself.”).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

billboards, and on talk shows.⁴⁸ This slogan, along with the D.A.R.E. program and the 1985 “[t]his is your brain on drugs” public service advertisement, would run for years to come.⁴⁹

D. The Intersection of Racism, Cannabis Prohibition, and Discriminatory Impact

Stemming from the highly punitive legislation and the newly formed DEA, policing of cannabis-related crimes changed significantly over the course of the 1980–90s.⁵⁰ Societal tensions surrounding the stigma of cannabis use increased proportionately with incidents of hostile interactions between the police and certain communities, particularly poor and minority communities.⁵¹ Indeed, “[d]rug-related enforcement is one, if not *the*, biggest drivers of police harassment, misconduct, and violence in America.”⁵² And, as mentioned in the foregoing discussion, “Black and Latinx communities bear the overwhelming brunt of cannabis-related enforcement and the harassment and police brutality it entails.”⁵³ This disparate level of enforcement persists despite white people being just as likely to consume cannabis as non-white people.⁵⁴ “These racial disparities are . . . [seemingly] by design . . . born out of an explicit desire to maintain social control over America’s communities of color.”⁵⁵

E. Disparate Economic Impact

The disproportionate and disparate effect of cannabis and drug criminalization on communities of color creates a particularly oppressive rippling effect that can be felt economically for generations.⁵⁶ This is because a “[c]onviction for a drug offense can have serious consequences,” especially in states where cannabis is still prohibited.⁵⁷ Students can face expulsion or revocation of a scholarship, parents can lose custody of a child, and low-income, disabled, or indigent individuals may be barred from obtaining subsidized housing.⁵⁸ And while administrative practices currently protect patients from losing benefits due to cannabis use, veterans or Medicaid

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See LAST PRISONER PROJECT, *supra* note 42, 19–20.

⁵¹ *Id.* at 32.

⁵² *Id.* at 7.

⁵³ *Id.* at 8.

⁵⁴ *Id.*

⁵⁵ *Id.*; see also Harris & Martin, *supra* note 32, at 10 (“Cannabis use rates are roughly equivalent across racial groups, yet Black people on average are 3.64 times more likely to be arrested for possession, a disparity that has remained constant since 2010 . . . [and] increased in 31 states between 2010 and 2018.”).

⁵⁶ See generally LAST PRISONER PROJECT, *supra* note 42, at 8.

⁵⁷ Harris & Martin, *supra* note 32, at 11.

⁵⁸ *Id.* See generally Laura M. Borgelt, *Considerations for Hospital Policies Regarding Medical Cannabis Use*, 52 *Hosp Pharm.* 89–90, Feb. 2017; *Marijuana Use and Your Social Security Disability Claim*, PARMELE L. FIRM, <https://parmelelawfirm.com/blog/social-security/marijuana-use-and-your-social-security-disability-claim/> (last visited May 30, 2022).

benefits do not cover medical use of cannabis.⁵⁹ Virtually everywhere, a criminal record of any kind can make it extremely difficult to obtain employment.⁶⁰ Given the disparate nature of “drug” enforcement, “[i]t would be naive not to think this would . . . [put people of color at a] greater disadvantage” than white people.⁶¹ The foregoing discussion sheds light on how a number of factors have contributed to inequities in the economic landscape, especially for minorities.

F. Decriminalization and Legalization

Currently, a majority of states have adopted some type of evolved cannabis policy that reflects a view of either decriminalization or legalization.⁶² Legalization and decriminalization are often used interchangeably, but they have very different meanings and implications.⁶³ “Decriminalization is the act of removing criminal sanctions against an act, article, or behavior,” this means that when a state decriminalizes cannabis, it remains illegal, but the legal system does not prosecute low-level crimes such as minor possession.⁶⁴ In contrast, legalization of cannabis removes all legal prohibitions, meaning that licensed cannabis businesses can operate and adults can “purchase and use [it] at will, similar to tobacco and alcohol.”⁶⁵ With the Compassionate Use Act of 1996, California became the first state to legalize marijuana for medicinal use by people with severe or chronic illnesses.⁶⁶ Between 1996 and 2012, sixteen states followed suit and legalized it for similar medical purposes only.⁶⁷ In 2012, Colorado and Washington became the first states to legalize cannabis for recreational use.⁶⁸

⁵⁹ *Id.* See generally Patrick McNight, *Veterans Struggle to Gain Access to Medical Marijuana*, 12 Nat'l L. Rev., no.291, Oct. 2019; Mike Woods, *Will I Lose My VA Disability Benefits If I Use Marijuana?*, WOODS & WOODS, <https://www.woodslawyers.com/marijuana-va-disability/> (Apr. 4, 2022).

⁶⁰ Harris & Martin, *supra* note 32, at 11.

⁶¹ *Id.*

⁶² See *State Policy*, MARIJUANA POL'Y PROJECT, <https://www.mpp.org/states/> (last visited May 30, 2022) (outlining policy via interactive map).

⁶³ See Dragan M. Svrakic et al., *Legalization, Decriminalization & Medicinal Use of Cannabis: A Scientific and Public Health Perspective*, 109 MO. MED. 90, 90 (Mar./Apr. 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6181739>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See *Marijuana*, *supra* note 15.

⁶⁷ See generally *State-By-State Medical Marijuana Laws Report*, MARIJUANA POL'Y PROJECT, <https://www.mpp.org/assets/pdf/issues/medical-marijuana/State-by-State-Laws-Report-2015.pdf> (Dec. 2016).

⁶⁸ *Id.* at 9. Keith Coffman & Nicole Neroulias, *Colorado, Washington first states to legalize recreational pot*, REUTERS (Nov. 6, 2012, 7:53 PM), <https://www.reuters.com/article/us-usa-marijuana-legalization/colorado-washington-first-states-to-legalize-recreational-pot-idUSBRE8A602D20121107>.

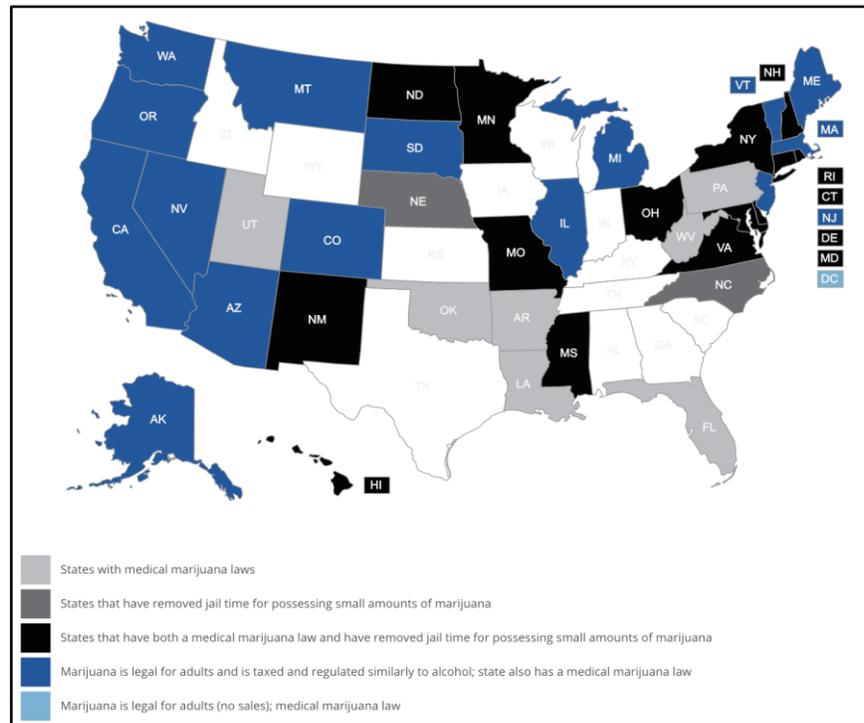


Figure 1

Notwithstanding that cannabis currently remains illegal under the federal law of the United States, the evolving legal status among the states has shifted to reflect that most Americans favor legalizing and regulating the substance.⁶⁹ While the onset of the state-regulated cannabis industry has heralded a “green rush” of opportunity for many entrepreneurs, minorities and other communities marginalized by the failed “War on Drugs” still face obstacles and barriers blocking their entry to the market.⁷⁰ Indeed, many would-be cannabis business moguls are instead sitting in prison, incarcerated for crimes that, depending on their zip code, may now be legal pursuant to the laws of the state.⁷¹ Therefore, in order to achieve true diversity in the industry and to right the wrongs of the injustice doled out by the failed “War on Drugs,” effective social equity programs must be part of any future cannabis

⁶⁹ *State-By-State Medical Marijuana Laws Report*, *supra* note 67, at app. D.

⁷⁰ *Id.*; *The Cannabis Green Rush: What Is It? Is It Over?*; YAHOO: FINANCE (Nov. 17, 2020), https://finance.yahoo.com/news/cannabis-green-rush-over-203410554.html?soc_src=social-sh&soc_trk=ma.

⁷¹ *State-By-State Medical Marijuana Laws Report*, *supra* note 67, at app. D; Jordan Winters, *Prison-to-pot farms confront legacy of war on drugs*, NBC NEWS (Mar. 13, 2022, 4:30 AM), <https://www.nbcnews.com/news/us-news/prison-pot-farms-confront-legacy-war-drugs-rcna18421>.

regulation. While there have been ongoing efforts at the federal level for some reform, as of publication, there has been no federal relief for the cannabis industry other than the amendments to the budgetary bills that protect state commercial cannabis programs.⁷² Importantly, at the time of writing, Ohio has yet to amend its existing Code or pass any new legislation regarding social equity in the state's cannabis industry.⁷³

III. ANALYSIS: THE GOOD, THE BAD, AND THE UGLY OF STATES' SOCIAL EQUITY PROGRAMS FOR CANNABIS BUSINESSES

In an effort to make reparations for the troubling history of discrimination and injustice surrounding the business of cannabis in America, many states with developing regulated commercial cannabis programs have attempted to establish social equity initiatives in some form.⁷⁴ Such initiatives typically address one or more categories of marginalized groups and individuals who have been disenfranchised by: (1) past life experiences, including criminal history and veteran status; (2) disadvantageous geographic and socioeconomic circumstances; and (3) immutable characteristics such as race, sexual orientation, and gender identity.⁷⁵ Identifying as a member of one of these groups during the application process usually translates to calculating additional points on a competitively scored application for a business license and/or gaining access to specialized resources that are otherwise unavailable to a non-member applicant.⁷⁶ The specific qualifications, benefits, and operational logistics vary for each jurisdiction's social equity and inclusion program.⁷⁷ The following discussion provides a brief overview of the respective states' social equity and inclusion program

⁷² See, e.g., Marijuana Opportunity Reinvestment and Expungement Act of 2019, S. 2227, 116th Cong. § 3054(b); Iris Dorbjan, *Biden Administration Has Some Cannabis Professionals Feeling Hopeful But Cautious*, FORBES (Jan. 27, 2021, 9:26 AM), <https://www.forbes.com/sites/irisdorbjan/2021/01/27/new-bidenharris-administration-has-some-cannabis-professionals-feeling-hopeful-but-cautious/>; Lisa Rough, *The Cole Memo: What Is It and What Does It Mean?*, LEAFLY (Sept. 14, 2017), <https://www.leafly.com/news/politics/what-is-the-cole-memo>. The *Cole Memo* prevented federal funds from being used to undermine legal states' programs. *Id.*

⁷³ Ohio: Equity Project State Briefing; MINORITY CANNABIS BUS. ASS'N, <https://minoritycannabis.org/equitymap/ohio/#:~:text=Social%20Equity%20Definition%20%2F%20Criteria,disproportionately%20harmmed%20by%20cannabis%20prohibition> (Jan. 13, 2022).

⁷⁴ See *Comparison of State Cannabis Social Equity Provisions*, NAT'L ASS'N CANNABIS BUS. (2020), https://f.hubspotusercontent30.net/hubfs/2796535/Final%20NACB_Chart.pdf; Bart Schaneman, *Illinois social equity program flawed, advocates say, but it's best in cannabis industry so far*, MJBIZDAILY, <https://mjbizdaily.com/illinois-social-equity-program-flawed-advocates-say-but-it-is-best-in-cannabis-industry-so-far/> (Dec. 17, 2021); Hoban, *supra* note 5.

⁷⁵ See *Comparison of State Cannabis Social Equity Provisions*, *supra* note 74; *Priority Applications*, N.J.GOV: CANNABIS REGUL. COMM'N, <https://www.nj.gov/cannabis/businesses/priority-applications/> (last visited May 30, 2022); *State Medical Marijuana Social Equity Plan Comparison*, CANNABIS CONTROL COMM'N MASS., <https://mass-cannabis-control.com/wp-content/uploads/2017/12/Social-Equity-Combined-Handout.pdf> (last visited May 30, 2022).

⁷⁶ For example, in the author's experience consulting for business applicants in the cannabis industry, states like Pennsylvania, Illinois, and Florida offered bonus points on the application and/or resources to Social Equity applicants.

⁷⁷ See *Comparison of Social Equity Provisions*, *supra* note 74.

efforts, as well as an analysis of each program's efficacy and what seems to be working well.⁷⁸

A. *The Good: Legal, Impactful, and Sustainable Social Equity Programs that Promote Industry Inclusion Based on Disadvantageous Past Life Experiences*

The following discussion explores why states that have potentially implemented the most legally viable and impactful social equity programs base the qualifications for inclusion in their programs on multi-faceted criteria beyond just immutable characteristics. Such programs have been implemented by a few states and municipalities, including Massachusetts and Illinois, discussed herein.⁷⁹

1. Massachusetts

Massachusetts implemented its medical marijuana program in 2012 and its adult-use program in 2016.⁸⁰ Only the adult-use program incorporated a Social Equity Program ("SEP") and an Economic Empowerment Priority ("EEP") for owners of commercial cannabis businesses, which arose "from the requirement for the [Cannabis Control] Commission to ensure that people from communities that have been disproportionately harmed by marijuana law enforcement are included in the new legal marijuana industry, under [Massachusetts state law]."⁸¹ Over the subsequent years, the SEP arrived at its current iteration under the oversight of the Cannabis Control Commission ("CCC").⁸² The CCC purported that its purpose was to address equity in Massachusetts's regulated cannabis industry by providing various benefits to "disproportionately harmed people [through the SEP], for businesses that economically empower disproportionately harmed people [through the EEP], and for minority-owned, women-owned, and veteran-owned businesses."⁸³

First, in order to qualify for participation in the SEP, applicants must demonstrate at least one of the following criteria: "[applicant's] income does not exceed 400% of Area Median Income and residency in an Area of Disproportionate Impact, as defined by the Commission, for at least five of the past ten years"; they have a past drug conviction, and have been a resident of Massachusetts for at least the preceding twelve months; or they have been

⁷⁸ *Id.*; Christopher Nani, *Social Equity Assessment Tool for the Cannabis Industry*, OHIO S. J. CRIM. L. (forthcoming) (manuscript at 1), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3312114.

⁷⁹ See *Comparison of State Cannabis Social Equity Provisions*, *supra* note 74; Schaneman, *supra* note 74; COLO. REV. STAT. § 44-10-103.

⁸⁰ *Policy: Massachusetts*, MARIJUANA POL'Y PROJECT, <https://www.mpp.org/states/massachusetts/> (June 22, 2021); *Guidance on Equity Programs*, CANNABIS CONTROL COMM'N MASS., https://mass-cannabis-control.com/wp-content/uploads/200825_Guidance_on_Equity_Programs.pdf (June 2020).

⁸¹ *Id.* at 1.

⁸² See generally *Id.*

⁸³ *Id.* at 1.

married to or are the child of a person with a drug conviction and the applicant has been a resident of Massachusetts for at least the preceding year.⁸⁴ While there are some restrictions regarding qualifying drug convictions, it seems to have a great potential impact for individuals who have been directly disadvantaged by a criminal record to now be able to find opportunity in the cannabis industry arising from that record.⁸⁵ In other words, the once illegal nature of cannabis that led to an individual's relatively minor drug conviction can now, because cannabis is no longer illegal, provide an opportunity for that individual to benefit and thrive. Additionally, the qualification criteria also have a positive impact on familial legacy, in that the convictions that may plague spouses and dependents of an applicant can also potentially benefit them in obtaining marijuana business ownership.⁸⁶ Finally, the Massachusetts SEP qualification criteria apply to any person regardless of race, sex, sexual orientation, and ethnicity.⁸⁷ For these reasons, the SEP can directly impact righting past wrongs and is available to those who were directly affected by the failed "War on Drugs."

Although the SEP is a "free, statewide, technical assistance and training program that provides education, skill-based training, tools, and licensing benefits for success in the cannabis industry for those most impacted by the War on Drugs, marijuana prohibition, and disproportionate arrests and incarceration," it has its shortcomings.⁸⁸ The program is "designed to give participants the tools and training necessary to apply for and obtain a license and the skills-based training for employment in the industry."⁸⁹ However, the SEP does not address the disparity in the actual ability to access and utilize the resources provided and, most importantly, "[c]ompletion of the program does not guarantee licensure."⁹⁰ For example, many would-be applicants lack access to computers and thus cannot access the SEP application nor the training resources.⁹¹ Other obstacles include language and literacy

⁸⁴ *Id.*; see also *Comparison of State Cannabis Social Equity Provisions*, *supra* note 74.

⁸⁵ See generally 935 MASS. CODE REGS. § 500.801; *Equity Programs*, CANNABIS CONTROL COMM'N MASS, <https://masscannabiscontrol.com/equity-programs/#eligibility> (last visited May 30, 2022). For example, a license applicant cannot have been convicted of providing cannabis to a minor. *Id.*

⁸⁶ *Guidance on Equity Programs*, *supra* note 80, at 2.

⁸⁷ *Id.* at 1.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*; see *infra* note 91–92 and accompanying text.

⁹¹ This was learned through the author's personal experience working with clients in the Massachusetts SEP program. One client specifically explained that several participants could not access computers, even at the public library, especially during the closures due to COVID-19. For more discussion on the Cannabis Industry, see Travis Steffen, *COVID-19's Prolonged Impact on the Cannabis Industry*, CANNABIS BUS. EXEC. (Oct. 13, 2020), <https://www.cannabisbusinessexecutive.com/2020/10/covid-19s-prolonged-impact-on-the-cannabis-industry/>; *infra* note 103 and accompanying text.

barriers that present similar challenges to some individuals who cannot fully take advantage of the instructional materials.⁹²

Separate from the SEP, the CCC also developed a prioritized review system to accelerate the licensing decision process for communities targeted for economic empowerment.⁹³ Specifically, the program “prioritize[d] review and licensing decisions for ‘applicants seeking retail, manufacturing, or cultivation licenses who were able to demonstrate experience in—or business practices that promote—economic empowerment in disproportionately impacted communities.’”⁹⁴ Finally, the CCC is “required to track and pursue meaningful participation by minority, women, and veteran business enterprises.”⁹⁵ Although the benefits provided through the EEP and to minority-, women-, and veteran-owned businesses are worth mentioning, there is a potential that Massachusetts runs the risk of rendering its initiative moot if—by including so many different classes of applicants—the program is not sufficiently tailored to provide any real benefit to its participants.⁹⁶

Massachusetts also provides another interesting benefit: “For at least two years, Delivery Endorsements for microbusinesses[,] . . . Delivery-Only Licenses, [and Social Consumption Licenses] will be limited exclusively to businesses controlled by, and with majority ownership comprised of, Certified Economic Empowerment Priority Applicants or SEP participants.”⁹⁷ By creating this exclusivity, bigger businesses and investors are incentivized to partner with EEP and SEP participants. In addition, these particular licenses enjoy “[n]o application fees for license applications [and a] 50% reduction in annual license fees.”⁹⁸ The CCC explicitly states that the foregoing benefits “are designed to reduce barriers to entry into the adult-use marijuana industry.”⁹⁹

So far, the program seems to be achieving its goals. The varied yet tailored qualification criteria provide an avenue for entry for a significant number of applicants; there are specifically designated license types

⁹² Additionally, one of the author’s clients explained that some participants face literacy and language barriers, which can be especially detrimental to individuals for whom English is not their first language when resources and materials are provided only in English.

⁹³ *Guidance on Equity Programs*, *supra* note 80, at 1.

⁹⁴ *Id.* (quoting 2017 Mass. Acts 55).

⁹⁵ *Id.* at 2.

⁹⁶ An even worse outcome could be too many “loopholes” that predatory investors could take advantage of. See generally Morgan Fox, *Looking Back On Ten Years Of Cannabis Reform—The Road Behind, The Struggle Ahead*, NAT’L CANNABIS INDUS. ASS’N (Aug. 20, 2019), <https://thecannabisindustry.org/looking-back-on-ten-years-of-cannabis-reform-the-road-behind-the-struggle-ahead> (“State and local restorative justice efforts have had limited success, to put it generously. Funds intended for community reinvestment have been diverted or delayed, and equity programs are sometimes being exploited by predatory operators.”).

⁹⁷ *Guidance on Equity Programs*, *supra* note 80; see *Guidance on Licensure*, CANNABIS CONTROL COMM’N MASS. 5 (Jan 2020), https://mass-cannabis-control.com/wp-content/uploads/200825_Guidance_on_Licensure.pdf.

⁹⁸ *Guidance on Equity Programs*, *supra* note 80, at 5.

⁹⁹ *Id.*

exclusively available for SEP participants, which incentivizes partnerships and reduces the likelihood of monopoly.¹⁰⁰ Moreover, the CCC seems to be continuously working with SEP participants to provide ongoing resources and adjust the program when needed.¹⁰¹ However, while Massachusetts appears to have a “good” program, it is still in its early stages; thus, it remains to be seen whether the desired impact will be felt and whether the program is sustainable.

2. Illinois

Regarded by many in the industry as one of “the most forward-thinking” and “the most comprehensive social equity program[s]” in the United States, Illinois cannabis regulators drew from other states to draft social equity regulations “to foster diversity in cannabis business ownership” in the state.¹⁰² Unfortunately, because “[t]he COVID-19 pandemic has slowed the program’s rollout,” it has yet to be seen if the program—which looks so promising on paper—will live up to its hype in practice.¹⁰³ Like Massachusetts, Illinois’s social equity initiative addresses three main categories:

- (1) The applicant originates from an under-resourced area or one disproportionately impacted by the war on drugs.
- (2) The applicant or a family member of the applicant was directly impacted by police enforcing anti-marijuana laws.
- (3) The applicant hires 51% of employees from a distressed neighborhood negatively affected by the war on drugs.¹⁰⁴

While no licenses have been issued due to delays caused by COVID-19, those who qualify for social equity consideration are expected to score well, especially since “the social equity component of the application . . . accounts for 25% of the total score.”¹⁰⁵

Critics of the Illinois program have expressed concern that it will not effectively promote diversity to the level that is desired.¹⁰⁶ Learning lessons from lawsuits brought in other states, like *Pharmacann*, the social equity policies for Illinois did not designate “a certain number of licenses . . . [to] go to people based on race.”¹⁰⁷ While this seems positive on its face, it does not

¹⁰⁰ *See id.*

¹⁰¹ *See id.*

¹⁰² Schaneman, *supra* note 74.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*; *see also* Steffen, *supra* note 91. At the time of writing, the world was still in the throes of the COVID-19 virus pandemic which rocked the socioeconomic climate on a global scale; the true positive and negative impact of the pandemic on the cannabis industry is yet unknown.

¹⁰⁶ Schaneman, *supra* note 74.

¹⁰⁷ *Id.*

directly promote diversity when Black applicants “don’t qualify for social equity because they’ve never been arrested and don’t live in distressed neighborhoods.”¹⁰⁸

The benefits of the program seem to be impactful and sustainable since “[s]ocial equity applicants can . . . apply for a low-interest loan to assist with the expenses of starting and operating a marijuana business as part of the Social Equity Cannabis Business Development Fund.”¹⁰⁹ Additionally, similar to the exclusive license types available in Massachusetts, Illinois has a “limited-license market,” which means that, in a competitive environment where only so many licenses are awarded, “social equity applicants who do win permits should be able to succeed financially.”¹¹⁰ Because of the limited licenses and delays in the rollout, it is probable that the Illinois market will not become “oversaturated for some time,” making it slightly easier for those with licenses to seek capital from investors.¹¹¹

B. *The Bad: Ineffective and Unconstitutional Programs*

Other states like Ohio and Colorado, discussed below, have made relatively anemic attempts to promote social equity within the cannabis industry.¹¹² After embarking on hasty and overbroad laws that were struck down, most states now take a very slow and cautious approach to developing social equity programs.¹¹³ Unfortunately, this trepidation, however thoughtful and tactical, is counterproductive to promoting equity and inclusivity when the industry is exploding at such a breakneck pace.¹¹⁴ Though it is reasonable to take time to carefully draft social equity provisions, the existing industry is moving full-steam ahead, leaving social equity participants waiting in the wings, seemingly indefinitely.

1. Ohio

As discussed in the Introduction, Ohio’s attempt at a social equity program was flawed from the start and doomed to fail in its infancy.¹¹⁵

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* More simply put, based on the author’s experience, when the licenses are scarce, more investors will be interested in the fewer players, making it potentially easier for those who do hold licenses to seek capital contributions.

¹¹¹ *Id.*

¹¹² See discussion *infra* Sections B.1–2.

¹¹³ *Minutes*, MED. MARIJUANA ADVISORY COMM. (Nov. 12, 2020), [https://www.medicalmarijuana.ohio.gov/Documents/advisory-committee/Meeting%20Materials/2020-12%20\(November\)/Meeting%20Minutes.pdf](https://www.medicalmarijuana.ohio.gov/Documents/advisory-committee/Meeting%20Materials/2020-12%20(November)/Meeting%20Minutes.pdf) (last visited May 30, 2022) (one of many instances where social equity still has not been brought into the discussion). Due to delays in Illinois and Missouri as well as Ohio’s approach, no further plans appear to be in the works for social equity.

¹¹⁴ See generally Hoban, *supra* note 5; Sagiv Galai, *Equity Must Be at the Heart of Marijuana Legalization*, AM. C.L. UNION (June 26, 2019, 1:45 PM), <https://www.aclu.org/blog/criminal-law-reform/drug-law-reform/equity-must-be-heart-marijuana-legalization>.

¹¹⁵ Mikos, *supra* note 9.

Indeed, the state's obligation to comply with the Code was dismissed before the second wave of processor licenses could be awarded.¹¹⁶ Nonetheless, even if the program had survived the *Pharmacann* action, benefits to participants were not included within the provisions of the Ohio Revised Code.¹¹⁷ While hopeful applicants relied upon the Code's guarantee that minorities would hold a statutory minimum of all cannabis business licenses in Ohio, the carve-out based on race did not account for any additional benefits.¹¹⁸ Unlike other states discussed herein, Ohio's initial attempt at social equity lacked a plan for impact and long-term sustainability.¹¹⁹ Unlike Illinois and Massachusetts, Ohio did not establish a distinct committee to provide ongoing resources and oversight of its plans for inclusion.¹²⁰ Moreover, based on lawsuits brought in other states, many should have known that the Ohio legislation with the race-based carve-out was doomed to fail.¹²¹

2. Colorado

As one of the first states to legalize adult-use cannabis, Colorado's cannabis industry is often looked to as an example of the best (and worst) practices other states can look to when modeling their own programs.¹²² As such, the Colorado cannabis industry has long been criticized for its

¹¹⁶ See discussion *supra* notes 3–11. Chapter 3796.09(C) of the Ohio Revised Code was enacted on September 8, 2016. OHIO REV. CODE ANN. § 3796.09. Applications were due on a rolling basis according to license type on June 16, 2017 (Level II Cultivator), June 30, 2017 (Level I Cultivator), November 17, 2017 (Dispensary), and December 15, 2017 (Processor). See generally *Marijuana Businesses*, OHIO MED. MARIJUANA CONTROL PROGRAM, <https://www.medicalmarijuana.ohio.gov/cultivation> (last visited May 30, 2022). Level II and Level I tiers of cultivation licenses were awarded on November 3, 2017, and November 30, 2017, respectively, and the first round of processor licenses was awarded on August 3, 2018. *Id.* The *Pharmacann* ruling was decided on November 15, 2018, abolishing the social equity carve-out provision; and the second and final rounds of processor licenses were awarded on January 9, 2019. *Id.*; see *supra* notes 6–11 and accompanying text. Finally, Dispensary Licenses were awarded on June 4, 2018. See generally *Marijuana Businesses*, OHIO MEDICAL MARIJUANA CONTROL PROGRAM, <https://www.medicalmarijuana.ohio.gov/cultivation> (last visited May 30, 2022). Qualifying for the Social Equity program means applicants may have spent more than two years from the promulgation of the rules creating a business plan and preparing, submitting, and waiting on application results only to learn that they were not going to benefit from the program.

¹¹⁷ See generally OHIO REV. CODE ANN. § 3796.09.

¹¹⁸ *Id.*; OHIO ADMIN. CODE 3796:2-1-01.

¹¹⁹ Carrie Ghose, *Led by Responsible Ohio backers, rejected medical marijuana cultivator applicants sue, seeking to scrap licenses and re-score*, COLUMBUS BUS. FIRST (Feb. 20, 2018, 4:23 PM), <https://www.bizjournals.com/columbus/news/2018/02/20/led-by-responsible-ohio-backers-rejected-medical.html/>.

¹²⁰ *Id.*; see *Guidance on Equity Programs*, *supra* note 80, discussion *supra* section A.2 and accompanying footnotes.

¹²¹ See generally Erin Cox, *Maryland medical marijuana regulators sued for not considering racial diversity of license winners*, BALT. SUN (Oct. 31, 2016, 8:25 PM), <https://www.baltimoresun.com/maryland/bs-md-marijuana-diversity-lawsuit-20161031-story.html>; Robert McCoppin, *New lawsuit challenges Illinois medical marijuana license for Will Co.*, CHI. TRIB. (Mar. 11, 2015), <https://www.chicagotribune.com/suburbs/daily-southtown/ct-medical-marijuana-grower-suit-met-20150311-story.html>.

¹²² See Bertie Song, *Colorado's Gold Standard for the New Legal States*, NEW FRONTIER DATA ANALYSTS (Nov. 21, 2016), <https://newfrontierdata.com/cannabis-insights/colorados-gold-standard-new-legal-states/>.

conspicuous lack of diversity and social equity measures.¹²³ In 2019, Colorado passed legislation that created two new categories of marijuana business licenses: accelerator cultivators and accelerator manufacturers.¹²⁴ To secure an accelerator license, a person must have resided in a census tract designated by the Colorado Office of Economic Development and International Trade as an Opportunity Zone for “at least fifteen years between the years 1980 and 2010”¹²⁵ Opportunity Zones are designated low-income communities; investment in these communities receives favorable federal tax treatment under the Tax Cuts and Jobs Act of 2017.¹²⁶ The accelerator license allows the licensee to work out of an established marijuana cultivator or manufacturer’s premises.¹²⁷ In addition, the established business, which is referred to as the “Accelerator-Endorsed Licensee,” can provide technical and capital support to the accelerator licensee.¹²⁸ For most of Colorado’s cannabis licenses, individuals with a felony conviction cannot apply for a license within three years of their conviction or while subject to a sentence, including any associated probation or parole.¹²⁹ However, a cannabis conviction cannot be the sole basis for denial of the accelerator licenses.¹³⁰

Additionally, in June of 2020, “An Act” formally addressing social equity for cannabis in Colorado was finally adopted.¹³¹ However, the program has been met with some harsh criticism as being “too little, too late.”¹³² This is because it appears that the social equity regulations went into effect well after the market had matured significantly; as such, it seems doubtful that even the savviest of entrepreneurs could have an impact with such a late entry into the industry. Therefore, while it is a welcome and long-sought-after action, Colorado’s social equity measures seem relatively impotent when compared to states that developed their social equity programs in lockstep with the regulatory structure.

¹²³ See Harris & Martin, *supra* note 32, at 11 (footnote omitted).

¹²⁴ COLO. REV. STAT. §§ 44-10-607, 608.

¹²⁵ *Id.* at § 44-10-308(4)(c)(I).

¹²⁶ *Id.*

¹²⁷ *Id.* at § 44-10-103(1)–(4.5).

¹²⁸ *Id.* at § 103(2).

¹²⁹ COLO. REV. STAT. § 44-10-307(1)(g)(I).

¹³⁰ *Id.*

¹³¹ *Id.* at §§ 44-10-103, 307.

¹³² Colorado, as one of the first legal markets, was legalized by the voters as a constitutional amendment and thus had no guidance from other jurisdictions; most importantly, Colorado had no (or very little) guidance on the issue of social equity. Song, *supra* note 122. Some argue that the state’s population significantly lacks diversity compared to some of the other jurisdictions discussed herein, and thus the lack of diversity is reflected accordingly. See, e.g., Tiney Ricciardi, *Denver’s marijuana businesses lack diversity in ownership and employment, city study finds*, DENVER POST (June 9, 2020, 8:04 AM), <https://www.denverpost.com/2020/06/08/denver-marijuana-cannabis-industry-racial-diversity/>. However, many, namely Wanda James, the first Black dispensary owner in the United States, vehemently reject this argument. Bart Schaneman, *Study: Denver cannabis companies mostly white-owned, lacking social equity*, MJBIZDAILY (June 10, 2020), <https://mjbizdaily.com/study-denver-cannabis-companies-mostly-white-owned-lacking-social-equity/>.

Importantly, many of Colorado's social equity program's shortcomings are belied by the municipal structure of its overall program, which allows certain municipalities to either "opt-in" or develop unique legislation.¹³³ This structure leaves much of the overall program in the hands of local governments, including any social equity efforts. This oversight, in turn, begets an arguably biased patchwork of "dry municipalities" who refuse to participate in the program and similarly varied social equity initiatives rather than a statewide program with statewide oversight and administration.

C. The Ugly: Hard Truths and Important Takeaways from the Current Landscape of Social Equity within the Cannabis Industry

The ugly side of social equity programs refers to a lack of due diligence and proper oversight of operations once the respective social equity program is underway.

1. Expectations vs. Reality

One predominant issue for social equity programs is the tension between how the programs were intended to function and how the programs actually function in practice over both the day-to-day and the long-term. For example, the professional training and technical assistance services to support SEP participants are provided by vendors who are selected as part of a state procurement process.¹³⁴ The vendors must submit comprehensive proposals and be thoroughly vetted before a contract is awarded.¹³⁵ While this seems like a sensible, effective process for providing SEP and EEP participants with professional training materials, resources, and advisors, the actual benefit to participants has been inconsistent and minimal when compared to the extensive requirements and steep learning curve for virtually inexperienced aspiring business owners.¹³⁶ Then to exacerbate the situation, there is apparently little incentive for the approved vendors to consistently or continuously provide support.¹³⁷ Many businesses applied to assist

¹³³ Tiney Ricciardi, *What is social equity in Colorado's cannabis industry? Regulators look to level the playing field for marginalized communities*, DENVER POST (Jan. 30, 2020, 10:43 AM), <https://www.denverpost.com/2020/01/30/social-equity-colorado-cannabis/>.

¹³⁴ *Equity Programs*, *supra* note 85.

¹³⁵ See Alexander Lektham, *Massachusetts Advances Its Unique Cannabis Social Equity Program*, FILTER (July 26, 2019), <https://filtermag.org/massachusetts-cannabis-equity/>.

¹³⁶ This information was gleaned from the author's interactions with clients.

¹³⁷ See, e.g., Chris Nani et al., *Understanding Social Equity*, CANNABIS L. REP. 57, <https://cannabislaw.report/new-publication-social-equality-by-chris-nani/> (last visited May 30, 2022). "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." *Id.* Bellino stated, "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 [spent applying for the microbusiness license] have been trying." *Id.* Furthermore, from the author's experience, vendors or potential partners and consultants are reluctant to provide support to social equity businesses without a tangible benefit in return, such as payment or co-ownership in the licensed business. This is probably understandable; a gratis initial consultation is costly to the providing vendor and thus feels generous from their perspective, but in

participants in the program by providing discounted or pro bono services as part of a “Positive Impact Plan”; however, they merely provided a single, short consultation at no cost or presented a general overview of their expertise, and then considered their “Plan” fulfilled.¹³⁸ This “service” falls far short of actually meeting the needs of SEP and EEP Participants who want to become licensed and operate a business in a highly competitive, highly regulated industry.

2. Providing Opportunity vs. Predatory Opportunism

Underinformed or misinformed advisory committees and regulators who are not careful to expressly define certain “checks” on the social equity participants’ qualification and ownership criteria may create a situation that leaves participants vulnerable. Often, certain “loopholes” in the legislation that governs the transfer of ownership can lead to “strawman” owners and “shell” companies that result in predatory contracts.¹³⁹ For example, limiting the ability of social equity applicants to sell their businesses to non-equity applicants limits the pool of potential buyers of their business enterprise.¹⁴⁰ More specifically, Colorado’s “accelerator” model may create an environment ripe for predatory opportunism.¹⁴¹ Such a model puts accelerator licensees in a position where they are dependent on the bigger businesses to act as endorsers; thus, the accelerator licensees may never fully realize independent ownership.¹⁴² Similarly, other models create this potential for predatory opportunism in other areas. In Illinois, “[a]pplicants can score points for hiring 51% of the company’s employees from a disproportionately impacted area, which could easily be misused if the workers aren’t paid well or given prominent positions in the company.”¹⁴³

Another substantial hurdle that most social equity applicants in the cannabis industry face is “a lack of access to capital.”¹⁴⁴ As cannabis continues to be federally illegal, most banks in the United States are reluctant to work with licensed cannabis businesses “for fear of being shut down by the federal government.”¹⁴⁵ Thus, cannabis entrepreneurs are without access to traditional banking products and services, leaving them to “self-fund or borrow money from their friends, family, or other sources,” unlike a typical

reality, one free consultation does little to support incoming program entrants over the long term. Contrastingly, it seems unreasonable to expect vendors and others to provide continuous services and expertise without payment or ownership stake in the business.

¹³⁸ *MCBA Determines that Los Angeles’ Social Equity Program Falls Short of Goals*, MINORITY CANNABIS BUS. ASS’N (June 27, 2019), <https://minoritycannabis.org/mcba-determines-that-los-angeles-social-equity-program-falls-short-of-goals/>.

¹³⁹ *See id.*

¹⁴⁰ COLO. REV. STAT. § 44-10-103(68.5).

¹⁴¹ *See id.* at (1)–(2).

¹⁴² *Id.*

¹⁴³ *See Schaneman, supra* note 74.

¹⁴⁴ *Id.*

¹⁴⁵ Shu-Acquaye, *supra* note 12, at 39.

startup or small business.¹⁴⁶ In turn, “given the inherent [racial] gaps in wealth, ownership, and credit building,” this lack of access to financial resources has a disparate effect on minorities attempting to own and operate a cannabis business.¹⁴⁷

3. A Colorblind Eye Turned on Impact and Sustainability

Implementing an effective social equity and inclusion strategy must address the tensions between promoting diversity and access to resources for marginalized groups while simultaneously maintaining a sense of “colorblindness” and long-term viability. As Dr. Tiffany Bowden, an expert in diversity and inclusion, has expressed:

[M]y experiences with my former companies helped me understand that while we talk about people getting into the cannabis industry, people do not discuss what happens to us when we are here. Many cannabis companies are so small that they are not regulated by the Equal Employment Opportunity Commission (“EEOC”). Women are at risk and Minorities too, are being used as props in social equity programs and these businesses are being taken from them or manipulated.¹⁴⁸

Dr. Bowden’s experience reflects the harsh truth underpinning the current climate of social equity programs in cannabis: it is not working, not yet.

IV. A PROPOSAL FOR OHIO AND BEYOND

It is possible that a more thorough preparation of their case and a few tweaks to the defendant’s argument could have convinced a slightly more compassionate judge to decide the *Pharmacann* case differently. But, with the present issues and tension surrounding the conflict between state and federal law, the judiciary is, as evidenced by the *Pharmacann* case, hesitant to endorse certain social equity programs wholeheartedly.¹⁴⁹ Therefore, as Ohio prepares to institute an adult-use commercial cannabis program, it is worthwhile to consider a “new and improved” social equity program to include in the initiative.

The proposed program is designed with consideration to specific elements described herein so as to avoid strict scrutiny review altogether. However, with such a program, should strict scrutiny be applied, the Ohio

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Warren Bobrow, *5 Inclusive Questions For Cannabis Diversity Educator Dr. Tiffany Bowden*, FORBES (Sept. 14, 2020, 9:26 AM), <https://www.forbes.com/sites/warrenbobrow/2020/09/14/5-inclusive-questions-for-cannabis-diversity-educator-dr-tiffany-bowden/#2aed8b5a209d>.

¹⁴⁹ See *Pharmacann Ohio, LLC, v. Ohio Dept. Com. Dir. Jacqueline T. Williams*, No. 17-CV-10962, 2018 WL 7500067, at *10 (Ohio Com. Pl. Nov. 15, 2018).

government could likely provide a “strong basis in evidence” that the program was “narrowly tailored” in such a way as to justify the state’s “compelling” interest in fostering a diverse and inclusive commercial cannabis industry.¹⁵⁰ First, the legislation must be drafted with substantial consideration given to demographic research and impact studies.¹⁵¹ Second, based on progress in states like Massachusetts and Illinois, where a multi-faceted qualification structure is applied to social equity participants, Ohio should not limit its qualification criteria to race alone.¹⁵² Finally, measures for sustainability should be implemented in such a way so that their long-term impact can be monitored and the program can be modified accordingly.

A. *Creating a “strong basis in evidence” by conducting demographic research and impact studies.*

We as a society may be able to accept that people are differently impacted by socioeconomic and systemic marginalization; however, before the judiciary, these accepted principles must be substantiated with factual evidence. States that have conducted research on socioeconomic, cultural, and historical backgrounds of different areas have drafted more targeted legislation attempting to address community needs and disparities directly.¹⁵³ As Ohio develops its new program, conducting thorough research as part of the process will better inform the scope and goals of its new legislation.¹⁵⁴

One possible way to do this is to create “heat maps” used to indicate concentrated areas of the state’s populace that experience various forms of disparity.¹⁵⁵ States could model their research on a similar analysis conducted

¹⁵⁰ United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938).

¹⁵¹ For example, at the request of the Maryland Governor, economist Gail Rand conducted a disparate impact study and provided a report on the demographics of the state to better inform its development of a program to target specific communities as individuals based on the intersection of multiple socioeconomic, race, gender, and geographic factors. See Letter from Jon Wainwright, Managing Dir., Nat’l. Econ. Rsch. Assoc. to R. Earl Lewis, Jr., Deputy Sec’y, Md. Dep’t. of Transp. (Jan. 17, 2018) <https://mmcc.maryland.gov/Documents/2018DisparityStudyforMDCannabisIndustry.pdf> (describing demographic research concerning minority-owned businesses); see also Sara Berg, *Targeting COVID-19 inequities requires a data-driven approach*, AM. MED. ASS’N (May 29, 2020), <https://www.ama-assn.org/delivering-care/health-equity/targeting-covid-19-inequities-requires-data-driven-approach>; *infra* note 154 and accompanying text.

¹⁵² See *supra* note 3–1313 and accompanying text; see also Nik DeCosta-Klipa, *Massachusetts marijuana dispensary association withdraws lawsuit against state delivery rules after backlash from members*, BOSTON.COM (Jan. 25, 2021), <https://www.boston.com/news/local-news/2021/01/25/massachusetts-marijuana-dispensary-delivery-lawsuit-backlash> (the Massachusetts Cannabis Association for Delivery lawsuit which was retracted after public outcry); see *supra* Discussion II.A.1 and II.A.2.

¹⁵³ See *Comparison of State Cannabis Social Equity Provisions*, *supra* note 74 (discussing how Massachusetts, California, and Oregon each implemented targeted Social Equity Programs).

¹⁵⁴ See, e.g., *supra* note 151 and accompanying text; Sam Wolff, *Cannabis Equity Survey and Analysis*, DEP’T OF FIN. & ADMIN. SERVICES, CONSUMER PROT. DIV. (Nov. 2019), <http://www.seattle.gov/documents/Departments/FAS/BusinessLicenseTax/Cannabis%20forum/CANNABIS-EQUITY-SURVEY-ANALYSIS.pdf>.

¹⁵⁵ *When (and Why) to use Heat Maps*, DUNDAS BI, <https://www.dundas.com/resources/blogs/best-practices/when-and-why-to-use-heat-maps> (last visited May 30, 2022).

as part of the rollout of the COVID-19 vaccine.¹⁵⁶ Under this model, specific locations were targeted to receive and administer doses of the vaccine.¹⁵⁷ The selected locations were those determined to be particularly high-risk areas based on the potential to spread infection and lack of access to healthcare resources.¹⁵⁸ As applied to cannabis business social equity programs, different criteria could be researched, reported, and illustrated to indicate “hot zones” of concentrations of affected areas. Then, each heat map could be overlaid to indicate the greatest concentrations of disparate impact areas to determine where to focus targeted legislation.

B. Developing a “narrowly tailored,” multi-faceted qualification structure.

Once the research is conducted and the targeted communities and individuals are identified, the language of the overarching act, regulations, and stated goals must be carefully drafted to reflect the program’s intentions.¹⁵⁹ As evidenced by the *Pharmacann* ruling, it seems important to focus the enumerated qualifications for social equity programs beyond just race to include clearly defined individuals and communities. The government must be able to support, with evidence, that the identified groups that stand to benefit are best suited to carry out its interest in implementing a diverse and inclusive commercial cannabis industry that fosters social equity.

C. Providing evidence of a “compelling government interest” by clearly defining, monitoring, and implementing measures for sustainability.

As a nascent industry, the long-term efficacy and impact of social equity programs have yet to be fully understood. In fact, at the time of authorship, several states, including Illinois, Colorado, and Massachusetts, had yet to award cannabis business licenses to qualified social equity participants.¹⁶⁰ Therefore, states may need to review and amend their

¹⁵⁶ Nik DeCosta-Klipa, *Massachusetts is ramping down its mass vaccine sites as rollout enters new phase*, BOSTON.COM (May 3, 2021), <https://www.boston.com/news/coronavirus/2021/05/03/massachusetts-vaccine-rollout-new-phase-mass-vax-sites-close/>; *COVID-19: Policies to Protect People and Communities*, URBAN INST. (Oct. 15, 2020), <https://www.urban.org/features/covid-19-policies-protect-people-and-communities#chapter-1>; Steven Brown, *The COVID-19 Crisis Continues to Have Uneven Economic Impact by Race and Ethnicity*, URBAN INST. (July 1, 2020), <https://www.urban.org/urban-wire/covid-19-crisis-continues-have-uneven-economic-impact-race-and-ethnicity> (“[T]racking which households are most affected could assist local, state, and federal policymakers in targeting their efforts and ensuring an equitable recovery for all Americans.”).

¹⁵⁷ See DeCosta-Klipa, *supra* note 156 and accompanying text.

¹⁵⁸ *Id.*

¹⁵⁹ It is well established that the language of any particular legislation is the best evidence of the legislature’s intent. Therefore, to avoid misinterpretation and misapplication, the language must be neither too broad nor too restrictive to apply effectively.

¹⁶⁰ See Steffen *supra* note 91 and *supra* note 103 and accompanying text for an explanation of some delays cause by the COVID-19 pandemic; however, this knowledge is from the author’s first-hand experience with clients.

programs from time to time in order to ensure the program's desired outcome is being achieved. This seems especially important given the government's potential need to prepare a defense should a cause of action attacking the constitutionality of the program be brought against it, as it was in *Pharmacann*.¹⁶¹ If the government is able to lay the proper foundation for its legislation and can provide ongoing evidence of the social equity program's ability to serve the government's interest, then it should be able to provide evidence that the program is sufficiently serving its interests.

To begin with, the state's interest should be clearly defined in the overarching language of the act. Some states, including Massachusetts and Illinois, included language that articulates an overarching purpose of the social equity program.¹⁶² While this language generally refers to an interest in diversity, such as providing resources and reducing barriers to entry into the industry for those who have experienced a disparate negative impact, in other states, disparate impact alone may not be sufficient to justify a "compelling government interest."¹⁶³ Therefore, it would seem that the more specific a state can be in articulating its goals and its interests, the more clearly it can conduct studies to determine whether the program, as written and implemented, is achieving those goals.

Next, the state should develop a plan to monitor its progress toward achieving its defined goals. One way to do this would be by conducting regular surveys, audits, reports, and reviews. For example, once a state's social equity program becomes operational with active licensees, a 90-day follow-up survey could be administered to the participants. In fact, a few states have administered ongoing surveys to representatives of participants in social equity programs at the conclusion of the application process and startup process.¹⁶⁴ The survey asked a number of questions relating to the client's experience in terms of what worked well and what did not.¹⁶⁵ The apparent goal is to use this data to inform social equity lobbying and advocacy efforts with legislators in the state.¹⁶⁶ It, therefore, seems that similar surveys and reviews could be conducted as part of the state's program responsibilities. Thereafter, adjustments could be made based on the feedback, and after public comment, measures could be amended as appropriate.

Finally, it is likely that providing evidence of both the immediate and long-term benefits and overall impact on the community would be useful in

¹⁶¹ Causes of action have been brought in almost every state with a regulated commercial cannabis program, especially those early programs with social equity measures.

¹⁶² See *supra* notes 83, 102 and accompanying text.

¹⁶³ The *Pharmacann* case is an example where the government's defense, which included research of the disparate impact on minorities and the desire to promote an inclusive industry, was not convincing to the court. See *supra* notes 10–11 and accompanying text.

¹⁶⁴ See Wolff, *supra* note 153.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

showing that the state's social equity program is carrying out its intended purpose. Short-term benefits may include the addition of jobs and commerce to the local community and the state overall. Thus, in states where the social equity programs include access to startup funding, educational resources, and training, communities and the state overall could potentially realize a significant boost to their economy.¹⁶⁷

States may also decide to allocate tax revenue derived from commercial cannabis to other impactful public programs. For example:

When Illinois legalized recreational marijuana, the state created the Restore, Reinvest and Renew Program, which allocates 25% of cannabis tax revenue to fund grants for violence prevention, economic development and other efforts in parts of the state that are “found to be acutely suffering from the horrors of violence” and related problems.¹⁶⁸

Colorado and Massachusetts have similar programs in place as well.¹⁶⁹ In fact, in 2019, the Colorado Department of Revenue counted over \$302 million in cannabis tax revenue, “nearly a 12 percent bump over 2018’s total of \$266.5 million.”¹⁷⁰ Out of that tax revenue, “the first \$40 million . . . is distributed to the state’s Public School Capital Construction Assistance Fund, . . . [and the e]xtra marijuana excise tax revenue then goes to the state’s general public school fund”¹⁷¹

An additional benefit may be that communities see a reduction in crime rates, both cannabis-related and otherwise. To this point, most licensed cannabis facilities are equipped with sophisticated security systems and tend to increase the presence of law enforcement and security officers in the area.¹⁷² Furthermore, states with programs for legal cannabis have seen a reduction in opioid addiction and overdose fatality rates.¹⁷³

¹⁶⁷ For a discussion of the impact of discrimination and the economy, see Adeyo Akala, *Cost Of Racism: U.S. Economy Lost \$16 Trillion Because Of Discrimination, Bank Says*, NPR (Sept. 23, 2020, 2:42 PM), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/09/23/916022472/cost-of-racism-u-s-economy-lost-16-trillion-because-of-discrimination-bank-says>. By implementing programs specially designed to promote diversity, the economy can flourish like never before. *Id.*

¹⁶⁸ See Schaneman, *supra* note 74 (quoting *Restore, Reinvest, and Review (R3) Program*, ILL. JUST. PROJECT, <https://www.iljp.org/r3program> (last visited May 30, 2022)).

¹⁶⁹ See Christy Bieber, *Marijuana Tax Revenue: A State-by-State Breakdown*, MOTLEY FOOL (Aug. 3, 2021, 3:58 PM), <https://www.fool.com/research/marijuana-tax-revenue-by-state/>.

¹⁷⁰ Thomas Mitchell, *Record Sales Bring New High to Marijuana Tax Revenue*, WESTWORLD (Jan. 28, 2020, 8:27 AM), <https://www.westword.com/marijuana/record-marijuana-sales-in-colorado-bring-new-high-to-tax-revenue-11621939>.

¹⁷¹ *Id.*

¹⁷² See e.g., Derek Arcuri, *Cannabis Industry: A Growth Sector for Security Professionals*, SECURITY (May 13, 2020), <https://www.securitymagazine.com/articles/92179-cannabis-industry-a-growth-sector-for-security-professionals>.

¹⁷³ See Nina Lincoff, *States with Legal Marijuana See 25 Percent Fewer Prescription Painkiller Deaths*, HEALTHLINE, <https://www.healthline.com/health-news/states-with-legal-marijuana-have-fewer-overdose-deaths-082614#1> (Oct. 20, 2018).

V. CONCLUSION

Designing and implementing a program based upon the foregoing measures will potentially provide access to opportunity and foster inclusion in the commercial cannabis industry in an impactful way. More importantly, a program like the one outlined above could be tailored in other states to specifically identify and direct positive impact on those individuals and communities who have been most disproportionately harmed by the failed “War on Drugs.” Built upon a research-driven foundation and derived from objective data, such a program would almost certainly stand up to scrutiny in a court of law.¹⁷⁴

The time is ripe for an ethically and intellectually honest, holistic approach to social equity in cannabis. These programs should be focused on providing overdue opportunities instead of loopholes for the opportunistic. With an analytical and pragmatic approach, it is possible to develop and implement a program that will have the desired impact while complying with state law and constitutional requirements. Even beyond the state of Ohio, we, as a nation, have a rare opportunity in the early days of this new booming industry. We get to acknowledge our shortcomings and how we have exacerbated harm in our most vulnerable and marginalized communities; then, we get to do the work to fix the system. Under the foregoing proposed model, wrongs can begin to be made right, promoting a diverse, inclusive, and economically thriving cannabis industry.

¹⁷⁴ See *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 781 (2007) (Kennedy, J., concurring); discussion *supra* Section III.