

# MORE THAN A PIPE DREAM: A STRUCTURAL APPROACH TO SOCIAL EQUITY IN THE LEGAL CANNABIS INDUSTRY

## *Note*

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## *Note*

### INTRODUCTION

As of 2025, forty-two states permit the use of cannabis<sup>1</sup> for medical purposes, and twenty-four states permit recreational adult-use.<sup>2</sup> Marijuana remains illegal for all purposes under federal law,<sup>3</sup> but its legalization on the state level has ushered in a flourishing legal cannabis industry estimated at 38.5 billion dollars in 2024.<sup>4</sup> But the financial opportunities created by legalization have not been enjoyed equitably. Most cannabis business owners are white,<sup>5</sup> a statistic that is particularly jarring considering the extensive damage done to communities of color as a consequence of the War on Drugs.<sup>6</sup> In recognition of the potential to provide redress through legalization, states have implemented policies aimed at promoting social equity in the cannabis industry.<sup>7</sup> However, existing social equity programs have largely fallen short, leaving “[t]he very people who were victimized by cannabis laws in the first place . . . yet again on the losing end . . .”<sup>8</sup>

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1. There is considerable debate over use of the term “marijuana” as opposed to “cannabis.” See William Garriott & Jose Garcia-Fuerte, *The Social Equity Paradigm: The Quest for Justice in Cannabis Legalization*, 47 SETON HALL J. LEGIS. & PUB. POL’Y 128, 128 n.2 (2023). While marijuana has been more commonly used for the past century, some see it as a racist term used by the Government to link cannabis to Spanish speaking populations. *Id.* And while cannabis is more scientifically accurate, some view it as a form of “corporate white washing—an attempt to re-brand marijuana so that it is more palatable to mainstream middle class tastes.” *Id.* at 129 n.2. Recognizing the salience of both arguments, this note uses both terms interchangeably.

2. *Where Marijuana Is Legal in the United States*, MJBIZ DAILY (June 20, 2025), <https://mjbizdaily.com/map-of-us-marijuana-legalization-by-state/> [https://perma.cc/8FY8-ZMLC]. The District of Columbia also allows cannabis for both medical and recreational adult-use. *Id.*

3. See 21 U.S.C. § 812(c), Schedule I(c)(10).

4. U.S. Cannabis Market Size & Share Industry Report Summary, GRAND VIEW RSCH., <https://www.grandviewresearch.com/industry-analysis/us-cannabis-market> [https://perma.cc/3YCF-RN6W] (last visited Sep. 6, 2025).

5. Andrew Long, *State of Diversity in Cannabis*, in MJBIZ DAILY, DIVERSITY, EQUITY, & INCLUSION IN THE CANNABIS INDUSTRY 4, 8 (2023), <https://mjbizdaily.com/> (select the “reports” dropdown menu, select “diversity,” and input information); Alana Yzola, *How Big Weed Shut Out People of Color and Became a Rich White Business*, BUS. INSIDER (Apr. 17, 2020), <https://www.businessinsider.com/how-big-weed-became-rich-white-business-2019-12> [https://perma.cc/725T-C82K].

6. See John Hudak, *Reversing the War on Drugs: A Five-Point Plan*, BROOKINGS (July 7, 2021), <https://www.brookings.edu/articles/reversing-the-war-on-drugs-a-five-point-plan/> [https://perma.cc/DJ83-PVHW].

7. See Chris Casacchia, *Cannabis Social Equity in 2023*, in MJBIZ DAILY, DIVERSITY, EQUITY, & INCLUSION IN THE CANNABIS INDUSTRY 9, 11–14 (2023), <https://mjbizdaily.com/> (select the “reports” dropdown menu, select “diversity,” and input information).

8. Rebecca Rivas, *Applicants Recruited on Craigslist Competed for Missouri Social Equity Cannabis Licenses*, MO. INDEP. (Oct. 26, 2023, at 10:23 CT), <https://missouriindependent.com/2023/10/26/applicants-recruited-on-craigslist-competited-for-missouri-social-equity-cannabis-licenses/>.

Minority entrepreneurs generally face more obstacles in building businesses than their white counterparts.<sup>9</sup> They often have less access to capital, professional networks, and advisors and endure discrimination from banks when applying for small business loans.<sup>10</sup> In many ways, the disadvantages faced by minority entrepreneurs “all boil[] down to finances.”<sup>11</sup> The persistent wealth gap that exists between white people and people of color is in part collateral damage from the disproportionate incarceration of minorities during the War on Drugs,<sup>12</sup> with one study calculating an average lifetime earnings loss of \$484,400 for those incarcerated as young adults.<sup>13</sup>

These disadvantages are particularly burdensome to minority entrepreneurs seeking to start a cannabis business due to several features unique to the industry. The startup costs associated with launching a legal cannabis business can be incredibly high.<sup>14</sup> Average startup costs (application fees, licensing fees, etc.) for a retail cannabis processing business in the recreational market can vary from one to six million dollars, depending on size.<sup>15</sup> Some states place an additional capital requirement on marijuana businesses that must be satisfied to prove financial viability. Pennsylvania, for example, requires a showing of at least \$2 million in capital with at least \$500,000 deposited in financial institutions.<sup>16</sup> Traditional business loans from banks and credit unions are out of the question because marijuana remains illegal for all purposes under federal law.<sup>17</sup> Accordingly, most cannabis businesses are self-funded—which means that access to liquid capital is critical for aspiring cannabis entrepreneurs.<sup>18</sup> Tax breaks that are normally available to traditional business owners are unavailable to cannabis business owners, further compounding the financial barriers faced

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recruited-on-craigslist-competed-for-missouri-social-equity-cannabis-licenses/ [https://perma.cc/J869-5HAK].

9. Liz Posner, *The Green Rush Is Too White*, PAC. STANDARD (Dec. 10, 2018), <https://psmag.com/economics/the-green-rush-is-too-white-hood-incubator-race-weed/> [https://perma.cc/ACQ2-S6DH].

10. *Id.*

11. *Id.*

12. See Hudak, *supra* note 6.

13. TERRY-ANN CRAIGIE, AMES GRAWERT & CAMERON KIMBLE, CONVICTION, IMPRISONMENT, AND LOST EARNINGS 17 (2020).

14. Kris Krane, *Lack of Cannabis Banking Hurts Average Small Business Owners, While Wealthy Entrepreneurs Flourish*, FORBES (June 13, 2018, at 12:44 ET), <https://www.forbes.com/sites/kriskrane/2018/06/13/marijuana-banking-constraints-disproportionately-harm-small-businesses/?sh=2a2888ae54ed> [https://perma.cc/8SK7-WGGE].

15. *Id.*

16. 28 PA. CODE § 1141a.30(a) (2023).

17. Yzola, *supra* note 5; Tatyana Hopkins, *Road to 2030: Federal Legislative Solutions to Social Equity in a Booming Cannabis Industry*, CONGR. BLACK CAUCUS FOUND., <https://www.cbcfinc.org/capstones/economic-opportunity/road-to-2030-federal-legislative-solutions-to-social-equity-in-a-booming-cannabis-industry/> [https://perma.cc/63X6-BVYY] (last visited Sep. 20, 2025).

18. See Mathew Swinburne & Kathleen Hoke, *State Efforts to Create an Inclusive Marijuana Industry*, 15 J. BUS. & TECH. L. 235, 256 (2020).

by minority licensees.<sup>19</sup> And minority entrepreneurs may also (understandably) feel reluctant to pursue opportunities in the legal cannabis industry after enduring decades of discriminatory marijuana law enforcement in their own communities.<sup>20</sup>

Existing social equity programs fail to provide comprehensive support that accounts for the breadth of damage inflicted on communities of color as a result of the War on Drugs. And popular features of state licensing regimes—like license caps and merit-based scoring—exacerbate barriers to entry for minority cannabis entrepreneurs by inviting corruption and a flood of litigation challenging licensing decisions. This Note examines how flaws in existing social equity programs interact with particular features of legal cannabis licensing regimes to bar social equity applicants from meaningful participation in the cannabis industry and advocates for a more comprehensive approach to social equity.

## I. LICENSING REGIMES

States that have legalized cannabis for medical or recreational use vary in their approach to distributing cannabis business licenses. Many issue different types of licenses for cannabis cultivators, processors, retailers, testing facilities, and transporters; others also opt to issue vertically-integrated licenses that allow a single individual or business entity to engage in all of the above functions under a single license.<sup>21</sup> The manner in which states evaluate applicants also varies: some employ a merit-based system in scoring applications, while others use a lottery to determine which applicants are awarded a license.<sup>22</sup> And while some states opt for a free market system, others attempt to control the market by making a limited number of licenses available.<sup>23</sup> The following section evaluates several common licensing practices and discusses how some may have a negative impact on the operation of social equity programs.

### A. License Caps

Some jurisdictions with legal cannabis programs place limits on the number of cannabis business licenses that may be issued across the state or within a

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19. Hopkins, *supra* note 17; Good Tree Capital, *How Much Does It Cost to Launch a Cannabis Business?* LEAFLY (June 1, 2022), <https://www.leafly.com/news/industry/how-much-does-it-cost-to-start-a-cannabis-business> [<https://perma.cc/GKF8-DLNC>].

20. Tracy Jarrett, *Six Reasons African Americans Aren't Breaking Into the Cannabis Industry*, NBC NEWS (Apr. 19, 2015, 19:29 CT), <https://www.nbcnews.com/news/nbcblk/6-reasons-african-americans-cant-break-cannabis-industry-n344486> [<https://perma.cc/8NZ6-SAFL>].

21. See Lucy Xiaolu Wang & Nicholas J. Wilson, *U.S. State Approaches to Cannabis Licensing*, 106 INT. J. DRUG POL'Y 1, 2–3 (2022); see, e.g., Ala. Code § 20-2A-67 (2024).

22. See Wang & Wilson, *supra* note 21, at 2.

23. See *id.* at 6.

particular locality.<sup>24</sup> States or localities may limit the number of licenses available generally, limit the number of licenses that an individual or business may own, or limit ownership to one or two types of licenses.<sup>25</sup> Some impose “hard caps,” or an absolute limit on the number of licenses available on the state level or per locality.<sup>26</sup> Others are linked to some demand-side metric, such as the number of patients or pharmacies in a given area or by a state’s population.<sup>27</sup> Alternatively, some states take a free market approach by distributing licenses without a finite limit to applicants who meet the application criteria.<sup>28</sup> And some states with previously uncapped markets have implemented license caps ex post facto by imposing a moratorium on the distribution of new licenses.<sup>29</sup>

Limited-license regimes are often criticized as being an overreach on the part of the government, whose proper role is protecting the health and safety of consumers, “not pick[ing] winners and losers.”<sup>30</sup> But for those who remain skeptical of legal cannabis, more government control may be desirable, and limiting the number of licenses issued for particular functions across the cannabis supply chain may provide states with better control of its production and sale.<sup>31</sup> This is particularly important in light of the ever-present threat of competition from the illicit cannabis market.<sup>32</sup> Issuing a large number of licenses at once, particularly to cultivators, may result in an oversupply that can drive retail prices down.<sup>33</sup> An oversupply may also result in the diversion of legal cannabis products into the illicit market, which can have negative public relations consequences for regulators.<sup>34</sup> In addition to better market control,

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24. See *id.*; Keegan Gendron, *License Caps for State Cannabis Programs*, CANNABIS PUB. POL’Y CONSULTING 1 (2024), <https://www.cannabispublicpolicyconsulting.com/wp-content/uploads/2024/01/LicenseCapMemo.pdf> [https://perma.cc/D4C5-36YV].

25. Wang & Wilson, *supra* note 21, at 6.

26. *Id.*

27. *Id.*

28. *Id.*; Gendron, *supra* note 24, at 4–5.

29. For example, in 2023, Oklahoma implemented a temporary moratorium on processing and issuing new medical marijuana licenses that remains in effect until August 2026. OKLA. STAT. tit. 63, § 427.14a (2023).

30. See Gendron, *supra* note 24.

31. *See id.*

32. *Disrupting the Illicit Market: Data-Informed Recommendations to Eliminate Unlawful Cannabis Commerce*, COAL. FOR CANNABIS POL’Y, EDUC., & REGUL., at 21 (Sep. 18, 2023), <https://www.cpear.org/wp-content/uploads/2023/09/Disrupting-the-Illicit-Market-Data-Informed-Recommendations-to-Eliminate-Unlawful-Cannabis-Commerce.pdf> [https://perma.cc/3JN3-NY96] [hereinafter *Disrupting the Illicit Market*]; Gendron, *supra* note 24.

33. Gendron, *supra* note 24.

34. See OKLA. MED. MARIJUANA AUTH., STRATEGIC RESPONSE TO ADDRESS OKLAHOMA’S OVERSUPPLY OF REGULATED MEDICAL MARIJUANA 4 (2023), <https://oklahoma.gov/content/dam/ok/en/omma/content/publications/supply-and-demand-study/OMMAStrategicResponse.pdf> [https://perma.cc/N9W7-5RYT] (finding that the significant oversupply of cannabis in Oklahoma contributed to an expansion of the illicit market in the state); Gendron, *supra* note 24.

license caps may allow for ease of enforcement and better administrability of marijuana regulations.<sup>35</sup>

In theory, restricting the number of cannabis businesses that are permitted to operate within a regulated market may help create space for smaller cannabis businesses.<sup>36</sup> But legalization has brought with it the emergence of “Big Marijuana” through the prevalence of “multistate operators” (MSOs)—corporate cannabis behemoths that operate in multiple regulated markets and often across the supply chain with vertically integrated operations.<sup>37</sup> In an oversaturated market—such as one resulting from an uncapped licensing system—smaller businesses might be unable to compete with large corporations that have the resources to suffer longer periods of losses.<sup>38</sup>

Another related consideration is the value of cannabis business licenses in systems that allow for their sale and transfer. When a limited number of licenses are available, the value of a single license increases, possibly creating a safety net for smaller cannabis businesses in the event they seek to exit the market.<sup>39</sup> However, the reality is that the increased value of licenses in a capped system almost inevitably results in their sale for exorbitant prices, effectively forging a path for the only cannabis businesses who can afford the high sale price: MSOs and other large cannabis corporations.<sup>40</sup> Thus, although limiting the number of licenses available theoretically comports with the goals of cannabis social equity initiatives, as a practical matter it does not.

### B. Merit-Based Scoring

Many states employ a merit-based system in evaluating applications for cannabis business licenses.<sup>41</sup> In a merit-based licensing process, applicants are evaluated using the same criteria, and those with the highest composite scores

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35. *See Disrupting the Illicit Market*, *supra* note 32, at 13; Gendron, *supra* note 24.

36. *See* Rosalie Liccardo Pacula, *Small Cannabis Producers Have Bigger Problems Than State Taxes and Regulation*, USC LEONARD D. SCHAEFFER INST. FOR PUB. POL'Y & GOV'T SERV. (Jan. 30, 2023), <https://schaeffer.usc.edu/research/small-cannabis-producers-have-bigger-problems/> [https://perma.cc/4V4L-TL9M].

37. *See How Multistate Operators Are Changing the Game in Cannabis*, CANNA BUS. RES., <https://cannabusinessresources.com/multi-state-operators/> [https://perma.cc/2MPY-38WC] (last visited Sep. 18, 2025).

38. *See id.*

39. Gendron, *supra* note 24, at 2 (“assuming no restrictions on license sales or transfers”).

40. *See* Natasha Yee, *Investors, Cannabis Corporations Acquire More Social Equity Licenses as Deadline to Open Dispensaries Looms*, ARIZ. CTR. FOR INVESTIGATIVE REPORTING (Oct. 6, 2023), <https://azcir.org/news/2023/10/06/social-equity-dispensary-deadline-looms/> [https://perma.cc/3MPK-WB5Q]; Gendron, *supra* note 24, at 3.

41. Rebecca Beitsch, *Licensing Medical Marijuana Stirs Up Trouble for States*, PBS NEWS (Dec. 22, 2016, at 13:32 ET), <https://www.pbs.org/newshour/health/medical-marijuana-licensing-states> [https://perma.cc/88G5-UK7M]; Elissa Frank, *Application-Reader Bias: Assessing State Agency Bias in the Context of Cannabis Law*, 48 RUTGERS L. REC. 166, 178 (2021).

are granted a license.<sup>42</sup> The specific criteria used to score applications varies by state, but many require local support, detailed policies and procedures, proof of sufficient capital, and plans for inventory control, operations, and security.<sup>43</sup> Merit-based scoring is the most common approach to license distribution employed by states with legal cannabis programs—perhaps unsurprisingly, given that states have a legitimate interest in ensuring that marijuana businesses are well-run and are supplying safe products.<sup>44</sup> But these systems have also proven to be susceptible to legal challenges that draw out the licensing process, creating extended periods of loss that social equity applicants are often unable to endure.<sup>45</sup>

Alternatively, some states distribute marijuana business licenses using a lottery system.<sup>46</sup> All applications that meet the minimum application criteria are placed into a lottery, and winners are picked at random.<sup>47</sup> Some states, like Washington, use a qualified lottery system in which the qualifying criteria are more stringent than in a regular lottery.<sup>48</sup> Lottery systems are often adopted by states seeking to insulate themselves from a flood of litigation challenging licensing decisions, which has proven to be a major problem with merit-based licensing regimes.<sup>49</sup>

The most obvious problem with awarding marijuana business licenses based on sheer luck rather than merit is the risk that all of the available licenses are awarded to less (and even under-) qualified businesses.<sup>50</sup> Giving licenses to less qualified applicants can result in undue delay or market instability because of problems with production or quality control, which in turn can undermine the legitimacy of a state's legal cannabis program.<sup>51</sup> States that have utilized lottery systems have also encountered difficulties due to applicants flooding the

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42. Frank, *supra* note 41, at 178; Beitsch, *supra* note 41.

43. See Susan Gunelius, *Lottery or Competition—What's the Best Way to Grant Marijuana Licenses?*, CANNABIZ MEDIA (Nov. 16, 2018), <https://www.cannabiz.media/blog/lottery-or-competition-whats-the-best-way-to-grant-marijuana-licenses> [https://perma.cc/5KZU-ZTWD]; see also, e.g., *Medical Marijuana: Growers-Processors*, COMMONWEALTH OF PA., <https://www.pa.gov/agencies/health/programs/medical-marijuana/growers-processors> [https://perma.cc/8T7H-HITLE] (last visited Sep. 21, 2025) (detailing the requirements for Grower-Processor permit approval in Pennsylvania).

44. See Frank, *supra* note 42, at 178.

45. See Gunelius, *supra* note 43.

46. Beitsch, *supra* note 41.

47. See David M. Yaskewich, *State Licenses for Medical Marijuana Dispensaries: Neighborhood-Level Determinants of Applicant Quality in Missouri*, 6 J. CANNABIS RSCH. 1, 3 (2024).

48. See Beitsch, *supra* note 41; Roberta Kwok, *How to Design a Marijuana-License Lottery*, THE NEW YORKER (Mar. 22, 2016), <https://www.newyorker.com/tech/annals-of-technology/how-to-design-a-marijuana-license-lottery> [https://perma.cc/WT36-QZSL]. Qualified lottery systems have proven to be less protective from legal challenges to licensing decisions—the situation in Washington is instructive. See Beitsch, *supra* note 41.

49. See Beitsch, *supra* note 41.

50. See *id.*

51. See *id.*

lottery with multiple applications in order to win a majority of the available licenses.<sup>52</sup>

### C. Local Control

A number of state cannabis programs require that applicants for cannabis business licenses obtain the approval of local officials as a prerequisite for licensure.<sup>53</sup> Applicants in Massachusetts, for example, must secure local approval from the municipality in which they plan to operate, giving municipalities “an early and essential role in selecting license applicants.”<sup>54</sup> In combination with the intense competition and highly lucrative opportunities that characterize the cannabis industry, particularly in limited-license markets, placing immense licensing authority in the hands of local or state political officials favors well-connected applicants who are capable of making lofty political contributions.<sup>55</sup>

The empowerment of local and state politicians in the cannabis licensing process has prompted numerous corruption and bribery cases. In the town of Fall River, Massachusetts, Mayor Jasiel Correia was indicted and convicted on federal extortion charges after he accepted hundreds of thousands of dollars from individuals and companies seeking cannabis business licenses in exchange for letters signifying local approval.<sup>56</sup> In California, a majority of localities have elected to bar legal cannabis businesses, creating an intensely competitive environment for businesses seeking to operate in the few municipalities that will allow them to.<sup>57</sup> Unsurprisingly, federal prosecutors charged two city officials in the California border city of Calexico with corruption for “solicit[ing] bribes from an undercover FBI agent in exchange for fast-tracking a marijuana permit application.”<sup>58</sup> And not long thereafter, federal agents arrested a Los Angeles City Council Member on federal corruption charges for soliciting political donations, dubbed “consulting fees,” in exchange for local marijuana permits.<sup>59</sup> The prevalence of bribery and corruption in cannabis

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52. See, e.g., Kwok, *supra* note 48; D.C. Fraser, *Pot Shops Picked: Province Defends Permit Process for Saskatchewan’s Marijuana Dispensaries*, REGINA LEADER-POST (June 1, 2018), <https://leaderpost.com/news/saskatchewan/pot-shops-picked-here-are-the-people-who-will-be-running-saskatchewans-marijuana-dispensaries> [https://perma.cc/9L4D-37UL].

53. Mona Zhang, *How State Marijuana Legalization Became a Boon for Corruption*, POLITICO (Dec. 27, 2020, at 06:50 ET), <https://www.politico.com/news/2020/12/27/marijuana-legalization-corruption-450529> [https://perma.cc/2N35-K68H].

54. MASS. CANNABIS CONTROL COMM’N, GUIDANCE ON HOST COMMUNITY AGREEMENTS 4 (2024), <https://masscannabiscontrol.com/wp-content/uploads/2022/01/Guidance-on-Host-Community-Agreements.pdf> [https://perma.cc/9FM8-LT8A].

55. See Zhang, *supra* note 53.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

licensing forms another barrier to entry for social equity applicants, who often hardly have sufficient funds to qualify for a cannabis business license, let alone to pay hundred-thousand-dollar bribes and political contributions to actually receive one.

#### D. Licensing Litigation

Legal challenges brought by applicants denied a license are rarely successful, but they are abundant in states that impose license caps and employ merit-based application scoring systems.<sup>60</sup> Typically, challenges to licensing decisions are rooted in state administrative procedure statutes and state marijuana statutes.<sup>61</sup> In 2021, Alabama became one of the first states in the Deep South to legalize medical marijuana.<sup>62</sup> But as of 2025, despite issuing licenses (and revoking them) a number of times, the state's legal cannabis program remains tied up in litigation.<sup>63</sup> Alabama opted for a capped, merit-based licensing system with a particularly rigorous application process.<sup>64</sup> The state's medical cannabis statute provides that the AMCC "may" consider the criteria specified in Alabama's underlying medical cannabis statute, whereas AMCC regulations mandate that they "shall" be used to evaluate license applications.<sup>65</sup> In one of many lawsuits filed against the AMCC, a denied applicant alleged that the AMCC failed to adhere to the statutorily prescribed scoring criteria and that it violated the Alabama Administrative Procedure Act by failing to provide notice as to why particular licenses were denied; failing to provide a grievance process for unsuccessful applicants; and failing to adopt rules governing facility inspection and certification.<sup>66</sup> Arkansas encountered similar problems when it began issuing legal cannabis licenses. Abraham Carpenter, a farmer and cannabis entrepreneur from Grady, Arkansas, actually

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60. See Jean Smith-Gonnell & Zie Alere, *Awarding Medical Cannabis Licenses: Takeaways From Recent Alabama Lawsuit*, TROUTMAN PEPPER LOCKE: REGULATORY OVERSIGHT (Apr. 30, 2024), <https://www.regulatoryoversight.com/2024/04/awarding-medical-cannabis-licenses-takeaways-from-recent-alabama-lawsuit/> [https://perma.cc/75XJ-9TUV]; Beitsch, *supra* note 41.

61. Smith-Gonnell & Alere, *supra* note 60.

62. ALA. CODE §§ 20-2A-6 to 7, 22 (2021); ALA. ADMIN. CODE. R. 538-X-2-01 to .03, .08 (2021).

63. Mona Zhang, *A Legal Morass Is Thwarting Alabama's Medical Marijuana Program*, POLITICO (Oct. 26, 2023, at 11:40 ET), <https://www.politico.com/news/2023/10/26/alabama-medical-marijuana-program-00123305> [https://perma.cc/6BBX-KLCC]; Mike Cason, *Alabama Medical Cannabis Commission Takes Big Step Toward Getting Products to Patients, Lawyer Says*, AL.COM (June 21, 2025, at 21:49 CT), <https://www.al.com/politics/2025/06/alabama-medical-cannabis-commission-takes-big-step-toward-getting-products-to-patients-lawyer-says.html> [https://perma.cc/KT4N-LY9D].

64. Smith-Gonnell & Alere, *supra* note 60; Zhang, *supra* note 63.

65. See ALA. CODE § 20-2A-56(c) (2021); ALA. ADMIN. CODE. R. 538-X-3-11(3) (2022).

66. Complaint at 6-7, Ala. Always, LLC v. Ala. Med. Cannabis Comm'n, No. 03-CV-2024-900524 (Ala. Cir. Ct. Apr. 15, 2025); Smith-Gonnell & Alere, *supra* note 60. The lawsuit referenced above was consolidated along with several similar actions commenced against the AMCC and ultimately dismissed for lack of subject-matter jurisdiction. *Ex parte* Ala. Med. Cannabis Comm'n, 406 So. 3d 121, 125, 129 (Ala. Civ. App. 2024).

prevailed in court on an equal protection claim challenging the denial of his license.<sup>67</sup> His license application was disqualified based on minor inconsistencies in his application, which the commission described as a “scriveners’ error.”<sup>68</sup> But the same error was present in another application—and that applicant was awarded a license.<sup>69</sup>

Allegations that licensing decisions are made arbitrarily or in a manner inconsistent with criteria prescribed by statute or administrative rules are commonplace in states that employ a merit-based licensing system.<sup>70</sup> The sometimes years-long waiting period that results from licensing litigation presents yet another barrier to entry for minority applicants, who often lack the resources needed to operate at a loss for long periods of time or to fund litigation in the event they are unfairly denied a license themselves.

## II. SOCIAL EQUITY INITIATIVES

Social equity has been a major selling point for marijuana legalization.<sup>71</sup> The popular demand for social equity measures has increased in the wake of Black Lives Matter and related social movements that have emerged in response to highly-publicized incidents of police brutality towards minorities.<sup>72</sup> Most social equity programs prioritize improving industry access for minority entrepreneurs, the expungement of past drug-related criminal convictions, and the reinvestment of tax revenue generated by legal sales into communities disproportionately impacted by the War on Drugs.<sup>73</sup> But in many states, achieving social equity in the cannabis industry remains a “pipe dream.”<sup>74</sup> Existing approaches to social equity fail to account for the complexity of disadvantages faced by minority communities, with the result being “policies

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67. Ark. Dep’t of Fin. and Admin. v. Carpenter Farms Med. Grp., LLC, 601 S.W.3d 111, 121–22 (Ark. 2020) (affirming the denial of a motion to dismiss because “Carpenter Farms has at least made a plausible case that there is state action (by the Commission) that differentiates among individuals (the 100 percent minority-owned applicants and everyone else)”). Carpenter Farms received their license in June 2020, one month after the decision. Griffin Coop, *Carpenter Farms Latest Medical Marijuana Cultivator to Reach Marketplace*, ARK. TIMES (September 30, 2022, at 10:12 CT), <https://arktimes.com/news/cannabiz/2022/09/30/carpenter-farms-latest-medical-marijuana-cultivator-to-reach-marketplace> [https://perma.cc/2LSV-N786].

68. Zhang, *supra* note 53.

69. *Id.*

70. See Smith-Gonnell & Alere, *supra* note 60; Gunelius, *supra* note 43; Beitsch, *supra* note 41.

71. Thomas Peipert, *Social Equity in Marijuana Industry Still Largely a Pipe Dream*, THE DENVER POST (April 30, 2021, 08:29 MT) <https://www.denverpost.com/2021/04/30/marijuana-industry-social-equity/> [https://perma.cc/38DX-RS6D].

72. Garriott & Jose Garcia-Fuerte, *supra* note 1, at 140.

73. Magaly Ordoñez, *Are Cannabis Social Equity Programs Truly Equitable?*, GENDER POL’Y REP. (Feb. 13, 2024), <https://genderpolicyreport.umn.edu/are-cannabis-social-equity-programs-truly-equitable/> [https://perma.cc/7PK6-MPUN].

74. Peipert, *supra* note 71.

crafted more for narrative resonance than effectiveness.”<sup>75</sup> The following section discusses several popular social equity measures implemented by states with legal cannabis programs.

#### *A. Licensing Preferences*

A number of states have attempted to promote diversity in the legal cannabis industry by carving out a distinct category of licenses made available only to applicants who meet certain social equity criteria.<sup>76</sup> These licenses can promote minority participation by reducing or altogether eliminating the costs associated with application and licensing fees collected by the state (or other licensing authorities).<sup>77</sup> Other states have adopted policies that give preference to social equity applicants in either scoring of the application or by creating a system providing for expedited review.<sup>78</sup> “Though definitions vary by state, generally these include applicants who are from communities that have been disproportionately impacted by cannabis prohibition, women-owned businesses, minority-owned businesses, distressed farmers, and service-disabled veterans.”<sup>79</sup> Providing individuals who have suffered some concrete injury related to the disproportionate enforcement of drug laws with an opportunity to profit from cannabis legalization has the appearance of an appropriate social equity intervention. But license preferences provide too narrow a solution to a highly complex problem. A license is merely a “ticket for admission”—without additional support, most social equity applicants do not have the resources necessary to achieve success in the legal cannabis industry.<sup>80</sup>

In states that provide licensing preference to social equity applicants, a concerning trend underscores the importance of providing support to social equity applicants throughout the licensing process. Predatory investors and cannabis consulting companies have sought out individuals who meet the social equity licensing criteria, attempting to entice them with contracts disguised as “business opportunities” that severely limit their control of the business and their share of the profits.<sup>81</sup> In Missouri, a significant number of licenses

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75. Garrett I. Haldier, *We(ed) the People of Cannabis, in Order to Form a More Equitable Industry: A Theory for Imagining New Social Equity Approaches to Cannabis Regulation*, 19 U. MASS. L. REV. 225, 225 (2024).

76. Alex Malyshev & Sarah Ganley, *The Challenges of Getting Social Equity Right in the State-Legal Cannabis Industry*, REUTERS (July 22, 2021, 14:48 CT), <https://www.reuters.com/legal/litigation/challenges-getting-social-equity-right-state-legal-cannabis-industry-2021-07-22/> [https://perma.cc/U9R3-UP3A].

77. *Id.*; see, e.g., COLO. REV. STAT. § 44-10-602(11) (2023).

78. See Malyshev & Ganley, *supra* note 76; see also, e.g., *Jensen v. Md. Cannabis Admin.*, No. 24-1216, 2025 WL 2503132, at \*2 (4th Cir. Sep. 2, 2025) (denying plaintiff’s challenge to Maryland’s system of giving preference to social equity applicants).

79. Malyshev & Ganley, *supra* note 76.

80. *See id.*

81. Rebecca Rivas, *Cannabis Regulators Concerned About Predatory Practices in Missouri’s Social Equity Program*, MO. INDEP. (Oct. 29, 2024, at 05:55 CT), <https://missouriindependent.com/2024/10/29/cannabis-missouri-predatory-social-equity/> [https://perma.cc/CB3X-THBA].

awarded as part of the state's social equity (or "microbusiness") program were recently revoked due to their connection to predatory groups or individuals.<sup>82</sup> Many of the revoked licenses were tied to a particular investor who offered to help social equity applicants navigate the application process in exchange for 49% of their potential company's profits.<sup>83</sup> This practice is not unique to Missouri. In Arizona, twenty-four out of twenty-six social equity licenses "are now fully controlled by companies or people who do not" meet the social equity criteria.<sup>84</sup> License preferences as a social equity measure have proven to be more trouble than they're worth: in many states, social equity licensees are exploited by predatory investors who leave them worse off than they were before they received a cannabis license.

### *B. Expungement of Prior Cannabis Convictions*

Many states exclude individuals with prior felony drug convictions from licensure in the legal cannabis industry.<sup>85</sup> Recognizing the cruel irony of commodifying legal cannabis and excluding those who suffered from its criminalization from sharing in the profits, some states have enacted legislation providing for or facilitating the process of review and expungement of prior cannabis convictions as a social equity measure.<sup>86</sup> This approach goes to the heart of the underlying basis for social equity initiatives in the cannabis industry by addressing an immediate consequence of the War on Drugs and providing an opportunity for those harmed by the discriminatory enforcement of drug laws to participate—and ideally benefit from—legalization. Although expungement is an important step in providing redress to disproportionately impacted communities, alone it does not rectify the deprivation of economic, educational, and social opportunities that result from a felony conviction.<sup>87</sup> Limiting expungement to cannabis convictions also excludes a large portion of those harmed by the discriminatory enforcement of drug laws regardless of the severity of the crime or its temporal distance.<sup>88</sup>

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82. *Id.*

83. *Id.*

84. *Id.*

85. Y. Tony Yang, Carla J. Berg & Scott Buris, *Cannabis Equity Initiatives: Progress, Problems, and Potentials*, 113 AM. J. PUB. HEALTH 487, 487 (2023).

86. *See id.*

87. *See id.*

88. *See id.*

### C. Reinvestment in Disproportionately Impacted Communities

Some states have opted to reinvest tax revenue generated by legal cannabis sales in disadvantaged communities as a social equity measure, typically in the form of direct grants dedicated to a particular purpose.<sup>89</sup> For example, New York reinvests 40% of its revenue (after regulatory and administrative expenses) into education, 40% back into communities, and 20% to drug treatment and education; Oregon invests most of its revenue into its Drug Addiction Treatment and Recovery Services Fund; California funds community reinvestment grants, childcare services, environmental programs, and programs for those harmed by punitive drug laws; and Illinois uses 20% to support mental health services and 25% to support local organizations in developing programs that benefit disadvantaged communities.<sup>90</sup> Reinvestment programs are particularly promising in that they may better account for the breadth of damage inflicted on certain communities as a consequence of the War on Drugs. One hypothetical analysis found “that earmarking a quarter of cannabis tax revenue could improve structural determinants of mental health among Black and Hispanic communities.”<sup>91</sup>

## III. LOOKING FORWARD: A STRUCTURAL APPROACH TO SOCIAL EQUITY

The following section envisions a more comprehensive approach to social equity in the cannabis industry, which includes changes to federal marijuana policy (up to and including full federal legalization); the adoption of licensing regimes that reduce both corruption and opportunities for litigation challenging licensing decisions; and modifications to existing social equity measures that address some of the shortcomings that have become apparent as the industry continues to grow.

### A. Federal Legalization

Under federal law, the sale and possession of marijuana remains illegal for all purposes.<sup>92</sup> However, a substantial number of states have now legalized

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89. *See id.* at 488.

90. *Cannabis Tax Revenue in States that Regulate Cannabis for Adult Use*, MARIJUANA POL’Y PROJECT, <https://www.mpp.org/issues/legalization/cannabis-tax-revenue-states-regulate-cannabis-adult-use/> [<https://perma.cc/Q66Z-9P9Z>] (last visited Sep. 5, 2025).

91. Yang, Berg & Buris, *supra* note 85, at 488; Jonathan Purtle, Kylie Brinson & Nicole A. Stadnick, *Earmarking Excise Taxes on Recreational Cannabis for Investments in Mental Health: An Underused Financing Strategy*, 3 JAMA HEALTH F. 1, 4 (2022), <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2790754> [<https://perma.cc/PA7X-H7QF>].

92. Controlled Substances Act, 21 U.S.C. §§ 812(c), Schedule I(c)(10), 841, 844 (2000).

cannabis for medical use, recreational adult use, or both.<sup>93</sup> The resultant conflict between federal and state law is clear: in states that permit cannabis use, state law legalizes what federal law criminalizes. The Supreme Court formally addressed the issue in *Gonzales v. Raich*, holding that Congress's Commerce Clause authority includes the power to criminalize the local cultivation and use of marijuana, even where it is authorized by state law.<sup>94</sup> In light of this power, the federal government is uniquely poised to facilitate cannabis social equity goals. And given the federal government's role in sanctioning War on Drugs-era policies (and the resulting far-reaching damage to communities of color), it is also uniquely obligated to do so. Ending federal cannabis prohibition entirely is unlikely, but the federal government can take actions short of ending prohibition that would help facilitate a more equitable cannabis industry by reducing or eliminating some of the most prominent barriers to entry for minority cannabis entrepreneurs.

The federal government has signaled that it intends to defer to the states on the issue of marijuana.<sup>95</sup> In 2013, the United States Department of Justice (DOJ) issued a memorandum known as the Cole Memo formally announcing the prosecutorial deprioritization of marijuana charges other than those considered "particularly important" to the federal government.<sup>96</sup> Although the Cole Memo was rescinded by then-Attorney General Jeff Sessions in 2018,<sup>97</sup> practically speaking, its imperative remains at least partially in effect thanks to an appropriations rider known as the Rohrabacher–Farr Amendment.<sup>98</sup> This Amendment prevents the DOJ from using federal funds to prosecute those who use cannabis in compliance with a state's medical marijuana laws and has been consistently included in federal omnibus spending bills since 2014.<sup>99</sup> To be sure, the Rohrabacher–Farr Amendment concerns only Congress's budgetary priorities rather than the actual federal legality of cannabis, and it is a temporary solution in that it requires renewal by Congress on a yearly basis.<sup>100</sup> Nonetheless, the Amendment is "one of the cornerstones of the modern

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93. Kate Bryan, *Cannabis Overview*, NAT'L CONF. OF STATE LEGISLATURES (June 20, 2024), <https://www.ncsl.org/civil-and-criminal-justice/cannabis-overview> [https://perma.cc/5PWG-A7UE].

94. *Gonzales v. Raich*, 545 U.S. 1, 5, 32–33 (2005).

95. Tess A. Chaffee, *We[ed] the People: How a Broader Interpretation of the Rohrabacher–Farr Amendment Effectuates the Changing Social Policy Surrounding Medical Marijuana*, 91 U. CIN. L. REV. 856, 886 (2023).

96. Memorandum from James M. Cole, Deputy Att'y Gen., U.S. Dep't of Just., on Guidance Regarding Marijuana Enforcement to All United States Attorneys (Aug. 29, 2013).

97. Memorandum from Jefferson B. Sessions, III, Att'y Gen., on Marijuana Enforcement to All United States Attorneys (Jan. 4, 2018).

98. Consolidated Appropriations Act, Pub. L. No. 118–42, § 531, 138 Stat. 25, 174 (2024); Chaffee, *supra* note 95, at 857.

99. Consolidated Appropriations Act § 531; Chaffee, *supra* note 95, at 857.

100. Jacob Sollum, *The Federal Ban on Medical Marijuana Was Not Lifted*, REASON (Jan. 4, 2016, 00:01 PT) <https://reason.com/2016/01/04/the-federal-ban-on-medical-marijuana-was/> [https://perma.cc/8LY8-ULAS].

marijuana industry” because it allows medical marijuana operators to conduct business with less fear of federal prosecution.<sup>101</sup>

The way courts interpret the Rohrabacher–Farr Amendment may have social equity implications.<sup>102</sup> Circuits are split on the issue of whether “strict compliance” or “substantial compliance” with a state’s medical marijuana laws is required to trigger protection under the Amendment.<sup>103</sup> By adopting a substantial compliance approach, rather than the strict compliance standard articulated by the Ninth Circuit in *United States v. McIntosh*,<sup>104</sup> courts may help minimize the deterrent effect of the Controlled Substance Act, which in turn “protect[s] those who are engaged in good faith conduct . . . .”<sup>105</sup> Construing the Rohrabacher–Farr Amendment in this manner could promote more equitable access to the cannabis industry by mitigating one of the largest—and often insurmountable—barriers to entry for minority cannabis entrepreneurs: capital acquisition.<sup>106</sup> This is because lowering the threshold of compliance necessary to trigger protection under the Amendment could potentially embolden banks and other financial institutions to provide services to substantially compliant marijuana businesses, which in turn could make small-business loans accessible to social equity applicants who would otherwise be barred from the industry due to financial barriers.

There are also other avenues through which the federal government may encourage the provision of banking services to legal cannabis operators. Legislation providing financial institutions with protection from federal prosecution for the provision of such services would be ideal, and that is precisely what a piece of legislation first proposed in 2021—the SAFE Banking Act—aims to do.<sup>107</sup>

Finally, Section 280E of the IRS tax code prohibits cannabis businesses from taking deductions for business expenses because marijuana is still listed as a Schedule I drug under the Controlled Substances Act.<sup>108</sup> Because they are unable to write off deductible business expenses like rent and marketing costs, cannabis businesses can end up paying more than double the taxes paid by a

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101. Whitt Steineker & Mason Kruse, *Pair of First Circuit Cases Give Court Opportunities for Recognizing Scope of Federal Authority to Regulate Marijuana Businesses*, BRADLEY: BUDDING TRENDS (Nov. 18, 2024), <https://www.buddingtrendsblog.com/2024/11/pair-of-first-circuit-cases-give-court-opportunities-for-recognizing-scope-of-federal-authority-to-regulate-marijuana-businesses/> [https://perma.cc/YP2C-2N72].

102. See Chaffee, *supra* note 95, at 885.

103. *Id.* at 857.

104. *United States v. McIntosh*, 833 F.3d 1163, 1178 (2016) (holding that the DOJ is prohibited from spending Appropriations Act funds to prosecute marijuana businesses only when those businesses are in strict compliance with the marijuana laws of their states).

105. Chaffee, *supra* note 95, at 885.

106. See *id.* at 885–86.

107. J. Hunter Robinson & Whitt Steineker, *Cannabis Banking: Will the SAFE Banking Act Finally Pass?*, BRADLEY: BUDDING TRENDS (June 21, 2022), <https://www.buddingtrendsblog.com/2022/06/cannabis-banking-will-the-safe-banking-act-finally-pass/> [https://perma.cc/A4BZ-Q2GH].

108. I.R.C. § 280E.

traditional business.<sup>109</sup> One Colorado cannabis business owner described 280E as “*the biggest problem with the industry by far . . .*”<sup>110</sup> Amending this section of the code to allow legal cannabis businesses to benefit from tax deductions enjoyed by businesses in other industries could also lessen post-licensure financial barriers for social equity operators.

### B. *Fairness and Transparency in Licensing*

The role that licensing structures can play in hampering the efficacy of social equity initiatives is often overlooked, but social equity is inextricably tied to the broader regulatory framework that governs legal marijuana markets. Rather than providing narrow pathways to entry for disadvantaged cannabis entrepreneurs, states should instead focus on designing licensing regimes that ensure fairness and transparency throughout the licensing process. Distributing licenses using a randomized lottery system in lieu of merit-based application scoring may reduce opportunities for corruption while simultaneously limiting the bases on which litigation challenging license denials may be brought.<sup>111</sup> And removing the approval of state or local political officials as a condition for licensure in states that require it may also alleviate the risk of corruption<sup>112</sup> and level the playing field for applicants who lack the financial and social capital necessary for success in a politicized process.

In an effort to curb unfair arrangements between social equity applicants and predatory investors, some states have implemented safeguards by providing for administrative review of social equity license applications.<sup>113</sup> New York, for example, now requires that social equity applicants retain a controlling majority of the marijuana business operated under their license in terms of both financial and legal control and limits the number of licenses in which any person may possess a “direct or indirect financial or controlling interest.”<sup>114</sup> Ideally, such procedural safeguards would be implemented along with interventions that address financial barriers to entry for social equity applicants. While an uptick in the exploitation of social equity applicants through deceptive business arrangements underscores the need to protect social equity applicants throughout the licensing process, it is also true that many social equity licensees do not have the resources necessary to survive in the highly regulated and competitive cannabis industry without the capital a well-financed partner brings

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109. See Good Tree Capital, *supra* note 19.

110. Mona Zhang, *Colorado’s Weed Market Is Coming Down Hard and It’s Making Other States Nervous*, POLITICO (June 9, 2024, at 07:00 ET), <https://www.politico.com/news/magazine/2024/06/09/colorado-weed-market-00157118> [https://perma.cc/B8CP-D7XC].

111. See Beitsch, *supra* note 41; Zhang, *supra* note 53.

112. See Zhang, *supra* note 53.

113. Memorandum from the Cannabis Control Comm’n on Fraud Considerations to Social Equity Program Participants and Certified Economic Empowerment Recipients (Nov. 14, 2019).

114. See Malyshev & Ganley, *supra* note 76 (quoting N.Y. CANNABIS LAW § 72(2) (McKinney 2025)).

to the table.<sup>115</sup> Given the dual nature of the barriers to entry faced by social equity applicants—both experiential and financial—comprehensive support is essential.

### C. Comprehensive Social Equity Measures

While recent reports have indicated that minority ownership in the cannabis industry is trending upwards,<sup>116</sup> using ownership as a metric for the efficacy of social equity programs is somewhat problematic depending on how the goal of such programs is conceptualized. If the goal of social equity programs is to encourage minority participation in the cannabis industry, then minority ownership trending up would suggest that existing social programs are working. However, considering the breadth of harm attributable to the disparate enforcement of War on Drugs-era drug policies, a more appropriate measure is the extent to which cannabis legalization may be leveraged to benefit disadvantaged communities as a whole.<sup>117</sup>

Minor modifications to existing social equity initiatives could help them better serve this goal. First, states should prioritize the reinvestment of tax revenue generated by legal cannabis sales directly into such communities. Similarly, when structured properly, special loan programs that provide essential financial support to social equity licensees are among the more promising social equity measures.<sup>118</sup> Colorado's Cannabis Business Loan Program, for example, provides the post-licensure support that many social equity licensees desperately need with state-funded loans ranging from \$50,000 to \$150,000.<sup>119</sup>

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115. See *id.*

116. Minority representation in the cannabis industry can be difficult to understand. Reliable demographic data is hard to obtain because only a few states monitor the race or ethnicity of those engaged with their legal cannabis programs. *MJBizDaily* publishes an annual report detailing the state of social equity in the cannabis industry that is based on data collected from two sources: data gathered via an anonymous, industry-wide survey of cannabis business owners and professionals; and data collected by state cannabis programs in Colorado, Illinois, Massachusetts, Nevada, and New Mexico. In its 2023 Diversity, Equity, and Inclusion report, *MJBizDaily* found that “[n]onwhite ownership of cannabis businesses this year grew to almost 19%, up from 15% in 2022.” Long, *supra* note 5.

117. Garrett I. Halydier, *We(ed) Hold These Truths to Be Self Evident: All Things Cannabis Are Inequitable*, 19 U. MASS. L. REV. 39, 101–08 (2024).

118. In some states, however, private equity influence has infiltrated social equity loan programs to the detriment of social equity licensees. In 2023, New York Governor Kathy Hochul announced the creation of a special social equity fund to finance cannabis businesses for social equity entrepreneurs. Rosalind Adams, *How Private Equity Trumped Social Equity in State Cannabis Deal*, THE CITY (Apr. 24, 2024, at 05:01 ET), <https://www.thecity.nyc/2024/04/24/cannabis-fund-social-equity-dispensary/> [https://perma.cc/6UQH-VKWy]. The state partnered with Chicago Atlantic Group, a private equity fund that agreed to loan the fund \$50 million at a 15% interest rate. *Id.* The deal is structured in a manner that places all of the risk on licensees and the state to the substantial benefit of Chicago Atlantic, with some lawyers and cannabis consultants “liken[ing] the agreement to the junk bonds of the 1980s or distressed debt lending.” *Id.*

119. *Cannabis Business Loan: Program Summary*, COLO. OFF. OF ECON. DEV. & INT'L TRADE, <https://oedit.colorado.gov/programs-and-funding/cannabis-business-loan> [https://perma.cc/5QVS-5QSQ] (last visited Dec. 27, 2024).

The interest rates are capped at 6.25% and interest payments are reinvested to support future borrowers.<sup>120</sup> Separately, the extension of pardons and expungements to all simple possession crimes, rather than those involving cannabis specifically, could also help increase social equity.<sup>121</sup>

## CONCLUSION

Providing meaningful redress for the harm inflicted on minority communities as a result of the War on Drugs requires acknowledging that “[i]ncarceration is not an isolated consequence.”<sup>122</sup> Financial barriers to entry are perhaps the most significant obstacles faced by minority cannabis entrepreneurs, and addressing the prohibitive effect of such barriers throughout the licensing process and beyond is paramount. Existing social equity initiatives, though commendable, are misguided, and they are often thwarted by features of the broader licensing regime in which they are lodged. Providing redress for communities harmed by War on Drugs-era policies should not be limited to those community members who participate in the industry directly as licensees. Accordingly, the provision of pre- and post-licensure support, the adoption of licensing regimes that reduce the likelihood of litigation challenging licensing decisions and opportunities for corruption, and social equity measures that benefit disproportionately impacted communities as a whole should be prioritized in the quest to create a more equitable legal cannabis industry.

*Sara M. Philp\**

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120. *Id.*

121. *See* Yang, Berg & Burris, *supra* note 85, at 487.

122. Halydier, *supra* note 117, at 51.

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