GOING FOR THE GREEN: SOCIAL EQUITY IN THE RECREATIONAL CANNABIS INDUSTRY

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I. INTRODUCTION

In the Summer of 2020, Americans took to the streets to protest the killing of George Floyd and police brutality.\(^1\) In response to these protests, the Colorado legislature passed House Bill 1424.\(^2\) House Bill 1424 creates social equity cannabis\(^3\) licenses for individuals directly impacted by the war on drugs.\(^4\) Specifically, social equity applicants receive reduced application and licensing fees, mentorship, and grants.\(^5\)

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\(^3\) In this article, I use the term “cannabis” as much as possible, both because of the racial origins of “marijuana” in prohibition campaigns and the more positive connotation “cannabis” has compared to marijuana. Konstantia Koutouki & Katherine Lofts, Cannabis, Reconciliation, and the Rights of Indigenous Peoples: Prospects and Challenges for Cannabis Legalization in Canada, 56 ALBERTA L. REV. 709, 710 n.3 (2019); Francis J. Mootz III, Ethical Cannabis Lawyering in California, 9 ST. MARY’S J. LEGAL MAL. & ETHICS 6, n.1 (2018); Alex Halperin, Marijuana: Is It Time to Stop Using a Word with Racist Roots?, THE GUARDIAN (Jan. 29, 2018), https://www.theguardian.com/society/2018/jan/29/marijuana-name-cannabis-racism. Where context requires, I use the terms “marijuana” or “marihuana” and they should be considered synonymous with “cannabis.”

\(^4\) H.B. 20-1424, 72nd Gen. Assemb., 2020 Reg. Sess. (Colo. 2020). Under House Bill 1424, a social equity applicant must demonstrate at least one the following; (1) Reside for at least fifteen years between the years 1980 and 2010 in an opportunity zone or designated as a disparately impacted by the war on drugs; (2) the applicant or the applicant’s parent, legal guardian, sibling, spouse, child, or minor in their guardianship was arrested, convicted, or subjected to civil asset forfeiture for a cannabis offense; or (3) the applicant’s household income does not exceed an amount determined by a state licensing authority. House Bill 20-1424. In addition, the social equity licensee or collectively one or more social equity licensees must hold at least fifty-one percent of the beneficial ownership of the cannabis license. See id.

\(^5\) Id.
Colorado Governor Jared Polis formally signed House Bill 1424 into law on June 29, 2020 and will go into effect on January 1, 2021. Notably, Governor Polis signed House Bill 1424 outside Denver’s Simply Pure Dispensary, owned and operated by Wanda James. James is believed to be America’s first black cannabis dispensary owner.

James is just one of many entrepreneurs participating in America’s “green rush.” As of 2020, 11 states have legalized recreational cannabis. Approximately 55 million Americans use cannabis regularly.

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Cannabis’ increased societal acceptance promises economic gain. In 2020, the cannabis industry expects growth of 700%.\(^\text{12}\) By 2026, the cannabis industry is estimated to be worth $50 billion.\(^\text{13}\)

Unfortunately, despite cannabis’ economic potential, white entrepreneurs dominate the cannabis industry – approximately 81% of cannabis business owners and founders are white.\(^\text{14}\) This vast disparity is unjust as the war on drugs disparately impacted minorities.\(^\text{15}\) Minorities entering the cannabis industry cite various concerns, such as high startup costs and prior drug convictions, that would bar them from receiving state cannabis licenses.\(^\text{16}\) In response, states have implemented various social equity programs to encourage minority participation in the burgeoning recreational cannabis industry.\(^\text{17}\) While these programs have noble intentions, multiple courts have struck down some of these programs as

\(^{12}\) Kristen Clarke, Cannabis industry shouldn't expand until we fix marijuana's racial inequities, injustices, USA TODAY (Feb. 22, 2019), https://www.usatoday.com/story/opinion/2019/02/22/marijuana-legalization-exposes-cannabis-industry-racial-injustice-incarceration-minorities-column/2836449002/.

\(^{13}\) Id.


\(^{15}\) See United States v. Willis, 967 F.2d 1220, 1226 (8th Cir. 1992) (Heaney, J., concurring) ([Disparate treatment between crack raids by race] makes the war on drugs "look like a war on minorities."); Juan R. Torruella, Deja Vu: A Federal Judge Revisits the War on Drugs, or Life in a Balloon, 20 B.U. PUB. INT. L. J. 167, 193 (2011) (“One of the most problematic, even if probably unintended, consequences of the "War on Drugs" has been its disparate impact on minorities in this country.”); Benjamin D. Steiner & Victor Argothy, White Addiction: Racial Inequality, Racial Ideology, and the War on Drugs, 10 TEMP. POL. & CIV. RTS. L. REV. 443, 443-44 (2001).

\(^{16}\) Charles, supra note 11.

\(^{17}\) Id.
being impermissible racial classifications.\textsuperscript{18} In addition, some of these programs do not grant many minorities licenses.\textsuperscript{19}

This article analyzes the various state social equity programs for minorities in the recreational cannabis industry. Part II examines the history of the war on drugs and its disparate impact on minorities. Part III depicts the various state social equity programs concerning the recreational cannabis industry and considers their Constitutionality. Part IV proposes a state statute that passes Constitutional scrutiny and utilizes the best parts of the various state social equity systems. The proposed statute encourages minority participation in the cannabis industry by offering inexpensive cannabis licenses, giving preference to those directly impacted by the war on drugs, offering mentorship to applicants, and by providing grants to assist in the operation of their cannabis business.

II. THE DRUGS OF WAR

America’s history is implanted with cannabis. This section explores American history showcasing cannabis’s transition from legality to illegality. In early American history, cannabis was used for both medicinal and industrial purposes.\textsuperscript{20} This acceptance changed in the early twentieth

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\textsuperscript{18} Pure Ohio Wellness, LLC. v. State of Ohio Brd. Of Pharmacy, CVH 20190197, (Ct. Com. Pl. Nov. 04, 2019), https://clerk.co.madison.oh.us/cgi bin/imageret.cgi?check=CVCP332620163D9B6520128900&imgext=djvu; Pharmacann Ohio, LLC v. Ohio Dept. Commerce, 17 CV 10962, (C.P. Franklin Cty., Ohio Nov. 15, 2018), https://fccdcjfs.co.franklin.oh.us/CaseInformationOnline/imageLinkProcessor.pdf?coords=SAYLWWJxXPq43vQ19hLajJCAOUumWIV0Mnjc33iYYRaALImnVZ%2F%2FqF7RjYFUl7bnteVhgs7AsYTuePMj o%2FaLeWLTpnzFlRFOtIKEUYJ%2Fpg3jgyoijMvtyvMR2ecvKBngPw5Zoq6i5nhHVA0n5frPdrqDTKGOUlQe4OMZ1X7j60%3D.


century over xenophobic and racist sentiments. In the mid-twentieth century, the war on drugs caused destruction in minority communities.

a. Peace Before War

For much of American history, cannabis was not illegal. Some scholars believe cannabis plants first came to North America from Asia over 10,000 years ago. In 1524, Italian explorer Giovanni da Verrazzano discovered cannabis growing wild in present-day Virginia. Some of the earliest uses of American cannabis use date to the Jamestown colony where colonists were ordered to plant hemp, an industrial variant of cannabis. Other colonies, like the Massachusetts Bay, Connecticut, and the Chesapeake Bay colonies, had similar orders requiring hemp cultivation. Hemp production continued throughout the era and both Thomas Jefferson and George Washington cultivated hemp. The 1850 United States census noted 8327 hemp farms of at least 2000 acres each existed within the United States showcasing hemp’s common use and cultivation.

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22 Id. at 900.
26See Dwyer, supra note 20, at 1156, n.102.
27 Id.
29 See Dwyer, supra note 20, at 1157, n.104.
During that same time period, cannabis use expanded beyond industrial uses. American medical practitioners recognized cannabis’s medicinal value.\textsuperscript{30} Cannabis was used as a treatment for a variety of ailments such as neuralgia, gout, tetanus, stomach pain, cholera, convulsions, and depression.\textsuperscript{31}

Cannabis’s medicinal uses sparked its earliest regulations in America.\textsuperscript{32} In the early 20\textsuperscript{th} century, unscrupulous snake oil salesmen marketed “miracle cures” containing odd concoctions of ingredients including cannabis.\textsuperscript{33} These “miracle cures” were even marketed to children and could also contain opium and alcohol.\textsuperscript{34} In response, the federal government passed the Pure Food and Drugs Act of 1906 requiring the labeling of ingredients contained within certain products,\textsuperscript{35} creating cannabis’s first federal regulation.\textsuperscript{36}

b. EARLY BATTLES

The proliferation of these “miracle cures” occurred after America experienced an influx of immigrants and urbanization.\textsuperscript{37} A number of Mexican immigrants entered the Southwestern United States after the Mexican Revolution of 1910 bringing with them their native customs including recreational cannabis use.\textsuperscript{38} During this time, cannabis use

\textsuperscript{32} Vitiello, supra note 30, at 794.
\textsuperscript{34} Vitiello supra note 30, at 793.
\textsuperscript{35} Pure Food and Drugs Act, ch. 3915, 34 Stat. 768 (1906); Vitiello supra note 30, at 794.
\textsuperscript{38} Berkey, supra note 31, at 421.
remained a local concern with little outcry. The earliest incident of a racial cannabis scare dates back to 1913 in El Paso, Texas. That incident involved a Mexican man supposedly high on cannabis who chased a couple, stabbed a team of horses, killed a police officer, and wounded another police officer. Police stated the man, who they referred to as a “fiend” had been smoking cannabis all day. In response to the incident, El Paso became the first city in the United States to pass an ordinance banning cannabis in 1914.

Localities justified cannabis prohibitions with racism and xenophobia. Supporters of cannabis bans often used racist language in calling for bans. California and Texas officials

39 Id.
40 See id.
42 Id.
45 See e.g. Alex Kreit, Drug Truce, 77 OHIO ST. L.J. 1323, 1342 (2016) (“When some beet-field peon takes a few puffs of [cannabis], he thinks he has just been elected president of Mexico, so he starts out to execute all his political enemies.”); Barbara Fedders, Opioid Policing, 94 IND. L.J. 389, 399 (2019) (“All Mexicans are crazy, and this [cannabis] makes them crazy.”). In New Orleans, newspaper articles associated cannabis with African Americans, jazz musicians and underworld whites. One critic stated, “The dominant race and most enlightened countries are alcoholic,” the critic continued, “whilst the races and nations addicted to hemp . . . have deteriorated both mentally and physically.” ERIC SCHLOSSER REFEREE MADNESS: SEX, DRUGS, AND CHEAP LABOR IN THE AMERICAN BLACK MARKET 19 (2003). In the 19th century opium bans were also justified on racist sentiments against the Chinese. See e.g. Ex parte Yung Jon, 28 F. 308, 312 (D. Ore. 1886) (“[The Opium den ban] proceeds more from a desire to vex and annoy the ‘Heathen Chinee’[sic] . . . than to protect the people from the evil habit.”).
told the public that cannabis caused Mexican immigrants to become violent and that Mexican immigrants distributed cannabis to children. In the South, anti-cannabis crusaders claimed that the drug made African Americans violent and called for bans. The resilience of these dubious claims gained public acceptance based on white fears over new immigrants and economic anxieties over job loss from new immigrants. By 1933, thirty-four states outlawed recreational cannabis use though cannabis remained legal federally.

The federal government’s involvement in cannabis regulation stemmed from the efforts of Harry J. Anslinger, the Commissioner of the Federal Bureau of Narcotics. During his early years at the Federal Bureau, Anslinger dismissed the idea that cannabis caused violence or harmed its users. Some commentators suggest Anslinger changed his beliefs about cannabis out of job security concerns after alcohol prohibition

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46 See Schlussel, supra note 21 at 895-96; see also SCHLOSSER, supra note 45, at 19.
47 Steven W. Bender, The Colors of Cannabis: Race and Marijuana, 50 U.C. DAVIS L. REV. 689, 690 (2016). Cannabis opponents also claimed the substance caused white women to be seduced by African American men. Id. Racist language like this is still used today. See Maybell Romero, Viewing Access to Justice for Rural Mainers of Color through a Prosecution Lens, 71 ME. L. REV. 227, 229 (2018). For example, in 2016, Maine Governor Paul LePage stated “These are guys by the name D-Money, Smoothie, Shifty—these types of guys that come from Connecticut and New York; they come up here, they sell their heroin, then they go back home. Incidentally, half the time they impregnate a young, white girl before they leave. Which is a real sad thing because then we have another issue that we have to deal with down the road.” See MICHAEL T. SOLOMON WHERE HAVE ALL THE BLACK PEOPLE GONE?: THE PARADOX OF RACE, CULTURE, AND POLITICS IN THE SHADOW OF BARACK OBAMA 93-94 (2019).
49 Schussel, supra note 21, at 896.
50 See Quattrone, supra note 43, at 306-07.
ended. Anslinger made explicitly racist appeals when urging for cannabis prohibition claiming cannabis caused violence, insanity, suicidal thoughts, and sexual promiscuity. Anslinger’s supposed “scientific evidence” showing negative effects of cannabis was fabricated. These racist appeals eventually earned Congress’s attention. In 1937, Anslinger testified before Congress and told fictitious stories that cannabis led two individuals high on cannabis to kill a police officer in Chicago, that cannabis was a gateway drug to heroine, and that two African-American men impregnated a white college student because the men were high on cannabis.

In response to Anslinger’s testimony, Congress passed the Marihuana Tax Act of 1937 (“MTA”) representing the federal government’s first federal law meant to discourage cannabis use. The MTA did not outlaw cannabis, but it was


54 GERBER, supra note 53, at 6.

55 See Schlussel, supra note 21, at 897.

56 GERBER, supra note 53, at 10-11.


so burdensome both financially and procedurally that it made compliance virtually impossible.\textsuperscript{59}

In the 1950s, Congress again, at the urging of Anslinger, enacted the 1951 Boggs Act and the 1956 Narcotics Control Act, which in conjunction increased criminal penalties and established mandatory minimums for cannabis possession.\textsuperscript{60}

c. Total War and its Costs

Anslinger’s early efforts laid the groundwork for the total war on drugs waged by later presidential administrations. President Richard Nixon started ramping up the war on drugs.\textsuperscript{61} Nixon was elected president by tapping into white anxieties about race, civil rights, and domestic unrest by calling for “law and order.”\textsuperscript{62} The war on drugs encompassed Nixon’s broader “law and order” strategy.\textsuperscript{63} Nixon promised a total war on drugs stating, “America’s public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive.”\textsuperscript{64} Years later, former Nixon advisor John Ehrlichman revealed that Nixon’s war on drugs specifically targeted Nixon’s political enemies including the minority community.\textsuperscript{65}

\textsuperscript{59} See Seeley v. State, 940 P.2d 604, 614 n.10 (Wash. 1997) (Sanders, J., dissenting) (describing the MTA as so burdensome both financially and procedurally that it virtually eliminated any legal medical, industrial, or recreational use of cannabis.). The MTA was ultimately held to be unconstitutional as it violated the Fifth Amendment’s guarantee against self-incrimination. See Leary, 395 U.S. at 37.

\textsuperscript{60} See Cynthia Brown, Beyond the Money: Expected (and unexpected) Consequences of America’s War on Drugs, 4 LINCOLN MEM’L U. L. REV. 118, 134-36 (2017).

\textsuperscript{61} See Gonzales v. Raich, 545 U.S. 1, 10 (2005); Alfred W. McCoy, From Free Trade to Prohibition, A Critical History of the Modern Asian Opium Trade, 28 FORDHAM URB. L.J. 307, 330 (2000).

\textsuperscript{62} Schlussel, supra note 21, at 898.

\textsuperscript{63} See id.


\textsuperscript{65} Ira P. Robbins, Guns N’ Ganja: How Federalism Criminalizes the Lawful Use of Marijuana, 51 U.C. DAVIS L. REV. 1783, 1808-09 (2018); Tom LoBianco, Report: Aide Says Nixon’s War on Drugs Targeted
Nixon’s efforts led to the creation of the Controlled Substances Act (“CSA”).\(^{66}\) Cannabis is classified as a Schedule I drug under the CSA.\(^{67}\) This classification is significant. As a Schedule I drug, cannabis is deemed to have no medicinal value and all uses are strictly prohibited.\(^{68}\) This prohibition federally criminalizes the manufacturing, distribution, or possession of any amount of cannabis.\(^{69}\) The CSA laid the groundwork for an even larger war on drugs that launched in the 1980s.\(^{70}\)

In the 1980s, the Reagan administration ratcheted up the war on drugs and increased criminal penalties for drug offenses, along with massively expanding the drug enforcement budget.\(^{71}\) As President Ronald Reagan increased funds to wage the war on drugs, he slashed funds for drug treatment and education.\(^{72}\) Reagan’s successor, George H.W. Bush, continued the Reagan administration’s anti-drug

\(^{66}\) See Quattrone, supra note 43, at 302.
\(^{69}\) See Vitiello, supra note 30, at 804.
\(^{70}\) IAN HANEY LOPEZ, DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS 51-52 (2013) (describing how during Reagan’s first term an increase in anti-drug funds at the FBI from $ 38 million to $ 181 million; and an increase in the Drug Enforcement Agency budget from $ 86 million to $ 1 billion).
\(^{71}\) Schlussel, supra note 21, at 899.
policies. Bush increased anti-drug enforcement spending, and appointed William Bennet as “drug czar” who advocated for the death penalty for drug dealers.

Journalists and Democrats acquiesced to Reagan’s and Bush’s scorched-earth drug war policies giving the total war bipartisan support. This bipartisan support continued when Democratic President Bill Clinton, escalated the war on drugs by pushing “three strike laws” and signing a $30 billion funding “law and order” bill for prisons and police agencies.

d. THE DEVASTATING EFFECTS OF TOTAL WAR

The bipartisan and devasting policies of the war on drugs live with us today. Even as overall drug arrests started to decline in 2006, cannabis arrests accelerated and were more than half of all drug arrests by 2010. Approximately 88% of cannabis arrests are for unlawful possession rather than trafficking in drugs. Despite similar cannabis usage among

73 Kenneth B. Nunn, Race, Crime and the Pool of Surplus Criminality: Or “Why the War on Drugs” Was a “War on Blacks,” 6 J. GENDER, RACE & JUST. 381, 387 (2002).


77 Schlussel, supra note 21, at 899-900. More than three times as many people were arrested for cannabis while Bill Clinton was President than Richard Nixon. SCHLOSSER, supra note 45, at 48-49.


80 Bender, supra note 47, 691 n*12.
racial groups, minorities are more likely to be arrested, prosecuted, and face incarceration from judges than white offenders. These factors place many non-violent minority drug offenders in prison.

The war on drugs greatly contributed to both mass incarceration and the racialization of American prisons. In less than thirty years, the American prison population spiked from 300,000 to more than 2 million largely from drug convictions. Drug convictions account for two-thirds of the rise in federal inmate population. Minorities make up sixty percent of the American prison population while whites account for only thirty-nine percent.

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82 AM. C.L. UNION, supra note 79, at 17-20; Blacks are three times more likely to be arrested for drug offenses and nearly ten more likely to be imprisoned for a drug offense than whites. Baradaran, supra note 81, at 200. Other studies show black drivers are more likely to be stopped by police than other racial groups, despite blacks having a lower probability of carrying large amounts of drugs than other racial groups. See Katherine Y. Barnes, Assessing the Counterfactual: The Efficacy of Drug Interdiction Absent Racial Profiling, 54 DUKE L.J. 1089, 1113, 1132-35 (2005).
84 See Baradaran, supra note 81, at 165-66.
85 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, 249-55 (2020).
86 See Swinburne, & Hoke, supra note 85 at 250-53.
88 ALEXANDER, supra note 76, at 6.
89 Id. at 59.
Incarceration scars former offenders. A drug conviction brings people into the criminal justice system where they face prosecution, jail time, and a conviction that will remain on their record, often without specifying the nature of the drug offense. Convictions impact many areas of life such as child custody disputes, immigration, voting rights, public housing, Supplemental Nutrition Assistance Program (“SNAP”) benefits, financial aid for secondary education, sentencing for future offenses, and employment. As many Americans live everyday with these scars from the war on drugs, state legalization of cannabis shows signs of hope.

III. STATE LEGALIZATION AND SOCIAL EQUITY

As of 2020, eleven states have legalized recreational cannabis use. This trend in legalization promises cannabis entrepreneurs plentiful business opportunities. Despite the disparate racial impact of the war on drugs, the American cannabis industry is dominated by white men. Several factors cause this disparity, including financial assets, criminal records, and concerns about cannabis’s legality. To combat this disparity, some states have created social equity programs encouraging minority participation in the recreational cannabis industry. Various accommodation systems have been challenged by opponents over the years on both Constitutional and effectiveness grounds.

a. STATE LEGALIZATION AND THE GREEN RUSH

The long journey to cannabis legalization began in 1996 when voters in Arizona and California legalized medicinal

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91 Schlussel, supra note 21, at 900.  
92 Schlussel, supra note 21, at 900; Vitiello, supra note 30, at 806-07.  
93 Winn, supra note 10, at 61-62.  
94 See Bender, supra note 47, at 695.  
96 Bender, supra note 47, at 696-97.  
97 Krane, supra note 19.  
98 See Khiara M. Bridges, Class-Based Affirmative Action, or the Lies that We Tell About the Insignificance of Race, 96 B.U. L. REV. 55 (2016).
cannabis. In 2012, Colorado and Washington became the first states to legalize recreational cannabis. Early cannabis legalization campaigns relied on various policy arguments that cannabis legalization would: (1) increase state government tax revenue, (2) lower government spending on cannabis enforcement, (3) increase privacy rights, and (4) improve public health. Early campaigns rarely focused on the disparate impact of the war on drugs on minority communities. Instead, some campaigns used subtle racial dog whistles appealing to white anxieties. For example, one ad in Colorado contained a voice-over saying “Let’s vote for the good guys and against the bad guys. Let’s have marijuana tax money go to our schools rather than criminals in Mexico.” These early campaigns ignored the racial injustices of the drug war.

This avoidance changed when Washington, D.C. prominently used racial justice messaging in their successful cannabis legalization campaign. The D.C. campaign website’s slogan was “Legalization Ends Discrimination,” and their website noted that “billions of dollars [were] wasted on racially

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101 Schlussel, supra note 21, at 905-06.

102 Bender, supra note 47, at 693.

103 Schlussel, supra note 21, at 909.

104 Colorado Marijuana Initiative 2012, Yes on 64 TV Ad – “Vote for Colorado,” YOUTUBE (Oct. 6, 2012), https://www.youtube.com/watch?v=1KAOq7XX2OY.

105 See Schlussel, supra note 21, at 886-87.

106 Bender, supra note 47, at 694.

biased arrests.”108 Subsequently, both California’s and Massachusetts’s successful legalization campaigns prominently featured racial justice arguments.109 In California’s legalization campaign, organizers aired ads highlighting racial inequality in the war on drugs.110 One ad, narrated by Jay-Z, stated “[T]he war on drugs exploded the U.S. prison population disproportionality, locking away blacks and Latinos.”111 Like California, Massachusetts also used racial justice messaging in their legalization campaign.112 Massachusetts’s cannabis legalization website reads, “Too often young people and people of color can’t find a job or take care of their families because they have a petty arrest record for possessing marijuana.”113 The website also highlighted the racial disparity of the drug war. “In Massachusetts, people of color are three times more likely to be arrested for marijuana possession.”114 These campaigns show that racial justice is a growing reason that voters legalize cannabis.

While some jurisdictions have highlighted racial justice in their campaigns the benefits of cannabis legalization have stark racial disparities. In the states that have legalized cannabis it is taxed heavily (in Washington, for example, the effective tax rate on cannabis is 46%).115 Cannabis’s taxation scheme is regressive, imposing steep costs on less affluent users.116 This steep tax leads buyers of color to turn to still illegal channels in the cannabis market, perpetuating drug arrests and incarceration.117

109 Schlussel, supra note 21, at 917.
110 Id.
111 Jay Z - The War on Drugs: From Prohibition to Gold Rush | Yes on 64, YOUTUBE (Oct. 18, 2016), https://www.youtube.com/watch?v=eI5mE5PBGjg.
112 Schlussel, supra note 21, at 918.
114 Id.
115 See Bernie Becker, Cannabis was supposed to be a tax windfall for states. The reality has been different., POLITICO (Oct. 14, 2019), https://www.politico.com/agenda/story/2019/10/14/marijuana-tax-revenue-001062.
116 Vitiello, supra note 30, at 818.
117 Bender, supra note 47, at 699-700.
The continued perpetuation of drug convictions continues to lock out minorities from the recreational cannabis industry. State policies vary in granting recreational cannabis licenses to a person with a felony conviction. Alaska, Colorado, Maine, and Nevada forbid granting a license to someone with a felony conviction. Colorado and Maine have time limits on the offense. Colorado only considers felony offenses in the past five years and Maine considers disqualifying drug offenses in the past ten years.

The next category of jurisdictions takes a holistic view of an applicant. In both Oregon and Washington, a drug offense is not disqualifying but is considered in granting the license. California forbids all felony offenses except for drug-related felony convictions for cannabis. In excluding cannabis offenses, the California legislature intended to address “racially, ethnically, and economically diverse populations.” The final category of jurisdictions add additional points towards an application for an applicant convicted of a prior drug offense. The only jurisdictions in this category are Illinois, Massachusetts, and Michigan.

119 ALASKA STAT. ANN. § 17.38.200(i) (2019); COLO. REV. STAT. § 12-43.4-306(g)(I)-(II) (2016); 7 ME. REV. STAT. ANN. § 2447(1)(B) (2017); NEV. REV. STAT. c.453D.210(f)(1)-(2) (2017).
120 Rahwanji, supra note 118, at 342.
121 COLO. REV. STAT. § 12-43.4-306(g)(I)-(II) (2016); 7 ME. REV. STAT. ANN. § 2447(1)(B) (2017).
125 MICH. COMP. LAWS SERV. § 333.27958(1)(j) (LexisNexis 2018); 410 ILL. COMP. STAT. ANN. 130 / 115 (West 2020); MASS. GEN. LAWS ch. 94G § 5(b)(4) (2016). Illinois has gone further and is in the process of expunging the criminal records of 800,000 people convicted of purchasing or possessing 30 grams or less of marijuana. See John O’Connor, 800,000 Eligible to Clear Their Record in Illinois Legal Pot,
Even if an applicant lacks a criminal record or has their record expunged, minorities still face financial barriers for entry into the cannabis industry. Entering the cannabis industry comes with costs that other businesses don’t face. Application fees for obtaining a license to sell cannabis can be as high as $200,000 and in some states the application fee is nonrefundable.

If an applicant is granted a license, running a cannabis business has unique costs. Cannabis as a commodity requires specialized legal work because it is highly regulated. The costs of an attorney for a cannabis business owner can reach $50,000 annually. A cannabis business owner often must invest additional money in security such as camera feeds, complex security systems, and armed-guards for protection.

These added costs are because cannabis remains largely a cash-only business. Major credit card companies prohibit using their cards for cannabis purposes because cannabis is still federally illegal. An estimated 70% of cannabis businesses have no relationships with financial institutions and solely use cash for all business transactions. This model places cannabis

127 Id.
129 Kovacevich, supra note 126.
131 Id. at 298.
132 Gabriel J. Greenbaum, Note, What to Do with All This Green: Using Casino Regulations as a Model for Cannabis Industry Banking, 58 WASHBURN L.J. 217, 223 n.50 (2019).
businesses at a heightened risk of robbery and other types of violent crimes.\textsuperscript{134}

Participation in the cannabis industry requires substantial capital resources that many minority Americans do not have and are unlikely to acquire.\textsuperscript{135} A widening racial wealth gap exists in America.\textsuperscript{136} One analysis in 2011, found the average white household wealth was $111,146.00, the average Latino household was $8,348, and the average Black household wealth was $7,113.\textsuperscript{137} The high capital requirements alongside racial wealth disparities are a factor in low minority participation in the recreational cannabis industry.\textsuperscript{138}

Despite these many obstacles for minorities, the cannabis industry offers economic prosperity.\textsuperscript{139} By 2021, expected spending on legal cannabis will be $14.9 billion and research estimates a 25\% compound growth rate from 2016 to 2021.\textsuperscript{140} That success also reaches employees- as of 2019, 211,000 full-time jobs in America came from the legal cannabis industry.\textsuperscript{141} White entrepreneurs enjoy a greater share of this

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\textsuperscript{134} Katherine P. Franck, Note, Cannabis Reform: High on the Banking Agenda, 24 N.C. BANKING INST. 165, 173 (2020).
\textsuperscript{137} Id. at 5.
\textsuperscript{140} See id.
prosperity as only an estimated 17% of self-identified cannabis senior executives, owners or founders are minorities.\textsuperscript{142}

b. \textsc{State Social Equity Systems}

In attempting to remedy the cannabis industry's racial disparities and the disparate impact of the war on drugs, some states have implemented social equity systems for minorities in the cannabis industry.\textsuperscript{143} Among the states that have legalized recreational cannabis, only five utilize social equity systems.\textsuperscript{144} These states are: California, Illinois, Massachusetts, Michigan, and Washington.\textsuperscript{145} State social equity systems vary in these states.\textsuperscript{146} California's social equity system focuses on assisting municipalities with their respective systems instead of a blanket

\textsuperscript{142} Meera Jagannathan, \textit{People of color are reclaiming their place in a cannabis industry 'built on the backs of people from marginalized communities,'} \textsc{Marketwatch} (Nov. 12, 2019), https://www.marketwatch.com/story/people-of-color-are-reclaiming-their-place-in-a-cannabis-industry-built-on-the-backs-of-people-from-marginalized-communities-2019-08-05.

\textsuperscript{143} Kayla Siam, \textit{Social Equity Programs in Cannabis – Worth their Weight?}, \textsc{Seyfarth}, (Feb. 27, 2020), https://www.bluntruthlaw.com/2020/02/social-equity-programs-in-cannabis-worth-their-weight/. Maryland and Pennsylvania also provide social equity programs for minorities seeking to enter the medicinal cannabis market. In Maryland, the state must consider racial, ethnic, gender, and geographic diversity when awarding licenses. \textsc{Md. Code Ann., Health-Gen.} § 13-3306(9)(i) (2020). In Pennsylvania, applicants who submit a diversity plan are giving additional points on their application. 35 \textsc{Pa. Cons. Stat.} § 10231.615(b)(3) (2020); \textit{Medical Marijuana Permit Application}, at http://www.health.state.pa.us/mmrkt/docs-dispensaries/D-2018-17_Redacted.pdf (last visited May 31, 2020). Factors considered include diversity in the principals, operators, and employers. Diverse groups included are women, veterans, service-disabled veterans, and racial minorities. These states are not discussed further because they only apply for state medicinal cannabis licenses.

\textsuperscript{144} See \textit{infra} \textsuperscript{Id}.


\textsuperscript{146} Siam, \textit{supra} note at 143.
statewide system.\textsuperscript{147} Washington awards social equity applicants forfeited, canceled, revoked or otherwise unissued recreational cannabis licenses.\textsuperscript{148} The states of Illinois, Massachusetts, and Michigan provide social equity programs for communities disproportionality impacted by the war on drugs.\textsuperscript{149} While Oklahoma does not have a social equity system the state allows for an unlimited number of medicinal cannabis licensees and has low application fees which has created a diverse industry.\textsuperscript{150}

California does not have a statewide social equity provision but instead assists municipalities in administering their social equity programs.\textsuperscript{151} The California Cannabis Bureau considers the effectiveness of the local jurisdiction’s program at remedying the disparate impact of cannabis arrests and convictions on certain communities.\textsuperscript{152} In 2020, California awarded twelve jurisdictions $30,000,000 to assist in their local social equity programs.\textsuperscript{153} California’s social equity program is unique from other states as it merely provides grants and assistance to municipalities without creating a blanket social equity program for the entire state.\textsuperscript{154}

By contrast, Washington’s state social equity program is state-wide and applies to unused cannabis licenses.\textsuperscript{155} To qualify, the applicant must come from a disparately impacted
area determined based on poverty and drug conviction rates.\textsuperscript{156} The applicant must also submit a social equity plan on how they intend to achieve equity goals.\textsuperscript{157} The program only applies for licenses that were forfeited, canceled, revoked or otherwise unissued instead of all cannabis licenses.\textsuperscript{158} Nonetheless, the applications are relatively inexpensive, costing $1,480 with an application fee of $250.\textsuperscript{159}

The states of Illinois, Massachusetts, and Michigan have enacted state-wide laws to promote opportunities for communities or individuals disparately impacted by the war on drugs that impact all cannabis licenses.\textsuperscript{160} Massachusetts’s cannabis laws require their cannabis commission to promote policies that encourage participation by communities disproportionality harmed by the war on drugs.\textsuperscript{161} To achieve these goals the Massachusetts Cannabis Commission provides professional training, technical assistance, and mentoring for those who qualify as social equity applicants.\textsuperscript{162} To qualify for the social equity program an applicant must meet one of the following criteria: residing in an area of disproportionate impact for at least five of the past ten years and their current income may not exceed 400\% of federal poverty level; having a past drug conviction; or having been married to or the child of a person with drug conviction.\textsuperscript{163}

Michigan law also requires their state marihuana regulatory agency develop a plan to promote and encourage participation in the state cannabis industry for individuals who were disproportionality impacted by cannabis prohibition and enforcement.\textsuperscript{164} An applicant qualifies for Michigan’s social equity program if they live in a community disparately

\footnotesize{\textsuperscript{156} H.B. 2870, 2020 Reg. Sess. (Wash. 2020).}
\footnotesize{\textsuperscript{157} \textit{Id}.}
\footnotesize{\textsuperscript{158} \textit{Id}.}
\footnotesize{\textsuperscript{159} \textit{Id}.}
\footnotesize{\textsuperscript{161} MASS. GEN. LAWS ANN. ch. 94G, § 4(a1/2)(iii) (West 2019).}
\footnotesize{\textsuperscript{162} Massachusetts Social Equity Program, \textit{supra} note 149.}
\footnotesize{\textsuperscript{163} \textit{Id}.}
\footnotesize{\textsuperscript{164} MICH. COMP. LAWS SERV. § 333.27958(1)(j) (2020).}
impacted by the war on drugs.\(^{165}\) This is different from Massachusetts’s program as it does not have a length of time requirement.\(^{166}\) Like Massachusetts, Michigan offers benefits to qualifying social equity applicants. Michigan’s benefits are more expansive than Massachusetts’s. Michigan provides regional presentations, application assistance, reduced fees, and program resources for social equity participants.\(^{167}\)

Like Massachusetts and Michigan, Illinois also provides benefits for social equity applicants, but their program is codified into law and has specific requirements.\(^{168}\) An applicant qualifies as a social equity applicant if 51% of ownership and control is by individuals previously convicted of an offense eligible for expungement or live in disproportionality impacted area for at least five of the preceding ten years.\(^{169}\) Additionally, an applicant is also considered a social equity applicant if 51% of employees reside in a disparately impacted area, or they or a family member has been convicted or arrested for an offense eligible for expungement.\(^{170}\) If an applicant meets these requirements additional points are awarded on their application.\(^{171}\) A social equity applicant may also be awarded loans or grants to assist in the application process and operating their business by the state’s cannabis business development fund.\(^{172}\) The states of Illinois, Massachusetts, Michigan, and Washington all focus on providing social equity for areas disparately impacted by the war on drugs and individuals convicted of drugs offenses.\(^{173}\) These laws do not explicitly


\(^{166}\) Compare id. with Massachusetts Social Equity, supra note 149.

\(^{167}\) Michigan Social Equity Program, supra note 165.

\(^{168}\) 410 ILL. COMP. STAT. ANN. 130 / 115 (West 2019).

\(^{169}\) Id.

\(^{170}\) Id.

\(^{171}\) Id.

\(^{172}\) 410 ILL. COMP. STAT. ANN. 130 / 115(a-5) (West 2019).

\(^{173}\) 410 ILL. COMP. STAT. ANN. 705 / 7-10 (West 2019).

consider race when creating accommodations but instead assist all people impacted by the war on drugs.\footnote{174}{See generally, Siam, supra note 143.}

c. CONSTITUTIONAL AND EFFECTIVENESS CONCERNS

The previously discussed measures largely avoided race-conscious measures.\footnote{175}{Id.} Prior to 2018, Ohio’s state medicinal cannabis law utilized quotas requiring 15\% of all licenses to be awarded to racial minorities.\footnote{176}{Siam, supra note 143.} Ohio’s law succeeded in expanding racial diversity as over 16\% of all licensees were minorities.\footnote{177}{Id.}

Despite this success, the law was deemed unconstitutional as an impermissible racial quota.\footnote{178}{Pharmacann Ohio, LLC v. Williams, No. 17-CV-10962, 2018 WL 7500067 (Ohio Ct. Com. Pl. Nov. 15. 2018).} The Supreme Court has held policies that benefit individuals on the basis of race are subjected to a two-part strict scrutiny test under the Equal Protection Clause.\footnote{179}{See Grutter v. Bollinger, 539 U.S. 306, 323-28 (2003).} First, to withstand strict scrutiny, a policy that benefits individuals on the basis of race must serve a “compelling” government interest.\footnote{180}{Grutter, 539 U.S. at 326.} Second, the government’s method to achieve such an interest must be “narrowly tailored.”\footnote{181}{Id.} Interests the Court has found
“compelling” have involved diversity in education\textsuperscript{182} and remedying past discrimination in a particular industry\textsuperscript{183}. This framework was used by the Franklin County Court of Common Pleas in \textit{Pharmacann Ohio, LLC. v. Williams} where the court considered the Ohio law’s set-aside provision.\textsuperscript{184} In \textit{Pharmacann}, the plaintiff, received a final score in their medicinal cannabis license application that would otherwise qualify it for a license.\textsuperscript{185} However, the plaintiff was denied a license because two other lower scoring applicants were members of a disadvantaged group.\textsuperscript{186} The court examined the state’s racial quota under the standard of strict scrutiny.\textsuperscript{187} Under strict scrutiny, the racial classification must be justified by a compelling government interest \textit{and} must be narrowly tailored to achieve that goal.\textsuperscript{188} The court first considered whether the classification was a compelling interest.\textsuperscript{189} The defendant provided evidence that the legislature sought to remedy racial disparities of African Americans and Latinos regarding arrest rates for cannabis offenses.\textsuperscript{190} The court found this evidence was not enough to support a finding of discrimination within the brand new Ohio medicinal cannabis industry for African Americans, Latinos, American Indians, and Asians.\textsuperscript{191} The defendant also offered evidence of discrimination in government procurement.\textsuperscript{192} This evidence was unpersuasive as the court held that discrimination must be directly related to that particular

\textsuperscript{182} Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 311-14 (1978) (holding race can be considered in educational institutions so long as it is not decisive in admittance) (Powell, J.). \textit{But see}, Gratz v. Bollinger, 539 U.S. 244, 271-72 (2003) (holding college policy that made race the decisive factor for admittance constituted an unconstitutional racial classification).


\textsuperscript{184} \textit{Pharmacann}, 2018 WL 7500067 at *2.

\textsuperscript{185} \textit{Id.}

\textsuperscript{186} \textit{Id.}

\textsuperscript{187} \textit{Id.} at *3.

\textsuperscript{188} \textit{Id.} at *5-*6 (quoting Wygant v. Jackson Bd. Edn., 476 U.S. 267, 274 (1986)).

\textsuperscript{189} \textit{Id.} at *4.

\textsuperscript{190} \textit{Pharmacann}, 2018 WL 7500067 at *10.

\textsuperscript{191} \textit{Id.}

\textsuperscript{192} \textit{Id.}
industry, here medicinal cannabis, which was not demonstrated.\textsuperscript{193}

Though the court did not find the state had provided a compelling interest, the court considered whether the remedy was narrowly tailored.\textsuperscript{194} The court found that the quota was not narrowly tailored because the legislature did not consider alternative race-neutral remedies such as giving preference to companies owned by those previously convicted or arrested on a cannabis offense.\textsuperscript{195} Because the Ohio law failed both prongs, the court held the law was unconstitutional.\textsuperscript{196} In 2019, the Madison County Court of Common Pleas considered the same Ohio law and followed Pharmacann’s reasoning to find the quota was again unconstitutional.\textsuperscript{197}

Race-based classifications have been challenged beyond Constitutional grounds and on policy grounds. First, race-based programs are challenged by opponents as warping meritocracy.\textsuperscript{198} Instead of taking a holistic view of an individual’s characteristics, race is given special consideration.\textsuperscript{199} Another argument made by opponents is that race-based classification stoke racial tension because it divides individual’s based on their race.\textsuperscript{200} Finally, opponents argue

\textsuperscript{193 Id.}
\textsuperscript{194 Id. at *13.}
\textsuperscript{195 Id. at *14.}
\textsuperscript{196 Id. at *20.}
\textsuperscript{197 Pure Ohio Wellness, LLC v. State of Ohio Brd. Of Pharmacy, CVH 20190197 (C.P. Madison, Cnty, Ohio Nov. 04, 2019).}
\textsuperscript{199 See, e.g., Gratz v. Bollinger, 539 U.S. 244, 273-74 (2003) (noting that system that assigned points based on race hindered other considerations about an individual’s background or other characteristics beyond race); Fullilove, 448 U.S. at 533.}
\textsuperscript{200 Metro Broad., Inc. v. FCC, 497 U.S. 547, 603 (1990) (O’Connor, J., dissenting); Richmond v. J.A. Croson Co., 488 U.S. 469, 493 (1989) (Scalia, J., concurring) (“Those who believe that racial preferences can help... display, and reinforce, a manner of thinking by race....”).}

While these arguments have merit, state social equity programs that focus on remedying individuals directly harmed by the war on drugs offer the best remedial measures because they survive Constitutional scrutiny and help those directly impacted by the war on drugs\footnote{202}{See Robert A. Mikos, What Makes Illinois’s New Adult-Use Marijuana Law Noteworthy . . ., Marijuana L., Pol’y, & Auth. Blog (Jun. 28, 2019), https://my.vanderbilt.edu/marijuanalaw/2019/06/what-makes-illinoisss-new-adult-use-marijuana-law-noteworthy/}.\footnote{203}{See infra notes 20-93 and accompanying text.} It is true that the war on drugs had a disparate impact on minorities\footnote{204}{See Brown, supra note 78, at 207.} and that laws giving preferences to individuals directly impacted by the war on drugs would have a disparate impact favoring minorities.\footnote{205}{Wash. v. Davis, 426 U.S. 229, 237 (1976).} While this is true, these laws would not be found unconstitutional. The Supreme Court has held that a law that has a disparate impact on racial minorities is unconstitutional under the Equal Protection Clause only if the law had a discriminatory purpose.\footnote{206}{See Mikos, supra note 200.} Laws that favor individuals directly impacted by the war on drugs would likely pass Constitutional scrutiny. The laws are not adopted for a discriminatory purpose but instead serve as an accommodation for\footnote{} all individuals directly impacted by the war on drugs regardless of race. These laws are race neutral as they can apply to individuals of all races who were directly impacted by the war on drugs.

Aside from Constitutionality concerns over certain social equity systems, effectiveness concerns are also relevant. Data regarding diversity in the cannabis industry is limited. The social equity initiatives in Illinois and Michigan are just beginning and more time is required to determine their effectiveness. In Massachusetts only 1.2% of cannabis
businesses are owned by racial minorities.\textsuperscript{207} Massachusetts set aside 123 licenses for social equity applicants and only 10 people applied.\textsuperscript{208} Commentators suggest the lack of participation stems from the high costs: an applicant can expect to pay $50,000 to $60,000 in costs to complete an application.\textsuperscript{209} A better way forward must exist.

IV. CLEARING THE HAZE: PROPER STATE ACTION

Diversifying the recreational cannabis industry requires action by state governments. This section offers a statute aimed to provide inexpensive cannabis licenses and continuous mentorship for applicants while also discouraging illegal cannabis markets.

a. STATUTE RECOMMENDATION

Based on the experiences of various state social equity systems for minority cannabis entrepreneurs, I propose the following language be used in state cannabis statutes:

§ X. Cannabis Social Equity
(a) For any dispensing organization registered on or after July 1, 2021, the State Cannabis Bureau (“SCB”) shall award not less than 20\% of all available licenses to applicants that qualify as Social Equity Applicants.

\textsuperscript{207} Erin Magner, \textit{The cannabis world has a diversity problem, but Cannaclusive’s founders are seeking to change that}, WELL + GOOD, (Mar. 4, 2020), https://www.wellandgood.com/good-advice/cannaclusive-minorities-cannabis-industry/ (noting that 11.5\% of companies in the traditional economy are owned by minorities).


\textsuperscript{209} Jeff Smith, \textit{Medical cannabis business opportunities could swell in several states this year}, MARIJUANA BUSINESS DAILY (Feb. 14, 2020), https://mjbizdaily.com/medical-cannabis-business-opportunities-could-swell-in-several-states-this-year/.
“Social Equity Applicant” means an applicant that is a state resident that meets one of the following criteria:
(1) an applicant with at least 51% ownership and control by one or more individuals who have resided for at least 5 of the preceding 10 years in a Disproportionately Impacted Area;
(2) an applicant with at least 51% of ownership and control by one or more individuals who have been arrested for, convicted of, a past drug offense; or have been married to or a child of a person with a past drug arrest or conviction in the state.

(b) The SCB shall make available the following for a successful social equity applicant:
(1) Application Assistance and continued business operation assistance.
(2) A 50% reduction in renewal fees.
(3) The SCB shall partner with other state agencies that are relevant to individuals participating in the cannabis industry.
(4) The SCB shall award social equity applicants grants in gaining entry to, and successfully operating in, the State’s regulated cannabis marketplace.
(c) The tax on retail cannabis sales will be established at seven percent (7%) of the gross amount received by the seller.
(d) The application fee shall be two hundred fifty dollars ($250). The application fee is refundable if the application is rejected.

b. STATUTE ANALYSIS

This statutory language combines the best features of the existing state social equity programs. It also takes into consideration lessons from state courts. It encourages the continued participation of those disparately impacted by the war on drugs in the burgeoning recreational cannabis industry. This section considers the purpose and effect of each element of the statute and how the statute improves upon existing law.

i. SECTION (A) – WHO IS A SOCIAL EQUITY APPLICANT UNDER THE STATUTE

Section (a) of this statute describes who is a social equity candidate. The statute begins with a set-aside requirement. This aspect follows the Ohio law that required 15% of state medicinal cannabis licensees to be awarded to racial
minorities.\textsuperscript{210} The Ohio law was successful in achieving racial diversity but was found to be an unconstitutional racial quota.\textsuperscript{211} The proposed statute learns from the lessons of the Ohio statute and is racially neutral as it applies to \textit{all} individuals who were directly impacted by the war on drugs regardless of race.

The statute then describes who is a social equity applicant. The language of this statute combines aspects of Illinois’s and Massachusetts’s social equity programs. The statute defines a social equity applicant as an individual who either lives in an area disproportionately impacted by the war on drugs, has an arrest of conviction for drug arrest or is married to or a child of someone arrested or convicted of a drug offense. This language allows for an individual who lives in an area disparately impacted by the war on drugs to be given reparations. The statute contains a residency requirement to prevent individuals from owning property briefly to meet the requirement.\textsuperscript{212} The statute then also turns to individuals with a drug arrests or convictions. This language protects those directly impacted by the war on the drugs. The statute omits Illinois’s problematic language of considering someone a social equity applicant by having 51\% of employees to be disproportionately impacted by the war on drugs. This omission seeks to focus on empowering the ownership of cannabis businesses and not merely employment.\textsuperscript{213} Ownership of a business comes with more economic potential.\textsuperscript{214} This language prevents individuals from manipulating the social

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\item \textsuperscript{210} Pharmacann, 2018 WL 7500067 at *8.
\item \textsuperscript{211} Siam, \textit{supra} note 143.
\item \textsuperscript{212} Cannabis residency requirements ensure the licensee has a connection to the local community, profits stay within the community, and prevent large corporations from controlling the cannabis industry. \textit{See} Daniel Shortt, \textit{Marijuana Industry Residency Requirements}, \textit{HARRIS BRICKEN} (Apr. 28, 2015), https://harrisbricken.com/cannalawblog/marijuana-industry-residency-requirements/.
\item \textsuperscript{214} \textit{See} Id.
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equity program by having a majority white ownership who are still social equity applicants.215

ii. SECTION (B) – SOCIAL EQUITY APPLICANT ASSISTANCE

Section (b) addresses the various forms of assistance the SCB may provide applicants. The forms of assistance are codified providing clear guidance for the SCB. These forms of assistance help to break down barriers that social equity applicants face in entering the cannabis market. First, this statute helps applicants navigate the application process by providing direct assistance when completing the application.216 Second, reducing application and renewal fees helps remedy the fact that minority family wealth is significantly less than that of white families.217 This provision helps remove an early barrier for poorer applicants. Third, by partnering with various state agencies relevant to the cannabis industry the state provides applicants who are often first-time business owners assistance in operating a complicated business.218 Fourth, this portion acknowledges the heavy costs of operating a cannabis business and provides applicants with continued monetary support.219

iii. SECTION (C) – WEAKENING THE ILLEGAL MARKET

Section (c) attempts to weaken the existing illegal cannabis markets and keep profits in social equity applicant’s hands. A low tax ensures people use legal channels to purchase inexpensive cannabis. It learns from the lessons of California

216 Vinicky, supra note 213.
217 SULLIVAN, supra note 136, at 5.
219 See Krane, supra note 19 (describing the hefty costs of cannabis business such as added security, and legal fees).
which imposes a high tax on cannabis sales that is incredibly problematic.\textsuperscript{220} Experts estimate that in California legal sales of cannabis will be $3 billion in revenue, compared to $8.7 billion in illegal sales.\textsuperscript{221} The state’s high cannabis tax caused California to reduce its expected revenue from cannabis sales.\textsuperscript{222} By contrast, Oklahoma’s tax on medicinal cannabis is the same rate as this proposed statute and the state’s revenue on medicinal cannabis sales is exceeding analysts’ wildest expectations.\textsuperscript{223} Finally, keeping the tax on cannabis low is essential to avoid another war on drugs.\textsuperscript{224} Even after legalization, drug enforcement continues to have a disparate impact on minorities.\textsuperscript{225}

iv. \textbf{SECTION (D) – LOW BARRIERS TO ENTRY}

Section (d) avoids the mistakes of other states that create a barrier to entry in the cannabis market due to high fees by copying the Washington application fee costs.\textsuperscript{226} Notably, these licenses apply to all state recreational cannabis licenses.\textsuperscript{227} Data is not available regarding diversity in Washington state’s recreational cannabis market. However, Oklahoma’s medicinal cannabis program’s low application fees has caused their state’s


\textsuperscript{222} \textit{Id.}


\textsuperscript{224} Shackford, \textit{supra} note 221. California is seemingly launching another drug war to crack down on illegal cannabis facilities. \textit{Id.}


\textsuperscript{227} Washington’s social equity program only applies to forfeited, canceled, revoked or otherwise unissued cannabis licenses. \textit{Id.}
market to be one of the most diverse in the entire nation. Finally, this statute makes an application refundable if denied ensuring applicants that a rejected application will not be financially harmful.

V. CONCLUSION

The war on drugs had a disparate impact on minorities. As states legalize recreational cannabis, the industry is increasingly dominated by rich white men. These individuals did not experience the same destructive effects of the war on drugs as minorities did. One conclusion is certain – states with legalized cannabis should take steps to encourage minority participation in the recreational cannabis industry.

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228 Siam, supra note 143.
230 Id.
231 Id.
## Appendix A

### State Social Equity in Recreational Cannabis

<table>
<thead>
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<th>Social Equity for all Cannabis Licenses</th>
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<th>State Grants for Municipalities</th>
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* See infra notes 143-173 and accompanying text.  
** Legislation will go into effect January 1, 2021.