NOTE

TURNING OVER NEW LEAVES: ACHIEVING EQUITY THROUGH CANNABIS LICENSURE REFORM IN NEW YORK

Frederick B. Jackson†

New York's Marihuana Regulation and Taxation Act (MRTA) promised an equity-centered model of cannabis legalization, but its Social and Economic Equity (SEE) and priority licensing programs have fallen far short of their goals. This Note argues that low licensing rates, predatory financing structures, pervasive illicit markets, and severe rollout delays have undermined justice-involved entrepreneurs and legal cultivators while enabling well-capitalized corporate entrants to gain advantage. Ongoing litigation further threatens the statutory foundation of New York's equity framework, exposing constitutional vulnerabilities that could dismantle race and justice-based preferences entirely. Political dissatisfaction and administrative instability within the Office of Cannabis Management have compounded these problems, prompting calls for substantial reforms. Drawing on comparative models from Massachusetts, Oklahoma, and Washington, this Note proposes a restructured equity approach that lowers barriers to entry, replaces predatory loans with accessible funding, simplifies licensing, and expands the legal market to meaningfully displace illicit operators. Without decisive reform, New York risks entrenching the very inequities the MRTA sought to repair.

† J.D., Cornell Law School, 2026; B.A., Hobart and William Smith Colleges, 2024; Online Editor, *Cornell Law Review* Vol. 111. The author would like to thank Professor Leslie Danks Burke for her helpful feedback and the editors of *Cornell Law Review* for lending their talents to this Note. The author would also like to thank Joel and Sarah Jackson for their unwavering support throughout this process.

Introduction

> The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and Black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or Black, but by getting the public to associate the hippies with marijuana and Blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify

> them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.[1]

These words, spoken by President Richard Nixon's domestic policy advisor John Ehrlichman in a 1994 interview, expose the calculated political agenda behind the War on Drugs. Though the campaign was publicly framed as a response to a growing drug crisis, with President Nixon declaring drug abuse "public enemy number one" in 1971, Ehrlichman's admission reveals that its true purpose was to criminalize dissent and target marginalized communities.[2] By linking political opponents to illicit substances and leveraging the legal system against them, the Nixon administration weaponized drug policy as a tool of social control.

The War on Drugs campaign led to soaring incarceration rates.[3] Police enforcement increasingly targeted low-level marijuana offenses, which accounted for more than an 80% increase in drug arrests between 1990 and 2002.[4] Almost twenty years later, the marijuana-related enforcement statistics are still substantial: In 2020 alone, over 300,000 individuals were arrested for marijuana possession in the United States—a decrease from the more than 500,000 arrested the previous year.[5] Despite this decline, the Black community has remained disproportionately affected by these policies. Although the Black community makes up just 13.6% of the U.S. population and members use marijuana at similar rates as white Americans,

---

1 *Nixon Adviser Admits War on Drugs Was Designed to Criminalize Black People*, EQUAL JUST. INITIATIVE (Mar. 25, 2016), https://eji.org/news/nixon-war-on-drugs-designed-to-criminalize-black-people/ [https://perma.cc/BN8D-DRSV] (quoting Dan Baum, *Legalize it All*, HARPER'S MAG. (Apr. 2016), https://harpers.org/archive/2016/04/legalize-it-all/ [https://perma.cc/388L-XP57] (author recounting his interview with Ehrlichman)).

2 Nazish Dholakia, *Fifty Years Ago Today, President Nixon Declared the War on Drugs*, VERA (June 17, 2021), https://www.vera.org/news/fifty-years-ago-today-president-nixon-declared-the-war-on-drugs [https://perma.cc/W4JK-LR4A]; *Public Enemy Number One: A Pragmatic Approach to America's Drug Problem*, RICHARD NIXON FOUND. (June 29, 2016), https://www.nixonfoundation.org/2016/06/26404/ [https://perma.cc/RG4V-ZCJL].

3 Dholakia, *supra* note 2.

4 Ryan S. King & Marc Mauer, *The War on Marijuana: The Transformation of the War on Drugs in the 1990s*, 3 HARM REDUCTION J. 2 (Feb. 9, 2006), https://link.springer.com/content/pdf/10.1186/1477-7517-3-6.pdf [https://perma.cc/A5Y3-872G].

5 Katharine Neill Harris, *317,793 People were Arrested for Marijuana Possession in 2020 Despite the Growing Legalization Movement*, CONVERSATION (Nov. 16, 2022), https://theconversation.com/317-793-people-were-arrested-for-marijuana-possession-in-2020-despite-the-growing-legalization-movement-192788 [https://perma.cc/WC86-CNKQ].

38.8% of those arrested for marijuana possession are Black.[6] As explained by John Ehrlichman, this racial disparity is hardly coincidental.

Christopher Blackwell, currently serving a forty-five-year prison sentence for murder, was first arrested at just twelve years old for marijuana possession.[7] His story highlights the harsh cycle that often unfolds in marginalized communities: early exposure to drugs, repeated incarceration during adolescence, and the absence of alternative interventions like counseling or drug treatment.[8] "By the time I was 14, I had been arrested more than a dozen times and I dropped out of school. By the age of 18, I had spent three and a half years incarcerated, all for parole violations or drug and theft-related crimes," Blackwell recalls, underscoring the compounding impact of a system that punishes rather than rehabilitates.[9]

To this day, Black and impoverished neighborhoods are still experiencing the effects of the War on Drugs caused by the U.S. government more than fifty years ago.[10] The War on Drugs tore apart communities, separated families, and irreparably altered countless lives.[11] Blackwell's story, and numerous stories just like it, have combined with published statistical data and galvanized a social justice movement advocating for legislation and initiatives aimed to address the extensive harm inflicted upon numerous Americans.[12]

---

6 *Id. See generally* NAT'L REGISTRY OF EXONERATIONS, RACE AND WRONGFUL CONVICTIONS IN THE UNITED STATES (Samuel R. Gross ed., 2022), https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/Updated%20CP%20-%20Race%20Report%20Preview.pdf [https://perma.cc/4B3T-FK3H].

7 Christopher Blackwell, *I Was Arrested for Weed at 12 Years Old. It Changed the Entire Course of My Life.*, HUFFPOST (May 31, 2022), https://www.huffpost.com/entry/drug-arrest-prison-juvenile-detention_n_628a2cbbe4b0415d4d78a720 [https://perma.cc/2BEE-GV26].

8 *Id.*

9 *Id.*

10 *See* Nkechi Taifa, *Race, Mass Incarceration, and the Disastrous War on Drugs*, BRENNAN CTR. FOR JUST. (May 10, 2021), https://www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrous-war-drugs [https://perma.cc/MJ2R-LT7A].

11 Brian Mann, *After 50 Years of the War on Drugs 'What Good Is It Doing For Us?'*, NAT'L PUB. RADIO (June 17, 2021), https://www.npr.org/2021/06/17/1006495476/after-50-years-of-the-war-on-drugs-what-good-is-it-doing-for-us [https://perma.cc/RD8U-E2YX].

12 *See id.*; *see also* Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html [https://perma.cc/7UEU-VGE3].

In 2021, New York lawmakers responded to this outcry and created the Marihuana Regulation and Taxation Act (MRTA) to address the numerous issues caused by the War on Drugs.[13] The MRTA legalized recreational cannabis in New York and laid out a plan to mitigate the harms caused by cannabis prohibition.[14] One of the strategies in the MRTA, the Social and Economic Equity Plan, has been criticized extensively by journalists, social equity advocates, and entrepreneurs who attest that the program's rollout and licensure framework has been ineffective at helping social equity applicants and has failed to create a viable cannabis market.[15]

The story of Jeremy Rivera, a formerly incarcerated cannabis entrepreneur, exemplifies the repercussions of New York's MRTA for individuals impacted by the War on Drugs.[16] Raised in a community heavily targeted by cannabis enforcement, Rivera served time for a cannabis-related conviction and, upon release, sought to rebuild his life through legal cannabis sales. As one of the initial recipients of an adult-use dispensary license under New York's Social and Economic Equity Plan, Rivera invested his life savings into a storefront yet, as of late 2023, cannot say when his business might open because of ongoing MRTA-related litigation. Rivera estimates that these delays have cost him $225,000 in lost revenue, while he also faces indefinite postponement of employee hiring. Rivera, "didn't cut any corners . . . didn't miss any commas. Everything was done the way [the state] asked."[17] In stark contrast, unlicensed dispensaries in his area continue to operate freely, capitalizing on New York's cannabis demand seemingly without repercussion.[18] Rivera's story is not uncommon; it illustrates the ongoing struggle New York faces in implementing an

13 Marihuana Regulation and Taxation Act (MRTA), N.Y. CANNABIS LAW §§ 1–139 (McKinney 2021).

14 *See id.* §§ 2, 87.

15 *See* Theara Coleman, *How New York's Legal Cannabis Rollout Ended up in the Weeds*, WEEK (Mar. 20, 2024), https://theweek.com/business/new-york-cannabis-rollout [https://perma.cc/C76G-KA27].

16 Mona Zhang, *New York Promised to Help People with Weed Convictions Open Dispensaries. Instead, They're Stuck in a Legal Nightmare.*, POLITICO (Sep. 1, 2023), https://www.politico.com/news/2023/09/01/new-york-dispensaries-legal-halt-00113803 [https://perma.cc/RX25-8VN2].

17 *Id.* (alteration in original).

18 Mona Zhang, *This State Legalized Cannabis. So Why Does it Still Have an Illegal Weed Problem?*, POLITICO (Sep. 13, 2024), https://www.politico.com/news/2024/09/13/new-york-rogue-weed-retailers-00177408 [https://perma.cc/Q74C-FXDY].

effective equity program—a struggle that continues to affect minority communities across the state.

Part I of this Note will examine the failure of New York's priority licensure program to achieve its social equity goals across various numerical metrics and standards. It challenges the claim that the program's structure is sufficient to address the harms caused by the War on Drugs. Part II of this Note will examine how court cases like *Valencia AG, LLC v. Reid*[19] will impact the priority licensure program and potentially impede its social equity goals. Part III discusses the current status of the MRTA and the equity program according to prominent New York politicians who have voiced desires to amend the program. Part IV of this Note will argue that the MRTA's failure to sufficiently support and protect equity applicants and entrepreneurs will have an irreparable impact as corporations and lobbyists continue to dominate the budding New York cannabis market. Finally, I will conclude this Note with policy recommendations for New York, based on the successes of other states, which focus on protecting entrepreneurs and preventing corporations from dominating the market by providing funding to cannabis entrepreneurs and reducing the barriers to entry into the cannabis market.

I
Priority Licensure Failed to Achieve New York's Equity Goals

A. Statute Goals

The New York legislature's goals for the MRTA were ambitious—perhaps overly so. The preamble outlines a sweeping array of objectives, including the reduction of violent crime, environmental protection, and enhanced resilience to climate change.[20] Critically, the statute seeks to redress the harms inflicted on communities disproportionately impacted by the War on Drugs.[21] Such aspirations prompt the question: Can a statute, comprising merely a few hundred pages, truly address challenges of this complexity and magnitude?

---

19 Valencia AG, LLC v. Reid, No. 5:24-cv-0116 (GTS/TWD), 2025 U.S. Dist. LEXIS 54706 (N.D.N.Y. Mar. 25, 2025), *appeal voluntarily dismissed at* 2025 U.S. App. LEXIS 27537 (2d Cir. Aug. 12, 2025).

20 Marihuana Regulation and Taxation Act (MRTA), N.Y. Cannabis Law § 2 (McKinney 2021).

21 *Id.*

Section 87 of the MRTA lays out the legislature's strategy for creating an equitable cannabis market.[22] It mandates that the Cannabis Control Board (Board) both develop and implement a comprehensive equity plan, prioritizing applicants from communities disproportionately affected by cannabis prohibition and fostering racial, ethnic, and gender diversity in the licensing process for adult-use cannabis activities.[23] Additionally, the statute emphasizes the broader goals of "promot[ing] diversity in commerce, ownership, and employment" and expanding "opportunities for social and economic equity in the adult-use cannabis industry," underscoring a framework for inclusivity within this emerging market.[24] Moreover, the legislature aims to allocate 50% of adult-use cannabis licenses to social and economic equity applicants.[25]

B. New York's Proposed Solution

The Board's strategy to achieve these equity goals relies primarily on a priority licensure mechanism.[26] However, the implementation of this mechanism has fallen short in advancing social equity due to a misapprehension of the unique challenges facing disparately impacted communities and the barriers to entry in the cannabis market. The current state of New York's cannabis industry supports this assessment.[27] This analysis of the MRTA's shortcomings will primarily focus on the priority licensure program, as it has been the most significant factor in the state's failure to achieve its equity goals.

The Social and Economic Equity (SEE) program is comprised of two parts, "priority" applicants and "extra priority" applicants, both of which receive the same benefits upon qualifying for the program.[28] These benefits include a 50% reduction for the application fee as well as the annual license fee as well as support in the form of counseling services, business planning,

---

22 *See id.* § 87.

23 *Id.*

24 *Id.* § 87(2).

25 *Id.*

26 *See id.* § 87(3)–(4).

27 *See* Alexander Lekhtman, *Lawsuit Casts Doubt on New York's Cannabis Social Equity Program*, FILTER (Aug. 15, 2023), https://filtermag.org/new-york-cannabis-equity-lawsuit/ [https://perma.cc/T6L8-YCZP].

28 MRTA § 87(2)–(3); N.Y. STATE OFF. OF CANNABIS MGMT., ADULT-USE SOCIAL & ECONOMIC EQUITY APPLICANT OVERVIEW 1–2 (2024) [hereinafter APPLICANT OVERVIEW], https://cannabis.ny.gov/system/files/documents/2024/03/ocm-seeapplicants.pdf [https://perma.cc/E6TV-5L72].

financial advising, and compliance assistance through the Cannabis Hub and Incubator Program (CHIP).[29]

Firstly, the MRTA expresses the goal of awarding 50% of all adult-use cannabis licenses to "priority" applicants.[30] Priority applicants fall into five categories: individuals from communities disparately impacted by former cannabis prohibition, minority-owned businesses, women-owned businesses, distressed farmers, and service-disabled veterans.[31] The legislature's broad definition of priority applicants indicates an expansive goal of diversity.[32]

Secondly, the "extra priority" applicants category reflects the state's effort to address the impact of War on Drugs.[33] The legislators define this category more narrowly, granting enhanced priority to individuals who have or whose close family members have marijuana-related convictions, who are residents of impoverished areas and who are members of communities disproportionately affected by former cannabis prohibition.[34] The Board assesses eligibility for "extra priority" status based on various factors, including the geographical area's history of arrests and convictions.[35]

"Th[e] [SEE] is an honest articulation of the progressive principles of the Cannabis Law, informing the work to come and ensuring that those most harmed by prohibition reap the economic benefits of legalization," said Damian Fagon in 2023, while he was then Chief Equity Officer of the Office of Cannabis Management (OCM).[36] This reflects the intended effect of the SEE program: to give targeted groups an early opportunity to establish themselves in the cannabis market before wealthier entrepreneurs and more complex entities, less impacted by cannabis prohibition, could dominate the marketplace.[37] Assemblywoman Donna Lupardo, a lead sponsor of the MRTA, has stated that the legislation was intended to open the

---

29 APPLICANT OVERVIEW, *supra* note 28 at 2.

30 *Id.* at 1; MRTA § 87(2).

31 APPLICANT OVERVIEW, *supra* note 28 at 1.

32 MRTA § 87(2).

33 *Id.* § 87(3).

34 *Id.*

35 *Id.* § 87(5)(g).

36 N.Y. STATE OFF. OF CANNABIS MGMT., *NYS Cannabis Control Board Approves Social & Economic Equity Plan to Achieve an Equitable & Inclusive Cannabis Market* (May 11, 2023), https://cannabis.ny.gov/system/files/documents/2023/05/nys-ccb-approves-see-plan.pdf [https://perma.cc/Y3VG-EUWL].

37 MRTA § 2.

adult-use cannabis industry to a "new, diverse group of farmers and entrepreneurs."[38] By reserving a substantial portion of the limited licenses for these communities, the legislature hoped to provide a competitive advantage that would allow these groups to build economic resilience and secure a lasting market presence before wealthier players could enter and control the market.[39] This early access was likely intended to help rectify the harms of past policies and ensure that the economic benefits of legalization reached those most affected by the War on Drugs.

C. Results of the Program to Date

While the lawmaker's intentions for the SEE program are laudable and appear promising for equity applicants and small cannabis entrepreneurs, the rollout has faced significant backlash. Journalists, applicants, and lawmakers have raised concerns over the limited number of licenses dispensed, increased competition from the illicit market, and the lack of aid provided to prospective cannabis entrepreneurs.[40] These issues raise questions about the program's effectiveness and whether it can fulfill its intended goals of equity and reparative justice.

1. *Number of Licenses Issued*

Between the enactment of the MRTA in 2021 and September 2024, a total of 8,414 applications were submitted for cannabis dispensary licenses in New York.[41] Of these, only 362 licenses—just over 4.3%—were provisionally approved.[42] This includes Conditional Adult-Use Retail Dispensary (CAURD) licenses, which prioritize applicants with prior justice involvement, as well as processor and cultivator licenses.[43] By comparison, New York received 6,914 liquor license applications in 2021

---

38 Press Release, Off. of the Governor of N.Y., Governor Hochul Signs Conditional Cannabis Cultivation Bill (Feb. 22, 2022), https://www.governor.ny.gov/news/governor-hochul-signs-conditional-cannabis-cultivation-bill [https://perma.cc/ZZ7Z-M3LM].

39 *Id.*

40 *See* Coleman, *supra* note 15.

41 N.Y. State Off. of Cannabis Mgmt., Marijuana Regulation and Taxation Act Implementation Report 4 (2024) [hereinafter MRTA Report], https://cannabis.ny.gov/system/files/documents/2024/10/mrta-implementation-report.pdf [https://perma.cc/8WGS-HEX9].

42 *Id.*

43 *Id.*

and approved 4,525, making the approval rating 65.4%—a rate drastically higher than New York's 4.3% dispensary license approval rate over a span of more than three years.[44]

2. *The Illicit Market*

The sparse number of licensed dispensaries is even more concerning when compared to the approximated 2,900 unlicensed dispensaries operating in New York City alone.[45] The issue posed by the illicit market is twofold: unregulated products that present health risks to consumers and unfair marketplace competition with licit dispensaries.[46]

The illicit market presents a growing risk to the safety of New York cannabis consumers. According to a 2022 report, 40% of the cannabis product sold in illicit dispensaries possessed lead, E.coli, salmonella, or toxic pesticides.[47] Some of the contaminants within these products "have the potential to cause headaches, nausea, and in cases of prolonged exposure, cancer, and organ failure."[48] The investigation further found that numerous THC products misrepresented the dosage or potency of the product.[49] Because these illicit dispensaries, which, as of January 2026, outnumber the licensed dispensaries more than 5-to-1, are not subject to the health regulations imposed by the New York Department of Health, they present a serious threat to health and safety of consumers.[50]

---

44 N.Y. State Liquor Auth., 2021 Ann. Rep. 17 (2021), https://sla.ny.gov/system/files/documents/2023/01/annual-report-2021-final.pdf [https://perma.cc/VFM5-R25H].

45 Cedar Attanasio & Jennifer Peltz, *NYC's Latest Crackdown on Illegal Weed Shops is Finally Shutting them Down*, AP News (July 31, 2024), https://apnews.com/article/new-york-recreational-pot-illegal-shops-crackdown-3a2e500726fd328293bac8fab4a5f6bd [https://perma.cc/7PDK-6FJX].

46 N.Y.C. Dep't of Health & Mental Hygiene, *Cannabis (Marijuana)*, NYC Health, https://www.nyc.gov/site/doh/health/health-topics/marijuana.page [https://perma.cc/674V-J3J9); MRTA Report, *supra* note 41, at 65.

47 N.Y. Med. Cannabis Indust. Ass'n, N.J. Cannabis Trade Assoc. & Conn. Med. Cannabis Council, E.Coli, Heavy Metals, Copyright Infringement, and 100 Percent Failure Rate (2022) [hereinafter Illicit Dispensary Report], https://www.dropbox.com/s/z5ct1lw4r99hxpt/NYC%20Illicit%20Cannabis%20Market%20Design%2011.29.22.pdf?dl=0 [https://perma.cc/6U3Z-HSV4].

48 *Id.*

49 *Id.*

50 Dispensary Location Verification, N.Y. State Dep't of Health (last accessed Jan. 5, 2026), https://cannabis.ny.gov/dispensary-location-verification [https://perma.cc/8F4Z-779Z]; Colin Moynihan, *A Neighborhood Battles Illegal Weed Shops: 'We've Been Begging for Help'*, N.Y. Times (June 2024), https://www.nytimes.com/2024/06/08/nyregion/lower-east-side-cannabis-stores.html [https://perma.cc/JK2C-JQVR]; *Cannabis Safety*, N.Y. State Dep't of

Additionally, the illicit market presents a substantial obstacle for prospective cannabis entrepreneurs seeking to establish a foothold in New York's regulated market, as they compete directly with unlicensed dispensaries operating outside the legal framework.[51] While cannabis sales are legal within New York, federal law still classifies cannabis as an illegal substance.[52] This classification forces legally operating dispensaries to source their products locally to avoid transporting cannabis across state lines, which would risk federal prosecution under the Controlled Substances Act empowered by the Supremacy Clause and the Commerce Clause.[53] In contrast, unlicensed operators remain largely undeterred by federal restrictions and have exploited the vast California cannabis market, sourcing approximately 75% of their products from California or West Coast growers at a significantly lower price than New York growers.[54] Because cannabis needs "lots of light" as well as "consistent sun and temperature," California makes for the perfect area to produce massive amounts of cannabis, far beyond what New York cannabis growers can hope to compete with in the event of federal legalization.[55]

The prevalence of these illicit dispensaries has created a market where consumers find greater accessibility and affordability in illegal options.[56] One customer, when asked about their decision to shop at an unlicensed dispensary explained, "from a general perspective, there was no way to tell they were

---

HEALTH (June 2024), https://www.health.ny.gov/community/cannabis/safety.htm [https://perma.cc/CDF7-5G4X].

51 Zhang, *supra* note 16.

52 Controlled Substances Act, 21 U.S.C. §§ 802(6), 802(16), 812(c)(10), 841(a) (2024).

53 *See id.*; U.S. CONST. art. VI, cl. 2; U.S. CONST. art. I, § 8, cl. 3. *See also generally* Gonzales v. Raich, 545 U.S. 1 (2005).

54 *See* ILLICIT DISPENSARY REPORT, *supra* note 47.

55 *See* Lester Black, *'Unprecedented': The Biggest Calif. Pot Farm Keeps Getting Bigger*, SFGATE (April 30, 2023), https://www.sfgate.com/cannabis/article/largest-california-cannabis-farm-glass-house-17924258.php [https://perma.cc/SHA8-UGDS].

56 *See* Terence McGinley, *What's Going on With Legal Marijuana in New York?*, N.Y. TIMES (Mar. 26, 2024), https://www.nytimes.com/2024/03/26/insider/marijuana-in-new-york.html [https://perma.cc/528Y-KJW8]; Ashley Southall, *New York's Marijuana Scorecard: 85 Legal Shops, 2,000 Illegal Ones*, N.Y. TIMES (Mar. 22, 2024), https://www.nytimes.com/2024/03/22/nyregion/nyc-cannabis-dispensary-legal.html [https://perma.cc/437B-ZGU2].

unlicensed."[57] This imbalance and confusion presents a significant challenge for inexperienced entrepreneurs attempting to enter the legal market, as they must not only navigate the complex regulatory framework of the MRTA but also offer competitive prices to establish their businesses against the illicit options. "'I didn't think it would be this big of a problem. It's a lot of competition,' said Coss Marte," whose legal dispensary is surrounded by more than thirty unlicensed weed vendors, adding, "I'm operating in a mature market already."[58] For individuals who are reintegrating into society after serving time for prior marijuana-related offenses, this task becomes even more daunting, further compounding the barriers to legal market entry.[59]

3. *Funding for Entrepreneurs*

"Are you willing to wait for [DASNY], or do you want to get first to sale?" one equity applicant responded, when asked about securing funding to lease a business space in New York City.[60] This sentiment underscores the challenges that are caused by delays in funding and operational support promised under New York's social equity initiatives. These delays have forced entrepreneurs to shoulder significant financial burdens and navigate a highly competitive market without the promised infrastructure and financial backing.[61]

The funding mechanism for New York's social equity applicants, intended to support small-scale operators, has only exacerbated the challenges for many licensees, further entrenching barriers to establishing a stable, legal market.[62] The

---

57 Sarah Goodman et al., *Over 30 Illegal Weed Shops Surround Single Legal Cannabis Dispensary in this Popular NYC Neighborhood–Causing Haziness Among 'Confused' Customers*, N.Y. Post (Jan. 11, 2024), https://nypost.com/2024/01/11/metro/hashing-out-nycs-confusing-illicit-cannabis-market/ [https://perma.cc/X87X-GU4G].

58 *Id.*

59 *See* Zhang, *supra* note 16; *see also* Paola Nagovitch, *From the corner to a dispensary: Formerly incarcerated Latinos make their way in New York's cannabis industry*, El País (June 8, 2024), https://english.elpais.com/society/2024-06-08/from-the-corner-to-a-dispensary-formerly-incarcerated-latinos-make-their-way-in-new-yorks-cannabis-industry.html [https://perma.cc/KJY5-WCPU].

60 Mona Zhang, *Inside New York's struggling weed real estate experiment*, Politico (Feb. 6, 2023) (alteration in original), https://www.politico.com/news/2023/02/05/new-york-weed-real-estate-00080188 [https://perma.cc/6UWU-UF9Q].

61 *Id.*

62 Rosalind Adams, *State Cannabis Officials Repeatedly Raised Alarms to Hochul's Team Over Private Equity Loan Deal, Internal Emails Show*, the City

state pledged $200 million in loans for equity applicants, with the goal of assisting justice-impacted individuals in building successful businesses.[63] To fulfill this pledge, New York collaborated with private equity firm Chicago Atlantic Admin, LLC (CAA), securing $150 million in capital to support CAURD licensees.[64] This arrangement has been widely criticized as exploitative, with loans carrying interest rates up to 18% and imposing restrictive terms that limit control over business expenses.[65] These predatory terms will disproportionately burden Black and brown communities—the very groups the MRTA sought to empower—by placing them in high-cost, unsustainable financial obligations. By charging exorbitant interest rates and retaining significant control over business operations, CAA effectively siphons profits from licensees, undermining their ability to build viable enterprises. As a result, many operators face the risk of default,[66] which may compel them to rely on or even re-enter the illicit market.

This "predatory exploitation" not only undermines the social equity goals of New York's cannabis program but also highlights the limitations of relying on private capital for public interest initiatives and the need for significantly greater state funding.[67] The mounting financial obstacles and lack of transparent support reveal the urgency for regulatory reform and alternative funding strategies that prioritize sustainable, accessible financing for minority cannabis entrepreneurs.

(June 11, 2024), https://www.thecity.nyc/2024/06/11/cannabis-emails-hochul-private-equity/ [https://perma.cc/4VFV-5MX7].

63 Rosalind Adams, *NY Promised Pot Store Loans Would Build Wealth and Create Equity. Instead, They're Loading Businesses With Steep Costs.*, THE CITY (Nov. 16, 2023), https://www.thecity.nyc/2023/11/16/marijuana-store-loans-licensed-cannabis-management-chicago-atlantic-dormitory-authority/ [https://perma.cc/L6WD-D974].

64 *Id.*; Press Release, Off. of the Governor of N.Y., Governor Hochul Announces $150 Million Investment in the Cannabis Social Equity Investment Fund (June 30, 2023), https://www.governor.ny.gov/news/governor-hochul-announces-150-million-investment-cannabis-social-equity-investment-fund [https://perma.cc/7HFT-MW9G].

65 Adams, *supra* note 63.

66 *Id.*

67 ELI NORTHRUP, BRONX DEFS., WRITTEN TESTIMONY OF THE BRONX DEFENDERS, N.Y. S. SUBCOMM. ON CANNABIS, STANDING COMMS. ON AGRIC., FIN., & INVESTIGATIONS & GOV'T OPERATIONS, 2023-2024 Sess., at 6 (2023), https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2023-10/the-bronx-cannabis-hub.pdf [https://perma.cc/C37L-J85Q].

4. *Impact on Distressed Communities*

More than three years after the MRTA was enacted, the OCM unveiled its plans in October 2024 to address the harms of cannabis prohibition through the Community Reinvestment Program (CRP).[68] The legislators designed the program to be comprised of a series of grants, with a total available funding of $5 million.[69] The OCM stated that the distribution of the grants will target priorities such as mental health, workforce development, and housing in disparately impacted communities.[70] These grants are not intended to target cannabis entrepreneurs; rather, they are designed to benefit the general community wherever they are allotted.[71]

In February 2025, OCM and the Cannabis Advisory Board began distributing the first round of CRP grants, awarding the full $5 million to nonprofit organizations across the state.[72] While this initial distribution marked the first concrete step toward reinvestment under the MRTA, the limited scale of the funding and the delayed implementation raise questions about whether the CRP can meaningfully address the longstanding harms of cannabis prohibition or achieve the statute's reparative objectives.

One concern with the CRP lies in the disbursement of these funds. The OCM has faced persistent criticism and even litigation over its handling of the CAURD licensing rollout—marked by confusion, inconsistent communication, and allegations of unfair prioritization[73]—raising reasonable concerns that similar administrative and distribution issues could emerge with the CRP. The criteria and decision-making processes for grant

---

68 David Carlucci, *Office of Cannabis Management Offers $100,000 Grants For Youth-Servicing Projects in Priority Communities*, ROCKLAND CNTY. BUS. J. (Oct. 24, 2024), https://rcbizjournal.com/2024/10/24/100000-community-reinvestment-grants-offered-through-nys-office-of-cannabis-management/ [https://perma.cc/J52W-J7T5].

69 *Id.*

70 *Community Reinvestment Program*, N.Y. STATE OFF. OF CANNABIS MGMT., https://cannabis.ny.gov/reinvestment [https://perma.cc/ZGD2-7NJQ].

71 *Id.*

72 *New York State Awards First Round of Community Reinvestment Grants To 50 Youth-Focused Organizations Across the State*, N.Y. STATE OFF. OF CANNABIS MGMT. (Oct. 16, 2025), https://cannabis.ny.gov/system/files/documents/2025/10/cgrf-awards-press-release.pdf [https://perma.cc/9Y3A-2NEF].

73 Kate Lisa, *'We're confused': Cannabis Retail Applicants Question State's Process*, SPECTRUM LOCAL NEWS (N.Y.) (Dec 21, 2023), https://spectrumlocalnews.com/nys/central-ny/politics/2023/12/22/-we-re-confused—-cannabis-retail-applicants-question-ocm-s-process [https://perma.cc/L5DE-DS9W] (reporting applicants' criticisms of OCM's CAURD rollout).

allocation may also face similar legal scrutiny as the Social and Economic Equity program and the issuance of CAURD licenses. Part III of this paper will analyze the past and pending litigation surrounding those programs, but in the case of the CRP, only time will reveal its effectiveness.

II
Legal Concerns

Since the enactment of the SEE program, multiple lawsuits have been filed by prospective licensees challenging the SEE's constitutionality under the Equal Protection Clause and the Dormant Commerce Clause. This Part will examine three key cases, analyze their outcomes, and discuss the anticipated impacts on the licensing program resulting from these decisions.

A. *Variscite*

In *Variscite*, an out-of-state plaintiff challenged the legality of New York's SEE and CAURD licensing programs, arguing that the programs discriminate against non-residents and violate the Dormant Commerce Clause.[74] The Dormant Commerce Clause is the Constitutional principle that prohibits states from enacting laws or policies that unduly burden or discriminate against interstate commerce.[75] The district court denied the plaintiffs' request for a preliminary injunction, placing significant emphasis on the conclusion that because cannabis remains illegal under federal law, the Dormant Commerce Clause does not apply to state cannabis markets.[76]

On appeal, however, the Second Circuit rejected that reasoning, vacated the district court's decision, and remanded the case for further proceedings.[77] In doing so, the court clarified that federal illegality does not categorically foreclose Dormant Commerce Clause scrutiny and that state cannabis regulations may still be subject to constitutional limits on discrimination against out-of-state economic actors.[78] Although the ultimate disposition of the case on remand remains unresolved, the

74 Variscite NY Four, LLC v. N.Y. State Cannabis Control Bd., No. 1:23-cv-01599 (AMN/CFH), 2024 U.S. Dist. LEXIS 18357, at *1 (N.D.N.Y. Feb. 2, 2024), *vacated*, 152 F.4th 47 (2d Cir. 2025).

75 *See generally* Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824).

76 *Variscite*, 2024 U.S. Dist. LEXIS 18357, at *26–27, 36.

77 *Variscite NY Four, LLC*, 152 F.4th at 66.

78 *Id.*

appellate decision substantially weakened New York's reliance on federal illegality as a shield against constitutional challenge.

Moreover, regardless of the outcome on remand, *Variscite* leaves open a significant pathway for future Dormant Commerce Clause challenges, particularly in the event of federal legalization. Given the rapid growth of New York's cannabis market in recent years,[79] it is likely that similar suits will be brought challenging residency-based or in-state preference structures embedded within the CAURD framework. Without the insulation provided by federal prohibition, courts would be required to directly assess whether New York's licensing regime impermissibly discriminates between in-state and out-of-state applicants, which it arguably does. The Second Circuit's decision thus underscores the fragility of the current licensing scheme and highlights the need for preemptive reform to reduce constitutional vulnerability.

B. *Fiore*

The *Fiore* case was a major factor in New York's delayed rollout of adult-use dispensary licenses.[80] This suit, filed by veterans, sought an injunction against the CAURD licensing program, arguing that it was unconstitutional and violated the Separation of Powers Doctrine.[81] The plaintiffs successfully argued that the CAURD license category was not authorized by the MRTA and was introduced later, meaning that the Board and the OCM had likely exceeded their authority by implementing the program.[82] Since the CAURD license was "opened . . . to justice-involved individuals to the exclusion of everyone else,"

---

[79] *See* Debra Borchardt, *New York Could be a $6B Cannabis Market in just Two Years*, CRAIN'S N.Y. BUS. (Oct. 31, 2024), https://www.crainsnewyork.com/cannabis/new-york-could-be-6b-cannabis-market-just-two-years [https://perma.cc/MGA9-SCKN]; Caroline Lewis, *'Shark-Like' Investors Emerge as NY Officials Court Out-of-State Money for Cannabis Startups*, GOTHAMIST (N.Y.C.) (Apr. 27, 2023) https://gothamist.com/news/shark-like-investors-emerge-as-ny-officials-court-out-of-state-money-for-cannabis-startups [https://perma.cc/5M35-DZ74].

[80] Fiore v. N.Y. State Cannabis Control Bd., No. 907282-23, 2023 N.Y. Misc. LEXIS 35788, at *1 (Sup. Ct. Albany Cnty. Aug. 18, 2023); Alex Malyshev, *Looking Ahead to New York Cannabis in 2024: Is 'Fiore' Truly in the Rearview Mirror?*, N.Y. LAW J. (Dec. 15, 2023), https://www.law.com/newyorklawjournal/2023/12/15/looking-ahead-to-new-york-cannabis-in-2024-is-fiore-truly-in-the-rearview-mirror/?slreturn=20260120121246 [https://perma.cc/M89J-A4B7].

[81] *Fiore*, 2023 N.Y. Misc. LEXIS 35788, at *1, 7; *See generally Intro.7.2 Separation of Powers Under the Constitution*, CONST. ANNOT., https://constitution.congress.gov/browse/essay/intro.7-2/ALDE_00000031/ [https://perma.cc/4EGY-YX8W].

[82] *Fiore*, 2023 N.Y. Misc. LEXIS 35788, at *14.

groups of priority applicants have expressed confusion and a sense of exclusion over its implementation.[83]

The injunction was lifted following a settlement agreement in December 2023;[84] however, the *Fiore* litigation casts a long shadow over the CAURD program's legal foundations and highlights critical limitations on the OCM's and CCB's authority to create licensing categories not explicitly outlined in the MRTA. This case underscores a fundamental flaw in New York's regulatory approach, revealing that without clear statutory authorization, future agency-led initiatives may be vulnerable to similar constitutional challenges, creating instability and disenfranchisement among eligible applicants whom the MRTA was designed to help.

C. *Valencia*

The litigation that initially appeared to pose the greatest threat to the SEE program and CAURD licenses is no longer pending.[85] The plaintiff in *Valencia*, a white male-owned cannabis company, challenged New York's licensing framework on Equal Protection grounds, contending that the program unlawfully favored minority- and women-owned businesses in the licensing process.[86] The constitutional argument centered on the claim that the preferential treatment afforded to SEE applicants constituted impermissible racial and gender-based discrimination in violation of the Fourteenth Amendment.[87]

The district court ultimately dismissed the action for lack of subject matter jurisdiction, and the plaintiff thereafter voluntarily dismissed its appeal.[88] As a result, *Valencia* did not yield a judicial determination on the merits of the Equal

---

83 Tom Hymes, *Judge Approves 'Fiore' Settlement, Ending Injunction*, Cannabis Bus. Exec. (Dec. 2, 2023), https://www.cannabisbusinessexecutive.com/2023/12/judge-approves-fiore-settlement-ending-injunction/ [https://perma.cc/NH73-L4EY].

84 *See id.*

85 *See, e.g.*, Molly Burke, *N.Y. cannabis firm claims white male owners faced racial and gender discrimination*, Times Union (Jan. 29, 2024), https://www.timesunion.com/state/article/n-y-cannabis-regulators-face-another-lawsuit-18633818.php [https://perma.cc/P6VZ-HC44].

86 Complaint ¶¶ 49, 64, Valencia AG, LLC v. N.Y. State Off. Of Cannabis Mgmt., *sub nom.* Valenca AG, LLC v. Reid, 5:24-CV-0116 (GTS/TWD), 2025 U.S. Dist. LEXIS 54706 (N.D.N.Y. Mar. 25, 2025), *appeal voluntarily dismissed at* 2025 U.S. App. LEXIS 27537 (2d Cir. Aug. 12, 2025); U.S. Const. amend. XIV, § 1.

87 *See* Complaint, *supra* 86, ¶¶ 64–70.

88 *Id.*

Protection claims asserted against the SEE program, nor did it result in any immediate changes to New York's cannabis licensing framework.

Nevertheless, the litigation remains instructive. Even though *Valencia* was dismissed on jurisdictional grounds, the case highlights the constitutional vulnerability of race and gender-conscious licensing schemes in the current judicial climate. The plaintiff's arguments closely tracked those that have proven successful in other contexts, and the involvement of the Pacific Legal Foundation,[89] an organization with a well-documented record of challenging race-based government programs, underscores the likelihood that similar claims will be reasserted in future litigation. In light of heightened judicial skepticism toward affirmative action and explicit racial classifications, the dismissal of *Valencia* should not be read as an endorsement of the SEE program's constitutional durability.[90]

Accordingly, while *Valencia* no longer presents an immediate legal threat, it serves as a cautionary signal. The claims advanced in the case illustrate how New York's reliance on race and gender-based preferences may invite renewed Equal Protection challenges, either through more carefully structured litigation or in conjunction with other constitutional claims. Absent legislative or regulatory reform, future suits may succeed where Valencia did not, potentially forcing New York to reevaluate its approach to social equity not only in cannabis licensing, but across other state programs designed to remediate the harms of historically discriminatory systems.

D. Implications

The legal challenges to the SEE and CAURD licensing programs nevertheless reveal structural vulnerabilities that are likely to prompt future revisions to the MRTA, even though not all the most prominent cases have resulted in rulings on the merits. Although *Valencia* did not produce a substantive Equal Protection decision, the litigation underscored the

---

89 *What We Fight For: Equality and Opportunity*, PAC. LEGAL FOUND., https://pacificlegal.org/equality-and-opportunity/ [https://perma.cc/5ACP-MXWR].

90 *Race and sex preferences in New York business licensing deny equal treatment and opportunity*, PAC. LEGAL FOUND., https://pacificlegal.org/case/cannabis-licensing-new-york-discrimination/ [https://perma.cc/SJ7S-UGN2] [hereinafter *Race and Sex Preferences*]; *see, e.g.*, Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll., 600 U.S. 181 (2023).

constitutional risk inherent in race and gender-conscious licensing frameworks operating in an increasingly skeptical judicial environment. Rather than eliminating that risk, the dismissal of *Valencia* leaves unresolved questions about the long-term durability of the SEE program's preferential criteria. Accordingly, continued reliance on explicit racial or gender classifications may invite renewed challenges that succeed where Valencia did not, particularly if brought alongside more carefully framed jurisdictional or statutory claims. Such challenges could force the state to reconsider aspects of its equity framework, potentially narrowing or restructuring eligibility criteria in ways that would undermine the MRTA's reparative objectives and reverberate across other state programs employing similar equity-based preferences.

Moreover, the *Fiore* case highlights the vulnerabilities of agency-led initiatives without explicit statutory authorization, suggesting that future licensing frameworks will require clearer legislative mandates to withstand constitutional scrutiny.[91] In response to these cases, and to reduce the risk of further litigation-induced disruption, the MRTA may require amendment to more firmly anchor licensing categories within the statutory text itself, rather than leaving them to administrative interpretation. Such amendments could clarify the scope and justification of social equity criteria, recalibrate eligibility standards to reduce constitutional exposure, and increase transparency in the licensing process.

Recent developments further complicate this landscape. According to a December 2025 report issued by the Cannabis Control Board, more than 2,000 adult-use licenses have now been granted statewide, and approximately forty-four percent of the licenses issued in the past year were awarded to SEE applicants.[92] While these figures suggest meaningful progress toward the MRTA's numerical equity goals, they do not resolve the underlying constitutional and structural concerns exposed by *Fiore*, *Variscite*, and *Valencia*. Absent statutory reform, even a maturing and increasingly inclusive licensing regime remains susceptible to legal disruption, threatening both program stability and the very entrepreneurs the MRTA was designed to protect.

---

91 *See* sources cited *supra* notes 80–83.

92 *New York State Cannabis Control Board Approves 38 New Adult-Use Licenses and Continues Equity-Led Market Growth*, N.Y. STATE OFF. OF CANNABIS MGMT., (Dec. 19, 2025), https://cannabis.ny.gov/system/files/documents/2025/12/december-2025-ccb-press-release-.pdf [https://perma.cc/PDN3-ETAS].

III
Legislative Amendment and Imminent Change

A. Political Dissatisfaction

This subpart analyzes the growing political discontent with New York's cannabis licensing and loan frameworks. It examines critical perspectives from prominent policymakers, including Senators Liz Krueger and Gustavo Rivera, Governor Kathy Hochul, and Assembly Majority Leader Crystal Peoples-Stokes. These figures have voiced significant concerns regarding the regulatory burdens placed on social equity applicants and the state's approach to combating illicit dispensaries. By exploring their critiques, this subpart highlights the broader political and administrative challenges confronting New York's cannabis industry.

1. *Liz Krueger and Gustavo Rivera*

New York Senators Liz Krueger and Gustavo Rivera, sponsors of the MRTA, have recently released a joint statement expressing concerns regarding New York's CAURD loan program.[93] The senators framed the loan programs as a choice to "either enter the market without financial support or sign a deal that offered zero control of design, buildout, or auxiliary costs with loan amounts that ballooned beyond realistic revenue projections."[94] In their statement, the senators called for an investigation of the public-private fund that had, ironically, been designed to help people whose lives had been destroyed by discriminatory policies that targeted disadvantaged communities.[95]

2. *Kathy Hochul*

New York Governor Kathy Hochul criticized the MRTA's licensing program openly, describing the cannabis rollout as a

93 Rosalind Adams, *State Senators Call for Investigation of Cannabis Fund After Reading CITY Exposé*, The City (June 13, 2024), https://www.thecity.nyc/2024/06/13/state-senators-cannabis-chicago-atlantic-investigation/ [https://perma.cc/DZ54-KU6G]; *Senate Bill S1527C*, N.Y. State Senate (2019), https://www.nysenate.gov/legislation/bills/2019/S1527 [https://perma.cc/5SLH-EHA6].

94 Press Release, Liz Krueger & Gustavo Rivera, N.Y. State Senate, Senators Krueger and Rivera's Statement on Concerns Regarding the NYS Cannabis Social Equity Fund (June 12, 2024), https://www.nysenate.gov/newsroom/press-releases/2024/gustavo-rivera/senators-krueger-and-riveras-statement-concerns [https://perma.cc/M858-YE2F].

95 *Id.*

"disaster" in 2024.[96] Hochul inherited the MRTA program in 2021 from ex-Governor Andrew Cuomo, who resigned from his position amid a sexual harassment scandal.[97] Despite her strong critique, Hochul expressed doubt that significant legislative changes to the MRTA's licensing provisions would be feasible in the near term.[98] This could suggest one of two things: either Governor Hochul does not view the issues with the MRTA as urgent enough to warrant immediate legislative action, or, as she asserts, she considers achieving such legislative change to be arduous and infeasible.[99]

Instead, Governor Hochul advocates for strengthening penalties on unlicensed operators, stating, "There should be strict penalties and fines . . . . The Legislature needs to increase the penalties . . . ."[100] In support of this stance, her administration shut down more than 1,000 unlicensed stores statewide and seized over $110 million in illicit products.[101] The effectiveness of these shutdowns, however, has been called into question as illicit dispensary owners have remained undeterred by the crackdown and simply reopen their businesses or cut the padlocks on their storefronts.[102] Furthermore, a judge ruled that the law used in this crackdown violated the illicit dispensary owners' Due Process rights.[103] If

96 Tim O'Shei, *Hochul Says cannabis Rollout a 'Disaster,' but Fixing it is Unlikely*, BUFF. NEWS (Jan. 31, 2024), https://buffalonews.com/news/local/hochul-says-cannabis-rollout-was-a-disaster-but-fixing-it-is-unlikely/article_979f5a62-bea3-11ee-afa1-4f106e0a993b.html [https://perma.cc/7M93-6FC7].

97 *Id.*; Shannon Young & Michelle Bocanegra, *Andrew Cuomo Resigns Amid Sexual Harassment Scandal*, POLITICO (Aug. 10, 2021), https://www.politico.com/states/new-york/albany/story/2021/08/10/andrew-cuomo-resigns-1389566 [https://perma.cc/VQ2Z-PCHT].

98 O'Shei, *supra* note 96.

99 *See id.*

100 *Id.*

101 Press Release, Off. of the Governor of N.Y., Governor Hochul and Mayor Adams Announce More Than 1,000 Illegal Cannabis Shops Have Been Shut Down Statewide (July 31, 2024), https://www.governor.ny.gov/news/governor-hochul-and-mayor-adams-announce-more-1000-illegal-cannabis-shops-have-been-shut-down#:~:text=Since%20Governor%20Hochul%20signed%20legislation,total%20to%20more%20than%201%2C000 [https://perma.cc/PWG7-LGPL].

102 Zhang, *supra* note 18.

103 A S A 456 Corp. v. City of New York, No. 721248/2024, 2024 N.Y. Misc. LEXIS 25793, at *22–23 (Sup. Ct. Queens Cnty. Oct. 29, 2024); *see also* Erin Pflaumer, Kristin Cole & Associated Press, *Could Smoke Shops Reopen After NYC Padlock Law Ruled Unconstitutional?*, PIX 11 (N.Y.) (Oct. 30, 2024), https://pix11.com/news/local-news/marijuana-in-ny-nj/could-smoke-shops-reopen-after-nyc-padlock-law-ruled-unconstitutional/ [https://perma.cc/B74Z-QFBW].

the judgment holds, the owners could reopen their shops[104] as well as seek damages[105] for the violation of their Constitutional rights, leaving the illicit market stronger than ever and the licensed dispensary owners with an even greater sense of hopelessness.

Furthermore, the administrative and structural changes necessary to overhaul the licensing process present a substantial challenge. "Without enough licensed dispensaries to serve demand, thousands of unlicensed sellers stepped in, often flouting rules by popping up near schools and selling weed in colorful packaging."[106] The ongoing delay in implementing such reforms only serves to entrench the illicit market's presence in New York, complicating efforts to build a stable, legal cannabis industry.[107]

3. *Crystal Peoples-Stokes*

Assembly Majority Leader Crystal Peoples-Stokes recently criticized former Governor Andrew Cuomo, who passed the MRTA in 2021, and called for New York lawmakers to revisit the statute, suggesting that "some pieces of it . . . are not fit[] for 2024."[108] One area of concern for Peoples-Stokes is the potency tax, an excise tax on adult-use cannabis products above a certain THC potency.[109] The concern regarding the potency tax is that it imposes too significant of a burden on cannabis retailers and growers. Another change that the Majority Leader proposed is the removal of marketing restrictions, to allow dispensaries to better advertise cannabis products. Additionally, she has criticized the high-interest social equity loans, stating that the "rates are a little predatory . . . . 13% is too much."[110]

---

104 Zhang, *supra* note 18.

105 *See* Eileen Lehpamer, *Smoke Shops Accused of Illegally Selling Weed Fight Back with Class Action Suit*, PIX11 (N.Y.) (June 14, 2024), https://pix11.com/news/local-news/smoke-shops-accused-of-illegally-selling-weed-fight-back-with-class-action-suit/ [https://perma.cc/ERE6-UKTP].

106 *See* Zhang, *supra* note 18.

107 *See id.*

108 Kate Lisa, *'I'm Open to it': Sponsor of N.Y. Adult-Use Cannabis Law Weighs Tweaks*, SPECTRUM NEWS 1 (N.Y.) (Feb. 6, 2024), https://spectrumlocalnews.com/nys/central-ny/politics/2024/02/06/pols-weigh-tweaking-n-y—law-that-legalized-recreational-cannabis [https://perma.cc/2BA3-53A4].

109 *Id.*; Jason Klimek, *New York Adult-Use Cannabis THC Potency Tax*, N.Y. STATE SOC'Y OF CERTIFIED PUB. ACCTS. (Apr. 1, 2023), https://www.nysscpa.org/article-content/new-york-adult-use-cannabis-thc-potency-tax [https://perma.cc/6Z9L-L2NR].

110 Joe Rossi, *New Yorkers: Speak up About the Cannabis Program 'Disaster' at this Friday's CCB Meeting (Guest Column)*, SYRACUSE.COM (Feb. 15, 2024),

While Peoples-Stokes has acknowledged these concerns and has suggested that the state should explore ways to ease the burden on social equity borrowers, she has not articulated a concrete legislative proposal or timeline regarding whether the loan program will actually be changed or whether social equity applicants can expect guaranteed additional financial assistance as they look to secure funding for their businesses.

Peoples-Stokes has maintained her belief that the MRTA's commitment to social equity—particularly the provision ensuring at least 51% of licenses are awarded to equity applicants—should be left untouched by the amendments, despite the legal challenges the provision has faced over the past four years.[111]

B. OCM Leadership Changes

Among the criticisms that the MRTA and SEE program has received, much frustration has been directed at the personnel appointed to manage the program.[112] Since its inception, the OCM has experienced two notable resignations. The first occurred in May 2024, when Chris Alexander, the head of the OCM, was called upon to resign by Governor Hochul.[113] The resignation followed Hochul's order for a thirty-day review of the agency and the release of a State Operations Assessment Report which criticized the leadership of the OCM as "relatively inexperienced."[114] Additionally, the report found that the OCM had sixty-five unfilled staff positions and had underspent its yearly budget by $26 million—money that could have been spent helping lawful entrepreneurs establish themselves in the industry or helping the communities that the MRTA was

https://www.syracuse.com/marijuana/2024/02/new-yorkers-speak-up-about-the-cannabis-program-disaster-at-this-fridays-ccb-meeting-guest-column.html [https://perma.cc/6T8D-BZ9P].

111 Lisa, *supra* note 108; *see also Race and Sex Preferences*, *supra* note 90.

112 *See* Chris Roberts, *Scapegoat or Solution? Ouster of Top New York Marijuana Official Raises Questions*, MJBizDaily (May 14, 2024), https://mjbizdaily.com/will-change-in-new-york-marijuana-leadership-fix-adult-use-market/ [https://perma.cc/D88U-V9FK].

113 Rosalind Adams, *New York Cannabis Chief Resigns After Criticism from Hochul*, The City (May 25, 2024), https://www.thecity.nyc/2024/05/25/chris-alexander-cannabis-resigns/ [https://perma.cc/9S85-NZK7].

114 Jeanette M. Moy, OCM Assessment Final Report, N.Y. State Off. of Gen. Servs., 2024-2025 Sess., at 4 (2024), https://www.governor.ny.gov/sites/default/files/2024-05/OCM_Assessement_Final_Report.pdf [https://perma.cc/TL4H-WY22].

designed to rebuild.[115] A former OCM official blames Alexander for much of the rollout's failures.[116]

> Chris was putting out timelines—"This is when regulations are going to be done"— . . . but privately saying to people who have his personal number, "We're not going to hit those deadlines," . . . . Meanwhile, "We got all these people, like 200 farmers, betting everything and we don't have a retail market. . . . And nobody said anything."[117]

While some have criticized the call for Alexander's resignation as an attempt to deflect blame for the challenges facing the cannabis market, it is unclear whether the true issue lies with the management or the program itself.[118]

The second resignation was Damien Fagon, the Chief Equity Officer for the OCM, who resigned in November 2024 following an investigation regarding complaints that Fagon had abused his powers to punish a cannabis processor who had been outspoken against Fagon's conduct.[119] One of the controversies involving Fagon centered on allegations of retaliation against a New York processor who leaked audio of the Chief Equity Officer acknowledging that the OCM was aware of "large out-of-state brands openly [flouting] regulations or illegally importing cannabis from other states."[120] While Fagon was cleared of his charges, the concerns around OCM management and licenses have continued to hurt the office's public perception and contributed to the discontentment with the program as a whole.[121]

C. Legislative Changes

To summarize, while there is broad consensus among the New York legislature and the public that the MRTA has failed

---

115 *Id.*

116 Brendan J. Lyons, *NY's Embattled Cannabis Leader Tells Hochul He's Stepping Down Now*, TIMES UNION (May 27, 2024) https://www.timesunion.com/capitol/article/leader-embattled-ny-cannabis-office-leaving-post-19478001.php [https://perma.cc/AMN6-DXXV].

117 *Id.*

118 *See* Roberts, *supra* note 112.

119 *New York's Cannabis Social Equity Director Resigns*, MJBIZDAILY (Sep. 23, 2024), https://mjbizdaily.com/new-yorks-cannabis-social-equity-director-damian-fagon-resigns/ [https://perma.cc/9JSA-QFKD].

120 Sean Teehan, *Investigation into NY Cannabis Regulator Damian Fagon Still Going*, SYRACUSE.COM (May 22, 2024), https://www.syracuse.com/marijuana/2024/05/investigation-into-ny-cannabis-regulator-damian-fagon-still-going.html [https://perma.cc/HDQ7-8MCR].

121 *New York's cannabis social equity director resigns*, *supra* note 119.

to achieve its equity goals, few meaningful reforms have been proposed to address these shortcomings. Governor Hochul has described the licensure rollout as a "disaster," yet her focus has been on the Sisyphean task of eradicating the illicit market and shifting program leadership, rather than overhauling the program itself.[122] While amending the MRTA would be a tedious process, it at least guarantees the resolution of some of the statute's issues. Similarly, Assembly Majority Leader Peoples-Stokes has acknowledged that the program's equity goal is facing significant challenges, but has focused her efforts on other areas of the MRTA. Despite recognizing the serious risks posed by predatory loans, which have historically harmed Black and Brown communities,[123] there has been no indication that the loan program will be restructured in any significant way.

IV
The Implications of Changes to the SEE Program

Although the precise effects of a judgment against the SEE program, the constitutionality of CAURD licenses, or future legislative changes cannot be predicted with certainty, this Part identifies key issues that have already emerged or are likely to emerge as a result of these developments.

A. Lost Value for Priority Applicants

The foremost issue facing priority applicants is the loss of their investments in their business. Due to licensing delays and persistent legal challenges to the program, even if the CAURD program is upheld, these entrepreneurs are operating their businesses at a financial disadvantage.[124] While the opening of the businesses has been delayed, the costs of paying rent and retaining employees remain. Additionally, these minority entrepreneurs are faced with the challenge of paying off the high-interest loans that they secured in order to start the business.

These mounting financial pressures are further exacerbated by competition with the preexisting illicit market.[125] As CAURD licensees—who are generally less affluent, and by definition, often come from underprivileged areas or are dealing

---

122 O'Shei, *supra* note 96.

123 *See generally* Creola Johnson, *The Magic of Group Identity: How Predatory Lenders Use Minorities to Target Communities of Color*, 17 Geo. J. on Poverty L. & Pol'y165 (2010).

124 *See supra* subpart I.C.

125 *See supra* section I.C.2.

with the impacts of incarceration—seek to make their businesses profitable, they must compete with illicit operators who can sell products at significantly lower prices due to fewer regulatory obstacles. The licensees are forced to make a difficult choice: offer their products at a profitable price but risk losing market share to low-cost illicit dealers or offer a competitive price with lower margins. In either scenario, they face substantial risks, including the possibility of defaulting on loans or losing their investments entirely.[126]

Farmers have been profoundly affected by the program's delayed rollout, with 97% of New York's small licensed cannabis cultivators reportedly operating at a loss.[127] Tessa Williams, a New York cannabis grower, explains the lack of revenue simply: "[W]e aren't on shelves because there aren't enough stores open."[128] Under the MRTA and federal law, licensed dispensaries must source their cannabis from New York farmers.[129] However, the slow implementation and the prevalence of illicit dispensaries—which often source their products from out-of-state suppliers—have placed these farmers in severe financial jeopardy.[130] With regulators failing to launch licensed dispensaries on schedule, farms are "sitting on over 250,000 pounds of weed that is slowly rotting."[131]

Many farmers who anticipated a profitable transition into the legal cannabis market are now facing desperate circumstances. Collectively losing millions of dollars, some have been forced to sell tractors and farm equipment to stave off bankruptcy, while others are grappling with suicidal thoughts while hundreds of pounds of weed rot in their silos.[132] "This ruined

---

126 *See supra* section I.C.3.

127 Kelsey Brown, *Group for Small Pot Farmers Sues N.Y. and Warns Industry 'at Risk of Collapse'*, TIMES UNION (N.Y.) (Nov. 11, 2024), https://www.timesunion.com/capitol/article/cannabis-farmers-alliance-sues-ny-office-cannabis-19906334.php [https://perma.cc/R9ZN-4YHT].

128 Mel Hyman, *Senator Hinchey and Assemblywoman Lupardo to Push for Cannabis Farmer Relief Fund in 2024*, NYUP.COM: CANNABIS INSIDER (Jan. 16, 2024), https://www.newyorkupstate.com/cannabis-insider/2023/11/senator-hinchey-and-assemblywoman-lupardo-to-push-for-cannabis-farmer-relief-fund-in-2024.html [https://perma.cc/SJ9F-7SAX].

129 *See supra* section I.C.2.

130 Wesley Parnell, *They Signed Up To Grow Weed. Then New York State Pushed Them Into The Black Market*, ROLLING STONE (Mar. 22, 2024), https://www.rollingstone.com/culture/culture-features/new-york-legal-weed-cannabis-farmers-struggling-1234985171/ [https://perma.cc/JG7C-AVCN].

131 *Id.*

132 Brendan J. Lyons, *'This Ruined my Life': Impact of N.Y.'s Botched Cannabis Rollout Aired*, TIMES UNION (N.Y.) (Sep. 13, 2023) https://www.timesunion.

my life," stated one farmer who relied on the assurances of New York's regulators that the transition to the cannabis market would be a lucrative endeavor.[133]

> We all bet the farm on weed because we were invited to grow for New York State, and cannabis is more lucrative than carrots. Turns out the "too good to be true" offer from our governor is just that.[134]

Despite desperate pleas for assistance, cannabis farmers' financial relief has come only after prolonged delay and remains insufficient to address the scale of the crisis they face. Although the 2025 budget ultimately authorized $60 million in loans, $40 million in grants, and $28 million in tax credits for cannabis farmers, this funding arrived only after years of losses and has been widely criticized as inadequate relative to the magnitude of farmers' collective debt and unsold inventory.[135] In the face of this "agricultural emergency," Donna Lupardo and the Agriculture Committee have continued to press for the creation of a dedicated cannabis relief fund that would provide sustained, targeted support, but no permanent or comprehensive relief mechanism has yet been enacted.[136] The limited scope and delayed timing of legislative intervention underscore the state's failure to meaningfully stabilize the cultivator sector, casting doubt on the likelihood that the cannabis relief fund will ever be enacted. This pattern of failed initiatives reflects a legislative sentiment that undervalues the role of New York farmers and reveals a tepid commitment to the equity goals espoused in the MRTA's preamble.

B. Growth of the Illicit Market

The financial pressures stemming from the delayed licensing rollout have forced farmers and retailers into the illicit market as a means of survival.[137] Farmers who initially committed

---

com/state/article/this-ruined-life-n-y-cannabis-meeting-reveals-18361515.php [https://perma.cc/MP28-KZQ9].

133 *Id.*

134 Hyman, *supra* note 128.

135 Lyons, *supra* note 132; Press Release, Jeremy A. Cooney, Senator Cooney Statement on Cannabis Wins in Just-Passed Senate "One-House Budget", (Mar. 14, 2024), https://www.nysenate.gov/newsroom/press-releases/2024/jeremy-cooney/senator-cooney-statement-cannabis-wins-just-passed [https://perma.cc/D7XY-546D].

136 Hyman, *supra* note 128; Assemb. B. A06593, 2023-2024 Gen. Assemb., Reg. Sess. (N.Y. 2023); *Assembly Bill A6593*, N.Y. STATE SENATE, https://www.nysenate.gov/legislation/bills/2023/A6593 [https://perma.cc/M4H4-7GM4].

137 Parnell, *supra* note 130.

to operating within the legal framework now face the grim reality of bankruptcy, sitting on an estimated $6 billion worth of unsold cannabis.[138] For many, the choice is grim: risk financial ruin by adhering to the law or enter the illicit market to avoid bankruptcy. As one licensed farmer explained, their decision to sell on the illicit market came down to "selling now or losing your farm."[139]

Similarly, CAURD applicants, already burdened by high-interest loans and the cost of maintaining operations during prolonged delays, remain vulnerable to displacement into the illicit market as a result of ongoing legal uncertainty surrounding the priority licensure framework. Although the Equal Protection challenge in *Valencia* was dismissed on jurisdictional grounds, the litigation exposed the fragility of the program and the real possibility that future constitutional challenges could disrupt or restructure the priority licensing regime. In the event that similar claims succeed, justice-involved entrepreneurs could be forced to reapply for standard retail licenses at the "back of the line," jeopardizing their ability to ever operate legally. Faced with sunk costs, mounting debt, and no immediate legal path forward, some applicants may view unlicensed sales as the only means of recouping their investments. Without viable legal alternatives, many of these entrepreneurs risk being pushed into the growing ranks of illicit operators, further undermining both the MRTA's equity goals and the state's ability to establish a stable, regulated cannabis market.

C. Corporate Takeover

Vertical integration, a business approach where a company gains control over all stages of its supply chain—from production to retail—is commonly used to maximize efficiency and achieve market dominance. While effective, it is also prohibitively expensive, favoring large corporations with substantial financial resources.[140] The MRTA initially prohibited vertical integration to promote a diverse and equitable cannabis market, restricting licensees to a single segment of the supply chain to prevent monopolistic practices and

---

138 *Id.*

139 *Id.*

140 Robert D. Buzzell, *Is Vertical Integration Profitable?*, HARV. BUS. REV. (Jan. 1983), *as reprinted in* HARV. BUS. REV., https://hbr.org/1983/01/is-vertical-integration-profitable [https://perma.cc/MU7P-CEAR].

ensure that small operators could compete.[141] However, as of November 2024, New York legislators have significantly deviated from this vision. The Office of Cannabis Management publicly previewed proposed regulatory changes that would permit registered medical organizations to obtain vertically integrated adult-use licenses, citing the need to rapidly expand retail capacity and stabilize the legal market.[142] Under the proposed framework, medical operators could enter the adult-use market upon payment of a multimillion-dollar fee—reported to be approximately $5 million—reflecting a regulatory shift toward leveraging incumbent operators to address consumer demand and market shortfalls.[143]

The proposal generated immediate backlash from New York cannabis farmers and advocacy organizations. Cultivators publicly warned that permitting vertically integrated medical operators to enter the adult-use market would severely disadvantage small growers, arguing that large incumbents would be able to dominate shelf space and pricing in a way that effectively forecloses meaningful market participation by independent cultivators.[144] Farmer representatives and trade groups indicated that the policy shift undermined the MRTA's core equity goals and raised the prospect of legal challenge, particularly given the absence of comparable relief or market access for small producers.[145] By allowing well-capitalized corporations to dominate multiple aspects of the supply chain, New York risks sidelining the small businesses and social equity operators that the MRTA was ostensibly designed to protect. This decision may exacerbate the existing disparity between corporate and independent operators, potentially consolidating

---

[141] Marihuana Regulation and Taxation Act (MRTA), N.Y. CANNABIS LAW §§ 68(5) to 68-b (McKinney 2021).

[142] Rosalind Adams, *Big Weed Is on the Brink of a Multi-Million Dollar Surge into New York's Cannabis Market*, THE CITY (Sep. 11, 2023), https://www.thecity.nyc/2023/09/11/big-weed-cannabis-medical-marijuana/ [https://perma.cc/EM24-X7A4]; *Office of Cannabis Management Previews Updated Proposed Adult-Use Cannabis Regulations*, N.Y. STATE OFF. OF CANNABIS MGMT., (May 10, 2023), https://cannabis.ny.gov/system/files/documents/2023/05/office-of-cannabis-management-previews-updated-proposed-adult-use-cannabis-regulations-.pdf [https://perma.cc/QN73-GKAY].

[143] *Office Of Cannabis Management Previews Updated Proposed Adult-Use Cannabis Regulations*, *supra* note 142.

[144] Rowan Dunne, *New York Pot Farmers Take State Authorities to Court Over Adult-Use Rollout Measures*, MUGGLEHEAD MAG. (Vancouver) (Nov. 14, 2024), https://mugglehead.com/new-york-pot-farmers-take-state-authorities-to-court-over-adult-use-rollout-measures/ [https://perma.cc/72LQ-BKHS].

[145] *Id.*

market power in the hands of a few dominant players at the expense of the undercapitalized minority entrepreneurs.

The abandonment of the MRTA's initial prohibition on vertical integration also raises broader questions about the state's commitment to its equity goals. While the OCM's justification that "we need more stores" highlights operational challenges in the cannabis rollout, critics argue that the decision reflects a troubling willingness to prioritize expediency and revenue over the long-term development of a fair marketplace.[146] The introduction of vertical integration, even in a limited capacity, risks replicating patterns of market concentration seen in other states, where corporate players marginalize smaller competitors.[147] Ultimately, the decision's impact will depend on whether New York can implement safeguards to prevent further erosion of its equity objectives, but this favorable shift towards cannabis giants signals a worrisome trend that may undermine the MRTA's principles and goals of equity.

V
The Solution: How to Protect Entrepreneurs in the Face of Cannabis Giants

This Part outlines my recommendations for improving the MRTA and the SEE program. First, I will identify the core values that any successful social and economic equity program should highlight, emphasizing accessibility, fair business practices, and sustainability. Second, I will compare New York's SEE program to similar equity frameworks implemented in other states that have legalized cannabis, examining their relative strengths and weaknesses. Finally, drawing on the successes and challenges observed in these states, I will propose a legislative adjustment that would affect the issues highlighted in Part IV. The recommendation will address three critical areas: combating the illicit cannabis market, providing long-lasting support to historically disadvantaged communities, and mitigating the negative effects of the MRTA's slow rollout. By focusing on these priorities, my proposed solution aims to realign New York's cannabis policies with the equity goals originally espoused in the MRTA.

146 Adams, *supra* note 142.

147 *See, e.g.*, Megan Ulu-Lani Boyanton, *LivWell to be Colorado Cannabis Giant After Powerhouse PharmaCann Plans to Buy Boutique Chain*, Denver Post (Sep. 9, 2022), https://www.denverpost.com/2022/09/09/livwell-pharmacann-buying-the-clinic-cannabis-marijuana/ [https://perma.cc/5JST-FHGH].

A. Defining a "Successful" Equity Program

Firstly, an effective equity program should prioritize accessibility for the targeted groups, addressing issues like those California faced with its initial cannabis equity program, which included an overly complex licensing process and significant barriers to entry for equity applicants.[148] Fundamentally, this requires reducing the barriers to entry in the cannabis market.[149] These barriers to entry include complex regulatory codes, substantial capital requirements, and the general challenge of obtaining a license.[150] In order to address compliance difficulties, equity programs could provide regulatory education to entrepreneurs which would equip them with the knowledge needed to navigate their market and understand their responsibilities.

Additionally, financial accessibility could be promoted by reducing program costs or increasing need-based funding to support aspiring individuals. This is a strategy that has been exemplified by the widely praised POSSE Foundation Scholarship Program.[151] Equity programs must also provide a "level playing field" by addressing the unique challenges faced by specific groups—such as women, Black individuals, veterans, and justice-involved individuals—through tailored assistance that acknowledges and mitigates the discrete obstacles that each group encounters.[152] By focusing on these measures in an individualized way, an equity program can foster a more inclusive and accessible cannabis market.

An effective equity program must prioritize fair business practices to ensure that small business owners can compete alongside larger corporate entities.[153] Key considerations should include providing accessible and fair loans, implementing regulations that protect vulnerable entrepreneurs,

---

148 Tony Lange, *New Report: High Entry Barriers to California's Cannabis Market Impede Oversight, Market Viability*, CANNABIS BUS. TIMES (Feb. 16, 2024), https://www.cannabisbusinesstimes.com/us-states/california/news/15686923/new-report-high-entry-barriers-to-californias-cannabis-market-impede-oversight-market-viability [https://perma.cc/7HRK-28F2].

149 *Id.*

150 *Id.*

151 *About Posse*, POSSE FOUND., https://www.possefoundation.org/about-posse [https://perma.cc/9Z3U-2WCT]; Julie Blair, *Power of the Posse*, EDUCATIONWEEK (Mar. 22, 2000), https://www.edweek.org/teaching-learning/power-of-the-posse/2000/03 [https://perma.cc/9EMM-FT6H].

152 *See, e.g.*, *Contracting Assistance Programs*, U.S. SMALL BUS. ADMIN., https://www.sba.gov/federal-contracting/contracting-assistance-programs [https://perma.cc/6HTA-CPA6].

153 *See, e.g.*, *Supplier Diversity Program (SDP)*, MASS. SUPPLIER DIVERSITY OFF. https://www.mass.gov/supplier-diversity-program-sdp [https://perma.cc/8JC6-DT99].

imposing penalties to deter illegal practices, and maintaining consistency with stated intentions. Regulatory stability is particularly important[154] for equity entrepreneurs and first-time operators, as the complex and unsettled cannabis laws already make regulatory compliance challenging due to these individuals' limited resources.[155] Unpredictable or frequently changing regulations increase the risk of noncompliance, potentially leading to financial penalties or business closures.[156]

Lawmakers must prioritize economic sustainability in an equity program, fostering a cannabis market that benefits both consumers and entrepreneurs.[157] By limiting the dominance of large corporations in the market, lawmakers promote ownership opportunities for equity entrepreneurs.[158] When entrepreneurs have ownership of their businesses, they are more inclined to make decisions that improve operations and provide better value to customers and consumers.[159] When legislators align personal and business success, they incentivize innovation, quality, and customer satisfaction, thereby creating a more vibrant and competitive market.[160] A successful equity program should actively maintain market diversity and sustainability by curbing corporate dominance, empowering individual operators, and advancing broader social equity objectives.

B. Alternate Equity Approaches Across the States

States have adopted various strategies to create equitable cannabis markets, each with their own unique successes and

---

154 Timothy S. Jost, *Supreme Court Tells Government to "Honor its Obligations" to ACA Insurers*, COMMONWEALTH FUND: BLOG (May 4, 2020), https://www.commonwealthfund.org/blog/2020/supreme-court-tells-government-honor-its-obligations-aca-insurers [https://perma.cc/EUQ8-FGA8].

155 *See* Debra Borchardt, *New York's Ongoing Struggle to Launch Cannabis Companies*, GREEN MKT. REP. (July 9, 2024), https://www.greenmarketreport.com/new-yorks-ongoing-struggle-to-launch-cannabis-companies/ [https://perma.cc/F5AF-ZGMP].

156 John E. Calfee & Richard Craswell, *Some Effects of Uncertainty on Compliance with Legal Standards*, 70 VA. L. REV. 965, 966 (1984).

157 *Cf., e.g. The Affordable Housing Crisis Grows While Efforts to Increase Supply Fall Short*, U.S. GOV'T ACCOUNTABILITY OFF. (Oct. 12, 2023), https://www.gao.gov/blog/affordable-housing-crisis-grows-while-efforts-increase-supply-fall-short [https://perma.cc/8VZV-ETU4].

158 STACY MITCHELL, MONOPOLY POWER AND THE DECLINE OF SMALL BUSINESS THE CASE FOR RESTORING AMERICA'S ONCE ROBUST ANTITRUST POLICIES, INST. FOR LOC. SELF-RELIANCE 13, 18 (2016), https://ilsr.org/wp-content/uploads/2018/03/MonopolyPower-SmallBusiness.pdf [https://perma.cc/EL6N-YT8A].

159 *Id.* at 13–16.

160 *Id.* at 6, 13–16.

challenges. This subpart will explore Massachusetts' focus on financial grants, Oklahoma's reduction of capital barriers, and Washington's incremental equity licensing, offering insights into how different frameworks address social and economic disparities in different aspects of the cannabis industry.

1. *Massachusetts*

Massachusetts's social equity program had initially focused its efforts on giving its applicants expedited licensing review as well as access to technical assistance.[161] This strategy, however, failed to realize its goal of fostering a diverse and equitable industry. A study released in 2021 by the state Cannabis Control Commission indicated that 73% of cannabis players were white, and 64% were male.[162] Commentators identified a critical barrier that Massachusetts legislators had overlooked: equitable access to capital.[163]

Since then, Massachusetts launched a $25 million Cannabis Social Equity Grant Program dedicated to addressing the financial pressure on priority entrepreneurs.[164] The program designates grants ranging from $25,000 to $500,000 for cannabis entrepreneurs and is funded by the cannabis sales taxes brought in by the state.[165] While the program's long-term impact on creating an equitable cannabis market remains to be seen, it represents a significant step in addressing prior shortcomings. By directly responding to the financial needs that have been articulated by equity applicants, Massachusetts has demonstrated adaptability and a commitment to address the unique challenges faced by disadvantaged entrepreneurs.[166]

---

161 *Equity Programs*, CANNABIS CONTROL COMM'N: COMMONWEALTH OF MASS., https://masscannabiscontrol.com/equity/ [https://perma.cc/Q6QF-Q9DV].

162 Melissa Hanson, *Why the Massachusetts Cannabis Industry Remains Primarily White and Male*, MASSLIVE.COM (Aug. 6, 2021), https://www.masslive.com/cannabis/2021/08/why-the-massachusetts-cannabis-industry-remains-primarily-white-and-male.html [https://perma.cc/E8QY-QF42].

163 Bhaamati Borkhetaria, *With Limited Access To Capital, Social Equity Marijuana Businesses In Massachusetts Say They've Been Sold 'Bag Of Dreams'*, MARIJUANA MOMENT (May 14, 2024), https://www.marijuanamoment.net/with-limited-access-to-capital-social-equity-marijuana-businesses-in-massachusetts-say-theyve-been-sold-bag-of-dreams/ [https://perma.cc/AXG5-QPDA].

164 Eric Casey, *Mass. Launches $25M Fund Looking to Boost Social Equity Cannabis Companies*, WORCESTER BUS. J. (Sep. 25, 2024), https://www.wbjournal.com/article/mass-launches-25m-fund-looking-to-boost-social-equity-cannabis-companies [https://perma.cc/AN6P-7PTH].

165 *Id.*

166 *See id.*; *see also* Matt Reed, *Equity is Pillar of Boston's First Black Woman-Owned Cannabis Dispensary*, WCVB5 (Boston) (Feb. 9, 2023), https://www.

By listening to the needs of the people that the state is hoping to help, they are able to tailor their efforts accordingly.

2. *Oklahoma*

As of 2024, Oklahoma has only legalized medical cannabis, so it is unclear whether their equity policies may change in the event of recreational legalization. Currently, Oklahoma has adopted a markedly different approach than Massachusetts in protecting individuals who have been disproportionately impacted by the cannabis prohibition. Oklahoma does not offer a state social equity program at all.[167] Rather, the state's cannabis framework creates economic support systems generally, without considering the identity of the individuals. One example of this approach is Oklahoma's tiered licensing structure, which scales annual license fees based on the size or production volume of the licensee.[168] Additionally, the Oklahoma Medical Marijuana Authority requires only a $100 application fee, a significantly more manageable barrier to entry when compared to New York's adult-use cannabis application fees, which range from $1,000 to $10,000 depending on license type.[169]

By reducing capital requirements such as the application fee, Oklahoma logically enables a more economically diverse group of people to enter the market. Additionally, by tailoring the economic burden placed on individuals according to the scale of the operation, Oklahoma's tiered program serves to "level the playing field" and ensure that small businesses are given the same opportunity to exist in the cannabis market as large-scale growers and deep-pocketed corporations. While there is no data on the state's cannabis market composition by sex or race, the low barriers to enter the market coupled with the individualized economic burden of licensing fees indicate that the state has created the *opportunity* for a diverse market.

---

wcvb.com/article/equity-is-pillar-of-bostons-first-black-woman-owned-cannabis-dispensary/42800203 [https://perma.cc/U5E8-8KCW]; *Adult-Use Application and Licensing Fee Schedules*, N.Y. STATE OFF. OF CANNABIS MGMT., https://cannabis.ny.gov/system/files/documents/2024/03/application-and-licensing-fee-schedules.pdf [https://perma.cc/H2CR-XVU3]; *Application Requirements for Each License Type*, OKLA. MED. MARIJUANA AUTH., https://oklahoma.gov/omma/patients-caregivers/patient-licenses.html [https://perma.cc/92N7-TXRA].

167 *Oklahoma: Equity Project State Briefing*, MINORITY CANNABIS BUS. ASS'N, https://minoritycannabis.org/equitymap/oklahoma/ [https://perma.cc/8AJB-NNAP].

168 OKLA. STAT. ANN. tit. 63 § 427.14(D)(2)(a)–(b) (West 2025).

169 FAQs, OKLA. MED. MARIJUANA AUTH. https://oklahoma.gov/omma/help/faqs.html [https://perma.cc/JC8V-LU7A].

3. *Washington*

As one of the first states to legalize recreational-use cannabis,[170] Washington's approach to cannabis legalization did not include many social equity considerations. Because of this, as of 2021, a mere 4% of cannabis retail businesses were Black-owned.[171] Black business owners recognized this inequality and demanded change "You guys punish us for years for cannabis," one said, "[a]nd now it's okay. Now you're doing it. Now it's okay."[172] Washington has since then enacted a social equity plan which, most notably, increased the maximum number of licenses available in the state with the provision that all available licenses will go to applicants who have been disparately impacted by cannabis prohibition.[173] This plan included a caveat that reallocates licenses that have been revoked, forfeited, or are unused to social equity applicants.[174] Further amendments to the program have increased the number of licenses made available to social equity applicants.[175] By incrementally increasing the amount of equity licensees exclusively in the preexisting market, Washington is consistently moving towards an equitable market at a rate that has yet to overwhelm the state's growers and producers.

Washington's framework, which limits the number of total legal sellers on the market, may pique concerns that illicit sellers will dominate the market by filling the unmet demand and undercutting legal businesses. This, however, is not the reality, as a 2021 study on Washington cannabis consumption indicated that 77% of participants purchased their cannabis from a legal source, significantly higher than the national average of 44%.[176] The study further revealed that the price of cannabis

---

170 Alex Leeds Matthews & Christopher Hickey, *More US States are Regulating Marijuana. See Where it's Legal Across the Country*, CNN (Apr. 19, 2024), https://www.cnn.com/us/us-states-where-marijuana-is-legal-dg [https://perma.cc/4J2C-GQ52].

171 PJ Randhawa, *'A Failure': How Washington's Cannabis Program Shut out Black Business Owners*, King 5 (Seattle) (Nov. 2, 2022), https://www.king5.com/article/news/community/facing-race/washington-cannabis-program-shut-out-black-business-owners/281-319c9559-1733-4556-b702-87f2a48c34d8 [https://perma.cc/3RBN-94TT].

172 *Id.*

173 *Cannabis Social Equity*, Wash. State Liquor & Cannabis Board, https://lcb.wa.gov/se/cannabis-social-equity [https://perma.cc/SX8R-JVHN].

174 H.B. 2870 § 5, 66th Leg., 2020 Reg. Sess. (Wash. 2020).

175 S.B. 5080 § 3, 68th Cong., 2023 Reg. Sess. (Wash. 2023).

176 Univ. Waterloo, Int'l Cannabis Pol'y Study, Washington 2021 Cannabis Report 27 (May 2022), https://lcb.wa.gov/sites/default/files/publications/

was consistently lower in legal markets, with the average cost per gram in Washington reported at $6.51, compared to $13.58 in illegal markets.[177] Washington Liquor and Cannabis Board Director Rick Garza explained that the department's strategy was based on the premise that competitive pricing and an adequate number of retail stores would encourage consumers to choose legal options.[178] By focusing their efforts on growing the legal market, the department found that prices "fell month-over-month until [they] stabilized."[179] Washington's approach demonstrates that fostering a competitive and accessible legal market can effectively reduce reliance on illicit sources and support long-term industry stability. It also illustrates that in a stable market, an equity program can be effectively implemented through deliberate and incremental efforts.

C. Solution

To address the shortcomings of New York's "disast[rous]" cannabis rollout and licensure program, legislators should draw lessons from other states' successful equity initiatives that preceded the MRTA.[180] Oklahoma reduced fiscal barriers to entry by implementing low application fees and a scaled licensing cost structure. Similarly, Massachusetts tackled capital barriers by offering grants to equity applicants and providing technical training to those in need. These strategies directly alleviate the financial pressures that often exclude disadvantaged entrepreneurs. Meanwhile, Washington effectively reduced the prevalence of illicit sellers by fostering a competitive and accessible legal market.

New York has the opportunity to solve its problem of inequitable barriers to enter the cannabis market by adopting policies that prioritize regulatory clarity, reduce financial barriers, and support consistent, well-planned expansion of the legal market. By combining Oklahoma's emphasis on affordability, Massachusetts' financial support programs, and Washington's market stabilization strategies, New York can

---

temp_links/2021-Washington-State-ICPS-Cannabis-Report.pdf [https://perma.cc/L3MJ-LPX5].

177 *Id.* at 24.

178 Press Release, Wash. State Liquor & Cannabis Bd., Study Shows Most WA Cannabis Consumers Purchase Products at Retail Stores, https://lcb.wa.gov/pressreleases/studies-show-most-cannabis-consumers-purchase-products-from-retail-stores [https://perma.cc/8PKS-ARNJ].

179 *Id.*

180 O'Shei, *supra* note 96.

build a more inclusive, sustainable, and equitable cannabis market, advancing both social justice and economic objectives.

To realize these goals, New York should focus on two primary strategies: reducing the requirements for obtaining a license and increasing funding support for applicants based on need. Regarding licensing requirements, New York must drastically reduce the financial barriers posed by high application and licensing fees to foster inclusivity. While the state currently reduces fees by 50% for SEE applicants, this reduction should be further expanded to encourage more participation.[181] New York could adopt Oklahoma's approach by setting minimal fees or scaling costs based on the applicant's income or total assets. Additionally, New York should adopt an equity program similar to Massachusetts's, which issues grants of money obtained through cannabis taxation rather than predatory loans that only benefit the private financing firm.

In addition to reducing costs, New York should streamline its licensing process. As noted in Governor Hochul's investigative report, the OCM has been hampered by insufficient staffing and overly "complex and obscure" requirements, which has contributed to the delays in issuing licenses.[182] If New York simplified the licensing process and clearly communicated the license requirements to the prospective entrepreneurs, there would be an increase in the number of applicants and a reduction of the existing frustrations that the entrepreneurs have with the licensing process. One potential reform that New York should consider is to abandon the highly litigious priority licensing program not because it has been judicially invalidated, but because its continued constitutional vulnerability generates instability that disproportionately harms the very applicants it was designed to protect. As discussed in Part II, even unsuccessful or jurisdictionally dismissed challenges such as *Valencia* expose the fragility of the priority framework and create recurring uncertainty that delays licensing, discourages investment, and increases the risk that equity applicants will be displaced into the illicit market. A licensing regime that evaluates applicants equally, or that prioritizes financial need and demonstrable barriers to market entry rather than explicit racial or gender classifications, would reduce litigation risk while more precisely targeting those most harmed by prohibition. Additionally, the OCM must expand its staff to provide direct support to applicants and centralize decision–making to enable swift and efficient problem solving.

---

181 Applicant Overview, *supra* note 28, at 2.

182 Moy, *supra* note 114, at 4.

Implementing these changes would likely yield significant benefits as demonstrated by the results from the aforementioned states. Increasing the number of legal retailers would alleviate the struggles of farmers who currently lack sufficient legal purchasers for their cannabis stock. As Washington demonstrates, a robust network of legal retailers with adequate supply can substantially reduce the demand for illicit products, as consumers tend to opt for safe, affordable, and regulated cannabis.

Finally, New York should streamline the licensing process while expanding the number of legal cannabis retailers in order to stimulate economic growth and stabilize the cannabis market. With more operational retailers generating revenue, the state would collect significantly more tax revenue. These funds could then be reinvested in the form of grants to equity operators or directed toward programs like the CRP to benefit communities disproportionately impacted by cannabis prohibition. By ensuring that the cannabis market is accessible to all types of people equally, the New York Cannabis market would thrive to the ultimate benefit of the communities the MRTA is designed to promote.

Conclusion

The MRTA's lofty goals of equity and social justice have been unfortunately overshadowed by a series of setbacks, including a flawed licensing process, the dominance of the illicit market, and inadequate support for equity applicants. While legal challenges threaten to dismantle the program's fundamental goals, legislative inaction further jeopardizes its future. The experiences of other states who have dealt with similar issues offer valuable insights into strategies that can foster a more equitable and sustainable cannabis market. By learning from their successes, New York can implement meaningful reforms that prioritize accessibility, fair business practices, and the long-term success of its equity applicants.

New York must act decisively to address the MRTA's shortcomings by reducing licensing barriers, increasing funding support for applicants, and fostering a competitive legal market that can effectively displace illicit operators. Failure to do so risks perpetuating the very inequities the program was designed to address, leaving behind a legacy of broken promises and missed opportunities for those most impacted by the War on Drugs. By embracing a more comprehensive and equitable approach to cannabis legalization, New York can still achieve its vision of a just and prosperous cannabis industry that benefits all its citizens.