

Joint Informational Hearing of the
Senate Governance and Finance Committee and
Senate Business, Professions and Economic Development Committee

Establishing Equity in California's Cannabis Industry: The Stakes Are High

Monday, May 14, 2018
12 p.m., State Capitol, Room 3191

BACKGROUND PAPER

On November 8, 2016, California voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, making California the sixth state in the nation to legalize the distribution, sale, and possession of cannabis for recreational use. Since then, stakeholders have worked to craft a regulatory structure for California's new commercial cannabis market. On January 1, 2018, the state agencies responsible for regulating the commercial cannabis industry began issuing temporary licenses, with permanent licenses to follow later this year.

According to BDS Analytics, a cannabis marketing data and analytics company, California's legal adult-use cannabis sales are projected to exceed \$5.1 billion by the end of 2019.¹ California is now home to the world's largest regulated commercial cannabis market.² But who is profiting? Due to a combination of factors, including discriminatory drug enforcement policies and federal law preventing access to traditional funding, the same communities who were disproportionately targeted and affected by War on Drugs policies now face systemic barriers to enter the commercial cannabis market. Meanwhile, wealthy investors are poised to "make millions doing the same thing that generations of people of color have been arrested for."³ This hearing will examine what California is doing, and should do, to promote social equity and realize justice in California's commercial cannabis market.

The "War on Drugs"

Regulation of Cannabis in the United States

Congress first regulated cannabis through the Marihuana Tax Act in 1937, which placed cannabis under the jurisdiction of the Bureau of Narcotics and levied a tax on the sale of cannabis, hemp, and marijuana. During the mid-1960s and 1970s, public policy under the Nixon and Ford administrations took an increasingly restrictive stance towards drugs, including

This paper was prepared by Anissa Badea.

¹ Berke, Jeremy, "California's cannabis market is expected to soar to \$5.1 billion – and it's going to be bigger than beer," Business Insider (February 28, 2018). Available at <http://www.businessinsider.com/california-legalizing-weed-on-january-1-market-size-revenue-2017-12>

² Gorman, Steven, "California launches legal sale of cannabis for recreational use," Reuters, (January 1, 2018). Available at <https://www.reuters.com/article/us-usa-marijuana/california-launches-legal-sale-of-cannabis-for-recreational-use-idUSKBN1EQ0WF>

³ Drug Policy Alliance, "Brief History Drug War." Available at <http://www.drugpolicy.org/issues/brief-history-drug-war>

marijuana. From 1964 to 1968 in California alone, cannabis arrests increased from 7,560 to 50,327.⁴

In 1970, Congress passed the Controlled Substance Act (CSA), which established five categories for regulating drugs based on their perceived medical usefulness and potential for abuse. Under CSA, cannabis was classified as a Schedule I drug, the category for narcotics considered to have no accepted medical use and a high potential for abuse. It thus became a federal crime to manufacture, distribute, dispense, or possess cannabis. However, in 1972, the National Commission on Marijuana and Drug Abuse, which was created by President Richard Nixon to study cannabis and its medicinal effects, unanimously recommended decriminalizing the possession and distribution of marijuana for personal use. President Nixon ignored the Commission's recommendations and kept marijuana classified as Schedule I.⁵

Eleven states disagreed with Nixon's punitive stance and decriminalized the possession of small amounts of cannabis between 1973 and 1978.⁶ President Carter himself even supported federal legislation in 1977 that would have decriminalized possession of less than one ounce of cannabis. The election of President Reagan in 1981, however, again ushered in harsh drug policies which resulted in skyrocketing rates of incarceration. In 1984, the "Just Say No" campaign became the center of the Reagan administration's anti-drug campaign. In 1986, the Anti-Drug Abuse Act created mandatory minimum penalties for drug offenses and restored mandatory prison sentences for large-scale distribution of cannabis. It was later amended to increase federal penalties for cannabis possession, cultivation, and trafficking. The number of nonviolent drug law offenders in United States prisons increased from 50,000 in 1980 to over 400,000 by 1997.⁷

President Bill Clinton's policies continued to accelerate criminal punishments for cannabis. The Violent Crime Control and Law Enforcement Act of 1994 intensified the criminalization of drug use, introduced the "three strikes" provision for traffickers, and increased funding for prisons and law enforcement. Local police, flush with federal support, increased arrests for cannabis-related crimes from approximately 327,000 in 1991 to over 700,000 in 2000.⁸

During the President Bush, Obama, and Trump administrations, rhetoric regarding cannabis has shifted towards decriminalization, but it remains a Schedule I substance.⁹ Policy is shifting, albeit in waves. In 2013, the U.S. Justice Department issued what is commonly known as the "Cole Memorandum," which stated that the Justice Department would not enforce federal marijuana prohibition in states that had legalized marijuana for recreational or medical use. In January 2018, however, Attorney General Jeff Sessions announced a reversal of the Obama era policy toward cannabis enforcement by rescinding the memo. Medical cannabis retains some

⁴ Los Angeles City Council, "Cannabis Social Equity Analysis Report," (October 18, 2017). Available at http://clkrep.lacity.org/onlinedocs/2017/17-0653_rpt_CLA_10-20-2017.pdf

⁵ See 3

⁶ See 4.

⁷ See 3

⁸ City and County of San Francisco, "Cannabis Equity Report," Office of Cannabis, Human Rights Commission, Controller's Office, (November 1, 2017). Available at https://officeofcannabis.sfgov.org/themes/custom/cannabis/pdf/11.19.2017_Equity_Report.pdf.

⁹ See 4

federal protections, though; Congress renewed the Rohrabacher-Blumenauer amendment on May 21, 2018 for another six months. This amendment to the annual appropriations bill prohibits the Department of Justice from using federal funds to interfere with state's legal medical cannabis programs.

California's Criminalization and Decriminalization of Cannabis

In 1913, California became one of the first states to restrict cannabis through an addendum to the Poison Act of 1907, which added cannabis to a list of narcotics, including cocaine and opiates, that were illegal to sell or use without a prescription.¹⁰ For the next several decades, California's cannabis laws deferred to the increasingly stricter federal policies until California began to independently decriminalizing marijuana in the 1970s. In 1975, the California legislature passed SB 95 (Moscone, Chapter 248, Statutes of 1975) which reduced the criminal sanctions for possession of an ounce or less of marijuana to a misdemeanor punishable by a maximum fine of \$100.¹¹ In 1996, California became the first state to legalize medical marijuana when voters approved Proposition 215, otherwise known as the Compassionate Use Act, paving the way for the legalization of recreation marijuana twenty years later. Building on SB 95, the Legislature later passed SB 1449 (Leno, Chapter 708, Statutes of 2010) which downgraded the criminal sanctions for possession of an ounce of marijuana from a misdemeanor to an infraction, but kept the \$100 maximum fine for simple possession. After two failed attempts in 1972 and 2010, California voters approved Proposition 64 in November 2016, which legalized the recreational use of marijuana for individuals over 21.

Despite California's more progressive efforts to decriminalize cannabis, the effect of the War on Drugs' enforcement policies on California's Black and Latinx communities have been parallel to that of the rest of the country. A 2016 Drug Policy Alliance report found that between 2006 and 2015, nearly half a million Californians were arrested for marijuana crimes.¹² Despite consuming and selling marijuana at similar rates, Black and Latinx people are arrested for marijuana related crimes at significantly higher rates than white people.¹³ In 2010, 16.38 percent of people arrested for marijuana were Black, 41.5 percent were Latinx, and only 35.7 percent were white, even though California's population was only 6.6 percent Black, 38.4 percent Latinx, and 39 percent white.¹⁴

Although arrests declined following the 2010 reforms, in 2015 Black people were still arrested for all marijuana offenses at three and a half times the rate of white people. In fact, the California ACLU and the Drug Policy Alliance found that under the new infraction regime, tickets issued to Black and Latinx people for cannabis possession were "wildly disproportionate"

¹⁰ Gieringer, Dale H., "The Origins of Cannabis Prohibition in California," Contemporary Drug Problems, Federal Legal Publications (May-Jul. 2012). Available at http://www.canorml.org/background/Origins_MJ_Proh_2012.pdf.

¹¹ Roy, Jessica. "Californias been rejecting legalized marijuana for more than a century. Here's why this time is different," Los Angeles Times, (September 13, 2016). Available at <http://www.latimes.com/politics/la-pol-ca-timeline-california-recreational-marijuana-history-20160708-snap-story.html>

¹² Drug Policy Alliance, "It's Not Legal Yet: Nearly 500,000 Californians Arrested for Marijuana in Last Decade," (August 2016). Available at http://www.drugpolicy.org/sites/default/files/California_Marijuana_Arrest_Report_081816.pdf.

¹³ Drug Policy Alliance and American Civil Liberties Union of California, "Marijuana Enforcement Disparities In California: A Racial Injustice," (May 2016). Available at https://www.acluca.org/wp-content/uploads/2016/05/CA_Marijuana_Infractions_FINAL.2016.05.pdf

¹⁴ *Id.*

compared to those issued to white people.¹⁵ This discrepancy was exacerbated by the fact that although the cap on marijuana possession citations was technically \$100, after fees and assessments it could rise to \$490, and \$815 if the individual missed the deadline to appear in court or pay the ticket.¹⁶ This burden fell hardest on those least able to pay, primarily Black and Latinx people, who could be persecuted again when presented with an arrest warrant for nonpayment.¹⁷

Proposition 64 addressed the effects of cannabis criminalization from several angles, including reducing the penalties for the use, sale, or production of marijuana by minors; providing for expungement or reduction of prior marijuana convictions; and establishing a community reinvestment fund to help communities disproportionately affected by past federal and state drug policies. However, the nascent legal marijuana industry is currently dominated by white male entrepreneurs.¹⁸ While California has gone farther than other states in attempting to overcome barriers to entry for those affected by the War on Drugs, there still remain many significant challenges for minority communities.

Public and Private Response

As California implements Proposition 64, government and private entities have taken steps to facilitate the participation of communities in the legal cannabis market who were disproportionately affected by its previous criminalization.

At the state level, the Bureau of Cannabis Control established an Advisory Committee pursuant to guidance in Prop 64 which includes three Community Equity Representatives, and the Advisory Committee in turn created an Equity Subcommittee. The Equity Subcommittee met in February and March of 2018 to develop recommendations to the state cannabis licensing authorities regarding equity in cannabis regulation. The Equity Subcommittee presented eight recommendations at the Bureau's March 15, 2018 meeting, all of which passed unanimously. The Legislature is also pursuing legislation to ensure an equitable marketplace: SB 1294 (Bradford of 2018), the Cannabis Collaboration and Inclusion Act, would require the Bureau of Cannabis Control to establish a statewide equity program and provide technical support to state and local equity applicants and licensees if passed.

On the local level, four California cities have equity programs within their cannabis business licensing schemes: Oakland, San Francisco, Los Angeles, and Sacramento. These equity programs are the result of studies and reports that analyzed, in part, the disproportionate impacts of cannabis law enforcement in disadvantaged communities, and barriers to entry into the legal cannabis industry. The reports presented policy options for equity programs, including the creation of equity-specific applicant criteria; community reinvestment; workforce development; financial and capital access; technical assistance; stakeholder engagement; public awareness and

¹⁵ *Id.*

¹⁶ Lawyers Committee for Civil Rights, "Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California," (April 2015). Available at <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf>

¹⁷ Bender, Steven W., "The Colors of Cannabis: Reflections on the Racial Justice Implications of California's Proposition 64," (2017). Available at <https://lawreview.law.ucdavis.edu/online/vol50/Bender.pdf>

¹⁸ *Id.*

education; data collection and accountability; and industry partnering – many of which are represented in each program.¹⁹

Overview of Local Equity Programs

Oakland

The Oakland Equity Permitting Program was created “to promote equitable business ownership and employment opportunities in the cannabis industry in order to decrease disparities in life outcomes for marginalized communities and address the disproportion impacts of the war on drugs in those communities.”²⁰ The Program is based on the findings and recommendations made in the City of Oakland’s 2017 *Race and Equity Analysis Report*. The report found that in 2015, 77 percent of those arrested for cannabis were Black/African American compared to four percent who were white, despite both racial groups accounting for a similar proportion of Oakland’s population (31 percent v. 30 percent, respectively).²¹ The report also notes that “the high percentage of arrests of African Americans remained constant despite state and local decriminalization of medical cannabis” and that the “the permissive business environment on one hand and the aggressive enforcement of drugs laws on the other has widened the opportunity gap between people of color and white residents in the City of Oakland.”²²

Oakland’s Equity Permitting Program requires at least half of all permits to be issued to Equity Applicants during the initial permitting phase. An Equity Applicant is classified as an Oakland resident with an annual income at or below 80 percent of the Oakland Average Medium Income who either has a cannabis conviction received in Oakland or has resided, for ten of the last twenty years, in areas that experienced a disproportionately high rate of cannabis-related law enforcement activity. All other applicants are classified as General Applicants. Oakland also facilitates an Equity Incubator Program, in which a General Applicant provides an Equity Applicant with three years of at least 1,000 square feet of rent-free space to operate their business, in return for permitting priority. Oakland also provides fee waivers and financial assistance to Equity Applicants and free technical assistance for Equity Applicants and Incubators.

Oakland held a public drawing to select four qualified individuals and business to be eligible for new cannabis dispensary permits made available specifically to equity applicants, and on January 31, 2018, Oakland announced its first permit recipients.²³ Oakland also announced businesses that qualified for four dispensary permits through a competitive scoring process. Of the four new dispensary permits selected through the competitive process, two are equity-owned, 50 percent of all employees will be formerly incarcerated Oakland residents, and 29 equity businesses will be provided free rent and security for three years through the Equity Incubator Program.

¹⁹ Bureau of Cannabis Control, “Overview of California Cannabis Equity Programs,” (February 26, 2018). Available at https://bcc.ca.gov/about_us/meetings/materials/20180301_equ_overview.pdf

²⁰ Oakland Ord. No. 13425, § 2

²¹ City of Oakland, “Equity Analysis and Proposed Medical Cannabis Ordinance Amendments,” Agenda Report, (February 14, 2017). Available at <http://www2.oaklandnet.com/oakca1/groups/cityadministrator/documents/report/oak063627.pdf>

²² *Id.*

²³ City of Oakland, “City Announces First Cannabis Dispensary Permit Recipients Under Equity Program,” (January 31, 2018). Available at <http://www2.oaklandnet.com/oakca1/groups/cityadministrator/documents/pressrelease/oak068879.pdf>

San Francisco

San Francisco's Cannabis Equity Program was created in November 2017 to "provide assistance to communities unfairly burdened by the War on Drugs...by provid[ing] support to individuals who have experienced social indicators that exacerbated inequities, and shall create strategies to uplift communities where those inequities have been concentrated."²⁴ The *Cannabis Equity Report* published by the San Francisco Office of Cannabis found that in 2015, six percent of San Francisco's population was black but 47 percent of individuals arrested for cannabis crimes were black.²⁵ The report also found that while rates of drug use and sale are proportional across racial lines, "Black and Latino communities interact with the criminal justice system, including via arrests, bookings, and incarceration, at a rate far higher than their white counterparts."²⁶

As part of San Francisco's cannabis businesses permitting process, 50 percent of the total number of Cannabis Business Permits in a permit category must be awarded to Equity Applicants or Equity Incubators before permits can be awarded to applicants who do not meet the criteria for either program.²⁷ San Francisco waives the \$5,000 fee for Equity Applicants, and Equity Applicants can receive free rent and technical assistance through San Francisco's Equity Incubator program. To qualify as an Equity Applicant, an individual must be a natural person, not a company; have assets that do not exceed an asset limit; submit an application for a Cannabis Business Permit; and meet at least three of the following six conditions: 1) have a household income below 80 percent of the average median income in San Francisco; 2) have been arrested for or convicted of the sale, possession, use, manufacture, or cultivation of cannabis (including as a juvenile) from 1971 to 2016; 3) have a parent, sibling, or child who was arrested for or convicted of the sale, possession, use, manufacture, or cultivation of cannabis (including as a juvenile) from 1971 to 2016; 4) lost housing in San Francisco after 1995 through eviction, foreclosure, or subsidy cancellation; 5) attended school in the San Francisco Unified School District for a total of five years from 1971 to 2016; or 6) have lived in San Francisco census tracts for a total of five years from 1971 to 2016 where at least 17 percent of the household had income at or below the federal poverty level.

To qualify as an Equity Incubator, an applicant must either provide Equity Applicants with rent-free commercial space for three years or provide Equity Applicants with technical assistance. In addition, Equity Incubators must pledge to create a community investment plan demonstrating engagement with businesses and residents located within 500 feet of the proposed business site, ensure that at least 30 percent of all Equity Incubator business work hours will be performed by local residents, and ensure that at least 50 percent of all employees meet three of the six requirements for Equity Applicants.

Los Angeles

²⁴ S.F. Police Code, § 1604(a)

²⁵ City and County of San Francisco, "Cannabis Equity Report," Office of Cannabis, Human Rights Commission, Controller's Office, (November 1, 2017). Available at https://officeofcannabis.sfgov.org/themes/custom/cannabis/pdf/11.19.2017_Equity_Report.pdf.

²⁶ *Id.*

²⁷ S.F. Police Code, § 1606 (b)

In October 2017, the Los Angeles City Council created the Social Equity Program to promote “equitable ownership and employment opportunities in the cannabis industry in order to decrease disparities in life outcomes for marginalized communities and to address the disproportionate impacts of the war on drugs in those communities.”²⁸ As in Oakland and San Francisco, Los Angeles commissioned a *Cannabis Social Equity Analysis Report* in preparation for the establishment of its program. The Report found that in Los Angeles, individuals who are Black/African American comprise 9.6 percent of the population, but represented approximately 40 percent of all cannabis-related arrests from 2000 to 2017. Individuals who are white represent 28 percent of the population, but represented only 16 percent of cannabis-related arrests. Individuals who are Asian represent 11 percent of the population, but represented close to zero percent of cannabis-related arrests. Individuals who are Hispanic or Latinx represented 49 percent of the population, and represent a fairly consistent proportion of cannabis-related arrests at 44 percent.²⁹

Los Angeles’ Cannabis Social Equity Program is divided into a three-tier licensing system, in which each tier has different qualifications, requirements, and benefits. “Tier 1” applicants must own at least a 51 percent equity share of the business and must be either low income and have a prior California cannabis conviction, or be low income and have resided for at least five years in a disproportionately impacted area. “Tier 2” applicants must own at least 33 1/3 percent equity share of the business, be either be low income and have resided for a total of five years in a disproportionately impacted area or have resided for a total of ten years in a disproportionately impacted area, and must enter into a Social Equity Agreement to provide business, licensing, and compliance assistance to a “Tier 1” participant. Similar to the incubator programs in Oakland and San Francisco, “Tier 3” applicants must enter into a Social Equity Agreement to provide capital, leased space, and business, licensing, and compliance assistance to “Tier 1” or “Tier 2” participants and are required to provide a “Tier 1” applicant with rent-free space for a minimum of two years. “Tier 1” participants receive the potential for fee deferrals if the City adopts a fee deferral program and access to an Industry Investment Fund, if established. Both “Tier 1” and “Tier 2” applicants receive business, licensing, and compliance assistance and applicants in all three tiers receive expedited renewal processing and program site specific conditions.

All Social Equity Program applicants are required to have no less than 50 percent of the weekly hours of their workforce performed by local residents and a portion of those hours must be completed by social equity workers and transitional workers, as defined.

Sacramento

In November 2017, the Sacramento City Council voted to establish a cannabis equity program and is currently in the process of implementation.³⁰ The program aims to create a path for small businesses, women and veteran-owned businesses, and minority communities to enter the cannabis industry. The program is comprised of three applicant categories:

²⁸ Los Angeles City Council, “Cannabis Social Equity Analysis Report,” (October 18, 2017). Available at http://clkrep.lacity.org/onlinedocs/2017/17-0653_rpt_CLA_10-20-2017.pdf

²⁹ *Id.*

³⁰ The City of Sacramento, “Establishing the Cannabis Equity Program and Ordinances,” City Council Report, (November 1, 2017). Available at http://sacramento.granicus.com/MetaViewer.php?view_id=22&clip_id=4095&meta_id=508159

First, applicants who have resided in a zip code of a priority neighborhood for at least seven years between 1994 and the date of application or who are from a negatively-impacted zip code are eligible to receive business support services, expungement of certain criminal convictions, and will be given priority processing and fee waivers or deferrals for Conditional Use Permits (CUP) and Business Operating Permit (BOP). Second, applicants who have an income below 200 percent of the Federal Poverty Level and net worth below \$250,000, or business that are women- or veteran-owned, are eligible for business support services and priority processing and fee deferrals for CUP and BOP. Third, business that commit to employ 51 percent transitional workers, a business with an equity incubator or Cannabis Social Enterprise, or a business that hosts an equity business are eligible for CUP and BOP priority processing.

Currently, Sacramento is developing a Request for Proposal to implement the Community Opportunity, Reinvestment, and Equity Program and a draft ordinance will be presented to the City Council in the near future.

Overview of Equity Advocate Organizations

A number private entities and nonprofits have developed programs or initiatives aimed at creating equity in the recreational cannabis market.

The *California Growers Association* is a statewide membership organization founded in 2015 that represents cannabis growers and other businesses in an effort to promote and protect the cannabis marketplace, among other goals. As part of its advocacy program, the California Growers Association represents its members in legislative and regulatory affairs. It is assisted in its equity efforts by its Social Justice Committee.

The *United Food and Commercial Workers Union (UFCW)*, *Western States Council* represents over 200,000 workers in California, Nevada, and Arizona, including workers in California's legal cannabis industry. The UFCW was actively involved in helping pass Proposition 64 in 2016 and in other state legislation and regulatory work that ensure cannabis worker protections.

The *California Cannabis Industry Association (CCIA)* works to create favorable social, economic, and legal environment for the cannabis industry in California. The CCIA has a Diversity and Inclusion subcommittee that fosters professional mentor-mentee relationships between industry pioneers and CCIA members from minority communities; encourages CCIA members from minority communities to get involved and assume leadership roles in CCIA; and helps cannabis companies diversify their C-level executives, in-house legal departments, and upper management.

The *Drug Policy Alliance* is an advocacy group founded in 1987 with the goal of reducing the role of criminalization in drug policy, advocating for responsible and equitable legal regulation of marijuana, promoting health-centered drug policies, and encouraging honest, reality-based drug education by advancing those policies and attitudes that best reduce the harms of both drug use and drug prohibition. The Drug Policy Alliance was actively involved in passing California's Proposition 215 and Proposition 64 as well as numerous other major drug sentencing reforms in California.

The *California Urban Partnership* is a Sacramento-based nonprofit organization that develops technology, joint ventures, and policy solutions to build economic security in communities of color, including in the cannabis market. The California Urban Partnership's core programs include its online and digital media tools that work to build and connect communities; its policy advocacy program on the local, state, and national level; and its Community Investment Initiative which includes initiatives such as small business planning, affordable housing, and academic support for underrepresented youth.

The Hood Incubator is an Oakland-based nonprofit organization that increases the participation of Black and Latinx communities in the legal cannabis industry through community organization, policy advocacy, and economic development. The Hood Incubator created the first people of color focused Cannabis Business Accelerator program in the nation which has, to date, supported 10 Black and Brown entrepreneurs. The Hood Incubator has accumulated a membership of over 2,000 people nationwide, launched a cannabis industry apprenticeship program, and has worked with the Oakland City Council to develop Oakland's Cannabis Equity Program.

Supernova Women is an Oakland-based nonprofit organization founded in 2015 to empower women of color to become "self-sufficient shareholders in the evolving cannabis economy." Supernova Women's key programs include a panel discussion series, *Shades of Green*, which addresses the need for the involvement of communities of color in cannabis legislative efforts and how individuals can participate in the cannabis market; cannabis business workshops that cover the fundamentals of launching a cannabis business and how to grow an enterprise; and an ex-offender advocacy and education program to provide information for attendees on what their options for expungement are.

Conclusion

California is now home to the largest regulated cannabis market in the world. As the Legislature and licensing agencies continue to develop the parameters of cannabis regulation, it is necessary that California take proactive measure to ensure that the communities who were most affected by the oppressive War on Drugs policies are able to participate in and benefit from the legal cannabis market.