



5-2017

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Recommended Citation

Danquah-Brobby, Elizabeth (2017) "Comment: Prison For You. Profit For Me. Systemic Racism Effectively Bars Blacks From Participation in Newly-Legal Marijuana Industry," *University of Baltimore Law Review*: Vol. 46 : Iss. 3 , Article 5.
Available at: <http://scholarworks.law.ubalt.edu/ublr/vol46/iss3/5>

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PRISON FOR YOU. PROFIT FOR ME.
SYSTEMIC RACISM EFFECTIVELY BARS BLACKS FROM
PARTICIPATION IN NEWLY-LEGAL MARIJUANA INDUSTRY

*Elizabeth Danquah-Brobby**

“Although the butterfly and caterpillar are completely different, they are one and the same.”¹

I. INTRODUCTION

Historically, blacks have been prosecuted and convicted across the United States at significantly higher rates when compared to whites for marijuana-related crimes,² despite the fact that studies indicate marijuana use by whites and blacks is relatively equal.³ Further, individuals with lower economic means were dually susceptible to conviction as a result of less vigorous legal representation.⁴

Now, laws have legalized marijuana for medicinal purposes in twenty-six states, along with a small portion of states (seven) legalizing marijuana for recreational use.⁵ Yet retroactive ameliorative relief is not widely available to those who were convicted under circumstances that are now legal, and as a result, stains remain on the records of a disproportionate number of blacks.⁶ Marijuana has become a big business, often being compared to the Gold Rush and referred to as the Green Rush.⁷ However, regulations across states that are a part of this Green Rush effectively wall out

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1. KENDRICK LAMAR, *Mortal Man*, on TO PIMP A BUTTERFLY (Top Dawg Entm't 2015).

2. AM. CIVIL LIBERTIES UNION, THE WAR ON MARIJUANA IN BLACK AND WHITE 4, 9 (2013), <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>.

3. *Id.* at 4, 21.

4. *See id.* at 12, 105–06, 114–15.

5. *State Marijuana Laws in 2016 Map*, GOVERNING, <http://www.governing.com/gov-data/state-marijuana-laws-map-medical-recreational.html> (last updated Jan. 30, 2016).

6. Jake Thomas, *After Legalization, Why Can't People's Prior Pot Convictions Be Wiped Clean?*, SUBSTANCE.COM (Dec. 11, 2014), <http://www.substance.com/after-legalization-why-cant-peoples-prior-pot-convictions-be-wiped-clean-2/17203/>; *see* AM. CIVIL LIBERTIES UNION, *supra* note 2, at 4, 9.

7. Curtis Silver, *Marijuana's \$40 Billion Dollar Green Rush*, FORBES (June 2, 2016, 7:35 AM), <http://www.forbes.com/sites/curtissilver/2016/06/02/marijuanas-40-billion-dollar-green-rush/#10f08cae3097>.

those once convicted (overwhelmingly blacks) for participating in, and profiting from, the very same industry.⁸

This Comment will discuss the history of racial disparity in enforcement of marijuana laws across the United States;⁹ the effect of state-sanctioned legalization of marijuana use, possession, and sale in limited states;¹⁰ the stance of the United States in general as it applies to policy on retroactive relief when laws change;¹¹ the different avenues states have taken thus far to address how changes in the law should affect those already convicted;¹² evidence of the big business opportunities emerging in legal marijuana markets;¹³ and the barriers to entry that exist—particularly for blacks—who have been disparately negatively impacted by the war on drugs.¹⁴

II. BACKGROUND

A. *Racial Disparity in Enforcement of the War on Drugs*

In the United States, use of marijuana is roughly equal between blacks and whites.¹⁵ In 2010, 14% of blacks and 12% of whites reported using marijuana in the past year;¹⁶ in 2001, the figure was 10% of whites and 9% of blacks.¹⁷ Despite nearly equal self-reporting of the use of marijuana, arrest rates were, and continue to be, alarmingly disproportionate between the two races.¹⁸ Between 2001 and 2010, police made 8.2 million marijuana-related arrests, with 88% of these, or 7.2 million, representing possession related charges.¹⁹ Considering the amount of data researchers had to analyze, the arrest data revealed one consistent and undeniable trend—astounding and undeniable racial bias.²⁰

8. See, e.g., *Setting Up a Legal Marijuana Business: State Laws to Know*, FINDLAW, <http://smallbusiness.findlaw.com/business-laws-and-regulations/setting-up-a-legal-marijuana-business-state-laws-to-know.html> (last visited Apr. 1, 2017).

9. See *infra* Section II.A.

10. See *infra* Section II.A.

11. See *infra* Section II.C.

12. See *infra* Sections II.C.1–2.

13. See *infra* Section II.E.

14. See *infra* Section II.F.

15. AM. CIVIL LIBERTIES UNION, *supra* note 2, at 21.

16. *Id.*

17. *Id.*

18. *Marijuana Arrests by the Numbers*, ACLU, <https://www.aclu.org/gallery/marijuana-arrests-numbers> (last visited Apr. 1, 2017).

19. *Id.* (differentiating between possession charges and other charges such as possession with intent to distribute, manufacturing, or trafficking).

20. *Id.*

The overall nationwide data revealed that blacks were arrested on average at a rate 3.73 times higher than whites for crimes that occurred in nearly identical rates between the two races.²¹ A closer look at the numbers reveals that in states with the worst disparities, blacks were over six times more likely to be arrested for marijuana-related crimes than whites.²² Counties with the worst disparities in these numbers showed that, in some instances, blacks were as much as thirty times more likely to be arrested than white residents for the same offense.²³ These numbers are not anomalies in certain counties, states, or even regions, but are perpetual and continuous throughout the entire country, differing only by severity.²⁴

On November 6, 2012, Colorado passed Amendment 64 to the Colorado State Constitution, legalizing recreational use of marijuana under state guidelines.²⁵ Still, racial disparities in marijuana arrests within the state persist and have not substantially changed after the passage of Amendment 64.²⁶ As expected, frequency of marijuana offenses decreased dramatically in 2014, yet the data still reveals significantly higher arrest rates for blacks as compared to whites within the state.²⁷ Though Amendment 64 legalized recreational use of marijuana in the home, arrests persist because the Amendment particularized limitations for amounts one can possess, age restrictions on purchasing and use, and growing restrictions for personal use.²⁸ Possession is limited to one ounce;²⁹ public

21. *Id.*

22. *Id.* (finding that in comparison to whites, blacks were all near or above six times more likely to be arrested for marijuana-related offenses in Iowa, Washington, D.C., Minnesota, Illinois, Wisconsin, and Kentucky).

23. AM. CIVIL LIBERTIES UNION, *supra* note 2, at 9.

These staggering racial disparities in marijuana possession arrests exist in many counties irrespective of the overall [b]lack population. For example, in Lycoming and Lawrence, PA, and in Kenton County, KY, [b]lacks make up less than 5% of the population, but are between 10 and 11 times more likely than whites to be arrested.

Id. at 20.

24. *Id.* at 9.

25. COLO. CONST. art. XVIII, § 16 (declaring that the use of marijuana should be legal for persons twenty-one years of age or older and taxed in a manner similar to alcohol and providing definitions and regulations for legal use, possession, and sale).

26. JON GETTMAN, MARIJUANA ARRESTS IN COLORADO AFTER THE PASSAGE OF AMENDMENT 64, at 7 (2015), https://www.drugpolicy.org/sites/default/files/Colorado_Marijuana_Arrests_After_Amendment_64.pdf.

27. *Id.* at 3, 7–8 (explaining marijuana arrests decreased by 80% in Colorado between 2010 and 2014).

28. COLO. CONST. art. XVIII, § 16.

consumption is flatly prohibited, including consumption in state parks;³⁰ selling and assisting those under the age of 21 in obtaining marijuana is prohibited;³¹ growing is limited to six plants per individual;³² and driving under the influence remains illegal.³³ Thus, there remains a wide array of arrestable marijuana offenses, despite legalization.

The Colorado Bureau of Investigation reported that “the marijuana possession arrest rate in 2010 (per 100,000 population) for white people was 335.12 and the arrest rate for black people was 851.45”—a rate 2.4 times higher for blacks in the state before the passage of Amendment 64.³⁴ Post-legalization data revealed this number remained steadfast with the 2014 arrest rate in the state “for marijuana possession for white people [at] 115.93 [per 100,000 population], while the arrest rate for black people was 281.10”—again, 2.4 times higher for blacks.³⁵ Although blacks made up only 3.8% of Colorado’s population, they accounted for 9.2% of marijuana possession arrests.³⁶ These disparities in arrests across racial lines exist not only in possession arrests in Colorado, but also in cultivation³⁷ and distribution arrests.³⁸

In sum, Colorado’s ground-breaking stance on marijuana legalization did absolutely nothing to improve the disproportionate enforcement of marijuana-related arrests.³⁹ However, it is not merely the arrest that ultimately bars individuals from participating in the now lucrative and fast-growing legal marijuana industry, but also the subsequent conviction and felony record.

B. *Differentiating Between Marijuana Felonies and Misdemeanors*

States individually define the particulars as to what qualifies as a felony versus a misdemeanor offense, and these differences vary

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. GETTMAN, *supra* note 26, at 7.

35. *Id.*

36. *Id.*

37. *Id.* at 8 (stating that cultivation arrests in 2014 were reported at 2.79 for whites and 6.86 for blacks, per 100,000 population).

38. *Id.* (stating that distribution arrests in 2014 were reported at 4.54 for whites and 24.49 for blacks, per 100,000 population).

39. *See id.* at 7–8.

widely.⁴⁰ However, as a generalization, states categorize personal possession of marijuana as a misdemeanor, while felony marijuana offenses typically include cultivation or distribution of any amount of marijuana.⁴¹

Less than 10% of marijuana-related arrests result in a felony conviction, with the balance categorized as misdemeanors resulting in fines, probation, or complete dismissal.⁴² However, every arrest is documented on a person's criminal record, whether it leads to a *nolle prosequi*, probation before judgment, or any form of conviction.⁴³ For blacks arrested at alarmingly higher rates in this sphere, eventually the cumulative effect of a criminal record can *lead to* a felony conviction, despite the fact that the isolated charges adjudicated individually may not.⁴⁴ For example, an individual who has several marijuana-related misdemeanor arrests and/or convictions is more likely to be convicted of a marijuana-related felony when his criminal history is considered compared to an individual with no criminal record facing the same charges.⁴⁵ Jesse Wegman, a journalist for *The New York Times*, explains:

Particularly in poorer minority neighborhoods, where young [black] men are more likely to be outside and repeatedly targeted by law enforcement, these arrests accumulate. Before long a person can have an extensive “criminal history” that consists only of marijuana misdemeanors and dismissed cases. That criminal history can then influence the severity of punishment for a future offense, however insignificant.⁴⁶

Mathematically, if only 6% of total marijuana arrests lead to conviction, since blacks are on average 3.73 times more likely to be arrested in the first place, then they remain 3.73 times more likely to be convicted of a marijuana-related felony.⁴⁷

40. RICHARD GLEN BOIRE, LIFE SENTENCES: THE COLLATERAL SANCTIONS ASSOCIATED WITH MARIJUANA OFFENSES 6–7 (2007),

http://www.cognitiveliberty.org/pdf/col_sanc_pdfs/report_narrative.pdf.

41. *Id.* at 7.

42. Jesse Wegman, *The Injustice of Marijuana Arrests*, N.Y. TIMES (July 28, 2014), https://www.nytimes.com/2014/07/29/opinion/high-time-the-injustice-of-marijuana-arrests.html?_r=0.

43. *Id.*

44. *Id.*

45. *See id.*

46. *Id.*

47. *Id.*; see also AM. CIVIL LIBERTIES UNION, *supra* note 2, at 4.

C. *Post-Conviction Relief Generally in the United States*

Tides appear to be turning in the realm of marijuana legalization for both medical and recreational use,⁴⁸ yet more than 20,000 people are estimated to be convicted of marijuana-related felonies every year in state courts alone.⁴⁹ Many of these individuals have been convicted of felony marijuana offenses for acts that are now wholly legal or legal with the proper licensure.⁵⁰ In the United States, this turning tide appears to do little to assist these individuals—a uniquely American stance.⁵¹ In fact, the United States is a part of the International Covenant on Civil and Political Rights (ICCPR), along with 167 other countries.⁵² In Provision 15 of the covenant, the ICCPR “sets the main legal framework for the *lex mitior* [more lenient law] principle under which the countries of the world have fashioned their constitutions and penal codes.”⁵³ In essence, the ICCPR allows individuals, as a right, to benefit from lighter penalties if laws change after they have been convicted.⁵⁴ The United States is the *only* country (in the ICCPR) that has attached a reservation indicating that this section of the covenant would not apply under any circumstances.⁵⁵ The reservation explains “[t]hat because U.S. law generally applies to an offender the penalty in force at the time the offence was committed, the United States does not adhere to the third clause of paragraph 1 of article 15.”⁵⁶

Outside of the ICCPR, the United States is one of only twenty-two countries that does not provide retroactive ameliorative relief in sentencing.⁵⁷ Therefore, when a law legalizing marijuana is passed in any state, those already convicted under a previous law (that is now no longer in effect) will not automatically have their sentences adjusted accordingly.⁵⁸ This puts the United States in comparable

48. *State Marijuana Laws in 2016 Map*, *supra* note 5.

49. Sean Rosenmerkel et al., *Felony Sentences in State Courts, 2006 - Statistical Tables (Standard Error Tables Added)*, BUREAU OF JUST. STAT. (Dec. 30, 2009), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2152> (reflecting findings from 2000 to 2006 with no more recent data available).

50. Thomas, *supra* note 6.

51. *See infra* notes 52–57 and accompanying text.

52. CONNIE DE LA VEGA ET AL., UNIV. OF S.F. SCH. OF LAW, CRUEL AND UNUSUAL: U.S. SENTENCING PRACTICES IN A GLOBAL CONTEXT 68 (2012), <http://fairsentencingofyouth.org/wp-content/uploads/2013/01/Cruel-And-Unusual-2.pdf>.

53. *Id.*

54. *Id.*

55. *Id.* (explaining that ICCPR Article 4(2) states that Provision 15 is non-derogable).

56. *Id.* (alteration in original).

57. *Id.* at 69.

58. *See id.* at 68–69.

position with countries such as Pakistan, Oman, and South Sudan when it comes to its stance on retroactive ameliorative relief.⁵⁹

The United States does not operate under the concept of statutory retroactivity; statutes are generally presumed to operate prospectively only (i.e., against conduct that occurs after the effective date of the statute or amendment).⁶⁰ This concept has been put to the test only a handful of times in U.S. history, most notably in cases involving changes in death penalty laws and the implications for inmates already on death row.⁶¹

1. Post-Conviction Relief in Colorado

Though the United States does not generally recognize ameliorative relief, states are still free to write their own rules.⁶² When Colorado legalized marijuana for recreational use in 2012, the initial bill did not appear to address this issue or offer any relief to those already convicted.⁶³ One journalist summarized the situation, stating: “If you were sitting in prison for selling pot, you’re still there. If you were ever convicted of a felony marijuana charge, it’s still on your record — and your prospects of getting a decent job are likely still daunting.”⁶⁴

However, lawmakers in Colorado brainstormed a possible new path through Senate Bill 13-250, which permits offenders to have felonies reduced to misdemeanors after completion of their sentence.⁶⁵ Under the bill:

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59. Matthew Fleischer, *Don't Just Legalize Marijuana, Free Prior Offenders*, L.A. TIMES (Jan. 16, 2014, 5:00 AM), <http://www.latimes.com/opinion/opinion-la/la-ol-legalize-marijuana-free-prior-offenders-20140115-story.html>.
60. 82 C.J.S. *Statutes* § 582 (2016) (“As a general rule, statutes are construed to operate prospectively unless the legislative intent that they be given retrospective or retroactive operation clearly appears from the express language of the acts or by necessary or unavoidable implication.”); *see also* 2 SUTHERLAND STATUTORY CONSTRUCTION § 41:4 (Norman J. Singer & Shambie Singer eds., 7th ed. 2016).
61. *See, e.g.*, *Montgomery v. Louisiana*, 136 S. Ct. 718, 725 (2016); *Schriro v. Summerlin*, 542 U.S. 348, 350–52 (2004); *Teague v. Lane*, 489 U.S. 288, 300–01, 307 (1989).
62. *See* U.S. CONST. art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . *any Thing* [sic] in the Constitution or Laws of any State to the Contrary notwithstanding.”) (emphasis added).
63. Fleischer, *supra* note 59.
64. *Id.*
65. S.B. 13-250, 69th Gen. Assemb., 1st Reg. Sess. (Colo. 2013), http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont/4D90F2F2BE4F1D1587257A8E0073C8A4?Open&file=250_01.pdf; *see* COLO. REV. STAT. ANN. § 18-1.3-401.5 (West Supp. 2016).

[T]hose convicted of felony drug possession can have that conviction changed to a class 1 misdemeanor, the highest-level misdemeanor crime, upon successful completion of a sentence. You only get two shots at this deal, and on a third felony drug conviction, the felony record cannot be changed. Like three strikes, only in reverse.⁶⁶

The bill became viable law in July 2014 under C.R.S.A. § 18-1.3-103.5 and provides relief for those who were convicted of possession of more than twelve ounces of marijuana or more than three ounces of marijuana concentrate.⁶⁷

Besides Colorado rethinking ameliorative relief for those who have successfully served their sentences, Colorado also has a unique case that was granted certiorari under the Colorado Supreme Court.⁶⁸ If upheld, *People v. Russell* would allow relief to any individual with an active appeal pending on a marijuana-related case when Amendment 64 was passed.⁶⁹ David Broadwell, Denver's Assistant City Attorney, summarized the situation *Russell* addresses as follows:

Even though the general common law rule is that state constitutional amendments have only prospective applicability, the Colorado Court of Appeals affirmed dismissal of a marijuana conviction under Amendment 64 arising out of an incident that occurred over two years before the amendment was adopted. The key factor: the Colorado Criminal Code contains a caveat allowing a defendant to receive post-conviction relief if there has been a “significant change to the law.” The holding in this case would appear to be very narrow, however, because the court explicitly limited the applicability of its decision to situations where the defendant's conviction was subject to

66. Mike Krause, *Colorado Senate Bill 250: A Net Reduction in Drug War Stupidity*, HUFFINGTON POST (July 6, 2013), http://www.huffingtonpost.com/mike-krause/colorado-sb-250_b_3055768.html.

67. COLO. REV. STAT. ANN. § 18-1.3-103.5 (West Supp. 2016). There is, however, no provision under this statute for cultivation or distribution convictions. *See id.*

68. *See infra* notes 69–70 and accompanying text.

69. *People v. Russell*, 2014 WL 972249, *as modified on denial of reh'g* (May 8, 2014), *aff'd*, 2017 WL 177817 (Colo. Jan. 17, 2017) (summarizing the issue as “whether [Amendment 64] applies to defendant's conduct, which occurred twenty months before Amendment 64's effective date.”).

an appeal or a motion for post-conviction relief on the date Amendment 64 went into effect, i.e. December 10, 2012.⁷⁰

2. Post-Conviction Relief in Oregon

Oregon followed in Colorado's footsteps, becoming the second state to legalize marijuana for recreational use by passing Ballot Measure 91 on November 4, 2014.⁷¹ Professor of Law Jenny M. Roberts of American University said, "Oregon is one of the first states to really grapple with the issue of what do you do with a record of something that used to be a crime and no longer is."⁷² Oregon's current state law allows any person convicted of a low-level felony, misdemeanor, or non-traffic violation to have their record sealed after they successfully complete their sentence and ten years have passed without any subsequent convictions.⁷³ Oregon's newest addition to this stance in their state laws, State Bill 364A, which went into effect January 1, 2016, allows the same treatment for more serious felony marijuana convictions of the past, including manufacturing.⁷⁴ The new law directs courts to use the standards of current law—under which possessing, growing, and selling marijuana are all legal—in considering record-clearing applications.⁷⁵ Oregon even declared the reclassification of marijuana offenses a state of emergency, using this language in its new law: "This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage."⁷⁶

Though Oregon treated this reclassification as a state of emergency, the new laws did absolutely nothing to effect change for those currently incarcerated under the previous classifications, and the

70. DAVID W. BROADWELL, 2013-14 SURVEY OF MUNICIPAL LAW 17-18 (2014), <https://www.cml.org/Issues/Government/State/2014-10-09-Attorneys-Seminar--Annual-Survey-of-Municipal-Law/> (emphasis added).

71. Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act (2014), <https://www.oregon.gov/olcc/marijuana/Documents/Measure91.pdf> (allowing home possession and cultivation beginning July 2015 and allowing marijuana business applications beginning January 2016).

72. Kirk Johnson, *Oregon's Legal Sale of Marijuana Comes with Reprieve*, N.Y. TIMES (Sept. 20, 2015), http://www.nytimes.com/2015/09/21/us/oregons-legal-sale-of-marijuana-comes-with-reprieve.html?_r=0.

73. OR. REV. STAT. § 137.225 (2015).

74. 2015 Or. Laws, ch. 290 (S.B. 364).

75. *Id.* (requiring the court to consider marijuana offenses committed before July 1, 2013 to be classified as if conduct occurred on July 1, 2013, when determining eligibility for setting aside convictions).

76. *Id.*

State has no bills pending to address relief for these offenders.⁷⁷ The most they can hope for is to successfully serve their sentences, wait ten years, and apply for relief, if eligible.⁷⁸

D. *Collateral Sanctions: Consequences of a Felony Conviction*

Thousands of Americans with felony convictions face life-long consequences as a result.⁷⁹ Although these sanctions vary by state, nationwide they include: loss of the right to vote;⁸⁰ loss of the ability to receive student loans;⁸¹ loss of qualification to obtain professional licenses;⁸² disqualification from consideration for certain employment opportunities;⁸³ loss of the choice to adopt a child;⁸⁴ and exclusion from the ability to qualify for government assistance or housing aid.⁸⁵ Under the laws of the majority of states, employers may legally refuse to hire or promote a person because of a past marijuana conviction, and even more worrisome is that in some states, a marijuana arrest can bar applicants from employment consideration.⁸⁶

For those individuals with marijuana-related felony convictions, those very convictions can bar them from participation in the now extremely lucrative, fast-growing, and newly-legal medical and recreational marijuana industries.⁸⁷ Both the licensure requirements and monetary requirements needed to enter either side of the legal marijuana business are negatively impacted by the collateral consequences a felony record brings.⁸⁸ As the numbers illustrate, it is blacks who have been disproportionately targeted in both past *and present* enforcement of marijuana laws, and thus are highly disadvantaged when it comes to even attempting to gain a foothold in this newly-legal market.⁸⁹

77. *Id.* As of April 1, 2017, the Oregon Legislature currently has no pending bills on its docket. See *2017 Regular Session*, OR. ST. LEGISLATURE, <https://olis.leg.state.or.us/liz/2017R1#> (last visited Apr. 1, 2017).

78. See *supra* note 73 and accompanying text.

79. BOIRE, *supra* note 40, at 15.

80. *Id.*

81. *Id.* at 16.

82. *Id.* at 15.

83. *Id.* at 16.

84. *Id.* at 15–16.

85. *Id.* at 15.

86. *Id.* at 16.

87. Wegman, *supra* note 42.

88. *Id.*

89. *Id.*

E. *Evidence of the Green Rush: The Big Business of the Marijuana Market*

Derek Peterson of TerraTech, who chose a chance to participate in the marijuana industry over his past career at the global financial services firm Morgan Stanley, reported profit margins of thirty to forty-five percent and said, “[a] retail dispensary can make from \$3,500 to \$5,000 in revenue per square foot.”⁹⁰ Compare that to Apple’s revenue of \$4,650 in sales per square foot and Tiffany & Co.’s \$4,221.⁹¹

Brendan Kennedy, owner of a private-equity firm that owns three marijuana companies, one of which is backed by PayPal founder and billionaire Peter Thiel, predicts “that [the] marijuana industry could deliver \$50 billion in annual revenues.”⁹² Similarly, Green Wave Financial Advisors published a report in 2014 predicting annual revenues around thirty-five billion dollars.⁹³

The Marijuana Policy Project, an organization that describes itself as the largest organization in the United States focused solely on ending marijuana prohibition, now has a board of directors list that evidences the lucrateness of this emerging market.⁹⁴ The chairman of the board is Joby Pritzker, heir to the Hyatt Hotel fortune.⁹⁵ Another member of the board is Troy Dayton, owner of the ArcView Group, which is an angel venture capital investment company that purports to have sixty-one million dollars available for marijuana start-up businesses.⁹⁶

90. Jana Kasperkevic, *Medical Marijuana: As Profitable as Apple Stores, but Only for High Rollers*, GUARDIAN (Oct. 29, 2014, 8:00 AM), <http://www.theguardian.com/business/2014/oct/29/medical-marijuana-business-new-york>.

91. *Id.* These numbers reflect 2013 earnings.

92. Richard Pollock, *Silicon Valley Sees Mega-Profits in Marijuana’s ‘Green Rush,’* DAILY CALLER (Jan. 6, 2016, 9:01 PM), <http://dailycaller.com/2016/01/06/silicon-valley-sees-mega-profits-in-marijuanas-green-rush/>.

93. MATTHEW A. KARNES, STATE OF THE EMERGING MARIJUANA INDUSTRY: CURRENT TRENDS AND PROJECTIONS 2 (2014), https://www.greenwaveadvisors.com/wp-content/uploads/GreenWave_Report_ES.pdf. These numbers are projected for the year 2020 and based on all states and the federal government fully legalizing marijuana. *Id.*

94. *Overview of the Marijuana Policy Project*, MARIJUANA POL’Y PROJECT, <https://www.mpp.org/about/overview/> (last visited Apr. 1, 2017).

95. Pollock, *supra* note 92.

96. *Id.*

Sean Parker, founder of the once overwhelmingly successful company Napster, funded his own legalization initiative in California and contributed over seventy-five million dollars toward the effort.⁹⁷

Derek Peterson, Brendan Kennedy, Peter Thiel, Joby Pritzker, Troy Dayton, and Sean Parker—besides being all wealthy businessmen interested in the legalization of marijuana for profit—also are all white.⁹⁸

F. *Barriers to Entry in the Legal Marijuana Industry*

“After 40 years of impoverished black men getting prison time for selling weed, white men are planning to get rich doing the same things,” writes Michelle Alexander, civil rights lawyer, advocate, legal scholar, and author of *The New Jim Crow*.⁹⁹ This is not a situation where whites are eagerly entering this lucrative industry that is a level playing field for anyone interested in the market; it is a situation where blacks are actually prevented from participating.¹⁰⁰ Journalist Carolyn Brown explains, “[t]here’s a Catch-22 in that in most states the only people allowed to grow or sell weed retail are people who have maintained good standing and were previously in the medical marijuana . . . industry, which leaves out millions of African Americans with drug convictions.”¹⁰¹ Attorney Katherine Schroeder describes that “[s]tate by state legalization means that a poor African American man could in one state be going off to prison for doing exactly what a more privileged entrepreneur profits from in a different state.”¹⁰² There is a nuance to this discrimination, and it

97. *Id.* Parker also served as the first president of Facebook. *Id.*

98. Derek Peterson, LINKEDIN, <https://www.linkedin.com/in/derek-peterson-4b06469> (last visited Apr. 1, 2017); Brendan Kennedy, LINKEDIN, <https://www.linkedin.com/in/kennedybrendan> (last visited Apr. 1, 2017); Peter Thiel, LINKEDIN, <https://www.linkedin.com/in/peterthiel> (last visited Apr. 1, 2017); Joby Pritzker, LINKEDIN, <https://www.linkedin.com/in/jobypritzker> (last visited Apr. 1, 2017); Troy Dayton, LINKEDIN, <https://www.linkedin.com/in/troy-dayton-850a0a21> (last visited Apr. 1, 2017); Sean Parker, LINKEDIN, <https://www.linkedin.com/in/parkersean> (last visited Apr. 1, 2017).

99. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLOR BLINDNESS 2* (2010); Saki Knafo, ‘White Men Getting Rich from Legal Weed Won’t Help Those Harmed Most by Drug War,’ HUFFINGTON POST (Mar. 7, 2014), http://www.huffingtonpost.com/2014/03/06/michelle-alexander-drug-war_n_4913901.html.

100. See, e.g., Carolyn M. Brown, *Marijuana Inc: Growing Opportunities for Black Businesses*, BLACK ENTERPRISE (Nov. 25, 2014), <http://www.blackenterprise.com/small-business/marijuana-inc/2/>.

101. *Id.*

102. Katherine Schroeder, *Marijuana and Racism: Bearing the Blunt of the Problem*, CANNA LAW BLOG (Mar. 20, 2015), <http://www.cannalawblog.com/marijuana-and-racism-bearing-the-blunt-of-the-problem/>.

comes as a result of the systematic disproportionate enforcement and conviction of blacks as compared to whites, not only in enforcement of marijuana laws, but also in the criminal justice system as a whole;¹⁰³ oppressive and unequal educational opportunities for blacks compared to whites;¹⁰⁴ unequal distribution of wealth nationwide with roots in the United States' economic foundation built on slavery, which continues to perpetuate in today's society;¹⁰⁵ and whites generally occupying the majority of positions of power and policy-making in both the public and private sector, which results in unequal power, unequal opportunities, and a systematic oppression of non-white groups since our nation's founding and continues today.¹⁰⁶

This systemic racism manifests itself in three main categories when it comes to the legal marijuana industry: (1) criminal records as an obstacle to licensure; (2) monumental monetary requirements necessary to be considered for licensure; and (3) farm requirements to be eligible to become a cultivator. Although specific licensure requirements vary by state and between medical, recreational, and cultivator licenses, these are the three main categories where the system disadvantages, if not completely eliminates, black applicants, particularly those who were previously a part of the historically racially disproportionate enforcement of marijuana laws.¹⁰⁷

Hanging as a backdrop is that this market is only quasi-legal, with marijuana still being federally classified as a Schedule I controlled substance.¹⁰⁸ Ethan Nadelmann, Director of the Drug Policy Alliance summarized the issue in an interview with NBC:

African Americans know that whenever something is in a gray area of the law they will feel more vulnerable, and for good reason since statistically minorities are more likely to be targeted or seen as suspects . . . It may be that the general element of racism and racial disproportionality in

103. *Id.*

104. Karen Mawdsley et al., *Experts: Minorities Struggle for Footing in Lucrative Cannabis Industry*, NEWS21 (Aug. 15, 2015), <http://weedrush.news21.com/experts-minorities-struggle-for-footing-in-lucrative-cannabis-industry/>; *see also* Jamie Fellner, *Race, Drugs, and Law Enforcement in the United States*, HUM. RTS. WATCH (June 19, 2009, 10:18 AM), <https://www.hrw.org/news/2009/06/19/race-drugs-and-law-enforcement-united-states>.

105. *See* Mawdsley et al., *supra* note 104.

106. *Id.*

107. *See infra* Sections II.F.1–3.

108. 21 U.S.C. § 812(c) (2012).

law enforcement around drugs can make minorities queasy about entering an area which is not fully legal.¹⁰⁹

1. Criminal Records and Disproportionate Law Enforcement

Every state that has legalized marijuana for either recreational or medical use requires a professional license for participation in the industry, and every license requires certain criteria be met and this criteria process includes an evaluation of applicant's criminal history.¹¹⁰ For example, Washington State uses a scoring system to assess eligibility for licensure applications.¹¹¹ Any applicant with eight points or more is "not normally" approved to move ahead in the application process for a marijuana license.¹¹² In Washington's scoring system, a felony conviction within the last ten years is weighted as twelve points, equating to "normal[]" disqualification.¹¹³ Misdemeanors within the last three years count between four to five points depending on severity, though there is language that allows an exception for marijuana possession misdemeanors.¹¹⁴ Other states have similar criminal background barriers. For example, Colorado bars any applicant with a felony conviction within the past five years.¹¹⁵ Since blacks are 2.4 times more likely to be arrested for a marijuana-related offense, and subsequently 2.4 times more likely to have a felony conviction for a marijuana-related offense, this means blacks are also less likely to be eligible for licensure and participation in this lucrative industry, even though the business is being legitimized through law.¹¹⁶

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109. Tracy Jarrett, *Six Reasons African Americans Aren't Breaking into Cannabis Industry*, NBC NEWS (Apr. 19, 2015, 8:29 PM), <http://www.nbcnews.com/news/nbcblk/6-reasons-african-americans-cant-break-cannabis-industry-n344486>.
110. See, e.g., COLO. REV. STAT. ANN. § 12-43.3-307 (West Supp. 2016) (explaining the background requirements and criterion for gaining a license to sell marijuana in Colorado); WASH. ADMIN. CODE § 314-55-040 (2016) (explaining the criminal background requirement process for the granting of marijuana licenses in Washington State).
111. ADMIN. § 314-55-040.
112. *Id.*; see also Jarrett, *supra* note 109 (explaining the Washington point system and the fact that a felony will more or less disqualify an applicant from consideration).
113. ADMIN. § 314-55-040.
114. *Id.*
115. COLO. REV. STAT. ANN. § 12-43.3-307(1)(h)(I) (West Supp. 2016) (stating that "[a] person who has discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date" is flatly prohibited from becoming a licensee).
116. See *supra* Section II.A.

Hupp and Bowden point out that for blacks there remains a greater *potential risk* to participate in the industry, even without a prior felony conviction barring an individual from licensure.¹¹⁷ Joseph Richardson, a professor of African American studies at the University of Maryland, says, “this history of [disproportionate] incarceration discourages black Americans from engaging in legal marijuana-related activities.”¹¹⁸

2. Monetary Requirements

Participation in the marijuana industry requires substantial monetary resources that most black Americans—let alone most convicted felons—do not have and are unlikely to acquire.¹¹⁹ There remains a huge and widening wealth gap in America across racial lines.¹²⁰ According to one analysis, in 2011, the average white household wealth was \$111,146.00, and the average black household wealth was \$7,113.¹²¹ A 2016 study by Bloomberg Business analyzed the odds Americans of different races have to become a millionaire—a practical requirement to enter the marijuana industry.¹²² The study projected that similarly aged and similarly educated black and white Americans have vastly different odds of achieving millionaire status, with a 21.5% chance for whites and a 6.4% chance for blacks.¹²³

The licensure application process alone costs thousands of dollars.¹²⁴ For example, in Colorado, a retail store license application costs \$2,500 to process and a medical center license can cost as much as \$14,000 to process.¹²⁵ New York State’s medical marijuana application to manufacture and dispense marijuana requires “a

117. Mawsley et al., *supra* note 104.

118. *Id.*

119. *Id.*

120. LAURA SULLIVAN ET AL., THE RACIAL WEALTH GAP: WHY POLICY MATTERS 5 (2015), <https://iasp.brandeis.edu/pdfs/2015/RWA.pdf>.

121. *Id.* at 1 (highlighting the disparities in housing, education, and labor markets between blacks, whites, and Latinos). Note that these figures do not represent only income, but are a calculation of “wealth” based on home ownership, educational opportunities, college graduation rates, and income disparities across race. *Id.*

122. Victoria Stilwell, *What Are Your Odds of Becoming a Millionaire?*, BLOOMBERG (Jan. 21, 2016), <http://www.bloomberg.com/features/2016-millionaire-odds/>.

123. *Id.* The study also asserts that without a college degree, blacks’ chances plummet to less than 1%. *Id.*

124. *See, e.g., infra* notes 125–26 and accompanying text.

125. *Retail Fees*, COLO. DEP’T OF REVENUE, <https://www.colorado.gov/pacific/sites/default/files/MED%20Fee%20Table%20Color%202002092017.pdf> (last updated Feb. 8, 2017).

\$10,000 non-refundable application fee in addition to a \$200,000 registration fee.”¹²⁶ Later, those applicants not issued a registration have their \$200,000 registration fee refunded.¹²⁷

Although the licensure application fees are not insurmountable, that is not where the most significant monetary barriers lie.¹²⁸ Dr. Malik Burnett, an organizer for the Drug Policy Alliance, states, “[y]ou can’t get normal loans and seed money to be able to participate in the cannabis industry, so you have to rely on angel investors and groups that can give you the money — that’s where you get the subtle but real barriers of entry for people of color.”¹²⁹ Additionally, “a number of states require [a monumental amount of] liquid non-working assets to be granted a license.”¹³⁰ “That amount of money,” says Dr. Burnett, “when you can’t even use it towards building your business, is a barrier to entry that many people, particularly minorities, can’t meet.”¹³¹ The exorbitant monetary requirements, coupled with the wealth disparity among races, could explain why Wanda James and her husband, Scott Durrah, are the *only* African American retail dispensary owners in Colorado,¹³² which after the latest report was a group of 440.¹³³

3. Farming Requirements

Apart from being able to sell marijuana, farmers must grow and provide marijuana to retail and medical dispensaries under state regulation, creating another category of licensure.¹³⁴ Some states have effectively barred nearly all blacks from obtaining this sought

126. *State Health Department Now Accepting Medical Marijuana Registered Organization Applications*, N.Y. ST. DEP’T OF HEALTH, https://www.health.ny.gov/press/releases/2015/2015-04-27_mm_application.htm (last updated Apr. 2015) (requiring the fee be paid upfront for the application to be considered).

127. *Id.*

128. *See infra* notes 129–33 and accompanying text.

129. Jarrett, *supra* note 109.

130. *Id.* For example, “In some states you have to have a performance bond of one million dollars just sitting in an account, available in the event the state wants to make a claim against you for not following the rules.” *Id.*

131. *Id.*

132. Darnell L. Moore, *The Booming Marijuana Industry Is Still Too White*, MIC (Jan. 26, 2016), <http://mic.com/articles/133336/the-booming-marijuana-industry-is-still-too-white#.z5enN2P9l>.

133. *MED Licensed Facilities*, COLO. DEP’T OF REVENUE, <https://www.colorado.gov/pacific/enforcement/med-licensed-facilities> (last updated Jan. 1, 2017).

134. *See* Hilary Bricken, *The Future of Marijuana Licensing: Greater Barriers to Entry?*, CANNA L. BLOG (Jun. 8, 2015), <http://www.cannalawblog.com/the-future-of-marijuana-licensing-greater-barriers-to-entry/>.

after, and nearly guaranteed profitable license, by creating licensing requirements that nearly no blacks in the state meet.¹³⁵ Florida, for example, requires applicants' nurseries to have been in existence for at least thirty continuous years and to have an agricultural license from the state that permits them to grow at least 400,000 plants.¹³⁶ Beyond that, Florida requires the approved farmer applicants to post a five million dollar performance bond once selected, marrying both the monetary and farming requirements.¹³⁷

"In other words, if you are not a large and well-funded nursery that has been around for 30 [plus] years, forget about it."¹³⁸ According to Florida Black Farmers and Agriculturists Association President Howard Gunn Jr., hardly any black farmers meet that criteria as, "[t]here weren't that many black farmers 30 years ago in the nursery business . . . [w]e say they weren't there because of the discriminatory practices set by the USDA."¹³⁹

III. DISCUSSION

This almost decade-long string of events has brandished marijuana-related law enforcement as a weapon to criminalize, incarcerate, and stigmatize blacks.¹⁴⁰ Now, that very weapon has been retooled into a membership card available to an exclusive few, consisting of mostly already rich white men.¹⁴¹ Absent a time machine, the past cannot be made just, years served in prison cannot be reversed, and those targeted by police cannot be untargeted. However, through exercise of the gubernatorial pardon power, sweeping reform in legislation, wider availability of expungement, closer scrutiny in enacting regulations, and a system to equalize the monetary requirements necessary to participate in the newly-legal marijuana industry, the future can become more fair and inclusive.

135. See, e.g., *infra* notes 136–37 and accompanying text.

136. Bricken, *supra* note 134.

137. *Id.*

138. *Id.*

139. Kyle Rothenberg, *Black Farmers Say Florida's Medical Marijuana Law Shuts Them Out*, FOX NEWS (May 4, 2015), <http://www.foxnews.com/politics/2015/05/04/black-farmers-say-floridas-medical-marijuana-law-shuts-them-out/>.

140. See *supra* notes 15–24, 40–47 and accompanying text.

141. See Moore, *supra* note 132.

A. *Immediate Ameliorative Relief for Those Still Incarcerated for Now Legal Acts*

The first step in resetting the playing field in this arena should be the immediate review of any conviction for a person currently incarcerated under a state marijuana law that is no longer in effect, without regard as to whether the case is still pending appeal. Lawmakers in states with legalization of marijuana should draft legislation to reflect this change. Those with no other convictions should be released. Those with more complex situations, such as those serving sentences for unrelated offenses but whose sentencing was impacted by their marijuana-related conviction, should have individualized review resulting in diminished remaining sentences.

Alternatively, governors in these states should exercise their pardon power en masse. Arkansas Governor Mike Beebe pardoned approximately 700 individuals throughout his tenure from 2007 to 2013, mostly granting pardons to minor drug offenders.¹⁴² Beebe had a perspective unique to most other politicians on the issue in that, among those he pardoned was his own son, Kyle Beebe, who had been convicted of felony possession of marijuana with intent to deliver.¹⁴³ While Kyle's act was still illegal under Arkansas state law when he received his pardon, it seems ludicrous to continue punishing people for acts that, if committed today in their own state, would result in no punishment.

1. Addressing the Moral Counterargument

The moral counterargument that a person should be punished for breaking a law that was in effect at the time may be persuasive to those privileged enough to have never been negatively impacted by the disparities discussed in this Comment. Subscribing to this point of view can likely be diminished by imagining the following scenario:

Imagine you and your family have just moved and are new to the neighborhood, one which has an already established homeowners association (HOA). Your family immediately begins to feel unwelcome, noticing a lack of friendliness

142. Stateline, *Governors' Pardons Are Becoming a Rarity*, GOVERNING (Feb. 8, 2013), <http://www.governing.com/news/state/sl-governors-balance-politics-with-pardons.html>.

143. Sam Levine, *Arkansas Gov. Mike Beebe to Pardon Son on Drug Charge*, HUFFINGTON POST (Nov. 13, 2014), http://www.huffingtonpost.com/2014/11/12/mike-beebe-son-pardon_n_6149334.html.

from the neighbors. You remain because you are told that this neighborhood has a great reputation for advantaging those living in it, boosting residents' chances of achieving dreams and succeeding. You and your family come from a culture that uses a new form of technology to heat, cool, and provide electricity to houses, using only naturally grown resources. There are no rules in the homeowner's association as to the use of this technology. Your family utilizes this technology for your own home and pays no electric bill. Soon, word gets out in the neighborhood about this new technology. Others begin using and selling the technology as well. The neighborhood association becomes increasingly resentful of you and your family and enacts rules banning the use of this technology. The HOA also leverages ties in the legislature to make use of this technology a crime. When your family continues to use it, you are arrested and convicted. The neighbors who have lived in the neighborhood for most of their lives, and who were also using and selling it receive warnings, but are not arrested or prosecuted. As you sit in prison, the neighborhood association discusses how profitable and perhaps beneficial this new technology could potentially be. They take a community vote and decide to legalize and regulate this new technology. Their friends in the legislature draft new laws allowing use and sale under their own rules and system. They make a rule that in order to use or sell the technology, you must have been an original member of the HOA when it was formed, you must pay a fee of one million dollars (which, coincidentally only the president and a few members of the HOA have), and you must not have been convicted for prior use of this technology in the past ten years. You remain in prison, and appeal based on the status of the new law, which intuitively you think you should benefit from. However, you are told there is no relief, and you must continue your sentence, and when you complete it, you have a lifelong felony record.

This hypothetical is equivalent to the reality of how marijuana became illegal in the United States in the first place, and how we now know that enforcement of these laws was selective based

predominantly on race.¹⁴⁴ When Mexicans began immigrating to Texas and the southwest United States in the 1930s, they brought *marihuana* with them, and consequently, the states enacted laws outlawing it as a mechanism to both demonize and arrest them.¹⁴⁵ Simultaneously, the media bolstered the fear surrounding marijuana with the idea of “reefer madness,” with stories intended to provoke fear and control of citizens by painting black and brown people as “drug crazed” and reporting narratives of marijuana use as causing the “ravaging [of] women and children.”¹⁴⁶ It is worthy to note that concurrent with the demonizing and outlawing of recreational use of marijuana and the Mexican immigrant throughout the 1930s, marijuana and its byproducts were being prescribed medically, used industrially, and taxed as a source of revenue for the United States until 1970.¹⁴⁷

Continued service of sentences from outdated marijuana laws that were historically racially biased in their enforcement should be eradicated. This should be done through the use of legislation that requires immediate case review and vacation of all remaining sentences that could not be dispensed today, or even more swiftly through the exercise of gubernatorial pardon.

B. *Felony Records Expunged*

As described in this Comment, the collateral consequences of any felony conviction are enough to stifle anyone’s future.¹⁴⁸ These consequences are particularly unfair for those navigating the world with a felony conviction for acts now legal, or more particularly, legal for those with the proper licensure.¹⁴⁹ Compounding that inequity is the use of prior marijuana convictions to successfully bar participation in the newly legal marijuana industry itself through licensure requirements that exclude felons with certain marijuana-related arrests.¹⁵⁰ Compounding that inequity further is the continued exclusion from opportunities for the black person who was disproportionately targeted for arrest, convicted, sentenced, and

144. *See supra* Section II.A.

145. Richard J. Bonnie & Charles H. Whitebread II, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 VA. L. REV. 971, 1035–37 (1970).

146. Sean R. Hogan, *Race, Ethnicity, and Early U.S. Drug Policy*, in THE PRAEGER INTERNATIONAL COLLECTION ON ADDICTIONS: FACES OF ADDICTION, THEN AND NOW 37, 47 (Angela Browne-Miller ed., 2009).

147. Marihuana Tax Act of 1937, ch. 553, 50 Stat. 551 (1937) (repealed 1970).

148. *See supra* Section II.D.

149. *See supra* Section II.D.

150. *See supra* notes 87–89 and accompanying text.

imprisoned for the very same activity that his white counterpart committed at equal rates, but who was not arrested, not convicted, not sentenced, not imprisoned, not labeled a felon, and who can now potentially receive licensure and a piece of the Green Rush.¹⁵¹ The only way to undo the undeniable and vast disparity in arrests and subsequent convictions is to create immediate paths that begin to right these wrongs, including, but not limited to, expunging felony records for those who have already served their sentences for acts now legal. It is not enough to ensure that, moving forward, all racial disparity in marijuana arrests be banished (an improbable if not impossible feat), as this does nothing for the individuals already affected by these gross injustices and racially biased police practices.

C. *Farming Requirements Equalized*

Michelle Alexander coined the term “The New Jim Crow” in the title of her book, which argues, “[w]e have not ended racial caste in America; we have merely redesigned it.”¹⁵² The farming requirements utilized by Florida in its cultivation licensure are a clear manifestation of this truth.¹⁵³ Outwardly neutral requirements and qualifications that coincidentally cannot be met by blacks and other historically oppressed groups are nothing but thinly veiled “no coloreds allowed” signs.¹⁵⁴ These regulations are akin to literacy tests utilized to effectively bar blacks from voting in the 1850s until they were banned by the Voter Rights Act in 1970.¹⁵⁵ Requirements for licensure in these arenas must be closely scrutinized by both lawmakers and citizens panels, before enactment, to allow farmers and entrepreneurs of any race to have a fair chance of acquiring one of these coveted and potentially highly profitable cultivation licenses.¹⁵⁶ If years in service is to be made a farming licensure requirement, a more modest figure such as five or seven years would show a farm has the stability necessary to sustain itself in modern

151. See *supra* notes 87–89 and accompanying text.

152. ALEXANDER, *supra* note 99, at 2.

153. See *supra* Section II.F.3.

154. See *supra* Section II.F.3.

155. Deuel Ross, *Pouring Old Poison into New Bottles: How Discretion and the Discriminatory Administration of Voter ID Laws Recreate Literacy Tests*, 45 COLUM. HUM. RTS. L. REV. 362, 365 (2014); see also *The Rise and Fall of Jim Crow*, PBS, http://www.pbs.org/wnet/jimcrow/voting_literacy.html (last visited Apr. 1, 2017) (recreating the literacy tests and allowing the public to attempt to pass one).

156. See *supra* Section II.F.

markets. Those who meet the criteria should then be selected by blind lottery if only a limited number of licenses are to be distributed.

D. *Monetary Requirements Adjusted*

Requiring applicants to have access to hundreds of thousands of dollars (in addition to sizeable business start-up money), none of which can be legally borrowed from federal banks due to the current federal prohibition of marijuana,¹⁵⁷ is a hurdle that effectively fuels the American divide of the rich getting richer and the poor getting poorer.¹⁵⁸ States require surety bonds or other forms of upfront access to cash as prerequisites to the licensure process so that potential licensees have a sure way to defend themselves against possible future lawsuits.¹⁵⁹ Instead of forcing applicants to shoulder these exorbitant fees, states themselves should bear these costs. If a state is willing to sanction marijuana legalization in either medicinal or recreational form, the state itself should carry some of the risk of walking the tightrope between federally prohibited and state-sanctioned activity.¹⁶⁰ These funds could be collected as a part of the tax collection that states receive from the sale of the marijuana. Colorado is the flagship example to demonstrate the viability of this plan, since in the fiscal year of 2014–2015, the state realized *over* fifty-one million dollars in total tax transfers and distributions from marijuana sales.¹⁶¹ With the state absorbing this portion of the risk and the excessive need for cash that accompanies it, the potential applicant pool can be widened greatly, thus leveling the playing field in that respect.

IV. CONCLUSION

The American dream, as described by James Truslow Adams, “that life should be made richer and fuller for everyone and opportunity

157. 21 U.S.C. § 812(c)(10) (2012) (classifying marijuana as a Schedule I Controlled Substance).

158. *See supra* Section II.F.2.

159. Amber Fehrenbacher, *Racketeering Lawsuits, High Risk for Sureties in Marijuana*, SURETY BOND INSIDER (July 27, 2015), <https://www.suretybonds.com/blog/racketeering-high-risk-sureties-marijuana/10879>; *see* Matt Pilon, *Growing Pot in CT Will Be a High-Rollers Game*, HARTFORDBUSINESS.COM (Aug. 26, 2013), <http://www.hartfordbusiness.com/article/20130826/PRINTEDITION/308229939/growing-pot-in-ct-will-be-a-high-rollers-game>.

160. *See supra* Section II.F.2.

161. *Marijuana Tax Data*, COLO. DEP'T OF REVENUE, <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data> (last updated Jan. 2016).

remain open to all”¹⁶² has proven to be truly a dream in the realm of legal-marijuana opportunities. Arguably the United States’ fastest growing and most lucrative new industry—marijuana-related business opportunities—are not available to most.¹⁶³ This is especially true for blacks who are currently and historically were disproportionately targeted for marijuana-related offenses, despite equal use across racial lines.¹⁶⁴ Whether it be a prior or current felony conviction, the fear of being targeted for arrest in an industry that remains federally illegal, a steep financial hurdle, or a farming requirement that can only be met by a select few, there are plenty of roadblocks to getting a piece of the Green Rush.¹⁶⁵ In sum, “[h]ere are white men poised to run big marijuana businesses, dreaming of cashing in big—big money, big businesses selling weed—after 40 years of impoverished black kids getting prison time for selling weed, and their families and futures destroyed.”¹⁶⁶ Without rapid and deliberate intervention by lawmakers and voters, this playing field will continue to be set unfairly, thus continuing to perpetuate systemic racism in the United States.

162. JOHN TRUSLOW ADAMS, *THE EPIC OF AMERICA* 308 (1931).

163. See discussion *supra* Sections II.E–F.

164. See *supra* Section II.F.1.

165. See *supra* Sections II.A, II.D–F.

166. April M. Short, *Michelle Alexander: White Men Get Rich from Legal Pot, Black Men Stay in Prison*, ALTERNET (Mar. 16, 2014), <http://www.alternet.org/drugs/michelle-alexander-white-men-get-rich-legal-pot-black-men-stay-prison>.

