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High Expectations? Minnesota's Cannabis Social Equity Statute Falters

Claire Cavanagh[†]

Introduction

In 2023, Minnesota became the twenty-third state to legalize cannabis, and, following suit from other states to pass similar legislation, it included a social equity provision to give qualified applicants a preferred status when applying for a cannabis business license.¹ As in other states, Minnesota's social equity provision seeks to provide individuals who have suffered negative repercussions from the criminalization of cannabis and its prohibition with increased chances to receive highly coveted cannabis business licenses through lower entry costs and separate license lottery windows.²

However, Minnesota's statute is subject to the same issues that other states face—it is vague, inaccessible, and offers too many avenues for qualification.³ Surprisingly, Minnesota did not appear to incorporate the suggestions and critiques that were well-publicized in other states.⁴ The Minnesota Legislature nonetheless congratulated itself on its

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1. See MINN. STAT. § 342.09 (2023) (legalizing personal adult use and possession of cannabis); § 342.17 (2023) (defining "social equity applicants"); § 342.18, subd. 3(1) (2023) (awarding application points for status as a social-equity applicant); *see also Cannabis Law, OFFICE OF CANNABIS MANAGEMENT*, <https://mn.gov/ocm/laws/cannabis-law.jsp> [<https://perma.cc/6ZC8-M8BW>] (providing that Minnesota is the twenty-third state in the United States to legalize adult-use cannabis).

2. See Tim Walker, *Cannabis conferees successfully hash out differences, expand bill's scope*, MINNESOTA HOUSE OF REPRESENTATIVES (May 15, 2024), <https://www.house.mn.gov/sessiondaily/Story/18393> [<https://perma.cc/436N-SFWZ>] (explaining that the intent of the social equity provision is to repair some of the harms associated with the prohibition of cannabis); *see also* MINN. STAT. § 342.14, subd. 4 (2024) (stating that individuals who qualify as social equity applicants will be entered into two lotteries for cannabis business licenses, increasing their chance of receiving one).

3. See MINN. STAT. § 342.17 (2023).

4. See, e.g., Garrett I. Halydier, *We(ed) the People of Cannabis, in Order to Form a More Equitable Industry: A Theory for Imagining New Social Equity Approaches to Cannabis Regulation*, 19 U. MASS. L. REV. 225, 228 (2024) (explaining that social equity provisions in several states have failed to effectively achieve their goals of social equity and instead often compound the divide in equitable outcomes).

progressive social equity framework.⁵ Minnesota's social equity provision also fails to address the fact that the Black population undeniably suffered the most harm and therefore should be recognized as such when making qualification determinations.⁶ A provision that is intended to address harms related to cannabis prohibition should ensure that individuals most adversely affected by prohibition are accorded priority in the licensing process. The Minnesota Legislature could have provided language to qualify the Black population in statute and made the application process equitable. Instead, the broad language easily allows individuals who were not the intended target of this legislation or adversely impacted by cannabis prohibition to qualify. As it currently stands, the positive impact of this legislation is negligible and in fact is likely harmful to Black applicants' chances of receiving cannabis business licenses through this provision.

Minnesota Statutes Chapter 342 attempts to provide people who have experienced adverse effects of cannabis prohibition with avenues to more easily enter the cannabis market.⁷ The social equity provision lists seven broad "qualifying factors" that are used to determine if an applicant meets the social equity threshold.⁸ An applicant only needs to prove to the Minnesota Office of Cannabis Management (OCM) that they meet one of these qualifying factors to attain social equity applicant status, which is an objectively low threshold that is easy to achieve.⁹ In its capacity as a state agency, OCM does not have the authority to use discretion when interpreting the social equity provision of Chapter 342.¹⁰ Thus, the

5. See Tim Walker, *House Passes Cannabis Legislation Aiming to Speed Up Retail Sales*, MINNESOTA HOUSE OF REPRESENTATIVES (Apr. 18, 2024), <https://www.house.mn.gov/sessiondaily/Story/18324> [<https://perma.cc/CQ3H-SSMD>]; See also Sen. Lindsey Port, *Social Equity Cannabis Licensing Process Upholds Minnesota's Values*, MINN. SENATE DFL (Nov. 25, 2024) <https://senatedfl.mn/social-equity-cannabis-licensing-process-upholds-minnesotas-values/> [<https://perma.cc/635S-LGVY>] (claiming that Minnesota's social equity provision "corrects the harms and failures of cannabis prohibition.").

6. See sources cited *infra* note 21.

7. See MINN. STAT. § 342.17 (2024) (providing the qualifying factors an individual must meet to attain social equity applicant status).

8. *Id.*

9. *Id.* (providing that an individual must only demonstrate that they meet one of the seven qualifying factors to achieve social equity applicant status); see also MINNESOTA OFFICE OF CANNABIS MANAGEMENT, CANNABIS LICENSE SOCIAL EQUITY VERIFICATION 6 (2nd ed. 2025), https://mn.gov/ocm/assets/2411002_OCM_Social_Equity_Verification_Guide_v2.0_tcm12_02-664847.pdf [<https://perma.cc/T5CL-JBTf>] (The breadth of the seven factors provided in the social equity provision combined with the fact that an individual only needs to meet one criterion makes social equity verification more attainable. When compared to Maryland's social equity provision, which has only three, narrow qualifying factors, Minnesota's social equity provision has a much lower threshold for verification).

10. See MINN. STAT. § 14.05, subd. 1 (2001) (stating that an agency may only adopt rules "pursuant to authority delegated by law and in full compliance with its duties and obligations.").

statute as written negates the purported positive impact on Minnesota's Black population and opens the door for abuse of a provision that was intended to repair some of the harms resulting from cannabis prohibition.

This Note argues that the vague and overbroad terms of Minnesota's social equity provision undermine the State's intent to repair the harms of cannabis prohibition and will not provide any discernible benefit to the Black community. The Note begins with an examination of the impact of cannabis prohibition on Black individuals and their broader communities, and how historical influences created disparate arrest and conviction rates for similar cannabis-related offenses between the Black and white populations. Next, this Note explains how other states have tried, and largely failed, to implement similar social equity provisions to address these racial disparities.¹¹ It then discusses how Minnesota's social equity provision ultimately fails in its implementation because its overbroad statutory language allows too many individuals to qualify and the statutory language allows those in positions of power to easily abuse the broad statute to game the system and receive an enhanced application status, while Black applicants face several barriers throughout the process. Lastly, this Note addresses potential solutions to this issue, through both legislative and non-legislative actions, that would positively impact and enrich the relationship between Black Minnesotans and the emerging cannabis market.

I. The Disparate Impact of Cannabis Prohibitions on Black Individuals and Their Communities.

The official "War on Drugs" campaign heralded by President Richard Nixon in 1972 had devastating effects on Black communities across the United States.¹² The "War on Drugs" disproportionately impacted Black individuals and their neighborhoods through strategic policing efforts and tactics.¹³ These efforts sought to unfairly target Black people and had started decades before its recognition in the executive office as an official campaign.¹⁴ "War on Drugs" policies led to strict drug policies and enforcement practices nationwide that contributed to a significant increase in racial profiling and police violence in Black

11. Social equity provisions in other states, like Ohio, have been intensely scrutinized and subject to various legal challenges. *See Pharmacann Ohio, LLC v. Williams*, (Ohio C. P. 2018) (challenging the legal validity of Ohio's social equity provision).

12. *See Michael L. Rosino & Matthew W. Hughey, The War on Drugs, Racial Meanings, and Structural Racism: A Holistic and Reproductive Approach*, 77 AM. J. ECON. & SOC. 849, 849 (2018).

13. *Id.* at 851.

14. *Id.*

communities.¹⁵ This movement was tied to strong racist sentiments flooding the United States in the nineteenth century.¹⁶

Throughout the 1900s, Black communities experienced increased policing and police violence, which subsequently, and intentionally, led to increased arrests for low-level cannabis-related offenses.¹⁷ Fearful and racist sentiments regarding Black men, jazz musicians, and street criminals in the 1930s contributed to the eventual federal prohibition of cannabis, even though cannabis was primarily trafficked by white people and less frequently used by people of color.¹⁸ Notably, white people are more likely to have ever tried cannabis than Black people, yet are less likely to be arrested for low-level cannabis-related offenses than their Black counterparts.¹⁹ While the official “War on Drugs” campaign eventually dialed back in the 2000s, the racialized effects from its policies are still felt today.²⁰ Increased incarceration rates, police violence in Black communities, and false perceptions surrounding the Black population’s drug use are social problems that still pervade Minnesota and the entire United States.²¹

15. *Id.*

16. See Katrina Phillips, *How 19th-Century Anti-Black and Anti-Indigenous Racism Reverberates Today*, SMITHSONIAN MAGAZINE (Sep. 1, 2020), <https://www.smithsonianmag.com/smithsonian-institution/how-19th-century-anti-black-and-anti-indigenous-racism-reverberates-today-180975692/> (stating that racial tensions from the Civil War continued to exist even after the war ended, which led to outspoken racism and violent acts).

17. See Rosino, *supra* note 12, at 857 (explaining how drug-war policies and racialized narratives facilitated intensified policing in Black communities, producing disproportionate arrests for minor drug offenses).

18. *Id.*

19. *Id.* at 858 (describing that cannabis use by people of color was less prevalent than use by whites); see also Silvia S. Martins et al., *Racial and Ethnic Differences in Cannabis Use Following Legalization in U.S. States With Medical Cannabis Laws*, 4 JAMA NETWORK OPEN (2021) (showing that today cannabis use is similar to the nineteenth century).

20. See *War on Drugs*, HISTORY (May 28, 2025), https://www.history.com/topics/crime/the-war-on-drugs#section_7 [<https://perma.cc/G2MY-4TTM>] (stating that “[b]etween 2009 and 2013, some 40 states took steps to soften their drug laws, lowering penalties and shortening mandatory minimum sentences,” which reflects a shift in attitudes towards more progressive drug policies and policing).

21. See *Criminal Justice Fact Sheet*, NAACP, <https://naacp.org/resources/criminal-justice-fact-sheet> [<https://perma.cc/Q5WX-W8S7>] (reporting that Black individuals are disproportionately arrested and incarcerated for low-level drug offenses despite similar usage rates); see also *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*, ACLU, <https://www.aclu.org/publications/tale-two-countries-racially-targeted-arrests-era-marijuana-reform> [<https://perma.cc/Z6DV-NDYV>] (documenting that Black people are far more likely than white people to be arrested for marijuana possession nationwide, even in states that have reformed cannabis laws).

A. Minnesota's Racialized Enforcement of Cannabis Offenses.

In 1935, two years before cannabis was criminalized at the federal level, the Minnesota Legislature passed legislation that prohibited cannabis possession, production, and sale.²² Perceptions surrounding cannabis in Minnesota were deeply influenced by the poor race relations throughout the state.²³ The popular local newspaper, the Minneapolis Tribune, published several articles describing cannabis as a dangerous drug and, in as early as 1885, referred to it as "The Loco Weed."²⁴ Additional articles were published that associated cannabis with people of color and Mexico, which furthered the notion that people of color were more likely to use cannabis.²⁵

After the criminalization of cannabis in Minnesota, there was a marked increase in both the arrest rate and the number of people of color (especially Black Minnesotans) sentenced to prison compared to their proportion of the total population.²⁶ As "tough on crime" and harsh drug enforcement policies gained traction across the United States throughout the 1960s and 1970s, the proportion of Black individuals arrested and sentenced to prison skyrocketed in Minnesota.²⁷ The national crime policies, racialized rhetoric surrounding drugs, and the "War on Drugs" campaign shaped the implementation of racially motivated state-level cannabis policing efforts, which continue to the present day.

In Minnesota, the 2023 Uniform Crime Report shows that cannabis was related to a high percentage of all drug abuse arrests.²⁸ That year, charges for possession or concealment of cannabis were associated with 8,593 of all 10,480 drug arrests, demonstrating a high level of

22. See Tanner Berris, *The Racial History of Cannabis Prohibition in Minnesota*, MINN. CANNABIS COLL. (June 19, 2023), <https://mncannabiscollege.org/race-and-cannabis/> [<https://perma.cc/3TT3-QAMH>] ("The original legislation enforcing cannabis prohibition in Minnesota was instituted in 1935, a mere two years before the national criminalization. Chapter 321 forbade the possession, production and sale of 'Cannabin' . . .").

23. See Jennifer Delton, *Labor, Politics, and American Identity in Minneapolis, 1930–50*, 57 MINN. HIST. 418, 420 (2001) (describing discrimination, segregation, and restrictive covenants that existed in Minneapolis in the 1930s and 1940s).

24. Berris, *supra* note 22.

25. *Id*; see also *Hope to Outlaw Dope Weed Seen in '33*, 81 ST. PAUL PIONEER PRESS, (Mar. 1, 1934).

26. *Id*.

27. Rosino, *supra* note 12, at 858 ("In the 1960s, the state implemented drug laws and 'tough on crime' policies as a tool for social control against progressive social movements, including the civil rights movement. In the 1970s, the development of the Drug Enforcement Agency intensified and militarized drug law enforcement practices, justifying wars overseas and a war on people of color at home. In the 1980s, racially biased sentencing guidelines and racialized moral panics around the 'crack epidemic' further augmented and racialized drug penalties and the prison population.").

28. 2023 *Uniform Crime Report*, MINN. DEP'T. OF PUB. SAFETY, BUREAU OF CRIM. APPREHENSION (2024).

enforcement in Minnesota.²⁹ Of these drug-related arrests, the Black population was disproportionately represented, making up 25.03% of all arrests despite comprising just 7.9% of Minnesota's population.³⁰ As a result of the historical and current inequities in cannabis policing and enforcement, Black Minnesotans are more likely to be/have been incarcerated and more likely to have a criminal drug record involving cannabis.³¹

Black Minnesotans' higher likelihood of interaction with the criminal justice system unfairly contributes to the racial disparities present throughout society.³² Specifically, interaction with the criminal justice system is associated with a variety of negative consequences.³³ There are numerous fees, fines, and debts associated with the criminal justice system.³⁴ Further, individuals with criminal records face obstacles when seeking employment because roughly 9 in 10 employers across the United States conduct background checks during the hiring process.³⁵ Employers are far less likely to hire an individual with a criminal record, making it more difficult for those with criminal records to secure high-paying, stable employment.³⁶ Without secure employment, it is almost insurmountable for individuals to provide for themselves, let alone pay the costs of incarceration.³⁷ There are even more devastating effects on individuals with families who have dependents who rely on them for their basic needs.³⁸ This has led to families with current or previously incarcerated family members obtaining 50% less wealth and incurring significantly more debt than households without.³⁹

29. *Id.*

30. QUICK FACTS: MINNESOTA,
<https://www.census.gov/quickfacts/fact/table/MN/PST045224>.

31. *Black People Five Times More Likely to Get Arrested for Marijuana in Minnesota*, ACLU OF MINNESOTA, (Apr. 20, 2020), <https://www.aclu-mn.org/en/press-releases/black-people-five-times-more-likely-get-arrested-marijuana-minnesota> [<https://perma.cc/V4Q2-FPYA>].

32. *Id.*

33. Christian E. Weller, Akua Amaning & Rebecca Vallas, *America's Broken Criminal Legal System Contributes to Wealth Inequality*, CTR. FOR AM. PROGRESS (Dec. 13, 2022). <https://www.americanprogress.org/article/americas-broken-criminal-legal-system-contributes-to-wealth-inequality/> [<https://perma.cc/C89L-5RWG>].

34. Karin D. Martin, Bryan L. Sykes, Sarah Shannon, Frank Edwards & Alexes Harris, *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, 1 ANN. REV. CRIM. 471, 473 (2021).

35. See Weller et. al, *supra* note 33 ("Appropriately, particular attention has been paid to the dramatic toll that a conviction and/or incarceration record takes on an individual's employment and earnings prospects in an era when roughly 9 in 10 U.S. employers use background checks in hiring.").

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* ("Households with a currently or previously incarcerated family member have about 50 percent less wealth than households not affected by incarceration, on average.").

Additionally, individuals with criminal records are more likely to have poorer health outcomes, even if they were not incarcerated.⁴⁰ This has been attributed to the trauma and anxiety resulting from police interactions, which is compounded for Black individuals due to the long history of police violence towards the Black community.⁴¹ For individuals with mental health illnesses who have been incarcerated, their conditions are often made worse during incarceration due to poor-quality treatment or lack thereof.⁴² A criminal record can also preclude an individual from enrollment in federal benefits and programs.⁴³ Moreover, once released from prison, individuals have a high rate of recidivism.⁴⁴ This creates a cyclical process that continually harms those who have interacted with the criminal justice system, which is disproportionately Black individuals.⁴⁵

II. How States Have Attempted to Address the Harms Associated with Cannabis Prohibition Within Their Cannabis Laws

A. *Critiques of Other States' Social Equity Provisions*

Social equity provisions have been implemented in several other states, have often been criticized regarding their effectiveness, and have faced legal challenges surrounding their implementation.⁴⁶ Maryland was the first state to separate and reserve the first round of cannabis business licenses for social equity applicants.⁴⁷ License seekers were eligible under Maryland's social equity program if they:

[L]ived in a [d]isproportionately [i]mpacted [a]rea ... for five of the last ten years ... , (2) attended a public school in a ...

40. Ram Sundaresh, Youngmin Yi, Brita Roy, Carley Riley, Christopher Wildeman & Emily A. Wang, *Exposure to the US Criminal Legal System and Well-Being: A 2018 Cross Sectional Study*, 110 AM. J. PUB. HEALTH S116, S116 (2020).

41. *Id. See also* Timonthy J Geier, History of Racial Discrimination by Police Contributors to Worse Physical and Emotional Quality of Life in Black Americans After Traumatic Injury, 11 J. Racial and Ethnic Health Disparities 1774, 1781 (2023) (stating that "prior discriminatory experiences detrimentally impact physical and mental health recovery. The implications of these results are further magnified by the recent civil unrest in the wake of widely publicized murders of unarmed Black Americans at the hands of police and the disproportionate effect of the COVID-19 pandemic on Black American communities, including an increase in injury.").

42. *See Criminal Justice Fact Sheet*, *supra* note 21.

43. *Id.*

44. *What is the sequence of events in the criminal justice system*, BUREAU OF JUSTICE STATISTICS, <https://bjs.ojp.gov/justice-system> [<https://perma.cc/AE3X-GK8>].

45. *Id.*

46. *See* sources cited *infra* notes 47-55 (detailing the social equity provisions in Maryland, California, and Ohio and how they have been challenged legally or criticized).

47. UNITED STATES: LEGAL LEAF CANNABIS ALERT MARYLAND CANNABIS UPDATE, <https://plus.lexis.com/api/permalink/c8626221-1aef-4b70-8161-e7fce96af354/?context=1530671> [<https://perma.cc/GU74-H3H7>].

[disproportionately impacted area] for at least five years; or (3) for at least two years, attended a four-year institution of higher education in Maryland where at least 40% of attendees are eligible for a Pell Grant.⁴⁸

Maryland's social equity factors are noticeably more stringent than Minnesota's and have been subject to several lawsuits that challenged their validity.⁴⁹ One of the lawsuits challenging the validity of Maryland's social equity provision argued that it violated the dormant Commerce Clause.⁵⁰ The court determined, however, that the dormant Commerce Clause does not apply to adult-use cannabis because it is a federally prohibited activity.⁵¹

Social equity provisions in California were also subject to criticism in their implementation. The city of Costa Mesa adopted a social equity program that aimed to offer opportunities to those negatively impacted by the historic criminalization of cannabis.⁵² Costa Mesa was sued for delegating social equity license determinations to its city manager without requiring the input of the city council.⁵³ Costa Mesa was accused of impropriety and favoritism towards certain applicant types regarding the social equity lottery and of excluding or disfavoring "applicants 'most impacted' by the war on drugs."⁵⁴ Similarly, in Ohio, the decision-making process for social equity licenses was challenged as unconstitutional, arguing that it violated due process.⁵⁵ The implementation of social

48. Regina Desantis & Austin Ownbey, *New Lawsuit Challenges Maryland Cannabis Administration's Social Equity Program Under 'Dormant Commerce Clause,' Seeks Injunction Against Issuing Licenses*, JD SUPRA (Feb. 28, 2024), <https://www.jdsupra.com/legalnews/new-lawsuit-challenges-maryland-9963142/> [<https://perma.cc/B6D2-3433>].

49. See *id.* (stating that the Maryland social equity provision was challenged for violating the dormant Commerce Clause "by discriminating against out-of-state applicants").

50. See Regina Desantis & Austin Ownbey, *Litigation Update: Maryland District Court Finds That 'Dormant Commerce Clause' Does Not Apply to Adult-Use Cannabis in Maryland, Denies Injunction*, JD SUPRA (Mar. 1, 2024), <https://www.jdsupra.com/legalnews/litigation-update-maryland-district-5100382/> [<https://perma.cc/P5MR-U9UZ>]; see also U.S. CONST. ART. I, § 8, cl. 3 (granting Congress the power to regulate interstate commerce).

51. *Id.*

52. Sara Cardine, *Cannabis hopefuls up in arms as Costa Mesa's application process rolls on without them*, DAILY PILOT (Sep. 2, 2021), <https://www.latimes.com/socal/daily-pilot/news/story/2021-09-02/cannabis-hopefuls-up-in-arms-as-costa-mesas-application-process-rolls-on-without-them> [<https://perma.cc/CB9F-FXJR>].

53. See CANNABIS CO. SAYS CALIF. CITY FADED SOCIAL EQUITY PROGRAM, <https://plus.lexis.com/api/permalink/8b5905ad-5121-4dc0-b840-3219a43cb076/?context=1530671> [<https://perma.cc/BS3R-7EAJ>].

54. *Id.*

55. Pharmacann Ohio, LLC v. Williams, No. 17-CV-010962, 2018 WL 7500067, at 1 (Ohio Com. Pl. Nov. 15, 2018), [https://1.next.westlaw.com/Document/I6e4a97703c3b11e987fd8441446aa305/View/FullText.html?originationContext=typeAhead&transitionType=Default&contextData=\(sc.Default\) \[https://perma.cc/9MQU-BHRWJ\]](https://1.next.westlaw.com/Document/I6e4a97703c3b11e987fd8441446aa305/View/FullText.html?originationContext=typeAhead&transitionType=Default&contextData=(sc.Default) [https://perma.cc/9MQU-BHRWJ) [<https://perma.cc/9MQU-BHRWJ>].

equity provisions in other states has been subject to intense scrutiny and has not occurred without issue.

B. Minnesota's Approach to a Cannabis Social Equity Provision

The Minnesota Legislature enacted a social equity provision within the larger cannabis statute to address some of the harms caused by the state's historical prohibition of cannabis.⁵⁶ The social equity provision initially provided these qualifying factors: (1) "a military veteran who lost honorable status due to a cannabis related offense;" (2) someone who has lived for the past five years in an area "that experienced a disproportionately large amount of cannabis enforcement as determined" by the office, or (3) someone who has lived for the last five years in low-income areas.⁵⁷ The initial version of the social equity provision, with only three qualifying factors, still failed to adequately reflect that the Black community had been most negatively affected because the factors do not account for the racial disparity associated with cannabis's prohibition.⁵⁸

As Chapter 342 made its way through the legislative process, significant amendments ultimately broadened the scope of the social equity provision to the expansive seven-factor provision currently in effect.⁵⁹ By expanding the purview of the social equity provision, the Legislature effectively excluded the Black community from realistically reaping any of the purported benefits the provision aims to provide. By widening the pool of individuals who qualify under the social equity provision, the Legislature lessened Black Minnesotans' chances of receiving a cannabis license and further limited them from receiving the financial benefits of cannabis legalization.

56. See Peter Callaghan, *Walz supports changes to Minnesota's recreational marijuana law to strengthen 'social equity' provisions*, MINNPOST (Feb. 14, 2024), <https://www.minnpost.com/state-government/2024/02/walz-supports-changes-to-minnesotas-recreational-marijuana-law-to-strengthen-social-equity-provisions/> [https://perma.cc/B7S9-EFUZ] (stating that OCM asked the Minnesota Legislature "to amend the 2023 recreational marijuana law to make it easier for people and neighborhoods who suffered most from prohibition to get into the business."); *see also* MINN. STAT. § 342.17 (2024) (the current social equity provision that the Minnesota Legislature added in response to OCM's proposal).

57. See H.F. 100, 93rd Leg. (Minn. 2023) (the initial introduction of the cannabis bill into the Minnesota House of Representatives which originally only had three criteria that could qualify an applicant for social equity application status).

58. *Id.* (the initial version of the bill had fewer qualifying factors than the final bill that was promulgated).

59. See MINN. CONF. COMM. REP., H.F. 100., (2023) (demonstrating the change in the statutory language in the final Minnesota Chapter 342 cannabis bill that added four additional qualifying factors that individuals may use to assert social equity application status).

III. Chapter 342's social equity provision fails to accomplish the Minnesota Legislature's intended goals.

In the last few years, nearly half of the states have passed legislation legalizing recreational adult-use cannabis.⁶⁰ In most states, legislators have attempted to address the harms that the prohibition of cannabis had on the Black population through social equity provisions laid out in statute.⁶¹ The intended effect of social equity provisions is to give individuals and communities adversely affected by cannabis prohibition an advantage or priority to enter the market and accumulate wealth through profits.⁶² In theory, social equity provisions appear to, albeit slightly, take accountability for the harm cannabis prohibition has caused and provide an actionable, tangible benefit which increases access and participation in the legal cannabis market to generate wealth. However, in practice, the supposed benefits are difficult to assess, and the statutory language is often written vaguely, allowing individuals to game the system and take advantage of their positions of power to garner profits from cannabis when they were not the intended target of the legislation. These problems exist within the current version of Minnesota's social equity provision.

A. *The statutory language is overly broad and inclusive, thus allowing individuals to qualify who were not harmed by the prohibition of cannabis.*

The governing statute, Minnesota Statutes Chapter 342.17, provides that specific individuals may qualify for Social Equity Applicant (SEA) status, which is intended to boost applicants' chances of receiving a cannabis license through the lottery system.⁶³ The state Legislature gave OCM authority to determine the number of cannabis licenses it will issue, which, to balance supply and demand, will be significantly lower than the

60. See *Cannabis Law*, *supra* note 1.

61. See Beau Kilmer, Jonathan P. Caulkins, Michelle Kilborn, Michelle Priest & Kristin M. Warren, *Cannabis Legalization and Social Equity: Some Opportunities, Puzzles, and Trade-Offs*, 101 BOS. U. L. REV. 1003 (detailing how cannabis prohibition has disproportionately affected the Black population and that social equity provisions have attempted to mitigate the harms associated with cannabis policy).

62. See Walker, *supra* note 2.

63. MINN. STAT. § 342.17 (2024); see also Media Release, Minnesota Office of Cannabis Management, Minnesota Office of Cannabis Management opens window for social equity applicant verification (Jan. 15, 2025) <https://content.govdelivery.com/accounts/MNOCM/bulletins/3cca2eb> [https://perma.cc/Z6U6-WV2P] (quoting the director of OCM, who stated that "[OCM's] main goal in the months ahead is to issue licenses and launch Minnesota's adult-use cannabis program promptly while preserving the benefits for qualified social equity applicants envisioned in the law.").

number of people who apply for licenses.⁶⁴ This process is very competitive, and SEA status can substantially influence an applicant's statistical chances of receiving a license.⁶⁵ Unfortunately, the statutory language is overly broad, it provides too many ways for individuals to qualify, and thus allows applicants who should not necessarily qualify for SEA status to take the benefits away from the intended populations.

Minnesota Statutes Chapter 342.17, subdivision a, lists seven qualifications individuals can use to assert their SEA status.⁶⁶ The qualifiers state that an individual qualifies as an SEA if the applicant:

- (1) was convicted of an offense involving the possession or sale of cannabis or marijuana prior to May 1, 2023;
- (2) had a parent, guardian, child, spouse, or dependent who was convicted of an offense involving the possession or sale of cannabis or marijuana prior to May 1, 2023;
- (3) was a dependent of an individual who was convicted of an offense involving the possession or sale of cannabis or marijuana prior to May 1, 2023;
- (4) is a military veteran, including a service-disabled veteran, current or former member of the national guard;
- (5) is a military veteran or current or former member of the national guard who lost honorable status due to an offense involving the possession or sale of cannabis or marijuana;
- (6) has been a resident for the last five years of one or more subareas, such as census tracts or neighborhoods:
 - (i) that experienced a disproportionately large amount of cannabis enforcement as determined by the study conducted by the office pursuant to section 342.04, paragraph (b), or another report based on federal or state data on arrests or convictions;
 - (ii) where the poverty rate was 20 percent or more;
 - (iii) where the median family income did not exceed 80 percent of the statewide median family income or, if in a metropolitan area, did not exceed the greater of 80 percent of the statewide median family income or 80 percent of the median family income for that metropolitan area;

64. See MINN. STAT. § 342.14, subd. 1a (2024) (describing that the Office of Cannabis Management is tasked with meeting market demand for cannabis flower and products, ensuring market stability, and maintaining a competitive market); *see also Application and License Holder Data*, MINN. OFF. OF CANNABIS MGMT., mn.gov/ocm/businesses/licensing/application-data/ [https://perma.cc/5CB5-JAMR] (demonstrating that certain license types have a limited number of licenses available. For example, there were 854 applicants for retailer licenses, but only 150 licenses available).

65. See MINN. STAT. § 342.14, subd. 4 (2024) (explaining that social equity applicants are entered into two lottery pools: one for only social equity applicants and then, if not selected, those applicants are entered into a lottery pool with all applicants; thus, increasing an individual's chances of being selected in the cannabis license lottery).

66. MINN. STAT. § 342.17, subd. (a) (2024).

- (iv) where at least 20 percent of the households receive assistance through the Supplemental Nutrition Assistance Program; or
- (v) where the population has a high level of vulnerability according to the Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Social Vulnerability Index; or
- (7) has participated in the business operation of a farm for at least three years and currently provides the majority of the day-to-day physical labor and management of a farm that had gross farm sales of at least \$5,000 but not more than \$100,000 in the previous year.⁶⁷

Individuals only need to prove they meet one of these seven broad qualifications to attain SEA status.⁶⁸ Further, the qualifying factors are overly inclusive, allowing individuals who have not experienced hardship due to cannabis prohibition to reap the benefits and generate profits from the social equity provision. This was not the intent of the Minnesota Legislature.⁶⁹ The ascribed goal of the social equity provision is to purportedly repair some of the harm created by the prohibition of cannabis by allowing affected individuals and their communities to economically benefit from the public retail sale of cannabis, thus generating revenue for SEA-owned businesses and their surrounding communities.⁷⁰ Black Minnesotans are undoubtedly the demographic that cannabis's prohibition has most harmed.⁷¹ Yet, Minnesota's SEA criteria continues to marginalize the Black community because the broad statute allows too many individuals to qualify, many of whom did not face historical repercussions from cannabis prohibition. As a result, Black applicants have a reduced chance of receiving a cannabis business license through the lottery to reap the financial benefits proffered by the social equity provision.

Several of the individual factors listed in the social equity provision present issues regarding the over-inclusivity of the provision as a whole. Specifically, subparts four, six, and seven appear over-inclusive considering the supposed purpose of the social equity provision. Subpart four states that any "military veteran, including a service-disabled veteran, current or former member of the national guard" qualifies for

67. *Id.*

68. See MINN. STAT. § 342.17 (2024) (statutory language stating that applicants need only meet one criterion for classification as a social equity applicant).

69. See Walker, *supra* note 2 (demonstrating that "people harmed by over-prosecution of cannabis laws in the past" were the intended target of the social equity provision).

70. See MINNESOTA HOUSE OF REPRESENTATIVES *Commerce finance and policy law focuses on cannabis, consumer data privacy protections*, <https://www.house.mn.gov/NewLaws/story/2024/5591> [<https://perma.cc/82QM-QVYE>] (describing the intent of the social equity provision found in Minnesota Statute Chapter 342).

71. Kilmer et al., *supra* note 61.

SEA status.⁷² However, military veterans and National Guard members have not been historically over-policed or disproportionately incarcerated for cannabis use or possession.⁷³ Subpart five specifically encompasses instances where military veterans or National Guard members have lost honorable status due to cannabis offenses.⁷⁴ Accordingly, subpart four is unnecessarily broad and includes thousands of additional potential social equity applicants who might not have experienced harm due to the prohibition of cannabis.

Subpart six presents a similar issue—it allows anyone who has lived in certain statutorily designated areas for five years or more to qualify for SEA status.⁷⁵ The following items highlight categories that are inherently relevant to challenges faced by Black individuals, because their communities were overpoliced and more likely to be impoverished.⁷⁶ However, the sweeping scope of the qualifiers allows them to be interpreted by other racial groups. This allows white individuals, who may fit into one or more categories but did not actually experience harm, to qualify for SEA status. The breadth of this subpart allows savvy applicants to essentially “argue” their SEA status based on the data and statistics surrounding their census tract or neighborhood rather than their individual circumstances.⁷⁷ This is especially notable in gentrified neighborhoods where areas of the same census tract experience strikingly different levels of income and social capital.⁷⁸ For individuals living in urban areas, policing efforts and wealth distribution can vary significantly from block to block; thus, using such a broad form of measurement (like census tracts or neighborhoods) permits individuals to capitalize on the circumstances of their surroundings.⁷⁹ This type of

72. MINN. STAT. § 342.17 (2024).

73. See Kelly Lynn Clary, Megan Habbal, Douglas C. Smith & Iulia Fratila, *The Green Sheep: Exploring the Perceived Risks and Benefits of Cannabis Among Young Military Members and Veterans*, 4 CANNABIS 31 (2021) (demonstrating that veterans are generally not worried about being arrested for cannabis use).

74. MINN. STAT. § 342.17 (2024).

75. See MINN. STAT. § 342.17(6) (2024).

76. See *Poverty rate in the United States in 2023, by race and ethnicity*, STATISTA, <https://www.statista.com/statistics/200476/us-poverty-rate-by-ethnic-group> [https://perma.cc/3DSJ-4UBV].

77. See MINN. STAT. § 342.17(6)(i) (2024) (stating that applicants may submit “another report based on federal or state data on arrests or convictions . . . ”).

78. See *On the Cusp of Greatness: Hamline-Midway, Crime, and Transformation*, CURA TWIN CITIES GENTRIFICATION PROJECT, <https://gentrification.umn.edu/hamline-midway> [https://perma.cc/DA92-PMW7] (describing how the St. Paul “Midway” neighborhood has experienced significant gentrification stemming from the construction of the light rail and soccer stadium. Midway residents relayed differing sentiments regarding the changes in the neighborhood, with more affluent white people raising concerns about crime levels, and longtime residents [many of whom are people of color] citing concerns about increased rent prices and greater police presence).

79. See RICH BLOCKS POOR BLOCKS, <https://www.richblockspoortblocks.com/>

factor is not equitable because of the high degree of variability that can occur in small sectors of urban areas.⁸⁰

Subpart seven includes individuals who have participated in the business operation of a farm for at least three years and meet other requirements.⁸¹ This subpart does not appear to address social equity as it relates to cannabis and the effects of its prohibition. Agricultural producers were not disproportionately prosecuted for cannabis-related offenses. It is unclear why farmers were included as part of the social equity provision. Regardless, this subpart serves to exclude actually harmed individuals from benefiting from the social equity program because it increases the number of applicants and competition for SEAs.

As enacted, Minnesota Statutes Chapter 342 failed to narrow the scope of the social equity provision to include only those populations who experienced negative effects resulting from cannabis prohibition, namely the Black community. Black Minnesotans have historically faced the highest levels of prosecution and experienced the most disparate negative outcomes associated with the prohibition of cannabis, especially those related to policing.⁸² The focus of a proposed “social equity” provision should have prioritized Black applicants. As it currently stands, the social equity provision does not address the racial disparities it intended to address. Black Minnesotans are not provided a discernible edge in the social equity license lottery when the broad statutory language allows too many individuals to gain SEA status without having experienced harm from cannabis prohibition.

i. The social equity application process presents barriers to access that exclude the Black population.

The application process and materials required for the application are barriers to accessing SEA status, as an individual must possess significant social and financial capital to navigate the complex process.

Applicants with the means to hire a lawyer or who possess education and knowledge about legal principles will fare much better in the application process. There are additional barriers to entry, such as application fees and business plan requirements, that serve to gatekeep

[<https://perma.cc/THN2-KGHA>] (demonstrating the varying degrees of wealth and income disparity in Minneapolis, Minnesota).

80. *Id.*

81. See MINN. STAT. § 342.17(7) (2024) (stating that an applicant qualifies under subpart seven of the social equity provision if they have “participated in the business operation of a farm for at least three years and currently provide[] the majority of the day-to-day physical labor and management of a farm that had gross farm sales of at least \$5,000 but not more than \$100,000 in the previous year.”).

82. *Criminal Justice Fact Sheet*, *supra* note 21; *see also* 2023 Uniform Crime Report, *supra* note 28.

the process. Though there is no fee for social equity verification, there are still license fees that are required under Chapter 342.⁸³ These fees can reach up to \$70,000 for certain license types, but for others still range from \$250 to \$2,000.⁸⁴ This is often a barrier to entry for individuals who aim to use a cannabis business as a means to accumulate wealth and do not currently have a significant amount of financial capital or savings. Individuals who attempt to apply independently and are ultimately rejected are then worse off financially and are barred from access to the cannabis industry.

Further, the license fees are due to OCM before the business would expect to generate a profit, which may force businesses to pay the fee on credit. Individuals with low socioeconomic status often have poor access to credit and are forced to turn to predatory lending facilities, putting them at an increased risk of incurring insurmountable debt. The social equity program essentially requires applicants to possess financial capital or access to funds. If an applicant does not have ready access to funds, they may exclude themselves from this program or put themselves in a precarious financial position with credit lenders.

The application itself has many components that an average individual may find confusing or require assistance with to assert their qualifications for SEA status adequately. For example, Minnesota's social equity provision requires cannabis business applicants to disclose ownership and control, which includes any true parties of interest.⁸⁵ Though this requirement may have administrative value, it inherently requires an understanding of business association law and governance, which requires knowledge that is dependent upon an individual having at least a post-secondary education.⁸⁶ Only 33.7% of Black Minnesotans have an Associate degree or higher.⁸⁷ With such a small percentage of Black Minnesotans attaining an educational status that likely has familiarity with the idiosyncratic knowledge required to demonstrate business ownership and control, this provision effectively serves to further exclude a portion of the Black population from SEA status.

83. MINN. STAT. § 342.11 (2024).

84. *Id.*

85. See MINN. STAT. § 342.14, subd. 1(a)(2) (2024).

86. See Thomas Peele, *Study Shows Benefits of Higher Education Beyond dollars and Cents*, EDSOURCE (Aug. 31, 2023), <https://edsource.org/updates/study-shows-benefits-of-higher-education-beyond-dollars-and-cents> [https://perma.cc/93XQ-F74G] (explaining that postsecondary education benefits individuals in all aspects of their lives).

87. See Minnesota Office of Higher Education, EDUCATIONAL ATTAINMENT: A 2023 MINNESOTA MEASURES REPORT 3 (2023), https://mnmeasures.highered.mn.gov/wp-content/uploads/2024/08/MNMeasures_2024-Report_EducationalAttainment_ADA.pdf [https://perma.cc/EUS4-46XK] (reporting 2024 statistics on adult educational attainments in Minnesota).

Further, Minnesota Statutes Chapter 342 states that an individual “that experienced a disproportionately large amount of cannabis enforcement as determined by the study conducted by the [OCM] . . .” qualifies for SEA status.⁸⁸ However, OCM subsequently explained that due to a “lack of relevant data,” the agency was unable to conduct the study on cannabis enforcement levels.⁸⁹ The agency website states that “[a]pplicants who believe they meet this criterion may submit a study or report, based on federal or state data on arrests or convictions at the community level, as in the neighborhood or census tract, to OCM. OCM will then evaluate the submitted data to determine if it meets the specified criteria.”⁹⁰

As a consequence of OCM’s failure to conduct the study on disproportionate cannabis enforcement, the onus falls onto the SEA to prove that they qualify. OCM has allowed applicants to submit their own reports based on federal or state data on cannabis arrests and convictions.⁹¹ However, that means that SEAs need to have the knowledge and wherewithal to analyze data and translate that information into a report for OCM to review. This additional burden is a significant threshold to overcome. It also compounds the inequities experienced by applicants with lower social or financial capital. It is contrary to the intent and purpose of social equity to place the responsibility upon the applicants to prove this qualification when the social equity provision is supposed to level the playing field.⁹²

Instead, the burdensome requirements make it more difficult for individuals with low socioeconomic status to attain SEA status and compete with applicants who have more resources to invest into their applications. The State of Minnesota requires applicants to provide supplemental information when making determinations regarding the administration of social benefits, like requiring proof of income when determining Supplemental Nutrition Assistance Program (SNAP) eligibility.⁹³ However, the issue here is that the type of supplemental

88. See MINN. STAT. § 342.17, subd. (a)(6)(i) (2024).

89. See *Social Equity Qualifications*, MINN. OFF. OF HIGHER EDUC., <https://mn.gov/ocm/businesses/equity-applicants/qualifications.jsp> [https://perma.cc/LE5V-8E4W] (qualifying that the agency was unable to conduct the study they were directed to by statute).

90. *Id.*

91. *Id.*

92. See Halydier, *supra* note 4, at 265–68 (describing the origin of social equity provisions in the context of the 2020 Black Lives Matter protests); see also *Division of Social Equity Overview*, MINN. OFF. OF CANNABIS MGMT, <https://mn.gov/ocm/social-equity/overview/> [https://perma.cc/HJM5-4WHP] (explaining that the Division of Social Equity at OCM works to ensure equity in Minnesota’s cannabis industry).

93. See *Mandatory Verifications-SNAP*, MINNESOTA DEP’T OF HUMAN SERVS., https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&Rev

information required by the social equity provision requires resources that the target demographic typically does not have.

IV. Potential Solutions That Would Increase the Effectiveness of the Social Equity Provision and Better Support Black Minnesotans Who Seek to Enter the Legal Cannabis Market.

A. Legislative Solutions

i. Amend the Current Statute to Narrow Who May Qualify for Social Equity Applicant Status.

If the Minnesota Legislature amended the current statute, it could remedy the present statutory gap and effectively designate SEA status to those who were actually harmed by cannabis prohibition. An amendment or change to the present statute could further designate *who* the social equity provision was intended to encompass and clarify agency discretion when OCM makes determinations regarding qualification status. Specifically, if an amendment narrowed the seven factors to only those that were pertinent to Black Minnesotans, the social equity provision would have much more success in its goal of remedying cannabis prohibition harm.⁹⁴ Narrowing these subparts is inherently difficult because a significant portion of Minnesota's population falls into several of the "factors" that determine an individual's qualification for SEA status. Therefore, the challenge is to isolate factors that are specific to the Black population.

ii. The Use of Racial Qualifiers Within An Amended Statute Will Bring Legal Challenges.

However, codifying racially-based qualifications presents a new set of legal concerns. The Students for Fair Admissions decisions at the University of North Carolina and Harvard University set a dangerous precedent for social equity programs that seek to repair harms that inherently fall along racial lines.⁹⁵ If race-based admissions are unconstitutional, then the logical next step is to find that race-based social

isionSelectionMethod=LatestReleased&dDocName=cm_00101802
[<https://perma.cc/4RQ5-YACU>].

94. See generally MINN. STAT. § 342.17 (2024) (demonstrating the current criteria employed by Minnesota's social equity provision).

95. See generally Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll., 600 U.S. 181, 230 (2023) (holding that race-based affirmative action programs violate the Equal Protection Clause of the Fourteenth Amendment); Students for Fair Admissions, Inc. v. Univ. of N.C., LEXIS 169181 (2019) (explaining that the Supreme Court held that race-based factors for college admission determination violated the Equal Protection Clause of the Fourteenth Amendment).

programs are unconstitutional. The Fourteenth Amendment's Equal Protection Clause should be interpreted to bolster diversity in spaces that non-diverse individuals have predominantly occupied.⁹⁶ This rings true for college admissions and other social programs where diversity is needed to support equitable outcomes for all individuals.⁹⁷

It is much more challenging to undo the historic, racialized, policing and prosecution efforts of cannabis-related crimes and provide more equitable opportunities for both licensing and diversity than to allow diversity, equity, and inclusion efforts to support underserved populations.⁹⁸ Race-based college admissions work in the same way as social programs like the social equity provision, which is available to all potential cannabis business license applicants for Minnesota's program.⁹⁹ The rulings in these cases could have devastating effects on Black applicants seeking enrollment in programs like the cannabis social equity program and on future Black Minnesotans who could undoubtedly benefit from an increase in diversity within the cannabis industry.

iii. Increase OCM's Agency Discretion to Determine Who May Qualify for Social Equity Applicant Status.

The Minnesota Legislature should have tasked OCM with developing the social equity provision and the associated qualifying factors. If the Legislature delegated rulemaking authority to OCM, the agency could adopt rules that align with the intent of the social equity provision, thereby increasing equity in the cannabis licensing process.¹⁰⁰ As an agency dedicated to cannabis management in Minnesota, OCM is better positioned to determine the qualifying factors for SEA status.¹⁰¹ OCM has

96. See Peder Humlen, *Promoting Equal Protection and Regulatory Remedies for Balanced Civic Education*, 14 CIVIC ENGAGEMENT, JUST. & L. NAT'L & INT'L CONTEXT, 1, 15 (2025). See generally U.S. CONST. AMEND. XIV (establishing equal protection under the law as a constitutional requirement. The Fourteenth Amendment supports programs like Minnesota's social equity verification process under the Equal Protection Clause because there are valid reasons to give SEAs an advantage toward entering the cannabis industry).

97. See Jason M. Scott, *The Imperative to Promote Diversity Post-Students for Fair Admissions Analyzing the Effects of Student-Body Diversity on Attrition, GPA, and Bar Passage in Law Students and Graduates*, 96 J. HIGHER EDUC. 596 (2025) ("[S]tudents of all races and institutional selectivity levels in the sample who were exposed to more diverse learning environments had better odds of earning licensure to practice law.").

98. See generally Kilmer et al., *supra* note 61 (discussing opportunities and challenges associated with various proposals for social equity programs).

99. See Leanne Salazar Montoya, *Equity, Diversion, and Inclusion: What's In a Name?*, 22 SEATTLE J. SOC. JUST. 621, 628 (2024) (stating that diversity, equity, and inclusion efforts "foster[] environments that are inherently more inclusive, culturally aware, and adept at responding to the diverse needs of students, thereby enriching the educational landscape.").

100. See Jody Freeman & Jim Rossi, *Improving Interagency Coordination in Shared Regulatory Space*, 38 ADMIN. & REG. L. NEWS 1134, 1135 (2013) (explaining that there are distinct benefits to "harness[ing] the expertise and competencies of specialized agencies.").

101. *Id.*; see also Wendy E. Wagner, *A Place for Agency Expertise: Reconciling Agency*

resources to research the effects of cannabis prohibition and which populations were most negatively impacted.¹⁰² OCM could compile data and its research to develop qualifying factors that would have a significant impact on the population most harmed by cannabis prohibition—the Black population.

Concerns about agency overreach or lack of oversight if the social equity provision were to be drafted by OCM instead of following the traditional lawmaking procedure fall short. Legislatures frequently rely on agencies to draft more technical or specific provisions of statutes. Agency rulemaking in Minnesota is a multi-step process that involves multiple public comment periods, the use of an advisory committee, and Administrative Law Judge review to determine whether the proposed rules are needed and reasonable.¹⁰³ These steps provide a “check” on the agency to develop well-written, appropriate rules and allow for additional feedback. Through its agency rulemaking power, OCM presently cannot adopt rules that contradict the social equity provision without overstepping its rulemaking authority, as statutes maintain supremacy over agency rules.¹⁰⁴ The Legislature would need to amend or repeal the existing social equity provision and then direct OCM to adopt rules governing a new provision.

B. Non-Legislative Solutions

i. Develop Social Programs That Assist Black Cannabis Business License Applicants with the Application and Financial Barriers.

If better outcomes and equity for Black cannabis business license applicants cannot be achieved through legislative means, perhaps social programs that work alongside the governing statute could be implemented to alleviate some of the burdens and barriers to access that exist for Black applicants. A social program could offer services that assist with filling out the application form, creating business plans, and

Expertise with Presidential Power, 115 COLUM. L. REV. 2019, 2023 (2015) (“[T]he basic concept that the agencies should preside over specialized information is hard-wired into the design of the administrative state.”).

102. See 2026-2027 Enacted Biennial Budget, MINNESOTA MGMT. AND BUDGET, <https://mn.gov/mmb/budget/current-budget/current-enacted-budget/> [<https://perma.cc/7NBH-N6CT>].

103. See *Rulemaking*, OFF. OF THE MINNESOTA SEC'Y OF STATE <https://www.sos.state.mn.us/about-the-office/rulemaking-data-practice/rulemaking/> [<https://perma.cc/GN8U-2J2L>].

104. See MINN. STAT. § 14.45 (2024); see also *Wangen v. Comm'r of Pub. Safety*, 437 N.W.2d 120, 124 (Minn. Ct. App. 1989) (citing *Guerrero v. Wagner*, 246 N.W.2d 838, 841 (Minn. 1976)) (stating that “a rule must be consistent with the statutory authority under which it was promulgated” in order to be valid).

completing other administrative tasks that may require advanced skills or niche understanding. This would ensure that Black applicants are able to submit a complete and effective application to be reviewed by OCM. A program could also offer grants or scholarships that provide assistance with the application fees for applicants who demonstrate financial need as a barrier to the application process.

A program such as this could greatly reduce the number of applications rejected due to incomplete or inadequate information, thus directly bolstering the effectiveness of the social equity provision for Black applicants. It could also increase the number of applications OCM receives from Black applicants, explicitly providing more equality within the social equity program.

This proposed program could be operated privately or through the state, with delegation of funds for social equity application fee grants allocated by the Minnesota Legislature. However, a state-run, race-based social program would likely be subject to constitutional legal challenges as discussed above. A privately-run program would have greater opportunity and leeway to make a significant positive impact, as it likely would not face as many legal obstacles in its implementation. Without state funding, the program would require significant financial capital to undertake the operation and execution of the program's services and scholarship opportunities. However, similar, privately-run nonprofits have found success in their missions. Black Men Teach is a Minnesota-based nonprofit organization that provides educational services and funding to Black men seeking careers in the education profession.¹⁰⁵ Accordingly, a program for Black social equity cannabis business applicants could work to achieve the ultimate goal of the social equity provision and address some of the harms the Black community has experienced.

Conclusion

The Minnesota Legislature intended to create a plan that would bolster those adversely affected by cannabis prohibition, but failed in its execution. The Minnesota Legislature should have provided language that would qualify the Black population in the statute and made the application process equitable or given OCM rulemaking authority to write qualifying factors that would most benefit Black Minnesotans. With the

105. See *Black Men Teach Empowering the Growth of Black Male Teachers*, BLACK MEN TEACH at 3 <https://www.blackmenteach.org/annual-report-2024/page-3> [<https://perma.cc/NFQ2-EGDM>] (explaining that the Black Men Teach organization's mission is to address the lack of representation of Black male teachers in Minnesota by offering "programs, partnerships, and supports designed to recruit, prepare, place, and retain Black male teachers in elementary schools.").

current version of the social equity provision, the system can be exploited by those with power to find loopholes in the law, gain special application status, and ultimately marginalize Black Minnesotans once again. Social programs could be introduced to assist Black applicants with the application process, which could help applicants overcome some of the barriers to access.

The Minnesota Legislature failed to incorporate feedback related to issues present in other states' social equity provisions that would have improved and increased equitable outcomes. Other states have attempted to implement social equity provisions, but have largely failed. The Minnesota Legislature should have taken note of the critiques of other states' social equity attempts. Instead, it missed the opportunity to enact a more effective social equity statute. The Minnesota Legislature is grandstanding the impacts of this legislation when, in reality, the progressive outcomes for the intended communities will be minimal. As other states across the United States legalize cannabis, their legislatures should examine the challenges Minnesota has faced regarding an equitable implementation of the social equity provision and implement solutions that will benefit Black communities and start to repair the harms associated with cannabis prohibition.

