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## RECENT PROPOSED LEGISLATION

DRUG POLICY — MARIJUANA JUSTICE ACT OF 2017 — SENATOR CORY BOOKER INTRODUCES ACT TO REPAIR THE HARMS EXACTED BY MARIJUANA PROHIBITION. — Marijuana Justice Act of 2017, S. 1689, 115th Cong.

Marijuana's prohibition and gradual legalization in the United States has had a significant economic impact on those left in its wake. On one hand, the punitive approach to marijuana use taken by local and state law enforcement agencies has had pernicious economic consequences for low-income and minority individuals and communities.<sup>1</sup> On the other, marijuana has shown itself to be a profitable cash crop in states that have legalized it,<sup>2</sup> and has represented a multibillion-dollar state-sanctioned industry to a newly minted class of entrepreneurs.<sup>3</sup> Recently, Senator Cory Booker of New Jersey has attempted to address this stark disparity by introducing the Marijuana Justice Act of 2017,<sup>4</sup> a bill that would legalize marijuana at the federal level.<sup>5</sup> While other bills introduced in recent years have proposed removing marijuana from the federal "schedule"<sup>6</sup> of illicit drugs,<sup>7</sup> none have so directly addressed the inequities exacerbated and created by marijuana prohibition. The bill's most unique provisions punish states that disproportionately arrest low-income and minority individuals,<sup>8</sup> and provide for a Community Reinvestment Fund intended to fund community development projects

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<sup>1</sup> See Steven W. Bender, *Joint Reform?: The Interplay of State, Federal, and Hemispheric Regulation of Recreational Marijuana and the Failed War on Drugs*, 6 ALB. GOV'T L. REV. 359, 365–67 (2013). For a discussion on the labor market effects of incarceration, see DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION 30–39 (2007). See also *id.* at 30 ("Long after an individual completes his prison term, the labor market costs of incarceration continue to register.").

<sup>2</sup> In 2016, "North American consumers spent \$6.7 billion on legal cannabis products, up 34% from 2015." ARCVIEW MARKET RESEARCH, THE STATE OF LEGAL MARIJUANA MARKETS: EXECUTIVE SUMMARY 3 (5th ed. 2017), [https://arcviewgroup.com/documents/report/5thedition/es/executive-summary\\_the-state-of-legal-marijuana-markets\\_5th-edition\\_22qxqmRQPyp7R.pdf](https://arcviewgroup.com/documents/report/5thedition/es/executive-summary_the-state-of-legal-marijuana-markets_5th-edition_22qxqmRQPyp7R.pdf) [<https://perma.cc/NWH7-HFHD>].

<sup>3</sup> See *id.* at 3–4.

<sup>4</sup> S. 1689, 115th Cong.

<sup>5</sup> *Id.* § 2.

<sup>6</sup> The Controlled Substances Act (CSA), 21 U.S.C. §§ 801–904 (2012), is the federal statute that governs the federal government's treatment of most psychoactive substances. The CSA organizes drugs into five "schedules" based on their potential for abuse, their safety, and their currently accepted medical applications. Marijuana is labelled a Schedule I drug, classed with narcotics like heroin, all of which are considered to have "a high potential for abuse" and "no currently accepted medical use in treatment in the United States." *Id.* § 812. Removal from the federal schedule under the CSA is referred to as "descheduling."

<sup>7</sup> See, e.g., Ending Federal Marijuana Prohibition Act of 2017, H.R. 1227, 115th Cong.

<sup>8</sup> S. 1689 § 3(b).

in neighborhoods hardest hit by prohibition.<sup>9</sup> Senator Booker's focus on repairing the vast harms exacted by marijuana prohibition signals an important moment in the conversation surrounding legalization. While holding promise for those interested in repairing these harms, the impact of a reparatory legalization<sup>10</sup> effort like Senator Booker's will hinge on the details of its implementation — specifically, marijuana's regulation and the attendant distribution of the wealth generated from the newly legal markets. Without addressing these issues, well-intentioned efforts like Senator Booker's leave behind a key tool for reckoning with the legacy of the war on drugs<sup>11</sup> and may deepen the inequality exacerbated by marijuana prohibition.

In his August 2017 announcement of the bill, Senator Booker lamented the noxious effect of marijuana prohibition on the long-term economic prospects of those within disproportionately affected minority and low-income communities.<sup>12</sup> He cited the “collateral consequences” of arrest and incarceration, including the inability to secure employment or business licenses, as well as disqualification from government benefits like public housing, food stamps, and Pell Grants.<sup>13</sup> Senator Booker's anecdotal observations bear out in the data: the interlocking patchwork of local and federal marijuana prohibition has proven to have dire consequences for poor and minority individuals and communities. According to a 2013 American Civil Liberties Union report, between 2001 and 2010, there were over eight million marijuana-related arrests in the United States.<sup>14</sup> Eighty-eight percent of these arrests were for simple possession.<sup>15</sup> Unsurprisingly, the racialized history of state and federal efforts to enact marijuana prohibition<sup>16</sup> has borne out in the racially

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<sup>9</sup> *Id.* § 4.

<sup>10</sup> The term “reparatory legalization” refers to models of legalizing marijuana that prioritize addressing the harms inflicted by the prohibition of marijuana on low-income and minority communities.

<sup>11</sup> For background on the war on drugs, see generally *A Brief History of the Drug War*, DRUG POL'Y ALL., <http://www.drugpolicy.org/issues/brief-history-drug-war> [<https://perma.cc/MS3P-9ZQK>].

<sup>12</sup> Cory Booker, FACEBOOK (Aug. 1, 2017, 9:34 AM), <https://www.facebook.com/corybooker/videos/10157111094132228/> [<https://perma.cc/6J23-3GTU>].

<sup>13</sup> *Id.* See generally AM. BAR ASS'N COMM'N ON EFFECTIVE CRIMINAL SANCTIONS & PUB. DEF. SERV. FOR THE DIST. OF COLUMBIA, INTERNAL EXILE: COLLATERAL CONSEQUENCES OF CONVICTION IN FEDERAL LAWS AND REGULATIONS (2009), <https://www.americanbar.org/content/dam/aba/migrated/cecs/interalexile.authcheckdam.pdf> [<https://perma.cc/X4KA-7KQ4>].

<sup>14</sup> AM. CIVIL LIBERTIES UNION, THE WAR ON MARIJUANA IN BLACK AND WHITE 8 (2013), <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf> [<https://perma.cc/6RV8-VVPZ>].

<sup>15</sup> *Id.*

<sup>16</sup> See Bender, *supra* note 1, at 362 (“[M]arijuana was scapegoated as prompting murder, rape, and mayhem among blacks in the South, Mexican Americans in the Southwest, and disfavored white immigrants from laboring classes — with marijuana blamed for the seduction of white girls

disparate impact of arrests. Despite persistent findings that rates of marijuana usage among white and black Americans are roughly equivalent, the national arrest rate for blacks for marijuana possession was 3.73 times higher than the arrest rate for whites in 2010.<sup>17</sup>

What's more, our nation's carceral framework has had implications for economic inequality at both the individual and communal level. Data has shown that the mark of a criminal record attaches negative employment and wage effects.<sup>18</sup> The high rate of black incarceration has contributed to lower labor force participation among blacks.<sup>19</sup>

Against this backdrop, Americans have come to recognize the need for legalizing marijuana. Eight states — four of them in the last year — have legalized recreational marijuana.<sup>20</sup> Further, in 2016, national support for legalizing marijuana use reached sixty percent, its highest in Gallup's forty-seven-year polling history.<sup>21</sup> In conjunction with the rise in public support, bipartisan federal bills have been introduced that would either reschedule or deschedule marijuana.<sup>22</sup> Considering the momentum that legalization has gained, the prospect of legalization at the federal level looks more likely than it has in recent years.

Seizing that momentum, Senator Booker's proposal is the most ambitious marijuana legislation in recent history. It includes five key policy

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by black men and for violent crimes committed by these groups.”). The effort to prohibit marijuana at the federal level was spearheaded in earnest by Harry J. Anslinger, then United States Commissioner of Narcotics, who did so with a gusto energized in no small part by racial animus. See Michael Vitiello, *Proposition 215: De Facto Legalization of Pot and the Shortcomings of Direct Democracy*, 31 U. MICH. J.L. REFORM 707, 749–50 (1998) (“Anslinger’s appeal to racism and hysteria was unabashed. He and other proponents of the Marijuana Tax Act argued that marijuana caused criminal and violent behavior.” (footnote omitted)). In a 1994 interview, John Ehrlichman, White House Counsel and Assistant to the President for Domestic Affairs under President Nixon, described the Nixon White House’s approach to the War on Drugs:

We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. . . . Did we know we were lying about the drugs? Of course we did.

Dan Baum, *Legalize It All: How to Win the War on Drugs*, HARPER’S MAG., Apr. 2016, at 22, 22.

<sup>17</sup> AM. CIVIL LIBERTIES UNION, *supra* note 14, at 9.

<sup>18</sup> Steven Raphael, *Improving Employment Prospects for Former Prison Inmates: Challenges and Policy*, in CONTROLLING CRIME: STRATEGIES AND TRADEOFFS 521, 528–30 (Philip J. Cook et al. eds., 2011).

<sup>19</sup> See Jeff Grogger, *Arrests, Persistent Youth Joblessness, and Black/White Employment Differentials*, 74 REV. ECON. & STAT. 100, 105–06 (1992).

<sup>20</sup> Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, and Washington have legalized recreational marijuana and nearly half of the states have legalized medical use. See Erwin Chemerinsky, *Introduction: Marijuana Laws and Federalism*, 58 B.C. L. REV. 857, 857 (2017).

<sup>21</sup> Art Swift, *Support for Legal Marijuana Use Up to 60% in U.S.*, GALLUP NEWS (Oct. 19, 2016), <http://news.gallup.com/poll/196550/support-legal-marijuana.aspx> [<https://perma.cc/64RD-3KWX>].

<sup>22</sup> See, e.g., Ending Federal Marijuana Prohibition Act of 2017, H.R. 1227, 115th Cong.; Ending Federal Marijuana Prohibition Act of 2015, S. 2237, 114th Cong.; Regulate Marijuana like Alcohol Act, H.R. 1013, 114th Cong. (2015).

goals for repairing past harms and preventing future ones. First, it completely removes marijuana from the list of controlled substances included in the Controlled Substances Act,<sup>23</sup> thereby legalizing it at the federal level.<sup>24</sup> This would open opportunities for businesses and consumers hoping to avoid federal prosecution while availing themselves of state laws authorizing marijuana distribution. Descheduling marijuana would diminish many of the hurdles marijuana businesses face at the federal level including a lack of access to banking services,<sup>25</sup> nearly untenable requirements stemming from federal tax law,<sup>26</sup> and a lack of access to lawyers.<sup>27</sup>

Second, Senator Booker's proposal reduces federal funding for prison construction and some law enforcement activities for states that show racial and/or class bias in marijuana arrest or incarceration rates.<sup>28</sup> Here, the proposal stands apart by taking clear aim at the inequalities perpetuated by prohibition. It directs the Attorney General to identify states with disproportionate arrest or incarceration rates, defined as circumstances where the percentage of low-income or minority individuals arrested or incarcerated for a marijuana offense in a state is higher than the comparable percentage for the population that is not low income or minority.<sup>29</sup> Identified states are deemed ineligible to "receive any Federal funds for the construction or staffing of a prison or jail."<sup>30</sup> Today, every state without a market for legal marijuana would likely be deemed ineligible for federal funding under this provision.<sup>31</sup> Such states would be further subject to as much as a ten-percent reduction in funding otherwise allocated through certain Department of Justice programs.<sup>32</sup>

Third, money withheld under the second part of the proposal is redirected to the "Community Reinvestment Fund."<sup>33</sup> This fund would be used by the Secretary of Housing and Urban Development to create grant programs "to reinvest in communities most affected by the war on

<sup>23</sup> 21 U.S.C. §§ 801–904 (2012).

<sup>24</sup> S. 1689 § 2(a).

<sup>25</sup> See Robin Abcarian, *Your Business Is Legal, but You Can't Use Banks*, L.A. TIMES (Jan. 29, 2017, 3:00 AM), <http://www.latimes.com/local/abcarian/la-me-abcarian-cannabis-cash-20170129-story.html> [<https://perma.cc/86DV-V8JV>].

<sup>26</sup> See Erwin Chemerinsky et al., *Cooperative Federalism and Marijuana Regulation*, 62 UCLA L. REV. 74, 94 (2015) ("Federal Tax Rule 280E requires any trade or business operating in violation of federal drug laws . . . to pay federal income tax and to do so on disadvantageous terms.").

<sup>27</sup> Because most actions of marijuana businesses remain illegal under federal law, actions like incorporating a business or drafting leases can be construed as ethical violations. See *id.* at 95.

<sup>28</sup> S. 1689 § 3(b).

<sup>29</sup> *Id.* § 3(a).

<sup>30</sup> *Id.* § 3(b)(1)(A).

<sup>31</sup> See AM. CIVIL LIBERTIES UNION, *supra* note 14, at 17–19.

<sup>32</sup> S. 1689 § 3(b)(1)(B) (providing for up to a ten percent reduction in funds allocated under the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197 (codified as amended in scattered sections of 5, 18, and 42 U.S.C.)).

<sup>33</sup> *Id.* § 4.

drugs.”<sup>34</sup> Funded programming may include expenses related to the expungement of convictions and programs providing job training, reentry services, health education programs, public libraries, community centers, and youth programs.<sup>35</sup> In addition to the funds redirected from the second part of the proposal, the proposed bill authorizes an appropriation of \$500 million for fiscal years 2018 through 2040.<sup>36</sup>

Fourth, the Marijuana Justice Act directs federal courts to expunge all convictions for “marijuana use or possession offense[s]” entered prior to the Act’s enactment.<sup>37</sup> Further, it makes those currently serving terms of imprisonment for criminal offenses involving marijuana eligible for sentence reductions through resentencing.<sup>38</sup> After a sentencing hearing “on motion of the individual, the Director of the Bureau of Prisons, the attorney for the Government, or the court,”<sup>39</sup> the Act authorizes federal judges to impose a sentence as though the Act were in effect at the time the criminal offense was committed.<sup>40</sup> These provisions would help curb the myriad collateral consequences facing those convicted of marijuana-related felonies, including restrictions on jury service, employment, voting, bearing arms, and immigration.<sup>41</sup>

Finally, the proposal grants a cause of action in federal court to individuals “aggrieved by a disproportionate arrest [or incarceration] rate.”<sup>42</sup> In those proceedings, it authorizes the court to “grant all necessary equitable and legal relief, including declaratory relief”<sup>43</sup> and to deem states ineligible for federal funds for the construction and staffing of prisons and jails.<sup>44</sup>

Notably absent from Senator Booker’s proposal is a provision for the regulation of legalized marijuana markets. Without a reparatory regulatory framework, the Act is missing an important opportunity to remediate further the harms of marijuana prohibition. In failing to account for the money that will be generated by the legal marijuana markets, Senator Booker leaves behind a key tool in accomplishing his proposal’s goals of bridging racial and economic inequality. Current

<sup>34</sup> *Id.* § 4(c).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* § 4(e).

<sup>37</sup> *Id.* § 3(c).

<sup>38</sup> *Id.* § 3(d).

<sup>39</sup> *Id.* § 3(d)(1).

<sup>40</sup> *Id.* § 3(d)(2).

<sup>41</sup> See generally U.S. DEP’T OF JUSTICE, FEDERAL STATUTES IMPOSING COLLATERAL CONSEQUENCES UPON CONVICTION (2006), [https://www.justice.gov/sites/default/files/pardon/legacy/2006/11/13/collateral\\_consequences.pdf](https://www.justice.gov/sites/default/files/pardon/legacy/2006/11/13/collateral_consequences.pdf) [<https://perma.cc/LQK7-DG4Y>] (describing the legal rights affected by a criminal conviction).

<sup>42</sup> S. 1689 § 3(e)(1).

<sup>43</sup> *Id.* § 3(e)(2)(A).

<sup>44</sup> *Id.* § 3(e)(2)(B)(i).

markets in the states that have legalized marijuana teach us that without state intervention, the black and Latino victims of marijuana prohibition are unlikely to benefit from the wealth attendant to the newly permissive environments. Reparatory legalization advocates should seek regulatory frameworks that increase the representation of these populations in the legalized marijuana market and should consider the prospect of direct cash transfers to those incarcerated for marijuana offenses.

Racial inequality remains a pernicious reality of current legalization efforts around the country. Black and Latino victims of the drug war are noticeably absent from current legal marijuana markets.<sup>45</sup> A BuzzFeed News report based on more than 150 interviews with those connected to the legal marijuana industry, including dispensary owners, consultants, and salespeople, estimated that fewer than three dozen of the over 3,000 storefront marijuana dispensaries in the United States are owned by black people.<sup>46</sup> After a long history of pervasive discrimination in housing,<sup>47</sup> employment,<sup>48</sup> and education,<sup>49</sup> black and Latino Americans are far less likely to be able to raise the money necessary to start marijuana businesses.<sup>50</sup> The interlocking systems of inequality leading to the racial wealth gap<sup>51</sup> have made many of the black and Latino victims of marijuana prohibition unlikely to capitalize on the newly permissive environment.<sup>52</sup> Amid predictions that the market for

<sup>45</sup> See Amanda Chicago Lewis, *How Black People Are Being Shut Out of America's Weed Boom: Whitewashing the Green Rush*, BUZZFEED NEWS (Mar. 16, 2016, 10:01 PM), <https://www.buzzfeed.com/amandachicagolewis/americas-white-only-weed-boom> [<https://perma.cc/S8Q5-52XT>] (reporting on the lack of racial diversity among dispensary owners).

<sup>46</sup> *Id.*

<sup>47</sup> See U.S. DEP'T OF HOUS. & URBAN DEV., HOUSING DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES, at xi (2012), [https://www.huduser.gov/portal/Publications/pdf/HUD-514\\_HDS2012.pdf](https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012.pdf) [<https://perma.cc/LDJ6-T53L>]; Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 AM. SOC. REV. 629, 629–30 (2010). See generally Jacob S. Rugh, Len Albright & Douglas S. Massey, *Race, Space, and Cumulative Disadvantage: A Case Study of the Subprime Lending Collapse*, 62 SOC. PROBS. 186, 204–07 (2015) (concluding that racial segregation was a key cause of the American foreclosure crisis).

<sup>48</sup> See, e.g., Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991, 1011 (2004).

<sup>49</sup> See Nikole Hannah-Jones, *Choosing a School for My Daughter in a Segregated City*, N.Y. TIMES MAG. (June 9, 2016), <https://nyti.ms/2k1ru6Z> [<https://perma.cc/3BN9-CJWP>].

<sup>50</sup> See Jana Kasperkevic, *Medical Marijuana: As Profitable as Apple Stores, but Only for High Rollers*, THE GUARDIAN (Oct. 29, 2014, 8:00 AM), <https://www.theguardian.com/business/2014/oct/29/medical-marijuana-business-new-york> [<https://perma.cc/QND3-ZGEW>] (discussing the barriers that high start-up costs impose on individuals attempting to open marijuana dispensaries).

<sup>51</sup> See LAURA SULLIVAN ET AL., DEMOS & INST. ON ASSETS & SOC. POLICY, THE RACIAL WEALTH GAP: WHY POLICY MATTERS 1 (2015), [http://www.demos.org/sites/default/files/publications/RacialWealthGap\\_2.pdf](http://www.demos.org/sites/default/files/publications/RacialWealthGap_2.pdf) [<https://perma.cc/U9TY-L5X8>].

<sup>52</sup> April M. Short, *Michelle Alexander: White Men Get Rich from Legal Pot, Black Men Stay in Prison*, ALTERNET (Mar. 16, 2014, 8:36 AM), <http://www.alternet.org/drugs/michelle-alexander->

legal marijuana will reach \$18 billion by 2020,<sup>53</sup> the profits related to the legal sale of marijuana have disproportionately gone to middle- and upper-class white Americans.<sup>54</sup> This discrepancy threatens to further entrench the inequalities exacerbated by our nation's carceral approach to marijuana prohibition.

To address this threat of widening inequality caused by the legal marijuana market, those interested in reparatory legalization should take lessons from recent state efforts. While an explicit racial preference may not be feasible, a race-neutral approach to distributing marijuana dispensary permits that uses former arrests and geography as proxies may provide a fruitful avenue for mitigating those inequalities.<sup>55</sup> For example, California's Proposition 64,<sup>56</sup> a state ballot measure that pairs legalization with a regulatory framework, laid the groundwork for Oakland's Equity Permit Program, a local initiative that gives preference in the marijuana permit process to those negatively affected by marijuana prohibition.<sup>57</sup> Under the equity program, half of the available permits are set aside for below-medium income Oakland residents who were convicted of a marijuana offense in the last twenty years or who, during that same period, lived for at least ten years in the areas of Oakland most affected by arrests for marijuana offenses.<sup>58</sup> Those interested in reparatory legalization should look with interest at whether this program diversifies the class of entrepreneurs reaping the benefits of legalization. The successes and challenges of the implementation of this measure may provide a model for future legalization efforts.

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white-men-get-rich-legal-pot-black-men-stay-prison [https://perma.cc/4VSW-CPCY] ("Here are white men poised to run big marijuana businesses . . . after 40 years of impoverished black kids getting prison time for selling weed, and their families and future destroyed. Now, white men are planning to get rich doing precisely the same thing?" (quoting Professor Michelle Alexander)).

<sup>53</sup> ARCVIEW MARKET RESEARCH, *supra* note 2, at 3.

<sup>54</sup> See Lewis, *supra* note 45.

<sup>55</sup> One objection may be that reparatory legalization efforts should narrowly target *only* those arrested and incarcerated for marijuana offenses. However, the harms of marijuana prohibition are not so neatly cabined. See Richard Delgado & Jean Stefancic, *Critical Perspectives on Police, Policing, and Mass Incarceration*, 104 GEO. L.J. 1531, 1533 (2016) ("A disproportionate number of minority families have a member ensnared in the criminal justice system or struggling to rejoin society following a prison term. These families lose a primary wage-earner, and communities are deprived of workers. . . . Families also suffer the loss of loved ones, including fathers, sons, brothers, and sisters, while their communities lose potential voters and role models."); see also Ta-Nehisi Coates, *The Black Family in the Age of Mass Incarceration*, THE ATLANTIC (Oct. 2015), <https://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/> [https://perma.cc/L6NV-TFY2].

<sup>56</sup> Assemb. B. 64, 2017–2018 Leg., Reg. Sess. (Cal. 2016).

<sup>57</sup> See Tammerlin Drummond, *A Call for Pot Entrepreneurs, Oakland Test Drives New Marijuana Permit Program*, E. BAY TIMES (Aug. 1, 2017, 4:11 PM), <http://www.eastbaytimes.com/2017/07/28/a-call-for-pot-entrepreneurs-oakland-test-drives-new-cannabis-permit-program/> [https://perma.cc/RJ4L-8DE9].

<sup>58</sup> *Id.*

The ameliorative reach of reparatory legalization should not be limited to those with the capacity to open marijuana businesses; rather, a reparatory regulatory framework should also utilize tax revenue from the marijuana industry to compensate those who lack such a capacity. In addition to increasing the representation of those harmed by the drug war in the legal marijuana trade, reparatory legalization advocates should consider direct financial compensation to those formerly arrested and incarcerated for marijuana offenses.<sup>59</sup> Such a model circumvents the obstacles attendant to business ownership in the marijuana industry.<sup>60</sup> This compensation could take the form of a direct cash transfer upon verification that a person was convicted of a marijuana offense in the United States, and could be funded by a tax on marijuana sales. In addition to a moral signaling effect that addresses the illegitimacy of prohibition,<sup>61</sup> cash payments directly accomplish one of the key goals of Senator Booker's Community Reinvestment Fund: injecting wealth into communities hit hardest by marijuana prohibition.<sup>62</sup>

Unlike most legalization efforts advanced thus far that do little to address the legacy of marijuana prohibition, Senator Booker's Marijuana Justice Act represents an important moment in the conversation surrounding marijuana legalization. Still, the victims of America's long and vicious war on drugs deserve more. Future legislation committed to dealing with the harm exacted by prohibition will have to seriously consider providing a regulatory framework that addresses the racially disparate distribution of the wealth generated by the market for legal marijuana. A failure to do so represents a missed opportunity. Absent these regulatory provisions, marijuana legalization threatens to entrench the inequalities exacerbated by the history of prohibition, and reparatory legalization efforts like the Marijuana Justice Act will leave behind a key tool in accounting for the harms they set out to repair.

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<sup>59</sup> But see Jamelle Bouie, *The Case for Marijuana Reparations*, SLATE (July 28, 2014, 6:49 PM), [http://www.slate.com/articles/news\\_and\\_politics/politics/2014/07/the\\_case\\_for\\_marijuana\\_reparations\\_the\\_profits\\_from\\_drug\\_legalization\\_should.html](http://www.slate.com/articles/news_and_politics/politics/2014/07/the_case_for_marijuana_reparations_the_profits_from_drug_legalization_should.html) [<https://perma.cc/6WE7-PN8C>] (calling the logistics of individual payments "too difficult"). Outside the criminal justice context, the idea of direct cash transfers to combat poverty has gained attention. See, e.g., James Surowiecki, *The Case for Free Money*, NEW YORKER (June 20, 2016), <https://www.newyorker.com/magazine/2016/06/20/why-dont-we-have-universal-basic-income> [<https://perma.cc/FY4L-56Z3>].

<sup>60</sup> See Kasperkevic, *supra* note 50.

<sup>61</sup> See sources cited *supra* note 16.

<sup>62</sup> Direct cash transfers have the benefit of giving the individuals who receive them the choice of how to spend their compensation. For example, the recipient of a cash transfer may choose to invest in sources as varied as education, housing, and childcare. By contrast, the Community Reinvestment Fund removes that autonomy by preselecting the sources of investment. S. 1689 § 4(c).



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