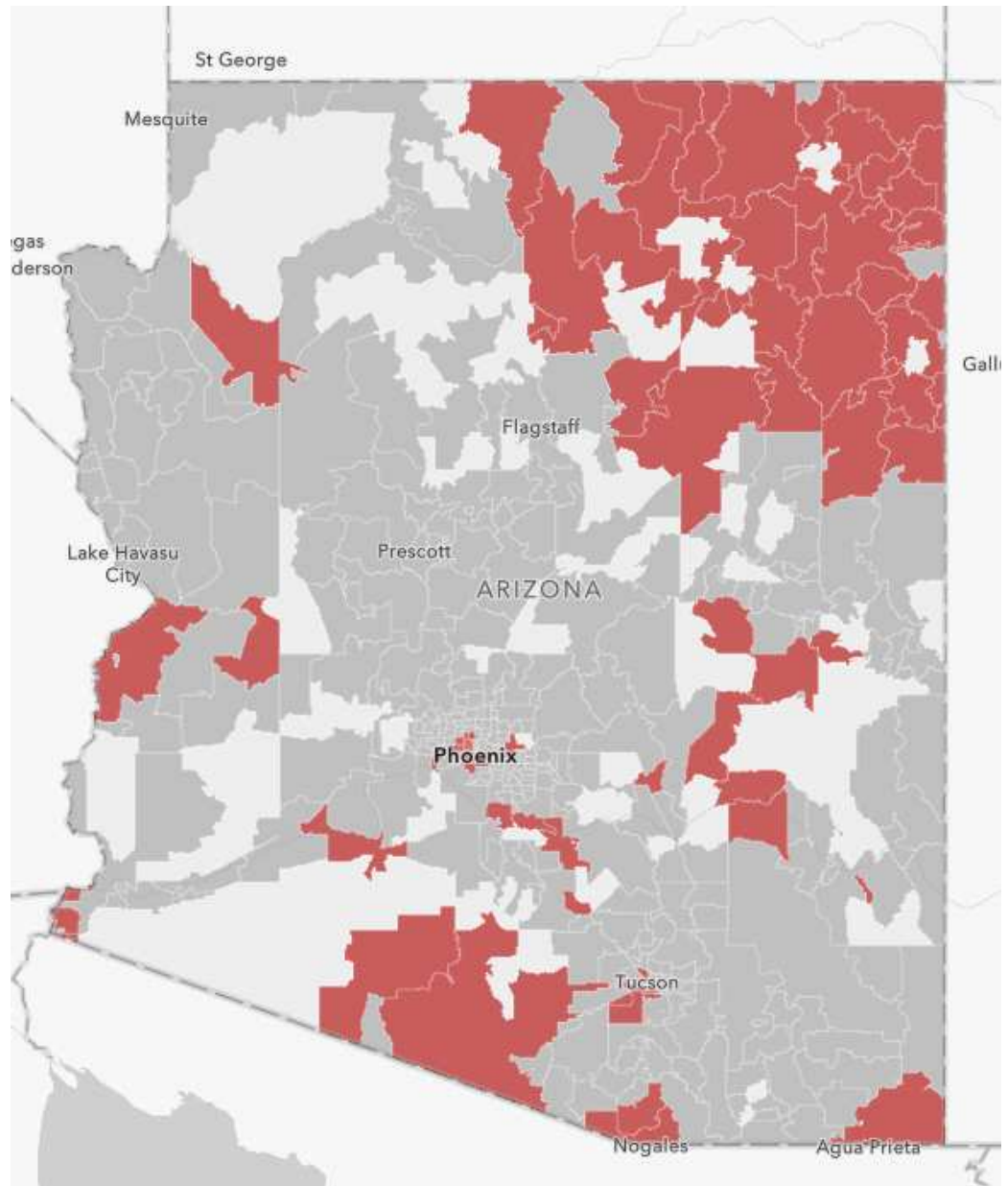


# Cannabis Social Equity

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Presented by Gary Michael  
Smith, Esq.

Arizona State Bar Convention  
2022



# 1996

In 1996, 65% of Arizona voters approved Proposition 200 (the "Drug Medicalization, Prevention and Control Act"), a drug policy reform initiative that contained a provision allowing physicians to prescribe cannabis or recommend Schedule I drugs for certain debilitating or terminal illnesses and requiring probation rather than jail for nonviolent personal drug users.

# 2002

In November 2002, Proposition 203, a medical cannabis initiative that also sought to decriminalize recreational use, failed with 42.7% of the vote. Included in the initiative were requirements to: (a) allow a patient to possess up to 2 ounces of cannabis and grow 2 plants; (b) establish a state-run system for the distribution of medical cannabis to patients; (c) decriminalize up to 2 ounces of cannabis for any use (punishable by a \$250 fine); and (d) enact new sentencing reforms for non-violent drug offenses (expanding upon the 1996 reforms).

# 2010

Proposition 203—the *Arizona Medical Marijuana Act*—was an initiative seeking to legalize the medical use of cannabis. Voters approved it with 50.1% of the ballots in favor. The initiative allows a patient with a doctor's recommendation to possess up to 2.5 ounces of cannabis for treatment of certain qualifying conditions. It limits the number of dispensaries to 124 and specifies that only patients who reside more than 25 miles from a dispensary may cultivate their own cannabis. Proposition 203 became effective on December 14, 2010.

# 2016

The Arizona Marijuana Legalization Initiative, also known as Proposition 205, appeared on the November 8, 2016, ballot in Arizona as an initiated state statute to legalize the recreational use of cannabis. It failed with 48.7% of the vote. The initiative would have allowed an adult to possess up to an ounce of cannabis and cultivate up to six plants for personal use. It also required the establishment of a system for the commercial distribution and taxation of cannabis, with excess tax revenues (after paying for the program's expenses) dedicated to funding public schools and substance abuse programs.

# 2020

Proposition 207 (the Smart and Safe Arizona Act) legalizes the adult recreational use of marijuana. It passed with 60% of the vote on November 3, 2020. Specifically, Prop 207 allows an adult in Arizona to possess up to 1 ounce (28 g) of marijuana (with no more than 5 grams being marijuana concentrate) to have up to 6 marijuana plants at their home (with up to 12 marijuana plants in households with two or more adult members). Possession and cultivation of cannabis became legal on November 30, 2020, when the results of the election were certified.

Opponents of Proposition 207 organized the campaign [Arizonans For Health and Public Safety](#). The PAC had raised \$1.0 million, including \$268,851 from the Center for Arizona Policy Action—a 501(c)(4) nonprofit organization. The Arizona Chamber of Commerce provided \$168,559 to the opposition campaign.

[Smart and Safe Arizona](#) led the campaign in support of Proposition 207. Smart and Safe Arizona had raised \$6.0 million, including \$1.8 million from Harvest Enterprises, Inc., a marijuana firm. CuraLeaf, a medical marijuana business, provided \$750,000, and Copperstate Farms, LLC, also a marijuana firm, provided \$410,000.

**OFFICIAL TITLE**

**AN INITIATIVE MEASURE**

AMENDING TITLE 36, CHAPTER 28.1, SECTION 36-2817, ARIZONA REVISED STATUTES; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 28.2; AMENDING TITLE 42, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 10; AMENDING TITLE 43, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-108; RELATING TO THE RESPONSIBLE ADULT USE, REGULATION, AND TAXATION OF MARIJUANA.

**TEXT OF PROPOSED AMENDMENT**

**36-2863. Justice Reinvestment Fund: exemption; distribution**

A. THE JUSTICE REINVESTMENT FUND IS ESTABLISHED CONSISTING OF ALL MONIES DEPOSITED PURSUANT TO SECTION 36-2856 AND INTEREST EARNED ON THOSE MONIES. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED. MONIES IN THE FUND AND ITS ACCOUNTS MAY NOT BE TRANSFERRED TO ANY OTHER FUND EXCEPT AS PROVIDED IN THIS SECTION, MAY NOT REVERT TO THE STATE GENERAL FUND, AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO THE LAPSING OF APPROPRIATIONS. THE STATE TREASURER SHALL ADMINISTER THE FUND.



C. ON DECEMBER 31 AND JUNE 30 OF EACH YEAR, THE STATE TREASURER SHALL TRANSFER ALL MONIES IN THE JUSTICE REINVESTMENT FUND IN EXCESS OF THE AMOUNT PAID PURSUANT TO SUBSECTION B AS FOLLOWS:

---

3. 30 PERCENT TO THE DEPARTMENT OF HEALTH SERVICES FOR THE PURPOSE OF PROVIDING JUSTICE REINVESTMENT PROGRAMS, ADDRESSING IMPORTANT PUBLIC HEALTH ISSUES THAT AFFECT THIS STATE, AND TO RESEARCH AND DEVELOP SOCIAL EQUITY PROGRAMS THAT WOULD PROMOTE THE OWNERSHIP AND OPERATION OF MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES BY INDIVIDUALS FROM COMMUNITIES DISPROPORTIONATELY IMPACTED BY THE ENFORCEMENT OF PREVIOUS MARIJUANA LAWS.

G. FOR PURPOSES OF THIS SECTION, "JUSTICE REINVESTMENT PROGRAMS" MEANS INITIATIVES OR PROGRAMS THAT FOCUS ON ANY OF THE FOLLOWING:

1. PUBLIC AND BEHAVIORAL HEALTH, INCLUDING EVIDENCE-BASED AND EVIDENCE-INFORMED SUBSTANCE USE PREVENTION AND TREATMENT AND SUBSTANCE USE EARLY INTERVENTION SERVICES.

2. RESTORATIVE JUSTICE, JAIL DIVERSION, WORKFORCE DEVELOPMENT, INDUSTRY SPECIFIC TECHNICAL ASSISTANCE, OR MENTORING SERVICES FOR ECONOMICALLY-DISADVANTAGED PERSONS IN COMMUNITIES DISPROPORTIONATELY IMPACTED BY HIGH RATES OF ARREST AND INCARCERATION.

3. ADDRESSING THE UNDERLYING CAUSES OF CRIME AND REDUCING THE PRISON POPULATION IN THIS STATE.

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36-2817.  
Medical  
marijuana  
fund; private  
donations

- D. ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, THE DIRECTOR OF THE DEPARTMENT SHALL TRANSFER THE FOLLOWING SUMS FROM THE MEDICAL MARIJUANA FUND FOR THE FOLLOWING PURPOSES:
- 6. **\$2,000,000 TO THE DEPARTMENT TO DEVELOP AND IMPLEMENT, IN CONJUNCTION WITH THE DEPARTMENT OF ECONOMIC SECURITY AND OTHER STATE AGENCIES, A SOCIAL EQUITY OWNERSHIP PROGRAM TO PROMOTE THE OWNERSHIP AND OPERATION OF MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES BY INDIVIDUALS FROM COMMUNITIES DISPROPORTIONATELY IMPACTED BY THE ENFORCEMENT OF PREVIOUS MARIJUANA LAWS.** FOR THE PURPOSES OF THIS PARAGRAPH, "MARIJUANA ESTABLISHMENT" AND "MARIJUANA TESTING FACILITY" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 36-2850.

36-2854. Rules;  
licensing; early  
applicants; fees;  
civil penalty;  
legal counsel

A. THE DEPARTMENT SHALL ADOPT RULES TO IMPLEMENT AND ENFORCE THIS CHAPTER AND REGULATE MARIJUANA, MARIJUANA PRODUCTS, MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES. THOSE RULES SHALL INCLUDE REQUIREMENTS FOR:

1. LICENSING MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES, INCLUDING CONDUCTING INVESTIGATIONS AND BACKGROUND CHECKS TO DETERMINE ELIGIBILITY FOR LICENSING FOR MARIJUANA ESTABLISHMENT AND MARIJUANA TESTING FACILITY APPLICANTS, EXCEPT THAT:

\* \* \*

(f) NOTWITHSTANDING SUBDIVISIONS (b) AND (c) OF THIS PARAGRAPH, AND **NO LATER THAN SIX MONTHS AFTER THE DEPARTMENT ADOPTS FINAL RULES TO IMPLEMENT A SOCIAL EQUITY OWNERSHIP PROGRAM PURSUANT TO PARAGRAPH 9 OF THIS SUBSECTION, THE DEPARTMENT SHALL ISSUE TWENTY-SIX ADDITIONAL MARIJUANA ESTABLISHMENT LICENSES TO ENTITIES THAT ARE QUALIFIED PURSUANT TO THE SOCIAL EQUITY OWNERSHIP PROGRAM.**

36-2854.  
Rules;  
licensing; early  
applicants;  
fees; civil  
penalty; legal  
counsel

A. THE DEPARTMENT SHALL ADOPT RULES TO IMPLEMENT AND ENFORCE THIS CHAPTER AND REGULATE MARIJUANA, MARIJUANA PRODUCTS, MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES. THOSE RULES SHALL INCLUDE REQUIREMENTS FOR:

\* \* \*

9. **THE CREATION AND IMPLEMENTATION OF A SOCIAL EQUITY OWNERSHIP PROGRAM TO PROMOTE THE OWNERSHIP AND OPERATION OF MARIJUANA ESTABLISHMENTS AND MARIJUANA TESTING FACILITIES BY INDIVIDUALS FROM COMMUNITIES DISPROPORTIONATELY IMPACTED BY THE ENFORCEMENT OF PREVIOUS MARIJUANA LAWS.**

# Arizona accepting applications for 26 lucrative marijuana licenses for 'social-equity'



**Ryan Randazzo**  
Arizona Republic

Published 1:26 p.m. MT Dec. 1, 2021 | Updated 4:16 p.m. MT Dec. 1, 2021

[View Comments](#)



The new licenses are intended to help people harmed by previous marijuana laws before the drug was legalized for recreational use last year by giving 26 individuals licenses to run lucrative marijuana shops.

But as with social-equity programs in other states, Arizona's program run by ADHS is facing headwinds from people who don't think the rules are fair to everyone who should have a chance to apply for them.

The primary concern is big dispensaries could use "straw men" who qualify for the program to serve as the applicants, and then buy out those people if they win a license, leaving the new dispensaries in the hands of existing dispensaries rather than entrepreneurs from communities harmed by old marijuana laws, as the law intended.



| MARIJUANA |

## Stop Pot Monopolies From Gobbling Up Arizona's 'Social Equity' Licenses, Group Urges

ERASMUS BAXTER | FEBRUARY 15, 2021 | 7:00AM

While **data** reinforces what communities of color have long known – that marijuana enforcement disproportionately targeted Black, Latino, and Native people – efforts to tie licenses explicitly to race have been found unconstitutional in other states, a national cannabis attorney **told *Phoenix New Times* in November.**

The lawsuit alleges that the Arizona health department has not fully vetted the roughly 1,500 applicants for the social equity lottery to confirm they are eligible under state law.

If the lottery isn't delayed for fuller vetting, the suit claims, the state might be forced to revoke some of the 26 licenses it plans to award after the April 8 drawing.

## New lawsuit filed over Arizona's adult-use marijuana social equity licensing



By **MJBizDaily Staff**

March 29, 2022 - Updated March 29, 2022

SHARE



Arizona regulators are facing a third lawsuit over adult-use marijuana social equity licensing in the state.



## News Release

For Immediate Release: March 24, 2022

Media Contacts: Steve Elliott  
Email: [pio@azdhs.gov](mailto:pio@azdhs.gov)

### **ADHS sets April 8 digital drawing for social equity marijuana establishment licenses**

*Proceeding will determine recipients of 26 licenses available under voter-approved law*

PHOENIX – The Arizona Department of Health Services (ADHS) will hold a drawing next month to determine recipients of the 26 adult-use marijuana establishment licenses available to applicants who qualify as part of the social equity ownership program under the voter-approved Proposition 207.

The digital random drawing will take place at 1 p.m., Friday, April 8.

Because of the large number of applicants, license recipients will be selected using a computerized random drawing system offered by Smartplay International Inc. This system is widely used for state lottery and raffle drawings and meets the highest standards for verification and accountability.

The drawing will be held at ADHS with industry and news media representatives witnessing and streamed live at [azdhs.gov/live](https://www.azdhs.gov/live). The accounting and auditing firm Henry and Horne will oversee the drawing.

ADHS received more than 1,500 applications for social equity licenses. The number of applicants included in the drawing will be determined after reviews of all applications are completed.

# Arizona Judge Upholds Rules for Social Equity Pot Licenses

A judge has dismissed a lawsuit challenging the state's rules for implementing a program to award 26 social equity business licenses that the state Department of Health Services will award under Arizona's 2020 law legalizing recreational marijuana.

By [Associated Press](#) | Feb. 1, 2022, at 12:42 p.m.

The ruling issued Tuesday by Maricopa County Superior Court Judge Randall Warner said the rules published by the department satisfy the broad mandates set under the voter-approved law put on the ballot through an initiative campaign.

The potentially lucrative social equity licenses will be issued under the law's provision to set aside 26 licenses for "people from communities disproportionately impacted by the enforcement of previous marijuana laws."

The lawsuit filed by the Greater Phoenix Urban League and a corporation said the rules are deficient, lacking provisions such as a prohibition against license transfers and a requirement that licensees' expenditures and profits remain in their communities.

Warner said the law's drafters gave the department leeway on how to write the implementation rules. As drafted, those rules "are reasonably designed to meet its objectives," the judge concluded.

### **Eligibility Requirements**

For complete eligibility and application requirements, please refer to the current draft of the rules. Please note that updated drafts of the rules may be posted between now and December 1, 2021. A complete history of this rulemaking, including ongoing rulemaking activity is available on our rulemaking webpage.

All principal officers and board members (PO/BMs) of the applying entity must create a facility licensing portal account and access the training by November 17, 2021, and complete each module of the ADHS provided training by November 24, 2021, regardless of who will submit the application. Details regarding training options can be found under "Training Opportunities." **Approximately 2,700 Individuals completed the training by November 24, 2021.**

1. Had an annual household income, as defined in A.A.C. R9-6-401, in at least three of the years 2016 through 2020 that, for the respective year, was less than 400% of the poverty level, as defined in A.A.C. R9-6-401, as shown by:
  - The applicable portion of an income tax return submitted to the U.S. Internal Revenue Service by the individual or an adult in the individual's household, as defined for the individual in A.A.C. R9-6-401, for the applicable tax year; or
  - If a copy of the applicable portion of an income tax return is not available, a transcript of the income tax return from the U.S. Internal Revenue Service; or
  - If neither the individual nor an adult in the individual's household was required to file an income tax return for an applicable year, documentation showing the amount and source of all monetary payments received by the individual and each adult in the individual's household for the applicable tax year

2. Has been adversely affected by the enforcement of previous marijuana laws because the individual:

- Has been granted expungement pursuant to A.R.S. § 36-2862, as demonstrated by a copy of the expungement issued by the prosecuting state or jurisdiction; or
- Was convicted in Arizona of a violation of federal or state law related to marijuana or marijuana paraphernalia, as demonstrated by a copy of the court's conviction document issued by the prosecuting state or jurisdiction.

3. Has been adversely affected by the enforcement of previous marijuana laws because the individual is related, as one of the following, to another individual who was convicted in Arizona of a violation of federal or state laws related to marijuana or marijuana paraphernalia, or is or was eligible for expungement pursuant to A.R.S. § 36-2862, as demonstrated by court documents for the other individual issued by the prosecuting state or jurisdiction:

- Spouse
- Surviving Spouse
- Parent
- Child
- Sibling
- Legal Guardian

4. Has lived for at least three of the years 2016 through 2020 at a physical address in an area that has been identified by the Department as being disproportionately affected by the enforcement of Arizona's previous marijuana laws.

### **How Areas Were Identified**

ADHS conducted an extensive analysis concerning whether a community meets the social equity program's requirement of disproportionate impact from the enforcement of previous marijuana laws. This included a review of a variety of data sources, including research and analyses of criminal justice and socioeconomic data. The analysis included considerations of limitations within the various data sources.

Based on the extensive analysis ADHS conducted, ZIP codes identified for the social equity program meet both of the following criteria, according to 2019 racial population data and 2019-2020 data from the Arizona Department of Economic Security Supplemental Nutrition Assistance Program:

1. Aggregate population for Black/African American, American Indian/Alaska Native and Hispanic is greater than 50% of the total population. Racial groups excluded from this factor were not disproportionately impacted by the enforcement of previous marijuana laws.

AND

2. Total population receiving SNAP benefits is above 25%.



**BLACK ARREST RATE**



**WHITE ARREST RATE**



**ACLU RESEARCH REPORT**

# A Tale of Two Countries

Racially Targeted Arrests in the Era of Marijuana Reform

In 2020, the ACLU published a revelatory report on racial disparity in marijuana arrests

## Black and White Marijuana Possession Rates (2010-2018)

Year	Arrest Rates per 100k			Black to White Ratio
	Marijuana Possession Arrest Rate	Black Arrest Rate	White Arrest Rate	
2010	250.52	659.06	199.19	3.31
2011	229.69	624.43	178.43	3.49
2012	217.79	601.68	168.75	3.57
2013	253.51	625.68	212.55	2.94
2014	199.40	552.13	155.80	3.54
2015	174.06	459.89	138.90	3.31
2016	179.99	477.64	143.42	3.33
2017	207.44	560.08	160.60	3.49
2018	203.88	567.51	156.06	3.63

Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

Despite using marijuana at similar rates, Black people are 3.64 times more likely than white people to be arrested for marijuana possession.

# Arizona's Black Population is only 2/3 of The National Average

## ARIZONA

ACLU

### 2018 SUMMARY

Arizona ranks

**34<sup>th</sup>**

in the nation for largest racial disparities in arrests for marijuana possession

Black people were

**3x**

more likely than **white** people to be arrested for marijuana possession ↑

Arrests for the **possession** of marijuana made up

**43%**

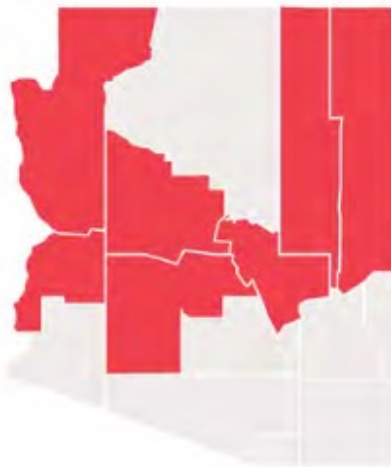
of all drug arrests in the state ↓

Direction of → indicates increase or decrease since 2010.

# Arizona Cannabis Racial Disparities Per the ACLU

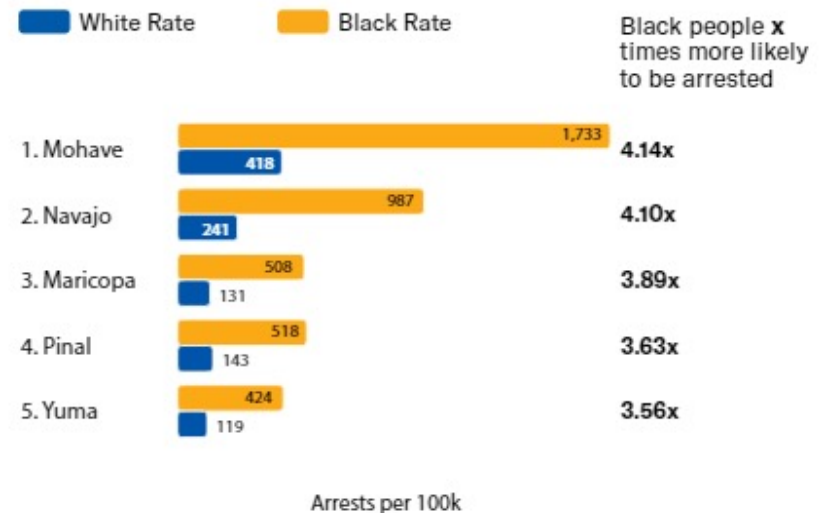
## BY THE COUNTY

All counties with **racial disparities** above the national average (3.64x)



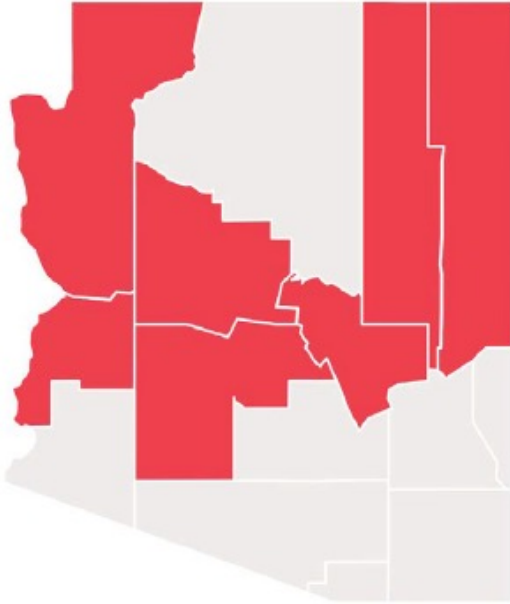
## Counties with the largest racial disparities

Counties with a pop. of >30,000, a Black pop. of >1%, a data coverage of >50%, and at least 25 marijuana possession arrests are included.

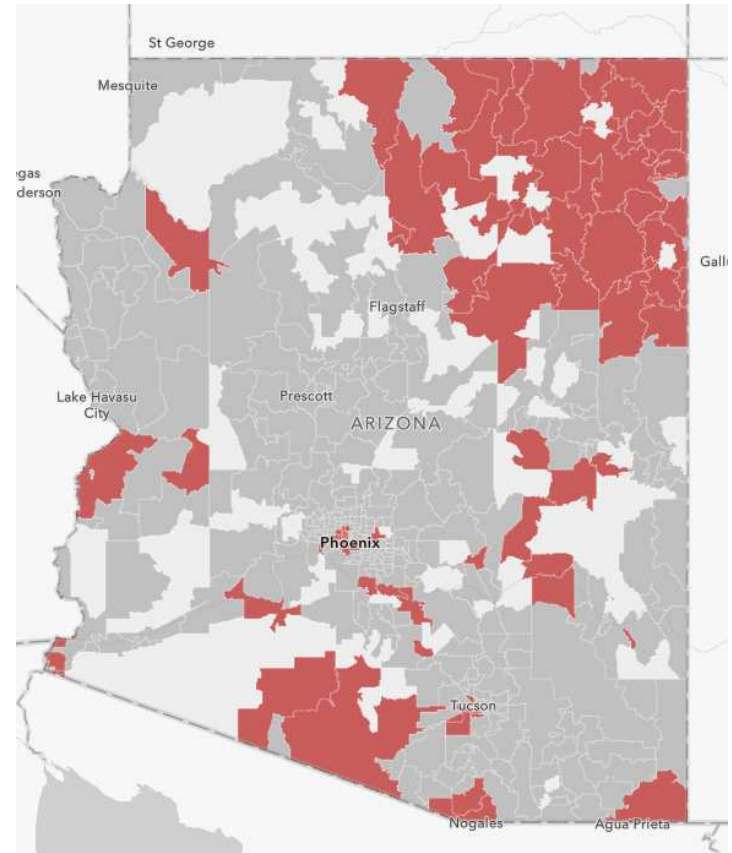


## How the ACLU sees Racial Disparity in Arizona Cannabis

All counties with **racial disparities** above the national average (3.64x)



## How DHS sees Racial Disparity in Arizona Cannabis





ARIZONA DEPARTMENT  
OF HEALTH SERVICES

LICENSING

**ADULT USE MARIJUANA PROGRAM  
PRINCIPAL OFFICER AND BOARD MEMBER ATTESTATION  
FOR SOCIAL EQUITY INITIAL ESTABLISHMENT APPLICATION**

I, \_\_\_\_\_, attest that:  
(Please print full legal name)

- The applying entity is eligible to apply under A.R.S. § 36-2854(A)(9), as specified in A.A.C. R9-18-303(B).
- Neither the applying entity nor any of its principal officers or board members have, directly or indirectly, entered or promised to enter into any agreements for a change in "ownership" as defined in A.A.C. R9-18-303(E), that will cause the applicant to no longer qualify for a marijuana establishment license under A.A.C. R9-18-303(B).
- Each principal officer or board member who meets the criteria in A.A.C. R9-18-303(B)(1) and (2) cannot be removed from the principal officer's or board member's position without:
  - o The written consent of the principal officer or board member, or
  - o A court order for removal of the principal officer or board member
- I do not have an excluded felony offense, as defined in A.R.S. § 36-2801.
- I understand and will comply with the requirements in A.R.S. Title 36, Chapter 28.2 and A.A.C. Title 9, Chapter 18.
- If issued a marijuana establishment license, the proposed establishment will not operate until the proposed establishment is inspected and obtains approval to operate from the Department.
- The information provided to the Department to apply for a marijuana establishment license is true and correct.

\_\_\_\_\_  
Principal Officer/Board Member Signature

\_\_\_\_\_  
Date Signed



APPLICATION CHECKLIST (continued)

Social Equity Eligibility Requirements

At least 51% of the applying entity must be owned by principal officer(s) or board member(s) (PO/BM) who each meet at least **3 out of the 4 eligibility** criteria listed below. Each PO/BM that is part of the 51% ownership must provide documentation that they meet 3 out of the 4 eligibility criteria listed below.

\*If any documents provided are not in the current legal name of the PO/BM, legal documentation must be provided to link the previous name to the current name (ex: marriage license, divorce decree, court order, etc.).

Had an annual household income, as defined in A.A.C. R9-6-401, in at least three of the years 2016 through 2020 that, for the respective year, was less than 400% of the poverty level, as defined in A.A.C. R9-6-401, as shown by:

- A copy of the applicable portion of an income tax return submitted to the U.S. Internal Revenue Service by the individual or an adult in the individual's household, as defined for the individual in A.A.C. R9-6-401, for the applicable tax year or a transcript of the income tax return from the U.S. Internal Revenue Service

**OR**

- If neither the individual nor an adult in the individual's household, as defined for the individual in A.A.C. R9-6-401, filed or was required to file an income tax return for an applicable year, documentation showing the amount and source of all monetary payments received by the individual and each adult in the individual's household for the applicable tax year

Has been adversely affected by the enforcement of previous marijuana laws because the individual:

- Has been granted expungement pursuant to A.R.S. § 36-2862, as demonstrated by a copy of the expungement issued by the prosecuting state or jurisdiction

**OR**

- Was convicted in Arizona of a violation of federal or state law related to marijuana or marijuana paraphernalia, as demonstrated by a copy of the court's conviction document issued by the prosecuting state or jurisdiction

Has been adversely affected by the enforcement of previous marijuana laws because the individual is or was related during the time-frame specified to another individual who:

- Was convicted in Arizona of a violation of federal or state laws related to marijuana or marijuana paraphernalia, or is or was eligible for expungement pursuant to A.R.S. § 36-2862, as demonstrated by court documents for the other individual issued by the prosecuting state or jurisdiction

**AND**

- Is one of the following, as demonstrated by applicable documentation, specified by the Department, verifying the individual's relationship to the other individual on the date of application or at the time of conviction or the event making the other individual eligible for expungement pursuant to A.R.S. § 36-2862:

- **Spouse** (individual who is currently married to the other individual)
- **Surviving spouse** (individual to whom a deceased other individual was married at the time of the deceased other individual's death)
- **Parent** (biological, an adoptive, or a foster mother or father, including a stepmother or stepfather, whose parental rights are not terminated)
- **Child** (parent's biological, adoptive, or foster child, including stepchild)
- **Sibling** (full- or half-, biological, adoptive, or foster sister or brother, including a stepsister or stepbrother)
- **Legal guardian**

Has lived for at least three of the years 2016 through 2020 at one or more physical addresses each in an area that has been identified by the Department as being disproportionately affected by the enforcement of Arizona's previous marijuana laws, as demonstrated by:

- Applicable documentation specified by the Department



Adult Use Marijuana Program  
Social Equity Application Checklist

Pursuant to Arizona Revised Statutes (A.R.S.) Title 36, Chapter 28.2 and Arizona Administrative Code (A.A.C.) Title 9, Chapter 18, the Department will accept applications for 26 adult use establishment licenses from social equity applicants from December 1, 2021 through December 14, 2021. Applications must be submitted through the Department's Facility Licensing Portal by the designated principal officer or board member of the applying entity. For a complete list of the application and eligibility requirements, please refer to A.A.C. R9-18-303.

To complete the application, you will need the following information and documents available to upload digitally.

APPLICATION CHECKLIST

General Application Requirements

- The following information about the applying entity:
  - ✓ Legal name of applying entity/proposed marijuana establishment
  - ✓ Type of business organization
  - ✓ Arizona mailing address
  - ✓ Telephone number
  - ✓ Email address (The principal officer or board member (PO/BM) submitting the application must be the applying entity's designated PO/BM. All email communications will go to the designated PO/BM's email address, and they must respond to any notices and resubmit the application through their Facility Licensing Portal account)
- Documentation that the applying entity is in good standing with the Arizona Corporation Commission
- The **email address that each Principal Officer and Board Member (PO/BM) uses to login** to the Individual and Facility Licensing Portal. (Refer to A.A.C. R9-18-301 to determine who must be listed on the application as PO/BM.) Before your application can be submitted, the system will validate that each PO/BM:
  - ✓ Has an active Facility Agent Card
  - ✓ Created a facility licensing portal account and accessed the required Social Equity Training Course by November 17, 2021, and completed the course by November 24, 2021
  - ✓ Has not already been listed as a PO/BM on 2 submitted applications
- For each PO/BM, a completed and signed "Principal Officer and Board Member Attestation for Social Equity Initial Establishment Application"
- The following information about any person who is not a principal officer or board member, but is entitled to 10% or more of the profits of the proposed marijuana establishment:
  - ✓ Name
  - ✓ Residence address
  - ✓ Date of birth
- \$4,000 payment using a credit card or electronic check

Social Equity Eligibility Requirements (see next page)

Brachium 3A, LLC	AZFA1639502131198179
Brachium 3B, LLC	AZFA1639504791336543
Brachium 4A, LLC	AZFA1639508647061796
Brachium 4B, LLC	AZFA1639510654905583
Brachium 5A, LLC	AZFA1639511951280652
Brachium 5B, LLC	AZFA1639512956534714
Brachium 6A, LLC	AZFA1639529073765736
Brachium 6B, LLC	AZFA1639529648450347

Updated 12.15.2021

Total Applications Submitted: 1,506



ARIZONA DEPARTMENT OF HEALTH SERVICES

**Adult Use Marijuana Program  
Submitted Social Equity Applications**

Brachium 7A, LLC	AZFA1639518150699990
Brachium 7B, LLC	AZFA1639519438407456



1 James M. Cool, State Bar No. 028023  
Joshua N. Mozell, State Bar No. 030865  
2 **FRAZER, RYAN, GOLDBERG & ARNOLD, L.L.P.**  
1850 North Central Ave., Suite 1800  
3 Phoenix, Arizona 85004  
Telephone: (602) 277-2010  
4 Facsimile: (602) 277-2595  
5 Email: [jcool@frgalaw.com](mailto:jcool@frgalaw.com)  
[jmozell@frgalaw.com](mailto:jmozell@frgalaw.com)  
6 [bmontano@frgalaw.com](mailto:bmontano@frgalaw.com)  
7 *Attorneys for Plaintiffs*

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 ACRE 41 ENTERPRISES, LLC, an Arizona  
Limited Liability Company; GREATER  
11 PHOENIX URBAN LEAGUE, INC., a Non-  
Profit Corporation,  
12 Plaintiffs,  
13 vs.  
14 STATE OF ARIZONA, a governmental  
entity; ARIZONA DEPARTMENT OF  
15 HEALTH SERVICES, a political subdivision  
of the State of Arizona; DOUG DUCEY, in his  
16 official capacity as Governor of the State of  
Arizona; DONALD HERRINGTON, in  
17 his official capacity as Director of the  
Arizona Department of Health Services;  
18 Defendants.

No.

**VERIFIED COMPLAINT**  
**(Declaratory Judgment; *Ultra Vires***  
**Regulations; Mandamus)**

19 **PARTIES, JURISDICTION AND VENUE**

20  
21 1. This lawsuit arises from the publication of *ultra vires* final regulations by  
22 the Arizona Department of Health Services on October 13, 2021, purporting to  
23 implement the recreational marijuana “social equity” program approved by the voters in  
24 2020 through the passage of Proposition 207 and subsequently mandated by enactment  
of A.R.S. § 36-2854(A)(9).

Clerk of the Superior Court  
By Fawn Fowler, Deputy  
Date 11/19/2021 Time 15:33:59

Description	Amount
CASER 01/2021-017898	
CIVIL NEW COMPLAINT	333.00
TOTAL AMOUNT	333.00
Receipt# 20525189	

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9 *Attorneys for Plaintiffs*

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **FOR THE COUNTY OF MARICOPA**

12 BLACK SEED, INC., an Arizona non-  
13 profit corporation; JAMAL F. ALLEN;  
14 DENNIS D. BEAVER; and ALEX  
15 HEGLAND LANE,

16 Plaintiffs,

17 v.

18 STATE OF ARIZONA, a governmental  
19 entity; ARIZONA DEPARTMENT OF  
20 HEALTH SERVICES, a political  
21 subdivision of the State of Arizona; and  
22 DON HERRINGTON, in his official  
23 capacity as Director of the Arizona  
24 Department of Health Services,

25 Defendants.

Case No. CV 2021-017898  
26 **VERIFIED SPECIAL ACTION**  
27 **COMPLAINT**

(Tier 2)

28 Plaintiffs Black Seed, Inc., ("BSI") an Arizona non-profit corporation, Jamal F.  
29 Allen, Dennis D. Beaver, and Alex Hegland Lane (collectively, "Plaintiffs"), allege as  
30 follows:

31 **PARTIES, JURISDICTION, AND VENUE**

32 1. BSI is an Arizona non-profit corporation, formed for the purpose of applying  
33 for and obtaining a license from the Arizona Department of Health Services ("ADHS") to

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6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
7 **IN AND FOR THE COUNTY OF MARICOPA**

8 DARNEL WILLIAMS, an Arizona resident;  
9 JAIME RUIZ; an Arizona resident; EDWARD  
10 BAUMAN, an Arizona resident;

10 Plaintiffs,

11 vs.

12 ARIZONA DEPARTMENT OF HEALTH  
13 SERVICES, an agency of the State of Arizona;  
14 and ABC DEFENDANT PARTIES 1-10;

15 Defendants.

Case No. CV2022-003498

**VERIFIED COMPLAINT**

14 For their Verified Complaint against Defendant, the Arizona Department of Health  
15 Services (the "Department"), Plaintiffs allege as follows:

16 **I. Parties, Jurisdiction and Venue.**

17 1. Darnel Williams is a resident of the State of Arizona and the qualifying principal  
18 officer, board member ("POBM") applicant listed on two initial social equity establishment  
19 applications pursuant to ARS § 36-2854(A)(1)(f), and rules promulgated by the Department  
20 thereunder, concerning Arizona's social equity ownership program, both of which  
21 applications for marijuana establishment licenses have been designated by the Department as  
22 "substantively complete".

23 2. Jaime Ruiz is a resident of the State of Arizona and the qualifying principal  
24 officer, board member ("POBM") applicant listed on two initial social equity establishment  
25

Clerk of the Superior Court  
\*\*\* Electronically Filed \*\*\*  
02/01/2022 8:00 AM

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-017808

01/31/2022

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT  
A. Meza  
Deputy

ACRE 41 ENTERPRISES L L C, et al.

JAMES M COOL

v.

STATE OF ARIZONA, et al.

ROOPALI HARDIN DESAI  
DOCKET-CIVIL-CCC  
JUDGE WARNER

1. Background.

In November 2020, Arizona voters approved Proposition 207, a ballot measure legalizing recreational marijuana. Part of Proposition 207 was a requirement that the Department of Health Services (DHS) create a “social equity ownership program,” described as follows:

The creation and implementation of a social equity ownership program to promote the ownership and operation of marijuana establishments and marijuana testing facilities by individuals from communities disproportionately impacted by the enforcement of previous marijuana laws.

When interpreting a statute, the Court does not defer to an administrative agency. *Saguaro Healing LLC v. State*, 249 Ariz. 362, 364, 470 P.3d 636, 638 (2020). But when a statutory directive is broad, the Court's role is limited to deciding whether the agency acted within the scope of the directive. *See Sharpe v. Arizona Health Care Cost Containment Sys.*, 220 Ariz. 488, 494-95, 207 P.3d 741, 747-48 (App. 2009) (an agency's power is measured by the statute); *see also, e.g., Raymond Proffitt Found. v. U.S. Army Corps of Engineers*, 343 F.3d 199, 210 (3d Cir. 2003) (recognizing the limited scope of court review of agency action when a statute vests the agency with broad discretion); *Pro. Drivers Council v. Bureau of Motor Carrier Safety*, 706 F.2d 1216, 1221 (D.C. Cir. 1983) ("The permissive nature of the statute implies broad agency discretion in selecting the appropriate manner of regulation."). This is because when a legislative body—in this instance, the voters exercising their initiative power—gives broad instructions to an agency, it is presumed to intend the agency will utilize its expertise and discretion in implementing the instructions. *See, e.g., AT & T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 397 (1999) ("Congress is well aware that the ambiguities it chooses to produce in a statute will be resolved by the implementing agency").



Plaintiffs first argue that the Rules do not establish a program for the ownership and operation of marijuana businesses because they fail to preclude or regulate the subsequent transfer of licensed entities to people who are not qualified under the Rules. A qualified entity, Plaintiffs point out, can obtain one of the 26 licenses then turn around and sell it to people who are not “from communities disproportionately impacted by the enforcement of previous marijuana laws.”

Nothing in A.R.S. § 36-2854(A)(9) requires that DHS restrict or prohibit the owners who obtain one of the 26 licenses from selling them. Had the authors of Proposition 207 intended that—to create essentially two classes of recreational marijuana licenses, one that is freely

Next, Plaintiffs argue that the Rules do not provide for ongoing regulation and oversight to promote the operation of marijuana businesses by qualified persons, not just ownership. Again, nothing in A.R.S. § 36-2854(A)(9) requires the program to be ongoing or to impose oversight or regulation that is not imposed on other dispensaries. Plaintiffs focus on the word “operation” in the statute, but DHS could reasonably conclude that granting licenses to entities majority owned by qualified persons promotes the operation of those establishment by those persons. It does not guaranty that this will occur, but the statute does not require DHS to “ensure” the establishments and facilities will be operated by qualified individuals, only that the program “promote” it.



Third, Plaintiffs argue that the Rules should regulate not only the owners of licenses, but entities with whom they might contract for services, like management companies. They note that, even though qualified persons will have 51% control over the licensed entities, the Rules “do not prohibit the licensed entity from diverting significant portions of those sale proceeds to third-party retail management companies owned and controlled exclusively by entities that are not SEOP-eligible.” *See* Plaintiffs’ Response/Reply at 20. They predict the same stratagem medical marijuana dispensaries use to circumvent the statutory non-profit requirement will be “deployed to prevent SEOP-eligible owners from fully realizing the proceeds generated by a license.” *Id.* at 19-20.

Defendants finally argue that the eligibility criteria in the Rules are “irrational and problematic,” providing counter-examples of people who would not qualify for the social equity ownership program even though they are from communities the law was intended to benefit. Developing eligibility criteria for a program like this requires making choices, and it is hard to imagine any airtight criteria for which one could not come up with counter-examples. The criteria in the Rules focus on income, community, and the past adverse effects of marijuana laws. They are reasonably designed to achieve the objectives of A.R.S. § 36-2854(A)(9).

The voters left to DHS how the social equity ownership program should work, and the Rules DHS developed comply with the law and are reasonably designed to meet its objectives. Having concluded that the Rules are within the parameters of DHS's statutory grant, it is unnecessary to resolve Defendants' other arguments for dismissal.