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Locked Out: Thanks to State Policies, Minorities Are Being Left Behind by the Cannabis Industry

By Nikitha Sattiraju & Evelina Nedlund

Richard Harding, an African-American native of Cambridge city, Massachusetts, grew up watching the adverse effects of cannabis criminalization on friends, family, and neighbors. So when recreational cannabis was legalized in Massachusetts in 2016, he jumped at the chance to start his own business and ensure he and his community benefit from the industry.

“This opportunity sets us up with just a small bit of payback for all the wrongs that have been done to the people and communities of color,” Harding said.

But as a minority business owner without the backing of big dollars, it has not been an easy road.

Along with his childhood friend, Taba Moses, Harding started laying the groundwork for his company, Green Soul Organics, in early 2018. They qualified for Massachusetts’ Economic Empowerment program which gives priority to cannabis business license applications from economically disadvantaged communities.

However, close to two years after starting the process, Harding and Moses still don’t have a license to open a cannabis retail store in Massachusetts. Instead they only managed to open a cannabis cultivation operation in the city of Fitchburg, Mass. In the meantime, big cannabis companies such as Cultivate and New England Treatment Access, have already started recreational cannabis sales and captured a significant share of the market.

Across the country, politicians and advocates are demanding that minorities have a greater share in the cannabis industry—particularly because their communities have been ensnared in the criminal justice system for cannabis use and possession. But states that have legalized cannabis and have programs to make the cannabis space more inclusive are failing to increase diversity in the cannabis industry, which is on track to become a \$30 billion one by 2025.

In 2017, only 10 percent of all cannabis businesses nationwide were owned or partly owned by African-Americans and Hispanics, [according](#) to a 2017 survey by Marijuana Business Daily. Minority cannabis business owners face a host of barriers.

The costs of starting up a cannabis business are high, with the licensing process alone requiring at least \$250,000. Navigating complex regulatory structures, and complying with jurisdictions at different levels, can be especially difficult for newcomers with little experience. The industry is also quickly consolidating, giving a few big players the upper hand in the market.

“The industry is still disproportionately white,” said Jason Ortiz, vice-president of the Minority Cannabis Business Association. “There are lots of [minorities] that want to get started and have the skill sets to be able to do things like grow and deliver, but simply cannot afford the outrageous licensing fees or various other capital requirements.”

Cannabis remains illegal at the federal level in the United States. However, 11 states have legalized recreational cannabis and 33 have legalized medical cannabis. Only seven of them have a social equity program—Massachusetts, Michigan, California, Illinois, Pennsylvania, Ohio, and Maryland.

Massachusetts tried to do it right, Harding said. “They wrote equity as explicitly as I've seen into their regulations,” he said. “But I don't know that it's playing out in the same way.”

A big part of success in the cannabis industry depends on timing the entry into the market. “People who are first out of the gate have a huge advantage,” said Julie Steiner, a law professor at Western New England University. “They get the advantage of getting their brand name out there, because when something becomes legal and you're the first store to open, everyone flocks to it. And you can make tons of money, millions, in a short amount of time.”

The first two companies to go live with recreational cannabis sales in Massachusetts—Cultivate and New England Treatment Access—took in a combined \$5.68 million in just their first two weeks of business, according to [data](#) from Massachusetts' Cannabis Control Commission.

Wading through a myriad of requirements

To be the first to the market, a small business would have to contend with an expensive and time-consuming process as Harding's case illustrates.

In Massachusetts, Harding and Moses had to put in an “application of intent” with the state's cannabis regulatory body, the Cannabis Control Commission. The application, which is required of all cannabis business license applicants, details ownership structure, sources of funding, the location of the operation, and a host-community agreement—permission to operate from the municipality or community in which the business will be located.

Every municipality in the state has the right to draft its own cannabis policies which form the basis for the host-community agreement. Harding and Moses, who want to open cannabis retail stores in Cambridge, Boston, and Somerville have to go through a different process in each place.

They also had to go through the additional step of first qualifying for the economic empowerment program, which only opened up applications for a short two-week window. The program requires at least 51 percent of a business to be owned by people who've lived in an area that is disproportionately impacted by cannabis-related arrests for at least 5 years.

Of these requirements, finding and holding down a location is one of the hardest things for small cannabis businesses. There are many restrictions on where a cannabis business can locate, which differs from municipality to municipality.

They have to be a certain number of feet away from sensitive areas like schools, and sometimes that'll also include other places where children can congregate like parks, said Steiner.

"Some enterprises have gone ahead and bought places or entered leases with landlords, and then found out that they're not going to be permitted locally, by the municipality, to locate there," Steiner said.

But in order to have their application accepted, business-owners need to either have a title or lease to the property where their cannabis operation will be located.

While big corporations can buy up property for this purpose, small business owners would have to pay rent on an expensive property even before they start making money through their business while going through the regulatory process. Harding and Moses were able to get legally binding letters from landlords who gave them permission to start paying rent once they get a license to open their business.

Vanessa Jean-Baptiste, another economic empowerment applicant in Massachusetts, was only able to secure a location in the city of Brockton for the licensing process because a friend of a friend offered her space on one of their properties.

"It was pretty difficult," said Jean-Baptiste. "My skin color, I feel, played a part in that." Jean-Baptiste, an African-American, who decided to start her cannabis company Legal Greens when Massachusetts' economic empowerment program was put into place, recalls being turned away by several landlords who didn't think she would make it in the industry.

Massachusetts actually made the requirements less stringent for recreational cannabis compared to medical cannabis. Businesses are [required](#) to have \$500,000 in assets when applying for medical cannabis licenses.

Some states also require license applicants to have experience handling cannabis in a business setting, which few people have in an as yet growing and federally illegal industry. Illinois, which legalized cannabis in June, is being hailed for incorporating social equity provisions into its cannabis laws right at the beginning.

However, the state has a point-based system for approving license applicants and while being a social equity applicant counts for 50 out of 200 points, a majority of the points—160 points—go toward “security and record keeping,” “business plan, financials, and floor plan,” “knowledge and experience.” As a result, smaller businesses are already at a disadvantage.

The search for money

Navigating the entire regulatory process can be expensive businesses usually require lawyers and consultants, who can be really expensive. Add to it the cost of the actual license. Massachusetts falls in the lower end when it comes to licensing costs, with licences for stores, manufacturing, cultivation or testing ranging from \$10,000 to \$15,000. But in Illinois, even a social equity applicant has to pay \$30,000 for a two-year operating license.

Once businesses get the licenses, they have to shell out millions of dollars to actually have the cannabis business up and running and to ensure that it remains compliant. Harding anticipates at least a \$1 million to open up their store in Cambridge.

However, there are few options for small cannabis business owners to raise capital. Since cannabis remains illegal at the federal level, there are no banking services available for the industry, which largely deals in cash. Financial institutions are usually hesitant to serve cannabis businesses even in states where cannabis is legal for fear of breaking federal laws.

Both Harding and Jean-Baptiste used their savings and reached out to family and friends for funding support. They also cut down their costs by figuring out the process themselves.

“There's a lot of people that will say that they're going to help you and they're going to be consultants and stuff, but it's like I'm paying you to connect me to other people when I could just go out and connect myself to these people,” said Jean-Baptiste, who managed to keep her regulator expenses under \$50,000.

Jean-Baptiste also applied for a \$100,000 grant from Theory Wellness, a Massachusetts based medical cannabis company. Harding and Moses too got a \$50,000 loan from MedMen, a medical cannabis company that operates in several states.

Financial institutions are so risk-averse when it comes to cannabis, even businesses whose operations do not involve touching the cannabis plant have a hard time accessing capital from banks. Shanel Lindsay, whose Massachusetts-based company Ardent Cannabis sells a device that allows its customers to activate the psychoactive effects in cannabis.

“People think that because we're not plant touching, somehow it's easier for us,” Lindsay said, “But unfortunately the stigma of cannabis is very pervasive.”

An industry that favors a few

The lack of legal financial options to raise capital also means that large companies with deep financial networks and access to angel investors can establish cannabis operations much faster than smaller, minority-owned businesses.

It's no surprise then that the first licenses go to big companies. But that is the nature of business, according to Steven Ernest, director of business development at Viridian Capital Advisors.

“The reality is that from a capitalism perspective, it costs so much money to play and be involved, that it's highly unlikely that you're going to have a lot of diversity at the top of that food chain,” Ernest said about the industry. He added that in more mature markets, there is a higher level of diversity due to lower barriers of entry.

Massachusetts handed out its first recreational licenses to established medical cannabis companies such as Cultivate, New England Treatment Access, Alternative Therapies Group, and INSA. Illinois' first recreational cannabis licenses also went to well-established medical cannabis dispensaries in the state, including Green Thumb Industries, one of the largest multi-state cannabis businesses in the United States. Not a single one of them is an equity applicant.

“Big cannabis buys the process. They have the lawyers, the money, and the first-mover advantage on the market,” Harding said. “And so they use all of the tools necessary to shut people like Green Soul and our business partners out of the emerging cannabis industry.”

The cannabis industry has been rapidly consolidating over the past few years, making it harder for small businesses to compete. In all, there were 293 mergers and acquisitions in 2019 compared with 311 the year before, according to data by Viridian Capital Advisors.

And that is bound to happen as it would in any other industry, Ernest said. “When you're a bigger company, you have a fiduciary responsibility to your shareholders,” he said. “Your job is to go out there and find the best assets.”

Big cannabis companies are also trying to gain control of smaller cannabis businesses, particularly economic empowerment applicants, in less straightforward ways, both Harding and Jean-Baptiste said. The companies provide them with capital or offer them consultancy services but write out the contracts in such a way that it gives them control of the company.

“There's a lot of sharks out there that really are trying to bite up all the small companies,” Jean-Baptiste said.

And this isn't limited to Massachusetts. In Los Angeles, California too, there have been cases of “predatory actors” trying to buy up social equity applicants who remain owners or managers in name only, said Morgan Fox, media relations director at the National Cannabis Industry Association. “They take a small payout that's worth a fraction of what the business might be worth in a couple of years,” Fox said about the social equity applicants.

Moving the conversation forward

Harding and Moses founded Real Action for Cannabis Equity (RACE), a non-profit organization, to fight for inclusive cannabis policies in Massachusetts and in other states. Their decision to start the non-profit came about when Cambridge city announced plans to hand the first recreational cannabis licenses to existing medical cannabis dispensaries.

Through RACE, Harding and Moses pushed the city council to place a two-year moratorium on medical cannabis businesses from selling recreational cannabis so that empowerment applicants can have the time to set up their operations and be on an equal footing.

Other cities in Massachusetts are also coming up with similar plans for social equity. Boston, for example, has a one-for-one policy which requires one social equity applicant to be approved for every regular cannabis business license applicant.

But states and municipalities have to do more than just “talk” when it comes to equity, said Harding. Their social equity policies are not translating into the real world. Without aggressive

measures such as the one in Cambridge, minorities will continue to be locked out of the cannabis industry, he said.

“At the end of the day, don't tell me what's written. Tell me what happened, tell me what the implementation looks like,” Harding said. “So if they wrote equity and everybody's clapping, they should be protesting now that we know for a fact equity didn't happen.”