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## **Toward a Socially Just Peace in the War on Drugs?: The Illinois Cannabis Social-Equity Program**

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# The Illinois Cannabis Social-Equity Program: Toward a Socially Just Peace in the War on Drugs?

*andré douglas pond cummings\** and *Steven A. Ramirez\*\**

*Laudably, when Illinois legalized the recreational use of cannabis, it also sought to repair the damage wrought by the War on Drugs (WOD) through its social-equity initiatives. That harm included excessive and disproportionate incarceration in communities of color, over-policing within those communities, and all of the social and economic harms implicit in those realities. This harm necessarily creates intergenerational harm, as parents and children lose necessary pillars of support. Moreover, compelling evidence suggests that the progenitors of the WOD intended this harm. Measured against this historic social injustice, the social equity efforts in Illinois fail to secure a material unwinding of the WOD harms. Illinois needs a broader approach to ending the War on Drugs beyond cannabis. Treatment should displace criminalization for narcotics. Expungements should become automatic and more widely available. The state should immediately issue more social-equity licenses in affected communities. Investment of revenues from cannabis and other decriminalized drugs in affected communities should continue.*

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## I. INTRODUCTION

In recent years, the War on Drugs (WOD) started winding down, as many states across the nation began legalizing widely used drugs such as cannabis.<sup>1</sup> These legalizing states recognized that the WOD had failed spectacularly.<sup>2</sup> Not only did the WOD fail to stanch the steady flow of drugs through and into the United States, but this “war” exacted enormous costs upon the communities of color<sup>3</sup> in which the WOD was most heavily enforced.<sup>4</sup> Despite the heartening national trend to decriminalize and legalize drugs including marijuana, the human and economic carnage the WOD imposed upon communities of color has proven far more durable.<sup>5</sup> Indeed, people of color today continue to face disproportionate incarceration for narcotics despite partaking at lower rates than whites (or

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1. See generally andré douglas pond cummings & Steven A. Ramirez, *Roadmap for Anti-Racism: First Unwind the War on Drugs Now*, 96 TUL. L. REV. 469 (2022) (providing a short history of the WOD and arguing that the WOD should end with the exit of federal criminalization so states can craft new approaches to problems of drug addiction and drug abuse).

2. See *id.* at 472–73 (citing enormous costs of the WOD including negative health outcomes due to lack of treatment, incarceration in particular of people of color, and corruption of police forces and rule of law, among others).

3. This article focuses upon the primary victims of the WOD: Latinx and African American communities. See *The Drug War, Mass Incarceration and Race*, DRUG POL’Y ALL. (Jan. 25, 2018), <https://drugpolicy.org/resource/drug-war-mass-incarceration-and-race-englishspanish> [<https://perma.cc/L3Z3-T8PB>] (explaining that Latinx and African American communities suffer disproportionate incarceration rates despite similar rates of drug use and sales across racial and ethnic lines).

4. See cummings & Ramirez, *supra* note 1, at 486 (noting economist Andrew Brimmer estimating the costs of economic loss from the destruction of human capital implicit in our racial hierarchy to exceed \$1 trillion per year).

5. See William Lee, *Legal Weed’s First Year in Chicago: High Arrest Rates for Black People, a Boutique Experience for Others*, CHI. TRIB. (Apr. 15, 2021), <https://www.chicagotribune.com/news/breaking/ct-marijuana-legalization-parallel-worlds-20210415-4hydfuinve27mtctk1m7dq4r4-story.html> [<https://perma.cc/J5MX-SQA8>] (“[W]hite smokers are enjoying the boutique experience with designer weed in clean, fashionable North Side dispensaries, [while] Black and brown people are left out of the windfall and continue to be arrested for selling weed illegally.”); Ben Markus, *As Adults Legally Smoke Pot in Colorado, More Minority Kids Arrested for It*, NPR (June 29, 2016, 4:50 AM), <https://www.npr.org/2016/06/29/483954157/as-adults-legally-smoke-pot-in-colorado-more-minority-kids-arrested-for-it> [<https://perma.cc/HG6R-FAZC>] (“A Colorado Health Department survey found there wasn’t a huge racial difference in who smokes pot [after

at about the same rates).<sup>6</sup>

Inexplicably, even in states where cannabis is legal, arrest records for black and brown Americans have increased for marijuana-related crimes, evidencing a law-enforcement culture that structurally produces outcomes harmful to people of color.<sup>7</sup> Still, some jurisdictions sought to end the WOD in a way that also recognized the need to repair the damage inflicted through this “war.”<sup>8</sup> Illinois, for example, legalized recreational cannabis and pursued the Illinois Cannabis Social Equity Program.<sup>9</sup> This essay will critique and contextualize this effort. We conclude that while the Illinois effort to repair the damage inflicted by the WOD holds some merit, it fails to secure social justice<sup>10</sup> for the many victims of the wrong-

legalization]. But the marijuana arrest rate for white 10- to 17-year-olds fell by nearly 10 percent from 2012 to 2014, while arrest rates for Latino and black youths respectively rose more than 20 percent and more than 50 percent.”). Even after legalization, underage youths of color still face disproportionate arrest for possession of pot. *Id.*

6. Scholars long ago identified disproportionate incarceration of people of color for drug offenses as a central failing of our so-called criminal justice system. PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* 121–22 (2017) (“Today most people know that ‘the war on drugs’ has been selectively waged against African Americans. . . . For drug crimes, African Americans are about 13 percent of people who do the crime, but about 60 percent of people who do the time.”); MICHELLE ALEXANDER, *THE NEW JIM CROW* 1–11 (paperback ed. 2012) (explaining how the WOD led to mass incarceration and became “the New Jim Crow”); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 *STAN. L. REV.* 1271, 1272–73 (2004) (“The gap between black and white incarceration rates . . . has deepened along with rising inmate numbers. . . . [T]he transformation of prison policy at the turn of the twenty-first century is most accurately characterized as the mass incarceration of African Americans.”).

7. See andré douglas pond cummings & Steven A. Ramirez, *The Racist Roots of the War on Drugs and the Myth of Equal Protection for People of Color*, 44 *UNIV. ARK. LITTLE ROCK L. REV.* 453, 479–82 (2022) (demonstrating trend of continued disparities in arrests for marijuana possession of black, brown, and indigenous people compared with whites where cannabis has been legalized, including Maine, Vermont, South Dakota, Chicago, and New York City).

8. See cummings & Ramirez, *supra* note 1, at 495–97 (reviewing proposed federal Marijuana Opportunity Reinvestment and Expungement Act (MORE Act), which includes efforts to repair damage to victimized communities); Beau Kilmer et al., *Cannabis Legalization and Social Equity: Some Opportunities, Puzzles, and Trade-Offs*, 101 *B.U. L. REV.* 1003, 1006–07 (2021) (summarizing efforts of various jurisdictions to pursue social equity as part of cannabis legalization).

9. See Cannabis Regulation and Tax Act, 410 *ILL. COMP. STAT.* 705/7-1(h) (2019) (“[T]he General Assembly finds and declares that a social equity program should offer, among other things, financial assistance and license application benefits to individuals most directly and adversely impacted by the enforcement of cannabis-related laws who are interested in starting cannabis business establishments.”); § 705/10-40 (“The General Assembly finds that in order to address the disparities [from the WOD], aggressive approaches and targeted resources to support local design and control of community-based responses to these outcomes are required. To carry out this intent, the Restore, Reinvest, and Renew (R3) Program is created . . .”).

10. Social justice requires no unearned privileges and no undeserved disadvantages. Instead, the common good demands only pro-social inequality—meaning that society, as a whole, benefits from any inequality. See generally Steven A. Ramirez, *Social Justice and Capitalism: An Assessment of the Teachings of Pope Francis from a Law and Macroeconomics Perspective*, 40 *SEATTLE UNIV. L. REV.* 1229, 1235–57 (2017).

headed war in communities of color. Along the way, it will highlight the elements necessary to achieve a just peace in truly winding down the War on Drugs.<sup>11</sup>

In particular, the WOD wasted tax revenues, destroyed human potential through mass felony encumbrances in employment, devastated entire communities by removing youths of color and leaving behind broken families, reproduced the American racial hierarchy, undermined democracy and the rule of law, and economically marginalized communities of color through the pernicious drug trade that resulted from the black markets the WOD created.<sup>12</sup> In order to unwind this harm, legislation must rebuild communities of color, expunge felony convictions as quickly and broadly as possible, reform policing, and give communities harmed by the WOD preferred access to economic opportunities arising from the legalization of narcotics and beyond.<sup>13</sup> Measured against these benchmarks, the Illinois effort thus far to secure “social equity” to mitigate the harm caused by the WOD amounts to a failure.<sup>14</sup> Moreover, the over-policing of communities of color that grew like a weed during the WOD continues notwithstanding the legalization of the most widely used narcotic—cannabis.<sup>15</sup>

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11. Even high-profile conservative commentators now recognize the failure of the WOD. See George P. Shultz & Pedro Aspe, Opinion, *The Failed War on Drugs*, N.Y. TIMES, (Dec. 31, 2017), <https://www.nytimes.com/2017/12/31/opinion/failed-war-on-drugs.html> [https://perma.cc/279H-3D2F] (“The war on drugs in the United States has been a failure that has ruined lives, filled prisons and cost a fortune.”); Ilya Somin, *Conservatives Rethinking Mass Imprisonment and the War on Drugs*, WASH. POST (Jan. 26, 2014), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/01/26/conservatives-rethinking-mass-imprisonment-and-the-war-on-drugs/> [https://perma.cc/GNW7-AQTH] (“[M]any social conservatives have gradually come to realize that the WOD is bad for family values. Some GOP-controlled state governments are seeking to reduce imprisonment in order to save money in difficult fiscal times.”).

12. “The cost of the war on drugs has been astronomical for U.S. taxpayers.” ALVARO PIAGGIO & PRACHI VIDWANS, HUM. RTS. FOUND., *THE COSTS AND CONSEQUENCES OF THE WAR ON DRUGS* 44 (2019) (cataloguing sources of costs arising from the WOD).

13. See *id.* at 58 (“Lifting prohibition would need to be coupled with deep institutional rehabilitation and reform to improve the overall health of the justice systems, police departments, electoral bodies, and more, in order to truly end human rights violations.”). See also Joseph E. Stiglitz, *Foreword to TERRY-ANN CRAIGIE ET AL., CONVICTION, IMPRISONMENT, AND LOST EARNINGS* 4, 5 (2020) (“There is much that has to be done if our society is to fully come to terms with our long history of racial injustice. Stopping mass incarceration is an easy place to begin. This report makes a compelling case for the enormous economic benefits to be derived from doing so.”).

14. For example, despite the legislation seeking to further social equity in the awarding of cannabis licenses, large multistate operators dominate the Illinois cannabis industry. See Robert McCoppin, *Illinois Supreme Court Denies Request to Let State Name Craft Cannabis License Winners. Applicants Say Ongoing Litigation Affecting Their Finances.*, CHI. TRIB. (Jan. 28, 2022), <https://www.chicagotribune.com/marijuana/illinois/ct-illinois-marijuana-craft-appeal-denied-20220129-paixxtayybflmq6xe23tbg6ba-story.html> [https://perma.cc/4XWC-2NPZ].

15. Despite wider legalization, “stark racial disparities in marijuana possession arrests have remained unchanged nationwide. On average, a Black person is 3.64 times more likely to be arrested

All of this suggests a disturbing reality: Legalization permits wealthy whites to consume cannabis with impunity, while communities of color continue to suffer virtually all of the oppression inherent in the WOD.<sup>16</sup>

Indeed, the War on Drugs never occurred in wealthy white areas and neighborhoods; its frontline brutality always hit communities of color first and foremost, leading to the destruction of the economic foundations of those communities.<sup>17</sup> The recent wave of cannabis legalization now threatens to leave the primary casualties of the WOD behind.<sup>18</sup> In sum, whites can now get high while communities of color suffer the lasting legacy of disempowerment from drug prohibition.

Illinois attempted to short-circuit this outcome with its Illinois Adult-Use Cannabis Social Equity Program.<sup>19</sup> This Act introduced a path for

for marijuana possession than a white person, even though Black and white people use marijuana at similar rates.” ACLU RSCH. REP., A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM 5 (2020), [https://www.aclu.org/sites/default/files/field\\_document/marijuanareport\\_03232021.pdf](https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf) [<https://perma.cc/E3FK-QT36>].

16. Whites use drugs more than people of color. See 2019 National Survey of Drug Use and Health (NSDUH) Releases, Table 1.22B, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://www.samhsa.gov/data/sites/default/files/reports/rpt29394/NSDUHDetailedTabs2019/NSDUHDetailedTabsSect1pe2019.htm> [<https://perma.cc/JQ4G-5YLN>] (showing that whites use drugs at greater rate than African Americans and Latinos in virtually all age groups). Moreover, recent analysis of government data establish that Whites tend to possess larger amounts of controlled substances, suggesting they engage more in distribution. Joseph E. Kennedy et al., *Sharks and Minnows in the War on Drugs: A Study of Quantity, Race and Drug Type in Drug Arrests*, 52 U.C. DAVIS L. REV. 729, 730–34 (2018).

17. According to Rev. Ira Acree, pastor at The Greater St. John Bible Church, a church on Chicago’s West Side: “We went to jail for cannabis first. But when it comes to legalizing it, we’re last.” Glenn Reedus, *Black and Latinx Owners Are Barely a Blip on the Cannabis Revenue Radar*, CHI. REP. (Jan. 13, 2021), <https://www.chicagoreporter.com/black-and-latinx-owners-are-barely-a-blip-on-the-cannabis-revenue-radar/> [<https://perma.cc/6DSJ-77EX>]. See generally STRAIGHT OUTTA COMPTON (Universal Pictures 2015) (dramatically characterizing the manic-like obsession of Los Angeles Police Department in pursuing drugs in urban communities, including use of battering rams and helicopters).

18. It appears, for example, that as of this writing, no Black-owned cannabis business operates in Illinois. Tom Schuba, *For Black Entrepreneurs, the Dream of Opening a Pot Shop Remains Just Out of Reach*, CHI. SUN-TIMES (Sept. 16, 2021, 5:30 AM), <https://chicago.suntimes.com/cannabis/2021/9/16/22674721/black-entrepreneurs-pot-cannabis-marijuana-dispensary-illinois-license> [<https://perma.cc/AU2B-ZQC8>]. Instead, many such social-equity applicants find themselves ensnared in protracted and expensive litigation. See McCoppin, *supra* note 14 (describing delay costing tens of thousands of dollars as litigation continues).

19. *New Illinois Legalization Bill Means Unprecedented Social and Criminal Justice Reform*, MARIJUANA POL’Y PROJECT, <https://www.mpp.org/states/illinois/new-illinois-legalization-bill-means-unprecedented-social-and-criminal-justice-reform/> (last visited Jan. 30, 2022) [<https://perma.cc/6UQY-UJTZ>] (“The most historic aspect of the [Illinois] Cannabis Regulation and Tax Act is not that it legalizes cannabis for adults, but rather the extraordinary efforts it takes to reduce the harm caused by the failed war on marijuana and the people it affected. This measure is the biggest step forward in social and criminal justice reform anywhere in the country, inside or outside the issue of cannabis reform.”).

securing a socially just way to end the WOD.<sup>20</sup> Within, we will contextualize and assess this effort with a view towards improving this initiative while articulating the ideal goals for a socially just path forward. Part II will review the reality of the history of the WOD, its ongoing devastation of communities of color, and how it operates to reproduce key elements of the American racial hierarchy. Part III will review and assess the approach of Illinois to the legalization of cannabis with a focus on its social equity program. Part IV will make suggestions for a better path forward, both in Illinois and beyond. The article will conclude by suggesting that policymakers risk botching the way out of the WOD as well as missing an historic opportunity to unwind key mechanisms of our nation's centuries long blight of racial hierarchy.

## II. A SHORT HISTORY OF THE WAR ON DRUGS AND ITS DEVASTATION OF COMMUNITIES OF COLOR

As we demonstrated recently, the War on Drugs arose from animus directed at the political enemies of President Richard Nixon—African Americans and the anti-war left in particular.<sup>21</sup> President Ronald Reagan doubled down on this political gambit.<sup>22</sup> President Clinton expanded the efforts of the Nixon and Reagan administrations.<sup>23</sup> In a morbid display of one-upmanship, Nixon declared a “war” on drugs, Reagan nationalized and militarized the drug war, and Clinton placed drug prohibition on steroids—all with an insidious and underlying aim to politically neutralize and devastate communities of color.<sup>24</sup> In this aim, these presidents were successful, as many communities of color have been shattered and hollowed out while millions of black and brown men and women, representing fathers, mothers, sons, daughters, brothers, sisters, breadwinners, and friends, are locked up under a mass-incarceration regime that has swept the nation and is based foundationally on drug infractions enacted under

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20. “Illinois was the first state in which the legislature legalized adult-use cannabis with a social equity program. With a statewide population of 12.6 million, one of the largest cities in the U.S., and only a limited number of cannabis business licenses available, the state is ripe with opportunity.” *Reflections on Illinois’ Social Equity Program*, COMPREHENSIVE CANNABIS CONSULTING, <https://www.3ccannabis.com/reflections-on-illinois-social-equity-program> (last visited Jan. 30, 2022) [<https://perma.cc/E5LM-RGRA>].

21. *cummings & Ramirez, supra* note 7, at 463–66 (including President Nixon’s insidious plan to harm African American and anti-war opponents through a war on marijuana and heroin as well as his commissioning a study on marijuana to seek scientific evidence to support the WOD).

22. *Id.* at 466 (beginning in 1982 with increased funding for eradication of drug use and decreased funding for education, prevention, and rehabilitation programs).

23. *Id.* at 474 (enacting Violent Crime Control and Law Enforcement Act of 1994).

24. *Id.* at 477 (“Nixon, Reagan and Clinton will forever be coupled and bonded to the racist timeline that has beset black Americans . . . a deliberate and systematic obliteration of the human and civil rights of black citizens.”).

Nixon, Reagan, and Clinton.<sup>25</sup>

*A. Intentional Presidential Harm Inflicted*

In declaring and militarizing the WOD, both Nixon and Reagan displayed near-constant animus towards people of color. Reagan opposed landmark civil-rights legislation including the Civil Rights Act of 1964 and the Voting Rights Act of 1965.<sup>26</sup> Nixon acted more politically, but nevertheless he suggested Africans uniquely lacked the ability to govern themselves, declared himself opposed to integration, acted to undermine bussing to desegregate schools, and eliminated access to the White House for “Jews, Blacks and youths.”<sup>27</sup> One aid described Nixon as believing, “America’s blacks could only marginally benefit from federal programs because they were genetically inferior.”<sup>28</sup> Nixon adopted a “very conservative approach” to all civil rights.<sup>29</sup>

Infamously, Nixon and Reagan shared offensive and racist jokes.<sup>30</sup> When Tanzania voted against the United States at the United Nations, Reagan called Nixon at the White House.<sup>31</sup> Referring to the Tanzanian delegates, Reagan stated, “To see those monkeys from those African countries, damn them. They are still uncomfortable wearing shoes.”<sup>32</sup> Nixon laughed.<sup>33</sup> The public can access the taped conversation online.<sup>34</sup>

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25. *Id.* (citing Professor Michael Tonry’s book arguing these three Presidents knew the WOD was unnecessary and ineffective, adversely impacting African American males and communities of color).

26. Doug Rossinow, *It’s Time We Face the Fact That Ronald Reagan Was Hostile to Civil Rights*, HIST. NEWS NETWORK (Apr. 20, 2015), <https://historynewsnetwork.org/article/158887> [<https://perma.cc/8785-F3RJ>].

27. Hugh Davis Graham, *Richard Nixon and Civil Rights: Explaining an Enigma*, 26 PRESIDENTIAL STUD. Q. 93, 98–99 (1996).

28. *Id.* at 94.

29. *Id.* at 99.

30. Sarah Mervosh & Niraj Chokshi, *Reagan Called Africans ‘Monkeys’ in Call With Nixon, Tape Reveals*, N.Y. TIMES (July 31, 2019), <https://www.nytimes.com/2019/07/31/us/politics/ronald-reagan-richard-nixon-racist.html> [<https://perma.cc/HQ5-BUP8>].

31. *Id.*

32. *Id.*

33. *Id.*

34. Kate Sullivan, *National Archives Releases Reagan’s Racist Call with Then-President Nixon, Ex-Nixon Library Director Says*, CNN (July 31, 2019, 3:44 PM), <https://www.cnn.com/2019/07/31/politics/ronald-reagan-richard-nixon-monkeys-african-countries/index.html> [<https://perma.cc/R5KC-KYWH>].



Nixon and Reagan also shared the now widely acknowledged “Southern Strategy.”<sup>35</sup> The “Southern Strategy” involved GOP candidates courting Southern white votes at the expense of minority voters in efforts to politically exploit racial polarization.<sup>36</sup> Overwhelming evidence for this racially driven politics includes public admissions from no fewer than two former GOP party chairpersons.<sup>37</sup> One, Michael Steele, told a graduating class at Chicago’s DePaul University, “For the last 40-plus years we had a ‘Southern Strategy’ that alienated many minority voters by focusing on the white male vote in the South.”<sup>38</sup> Another, Ken Mehlman, told the NAACP National Convention in Milwaukee,

By the '70s and into the '80s and '90s, the Democratic Party solidified its gains in the African American community, and we Republicans did not effectively reach out. Some Republicans gave up on winning the African American vote, looking the other way or trying to benefit politically from racial polarization. I am here today as the Republican chairman to tell you we were wrong.<sup>39</sup>

Nixon and Reagan purposely orchestrated this racial polarization.

Naturally, criminalizing people of color through the WOD inherently furthered the Southern Strategy. Former Richard Nixon domestic-policy adviser and Watergate co-conspirator John Ehrlichman specifically admitted to the racist underpinnings of the War on Drugs, stating,

The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I’m saying? 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. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night

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35. See IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE RE-INVENTED RACISM AND WRECKED THE MIDDLE CLASS* 24–27 (2014) (outlining the Southern strategy); Angie Maxwell, Editorial, *What We Get Wrong About the Southern Strategy*, WASH. POST (July 26, 2019), <https://www.washingtonpost.com/outlook/2019/07/26/what-we-get-wrong-about-southern-strategy/> [https://perma.cc/YHW4-8565] (describing the Southern Strategy as long-term campaign to win allegiance of white voters and remake Republican party in Southern white image).

36. LÓPEZ, *supra* note 35, at 26.

37. See STEVEN A. RAMIREZ, *LAWLESS CAPITALISM* 152 (2013) (discussing the surfacing of racially driven politics).

38. Elyse Siegel, *Michael Steele: For Decades GOP Pursued ‘Southern Strategy’ That Alienated Minorities*, HUFF. POST (June 22, 2010, 5:12 AM), [https://www.huffpost.com/entry/michael-steele-for-decade\\_n\\_547702](https://www.huffpost.com/entry/michael-steele-for-decade_n_547702) [https://perma.cc/DH2L-LSTA].

39. Mike Allen, *RNC Chief to Say it Was ‘Wrong’ to Exploit Racial Conflict for Votes*, WASH. POST (July 14, 2005), <https://www.washingtonpost.com/wp-dyn/content/article/2005/07/13/AR2005071302342.html> [https://perma.cc/7JJB-KHCS].

after night on the evening news. Did we know we were lying about the drugs? Of course we did.<sup>40</sup>

Key Reagan administration official (and one-time GOP chair) Lee Atwater made statements fully consistent with Ehrlichman's admission (but perhaps even more offensive).<sup>41</sup> The public can access recordings of his comments online, too.<sup>42</sup> These key political advisors' statements suggest the WOD was never about ending drug abuse or stemming the flow of drugs into the United States; rather, the WOD was a political ploy to entrench power within the white, male elite and neutralize the voting power and do positive injury to communities of color.<sup>43</sup>

If the intent of the WOD was focused on decimating the African American community, its impact proves that intent—particularly as a brutal political reality.<sup>44</sup> Shortly after Richard Nixon inaugurated the WOD the incarceration rate in the United States shot up; it ultimately increased to nearly five times the incarceration rate of 1971.<sup>45</sup> This wholly unnatural

40. Dan Baum, *Legalize It All*, HARPER'S MAG. (Apr. 2016), <https://harpers.org/archive/2016/04/legalize-it-all/> [<https://perma.cc/R93U-FHMU>].

41. Rick Perlstein, *Exclusive: Lee Atwater's Infamous 1981 Interview on the Southern Strategy*, THE NATION (Nov. 13, 2012), <https://www.thenation.com/article/archive/exclusive-lee-atwaters-infamous-1981-interview-southern-strategy/> [<https://perma.cc/F4CF-4TLF>]. Atwater stated:

You start out in 1954 by saying "n\*\*\*\*r, n\*\*\*\*r, n\*\*\*\*r." By 1968 you can't say "n\*\*\*\*r"—that hurts you, backfires. So you say stuff like, uh, forced busing, states' rights, and all that stuff, and you're getting so abstract. Now, you're talking about cutting taxes, and all these things you're talking about are totally economic things and the by-product of them is, blacks get hurt worse than whites. . . .

*Id.*

42. *Id.*

43. cummings & Ramirez, *supra* note 7, at 488.

44. See Baum, *supra* note 40 (noting that one in eight African American voters suffered disenfranchisement due to a felony conviction). Today, the rapid growth of the Latinx population in recent years means it now also suffers the negative consequences of the WOD. Jeffrey S. Passel, Mark Hugo Lopez & D'Vera Cohn, *U.S. Hispanic Population Continued Its Geographic Spread in the 2010s*, PEW RSCH. CTR. (Feb. 3, 2022), <https://www.pewresearch.org/facttank/2022/02/03/u-s-hispanic-population-continued-its-geographic-spread-in-the-2010s> [<https://perma.cc/8DV A-Q5S3>] (demonstrating impact of the WOD on Hispanic populations).

45. Mark J. Perry, *The Shocking Story Behind Richard Nixon's "War on Drugs" That Targeted Blacks and Anti-War Activists*, AM. ENTER. INST. (June 14, 2018), <https://www.aei.org/carpediem/the-shocking-and-sickening-story-behind-nixons-war-on-drugs-that-targeted-blacks-and-anti-war-activists/> [<https://perma.cc/E257-KP6H>]. "If the real goal of the War on Drugs was to target, convict and incarcerate subversive anti-war 'hippies' and black Americans, as Ehrlichman describes it, it sure worked. . . ." *Id.* To further contextualize this:

During the nearly 50-year period between 1925 and the early 1970s, the male incarceration rate was remarkably stable at about 200 men per 100,000 population, or 1 US male per 500, according to data from Bureau of Justice Statistics. By 1986, about a decade after the War on Drugs started locking up drug users and dealers in cages, the male incarceration rate doubled to 400 per 100,000 population.

*Id.*

incarceration rate cannot be deemed an accident. It instead must arise from the very predictable nature of any WOD.<sup>46</sup> After all, while Nixon started the modern incarnation of the WOD, prior efforts at federal prohibition of narcotics similarly involved a focus on the supposed ability of illicit drugs to induce poor conduct among people of color.<sup>47</sup> The “Founding Father” of earlier efforts at narcotics prohibition racialized the effort at its root.<sup>48</sup> In fact, even a cursory review of the impact of the WOD over the years reveals that Nixon and Reagan could count on systemic racism within the criminal justice system (from start to finish) to create grave injustice at its core.<sup>49</sup> Such grave injustice continues today and now

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46. See *id.* (“The arrest and incarceration data show that the War on Drugs had a significantly much greater negative effect on blacks and Hispanics than whites, making the Drug War even more shameful for its devastating and disproportionate adverse effects on America’s most vulnerable and disadvantaged populations.”); DORIS MARIE PROVINE, *UNEQUAL UNDER LAW: RACE IN THE WAR ON DRUGS* 4–5, 12 (2007) (“Our history of embedded racism also helps to explain the public’s otherwise surprising tolerance for failed policies, even in the face of the tremendous human suffering associated with incarceration.”).

47. See Doris Marie Provine, *Race and Inequality in the War on Drugs*, 7 ANN. REV. L. SOC. SCI. 41, 43 (2011) (“The government’s war on recreational drugs did not really get underway until 1930 when Harry Anslinger left his post in the Bureau of Prohibition to become the first commissioner of the Federal Bureau of Narcotics. He used his post—which he held for a remarkable 32 years—to argue that drug addicts were the most serious criminals in the nation.”). Anslinger epitomized “the goal . . . to establish harsh criminal sanctions for selected drugs. The most fruitful approach has been to link the drug with a disliked racial minority. The specter of out-of-control behavior by the feared racial ‘other’ helps to make the case for strong criminal sanctions.” *Id.* at 42.

48. Colin Moynihan, *An Exhibition Tells the Story of a Drug War Leader, but Not All of It*, N.Y. TIMES (Aug. 10, 2020), <https://www.nytimes.com/2020/08/10/arts/design/Anslinger-drug-czar-exhibition.html> [<https://perma.cc/2QT6-8FPS>] (“Harry J. Anslinger’s pioneering work as head of the Federal Bureau of Narcotics has largely been unsung, though experts see him as the founding father of America’s war on drugs.”) For example, Anslinger used racial slurs in his communications to the President and referred to “Oriental ruthlessness” with respect to the underworld of opiate drugs in his own book. *Id.* “Johann Hari, a writer and critic of U.S. drug policy, described Mr. Anslinger in his book ‘Chasing the Scream: The First and Last Days of the War on Drugs’ as someone who depicted drugs as dangerous by associating them with racial minorities. He said in an email message that his research indicated that Mr. Anslinger had adopted ‘a consistent framing that drugs are something nonwhite people disproportionately use.’” *Id.* Anslinger stated that cannabis caused “white women to seek sexual relations with Negroes . . .” and that it made African Americans “think they’re as good as white men.” Nick Wing, *Marijuana Prohibition Was Racist from the Start. Not Much Has Changed*, HUFFINGTON POST (Jan. 14, 2014, 2:02 PM), [https://www.huffpost.com/entry/marijuana-prohibition-racist\\_n\\_4590190](https://www.huffpost.com/entry/marijuana-prohibition-racist_n_4590190) [<https://perma.cc/87N7-9S79>]. See also Robert Solomon, *Racism and Its Effect on Cannabis Research*, 5 CANNABIS & CANNABINOID RESEARCH 1, 3 (2020) (reciting Anslinger’s racist associations between drug use and communities of color).

49. See, e.g., MICHAEL TONRY, *MALIGN NEGLECT: RACE, CRIME, AND PUNISHMENT IN AMERICA* 81–83, 208 (1996) (“The entanglement of extraordinary numbers of black American males in the justice system’s tentacles damages them, their children, and their communities.”) (reviewed in Paul Reidinger, *Separate but Unequal Lives*, ABA J., Dec. 1995, at 86, 86); Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677, 679 (1995) (positing that the disparate treatment of African Americans, including the mass incarceration

stands as an increasingly established fact.<sup>50</sup> The system delivered as Nixon and Reagan hoped and planned.

### B. Chicago Police Department Corruption

In Illinois, the Chicago Police Department has featured more than its fair share of police corruption tied to the War on Drugs over the years. Most recently, two officers pleaded guilty to terrorizing Chicago's African American community for years by planting drugs on innocent victims, shaking down drug dealers for offers of protection, and extorting victims with promises of favorable or threats of unfavorable treatment.<sup>51</sup> This latest scandal led Illinois courts to overturn 115 criminal convictions, and eighty-three other petitioners remain in prison or under cloud of conviction awaiting relief.<sup>52</sup> Cook County prosecutors barred ten active officers tied to the criminality from testifying in criminal cases.<sup>53</sup> The WOD incentivized and facilitated this type of police misconduct because of the ease of planting evidence, harsh sentences for drug convictions, and huge incentives, both in weapons and financial support, the federal government provides to local law enforcement as a key part of the WOD.<sup>54</sup> This type of misconduct, fundamentally tied to and a deeply

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of African Americans pursuant to the WOD, creates a "moral responsibility of [B]lack jurors to emancipate some guilty [B]lack outlaws"); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1272–73 (2004) ("The gap between black and white incarceration rates . . . has deepened along with rising inmate numbers. [T]he transformation of prison policy at the turn of the twenty-first century is most accurately characterized as the mass incarceration of African Americans.").

50. See, e.g., ELIZABETH TSAI BISHOP ET AL., CRIM. JUST. POL'Y PROGRAM, HARV. L. SCH., RACIAL DISPARITIES IN THE MASSACHUSETTS CRIMINAL SYSTEM 1–2 (2020) (highlighting that Massachusetts incarcerates "Black people at a rate 7.9 times that of White people and Latinx people at 4.9 times that of White people" and concluding that people of color are disproportionately arrested, charged more harshly, and sentenced more severely); M. Marit Rehavi & Sonja B. Starr, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014) (finding similar disparities in the federal system).

51. Matthew Hendrickson, *5 More Cases Tied to Corrupt Former Police Sgt. Ronald Watts Dropped—Leaving 83 Others Still in Limbo*, CHI. SUN-TIMES (Nov. 4, 2021, 5:18 PM), <https://chicago.suntimes.com/crime/2021/11/4/22763390/ronald-watts-chicago-exonerations-cook-county-states-attorney-kim-foxx> [https://perma.cc/PN3R-98H4].

52. *Id.*

53. Jason Meisner, *Cook County Prosecutors Bar 10 Chicago Cops from Testifying Because of Ties to Corrupt Ex-Sgt. Ronald Watts*, CHI. TRIB. (Apr. 24, 2018), <https://www.chicagotribune.com/news/breaking/ct-met-chicago-cops-corruption-ronald-watts-20180423-story.html> [https://perma.cc/FW6Q-A2C9].

54. ALEXANDER, *supra* note 6, at 73 ("Huge cash grants were made to those law enforcement agencies that were willing to make drug-law enforcement a top priority."); Timothy Egan, *Soldiers of the Drug War Remain on Duty*, N.Y. TIMES (Mar. 1, 1999), <https://www.nytimes.com/1999/03/01/us/soldiers-of-the-drug-war-remain-on-duty.html> [https://perma.cc/P9L3-

rooted part of the WOD, inflicts significant harm upon communities of color.<sup>55</sup> We may never achieve a true and accurate accounting of the number of victims of color, their identity, the number of unnecessary years they have served in jail, or the lost futures destroyed in service of the racist and discriminatory War on Drugs.<sup>56</sup> Politicians, academics, activists and impacted community members call for not just an end to the WOD, but clear policy enactments that repair the damage done to harmed communities and the injuries that have been visited upon people of color in the nearly five-decade “war.”<sup>57</sup>

### III. MITIGATING AND REPAIRING THE HARMS INFLICTED ON COMMUNITIES OF COLOR BY THE WAR ON DRUGS

The clear, superior policy choice available to combat the harms of the WOD consists of treatment of drug addiction and abuse, rather than criminalization.<sup>58</sup> In Portugal, drug abuse plunged in the wake of complete decriminalization of narcotics.<sup>59</sup> Given the heinous record in Illinois with

SGRV] (“Encouraged by Federal grants, surplus equipment handed out by the military and seizure laws that allow police departments to keep much of what their special units take in raids, the Kevlar-helmeted brigades have grown dramatically, even in the face of plummeting crime figures.”).

55. Jason Meisner, *Ex-Chicago Cop, a Fugitive for Almost 15 Years, Arrested in Detroit*, CHI. TRIB. (Sep. 19, 2017, 6:47 PM), <https://www.chicagotribune.com/news/breaking/ct-fugitive-ex-chicago-cop-arrested-met-20170919-story.html> [<https://perma.cc/25PF-J9Q3>] (“A 29-year veteran of the police force, Hicks [a former narcotics officer] was charged in Chicago in 2001 with running a crew of rogue officers who robbed drug dealers, pocketed the illicit cash and sold the stolen drugs to other pushers.”); see also andré douglas pond cummings, *Reforming Policing*, 10 DREXEL L. REV. 573, 622–24 (2018) (tracing militarization of policing to WOD, inflicting state violence against communities of color); ALEX S. VITALE, *THE END OF POLICING* 4–11 (2017) (discussing impact of WOD on communities of color).

56. Kennedy et al., *supra* note 16, at 784 (“Exactly how and why we have spent billions of dollars prosecuting drug crime and incarcerating hundreds of thousands of offenders for millions of hours without keeping more careful track of whom we were arresting and for what quantity is a question that may someday puzzle future, more enlightened, generations.”).

57. E.g., Booker, Lee, Khanna Introduce Landmark Marijuana Justice Bill, SEN. CORY BOOKER (Feb. 28, 2019), <https://www.booker.senate.gov/news/press/booker-lee-khanna-introduce-landmark-marijuana-justice-bill> [<https://perma.cc/W7ZQ-DBJE>] (sponsoring bill to end federal prohibition on marijuana, expunge records, and reinvest in communities impacted by WOD); Bryon Adinoff & Amanda Reiman, *Implementing Social Justice in the Transition from Illicit to Legal Cannabis*, 45 AM. J. DRUG & ALCOHOL ABUSE 673, 684 (2019) (focusing on regulatory and financial policies that can maximize benefits and mitigate negatives of cannabis legalization.).

58. *US: Disastrous Toll of Criminalizing Drug Use*, HUM. RTS. WATCH, (Oct. 12, 2016, 12:01 AM), <https://www.hrw.org/news/2016/10/12/us-disastrous-toll-criminalizing-drug-use#> [<https://perma.cc/L5QN-2MQQ>] (“The massive enforcement of laws criminalizing personal drug use and possession in the United States causes devastating harm . . . Enforcement ruins individual and family lives, discriminates against people of color, and undermines public health.”).

59. Caitlin Elizabeth Hughes & Alex Stevens, *What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?*, 50 BRIT. J. CRIMINOLOGY 999, 1018 (2010). “The Portuguese evidence suggests that combining the removal of criminal penalties with the use of alternative therapeutic responses to dependent drug users offers several advantages. It can reduce the burden of

respect to policing and the WOD,<sup>60</sup> social equity demands wider decriminalization and the diversion of funding from the criminal justice system to more humane approaches for addressing drug abuse.<sup>61</sup> Removing the stigma of criminalization and getting addicts out of prison play essential roles in recovery.<sup>62</sup> According to Dr. Nora Volkow, Director of the National Institute on Drug Abuse, “The research is unequivocal that putting someone who is addicted into prison or jail actually exacerbates their condition and puts them at much greater risk for relapse.”<sup>63</sup> The criminalization of drugs has proven excessively costly, inhumane, and racist.<sup>64</sup>

The costs associated with the War on Drugs fall disproportionately upon communities of color and promise to continue the indefinite reproduction of the American racial hierarchy. The economic harm from a felony conviction and subsequent incarceration literally lasts a lifetime. According to Nobel laureate Joseph Stiglitz, “As a perpetual drag on the earning potential of tens of millions of Americans, these costs are not only borne by individuals, their families, and their communities. They are also system-wide drivers of inequality and are so large as to have macroeconomic consequences.”<sup>65</sup>

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drug law enforcement on the criminal justice system, while also reducing problematic drug use.” *Id.* See also andré douglas pond cummings, “All Eyes on Me”: America’s War on Drugs and the Prison-Industrial Complex, 12 J. GENDER, RACE & JUST. 417, 447 (2012) (“While a profound corporate backlash would likely occur, the United States could seriously contemplate Portugal’s experiment with eliminating most prison time for all drug use.”).

60. See Tanya Basu, *Behind “the Disappeared” of Chicago’s Homan Square*, THE ATLANTIC (Feb. 24, 2015), <https://www.theatlantic.com/national/archive/2015/02/behind-the-disappeared-of-chicagos-homan-square/385964/> [<https://perma.cc/6BZZ-MAFW>] (detailing Chicago’s Homan Square, a “black site” detention center notorious for police brutality).

61. See Hughes & Stevens, *supra* note 59, at 1018 (“[T]his article [suggests] the need for more nuanced discussions of decriminalization, with acknowledgement of the different models and approaches that can be adopted and of their various costs and benefits.”) The authors also recognize that “the choice to decriminalize is not simply a question of the research. It is also an ethical and political choice of how the state should respond to drug use.” *Id.* For a new assessment of current data from Portugal, see Harvey Slade, *Drug Decriminalization in Portugal: Setting the Record Straight* (May 13, 2021), <https://transformdrugs.org/blog/drug-decriminalisation-in-portugal-setting-the-record-straight> [<https://perma.cc/RAK6-PSQD>] (“Portugal has set a positive example for what can be done when drug policies prioritise health rather than criminalisation. . . . Many impacts of reform were felt immediately: new HIV infections, drug deaths and the prison population all fell sharply within the first decade.”).

62. Slade, *supra* note 61.

63. Maia Szalavitz, *Treating Addiction as a Crime Doesn’t Work. What Oregon Is Doing Just Might*, N.Y. TIMES (Jan. 26, 2022), <https://www.nytimes.com/2022/01/26/opinion/oregon-drug-decriminalization-addiction.html> [<https://perma.cc/3CBG-9MBR>].

64. See generally cummings & Ramirez, *supra* note 7.

65. Stiglitz, *supra* note 13, at 4.

A. *Legalizing Marijuana and Creating Social Equity Opportunities*

As most now recognize that the WOD failed spectacularly, forward-looking states are decriminalizing and legalizing marijuana and in many of these legislative enactments are including social-equity provisions that seek to repair some of the harm done to communities of color we have identified above. We query here whether those social-equity provisions are real and whether they repair the positive injury done to people of color and their communities. Specifically, we look to see whether the Illinois Cannabis Social Equity Program repairs the harms the WOD visited upon Illinois communities of color.

As of this writing, eighteen states in the United States, plus the District of Columbia, have legalized recreational marijuana within their borders. In a rapid reversal from fifteen years ago, a strong majority of U.S. citizens now favor the legalization of marijuana.<sup>66</sup> Just thirty years ago, in 1988, only twenty-four percent of the U.S. population favored legalizing cannabis.<sup>67</sup> In 2018, that number had shifted dramatically to sixty-six percent of U.S. residents in favor of legalization.<sup>68</sup> The following eighteen states have legalized marijuana use: Alaska, Arizona, California, Colorado, Connecticut, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Vermont, Virginia, and Washington, plus Washington, D.C.<sup>69</sup> Of these, many include some form of social-equity legislation that seeks to set aside monies to repair the damage inflicted upon those communities most impacted by the WOD.<sup>70</sup>

An evaluation of the effectiveness of each state's social-equity provision is beyond the scope of this article. First, many of these state enactments are complex and difficult to interpret, and it is extremely difficult to qualify for the benefits under the new laws.<sup>71</sup> While these provisions take a step in the right direction, injured communities of color need better

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66. Amy Adamczyk, Christopher Thomas & Jacob Felson, *Why Do So Many Americans Now Support Legalizing Marijuana?*, PBS NEWSHOUR (Feb. 5, 2019, 5:13 PM), <https://www.pbs.org/newshour/science/why-so-many-americans-now-support-legalizing-marijuana-in-4-charts> [<https://perma.cc/E6DH-GSGE>].

67. *Id.*

68. *Id.*

69. Claire Hansen et al., *Where Is Marijuana Legal? A Guide to Marijuana Legalization*, U.S. NEWS & WORLD REP. (Apr. 20, 2022), <https://www.usnews.com/news/best-states/articles/where-is-marijuana-legal-a-guide-to-marijuana-legalization> [<https://perma.cc/8WDK-S6P8>].

70. Courtney Connley, *Cannabis Is Projected to Be a \$70 Billion Market by 2028—Yet Those Hurt Most by the War on Drugs Lack Access*, CNBC (July 1, 2021, 11:30 AM), <https://www.cnbc.com/2021/07/01/in-billion-dollar-cannabis-market-racial-inequity-persists-despite-legalization.html> [<https://perma.cc/8AZL-RXCT>].

71. *See id.* (“Some of the biggest barriers to accessing a license in the legally regulated cannabis market are capital and local government regulations . . .”).

policies and programs that allow repair—not paperwork and difficult-to-attain benefits. Second, some of the social-equity enactments are meant to allow citizens from impacted communities to gain access and licensure to the marijuana trade through opening dispensaries or growing facilities.<sup>72</sup> While well-intentioned, this licensing incentive repairs only a fraction of the injury visited upon communities of color and does not take into account the complexity of the licensure process that is supposed to benefit harmed populations.<sup>73</sup> Further, many people of color who need and seek repair are not interested in opening marijuana dispensaries.

At bottom, however laudable the legalization legislation that recognizes the terrible harms the WOD inflicted on targeted communities in the United States, the social-equity provisions in general are simply not close to being enough, neither creatively nor substantively. To truly repair the dreadful damage that the WOD inflicted on nationwide communities of color, marijuana legalization must provide repair to harmed communities and must reverse the law-enforcement disparities that remain in drug arrests, despite the legalization of cannabis.<sup>74</sup>

### B. *The Costs in Illinois*

The Brennan Center for Justice recently released a report, *Conviction, Imprisonment, and Lost Earnings*, that placed the lifetime earnings hit suffered by each “formerly incarcerated” individual at \$484,400.<sup>75</sup> While data is spotty, about 76,000 Illinoisans dwell in prisons, and Hispanics face twice the rate of incarceration of whites, while blacks face a rate that is 8.5 times higher.<sup>76</sup> Another 602,201 Illinoisans formerly have suffered a felony conviction.<sup>77</sup> These felony convictions entail permanent adverse

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72. *Id.*

73. *See id.* (“Across the country, data shows that many states and cities have seen less than satisfying outcomes from their social equity initiatives. In Massachusetts, only 1.2% of businesses are owned by racial minorities despite their social equity efforts.”).

74. Other scholars have recognized the centrality of law-enforcement reform to repairing the disproportionate harm suffered in communities of color from the war on drugs. *See* Kilmer et al., *supra* note 8, at 1010–12 (describing importance of reducing arrests and penalties for drug possession and expunging criminal records from WOD years).

75. CRAIGIE ET AL., *supra* note 13, at 7.

76. Prison Pol’y Initiative, *Illinois Profile*, <https://www.prisonpolicy.org/profiles/IL.html> (last visited Apr. 26, 2022) [<https://perma.cc/X2XQ-EFR6>].

77. KATIE BUITRAGO & SANDRA ESCOBAR-SCHULZ, HEARTLAND ALL., NEVER FULLY FREE 9 (2020), <https://socialimpactresearchcenter.issuelab.org/resources/36915/36915.pdf> [<https://perma.cc/ZR2N-MUXA>]. Illinois imposes 1,189 laws disempowering those with criminal records. Vivian La, *New Campaign Aims to Help Formerly Incarcerated People Through Laws, Outreach*, ILL. NEWSROOM (July 22, 2021), <https://illinoisnewsroom.org/new-campaign-aims-to-help-formerly-incarcerated-people-through-laws-outreach/> [<https://perma.cc/DGG3-6LC5>].



employment prospects, disqualification from various government programs, loss of professional-licensing opportunities, additional law-enforcement scrutiny and profiling, and associated negative health outcomes.<sup>78</sup> These negative outcomes can also adversely affect future generations.<sup>79</sup> Moreover, in Illinois racially disparate arrests continue for cannabis despite legalization.<sup>80</sup>

In Illinois, over the past few decades, about twenty percent of those jailed were labeled drug offenders.<sup>81</sup> Experts, however, estimate that as many as two-thirds of inmates committed crimes against property arising from drug addiction and prohibition.<sup>82</sup> This estimate seems reasonable given the surge of incarceration in Illinois coinciding with the WOD, which between 1978 and 2015 saw the total prison population in Illinois quadruple.<sup>83</sup> Assuming a minimum of twenty percent of mass incarceration was driven by the WOD, this would support a reasonable estimate that the WOD cost the people of Illinois about \$66 billion in lost human capital.<sup>84</sup> These losses impacted communities of color first and foremost, at a rate that likely mirrors the disproportionate rate of incarcerations in communities of color.<sup>85</sup>

In addition, the State of Illinois spends about \$37,000 to incarcerate an inmate for one year.<sup>86</sup> Thus, the state's taxpayers spend about \$2.8 billion

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78. Kilmer et al., *supra* note 8, at 1006.

79. *Id.*

80. See Cummings & Ramirez, *supra* note 7, at 481 (showing continued trend in Chicago of disparate arrest rates of people of color for cannabis sale and possession after legalization); see also Kilmer et al., *supra* note 8, at 1010 (collecting studies from various jurisdictions and concluding that youth of color actually suffered greater arrest disparities after legalization).

81. CHI. APPLESEED CTR. FOR FAIR CTS., RECLASSIFICATION OF PENALTIES FOR LOW-LEVEL DRUG POSSESSION IN ILLINOIS: AN OVERVIEW 17 (2021), <https://www.chicagoappleseed.org/community-resources/#reducing-barriers-to-recovery> [<https://perma.cc/P4MU-PD86>].

82. Carl Vogel, *An End to Mass Incarceration*, UNIV. CHI. SCH. SOC. SERV. ADMIN. MAG., [https://crownschool.uchicago.edu/ssa\\_magazine/end-mass-incarceration](https://crownschool.uchicago.edu/ssa_magazine/end-mass-incarceration) (last visited May 22, 2022) [<https://perma.cc/W8SA-KKP2>] (“40 percent of the Illinois Department of Corrections population [was] incarcerated for drug offences as of 2005, . . . [and] [t]wo-thirds of the inmates are nonviolent offenders who became caught up in the drug economy or committed crimes to get money to feed their addictions.”). Some experts suggest the actual number of drug offenders may reach higher levels. *Id.*

83. See *Illinois Profile*, *supra* note 76 (showing growth of Illinois incarceration rate since 1978).

84. See CRAIGIE ET AL., *supra* note 13, at 7 (estimating average lifetime earning loss at \$484,400 per incarcerated person); see also *supra* notes 75–77 and accompanying text (\$484,000 x 678,000 x 0.20).

85. See BUITRAGO & ESCOBAR-SCHULZ, *supra* note 77, at 13 (showing disproportionate rates of arrests and convictions of black Illinoisans since start of the WOD).

86. *Trends in Illinois Department of Corrections Spending and Prison Population*, INST. FOR ILL.'S FISCAL SUSTAINABILITY AT THE CIVIC FED'N (Mar. 20, 2020), <https://www.civ-icfed.org/iifs/blog/trends-illinois-department-corrections-spending-and-prison-population> [<https://perma.cc/J66F-8ZVG>].

per annum to incarcerate its citizens.<sup>87</sup> Again, about twenty percent of that amount directly or indirectly arises from drug offenses.<sup>88</sup> Thus, the state spends \$560 million per annum to destroy the human capital of its citizens pursuant to the WOD.<sup>89</sup>

In contrast, Illinois expends about \$2.5 billion for higher education,<sup>90</sup> so its incarceration expenditures effectively cancel out a substantial portion of its support of higher education. Alternatively, compare the cost of a year of incarceration to what an unaided Illinois resident student pays for one year's tuition, room and board at University of Illinois: \$38,154.<sup>91</sup> The State spends more destroying human capital than building human capital, especially when it comes to communities of color.

Furthermore, the Cato Institute estimates that tax revenues from bringing the black market of drug-dealing into the legitimate economy would generate nearly \$20 billion in tax revenue at the state level and nearly \$40 billion in federal tax revenues.<sup>92</sup> This reckoning does not include any surtax to offset the manifest externalities in drug use—such as additional health care costs and accidents.<sup>93</sup> A ten percent surtax should aim to fund externalities (such as accidents or drains on medical resources), and therefore not actually lead to any net economic benefit.<sup>94</sup> Nevertheless, given that Illinois is responsible for four percent of national GDP, it could generate nearly \$1 billion per annum in additional tax revenues while depriving gangs of these resources.

The destruction of human capital, wasted government expenditures,

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87. This total was calculated by assuming the average per-inmate yearly expenditure in state prisons (\$37,000) applies to people incarcerated in all types of facilities in Illinois and multiplying that average by the approximately 76,000 Illinoisans living in prisons in a given year. See Prison Pol'y Initiative, *supra* note 76.

88. CHI. APPLESEED CTR. FOR FAIR CTS., *supra* note 81, at 17; Vogel, *supra* note 82.

89. See *supra* note 61.

90. See Press Release, Ill. Bd. Higher Educ., Illinois Higher Education Organizations Laud \$2.484 Billion Level of Funding in State's FY22 Budget 1 (July 9, 2021), [https://www2.illinois.gov/HISNews/23547-Illinois\\_Higher\\_Education\\_Organizations\\_Laud\\_\\$2.484\\_Billion\\_Level\\_of\\_Funding\\_in\\_State%E2%80%99s\\_FY22\\_Budget.pdf](https://www2.illinois.gov/HISNews/23547-Illinois_Higher_Education_Organizations_Laud_$2.484_Billion_Level_of_Funding_in_State%E2%80%99s_FY22_Budget.pdf) [<https://perma.cc/6AT8-4PV>].

91. Tuition, UNIV. ILL. URBANA-CHAMPAIGN, <https://admissions.illinois.edu/Invest/tuition> (last visited Jan. 31, 2022) [<https://perma.cc/Z4PF-MH64>] (showing undiscounted annual tuition and fees for an Illinois resident priced at \$17,138–\$22,324 and room and board at \$12,720).

92. Jeffrey Miron, *The Budgetary Effects of Ending Drug Prohibition*, CATO INST. (July 23, 2018), <https://www.cato.org/tax-budget-bulletin/budgetary-effects-ending-drug-prohibition> [<https://perma.cc/2865-2FVS>] (“[F]ull drug legalization would yield \$19 billion in state and local tax revenue and \$39 billion in federal tax revenue.”).

93. See *id.* (discussing tax revenues from ending drug prohibition).

94. William J. Baumol, *On Taxation and the Control of Externalities*, 62 AM. ECON. REV. 307, 307–08, 320 (1972) (explaining when an activity imposes costs on others not subject to contract negotiation those costs should be recovered from profits of the producer of those costs).

and reduced revenues only constitute the most egregious and easily calculated costs. In 2016, a Police Accountability Task Force in Chicago found that police searched black and Latino drivers four times as often as white drivers, even though police found contraband on white drivers twice as often as black and Latino drivers.<sup>95</sup> Disparate law-enforcement practices lead to disparate law-enforcement outcomes and feed into the replication of the racial hierarchy. They also impose regular humiliation upon citizens of color in Illinois, even if in an unquantifiable manner.

Children of the victims of disparities in the criminal injustice system suffer from a lack of economic resources, behavioral challenges, lower educational attainment, and greater likelihood of involvement with the criminal injustice system.<sup>96</sup> A child of color born in 1990 faced a 6.8 times greater risk of a parent being incarcerated relative to a white child.<sup>97</sup> Effectively, the WOD not only destroys human capital for those ensnared, but also does so on an multigenerational basis.

Other costs of the war that escape quantification include the loss of trust and respect for the government, a weaker rule of law, impaired individual rights, increased suspicion of law enforcement, and increased attractiveness of lawlessness and gang membership.<sup>98</sup> Citizenship itself suffers impairment.<sup>99</sup> While these losses defy tally, the harm associated accumulates in the form of lives ruined, theft of opportunity, and weaker communities.

#### IV. ASSESSING THE ILLINOIS CANNABIS SOCIAL EQUITY PROGRAM

The Cannabis Regulation and Tax Act (CRTA)<sup>100</sup> legalized recreational cannabis for adult use in Illinois as of January 1, 2020.<sup>101</sup> The Illi-

95. POLICE ACCOUNTABILITY TASK FORCE, RECOMMENDATIONS FOR REFORM: RESTORING TRUST BETWEEN THE CHICAGO POLICE AND THE COMMUNITIES THEY SERVE 8 (2016), <https://ra-ceandpolicing.issuelab.org/resource/recommendations-for-reform-restoring-trust-between-the-chicago-police-and-the-communities-they-serve.html> [https://perma.cc/QNC8-HY5E].

96. Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, NAT'L INST. OF JUST. J., Mar. 2017, at 10, 10.

97. Christopher Wildeman, *Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage*, 46 DEMOGRAPHY 265, 272 (2009).

98. cummings & Ramirez, *supra* note 1, at 472 n.8 (citing PIAGGIO & VIDWANS, *supra* note 12, at 44–45).

99. Indeed, the essential issue of criminalization and harm reduction revolves around recasting criminals as rights-bearing citizens. See Shana Harris, *Possessing Drugs, Possessing Rights: Harm Reduction and Drug Policy Reform in Argentina*, 48 CONTEMP. DRUG PROBLEMS 260, 271 (2021) (“Promoting [people who use drugs (PWUD)] rights has incited harm reductionists in various locales to lobby for laws and policies that protect rather than violate PWUD rights.”).

100. 410 ILL. COMP. STAT. 705 (2019).

101. *Illinois Adult-Use Cannabis Social Equity Program*, ILL. DEP'T OF COM. & ECON. OPPORTUNITY, <https://www2.illinois.gov/dceo/CannabisEquity/Pages/default.aspx> (last visited Jan. 31, 2022) [https://perma.cc/N8KD-LZ6A].

nois Department of Commerce and Economic Opportunity (DCEO), acting under the authority granted in the CRTA, developed the Illinois Adult-Use Cannabis Social Equity Program (ICSEP).<sup>102</sup>

Illinois was the first state to include social equity as part of its legalization of cannabis.<sup>103</sup> The ICSEP aims to help “social equity applicants” apply for cannabis licenses if they originate from an area disproportionately impacted by the WOD or otherwise link their business to such areas or persons disproportionately impacted by the WOD;<sup>104</sup> and seeks to reinvest twenty-five percent of revenues to prevent violence and to develop areas damaged by the WOD.<sup>105</sup> In addition, the legislation sought to facilitate expungements for those with criminal records due to cannabis.<sup>106</sup>

Yet, despite the legislation’s intent, the ICSEP did not actually result in social equity as envisioned. First, consider expungements. Here, futures and employment opportunities hang in the balance, and the economic damage from prior criminal penalties amounts to hundreds of thousands of dollars per individual in forgone economic possibilities, as discussed above.<sup>107</sup> The State acknowledges that hundreds of thousands languish with criminal records and incarceration relating to cannabis.<sup>108</sup> Nevertheless, the State fails to attend to the administrative details of expungements, according to lawyers working for expungements.<sup>109</sup> At best, cannabis expungements proceed at a snail’s pace.<sup>110</sup> Complete data relat-

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102. *Id.*

103. *Reflections on Illinois’ Social Equity Program*, *supra* note 20.

104. *See Social Equity Applicant Criteria*, ILL. DEP’T OF COM. & ECON. OPPORTUNITY, <https://www2.illinois.gov/dceo/CannabisEquity/Pages/SocialEquityApplicantCriteria.aspx> (last visited Jan. 31, 2022) [<https://perma.cc/J675-V5U8>] (detailing criteria for qualification as a social-equity applicant).

105. *See* 410 ILL. COMP. STAT. 705/10-40 (2019) (creating Restore, Reinvest, Renew (R3) Program); *Restore, Reinvest, Renew (R3) Program*, ILL. JUST. PROJECT, <https://www.iljp.org/r3program> (last visited May 22, 2022) [<https://perma.cc/8XZE-L9ME>] (“The R3 Program drives 25% of cannabis tax revenue to fund grants for violence prevention, reentry, youth development, economic development and civil legal aid services in areas of the state that our [sic] objectively found to be acutely suffering from the horrors of violence, bolstered by concentrated disinvestment, identified by their rates of gun injuries, child poverty, unemployment, and incarceration rates.”).

106. 20 ILL. COMP. STAT. 2630/5.2(i) (2019).

107. *See supra* notes 84–89 and accompanying text.

108. Renée Cooper, *Thousands Still Eligible for Record Expungement Two Years After Illinois Legalizes Recreational Marijuana*, WCIA (Sept. 16, 2021, 7:18 PM), <https://www.wcia.com/news/target3/thousands-still-eligible-for-record-expungement-two-years-after-illinois-legalizes-recreational-marijuana/> [<https://perma.cc/J6PJ-PSUH>].

109. *Id.*

110. *Id.* According to the Illinois Sentencing Policy Advisory Council about 572,000 are eligible for expungements of minor cannabis-related offenses. *Id.* Yet in the most recent fiscal year the

ing to actual expungements is not available; this itself is a major shortcoming in social equity.<sup>111</sup> Even if automatic expungements proceed according to statutory schedule, records created prior to 2000 will not be expunged until 2025.<sup>112</sup> Legislation should require that certain expungements occur by operation of law and that transmitting or relying upon a cannabis-only record be deemed unlawful. Additionally, victims with records in which cannabis played a substantial factor should be subject to a petition for expungement so long as no violence was involved. Legal-aid funding should support such petitions. Finally, these expungements obviously only apply to cannabis offenders; other nonviolent drug offenders simply must endure lives at the economic margins of society, robbing all of us of the opportunity to sell our goods and services into a fully developed marketplace.

Next, with respect to helping victims of the WOD obtain cannabis licenses, the record under the ICSEP is, again, spotty at best. The licensing process spawned extensive litigation and administrative delays resulting in a cannabis industry dominated by large multistate operators, not social-equity applicants.<sup>113</sup> Social-equity applicants were shut out of the initial rounds of licensing,<sup>114</sup> which only licensed pre-existing medical dispensaries.<sup>115</sup> Even applicants that successfully navigated the cumbersome and costly process could sell the licenses in order to recoup as much of

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Illinois State Police reported only about 26,600 expungements for all offenses. *See* ILL. STATE POLICE, DIV. OF JUST. SERVS., EXPUNGEMENT BACKLOG REPORT, FY2021 1 (2021), [https://isp.illinois.gov/StaticFiles/docs/Identification/expunge\\_stats\\_fy21.pdf](https://isp.illinois.gov/StaticFiles/docs/Identification/expunge_stats_fy21.pdf) [<https://perma.cc/A2X8-RH63>] (reporting expungement information for Fiscal Year 2021 mandated by Expungement Backlog Accountability Law 20 ILCS 2630/14).

111. *Cf.* Kennedy et al., *supra* note 16, at 784 (“Exactly how and why we have spent billions of dollars prosecuting drug crime and incarcerated hundreds of thousands of offenders for millions of hours without keeping more careful track of whom we were arresting and for what quantity is a question that may someday puzzle future, more enlightened, generations.”).

112. 20 ILL. COMP. STAT. 2630/5.2(i)(1)(C)(iii) (2019).

113. McCoppin, *supra* note 14 (“Cannabis production in Illinois is dominated by several large, wealthy multistate operators that obtained medical licenses years ago and expanded into the billion-dollar recreational market in 2020.”).

114. Tom Schuba, *Some Pot License Winners Now Looking to Sell to Highest Bidder*, CHI. SUN-TIMES (Aug. 5, 2021, 5:31 AM), <https://chicago.suntimes.com/cannabis/2021/8/5/22610395/social-equity-license-marijuana-cannabis-illinois-craft-grow-sale-flip-cash-in> [<https://perma.cc/3RNA-6WLY>].

115. Chris Hush, *Despite Promise, Minorities Left Out of Illinois’ Billion Dollar Cannabis Industry*, NBC5 CHI. (May 3, 2021, 11:04 PM), <https://www.nbcchicago.com/news/local/despite-promise-minorities-left-out-of-illinois-billion-dollar-cannabis-industry/2501292/> [<https://perma.cc/9QN8-N9BF>] (“But more than a year after the state legalized recreational marijuana, not one new license has been issued for social equity applicants. The \$1 billion dollar industry in Illinois currently consists of 110 dispensaries that had a head start on recreational cannabis because they already had a medical license before the legalization.”).

their investment as possible in light of the unanticipated delays and expenses.<sup>116</sup> “Nic Easley, CEO and founder of 3C Comprehensive Cannabis Consulting, a national company based in Denver, said Illinois had the worst program he’s ever dealt with.”<sup>117</sup> Adding even more social inequity to the delays in expungements, discussed above, many of the most direct victims of the WOD are excluded: those with non-cannabis convictions cannot qualify for cannabis licensing.<sup>118</sup>

Thus, as of January of 2021, “there are 89 dispensaries in Illinois, none minority-owned, since the law took effect on Jan. 1, 2020. Of 16 dispensaries in Chicago, only two are located in Black or brown communities.”<sup>119</sup> The upshot of all of this is the effective closure of the cannabis business to social-equity applicants, at least until the courts resolve the protracted litigation over the fairness of the licensing process.<sup>120</sup>

With respect to funding redevelopment efforts of the communities most devastated by the WOD, the legislation provided for the creation of the Restore, Reinvest and Renew (R3) Program.<sup>121</sup> The R3 Program takes twenty-five percent of cannabis tax revenue to fund violence prevention,

116. Robert McCoppin, *Cannabis Industry in Illinois Sees Increasing Minority Ownership—but Delayed Startups Say They May Have to Sell Out*, CHI. TRIB. (Dec. 7, 2021), <https://www.chicagotribune.com/marijuana/illinois/ct-illinois-marijuana-minority-ownership-20211207-gtosbd6pkvc7hgwvu3zpzftypi-story.html> [https://perma.cc/H74B-5HGS] (“Several license applicants said they have already burned through six figures in dollars just to apply and keep going during the delay. The longer they have to wait, the more likely they will run out of money and have to sell their licenses.” (quoting Douglas Kelly, executive director of the Cannabis Equity Coalition Illinois)).

117. *Id.*

118. See Robert McCoppin, *Boom Time for Marijuana Sales in Illinois, but Minority Businesses Get Left Behind*, S. ILLINOISAN (Jan. 1, 2022), [https://thesouthern.com/news/state-and-regional/boom-time-for-marijuana-sales-in-illinois-but-minority-businesses-get-left-behind/article\\_e91c05fa-28bc-5318-9606-b27291e2f02b.html](https://thesouthern.com/news/state-and-regional/boom-time-for-marijuana-sales-in-illinois-but-minority-businesses-get-left-behind/article_e91c05fa-28bc-5318-9606-b27291e2f02b.html) [https://perma.cc/X572-V3KR] (“As [the law] stands, only those with low-level [cannabis] convictions can get expungements and get licensed.”).

119. Glenn Reedes, *Black and Latinx Owners Are Barely a Blip on the Cannabis Revenue Radar*, CHI. REP. (Jan. 13, 2021), <https://www.chicagoreporter.com/black-and-latinx-owners-are-barely-a-blip-on-the-cannabis-revenue-radar/> [https://perma.cc/N4HS-KVZ5].

120. See McCoppin, *supra* note 118; McCoppin, *supra* note 14 (detailing social-equity applicants’ protracted court battles over licensure); Brian J. Rogal, *As Flourishing Cannabis Industry Expands to Pricier, High-Profile Sites, Social Equity Applicants Left Behind*, CHICAGO TRIBUNE (May 23, 2022), <https://www.chicagotribune.com/business/ct-biz-marijuana-real-estate-20220523-urzt4ejl7zc7rpo5xssrx772u-story.html> [https://perma.cc/D35X-TKYE] (describing the financial toll on social-equity applicants who have made expenditures toward opening businesses but have been forced to wait on the outcome of the litigation); Kiana Hughes & Doug Kelly, *Illinois is Far from Social Equity in Cannabis Market*, CHICAGO SUN-TIMES (May 16, 2022), <https://chicago.suntimes.com/2022/5/16/23076049/marijuana-legalization-social-equity-norml-kiana-hughes-doug-kelly-other-views> [https://perma.cc/L3KM-85U4] (arguing that the legislature failed to take action in the wake of litigation to fulfill its social-equity promises with respect to the cannabis marketplace).

121. 410 ILL. COMP. STAT. 705/10-40 (2019).

post-incarceration reentry, youth development, economic development, and legal-aid grants.<sup>122</sup> The grants focus on areas of the state found suffering from the WOD, identified by rates of gun injuries, child poverty, unemployment, and incarceration.<sup>123</sup> Here, social equity appears vindicated: over \$45 million in grants will fund a wide variety of positive social- and economic-aid programs in the areas most acutely damaged from the WOD.<sup>124</sup> The funds from cannabis tax revenues now flow regularly to social-equity and economic-development organizations that seek to repair the damaged communities left in the wake of the WOD.<sup>125</sup> The projects focus upon youth recreation, legal aid, and human development.<sup>126</sup> Ultimately, judging the efficacy of these community reinvestment efforts will take years of data that does not yet exist.

More fundamentally, the ICSEP fails to achieve social equity because it leaves many nonviolent drug offenders to languish under the oppression inherent in the WOD. Legalizing cannabis alone fails to recognize the problematic history of the WOD as recounted herein. Decriminalization of drug addiction and abuse is demanded to achieve social equity. Indeed, the Illinois legislature found with respect to cannabis:

In the interest of allowing law enforcement to focus on violent and property crimes, generating revenue for education, substance abuse prevention and treatment, freeing public resources to invest in communities and other public purposes, and individual freedom, the General Assembly finds and declares that the use of cannabis should be legal for persons 21 years of age or older and should be taxed in a manner similar to alcohol.<sup>127</sup>

These legislative findings similarly support decriminalization of all drugs. Higher taxes (including fines) and tighter control for many narcotics may be warranted; criminalization and incarceration are not.

In fact, “[m]ost of what we hate and fear about drugs—the violence, the overdoses, the criminality—derives from prohibition, not drugs. And there will be no victory in this war either; even the Drug Enforcement Administration concedes that the drugs it fights are becoming cheaper and more easily available.”<sup>128</sup> Nationally, drug overdoses tripled between

122. *Id.*; *Restore, Reinvest, Renew (R3) Program*, *supra* note 105.

123. § 705/10-40.

124. *Pritzker Administration Announces \$45 Million in Grants Available Through Restore, Reinvest, Renew (R3) Funding Opportunity*, R3 (Dec. 15, 2021), <https://r3.illinois.gov/news/2021-12-15-r3-announcement> [<https://perma.cc/5NZG-H3V5>].

125. *Id.*

126. *Id.*; Mike Miletich, *R3 Grant Recipients Tell Illinois Lawmakers About Success, Challenges*, WEEK (Jan. 10, 2022, 5:48 PM), <https://www.week.com/2022/01/10/r3-grant-recipients-tell-illinois-lawmakers-about-success-challenges/> [<https://perma.cc/EXY4-X3MH>].

127. § 705/1-5(a).

128. Baum, *supra* note 44.

1999 and 2018.<sup>129</sup> The WOD fills our prisons with nonviolent offenders.<sup>130</sup> Stripped of its proffered public-policy basis, and with utter certainty that the WOD failed after fifty years of wasted government resources to interdict supplies or diminish the use of narcotics,<sup>131</sup> the only basis for the continuation of the WOD is its key role in reproducing our racial hierarchy—and the tremendous injustice inherent in that hierarchy.

As we argued elsewhere, the decriminalization of all drugs in Portugal worked to reduce the use of illicit substances, relieved pressure on the criminal justice system, and lowered drug overdoses.<sup>132</sup> Portugal's experience establishes that substituting treatment for incarceration does not lead to more drug abuse.<sup>133</sup> Prohibition of illicit drugs always substituted racial mythology for sound public-health policy, and the nation can no longer afford the costs of this original sin, nor complicity in its racist origins and impact.<sup>134</sup>

Illinois should follow the lead of states like Oregon and decriminalize

129. HOLLY HEDEGAARD ET AL., NCHS DATA BRIEF: DRUG OVERDOSE DEATHS IN THE UNITED STATES, 1999–2018, at 1 (2020), <https://www.cdc.gov/nchs/data/databriefs/db356-h.pdf> [<https://perma.cc/JR5K-7PGS>].

130. Lauren-Brooke Eisen & Inimai Chettiar, *39% of Prisoners Should Not Be in Prison*, TIME (Dec. 9, 2016, 5:01 AM), <https://time.com/4596081/incarceration-report/> [<https://perma.cc/APL5-NQ6S>] (“We found that approximately 39% of the nationwide prison population (576,000 people) is behind bars with little public safety rationale. And they can be released, significantly and safely cutting our prison population.”).

131. Talia Bronshtein, *Interactive: Explore How Illegal Drugs Have Become Cheaper and More Potent over Time*, STAT NEWS (Nov. 16, 2016), <https://www.statnews.com/2016/11/16/illegal-drugs-price-potency/> [<https://perma.cc/AM5G-8AED>] (illustrating an increase in purity of heroin and methamphetamine since 1986 and a decrease in price for heroin, methamphetamine, cocaine, and crack).

132. See Tiago S. Cabral, *The 15th Anniversary of the Portuguese Drug Policy: Its History, Its Success and Its Future*, 3 DRUG. SCI., POL'Y & L. 1, 1–3 (2017) (showing that Portugal's decriminalization of all illicit drugs led to a decline in drug use, fewer overdoses and more drug users seeking treatment); Caitlin Elizabeth Hughes & Alex Stevens, *What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?*, 50 BRIT. J. CRIMINOLOGY 999, 1018 (2010) (“The Portuguese evidence suggests that combining the removal of criminal penalties with the use of alternative therapeutic responses to dependent drug users offers several advantages. It can reduce the burden of drug law enforcement on the criminal justice system, while also reducing problematic drug use.”); Harvey Slade, *Drug Decriminalization in Portugal: Setting the Record Straight*, TRANSFORM DRUG POL'Y FOUND. (May 13, 2021), <https://transformdrugs.org/blog/drug-decriminalisation-in-portugal-setting-the-record-straight> (“Portugal has set a positive example for what can be done when drug policies prioritise health rather than criminalisation. . . . Many impacts of reform were felt immediately: new HIV infections, drug deaths and the prison population all fell sharply within the first decade.”).

133. cummings & Ramirez, *supra* note 7, at 458–59.

134. *Id.*



all drugs.<sup>135</sup> Oregon recently decriminalized narcotics and shifted law enforcement resources to treatment.<sup>136</sup> Ultimate social equity for Illinois requires decriminalization of all drugs.

Given the senselessness of the War on Drugs and the magnitude of damage caused, the Illinois Social Equity Program, while a step in the social-justice direction, cannot effectively address the catastrophe left in the wake of the WOD. Clearly more resources need to support faster and broader expungements. Expungements should occur by operation of law. The state bungled the licensing process. Perhaps the state should mandate that certain communities can only be served by victims of the WOD from those communities. Conversely, cannabis-tax funds now support previously oppressed communities of color victimized by the WOD. That certainly will help rebuild those communities. Most importantly, Illinois should next move to broaden its efforts by decriminalizing drugs beyond cannabis.

#### V. CONCLUSION

Illinois needs a broader approach to ending the War on Drugs beyond cannabis to secure social equity, and it needs to revise its approach to social equity insofar as cannabis is concerned. Doing so could strike a historic blow for social justice in Illinois. The approach that Illinois took with respect to cannabis shows the potential path forward for achieving this. Nevertheless, the Illinois approach also highlights certain shortcomings and pitfalls. The War on Drugs always centered upon communities of color, as intended by its primary progenitors. Its impact also focused on those same communities. It burdened communities of color with broken families and imposed economically destructive criminal records upon individuals and communities. Focusing more resources on those communities should be top priority. More and faster expungements are critically important. This means more resources. Community-based licensing for cannabis businesses in the most victimized communities should also be legislatively mandated. Adherence to these suggestions could place Illinois in a position where it becomes a global leader in ending and repairing the War on Drugs.

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135. Szalavitz, *supra* note 63.

136. *Id.*