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Legal marijuana made big promises on racial equity — and fell short

“Time is really up on selling your business dream as a social justice movement,” said the president of the Minority Cannabis Business Association.

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By Janell Ross

In 2015, a group of 24 investors managed to get a marijuana legalization measure on the ballot in Ohio.

Along with sanctioning small quantities of recreational weed, the measure limited mass growing operations to just 10 pieces of land controlled by the investment group. [The Cleveland Plain Dealer reported the investors put in \\$4 million each](#), enough to buy the land and fund a campaign for legalization centered on addressing criminal justice inequity while creating an economic boon. The New York Times [described it as a potential monopoly](#). [The Columbus Dispatch](#) identified just one black investor in the overwhelmingly white group, a former NBA player.

Others in the investor group included the progeny of former President William Howard Taft and a former boy band star. This was a group of Ohio’s richest, locking in an exclusive opportunity to get richer, while making an argument based on the [uneven social consequences of the drug war](#).

The measure failed [64 percent to 36 percent](#). But the sweeping claims of racial justice and inclusive business opportunities reappeared in the marijuana legalization debates that followed in California, Maine, Nevada, Michigan [and elsewhere](#). Despite these claims, research conducted by groups in favor of legalization has shown that it does not eliminate [racial disparities in marijuana arrests](#) or come [close to equally distributing legal weed’s economic rewards](#).

While marijuana arrests have declined and tax revenue has begun to flow in most states that have legalized pot, the gains have accrued most heavily to white residents, even though [black](#)

Americans paid the drug war's biggest costs, according to a statistical analysis conducted by the Drug Policy Alliance, a nonprofit group that advocates drug policy reform.

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"Just saying the right things on social justice or hinting at the right things on business opportunities won't cut it."

The results in Colorado, the District of Columbia and the nine other states where recreational marijuana became legal from 2012 to 2018 have left some lawmakers and even marijuana legalization advocates skeptical of broad social-justice claims. For that reason, lawmakers in New Jersey and New York – two of the three states expected to legalize marijuana in 2019 – are now pushing for [detailed criminal justice](#) and business equity measures as part of any legalization package.

"I think we've just reached the point where there's enough information, where just saying the right things on social justice or hinting at the right things on business opportunities won't cut it," said Roseanne Scotti, New Jersey state director for the Drug Policy Alliance.

The efforts in New Jersey and New York come as the inequities in other states have grown clearer. In Colorado, the Drug Policy Alliance found, [the number of black juveniles arrested on marijuana charges grew after legalization](#). In 2016, a Colorado Department of Public Safety analysis found that black people living in that state remained [three times more likely than white people to be arrested for selling or possessing marijuana](#). In Washington state, [an ACLU analysis](#) found that in 2014, the first year in which marijuana became available in legal retail stores, a black adult remained three times more likely to face low-level marijuana charges than a white adult.

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The truth behind those figures is complex, as state legal systems have not fully caught up to the new reality of legalized recreational pot. "Law enforcement officials and prosecuting attorneys continue to struggle with enforcement of the complex and sometimes conflicting marijuana laws that remain," according to the 2016 Colorado Department of Public safety report. Some of the

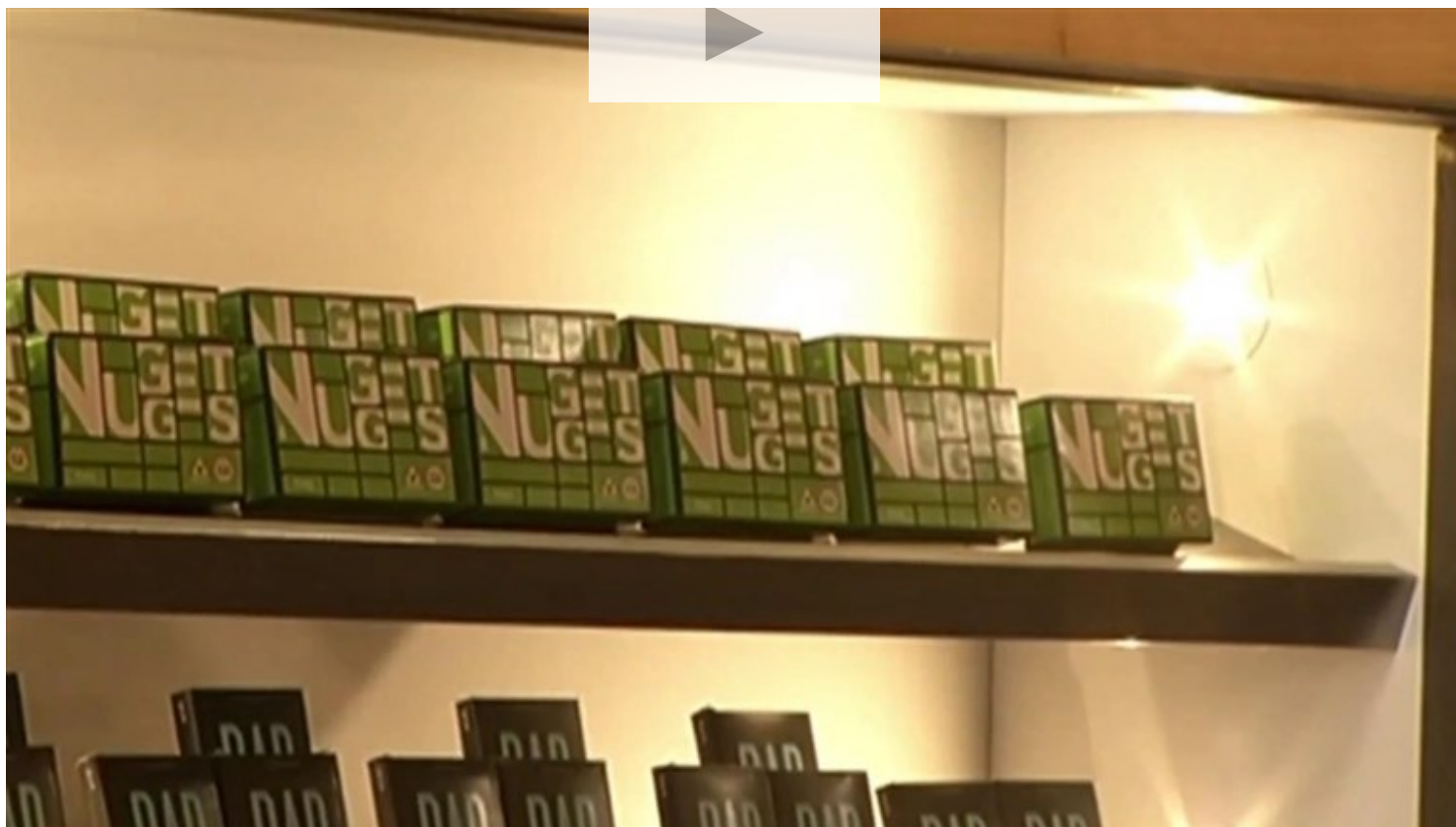
arrests involve people buying or selling small quantities on the black market, often to avoid new taxes. Public consumption is illegal in many states where recreational, small-scale possession is not. And, many criminal justice reform advocates say that fundamental problems in policing and prosecuting – including arrest goals and individual and institutional bigotry – remain.

States have also faced the question of what should happen to people who have criminal records for low-level marijuana offenses that are no longer crimes post-legalization. In Colorado, Washington and Nevada – a trio of early legalization adopters – state officials [refused to take up bills or vetoed measures](#) that would have sealed or expunged criminal records of people convicted of low-level marijuana crimes before legalization.

In 2017, criminal justice and drug policy reform advocates convinced Colorado lawmakers to pass a bill allowing people convicted of misdemeanor possession or marijuana use to have those records sealed if the case would no longer constitute a crime. The records are not expunged. Oregon did something similar in 2015.

In Missouri, which legalized medical marijuana, lawmakers have trimmed the waiting periods for those who want to have their misdemeanor criminal records erased from 10 to three years. In Maryland, Massachusetts and Vermont, where minor marijuana convictions can be expunged, people still must initiate and then navigate the process and pay the costs. A drug conviction can make it difficult to impossible to obtain work, student loans and even government-subsidized housing.

First recreational marijuana shops open in Massachusetts



aspect of the drug war – the police targeting of petty users and pushers, the heavy sentences and the lifelong difficulty finding legal work after a conviction. It changed the lives of family, friends and neighbors.

The measures pending before New Jersey’s legislature now include automatic record expungement for low-level marijuana crimes, as well as language designed to give a licensing advantage to marijuana businesses owned by veterans, women and people of color.

In New York, where state lawmakers are [expected to debate legalization in 2019](#), Gov. Andrew Cuomo, a Democrat, described the move as necessary to "advance our justice agenda and particularly address the forms of injustice that for too long have unfairly targeted the African-American and minority communities." A working group spent part of 2018 crafting a New York legalization bill that will be introduced next year.

Some states have moved from justice-related promises to particulars after legalization.

When legal recreational weed became available in California in January 2018, a host of promises and potential came with it. Cities set up what they called equity programs aimed at [opening doors to the legal weed trade to more people](#). But [their effectiveness ran headlong](#) into other rules that made the cost of entry in the legal weed industry exceptionally steep.

“We want opportunity. We do not want regulation that chokes the life out of a burgeoning industry,” said Shanita Penny, president of the Minority Cannabis Business Association, which

supports legalization with careful attention to criminal justice and business opportunity equity. “And we do not want to be used by businesses who do not care about the communities that were abused by the war on drugs. Time is really up on selling your business dream as a social justice movement.”

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Several months after legalization took effect in California, lawmakers followed up with more legislation. California lawmakers changed the process for expunging low-level marijuana convictions, shifting from something individuals must pursue to something more automated that courts and district attorney’s offices will initiate. California lawmakers also dedicated funds to local grant and loan programs capable of lowering barriers to entering the marijuana business.

In Massachusetts, [where legal recreational weed went on sale in November](#), lawmakers decided from the start that regulators should make a particular effort to award licenses to “people from communities disproportionately harmed by marijuana prohibition.”

When Maryland created a [state-sanctioned medical marijuana industry this year](#), advocates said it would create jobs, new businesses and significant trade in cities with large black populations like [Baltimore](#), ravaged both by drugs and the drug war. The state’s law called on regulators to actively seek racial, ethnic and geographic diversity in the ranks of those licensed to work in the state’s medical marijuana trade. But after the state set up the process to vie for its first 15 grower licenses, none went to a black applicant.

Penny saw similar promises and outcomes when Pennsylvania set up its medical marijuana program. She still has doubts about the effectiveness of the California recreational weed reforms and will be working to influence what happens in New York, New Jersey and other states next year.

“I can’t tell you how much attention we are going to be putting on data, gathering and demanding data, looking for patterns and pointing out flaws next year,” Penny said. “After reading these amazing [diversity plans](#) and community plans that, I will tell you, have too often been B.S., please believe we’ve learned some hard lessons.”



Janell Ross



Janell Ross is a reporter for NBC BLK who writes about race, politics and social issues.

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