HOUSING WORKS TESTIMONY FOR THE SENATE SUBCOMMITTEE ON CANNABIS; STANDING COMMITTEES ON AGRICULTURE, FINANCE, AND INVESTIGATIONS AND GOVERNMENT OPERATIONS

SUBJECT: To examine issues in the New York State market related to consumer accessibility and retail sale of legal adult-use cannabis

October 26, 2023 * 11:00 AM * Legislative Office Building, Hearing Room A

My name is Anthony Feliciano, VP for Community Mobilization for the Advocacy Department at Housing Works. Housing Works is a non-profit whose mission is to end the dual crisis of HIV/AIDS and homelessness and has a 33-year history of serving marginalized communities through provision of lifesaving services, relentless advocacy and entrepreneurial businesses that sustain our efforts.

I am speaking today to remind all of us how important it is to remember that we can be here thanks to laws, regulations, and policies that people fought hard to pass. But while the acceptance of the medical and social benefits of cannabis is more widely supported, the equity benefits and intent of the passage of the Marijuana Regulation and Taxation Act (MRTA) in March of 2021 has yet to fully meet the hopes of those who fought for its passage, to have a fair and equitable regulatory rollout.

On December 29, 2022, Housing Works became the first legal cannabis dispensary to open under the NYS Conditional Adult-Use Retail Dispensary (CAURD) program. This program has enabled Housing Works to learn and grow our cannabis operations to serve adult customers in need of legal cannabis, while raising critical funds for our mission and contributing to the millions in tax revenues that is being generated from the legal dispensaries to New York State. Non-profit dispensaries like ours are making meaningful reinvestments to impacted communities. These cannabis proceeds have specifically allowed Housing Works to expand its vocational programs for formerly incarcerated individuals (often using the cannabis industry for placement). We have been able continue to grow our harm reduction programs during an opioid epidemic and have continued our advocacy actions and policies for those affected by the war on drugs.

Housing Works' experience in this market thus far has been positive. OCM (Office for Cannabis Management) as well as regulators provided important assistance that allowed us to be among the first movers. However, fellow licensees, small cultivators, and processors have not had it so positive. The problems are:

- CAURDS and small farmers are in an unfair advantage to compete with vertically integrated producers (meaning the ROs can sell at their own retail locations). New York lawmakers in the beginning supported the restriction of vertical integration, which would be like the State's alcohol regulatory structure, businesses that are licensed for production (nursery, cultivation, processing). However, the two carve-outs for vertical prohibition made for microbusinesses and Registered Organizations have only bolstered their massive advantage on growing space and conditions. These challenges have been further heightened by regulators' recent promise to Registered Organizations (ROs), accompanied with its amended regulatory package, to accelerate and enhance their ability to vertically integrate in the market – severely limiting the capacity of small businesses and those most impacted by prior cannabis laws (those who the MRTA were intended to protect) to compete in the market.

- Barriers to access to capital resources and predatory lending have been a severe problem. As cannabis licensees have been desperately seeking the cash they need to expand, they often feel pressured into agreements with terms heavily favoring lenders, often resulting in extremely high interest and in equity transfers in exchange for capital. This practice is known as predatory lending, and while it may not technically be illegal, it is unethical.

- The subsequent lawsuits challenging the regulatory authority of the OCM's implementation of its Conditional Adult-Use Recreational Dispensary (CAURD) program have compounded the ability to reach equity. On the supply side, the delays have left licensed growers and processors with a huge supply of cannabis and cannabis products that they cannot sell, debilitating the value of the significant investments that these businesses made. On the retail side, legal challenges have led the courts to render all but very few CAURD licensees with the ability to sell legal cannabis, leaving applicants issued conditional licenses with no immediate path forward, and driving a substantial portion of cannabis consumers to potentially dangerous illicit cannabis market.

The intent of the program was this—to ensure the state's large cannabis market is not captured by huge multi-state operators who would diminish the goals and opportunities of people affected most by the war on drugs—particularly the Black and Latinx communities. We find it especially galling that these ROs, after cutting a deal for early entry, have turned around and joined lawsuits designed to freeze the market until they can enter. This can be a lucrative industry, but thus far across the nation the profits have disproportionally gone to communities NOT impacted by the war of drugs. New York needs to cross-correct, or we will continue going down that same road of other states. The NYS CAUARD is ambitious, and the correct way to approach the creation of an equitable market. Social equity goals and programs may be harder to stand up, but we must stay the course. We often give up too quickly and too easily when barriers are erected; instead, we run back to the old monied way of doing things. There must be a runway for the CAURDs to be able to raise capital, find an appropriate location and learn and grow from the early days of operations. We must strengthen the MRTA which established a strong social and economic equity program to provide resources to communities disproportionately impacted by polices of cannabis prohibition.

Along with allies like the Cannabis Social Equity Coalition- NYS, we have the following recommendations to lowering the barriers to entry into the market and boost cannabis business participation among marginalized communities and those affected by the war on drugs:

- Legislature needs to review current conditions and modify the Cannabis Law by restricting or lessening the impact of vertical integration for Registered Organizations by:
    1. Ensuring that RO's do not continue to receive preferential treatment regarding opening additional locations. CAUARDS and RO's should be on the same mandated trajectory for approvals to open their 2nd and 3rd locations.
    2. Committing to level playing field for all adult-use licensees, including the Registered Organizations. Microbusinesses would have their production capped and can only sell products that they produce – a model like farm breweries/wineries/cideries in the Alcohol Beverage Control (ABC) Law. However, the ten Registered Organizations would be the only companies in the state that can be vertically integrated, while operating at a larger production level than any other operator and retail other products in their dispensaries.

- The Legislature, regulators, and other decision-makers need to strongly urge the governor to sign the 280E City Tax Code Bill before the end of the year. The senate and the assembly successfully passed the bill. A7692/S7508 would de-couple NYC tax code with the Federal 280e. Currently businesses, such as dispensaries, end up effectively paying up to 75% tax. This would eliminate a major financial barrier to profitability and enable cannabis operators in NYC to be able to thrive like any other small business operating in the city. Several states have taken action to ensure that legal cannabis dispensaries are not denied deductions of legitimate business expenses for the purpose of calculating state and local taxes. Non-profit legal cannabis dispensaries like ours are thankful to Senator Sepulveda, Assemblymember Zaccaro, and the New York State Legislature for passing S7508/A7692.

- OCM and Cannabis Control Board (CCB) must develop reforms to the Social and Economic Equity Plan. Ideas and decisions around reforms must be co-led with stakeholders closest to the problem and solutions (i.e., justice-involved individuals, programs, and organizations working on their behalf, cannabis equity advocates, especially those from communities of color and impacted by the drug war). This includes the Governor and legislature working out the steps to codify the CAURD program to address inequities and to protect the state and industry from significant future legal challenges.

- Legislature and the Governor to fast-forward anticipated cannabis tax revenue and medical marijuana application fees from state funds to monetize zero-interest and low-interest loans to support social equity dispensaries, cultivation, micro-businesses, and other critical segments of the cannabis supply chain.

- Access existing and source new funding streams that can be advanced to provide for technical, vocational, and capacity training for impacted community members so that they can enter the cannabis industry in roles other than license-holders.

- Leveling the playing field by awarding 50% of all nine (9) license categories to the social equity population and awarding eleven (11) new medical marijuana licenses to social equity applicants from communities that have been disproportionately impacted by marijuana prohibition and non-profit organizations that serve those communities.

- Cap the number of all licenses. This could assist in avoiding excess regulatory costs and prevent an excess supply of marijuana that could be diverted to the illicit market. Capping should take consideration of fairly balancing the right number of licenses to issue and market demand. The adage that "big cannabis can be good cannabis" is not necessarily true if certain operators have unfair advantages and social equity applicants are not prioritize in every part of the roll-out.

- Incentivize cities and municipalities to establish zoning policy that supports environmentally sustainable, industrial, and commercial indoor cultivation and processing facilities.

- Prohibit the medical marijuana companies from selling wholesale cannabis products to cannabis dispensaries for three (3) years.

- The Governor, the Department of Taxation and Finance, and the Office of Cannabis Management must involve the New York City Community Advisory Boards and their equivalent in upstate counties more integrally around aggressive enforcement against illegal sale of cannabis. **We must be clear that this is not a call for more criminalization of individuals for selling of cannabis**. We know the bigger picture is about true public safety and public health. The governor has recently called for a new multi-agency initiative to target illegal operators for labor violations, thus significantly increasing fines and penalties that businesses may face. But there are deep investments and pockets supporting the illegal businesses that are opening. They can afford to pay the fines and renegotiate terms for retail space. In addition, landlords repeatedly are allowing their commercial storefronts to re-opened by either the same tenant or new renter after being seized by the sheriff department. We need more administrative mechanisms and legislation designed to get the landlord's attention.

- The Governor, the Department of Taxation and Finance, and the Office of Cannabis Management should improve their engagement of those in the cannabis market, especially the smaller businesses, civic and grassroots community-based organizations to design public awareness multi-language campaigns and consumer education around where they are getting their cannabis. The state can design maps and other visuals that identify the legal and illegal cannabis retailers. It can become available online and available in key and frequently utilized neighborhood locations (i.e., community board).

- The Governor, legislature, the New York City Mayor, and other upstate mayors should work together on a letter to Congress to enact a version of the SAFE Banking Act this year. The SAFE Banking is not the first effort to address the cannabis sector's dangerous overreliance on cash, and it may not be the last that government may need to do. But the safety issues faced by the cannabis sector will not be solved without it. We must have a healthy regulated market, which includes reducing cash usage in stores and reducing the high fees and instabilities in cannabis banking. The SAFE Banking Act of 2023 takes steps that are needed to get us there. If may also spur reduced prices for consumers – a group that includes patients – because cannabis businesses may become more able to access business financing.

- The Governor and legislature should identify and provide additional resources to the Office of Cannabis Management. It should be sufficient to support a meaningful crackdown on unlicensed cannabis retail outlets, which undercut licensed stores without collecting the cannabis-related sales tax.

These are necessary step to ensure that our cannabis businesses have a path to profitability and social equity entrepreneurs can build wealth. But before we reached that north star of wealth, we need a significant shift to address the inequities hampering successful and sustainable cannabis market roll-out.

Respectfully,
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