



President Joe Biden speaks at an IBM facility in Poughkeepsie, N.Y., on Thursday Oct. 6, 2022. (AP Photo/Andrew Harnik)AP

The Lead

The limits and promise of Biden's pardon — and the questions it raises about N.J.

With President **Joe Biden's** recent pardon announcement, it has certainly been hailed as a step in the right direction, with questions remaining as to what lies next.

The pardons — simple possession — were limited in scope. Pardons however do not necessarily wipe the slate clean.

The bigger picture here is expungement and expungement eligibility, which not only increases the applicant pool, but also the number of people who would be eligible to start social equity businesses within the industry.

Essentially, expanded expungement eligibility also means an expanded industry. It will also mean an expanded need for lawyers specializing in expungement work.

Osbert Orduña, CEO of The Cannabis Place also noted that the pardoning step should be one of many.

“President Biden took a drastic first step to correct the law enforcement disparities that have ruined Black and brown communities for decades simply for cannabis, while corporate America's Wall Street has made billions, this is a good first step but there is much more work that needs to still be done,” he said.

There's also the talk of potentially rescheduling cannabis, another important topic.

“The directive of the Department of Health and Human Services and the Attorney General's Office to ‘expeditiously’ review the classification of marijuana as a Schedule I drug is equally important, albeit ripe with administrative hurdles and rule-making obstacles,” said McLaughlin & Stern attorney **Mollie Lustig** in a statement.

Here are some key things to keep in mind going from here:

Pardons, expanded expungement and the workforce

Biden's pardons were for simple possession. Already the question is being asked, why simple possession only and why not all non-violent cannabis offenses? According to numbers from the Last Prisoner Project, that still leaves roughly [3,000 people who face higher level crimes and also 30,000](#) in several other states.

This just isn't a question that's being posed to Biden, it's also one that can be posed with Gov. **Phil Murphy's** program for expungements as well.

This was very consistent with previous conversations we've had with our sources in our reporting.

As reported by **Jonathan Salant** who spoke with expungement lawyer **Michael Hoffman**, only about half of the 1 million people convicted of possession from 1990 to 2018 had their convictions automatically erased. Others with additional charges such as loitering need to go through extra steps to get charges off of their record.

Others that possessed above a certain amount aren't even eligible.

The additional question here is, should the amount of cannabis possessed even matter?

In a [previous interview](#) we did with the Last Prisoner Project, executive director **Sarah Gersten** was pushing Murphy on that very issue.

“The majority of people that are still incarcerated in New Jersey for cannabis-only offenses have some kind of higher possession or distribution charge. We believe that those people are still deserving of release,” she said.

“We cannot at the same time legalize and regulate people, mostly white people, to make millions of dollars off of this plant, while at the same time saying if you distributed much fewer amounts of cannabis when it was illegal, we're going to leave you in prison amidst COVID for years and years,” Gersten said.

In the end, more expungements mean more employees, more applicants, more businesses and more revenue generated. With that, however, also comes the question of ...

Interstate commerce

State Senate President **Nicholas Scutari** recently filed [S3012](#), which allows for interstate commerce. The secondary part of what Biden is doing is talking about rescheduling, which, while not full legalization, is one step closer to it. That means more debate around interstate commerce and what the terms of it are.

Interstate commerce has its fair share of champions and a fair share of detractors. Champions of interstate commerce note that there is going to naturally be more money to be made and that states would have a hard time banning interstate commerce due to interpretations of the Commerce Clause.

The detractors, however, point out that if interstate commerce takes effect it will give even larger companies and Big Pharma the full go-ahead to start taking over the industry.

The states that have the most headquarters of the largest pharmaceutical companies in America? — New Jersey and New York.

If interstate commerce comes, best believe that those companies have every financial incentive to take care of their own backyards before they expand elsewhere.

Investment

More businesses also mean more investment. Remember, there's another bill currently going through the Legislature concerning just that.

With [A4151](#) being filed, this bill would allow a fund or a licensed cannabis entity to invest in a certified minority, woman or disabled veteran-owned business up to 35% and limit the number of investments to seven companies.

The caveat to that is if anyone defaults, ownership could transfer to another diversely owned business, but the rules are unclear about whether the diversely owned business the license goes to is also invested into by the same actors. It's a provision that the New Jersey CannaBusiness Association has been critical of.

If the expungements are expanded, expect that to take more of a centerpiece of conflict as the market continues to grow.

SAFE Banking debate

With investment also comes more competition, however, and with limited forms of investing, the calls for SAFE Banking become louder.

One of its primary critics is U.S. Sen. **Cory Booker** who has criticized the bill for its lack of social equity provisions. The Cannabis Regulators of Color Coalition has also criticized the bill because it would exacerbate disparities. The coalition has said larger companies would be able to increase their capital at a much more accelerated rate than the smaller ones.

Banking still has the right to choose its customers — the disparities in how those loans are doled out are well-documented. Check the following paragraphs from [a 2021 Brookings Institute report on banking disparities](#)

"... Between 1993 and 1998, Black-owned small businesses were about twice as likely to be denied credit even after controlling for differences in creditworthiness and other factors, suggesting that the racial disparity in credit availability was likely caused by discrimination."

"According to 2020 survey data from [Bankrate](#), minorities, millennials, and Northeasterners reported paying higher bank fees. The data showed that the average checking account holder at a bank or credit union paid \$8 per month in fees, including routine service charges, ATM fees and overdraft penalties, but fees paid varied by race. White checking account holders reported paying the lowest amount in monthly bank fees, \$5, compared to \$12 for Black account holders and \$16 for Latino or Hispanic account holders."

"Data from the [2020 Small Business Credit Survey](#) found that 92% of Black-owned businesses reported experiencing financial challenges in 2020, compared to 79% for white-owned firms. According to a survey conducted by [Reuters](#), Black business owners were more likely than any other group to suffer financially during the pandemic—38% borrowed money from a friend or relative, 25% worked a second job, and 74% dipped into their personal funds to cover cost."

And that's how regular banking currently works. The criticism here is that the current status quo of banking is ill-suited to help an increased number of social equity businesses that would have a hard time qualifying, which leads to another solution.

The Public Bank

Many people forgot, but NJCI didn't — Gov. Murphy promised to create a public bank. He signed an executive order back in 2019. The only other state that has a full model is North Dakota.

The problem here?

It's been met with intense lobbying by bankers who have been pressuring the governor — himself a former banker.

“The governor’s implementation board has nixed the North Dakota model where tax dollars go directly into the public bank, which can direct them to important public policy goals,” said **Les Leopold**, executive director of [The Labor Institute](#) in a February [NJ.com op-ed](#).

“Other more modest ‘starter’ public bank models were proposed and then dismissed along with a plan to purchase a small private bank to obtain its charter and then convert it to a public bank,” he said. “The common denominator is simple — the vast majority of board members do not want a public bank of any kind that upsets the status quo that is based entirely on borrowing money through private banks.”

As expungements come at the intersection of more business and a stabilized cannabis industry, more pressure may come from the cannabis industry to make the public bank a reality.

Overall takeaway

Biden’s order is a step in the direction of legalization — a lukewarm and midterm election opportunistic one, by the definition of his critics — but a step, nonetheless. The real question will be to see what subsequent steps are taken after this first initial one. Those steps are going to define the industry, social equity and money to be made.

— *Jelani Gibson*