



**TESTIMONY ON BEHALF OF  
THE NEW YORK CANNABIS RETAIL ASSOCIATION (NYCRA)  
BEFORE THE SENATE COMMITTEES ON FINANCE, AGRICULTURE,  
INVESTIGATION & GOVERNMENT OPERATIONS,  
AND THE SUBCOMMITTEE ON CANNABIS**

***MONDAY, OCTOBER 30, 2023***

***HEARING ROOM A, LEGISLATIVE OFFICE BUILDING, ALBANY NEW YORK***

Chairs Krueger, Hinchey, Skoufis and Cooney, thank you for the opportunity to testify today.

My name is Britni Tantalo, and I am the President of NYCRA, the New York Cannabis Retail Association. NYCRA is a coalition of 212 members from across New York State at various stages of entering the cannabis market as retailers. It is on their behalf that I offer this testimony.

It is not news to any of you that the roll out of the legal cannabis market in New York has been painful. From bureaucratic missteps to multiple lawsuits, our members have been confronted with a set of challenges that has resulted in confusion, anger, missed opportunities, and lengthy delays.

Collectively, the cost of this dysfunction to NYCRA members has meant lost time, lost investments, and lost income. It is our hope that this hearing will begin a process of serious oversight by the legislature of every aspect of New York cannabis market, from inadequacies of the Marihuana Regulation and Taxation Act (MRTA) to the practices and policies at the Office of Cannabis Management and DASNY.

For too long, our member's experience has been that our political leaders in Albany have taken a posture of defend and deny when it comes to the obvious problems that every aspect of the cannabis community has faced in the rollout of New York's legal cannabis market. It is our hope that, as a result of this hearing, that posture will end, not to extract revenge on the people and agencies that have contributed to the dysfunction, but to build a cannabis market and regulatory system that is honest, transparent, respectful, profitable, and responsive to legitimate criticisms.

With that aspirational hope, NYCRA offers the following suggested actions for your consideration.

- 1. Codify the CAURD Program in Statute.** The ruling by Supreme Court Justice Kevin Bryant, in *Carmine Fiore v. New York State Cannabis Control Board*, could not be clearer. As he stated in his August 18, 2023 ruling, “...this court is not persuaded by the argument that the legislature recognized the CAURD program by including funding in a budget bill and that this funding determination is the functional equivalent of specific statutory authority for the program. Based on the limited record, and lack of persuasive authority, it is likely that Defendants will not prevail on this argument, particularly given that the legislation acted to amend the license section of the MRTA after the creation of the CAURD program did not take the opportunity to create an equivalent license category.” Later he stated, “It is certainly conceivable that a successful challenge to the CAURD program could result in a finding that the licenses are invalid.” That ruling is an existential threat to every CAURD license holder in New York. The millions of dollars CAURD licensees (operational and pending operation) have spent on application fees, real estate, infrastructure, construction, attorney fees, inventory, marketing, logistics, and security could be wiped out if the CAURD license is not provided a basis in statute. We call on the Senate, the Assembly, Governor Hochul and OCM leaders to collectively acknowledge the findings of the court—that CAURD as established is unconstitutional—and enact a law to provide a basis for the CAURD license when session convenes in January 2024. The livelihood of our members and their families depends on it.
- 2. Amend the Retail Siting Rules in MRTA to Mirror New York’s Liquor Law.** As a very recent NY Cannabis Insider interview with three cannabis attorneys illustrated (*“The uncertain future of New York’s Conditional Adult-Use Retail Dispensary Program, October 26, 2023*) real estate—the actual placement of CAURD licensee businesses in New York—is enmeshed in the pending *Fiore* lawsuit. One of the factors contributing to the disadvantage the veterans face—due to CAURD being initiated ahead of them—is that CAURD licensees have secured ideal sites for their businesses. Because that disadvantage will contribute to the court ruling in favor of the plaintiffs—which could lead to the demise of CAURD licenses—the MRTA should also be amended to embrace the rules which apply to liquor stores. That law requires a distance of 200 feet from certain institutions, much less than the onerous rules for cannabis businesses in MRTA. Amending the law to the 200-foot liquor law standard would provide justifiable equity between liquor and cannabis retailers, and reduce the disadvantage at issue in *Fiore*. Enacting such an amendment would allow cannabis retailers to have dispensaries in the same locations (plazas, strip malls, etc.) as liquor stores.
- 3. Direct Funding to CAURD Licensees from the Registered Organization (RO) Adult-Use Entry Fees.** As proposed in S.7045-B(Cooney)/A.7666-B (Bronson), 50% of the adult use market entry fees to be paid by RO’s should be dedicated to grants or zero-interest loans to CAURD licensees. Doing so is justified on two grounds: 1) The DASNY fund,

intended to benefit CUARD licensees, has been less than helpful, to say the least; and 2) Given the extended delay in implementing the CUARD program, the anticipated advantage these licensees would have had all but vanished. Access to these funds, as a grant or a zero-interest loan, would help make up for that loss.

4. **Amend MRTA to Place a Retailer on Cannabis Advisory Board (CAB).** The current CAB includes mandated representation for virtually every aspect of the cannabis marketplace EXCEPT retail. Without the inclusion of retail, the oversight of the CAB will continue to lack the insights and perspectives of a retail practitioner with hands-on experience. We urge the legislature to enact legislation to provide this equitable representation.
5. **Provide the Cannabis Advisory Board with Staff.** Recent history has made clear that effective oversight of OCM is essential if New York's cannabis industry is going to flourish and grow. As CAB chair Joseph Belluck has publicly acknowledged, unless the CAB has dedicated staff to manage their process, organize their efforts, keep them informed of industry and OCM developments, and provide them with meaningful analysis, the CAB is advisory in name only. We urge the Governor and OCM to provide the CAB with dedicated staff so they can effectively carry out their statutory mandate.
6. **Require Transparency on Past CAURD Program Scoring.** There has been a tremendous lack of transparency when it comes to applicants requesting information regarding CAURD application scores. Many CAURD applicants have made a FOIL request to determine where we fell in comparison to other applicants. Such requests have continuously been extended for long durations, or only partially responded to. We ask that OCM respond to FOIL requests in a timely and transparent manner so that applicants can assess their shortcomings.
7. **Address the Many Problems at DASNY.** We have experienced significant challenges when dealing with DASNY. From the very beginning, CAURD applicants and licensees have had numerous frustrations in dealing with this agency: there is little transparency regarding their loans, such as what fees are involved, what the interest rate is, and what build out expenditures will be involved. Some information was made available AFTER applications were submitted, though many important issues remain unclear. Outstanding questions include: Did they ever raise the full promised amount of the fund? Have funds been distributed, and if so, to who, and for how much? What are the terms of the funds from Chicago Atlantic? Are funds still available, or are they all gone? NYCRA member attempts to seek answers to such questions routinely result in partial or no response. Finally, DASNY has acted as a competitor, rather than a collaborator, when it comes to securing real estate. They have bid up the price of property, and failed to provide a map of DASNY locations so CAURD applicants/licensees could be compliant with proximity. In summation, there is no shortage of problems with the role DASNY has played in the CAURD program. It is our hope that the legislature, working with the

Governor's office, can exert some influence on them to improve their performance going forward.

8. **Align Sanctions on Illegal Cannabis Market Operations with Alcohol Enforcement.** It is well documented that the illegal cannabis market is thriving. Some estimate that the number of illegal dispensaries numbers in the tens of thousands. Several factors contribute to the problem, including a severe lack of legal options and the cost of products in licensed establishments. While the state has taken laudable steps to put illegal dispensaries out of business, it is clear to anyone who understands the cannabis market that those efforts have impacted a miniscule fraction of illegal operators. Even more alarming, the dispensaries that have been cited are routinely back in business within days. The reason for this is clear: mere fines are not enough to compel illegal operators to close their doors. Rather, those fines are seen as the cost of doing business. If the State of New York is serious about standing up the legal cannabis market—which requires termination of the illegal market—those operating in violation of the law must face criminal penalties as well as fines. To achieve this, New York's cannabis enforcement laws should mirror the state's liquor law.
9. **Eliminate the Potency Tax.** No other state has a potency tax. Such a tax will drive prices up, which encourages consumers to purchase cannabis in the illicit market, which means the state loses any tax benefit, and consumers can be exposed to unregulated, less safe products. Alternatively, the state should utilize a fixed excise tax that is gradually implemented to enable retailers to adjust their prices over time. For example, for the first 3 years the tax rate could grow as follows: YR1 13%; YR2 14%; YR3 15%. A 20% tax is too high; it will drive business away from licensed retailers.
10. **Improve the OCM Application Process.** It is sometimes the case that our members receive correspondence from OCM about problems/issues with their applications AFTER the OCM had already made decisions about their application. At times, these problems are not substantive. OCM should be directed, in cases where minor errors appear in an application, to allow the applicant an opportunity to correct it. Doing so would prevent an applicant from being denied on minor, often technical mistakes.
11. **Delay the Entry of ROs into the Adult Use Market by One Year.** Small retailers face an extreme challenge in competing with large, well-capitalized RO's that can vertically integrate. RO's can cultivate indoors with a larger canopy, have greater access to capital, have processing advantages, and the ability to operate/distribute cannabis as a retailer. Collectively, this will give them a tremendous competitive advantage in the market. We know RO's entering the adult use market is inevitable, but we believe a delay of at least 1 year should be considered given the delays in rolling out CAURD and social equity licenses. Doing so would allow these small businesses a chance to establish a market presence and re-coop some portion of their initial investments before the RO's enter the market.

12. **Provide Proximity Protection for Pending Applicants Impacted by the Injunction.** Our members have questions concerning what will happen when a CAURD applicant/conditional licensee has submitted a location, but was unable to secure proximity protection due to the injunction? NYCRA requests that the legislature and Governor work with OCM to establish a fair policy that will not disadvantage these applicants due to the lawsuit. (Of course, one effective way to address this problem is to establish CAURD in statute; see recommendation #1 above).
  
13. **Create an Online Zoning Map Showing Where It's Legal to Operate.** There has been speculation and promises for months that OCM would be issuing an online map that would enable retailers to easily see where it would be legal to operate. While several municipalities have created their own online map, including Tarrytown, Binghamton and Rochester, a statewide map has yet to appear. It would be very helpful if the legislature and Governor would press OCM to create a statewide map, as it would save retailers time and money in attempting to secure their businesses.
  
14. **Provide Clarity on How SEE Grants will be Administered.** Retail applicants need clarity on the SEE grants that have been promised. Information on grant amounts, timing, eligibility qualifications, eligible expenditures, processing timelines, and any limitations placed on the grants would all be helpful.
  
15. **Clarify the Conditions of Default for a Pending CAURD Licensee.** Due to several impediments to rolling out the retail cannabis market, the existing 12-month grace to become operational has become a challenge. Because factors out of the control of licensees have resulted in delays in opening their doors, we believe the OCM needs to adjust the default to account for factors that have caused delays through no fault of the licensee.

In closing, I wish to reiterate in the strongest possible terms the difficulty our members have faced in attempting to enter the cannabis market due to practices and policies at OCM and DASNY. The frustration and anger our members have experienced is significant, causing the disruption of their lives and their livelihood. Having said that, NYCRA is focused on the future, and remain hopeful that with the constructively critical oversight of the legislature—which must include the enactment of important changes in the MRTA as outlined above—these problems will be overcome, and New York's legal cannabis market will be a success.

I appreciate the opportunity to testify and would be happy to answer any questions the committees might have.

Thank you.