



unsuccessful applicants any opportunity to challenge their ineligibility is unconstitutional, and cannot be permitted. Accordingly, in conjunction with this Complaint, Plaintiffs herein seek injunctive relief for the reasons specified below.

#### **Jurisdiction and Venue**

4. This court has jurisdiction pursuant to 28 U.S.C. 1331 and 28 U.S.C. 1367, as Plaintiffs bring a federal claim arising under the United States Constitution as well as a state law claim so related as to form part of the same case or controversy. Venue is proper as the events giving rise to these claims occurred in this district, some of the Plaintiffs reside in this district and the agency Defendant maintains its offices in this district.

#### **Parties**

5. Plaintiff Southshore Restore is 100% owned and controlled African American residents and business owners from the City's South Shore neighborhood. The team is made up of community organizers, environmental justice advocates, military veterans, urban farmers, small business owners and young professionals.

6. Plaintiff Heartland Greens is also 100% African American, mostly female, and majority-owned by Marquita Hollins, a military veteran. Residents of the City's West Side, this group was brought together for this opportunity by a wrongfully incarcerated individual who posted a notice in his neighborhood barbershop. The members include a Nutrition Educator at UIC, school board members, and employees of local community organizations.

7. Defendant Bret Bender is the Deputy Director of the Defendant Illinois Department of Financial & Professional Regulation.

#### **Background**

8. In 2014, the General Assembly passed a law to award licenses to a limited number of companies to sell medical marijuana in Illinois. Called the "Compassionate Use of Medical Cannabis Act" (the "Act"), the law created for the first time in Illinois a system of licensing dispensaries through which it would be legal to sell marijuana to patients suffering from conditions that are alleviated by marijuana. The Act places the Department in charge of the licenses.

9. Unlike some states in which there are an unlimited number of dispensary licenses, Illinois chose to strictly limit the number of available licenses. That limitation has made these licenses extremely valuable. Some recipients of these licenses have sold their dispensaries for tens of millions of dollars.

10. In 2019, the General Assembly amended the Act, creating rights to up to 60 new "Early Approval" secondary site dispensary licenses. 410 ILCS 705/15-15. Because, as described above, the State awarded 55 of the 60 available dispensary licenses in the original round, there are likewise 55 businesses eligible for Early Approval secondary site licenses.

11. The Act as amended provides that the only people eligible to win the 55 new Early Approval dispensary licenses are the set of people who already own companies holding existing dispensary licenses. As it turned out, the only companies with existing dispensary licenses are majority-owned by Caucasian males. Zero companies with

existing licenses are majority-owned by women or by minorities.

12. To try to justify this unequal distribution of valuable State resources, the amended Act further provides that minority-owned and female-owned businesses, while ineligible to apply for any of the 55 Early Approval licenses, would nonetheless be eligible to apply for a third round of dispensary licenses, consisting of 75 new Conditional Adult Use licenses, scheduled to be awarded before the end of 2021 (hereafter, the "Licenses").

13. In 2019, the Department announced a process to award these 75 Licenses. To compete for them, companies could apply and would be graded on various measures, with up to roughly 250 total points.

14. The Department selected KPMG via a no-bid, \$4.2M contract to grade the applications.

15. To facilitate participation in the nascent cannabis industry by people disproportionately affected by the War on Drugs, the State announced that 50 of the 250 possible points would be awarded to applicants who qualify as Social Equity Applicants, meaning that the company was majority-owned by person(s) who, for example, either lived in certain zip codes designated as disproportionately affected, or who had prior cannabis arrests. Other points were awarded to companies majority-owned by military veterans.

16. The Defendant, as well as the State and its Governor, promised that this round of new licenses was specifically designed diversify the cannabis industry and open it to Social Equity Applicants who had traditionally been excluded. Members of communities in need of economic development were encouraged to apply. Many did, investing

considerable money, sometimes their entire life savings.

17. The State announced a special fund to help Social Equity Applicants finance their dispensary businesses in the event they won. Traditional rules that would have required applicants to own and control property during the application process (an expensive proposition) were waived.

18. To further level the playing field, according to the FAQs published by the Department, many of the measures on which applicants were evaluated were designated to be graded via binary scoring, *i.e.*, pass/fail: the applicant either got all of the points, or did not. Among the measures that were designated pass/fail included the applicant's experience in cannabis, its diversity status, social equity and veteran status, and its community plan.

19. By making the scoring on these key measures binary, the Department created a contest where applicants could not distinguish their credentials on factors such as experience, diversity, and community involvement. The implication of such a scoring system is that many, if not most, applicants would receive maximum (tie) scores.

20. More than 700 companies submitted a total of more than 4,000 applicants. Many of those 700 companies, including the Plaintiffs, were majority-owned by true Social Equity Applicants who live in economically disadvantaged areas.

21. During the Summer of 2020, the Department announced emergency rules providing for what would happen if there was a tie for the highest scoring applicants. As it turned out, any applicants who

received the maximum number of points was tied with the others who did so as well. All such applicants thus became eligible to participate in the Lottery (hereafter, "Tied Applicants").

22. The State is divided into 17 Regions. For most of the State's Regions, the Department will award one to three licensees via this Lottery process. The primary exception was the Region covering the Chicagoland area, for which there are 47 Lotteries and 47 Licenses.

23. Applicants were allowed to file as many applications as they desired (at the cost of \$2,500 per application for Social Equity Applicants) but Tied Applicants are only eligible to enter into and participate in the Lottery the same number of times as there are Licenses available for that Region. In other words, for a Region with two Licenses available, all Tied Applicants who applied in that Region are allowed to participate in that Lottery a maximum of two times.

24. On September 3, 2020, the Department published a list of Tied Applicants, a total of only 21 companies, or less than 5% of the total number that applied. Each of those Tied Applicants who applied in a given Region will be allowed to participate in the 75 Lottery drawings by which these 75 Licenses will be awarded by lot. Other than these 21 companies, who will each win multiple licenses, no other companies will be allowed to participate in the Lottery.

25. Unlike most graded competitions for cannabis licenses, this one was not scored anonymously to control for political influence or bias. The vast majority of states that conduct competitions to award cannabis licenses do so via a process that requires applicants to redact the names and affiliations of their principals for grading

purposes. This competition, however, was not graded anonymously.

26. Based on their corporate registrations, at least some of the 21 Tied Applicants declared eligible for these enormously valuable licenses (collectively worth more than a billion dollars) are politically-connected. These include, for example, separate groups owned by a former Superintendent of the Chicago Police Department, Illinois gaming operators, the leader of the Illinois cannabis trade association/lobbying group, a private equity fund, the owner of an iconic Gold Coast restaurant/brand, and at least one Democratic Committeeman and lobbyist.

27. At least one Tied Applicant lists as a Manager a person identified on LinkedIn as a risk consultant for KMPG, the contractor that decided which companies would participate in the Lottery.

28. Pursuant to the Emergency Rules promulgated and announced by the Department, the Lottery for issuing the Licenses will be held at least five business days after the Tied Applicant list was released, which was shortly before the Labor Day weekend. That could be as soon as Thursday, September 10, 2020.

29. However, the Department has released no information or explanation for why the 4,000+ unsuccessful applicants were not selected for the Lottery, or why the 21 Tied Applicants were selected.

30. For those applicants not among the 21 selected for the Lottery, the Department has announced on its website that there will be no process for agency administrative review, and that all such applicants not selected for the Lottery have no recourse other than to file lawsuits.

31. Having established a procedure where the State is going to give away more than a billion dollars of valuable Licenses to what appears to be a group of 21 politically-connected insiders, it is unconstitutional to deny the 4,000+ unsuccessful applicants any ability to timely challenge the process by which they were not selected to participate in this Lottery. Due process requires a procedure be made available in time to obtain a meaningful remedy by participating in the lottery process.

32. Moreover, state law authorized a total of 75 Licenses; there is no statutory authorization to award more Licenses. If the Lottery proceeds and these Licenses are awarded, the winning applicants begin the process of building their dispensaries. The Department will likely argue that there is no ability to make whole (award a new License) to any unsuccessful applicants who can subsequently prove they should have been permitted to participate in the Lottery, much less that they would have won a License by lot.

33. Each of the Plaintiffs should have qualified to be Tied Applicant. Each Plaintiff was majority-owned by Social Equity Applicants and military veterans, and each Plaintiff is qualified to operate a dispensary business. Plaintiffs all submitted applications that should have received all of the available points.

34. On September 3, 2020, the same day the Department announced the 21 Tied Applicants, the Defendant informed Plaintiff and others that they were not a Tied Applicant, and thus ineligible to participate in the Lottery. A copy of the Department's determination notification, which was apparently identical for each of the 4,000+

unsuccessful applicants, is attached hereto as Exhibit A. The Department provided no explanation, no information about Plaintiffs' scores, and no reasons or even information about why they had not been deemed a Tied Applicant.

35. The same day they were informed that they were not Tied Applicants eligible to participate in the Lottery, Plaintiffs made a written request on the Department and its Director for information so they could assess the merits of their claims for judicial review. The information sought included Plaintiffs' scores and scorecards, the scoring rubric and evaluation criteria, any or all documents memorializing the reasons/rationale why Plaintiffs did not score enough points to become Tied Applicants, and any and all documents relating to the scores of those that did.

36. The Department has acknowledged receipt of the request, but, as of the filing of this Complaint, has provided no information whatsoever bearing on the decision, other than to inform Plaintiffs that they are not eligible.

37. The way the process has been set up by the Department, Plaintiffs have no opportunity to challenge the denial of their eligibility to participate in the Lottery. By design, there is no administrative review. And by the time Plaintiffs have any opportunity for judicial review, even if any can prove to the Court's satisfaction they should have been a Tied Applicant, the State will argue that it is too late to afford them a License, because the Lottery will have already occurred, and the 75 dispensaries will be under construction.

38. That process does not comport with due process.

Where the State is awarding enormously valuable Licenses to politically-connected insiders, there has to be at least some opportunity for meaningful judicial review. Because the process here was specifically designed to avoid that opportunity, the Lottery should be enjoined until the State provides Plaintiffs (and all others who ask) an opportunity to challenge the Department's decision and the information with which to do so, as well as the ability to receive a chance for a license should the Court deem that appropriate.

**Count I - Due Process**

39. Plaintiffs reallege all allegations of this Complaint as if fully set out herein.

40. By all of the above, Defendants, and each of them, are improperly denying Plaintiffs a fair opportunity to challenge the decision to exclude them from the Lottery in a meaningful way at a meaningful time. As a result they are being deprived of property rights without due process of law and lack an effective remedy. Plaintiffs have been injured as a direct and proximate result.

41. Plaintiffs are entitled to sufficient notice of the basis, if any, underlying the Department's decision that they are not a Tied Applicant, and a fair hearing process to challenge that basis. Moreover, this process must be afforded at a meaningful time when relief can still be effectively granted.

42. To preserve Plaintiffs' ability to obtain a remedy and this Court's ability to afford one, the Court should order as follows:

- A. Enjoin Defendants from conducting the Lottery

until after Plaintiffs have received a fair opportunity for judicial review as to the Department's bases for its finding against them, and a determination of the validity of the Department's decision; or, alternatively,

- B. Allow the Lottery to proceed, but require the Department to include Plaintiffs in the Lottery, and then thereafter hold hearings and afford process on the validity of the Department's decision as to all applications in which Plaintiffs place high enough in the lottery to receive a license if their score was corrected. Additionally, until Plaintiffs receive the opportunity to challenge the decision(s) and a hearing, the Department must be enjoined from awarding any Licenses for which Plaintiffs may yet qualify.

**Count II - Denial of Access to Courts**

43. Plaintiffs reallege all allegations of this Complaint as if fully set out herein.

44. Defendants are refusing to afford Plaintiffs a procedure consistent with Due Process to challenge its decision denying them Tied Applicant status.

45. Although Defendants have invited all non-eligible applicants to file lawsuits to challenge the Department's decision,

Defendants intend to deprive the court of the ability to provide relief for any violation. Specifically, Defendants intend to award the Licenses before any court can act.

46. By all of the above, Defendants, and each of them, are depriving Plaintiffs of access to court. Even Plaintiffs prove a violation by the Department and entitlement to Tied Applicant status, it will contend that no Licenses will remain to be awarded and that this Court has now power to grant relief. Plaintiffs have been injured as a direct and proximate result.

47. To remedy at least part of Plaintiffs' injuries, the Court should enjoin Defendants as follows:

- A. Enjoin Defendants from conducting the Lottery until after Plaintiffs have received a fair opportunity for judicial review as to the Department's bases for its finding against them, and a determination of the validity of the Department's decision; or, alternatively,
- B. Allow the Lottery to proceed, but require the Department to include Plaintiffs in the Lottery, and then thereafter hold hearings and afford process on the validity of the Department's decision as to all applications in which Plaintiffs place high enough in the lottery to receive a license if their score was corrected. Additionally, until Plaintiffs receive the opportunity to challenge the decision(s) and a

hearing, the Department must be enjoined from awarding any Licenses for which Plaintiffs may yet qualify.

**Count III - Administrative Review**

48. Plaintiffs reallege all allegations of this Complaint as if fully set out herein.

49. On or about September 3, 2020, The Department made final administrative decisions affecting Plaintiffs' rights. A copy of the decisions are attached hereto.

50. The court should review the decisions because they are not in accordance with the law, *inter alia*, for the reasons explained in this Complaint.

51. The Department should have reached the conclusion that Plaintiffs met all requirements for the highest score and should have been deemed a Tied Applicant as to each of the applications they submitted.

52. The Department is requested to file an answer to this Complaint consisting of the entire record of the process and grading resulting in the decision on Plaintiffs' application and on the applications of those deemed Tied Applicants.

53. Plaintiffs have exhausted all available remedies under the Administrative Review Law and have no further plain, speedy, adequate remedy under the law.

WHEREFORE, Plaintiffs respectfully request that Court grant the injunctive relief sought herein, as well as any other relief available in equity or at law, including but not limited to the Licenses under consideration.

RESPECTFULLY SUBMITTED,

/s/Jon Loevy

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