



# **Parabola Center Anti-Monopoly Toolkit**



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## About Parabola Center

Parabola Center is a nonprofit, nonpartisan think tank of legal professionals and drug policy experts that advocates for legalizing cannabis in a manner that protects people, not corporations. Our board of directors is comprised of women of color who are cannabis experts and attorneys – each with a deep history of activism, entrepreneurship, and experience serving as a government-appointed regulator or advisor. Our mission is to provide everyone with the education, access, and expertise to support cannabis policies that put communities and small businesses first. Learn more about us and check out our other educational materials at [ParabolaCenter.com](http://ParabolaCenter.com), and follow @ParabolaCenter on Twitter and Instagram for policy updates and other resources.

## Introduction

If you are concerned that big businesses are taking over the cannabis industry and you want to take action to prevent it from getting worse, this toolkit is for you. The national monopolization of cannabis is a big issue to tackle, but there's good news: We can work together now to prevent it. It's easier to stop it from happening in the first place than it is to fix it after the fact.

The purpose of this toolkit is to provide an educational resource for everyone with a stake in the outcome of this multibillion-dollar market – legislators, regulators, adult consumers, medical cannabis patients, or any concerned citizen who doesn't want to see yet more domination and destruction caused by Big Tobacco, Big Alcohol, and Big Pharma.

The first section of this toolkit provides sample legislative language that state policymakers can use to limit the consolidation of corporate power and encourage open, competitive state markets. Many of these provisions draw on policies that multiple states have already enacted.

Even if adopted at the state level, however, those provisions could become irrelevant if federal law is changed to legalize cannabis without any anti-monopoly protections. To that end, the second section of this toolkit outlines provisions that should be included in any such federal legislation to prevent a national monopoly or oligopoly from forming once national prohibition comes to an end.

The third and final section of this toolkit outlines actions that individuals can take to help build a better cannabis industry. These include adding your name to Parabola Center's **sign-on letter** (or writing your own), reaching out to your elected officials, and exposing **front groups** funded by Big Tobacco and other bad actors that seek to craft policies for their own ends.

The tools here build on work that Parabola Center has undertaken in **academic papers** and **expert analysis** for years, as the danger posed by cannabis monopolies has become increasingly evident. Legalization alone is not enough to undo the harm caused by the drug war and promote a healthy, competitive industry. It's crucial we seize the current moment, recognizing that policies put in place today will shape the country's relationship with cannabis for generations to come.

## How to Use This Toolkit

This is a document not only for policymakers, but also for anyone who wants to learn more about how to advocate for fair cannabis markets that prioritize people over profits. It offers a menu of potential policy options, and each section provides model language for how associated provisions might be written. Pay particular attention to the sample legal definitions in the footnotes and Glossary section, as the details of such definitions provide licensed businesses with needed clarity and are often invoked later on during enforcement proceedings.

The examples in this toolkit are intended as starting points that can be adapted and built upon to account for any jurisdiction's particular circumstances. For example, many of the suggested state-level protections could be adapted for use at the federal level. The provisions may also be used as part of broader grassroots organizing efforts, such as recruitment and visibility, direct advocacy, or coalition-building

Not every policy is the right fit for every community. This document is not an endorsement of every example provision for every situation, nor can it provide specific legal advice. Our goal is to raise awareness of important policy considerations that are too often overlooked in conversations around legalization.

# State Anti-Monopoly Protections

## 1. LIMIT HOW MUCH OF A CANNABIS MARKET ANY ONE ENTITY MAY OWN OR CONTROL<sup>1</sup>

In order to keep any single company from dominating the market, especially in the early days of a legal market, policymakers should set limits on the number of licenses, stores, or square feet of cultivation space that one person or entity may own or control. Such limits help prevent the establishment of massive cannabis companies that can use their deep pockets to crowd out smaller businesses. They can also prevent large marijuana operators from consolidating the market through acquisitions<sup>2</sup>, which can obscure a lack of real competition and consumer choice behind a confusing smorgasbord of brands and storefronts that in reality are all owned by the same conglomerate.

Limits on how much of the industry any one entity can control should be put in place instead of caps on the *total* number of licenses available statewide. Such overall limits tend to reward only “early movers” that are able to raise funds quickly, leaving behind smaller, local entities that need more time to piece together their financing.

Sample legislative language to prevent market domination:

***No licensee shall be granted more than 3 marijuana retailer licenses, 3 medical marijuana treatment center licenses, 3 marijuana processor licenses, or 3 marijuana cultivator licenses.***

Sample regulatory language to prevent market domination:

***No Person or Entity Having Direct or Indirect Control<sup>3</sup> shall be granted, or hold, more than 3 licenses in a particular class. Any Person or Entity Having Direct or Indirect Control, or Licensee, shall be limited to a total of 100,000 square feet of Canopy distributed across no more than three cultivation Licenses.***

## 2. PREVENT TECHNOLOGY PLATFORMS FROM CONTROLLING THE MARKET<sup>4</sup>

Monopolization by technology platforms is a major concern in other industries, where dominant digital platforms often preferentially market their own goods on their platforms – or products from partners who pay for the privilege – creating a conflict of interest that thwarts competition<sup>5</sup>. To protect small cannabis businesses from having to depend on platforms operated by their direct competitors, some states prohibit technology platforms from investing in licensed operators<sup>6</sup>. Other jurisdictions prohibit such platforms from fulfilling cannabis orders or deliveries altogether.

<sup>1</sup> The examples in this section are modified from adult-use cannabis regulations in Massachusetts.

<sup>2</sup> In early 2022, Columbia Care and Cresco Labs announced plans to complete a merger. A merger of that size would have violated the license limits in several states. The two companies announced a plan in late 2022 to sell off many of their retail and production facilities. The proposed deal has been delayed twice while the companies seek regulatory approval.

<sup>3</sup> The precise definition of ownership and control is a critical factor in the efficacy of policies meant to limit consolidation. Sample definition: Person or Entity Having Direct or Indirect Control specifically includes any Person or Entity Having Direct Control over an indirect holding or parent company of the applicant, and the chief executive officer and executive director of those companies, or any person or entity in a position indirectly to control the decision-making of a Marijuana Establishment.

<sup>4</sup> The examples in this section are modified from adult-use cannabis regulations in New York and Massachusetts.

<sup>5</sup> Khan, Lina, The Separation of Platforms and Commerce (May 15, 2019). 119 Columbia Law Review 973 (2019), Available at SSRN: <https://ssrn.com/abstract=3180174>

<sup>6</sup> Outside of the scope of this toolkit, the market power of companies like [Metrc](#) also raises concerns that could be addressed by more competition and options among the providers of software used to comply with track-and-trace requirements.

**Sample regulatory language to prohibit technology platforms from investing in the cannabis market: *No Online Platform*<sup>7</sup> shall own or control any marijuana establishment or license or any entity that owns or controls a marijuana establishment or licensee. A contract between a Delivery Licensee and an *Online Platform* shall be negotiated and entered into on an arm's length basis. A delivery licensee may not accept any investment in the delivery licensee by an *Online Platform* with which they have a contract.**

**Sample regulatory language to prohibit third-party technology platforms from fulfilling orders for dispensaries:<sup>8</sup>**

***A retail dispensary shall not market its cannabis products through an Online Platform that is operated by a third-party or fulfill any order referred to it by a third-party platform.***

### **3. DIVIDE NEW CANNABIS MARKETS INTO MULTIPLE TIERS<sup>9</sup>**

**To prevent consolidation and promote more open and competitive markets, policymakers should do what their predecessors did when alcohol prohibition ended: separate retailers, distributors, and processors and prevent “vertically integrated” businesses from operating across multiple tiers of the industry. However, we recommend granting an exception to Microbusinesses.<sup>10</sup>**

**Sample legislative language to create a multi-tiered market structure:**

***Except as otherwise provided under this Act, a person holding a marijuana cultivation or processing license may not also hold a retail dispensary license. Except as otherwise provided under this Act, no cannabis cultivator or processor shall have a direct or indirect interest, including by stock ownership, interlocking directors, mortgage or lien, personal or real property, management agreement, share parent companies or affiliated organizations, or any other means, in any premises licensed as a cannabis retail dispensary or in any business licensed as an adult-use cannabis retail dispensary.***

**Sample legislative language to create an exception for microbusinesses:<sup>11</sup>**

***A licensed microbusiness may cultivate and process marijuana and marijuana products at its licensed location(s) and transport, deliver and sell its own marijuana and marijuana products produced at the licensed location(s) directly to consumers.***

<sup>7</sup> Sample definition: Online Platform means a website, online or mobile application, operating system, digital assistant, or online service that—

(A) enables a user to generate content that can be viewed by other users on the platform or to interact with other content on the platform;

(B) facilitates the offering, advertising, sale, purchase, payment, or shipping of products or services, including software applications, between and among consumers or businesses not controlled by the platform operator; or

(C) enables user searches or queries that access or display a large volume of information.

<sup>8</sup> Jurisdictions who implement this rule should clarify that licensees may own and operate their own applications and work with vendors to develop them.

<sup>9</sup> The concepts and examples in this section are modified from adult-use cannabis regulations in Washington and New York.

<sup>10</sup> Sample definition: Microbusiness means an entity that is either a cultivator, a processor, or both. A microbusiness may be licensed to deliver marijuana or marijuana products produced at the licensed location directly to consumers. A microbusiness that is a processor may purchase no more than 2,000 pounds of marijuana or its dry-weight equivalent in raw concentrate per year from other marijuana establishments, but not any other marijuana products. A Microbusiness licensee may not be a person or having control of any other marijuana establishment or license or Online Platform.

<sup>11</sup> Depending on the jurisdiction's goals, the exception could be expanded to social equity businesses of any size or, conversely, narrowed to apply to only microbusinesses that are part of a social equity program.

# Federal Anti-Monopoly Protections

## **1. LIMIT MERGERS AND ACQUISITIONS**

Federal policymakers should prohibit cannabis mergers that would promote anticompetitive behavior. Separately, federal registration<sup>12</sup> criteria should prohibit companies over a certain size from obtaining a federal registration to participate in the cannabis industry.

Sample legislative language to prohibit harmful mergers:

***Any Prohibited Cannabis-Related Merger shall be unlawful under Section 7 of the Clayton Act, 15 U.S.C. § 18. A Prohibited Cannabis-Related Merger means an acquisition in which the acquiring or acquired person owns or controls a cannabis-related legitimate business and has annual aggregate revenues of greater than \$1,000,000,000.***

## **2. MANDATORY DISQUALIFICATION OF BAD ACTORS**

Instead of barring individuals from the cannabis industry based on drug-related convictions – an unfair, irrelevant, and outdated practice – corporations with a history of harmful conduct should be barred from the cannabis industry. The most straightforward example is Big Tobacco companies, which should be disqualified from receiving a federal registration due to their long and well-documented history of knowingly defrauding the public and undermining public health to the tune of millions of deaths.

Existing cannabis companies that have been found to engage in relevant unlawful conduct, such as abusive labor practices, bribery, or fraud should similarly be disqualified from a federal registration<sup>13</sup>.

Sample legislative or regulatory language to disqualify Big Tobacco corporations found to have violated civil racketeering laws:

***Mandatory Bar to Permitting. No permit shall issue to any individual, business enterprise, or any officer or director of the enterprise, any subsidiary, or any officer or director of a subsidiary, that has been convicted or has entered into a plea agreement, deferred prosecution agreement, non-prosecution agreement, or civil settlement with any agency or instrumentality of the United States for any violation of: the Racketeer Influenced and Corrupt Organizations Act, except where the unlawful conduct consisted of marijuana cultivation, processing, distribution, or sales.***

## **3. SUPPORT SMALL, CRAFT, AND MICROBUSINESSES**

If the goal of anti-monopoly protections is to promote a fair and competitive marketplace, then limits on large corporations must also be combined with support for small and craft businesses. At the federal level, such support could include: funding and assistance to provide capital to small businesses<sup>14</sup>; policies that allow small businesses to engage in interstate commerce before larger corporations<sup>15</sup>; and policies like the proposed SHIP Act, which would allow small cultivators to sell their products directly to consumers.

<sup>12</sup> The Drug Policy Alliance's Federal Cannabis Regulations Working Group, which includes Parabola Center, **recommends** that cannabis businesses should automatically receive a federal registration if the entity meets specified criteria, including a size threshold.

<sup>13</sup> For further sample language and detailed context, see Parabola Center's **comments** on the 2021 Cannabis Administration and Opportunity Act (CAOA) discussion draft.

<sup>14</sup> A forthcoming resource from our organization will dig into the details of small business resource access at the federal level.

<sup>15</sup> For our perspective and others' on interstate commerce, see **Regulating Cannabis Interstate Commerce: Perspectives on How the Federal Government Should Respond**, published by the Drug Enforcement and Policy Center of The Ohio State University Moritz College of Law.

Sample legislative language to allow small cultivators to directly sell to consumers<sup>16</sup>:

*A **Small marijuana cultivator** or **Small marijuana processor** may ship and sell marijuana or a marijuana product to an individual located in that State or another State in which possession of marijuana or the marijuana product is lawful by that individual, using the Postal Service or any private or commercial interstate carrier.*

## Additional Actions

Anticompetitive behaviors and monopolization in the legal cannabis industry are systemic problems that require systemic solutions. Our encouragement of individual action is not meant to imply that it is the responsibility of individuals alone to tackle these issues. Nevertheless, as an organization founded by longtime advocates, Parabola Center believes that an educated, empowered public is a critical part of how good policy is made. Below are some of the most effective actions we believe you can take.

### 1. DON'T LET BIG CORPORATIONS SPEAK FOR YOU

During recent sessions of Congress, federal policymakers and their staff members have been hearing from lobbyists that the most urgent concern among cannabis stakeholders is the need to protect banks that provide financial services to the industry. If protecting banks isn't your top concern, contact your legislators and tell them what your top concerns actually are. It's easier than you might think! By documenting and communicating who you are and what you care about, you will help to balance out the aggressive lobbying taking place by large corporations focused on maximizing their own profits.

Find your representatives' contact information [here](#). An effective strategy is to show up to their town halls, community forums, and other events to speak up for yourself and for small businesses. You can find out about these events in your representatives' newsletters and in their social media pages.

### 2. CONNECT WITH OTHERS AND COMBINE YOUR EFFORTS THROUGH SIGN-ON LETTERS

Individual actions are more powerful when undertaken collectively. Consider writing a letter to elected officials explaining your concerns about cannabis monopolies. Then, invite others to sign on, both to increase the impact of the letter and to strengthen your community of like-minded people. This technique is commonly used by advocacy organizations and even members of Congress themselves! When a congressional subcommittee held a cannabis hearing last year that gave a platform to Big Tobacco representatives, we brought together other drug policy experts and tobacco watchdogs for a first-of-its-kind [letter](#)<sup>17</sup> to push back.

<sup>16</sup> This language is adapted from the [Small and Homestead Independent Producers Act \(SHIP Act\)](#), which we recommend reading in its entirety.

<sup>17</sup> If you are a drug policy expert with a government, academic, or nonprofit affiliation, contact us at [info@parabolacenter.com](mailto:info@parabolacenter.com) to sign on.

### **3. ADVOCATE FOR HOME GROW IN ALL CANNABIS LEGISLATION**

While the vast majority of legal cannabis consumed in most states is purchased at retail stores, protecting the right to cultivate cannabis at home for personal use and sharing is an important check on corporate power. It allows consumers and medical patients, rather than just companies, to determine what products are available, ensuring they have access to strains and medicines that meet their interests and needs. Allowing growing at home is also a symbolic statement that the cannabis plant belongs to people, not corporations.

### **4. EDUCATE YOUR COMMUNITY ABOUT FRONT GROUPS THAT REPRESENT BAD ACTORS**

The ongoing decline of criminal prohibitions on cannabis has raised big questions about who will control the industry, and in the coming years we expect to see even more aggressive action by harmful corporations to co-opt the legalization movement. We know the methods these corporations often use to appear credible and gain control: creating front groups, hiring former activists, sponsoring major events, even underwriting academic research. Fortunately, it's usually possible to determine who's behind cannabis advocacy groups and what their underlying motives might be by looking up the professional history of their key leaders, researching their lobbying disclosures and other required public filings, or simply asking other knowledgeable advocates. At Parabola, we do not partner with organizations funded by Big Alcohol, Big Tobacco, or Big Pharma, nor will we participate in events they sponsor. We also encourage our colleagues to proactively adopt similar standards.

## **Glossary**

**Control** means, with respect to a person:

- A) holding 25 percent or more of the stock of the person;
- B) having the right to 25 percent or more of the profits of the person;
- C) in the event of the dissolution of the person, having the right to 25 percent or more of the assets of the person;
- D) if the person is a corporation, having the power to designate 25 percent or more of the directors of the person;
- E) if the person is a trust, having the power to designate 25 percent or more of the trustees;
- or
- F) otherwise exercising substantial control over the person.

**Home Cultivation** means the right of any person 21 or older, or a registered medical cannabis patient or their caregiver, to grow enough cannabis to yield a 60-day supply for personal use. A 60-day supply is defined as enough cannabis to provide 10 ounces of usable cannabis.

**Microbusiness** means an entity that is either a cultivator, a processor, or both. A microbusiness may be licensed to deliver marijuana or marijuana products produced at the licensed location directly to consumers. A microbusiness that is a processor may purchase no more than 2,000 pounds of marijuana or its dry-weight equivalent in raw concentrate per year from other marijuana establishments, but not any other marijuana products. A Microbusiness licensee may not be a person or have control of any other marijuana establishment or license or Online Platform.

**Oligopoly** means a market structure in which a small number of companies dominate the market and can greatly influence price, regulations, and other factors. In an oligopoly, outside competitors find it difficult or impossible to enter the market.

**Online Platform** means a website, online or mobile application, operating system, digital assistant, or online service that—

(A) enables a user to generate content that can be viewed by other users on the platform or to interact with other content on the platform;

(B) facilitates the offering, advertising, sale, purchase, payment, or shipping of products or services, including software applications, between and among consumers or businesses not controlled by the platform operator; or

(C) enables user searches or queries that access or display a large volume of information.

**Person or Entity Having Direct or Indirect Control** specifically includes any person or entity having direct Control over an indirect holding or parent company of the applicant, and the chief executive officer and executive director of those companies, or any person or entity in a position indirectly to control the decision-making of a Marijuana Establishment.

**Small Marijuana Cultivator** means a person who cultivates one acre or less of mature flowering marijuana plant canopy using outdoor cultivation, 22,000 square feet or less of marijuana plant canopy using greenhouse cultivation, or 5,000 square feet or fewer of mature flowering marijuana plant canopy using indoor cultivation, inclusive of all marijuana cultivated by that person.

**Small Marijuana Processor** means a person who produces a manufactured marijuana product, including a salve, tincture, edible, or concentrate, with a gross annual revenue of less than \$5,000,000, inclusive of all marijuana product manufactured by that person.

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