

Respect the Hustle: Necessity Entrepreneurship, Returning Citizens, and Social Enterprise Strategies

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**RESPECT THE HUSTLE: NECESSITY ENTREPRENEURSHIP,
RETURNING CITIZENS, AND SOCIAL
ENTERPRISE STRATEGIES**

PRIYA BASKARAN*

ABSTRACT

This Article will address a pervasive and growing problem for returning citizens—high rates of economic insecurity—and, as a novel solution, propose the creation of Economic Justice Incubators (“EJIs”) as a new, municipally-led social enterprise strategy. Mass incarceration is a national problem and requires comprehensive criminal justice reform. In contrast, the reentry process is locally focused due to a complex web of collateral consequences arising from state and local laws. An estimated 641,000 people return home from prison each year, many to economically distressed communities. Once released, the terms of their parole and the collateral consequences associated with their conviction restrict their mobility. Successful reentry initiatives require strong community and local government investment dedicated to supporting returning citizens post-release. Without targeted, short-term policy solutions, these individuals will remain trapped within the cycle of poverty and criminalization that pervades these disadvantaged geographic spaces. This Article will focus on one major obstacle that repeatedly impedes successful reentry: economic insecurity and disenfranchisement from viable employment opportunities.

The existing nonprofit model is intrinsically flawed as a means of economic enfranchisement because it fails to adapt to the lack of available jobs within disadvantaged geographic spaces and the larger transition to a knowledge-based economy. As a new strat-

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egy, this Article will propose municipally-led EJIs to support returning citizen entrepreneurs. Many local governments currently incubate and accelerate businesses as part of a growing local economic development strategy, often using public funds and resources to support these private enterprises. This Article will advocate for the equitable expansion of these municipal incubator programs to provide additional economic opportunities for returning citizens.

TABLE OF CONTENTS

INTRODUCTION.....	324
I. NECESSITY ENTREPRENEURSHIP AS A RESPONSE TO EMPLOYMENT	
BARRIERS FACED BY RETURNING CITIZENS	333
A. Criminal History Disclosures and Background Checks	334
B. Occupational Licensing Restrictions	336
C. The Consequences of Disadvantaged Spaces	339
D. Municipal Obligations to the Necessity Entrepreneur.....	344
II. FAILURES OF THE EXISTING NONPROFIT MODEL	348
A. Overview of Existing Nonprofit-Based Programming	349
B. Legal Limitations of Existing Nonprofit Models	353
C. Wealth-Building Barriers in the Nonprofit World.....	358
D. IRS Rulings Impacting Reentry Organizations	360
III. CLEAN DECISIONS AND CHANGING PERCEPTIONS: A NEW SOCIAL ENTERPRISE MODEL FOR REENTRY ORGANIZATIONS	362
IV. PROPOSED SOLUTIONS: CREATING AN ENTREPRENEURIAL ECOSYSTEM THAT SUPPORTS THE ECONOMIC ENFRANCHISEMENT OF RETURNING CITIZENS.....	365
A. Building Financial Capital for Returning Citizens.....	367
B. Building Human and Social Capital for Returning Citizens: Lessons from Venture Development Funds.....	370
C. A New Municipal Strategy for Increasing Economic Security for Returning Citizens: The Economic Justice Incubator	374
V. CONCLUSION.....	379

INTRODUCTION

*John's Story:*¹ John Turner was convicted of a nonviolent drug offense at the age of twenty and sent to Federal Correction Institute ("FCI") Hazle-

1. John's Story is a fictional account, combining facts from several former client cases. Names, locations, and additional details have been changed to protect the identities of former cli-

ton.² While incarcerated, John received an associate's degree in accounting and completed several training certificates. John returned home to Pittsburgh seven years later. Determined to rebuild his life, John attended an outreach event hosted by Making a BetterBurgh Inc. ("BetterBurgh"),³ a Section 501(c)(3) nonprofit organization dedicated to providing reentry social services for returning citizens.⁴ BetterBurgh helped orient John to available social services and assigned him a caseworker. John enrolled in BetterBurgh's flagship job-training program, a two-year apprenticeship focused on teaching basic carpentry, landscaping, gardening, and general handyman skills. John excelled in the program and graduated with high hopes of finding permanent employment with the assistance of BetterBurgh's network. As a temporary measure, John accepted a retail position with a chain home improvement and hardware retail store, earning just eleven dollars per hour and averaging twenty-five hours a week. To supplement his income, John did landscaping and handyman jobs posted on Craigslist and Thumbtack.

A year later, John is still working in the same retail position. He is growing disheartened and frustrated by his inability to find better paying, full-time employment despite his training and skills. His former caseworker at BetterBurgh is unable to help, explaining that recent graduates of the training program cannot even secure retail positions. John increasingly relies on his handyman work to make rent and pay other bills. Fortunately, he managed to build a steady base of repeat clients through his handyman projects.

John often thinks about starting his own handyman business as an alternative to being underemployed and underpaid. From an operations perspective, John knows he has the requisite expertise, determination, and a loyal customer base. He knows he can easily meet the demand for larger

ents. The underlying structural barriers and the subsequent struggles are an accurate reflection of challenges faced by many returning citizens when pursuing economic enfranchisement.

2. FCI Hazelton is a Federal Correctional Complex located in Bruceton Mills, West Virginia. *FCI Hazelton*, FED. BUREAU OF PRISONS, <https://www.bop.gov/locations/institutions/haf/> (last visited Jan. 29, 2018).

3. This is a fictional nonprofit organization, however there are many organizations that provide similar job-training programs for returning citizens. Part II of this Article will provide a more robust analysis of the operations of these nonprofit programs.

4. "Returning citizen" is a term used to describe individuals returning to the community after incarceration. Jarrod Phipps, *Unlocking the Second Prison: Changing Our Words to Help Returning Citizens*, SHARED JUSTICE (July 18, 2017), <http://www.sharedjustice.org/most-recent/2017/7/18/unlocking-the-second-prison-changing-our-words-to-help-returning-citizens>.

The term is meant to be more inclusive, removing the persistent stigma associated with terms like "convict" or "ex-offender." *See id.* "Reentry" is a term that encompasses the process of returning home after incarceration. *See* AMY L. SOLOMON ET AL., *LIFE AFTER LOCKUP: IMPROVING REENTRY FROM JAIL TO THE COMMUNITY* xvi (2008), <https://www.ncjrs.gov/pdffiles1/bja/220095.pdf>; *Reentry Resources*, OFF. OF MINORITY HEALTH, <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=18> (last modified Oct. 2, 2018).

projects by partnering with other graduates of the BetterBurgh training program and creating multiple crews of handymen. Moreover, John feels inspired by what his business can do for his fellow returning citizens. He could create a positive professional environment for people navigating life post-incarceration, providing additional support through mentorship and peer advocacy. Although John is very inspired by these possibilities, he simply does not know where to begin.

This story constitutes an excellent example of the shortcomings of traditional, nonprofit-centered⁵ efforts to create economic security⁶ for returning citizens. The ability to acquire and maintain employment, a primary means for participating in the capitalist economy, can play an important role in crime desistance and delaying re-incarceration.⁷ Conventional responses to high rates of unemployment among returning citizens focus on job training, employment placement assistance, and direct social services programs—all of which are typically coordinated by Section 501(c)(3) nonprofit organizations.⁸ These initiatives have nevertheless fallen short of

5. The Author will use the term “nonprofit” in this Article to refer specifically to tax-exempt organizations under Section 501(c)(3) of the Internal Revenue Code. See I.R.C. § 501(c)(3) (2012). These organizations are commonly referred to in nonprofit law practice as “public charities,” “nonprofit,” “not-for-profit,” or even “non-profit.”

6. “Economic security” is often defined as the ability for households to cover their basic needs in a sustainable manner. There are many components to economic security, including employment, housing costs, healthcare, and more. The Author will use this as a relative term to differentiate between high levels of economic disenfranchisement and increasing levels of economic participation that allow an individual to function within the current capitalist economy. See generally ILO SOCIO-ECON. SEC. PROGRAMME, DEFINITIONS: WHAT WE MEAN WHEN WE SAY “ECONOMIC SECURITY,” <http://www.ilo.org/public/english/protection/ses/download/docs/definition.pdf> (last visited Dec. 17, 2018); Jacob S. Hacker et al., *The Economic Security Index: A New Measure for Research and Policy Analysis* 3 (Fed. Reserve Bank of S.F., Working Paper No. 2012-21, 2012), <https://www.frbsf.org/economic-research/economic-research/files/wp12-21bk.pdf>.

7. Marilyn C. Moses, *Ex-Offender Job Placement Programs Do Not Reduce Recidivism*, CORRECTIONS TODAY, Aug–Sept. 2012, at 106, <https://www.ncjrs.gov/pdffiles1/nij/249041.pdf> (“Regardless of prior criminal record, individuals cannot lawfully sustain themselves without gainful employment. . . . There is a body of research that links employment to crime desistance.”); see Stephen Tripodi et al., *Is Employment Associated with Reduced Recidivism?: The Complex Relationship Between Employment and Crime*, 54 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 706, 706 (2010).

8. A number of large Federal Grants that fund reentry work, including various funding opportunities through the Second Chance Act of 2017, Pub. L. No. 110-199, 122 Stat. 657 (codified as amended in scattered sections of 34 U.S.C.), and overseen by the Department of Justice, require the recipient to be a Section 501(c)(3) nonprofit organization. See, e.g., BUREAU OF JUSTICE ASSISTANCE, SECOND CHANCE ACT COMPREHENSIVE COMMUNITY-BASED ADULT REENTRY PROGRAM FY 2017 COMPETITIVE GRANT ANNOUNCEMENT 1 (May 17, 2017), <https://www.bja.gov/Funding/communityreentry17.pdf>; BUREAU OF JUSTICE ASSISTANCE, SECOND CHANCE ACT MENTORING GRANTS TO NONPROFIT ORGANIZATIONS FY 2009 COMPETITIVE GRANT ANNOUNCEMENT 1 (Apr. 23, 2009), <https://www.bja.gov/Funding/09SecondChanceMentoringSol.pdf>.

eliminating the employment gap⁹ and increasing economic security for returning citizens.¹⁰

This Article will advocate for municipally-led social enterprise¹¹ solutions to promote the economic enfranchisement of returning citizens. The current nonprofit model fails to adequately address the dearth of available jobs created by a combination of collateral consequences, economically distressed urban communities, and the transition to a new, knowledge-based economy. Moreover, local governments are increasingly playing a larger role in criminal justice reform, positioning themselves to also play a pivotal part in advocating for effective reentry. Nationally, the Trump Administration has a mixed record on reentry services and comprehensive criminal justice reform,¹² motivating greater local advocacy on the state, regional, and municipal levels.¹³ Such local efforts include supporting progressive Dis-

9. One study found: “Among working-age individuals (25–44 in this dataset), the unemployment rate for formerly incarcerated people was 27.3%, compared with just 5.2% unemployment for their general public peers”—clearly indicating the presence of an employment gap for returning citizens. Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, PRISON POLICY INITIATIVE (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html>.

10. Despite the popularity of these programs, some critics argue “the accumulation of evidence during the past half-century indicates that ex-offender job placement programs are not effective in reducing recidivism.” Moses, *supra* note 7, at 106.

11. Social enterprise is commonly misconstrued as a hybrid entity like the benefit corporation. In truth, social enterprise is a broader philosophy—using market-based solutions to address social problems. Social enterprises use a variety of tools to work toward market-based, mission-driven solutions, including financing tools like social impact bonds, corporate structuring options like hybrid entities, and mission-inclusive governance mechanisms. *See generally* Robert A. Katz & Antony Page, *The Role of Social Enterprise*, 35 VT. L. REV. 59, 59, 61–64 (2010); Alicia E. Plerhopes, *Representing Social Enterprise*, 20 CLINICAL L. REV. 215, 223–25 (2013); Joseph W. Yockey, *Does Social Enterprise Law Matter?*, 66 ALA. L. REV. 767, 769 (2015).

12. Initially, the Trump Administration appeared uninterested in continuing Obama-era reforms focused on reentry and criminal justice. The Trump Administration’s DOJ decreased funding to reentry programs during 2016 and 2017. Jeff Sessions, Trump’s initial Attorney General, removed Obama-era prosecutorial discretion authorization for certain non-violent, mandatory minimum cases. *See, e.g., supra* note 200. Recently, Trump expressed his support for a criminal justice reform bill, the FIRST STEP Act, H.R. 5682, 115th Cong. (2018), which includes reducing sentences for certain categories of nonviolent offenders and allowing more sentencing discretion for low-level offenses. Seung Min Kim, *Trump Endorses Bipartisan Criminal-Justice Reform Bill*, WASH. POST (Nov. 14, 2018), https://www.washingtonpost.com/politics/trump-endorses-bipartisan-criminal-justice-reform-bill/2018/11/14/9be8f926-e84c-11e8-bd89-eecf3b178206_story.html?utm_term=.03e8927509a0.

13. *See* Chris Geidner, *Trump Loves Old School, Tough-On-Crime Policies. So Criminal Justice Liberals Are Going Local*, BUZZFEED NEWS (June 12, 2017), <https://www.buzzfeednews.com/article/chrisgeidner/as-trump-takes-over-washington-criminal-justice-liberals#.dkBNxLozgz> (explaining that local reform efforts are gaining momentum with municipal-, county-, and state-level initiatives). Current reform efforts include bail reform, replacing criminalization of low-level drug offenses with treatment options, and revising penalties for probation violations to reduce reincarceration rates. *See id.* For additional examples of local level reforms in Maine, Rhode Island, and suggested reforms in Louisiana, see LAUREN GALIK & JULIAN MORRIS, REASON FOUND. ET AL., SMART ON SENTENCING, SMART ON CRIME: AN ARGUMENT FOR REFORMING LOUISIANA’S DETERMINATE SENTENCING LAWS 17–21 (2013).

trict Attorney candidates¹⁴ and ballot initiatives that focus on bail reform¹⁵ and reducing penalties for non-violent drug offenses.¹⁶ Municipally-focused and -led reentry efforts are a natural extension of this latest evolution in criminal justice reform and should become a policy priority for local governments.

In addition to the pressures created by the shifting national policy agendas that necessitate local responses, state governments also have a general obligation to create economic opportunity. Municipalities should have a vested interest in creating stability for all residents and regularly commit municipal funds to a variety of economic development efforts, ranging from favorable zoning to building infrastructure.¹⁷ This Article will advocate for

14. John Legend, a popular R&B singer, recently partnered with the American Civil Liberties Union (“ACLU”) and other organizations to advocate for criminal justice reform with an emphasis on local initiatives. Among his efforts is a campaign emphasizing the important role of district attorneys in criminal justice reform. John Legend, *Meet Your District Attorney*, ACLU S. CAL., <https://www.aclusocal.org/en/campaigns/meet-your-district-attorney> (last visited July 21, 2018).

15. See Geidner, *supra* note 13 (discussing the ACLU’s efforts in support of “California legislation aimed at reforming the bail system”).

16. One notable example is the recent Ohio Drug and Criminal Justice Policies Initiative, a ballot initiative proposing various amendments to the Ohio Constitution aimed at criminal justice reform. *The Ohio Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment*, OHIO ORGANIZING COLLABORATIVE, <http://ohorganizing.org/safeandhealthy/the-ohio-neighborhood-safety-drug-treatment-and-rehabilitation-amendment/> (last visited July 21, 2018). The initiative garnered enough signatures to place the changes before voters on a statewide ballot during the November 2018 election. *Ohio Issue 1, Drug and Criminal Justice Policies Initiative (2018)*, BALLOTPEdia, [https://ballotpedia.org/Ohio_Criminal_Justice_Policies_Initiative_\(2018\)](https://ballotpedia.org/Ohio_Criminal_Justice_Policies_Initiative_(2018)) (last visited July 21, 2018). The proposed constitutional amendments make a number of progressive changes, including reducing the number of non-violent drug-related felony charges and creating a fund for healthy treatment and diversion programs. Unfortunately, the measure was ultimately defeated. See *id.* Florida did, however, successfully pass a ballot initiative to restore voting rights to certain felons. *Florida Amendment 4, Voting Rights Restoration for Felons Initiative (2018)*, BALLOTPEdia, [https://ballotpedia.org/Florida_Amendment_4_Voting_Rights_Restoration_for_Felons_Initiative_\(2018\)](https://ballotpedia.org/Florida_Amendment_4_Voting_Rights_Restoration_for_Felons_Initiative_(2018)) (last visited Dec. 17, 2018).

17. There are several competing schools of thought on the normative benefits of government involvement in economic development efforts. This Article will not address the merits of any particular method but will operate on the premise that the majority of local governments engage in some level of economic development. Some local governments are expressly granted the power to engage in economic development. For example, the Texas State Constitution authorizes local governments to engage in “development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state.” TEX. CONST. art. III, § 52-a. Others, like the City of Alhambra, CA, create local ordinances to grant themselves requisite authority. Julia J. Fuentes & Joseph Montes, *Creating Economic Development at the Local Level*, W. CITY (May 1, 2012), <https://www.westerncity.com/article/creating-economic-development-local-level>.

Such efforts include tax credits and subsidies, favorable zoning, and issuing municipal bonds to finance infrastructure development—all designed to promote economic growth. See Richard Auxier & John Iselin, *Infrastructure, the Gas Tax, and Municipal Bonds*, TAX POLICY CTR. (Mar. 23, 2017), <https://www.urban.org/research/publication/infrastructure-gas-tax-and-municipal-bonds> (“To finance capital [infrastructure] projects, state and local governments issue bonds.”); see also

the equitable use of these funds and programs to also assist returning citizens. In particular, social enterprise solutions can leverage these municipal investments and existing nonprofit programming to better serve returning citizens in the changing economic landscape.

To better understand the need for municipal leadership, it is vital to explore the problems with the existing nonprofit model. At its core, a nonprofit is poorly suited to create the necessary long-term economic stability and wealth-building solutions. There are two main factors that make a nonprofit an imperfect instrument. First, their activities and operations are limited by the Internal Revenue Code (“Code”) and Internal Revenue Service’s (“IRS”) rulings and regulations; second, their existing programming model does not always comport with the employment markets in many of the communities that returning citizens call home.

The Code as well as IRS rulings and regulations intentionally restrict nonprofits from fully participating in our capitalist economy.¹⁸ These regulations ensure that nonprofits can engage in *job training* but do not address the underlying issue—a lack of available jobs for returning citizens.¹⁹ Social stigmas and the collateral consequences of conviction routinely disqualify many returning citizens in the eyes of potential employers.²⁰ The resulting mismatch between a large pool of returning citizens seeking employment and a limited supply of available jobs necessitates the creation of new opportunities predicated on the belief that returning citizens are qualified and capable workers. The solution to this economic exclusion must address both the structural injustice and the need for greater market

Richard Briffault, *Smart Growth and American Land Use Law*, 21 ST. LOUIS U. PUB. L. REV. 253, 270 (2002) (“States as well as local governments have long supported a strong role for local governments in land use regulation.”). See generally Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 3 (1990); Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 74 (2010).

18. See *infra* Section II.B.

19. Nonprofits can engage in policy advocacy to remove barriers to employment for returning citizens, and they can work to place graduates through connections with existing employers. They can even train returning citizens to have the necessary skills and experience for employment. However, nonprofits cannot create their own permanent employment opportunities through their programming. For example, a nonprofit cannot open a factory that creates jobs and long-term employment as part of its nonprofit activities. Section II.B of this Article will discuss the IRS regulations that create these limitations.

20. See SOC’Y FOR HUMAN RES. MGMT., SHRM SURVEY FINDINGS: BACKGROUND CHECKING—THE USE OF CRIMINAL BACKGROUND CHECKS IN HIRING DECISIONS 2 (2012), <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Pages/criminalbackgroundcheck.aspx> [hereinafter SHRM SURVEY FINDINGS] (reporting that ninety-six percent of employers surveyed in 2012 viewed a candidate’s conviction of a violent felony as very influential in their decision to not extend a job offer); see also SCOTT H. DECKER ET AL., CRIMINAL STIGMA, RACE, GENDER, AND EMPLOYMENT: AN EXPANDED ASSESSMENT OF THE CONSEQUENCES OF IMPRISONMENT FOR EMPLOYMENT 67 (2014) (suggesting that employers use criminal records as a preliminary screening mechanism to reduce the applicant pool).

participation. Although nonprofits provide key social services and important policy advocacy, they are incredibly restricted in their operation by the Code and a complex network of IRS rulings and regulations. The IRS effectively restricts a nonprofit's ability to intervene in private markets, meaning they cannot attempt to permanently employ the majority of the returning citizens they train. As many returning citizens, like John, find it difficult to secure employment due to collateral consequences and other structural barriers, the inability for nonprofits to help them obtain true employment falls short of the economic enfranchisement goals of these nonprofit programs.

Additionally, nonprofits remain largely committed to an outdated model focused on training and placing low-income individuals in stable manufacturing and skilled-trades careers.²¹ Nonprofits have responded to this trend by electing to provide training programs serving more viable industries. Rather than offering job training with a manufacturing focus, nonprofits can offer programs that prepare individuals for the food service industry, for example, thereby responding to the hiring needs of the local economy.²² The modern U.S. economy includes a number of individuals, like John, who supplement their existing employment or are fully employed by a mix of part-time or project-based work, sometimes referred to as the "gig economy."²³ Specially designed technology platforms often facilitate this kind of alternative employment.²⁴ The most common examples of this

21. See, e.g., JEFFERY W. THOMPSON ET AL., SECTORIAL EMP'T DEV. LEARNING PROJECT, FOCUS: HOPE—A CASE STUDY OF A SECTORAL EMPLOYMENT DEVELOPMENT APPROACH 51–55 (2000) (observing that the job-training programs offered by Focus:HOPE, a nonprofit, "appear[] to do an excellent job linking students to employment or further education").

22. Nonprofits are exploring training and job placement opportunities in the food service industry. According to the Bureau of Labor Statistics, this industry is projected to grow faster than average when compared to other economic sectors. *Occupational Outlook Handbook, Food and Beverage Serving and Related Workers*, U.S. BUREAU LAB. STAT., <https://www.bls.gov/ooh/food-preparation-and-serving/food-and-beverage-serving-and-related-workers.htm#tab-6> (last modified Oct. 10, 2018). One such example is EDWINS Leadership & Restaurant Institute, a nonprofit based in Cleveland, Ohio that provides culinary training for formerly incarcerated adults. See *Our Mission*, EDWINS LEADERSHIP & RESTAURANT INSTITUTE, <http://edwinsrestaurant.org/about-us/> (last visited Jan. 31, 2018). However, these nonprofits are still entrenched in a job-training model that relies on (1) the availability of jobs in the private market and (2) the goodwill of employers to ignore the stigma of a criminal history when evaluating job applicants.

23. See Antonio Aloisi, *Commoditized Workers: Case Study Research on Labor Law Issues Arising from a Set of "On-Demand/Gig Economy" Platforms*, 37 COMP. LAB. L. & POL'Y J. 653, 653–54 (2016) (describing the "gig" economy as on-demand companies, like Uber, that "match[] labor supply and demand").

24. See Julie E. Cohen, *Law for the Platform Economy*, 51 U.C. DAVIS L. REV. 133, 136 (2017) (defining the role of platforms in the informational economy and noting the increase in economic activity through platforms, including the creation of online marketplaces for virtual labor exchanges). The boom in technology platforms, including certain apps, designed to support this new marketplace serves to grow the population of necessity entrepreneurs. Apps like Lyft, electronic message boards like craigslist, and websites like Thumbtack enable an increasing number of individuals to participate in the gig economy. See *About*, CRAIGSLIST,

phenomenon are apps like Uber and Lyft, designed to coordinate ridesharing between individual drivers and ride-seeking customers.²⁵

The gig economy establishes a secondary, unofficial job market and serves as one of the returning citizens' few opportunities for economic participation. For John, his entrepreneurial hustle becomes an important tool for survival, bridging the gap between the end of his job-training period and his underemployment. As mentioned earlier, this underemployment stems from the collateral consequences associated with his criminal conviction. His underemployment can also be attributed to his geographic isolation from employment opportunities. Many returning citizens live in "geographically disadvantaged space"—areas where a concentration of factors create and perpetuate poverty.²⁶ There are fewer employment opportunities in John's community, and John is less competitive for the opportunities that do exist because of his criminal history. Thus, John and other low-income individuals become "necessity entrepreneurs"—people who are "pushed to entrepreneurship[] due to low-income, lack of job opportunities, and limited government support."²⁷ Initially considered as a means to supplement or bridge income, necessity entrepreneurship has become a primary source of income for many returning citizens.²⁸ The individuals engaged in necessity

<https://www.craigslist.org/about/?lang=en&cc=us> (last visited Oct. 19, 2018); *Rider*, LYFT, <https://www.lyft.com/rider> (last visited Oct. 19, 2018); *This Is Our Story*, THUMBSTACK, <https://www.thumbtack.com/about/> (last visited Oct. 19, 2018).

25. See generally *Become a Driver*, LYFT, <https://www.lyft.com/drive-with-lyft> (last visited Jan. 10, 2019) ("Lyft matches drivers with passengers who request rides through our smartphone app, and passengers pay automatically through the app. Whether you're trying to offset costs of your car, cover this month's bills, or fund your dreams, Lyft will get you there. So, go ahead. Be your own boss."); *Drive with Uber*, UBER, <https://www.uber.com/drive/> (last visited Jan. 30, 2018).

Both companies do utilize criminal background checks but have used different standards at various times when determining driver eligibility. Initially, Uber employed a blanket ban to exclude drivers with any felony convictions. *What Does the Background Check Include?*, UBER, <https://help.uber.com/h/6970e704-95ac-4ed3-9355-e779a86db366> (last visited Jan. 30, 2019) ("Convictions for felonies, violent crimes, sexual offenses, and registered sex offender status, among other types of criminal records, are also disqualifying."). Recently, Uber has modified this blanket ban to comply with state and local regulations that limit certain types of disqualifying convictions. For example, Uber recently reinstated drivers in Pennsylvania who were wrongly disqualified from employment under Pennsylvania law for non-violent criminal convictions that were more than seven years old. Jason Laughlin, *Uber Changes Direction on Drivers' Criminal History*, PHILLY.COM (June 11, 2018), <http://www.philly.com/philly/business/transportation/uber-drivers-drug-charges-delaware-pennsylvania-law-20180611.html>. Likewise, Lyft also utilizes criminal background checks and may deny applicants with criminal history results that include violent crimes, sexual offenses, disqualifying felonies, disqualifying drug-related offenses, or disqualifying theft or property damage offenses. *Driver Requirements*, LYFT, <https://help.lyft.com/hc/en-us/articles/115012925687#bgc> (last visited Jan. 31, 2019).

26. See *infra* Section I.C.

27. Laura Serviere, *Forced to Entrepreneurship: Modeling the Factors Behind Necessity Entrepreneurship*, 22 J. BUS. & ENTREPRENEURSHIP 37, 37, 41 (2010).

28. Susan R. Jones, *Alleviating Poverty—What Lawyers Can Do Now*, 40 HUM. RTS., Aug. 2014, at 11, 13 (2014) [hereinafter Jones, *Alleviating Poverty*] ("For some, like immigrants and

entrepreneurship are surviving, but they are not building or retaining wealth in a meaningful way.²⁹

Social enterprise models can help John and other returning citizens by creating effective, short-term tools to further the economic enfranchisement.³⁰ Social enterprises provide a more holistic solution, combining the mission-driven advocacy and social services of traditional nonprofits while increasing employment and wealth-building opportunities for returning citizens. Social enterprise strategies that leverage municipal investment in start-ups or micro enterprises can help transform this necessity entrepreneurship into more stable economic opportunities.³¹ Equally compelling,

people with criminal records, microbusiness may be their only option for earning income, a phenomenon known as necessity entrepreneurship. For others, it's an alternative to a second or third job."); see also Susan R. Jones, *Representing Returning Citizen Entrepreneurs in the Nation's Capital*, 25 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 45, 52 (2016) ("[E]ntrepreneurship is especially important for returning citizens in D.C. who have been incarcerated in jurisdictions outside of the city and may lack the necessary social capital to obtain gainful employment. . . . [S]upported by shared workspaces, business incubators and accelerators, microbusiness training and loan programs, and community development financial institutions, entrepreneurship in D.C. is rapidly advancing, necessitating special efforts to include returning citizens in the entrepreneurial eco-system. . . . [S]elf-employment through entrepreneurship is a form of necessity entrepreneurship for some returning citizens.").

29. Necessity entrepreneurship is part of the larger definition of micro-enterprise. The nature of micro-enterprise as a stop-gap, survivalist method of economic participation is one of the many critiques against micro-finance and micro-enterprise models in the international development community. See generally David Roodman, *Microcredit Doesn't End Poverty, Despite All the Hype*, WASH. POST (Mar. 10, 2012), https://www.washingtonpost.com/opinions/microcredit-doesnt-end-poverty-despite-all-the-hype/2012/01/20/gIQAtfzR_story.html?utm_term=.f7099b98c0ac ("Microcredit rarely transforms lives. Some people do better after getting a small business loan, while some do worse—but very few climb into the middle class."); Anis Chowdhury, *Microfinance as a Poverty Reduction Tool—A Critical Assessment* 9 (Dep't of Econ. & Soc. Affairs, Working Paper No. 89, 2009), http://www.un.org/esa/desa/papers/2009/wp89_2009.pdf (arguing that although micro-finance "gives the unemployed and the poor some opportunities, hope and self-esteem," micro-enterprises nevertheless "face numerous constraints").

30. This Article will not address whether entrepreneurship provides long-term solutions for wealth building and economic inclusion but focuses instead on short-term strategies to prevent recidivism by increasing economic participation. See Rachel Chason, *Doing Time Far from Home, D.C. Prisoners Face Extra Barriers to Rehabilitation*, WASH. POST (Dec. 13, 2017), https://www.washingtonpost.com/local/dc-politics/incarcerated-in-federal-prisons-far-from-home-dc-prisoners-face-extra-barriers-to-rehabilitation/2017/12/13/b57d42aa-ca5e-11e7-aa96-54417592cf72_story.html?utm_term=.66b3be695f12 ("When we come home, a lot of us aren't able to remain strong if we can't get a job That's why people go back to what they were doing." (quoting Eddie Ellis, a returning citizen)).

31. Advocates for entrepreneurship as an economic development and wealth building strategy often cite research summarizing the positive impact of "opportunity entrepreneurs" on local economies. See, e.g., Robert W. Fairlie & Frank M. Fossen, *Defining Opportunity Versus Necessity Entrepreneurship: Two Components of Business Creation* 4 (Stanford Inst. for Econ. Policy Research, Working Paper No. 17-014, 2018), <https://siepr.stanford.edu/sites/default/files/publications/17-014.pdf> ("[Our] findings indicat[e] that opportunity vs. necessity entrepreneurship is positively associated with the creation of more growth-oriented businesses."). Opportunity entrepreneurs are ventures focused on growth rather than survival; these businesses are interested in hiring, purchasing, and producing products and

social enterprises can provide a continuing support system for returning citizens by collaborating with existing reentry efforts.³²

Part I of this Article will summarize the scope of the employment challenges encountered by formerly incarcerated people during reentry and explains the emergence of necessity entrepreneurship within this population. Part II will describe the nature and corporate structure of traditional reentry employment programs and explore the benefits and restrictions of the non-profit model. Part III will consider emerging social enterprise models as an alternative structure, assessing their advantages and limitations. Part IV will conclude by proposing policy solutions that address the limitations faced by emerging social enterprise models and advocating for the creation of Economic Justice Incubators (“EJIs”).

I. NECESSITY ENTREPRENEURSHIP AS A RESPONSE TO EMPLOYMENT BARRIERS FACED BY RETURNING CITIZENS

Unemployment is a pressing problem for many returning citizens and places them at higher risk for recidivism. Studies have repeatedly found a positive relationship between maintaining employment post-release and avoiding re-incarceration. One such study in Texas noted that individuals who obtained employment upon release lowered their recidivism risk by

services as they grow to scale. NIELS BOSMA & REBECCA HARDING, GLOBAL ENTREPRENEURSHIP MONITOR: GEM 2006 SUMMARY RESULTS 15 (2007), http://entreprenorskapsforum.se/wp-content/uploads/2010/02/GEM-Global-Report_2006.pdf.

Many scholars question whether entrepreneurship can effectively address poverty as significant structural barriers prevent certain classes of entrepreneurs (low-income entrepreneurs, entrepreneurs of color, and so on) from effectively competing in the market and growing to scale. For a full discussion of common criticisms of entrepreneurship as an effective strategy, see generally Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 HOFSTRA L. REV. 839, 843 (2014) (discussing the failures of entrepreneurship initiatives in benefitting low-income individuals and in creating “widespread and reliable local economic development and poverty relief”); Lynnise E. Phillips Pantin, *The Wealth Gap and the Racial Disparities in the Startup Ecosystem*, 62 ST. LOUIS U. L.J. 419 (2018) (discussing the historical and structural barriers that have prevented black-owned businesses from competing successfully in the American market). For a historical overview of entrepreneurial endeavors, see generally Robert W. Fairlie & Alicia M. Robb, *Why Are Black-Owned Businesses Less Successful Than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital*, 25 J. LAB. ECON. 289 (2007); W. Sherman Rogers, *The Black Quest for Economic Liberty: Legal, Historical, and Related Considerations*, 48 HOW. L.J. 1 (2004).

32. In many ways, returning citizens are doubly disadvantaged, facing standard obstacles encountered by low-income individuals as well as collateral consequences and other challenges stemming from incarceration. In John’s story, his business vision includes helping returning citizens in a comprehensive manner, acknowledging that they require more than a paycheck to succeed. John’s business provides a workplace environment that incorporates the distinctive needs of returning citizens, offering peer-support, mentorship, camaraderie, and an understanding of their unique challenges. As you can imagine, John’s business would be part of a larger, local effort to provide comprehensive support for returning citizens—ensuring that employers, nonprofits, and city agencies can collaborate and reach returning citizens during all stages of the reentry process.

68.5% and averaged 31.4 months before being re-incarcerated.³³ In contrast, individuals who did not obtain employment averaged 17.3 months before being re-incarcerated, demonstrating that employed individuals remained crime-free for a longer period of time.³⁴ A similar study of formerly incarcerated individuals in Indiana found that while “employment is the primary predictor of recidivism,” the ability to *maintain* employment is also a “decisive factor” in reducing recidivism.³⁵ This was true of nonviolent and violent offenders alike.³⁶

Given the clear benefits of employment, returning citizens often devote considerable time and resources to their job search.³⁷ For many, this proves to be a thankless and onerous endeavor rife with obstacles throughout the search, application, and hiring processes. Common barriers to obtaining and maintaining employment include the misuse of criminal history disclosures, occupational licensing restrictions, and the concentration of returning citizens within disadvantaged geographies. The combination of these factors contributes to the increase of necessity entrepreneurship as a means of economic participation. The following subsections examine three key obstacles for returning citizens seeking employment: the use of criminal history disclosures and background checks to preemptively disqualify returning citizens during the job application and screening phase; the existing occupational licensing regimes that effectively prevent returning citizens from pursuing careers that require professional licensure; the entrenched poverty and structural barriers in the communities that house returning citizens; and municipal obligations to the necessity entrepreneur.

A. *Criminal History Disclosures and Background Checks*

At the outset, there is a bias against hiring and even interviewing individuals with a criminal history.³⁸ A majority of employers surveyed by the National Institute of Justice in 2012 expressed reluctance to hire applicants

33. Tripodi et al., *supra* note 7, at 713.

34. *See id.*

35. John M. Nally et al., *The Post-Release Employment and Recidivism Among Different Types of Offenders with a Different Level of Education: A 5-Year Follow-Up Study in Indiana*, JUST. POL'Y J., Spring 2012, at 1, 23–24, http://www.cjcj.org/uploads/cjcj/documents/the_post-release.pdf.

36. *Id.* at 21 tbl.6.

37. *See* MARTA NELSON ET AL., VERA INST. OF JUST., THE FIRST MONTH OUT: POST-INCARCERATION EXPERIENCES IN NEW YORK CITY 13 (1999), https://storage.googleapis.com/vera-web-assets/downloads/Publications/the-first-month-out-post-incarceration-experiences-in-new-york-city/legacy_downloads/first_month_out.pdf (“The number-one concern for most of the people in the study was landing a job.”).

38. One study testing entry-level job applications in Milwaukee, Wisconsin found “conclusive evidence that mere contact with the criminal justice system, in the absence of any transformative or selective effects, severely limits subsequent employment opportunities.” Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 937, 960 (2003).

who were previously incarcerated for felonies and violent misdemeanors.³⁹ Additional research confirmed that a criminal record can be a greater disincentive than other factors, including long-term unemployment or receipt of public benefits.⁴⁰ The demographics of incarceration further exacerbate the issue of hiring bias because many returning citizens are African-American men, a group already labeled and disadvantaged in the hiring market.⁴¹

Candidates who report a criminal history may be eliminated by employers prior to an examination of their qualifications for the position, thus reentry advocates have made efforts to reduce employment barriers by removing criminal history disclosure requirements that trigger premature rejection of job candidates.⁴² Commonly known as “Ban the Box,” this movement advocates for reducing the prejudice in job applications for returning citizens.⁴³ Research shows there is often little connection between the qualifications for the position and the need for a criminal history disclosure. For example, job applications for generic food service positions may require a criminal history disclosure.⁴⁴ A disclosure for this kind of employment is frequently unnecessary because most aspects of the job and its duties do not depend on the employee’s lack of criminal history. Ban the Box advocates encourage employers to consider criminal history on an individual basis rather than using it as a “blanket exclusion[,]” ensuring a relevant connection between the individual’s criminal history and the requirements of the job.⁴⁵ Currently, only thirty-three states have passed

39. SHRM SURVEY FINDINGS, *supra* note 20, at 7; *see also* DECKER ET AL., *supra* note 20, at 52 (“Having any lifetime arrest dims the employment prospects more than any other employment-related characteristic.”).

40. DECKER ET AL., *supra* note 20, at 53–54.

41. Reuben Jonathan Miller & Amanda Alexander, *The Price of Carceral Citizenship: Punishment, Surveillance, and Social Welfare Policy in an Age of Carceral Expansion*, 21 MICH. J. RACE & L. 291, 302 (2016). A recent study on hiring bias against African-American men “found no change in rates of discrimination against African-Americans in field experiments of hiring from 1990 to 2015”—meaning the discrimination rate persisted during this twenty-five year period. Hilary Hurd Anyaso, *Research Finds Entrenched Hiring Bias Against African-Americans*, NORTHWESTERN NOW (Sept. 12, 2017), <https://news.northwestern.edu/stories/2017/september/research-finds-entrenched-hiring-bias-against-african-americans/>.

42. MICHELLE NATIVIDAD RODRIGUEZ & MAURICE EMMELM, NAT’L EMP’T LAW PROJECT, 65 MILLION “NEED NOT APPLY”: THE CASE FOR REFORMING CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT 22, 24 (2011), http://www.nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply.pdf.

43. BETH AVERY & PHIL HERNANDEZ, NAT’L EMP. LAW PROJECT, BAN THE BOX: U.S. CITIES, COUNTIES, AND STATES ADOPT FAIR-CHANCE POLICIES TO ADVANCE EMPLOYMENT OPPORTUNITIES FOR PEOPLE WITH PAST CONVICTIONS 1 (2018), <https://s27147.pcdn.co/wp-content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide-September.pdf>.

44. *See* Kai Wright, *Boxed In: How a Criminal Record Keeps You Unemployed for Life*, NATION (Nov. 6, 2013), <https://www.thenation.com/article/boxed-how-criminal-record-keeps-you-unemployed-life/>.

45. *See* NAT’L EMP’T LAW PROJECT, “BAN THE BOX” IS A FAIR CHANCE FOR WORKERS WITH RECORDS, NAT’L EMP. L. PROJECT 1 (2017), <http://www.nelp.org/content/uploads/Ban-the->

legislation removing criminal history disclosure requirements from standard job applications for public employers.⁴⁶ Far fewer states, a mere eleven in total, have removed criminal history disclosure requirements for private employers.⁴⁷ Thus, the misuse of criminal history disclosure requirements is pervasive and remains a significant barrier to obtaining and maintaining employment.

B. Occupational Licensing Restrictions

Even those returning citizens who are able to overcome the barriers imposed by criminal disclosure requirements often find themselves unable to compete for high paying positions. Many returning citizens are unskilled workers. This is due in part to inconsistent access to educational programs⁴⁸ and job-training programs⁴⁹ within federal correctional facilities,⁵⁰

Box-Fair-Chance-Fact-Sheet.pdf (emphasis omitted) (“Employers should make individualized assessments instead of blanket exclusions and consider the age of the offense and its relevance to the job.”); *see also id.* at 2 (noting that some Ban the Box policies “seek to limit background check inquiries to only those positions deemed sensitive or to limit the availability of certain criminal record information to only recent convictions” while others “have no limitations on background check screening except as to delay any inquiries until later in the hiring process”).

46. Those states include:

Arizona (2017), California (2017, 2013, 2010), Colorado (2012), Connecticut (2016, 2010), Delaware (2014), Georgia (2015), Hawaii (1998), Illinois (2014, 2013), Indiana (2017), Kansas (2018), Kentucky (2017), Louisiana (2016), Maryland (2013), Massachusetts (2010), Michigan (2018), Minnesota (2013, 2009), Missouri (2016), Nebraska (2014), Nevada (2017), New Jersey (2014), New Mexico (2010), New York (2015), Ohio (2015), Oklahoma (2016), Oregon (2015), Pennsylvania (2017), Rhode Island (2013), Tennessee (2016), Utah (2017), Vermont (2016, 2015), Virginia (2015), Washington (2018), and Wisconsin (2016).

AVERY & HERNANDEZ, *supra* note 43, at 1; *see also id.* (“Eleven states—California, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Washington—have also mandated the removal of conviction history questions from job applications for private employers, a change that advocates embrace as the next step in the evolution of these policies.” (emphasis omitted)).

47. California, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Washington restrict private sector employers from requesting a criminal history disclosure on job applications. *Id.*

48. *See* LOIS M. DAVIS ET AL., RAND CORP., HOW EFFECTIVE IS CORRECTIONAL EDUCATION, AND WHERE DO WE GO FROM HERE? 4 (2014), https://www.rand.org/content/dam/rand/pubs/research_reports/RR500/RR564/RAND_RR564.pdf (noting that “[s]upport for educational programs within correctional settings has waxed and waned over time as the nation’s philosophy of punishment has shifted from rehabilitation to crime control and then back again”). When interest in supporting such educational programming is low, these programs experience funding cuts, leading to everything from underfunding prison libraries to firing prison education staff. Terri Ann Reininger-Rogers, *A Review of the Bureau of Prisons’ Education Policy*, 4 POL. BUREAUCRACY, & JUST. J. 9 (2014), http://www.wtamu.edu/webres/File/Academics/College%20of%20Education%20and%20Social%20Sciences/Department%20of%20Political%20Science%20and%20Criminal%20Justice/PBJ/2014/4n2/4n2_02Reininger.pdf. There have been some recent efforts to improve access to education to incarcerated individuals. The Obama Administration launched the Second Chance Pell Pilot Program, which enabled approximately 12,000 incarcerated students to receive Pell Grants to earn

translating to low wages even when employed. For those interested in pursuing training and education post-incarceration, they may find certain opportunities inaccessible due to state occupational licensing regulations. Occupational licenses are necessary for a wide variety of positions, ranging from cosmetologists to physicians.⁵¹

a higher-education degree while incarcerated. Press Release, Dep't of Educ., 12,000 Incarcerated Students to Enroll in Postsecondary Educational and Training Programs Through Education Department's New Second Chance Pell Pilot Program (June 24, 2016), <https://www.ed.gov/news/press-releases/12000-incarcerated-students-enroll-postsecondary-educational-and-training-programs-through-education-departments-new-second-chance-pell-pilot-program>.

49. Job-training programs are often connected to prison industry, and thus are morally fraught endeavors. It is impossible to discuss benefits of such job training to prisoners without first acknowledging the inherently unjust rates of compensation and troubled history of these programs. Evolving from the forced labor model colloquially referred to as “chain gangs,” prison industry programs now provide job training and employment opportunities during incarceration. Employment programs within Federal Correctional Facilities are often linked with Federal Prison Industries, a corporation that supplies federal government agencies with an array of goods and services using inmate labor. See generally UNICOR, FACTORIES WITH FENCES 4, https://www.unicor.gov/publications/corporate/CATMC1101_C.pdf (last visited Jan. 10, 2019).

Opponents of the current prison industry model cite low wages and workplace safety concerns as some of the many exploitive elements of using prison labor. A recent prison strike that began on August 21, 2018, highlighted that prison workers were not paid the minimum wage and work under dangerous conditions. Beth Schwartzapfel, *A Primer on the Nationwide Prisoners' Strike*, MARSHALL PROJECT (Sept. 27, 2010), <https://www.themarshallproject.org/2016/09/27/a-primer-on-the-nationwide-prisoners-strike#.fGVBXf1lt> (“They also need not be paid minimum wage—or any wage at all. The average pay for a prisoner working a job in a state prison facility is [twenty] cents an hour. Unicor’s typical hourly wage is 23¢ to \$1.15 per hour. Up to [eighty percent] of wages can be withheld for reasons like room and board and victims’ compensation. And in at least three states—Texas, Georgia, and Arkansas—inmates work for no pay.”). For example, California wildfires are being fought in part by incarcerated firefighters, some of whom earn a dollar per hour and work under extremely dangerous conditions. *A New Form of Slavery? Meet Incarcerated Firefighters Battling California’s Wildfires for \$1 an Hour*, DEMOCRACY NOW! (Sept. 12, 2018), https://www.democracynow.org/2018/9/12/a_new_form_of_slavery_meet.

Proponents stated that these programs provide job training and the ability to earn a limited wage for individual prisoners. A 2015 report by the Congressional Research Service analyzed several different studies and ultimately concluded that “prisoners who participated in prison industries had lower levels of recidivism.” NATHAN JAMES, CONG. RESEARCH SERV., OFFENDER REENTRY: CORRECTIONAL STATISTICS, REINTEGRATION INTO THE COMMUNITY, AND RECIDIVISM 14 (2015). Proponents also believe work programs serve an important rehabilitative role. See UNICOR, *supra*, at 4 (noting that Federal Prison Industries’ mission is “to employ and provide job skills training to the greatest practicable number of inmates confined within the Federal Bureau of Prisons; contribute to the safety and security of our Nation’s federal correctional facilities by keeping inmates constructively occupied; produce market-priced quality goods and services; operate in a self-sustaining manner; and minimize FPI’s impact on private business and labor”).

50. For the purposes of this Article, the Author focuses on Federal Correctional Facilities. There are similar job-training and educational programs within state prisons. See *supra* note 49.

51. See e.g., Letter from Legislative Research Unit, Ill. Gen. Assembly, to Senator Tom Johnson, Ill. State Senate (Feb. 8, 2012), <http://www.icjia.state.il.us/IERTF/pdf/LegislativeResearchUnitDocuments/Licensing%20restricti>

The denial of occupational licenses often has no direct correlation to the crime committed. For example, it is easy to understand the public policy purpose when denying a Certified Public Accountant license to someone convicted of financial fraud. However, it is unclear why the state should deny that same individual a massage therapist license. In many states, the licensing board has complete discretion and does not need to provide a direct public policy purpose when denying an occupational license.⁵² This has several adverse effects. First, it continues to penalize individuals who completed their state-mandated sentence, extending punishment to their post-incarceration lives. Second, it negatively impacts the economy at large by limiting the free market participation of individual workers.⁵³ The larger economy benefits when workers are able to contribute positively to the local economy through both taxes and consumer spending.⁵⁴ Individuals who cannot obtain employment, or cannot move to where there are more lucrative opportunities, because of licensing restrictions are unable to fully participate in the economy.⁵⁵ Finally, occupational licensing restrictions inevi-

ons.pdf (compiling over one hundred kinds of licenses that “must be or may be denied to felons” under Illinois law).

52. See generally PAUL SAMUELS & DEBBIE MUKAMAL, LEGAL ACTION CTR., AFTER PRISON: ROADBLOCKS TO REENTRY 10 (2004), http://lac.org/roadblocks-toreentry/upload/lacreport/LAC_PrintReport.pdf; MICHELLE NATIVIDAD RODRIGUEZ & BETH AVERY, NAT’L EMP’T LAW PROJECT, UNLICENSED & UNTAPPED: REMOVING BARRIERS TO STATE OCCUPATIONAL LICENSES FOR PEOPLE WITH RECORDS 10 (2016), <https://www.nelp.org/content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>.

53. Occupational licensing is one of the many barriers that prevent economic participation among low-income workers. David Schleicher, *Stuck! The Law and Economics of Residential Stagnation*, 127 YALE L.J. 78, 84 (2017) (“[S]tate and local (and a few federal) laws and policies have created substantial barriers to interstate mobility, particularly for lower-income Americans. Land-use laws and occupational licensing regimes limit entry into local and state labor markets.”).

54. A Center for Economic Policy and Research study calculated that the United States lost at least \$57 billion in GDP in 2008 because of the lower levels of male workers due to incarceration. This number does not reflect time spent in prison and outside the labor market. Rather, it reports the lowered economic participation rates post-release due to employment related collateral consequences. JOHN SCHMITT & KRIS WARNER, CTR. FOR ECON. AND POLICY RESEARCH, EX-OFFENDERS AND THE LABOR MARKET 1 (2010), <http://cepr.net/documents/publications/ex-offenders-2010-11.pdf>; see also Edward Timmons, *Occupational Licensing Reform Will Benefit Millions of Americans*, THE HILL (Mar. 16, 2017, 3:10 PM), <http://thehill.com/blogs/pundits-blog/economy-budget/324341-occupational-licensing-reform-will-benefit-millions-of> (“Research suggests that incarceration for a crime is associated with a 40 percent reduction in annual earnings. In addition to as many as [seventy-five] percent of the formerly incarcerated that are still unemployed one year after their release.”).

55. State licensing requirements have increased dramatically, drawing criticism from both sides of the political spectrum. In general, occupational licensing is inconsistent across state lines and between different regions. This makes moving to pursue new economic opportunity within the same profession exceedingly difficult. For example, a licensed worker in State A may remain partially employed in her home state even though State B has many lucrative, full-time opportunities for individuals with similar credentials. The costs of becoming licensed again in State B may be too expensive or time-intensive. These regimes often disproportionately impact certain populations, including veterans, immigrants, lower income individuals, and returning citizens. These

tably exacerbate recidivism by promoting unemployment among returning citizens. Accordingly, since many licensing boards are composed of mid-level bureaucrats with unmitigated authority to make licensing decisions, they can have a significant, adverse economic impact and create employment barriers for returning citizens.⁵⁶

C. *The Consequences of Disadvantaged Spaces*

In their article, *The Price of Carceral Citizenship*, Professors Reuben Miller and Amanda Alexander use the term “disadvantaged spaces” in reference to the geographic concentration of certain factors that create and reinforce cycles of poverty.⁵⁷ According to Miller and Alexander, these spaces have high rates of crime, older and distressed infrastructure, few opportunities for employment, and high rates of housing insecurity.⁵⁸ In addition to Miller and Alexander’s troubling list of structural barriers, unreliable transportation networks also contribute to entrenching poverty in these geographically disadvantaged spaces.⁵⁹ Sadly, a number of returning

groups, therefore, cannot fully participate in the economy. John Blevins, *License to Uber: Using Administrative Law to Fix Occupational Licensing*, 64 UCLA L. REV. 844, 857–58 (2017).

Economists and scholars noted the barriers preventing workers from moving to localities and regions in pursuit of economic opportunity. See, e.g., Schleicher, *supra* note 53, at 83 (“[L]ower-skilled workers are not moving to high-wage cities and regions. Bankers and technologists continue to move from Mississippi or Arkansas to New York or Silicon Valley, but few janitors make similar moves, despite the higher nominal wages on offer in rich regions for all types of jobs.”). These larger observations reflect the barriers confronted by the general population and lower-income individuals in particular. On this basis, we can easily infer how much more difficult relocation is for returning citizens caught in the web of collateral consequences.

56. RODRIGUEZ & AVERY, *supra* note 52, at 14 (describing the lack of procedural safeguards or statutory authority that results in blanket bans for occupational licensing); see also JARED MEYER, FOUND. FOR GOV’T ACCOUNTABILITY, HOW OCCUPATIONAL LICENSING INHIBITS ECONOMIC OPPORTUNITY 5 (2017), <https://thefga.org/wp-content/uploads/2017/10/How-Occupational-Licensing-Inhibits-Economic-Opportunity-10-23-17.pdf> (explaining how vague language used in occupational licensing laws and regulations enables licensing boards to issue blanket denials to individuals with criminal records).

Heeding calls to limit collateral consequences with respect to occupational licensing, the State of Illinois found this argument persuasive and took measures to reduce overly broad, disqualifying language. Senate Bill 42 revised prohibitive licensing laws that denied license applications in barbering/cosmetology, roofing, and funeral service. S.B. 42, 99th Gen. Assemb. (Ill. 2016); see Alexia Elejalde-Ruiz, *Report: Illinois’ Hiring Protections ‘Minimal’ for Those with Criminal Records*, CHI. TRIB. (Apr. 26, 2016), <http://www.chicagotribune.com/business/ct-criminal-background-occupational-licensing-0427-biz-20160426-story.html> (“The bill . . . requires that if a conviction is used as a basis for rejection then it must be in writing and state the evidence and reasons for the rejection.”).

57. Miller & Alexander, *supra* note 41, at 299.

58. *Id.* at 300.

59. Andrew Miller, *How Public Bus Routes Can Deconcentrate Poverty and Promote Equity*, CHI. POLICY REVIEW (Jan 8, 2018), <http://chicagopolicyreview.org/2018/01/08/how-public-bus-routes-can-deconcentrate-poverty-and-promote-equity/> (“New research suggests that a more effective approach to changing the geography of poverty requires the expansion of effective public transportation systems.”); see also Mikayla Bouchard, *Transportation Emerges as Crucial to Es-*

citizens are regularly released to these disadvantaged spaces, their homecoming complicated by communities ill-equipped to handle their needs.⁶⁰ For example, one study documenting prisoner release in Michigan found that nearly a third of returning citizens were relocated to the city of Detroit—a notable disadvantaged space.⁶¹

Detroit has been synonymous with economic disaster for much of the last twenty years. Even the recent economic revival is laudable in part because of the economic devastation weathered by the Rust Belt city.⁶² The problems of the city are nuanced and based in a history fraught with racial injustice. Detroit is a city 138.75 square miles in size—large enough to house Manhattan, San Francisco, and Boston within its city limits.⁶³ This enormous geographic footprint is home to less than 700,000 residents,⁶⁴ eighty percent of whom are African American,⁶⁵ with almost forty percent of residents currently living below the poverty line.⁶⁶ Detroit struggles with obstacles commonly faced by many disadvantaged spaces, such as managing blighted properties⁶⁷ and providing reliable public transportation.⁶⁸

caping Poverty, N.Y. TIMES (May 7, 2015), <https://www.nytimes.com/2015/05/07/upshot/transportation-emerges-as-crucial-to-escaping-poverty.html>.

60. Miller & Alexander, *supra* note 41, at 300.

61. *Id.* at 299 (citing AMY L. SOLOMON ET AL., URBAN INST. JUSTICE POLICY CTR., PRISONER REENTRY IN MICHIGAN vi–vii, 34 (2004), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411172-Prisoner-Reentry-in-Michigan.pdf>).

62. There is no shortage of news stories remarking on Detroit’s improving economic condition. This is perhaps best evidenced by the November 2017 *New York Times* article calling Detroit “the most exciting city in America right now.” Reif Larsen, *Detroit: The Most Exciting City in America?*, N.Y. TIMES (Nov. 20, 2017), <https://www.nytimes.com/2017/11/20/travel/detroit-michigan-downtown.html>. In truth, economic conditions in Detroit have changed. The city declared bankruptcy in 2013 and was facing the prospect of selling major assets, including art from the Detroit Institute of Art. See Randy Kennedy, ‘Grand Bargain’ Saves the Detroit Institute of Arts, N.Y. TIMES (Nov. 7, 2014), <https://www.nytimes.com/2014/11/08/arts/design/grand-bargain-saves-the-detroit-institute-of-arts.html>. A mere five years later, Detroit is experiencing greater investment and growth in key economic sectors. See Larsen, *supra*.

63. *QuickFacts: New York County (Manhattan Borough), New York; Boston City, Massachusetts; San Francisco City, California; Detroit City, Michigan*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/newyorkcountymanhattanboroughnewyork,bostoncitymassachusetts,sanfranciscocitycalifornia,detroitcitymichigan/PST045217> (last visited Aug. 21, 2018) [hereinafter *QuickFacts*].

64. *Id.* (estimating that Detroit had a population of 673,104 as of July 1, 2017).

65. *Id.*; DETROIT FUTURE CITY, 139 SQUARE MILES 22–23 (2017), https://detroitfuturecity.com/wp-content/uploads/2017/11/DFC_139-SQ-Mile_Report.pdf.

66. *Quickfacts*, *supra* note 63 (estimating that 37.9% of Detroit residents live at or below the poverty line).

67. For example, in 2014 Detroit’s blight removal task force conducted a comprehensive study and determined that the necessary demolition and other measures would cost almost 2 billion dollars. See Dominic Rushe, *Clearing Detroit’s Blight Will Cost City Almost \$2bn, Taskforce Report Finds*, ATLANTIC (May 27, 2014), <https://www.theguardian.com/world/2014/may/27/detroit-blight-remove-vacant-structures-buildings-report>.

Both of these responsibilities are vital for a city's health. Blighted properties create dangerous conditions for local residents and undermine reinvestment efforts.⁶⁹ Likewise, public transit plays an essential role in maintaining employment and accessing education, job training, social services, and health care.⁷⁰

The latest economic resurgence in Detroit has not been equitable, largely benefitting new, white-collar workers. A combination of retail development, housing incentives, and new downtown employers focused on attracting white-collar workers into Detroit rather than providing employment opportunities for current residents.⁷¹ Most new businesses relocating

68. Low-income, African-American households disproportionately shoulder the burden of unreliable public transportation. See POLICYLINK & PROGRAM FOR ENVTL. AND REG'L EQUITY, AN EQUITY PROFILE OF THE DETROIT REGION 4 (2015), http://nationalequityatlas.org/sites/default/files/Detroit_Summary_FINAL.pdf ("One out of five Black households does not own a car . . ."); *id.* at 6 ("[W]ith limited transit service in the city, a resident's commute to the job-rich Downtown and Midtown areas is nearly four times longer by transit than by car."); see also HUDSON-WEBBER FOUND. ET AL., 7.2 SQ MI: A REPORT ON GREATER DOWNTOWN DETROIT 72 (2d ed. 2015), http://detroitsevenpointtwo.com/resources/7.2SQ_MI_Book_FINAL_LoRes.pdf (describing economic growth and employment in Downtown and Midtown Detroit).

69. John Accordino & Gary T. Johnson, *Addressing the Vacant and Abandoned Property Problem*, 22 J. URB. AFF. 301, 303 (2000).

70. Gillian B. White, *Stranded: How America's Failing Public Transportation Increases Inequality*, ATLANTIC (May 16, 2015), <https://www.theatlantic.com/business/archive/2015/05/stranded-how-americas-failing-public-transportation-increases-inequality/393419/>.

71. The majority of the revitalization efforts focused on the downtown and midtown neighborhoods (known as "Greater Downtown") in Detroit. Many of the programs specifically targeted skilled employees working jobs that typically require a degree or professional training. Laura A. Reese & Gary Sands, *Is Detroit Really Making a Comeback?*, CityLab (Feb. 19, 2017), <https://www.citylab.com/equity/2017/02/detroits-recovery-the-lass-is-half-full-at-most/517194/>. One such example was Live Midtown, a very popular program that was discontinued in 2015. *Live Midtown—Residential Incentive Program*, MIDTOWN DETROIT INC., <http://midtowndetroitinc.org/newsroom/latest-news/live-midtown-residential-incentive-program> (last visited Dec. 19, 2018). Live Midtown was a residential incentive program designed to encourage Wayne State University, Henry Ford Health System, and Detroit Medical Center employees to live in Midtown Detroit. *Id.* The program helped defray housing costs by providing taxable incentives like forgivable loans for home ownerships or rental allowances up to \$2,500 for the first year and \$1,000 for lease renewals. Matt Helms, *Housing Deals Boost Midtown's Revival*, DETROIT FREE PRESS (Nov. 2, 2015), <https://www.freep.com/story/news/local/michigan/detroit/2015/11/01/midtown-incentives-boost-diversity/74014992/>. The demographics of residents living in the downtown and midtown Detroit areas are notably different than the city as a whole. For example, an estimated forty-two percent of the Greater Downtown population between age twenty-five and thirty-four has a college degree or higher, compared to only twelve percent of all Detroit residents in that age range. HUDSON-WEBBER FOUND. ET AL., *supra* note 68, at 34; see also JPMORGAN CHASE & CO., DRIVING OPPORTUNITY IN DETROIT: BUILDING A MIDDLE-SKILL WORKFORCE TO STRENGTHEN ECONOMIC RECOVERY AND EXPAND THE MIDDLE CLASS 3 (2015), <https://www.jpmorganchase.com/corporate/Corporate-Responsibility/document/54841-jpmc-gap-detroit-aw3-final.pdf> (noting that twenty-two percent of Detroit residents lack a high school diploma or a GED). Greater Downtown has also seen significant real estate development investment between 2013 and 2014. See HUDSON-WEBBER FOUND. ET AL., *supra* note 68, at 82–83

to downtown Detroit require skills and education qualifications that disqualify a significant portion of the city's residents, resulting in locals remaining relegated to service jobs and low-wage positions.⁷² Low-skilled residents are often forced to seek jobs in the suburbs, with commutes of such absurd lengths that they draw national media coverage.⁷³

This phenomenon, focusing development in a limited number of neighborhoods often to detriment of existing, lower income residents, is not unique to Detroit. One such less than equitable development tool is the growing trend of local government investment, meaning public funds and other resources, in start-ups through Venture Development Funds ("VDFs").⁷⁴ Unfortunately, these investment efforts are rarely inclusive, denying access to a municipality's most economically vulnerable resi-

(reporting that \$5.2 billion was invested in 258 projects). At the same time, nearly forty-seven percent of Detroit homeowners were underwater on their mortgages. Ryan Felton, *What Kind of Track Records Do Quicken Loans and Dan Gilbert Have in Detroit? Does Anyone Really Care?*, DETROIT METRO TIMES (Nov. 12, 2014), <https://www.metrotimes.com/detroit/what-kind-of-track-record-does-quicken-loans-have-in-detroit-does-anyone-really-care/Content?oid=2266383&showFullText=true>.

Perhaps most telling are the words of Yusef Shakur, a neighborhood activist in Detroit: "You are creating lopsided communities You are putting all your wealth in Midtown, downtown . . . Woodbridge. It's not creating an even playing field." Louis Aguilar & Christine MacDonald, *Detroit's White Population Up After Decades of Decline*, DETROIT NEWS (Sept. 17, 2015), <http://www.detroitnews.com/story/news/local/detroit-city/2015/09/17/detroit-white-population-rises-census-shows/72371118/>.

72. One study drew an interesting distinction between the labor demographics in Detroit and its suburbs. The data indicates that seventy-one percent of jobs in Detroit are held by employees commuting from the suburbs. Dustin Walsh, *Detroit Workforce Team's Goal of 100,000 Jobs Highlights Big Labor Gap in City*, CRAIN'S DETROIT BUS. (Nov. 6, 2015), <http://www.craigslist.com/article/20151108/news/311089985/detroit-workforce-teams-goal-of-100000-jobs-highlights-big-labor-gap>. This is due in large part to a shortage of skilled workers in the city. See *id.* (noting that "[sixty-three] percent of working Detroiters possess[] no more than a high school diploma").

Anecdotally, local job training nonprofits have struggled to prepare workers for the influx of new jobs in Detroit, which, again, require a certain level of skill or education. See Nick Carey, *Even When Jobs Return, Detroit's Workers Fall Short on Skills*, REUTERS (Aug. 2, 2013), <https://www.reuters.com/article/usa-detroit-jobs/even-when-jobs-return-detroits-workers-fall-short-on-skills-idUSBRE97107C20130802> ("Pamela Moore, chief executive of . . . a non-profit focused on retraining the city's unemployed, said Detroit's labor force is unprepared for the jobs that may be coming. 'The question is whether we can prepare a lot of people in Detroit for those jobs,' Moore said. 'Right now, a lot of them don't have the necessary skills.'").

73. James Robertson, a fifty-one-year old Detroit resident, walked twenty-one miles every weekday to his low-skilled manufacturing job in the suburbs. Jethro Mullen & Stephanie Gallman, *Donations Pour in for Detroit Man Who Walks 21 Miles for His Daily Commute*, CNN (Feb. 3, 2015), <http://www.cnn.com/2015/02/03/us/detroit-man-walks-21-miles-for-daily-commute/index.html>. His story, originally reported in the *Detroit Free Press*, gained national attention, and he ultimately received over \$300,000 in donations to help purchase a car. Carlton Winfrey, *Fund-Raiser for Detroit Commuter Reaches \$300K*, DETROIT FREE PRESS (Feb. 5, 2015), <https://www.freep.com/story/news/local/michigan/detroit/2015/02/05/robertson-update/22926493/>.

74. See *infra* Section IV.B.

dents—returning citizens.⁷⁵ In reality, municipalities that subsidize start-up businesses to promote economic development often displace returning citizens.⁷⁶ These start-up enterprises do not offer avenues for returning citizens to gain economic security through employment, dividends, or business ownership. The city may experience economic benefits by increased tax revenue, attracting wealthy residents and service businesses catering to the new urban elite. The influx of new money increases rents and the general cost of living, further disenfranchising and sometimes even displacing the city's returning citizens along with other low-income residents.⁷⁷

75. Cities do not wholesale abandon returning citizens, but there is a troubling disparity in the long-term economic investment strategies. During the height of the incentive period between 2012 and 2015, Detroit and the State of Michigan entered into a deal with Sakthi Automotive ("SA"), an Indian auto parts supplier. Dustin Walsh, *Sakthi Automotive's Detroit Expansion Bets Big on Nontraditional Workforce: Ex-Felons*, CRAIN'S DETROIT BUS. (May 2, 2015), <http://www.crainsdetroit.com/article/20150502/NEWS/305039977/sakthi-automotives-detroit-expansion-bets-big-on-nontraditional>. Part of the deal included incentives for SA to hire recent parolees in Detroit. *Id.* The positions ensured a wage of \$11 to \$13.50 per hour and benefits. *Id.* The commitment was only to hire forty-eight returning citizens over a two-year period but did not foreclose the possibility of additional hires as needed. *See id.*

The jobs were traditional manufacturing jobs, a sector long-identified as in decline and lacking job security. The SA deal demonstrates the incongruity in Detroit's long-term economic planning for two distinct groups. The city seeks to provide incentives to lure in white-collar, educated workers through a variety of incentives while providing its more vulnerable citizens with less stable economic opportunities on a much smaller scale. Professor David Schleicher succinctly summarizes this issue through the lens of agglomeration-economics:

Once cities decline, they will not come back in the same form. Car companies and parts suppliers are not likely to return to Detroit in the same numbers. A city may return to economic health, but it will not be for the same reasons. As a result, it has been detrimental for Detroit to have an infrastructure, population, and government tailored to the existence of an automobile industry that is never going to return.

Schleicher, *supra* note 53, at 101.

76. Improving the financial prospects of a neighborhood often leads to the displacement of the economically insecure. Returning citizens are among the most vulnerable of this group. One study examining housing in Detroit noted:

Market-force displacement has the same effects; low-income households with the fewest resources struggle to adapt to or meet higher rent requirements, a situation of concern in Detroit. The average Detroit resident simply does not have the financial resources to adapt to forces of market displacement. The challenge for those encouraging economic investment and real estate market stabilization in Detroit is to invest in a way that also helps existing households and businesses adapt and adjust during times of rapid change.

BRADFORD FROST ET AL., CAPITAL IMPACT PARTNERS, BASELINE STUDY TO ADDRESS DISPLACEMENT AND RELOCATION TIED TO MULTIFAMILY REDEVELOPMENT IN GREATER DOWNTOWN DETROIT 6 (2016), <https://www.capitalimpact.org/wp-content/uploads/2016/07/Capital-Impact-Detroit-Resident-Relocation-Displacement-Study.pdf>.

77. Richard Florida, *This Is What Happens After a Neighborhood Gets Gentrified*, ATLANTIC (Sept. 16, 2015), <https://www.theatlantic.com/politics/archive/2015/09/this-is-what-happens-after-a-neighborhood-gets-gentrified/432813/> ("[D]isplacement is becoming a larger issue in knowledge hubs and superstar cities, where the pressure for urban living is accelerating. These particular cities attract new businesses, highly skilled workers, major developers, and large corporations, all of which drive up both the demand for and cost of housing. As a result, local residents—and neighborhood renters in particular—may feel pressured to move to more affordable

Detroit illustrates the collective impact of stressors in geographically disadvantaged spaces, preventing returning citizens from obtaining steady employment and achieving economic stability, which effectively ensures a higher risk of recidivism. When the effects of disadvantaged spaces are combined with the consequences of criminal history disclosures and occupational licensing restrictions, it logically follows that traditional employers may not hire returning citizens.⁷⁸ Thus, many returning citizens may need to create their own self-employment opportunities through entrepreneurship.

D. Municipal Obligations to the Necessity Entrepreneur

Economic development initiatives are intentionally structured to support a specific type of entrepreneur. Entrepreneurship is generally divided into two broad categories by economists and scholars studying the connections between economic development, unemployment, and entrepreneurship.⁷⁹ The first—the “opportunity entrepreneur”—more closely mimics our colloquial narrative of entrepreneurship in the United States.⁸⁰ Opportunity entrepreneurs capitalize on opportunities, leveraging personal intelligence and work ethic to become successful.⁸¹ Our society is littered with cultural homages to this model, ranging from tales of Horatio Alger⁸² to the modern tech-moguls of Silicon Valley. Our commendations of small business or entrepreneurship and our advocacy for policies and laws that support these endeavors is largely based on research analyzing the positive effects of opportunity entrepreneurship.⁸³ Opportunity entrepreneurs positively impact the economy by growing to scale, spending dollars in cre-

locations. . . . [A]n even bigger issue is the neighborhoods that are untouched by gentrification and where concentrated poverty persists and deepens . . . [,with some] formerly stable neighborhoods [falling] into concentrated disadvantage.”).

78. See *supra* notes 20, 39–40 and accompanying text.

79. See generally Nick Williams & Colin C. Williams, *Beyond Necessity Versus Opportunity Entrepreneurship: Some Lessons from English Deprived Urban Neighborhoods*, 10 INT’L ENTREPRENEURSHIP & MGMT. J. 23 (2014); Fairlie & Fossen, *supra* note 31.

80. See Fairlie & Fossen, *supra* note 31, at 4 (describing “opportunity entrepreneurs” as “individuals who are wage/salary workers, enrolled in school or college, or are not actively seeking a job before starting businesses”).

81. See *id.* at 2.

82. Horatio Alger, Jr. was a novelist famed for portraying rags to riches stories, where impoverished youth were able to attain great wealth thanks to their resilience and work ethic. See generally *Horatio Alger, Jr.—Biography*, HORATIO ALGER SOCIETY, http://www.horatioalgersociety.net/100_biography.html (last visited Dec. 19, 2018).

83. See Zoltan Acs, *How Is Entrepreneurship Good for Economic Growth?*, 1 INNOVATIONS: TECH., GOVERNANCE, GLOBALIZATION 97, 97 (2006) (noting that the Global Entrepreneurship Monitor research project found that “opportunity entrepreneurship has a positive and significant effect”).

ating jobs, and sourcing goods and services.⁸⁴ These businesses drive innovation and competition, both of which are important components of economic growth and development.⁸⁵

While this definition of entrepreneurship pervades American culture and drives our policies and laws forward, it largely excludes the “necessity entrepreneur”—an important subset of low-income individuals at the fringes of our economy.⁸⁶ Scholars observe that necessity entrepreneurs are reactive, not proactive.⁸⁷ Rather than exploiting an opportunity, necessity entrepreneurs have either limited opportunities or no opportunities at all and are thus *forced* into entrepreneurship as a means of survival.⁸⁸ Necessity entrepreneurship, therefore, commonly arises in the absence of traditional options for earning income such as participating in the wage-labor market.⁸⁹ A combination of factors, including geographic isolation, poverty, cultural and societal barriers, education, and lack of public infrastructure, can result in a dearth of viable employment prospects. This environment of economic deprivation logically leads to the creation of “necessity entrepreneurs” who engage in self-employment in order to provide for themselves and their families.⁹⁰

The most common necessity entrepreneurs are those most systematically and consistently disenfranchised from other economic opportunities. Scholars note that when barriers to entering the market are reduced for these individuals, there is a corresponding increase in necessity entrepreneurship

84. Madhur Jha, *Opportunity Entrepreneurs Are Key to Jobs and Growth*, WORLD BANK (May 3, 2016), <http://blogs.worldbank.org/jobs/governance/opportunity-entrepreneurs-are-key-jobs-and-growth> (“These are people who start businesses to exploit a potential opportunity. They are likely to grow their business faster, employ more people, and introduce innovation that could help fill important gaps in the market, while boosting productivity in the economy.”).

85. See Acs, *supra* note 83, at 103 (discussing the conditions that promote opportunity entrepreneurship, “which in turn will increase innovation and competition within the marketplace,” and ultimately result in “a positive influence on national economic growth”).

86. The Author defines entrepreneurship broadly, intending the definition to capture individuals who would not label themselves as entrepreneurs but are definitively “self-employed,” either partially or completely.

87. See Acs, *supra* note 83, at 97 (describing “necessity entrepreneurship” as “having to become an entrepreneur because you have no better option”); Marc Cowling & William D. Bygrave, *Entrepreneurship, Welfare Provision, and Unemployment: Relationships Between Unemployment, Welfare Provision, and Entrepreneurship in Thirty-Seven Nations Participating in the Global Entrepreneurship Monitor (GEM) 2002*, 28 COMP. LAB. L. & POL’Y J. 617, 622 (2006) (defining “necessity entrepreneur as someone who perceives no suitable employment alternatives as their reason for starting a business”).

88. Acs, *supra* note 83, at 98.

89. Cowling & Bygrave, *supra* note 87, at 624.

90. See Jones, *Alleviating Poverty*, *supra* note 28, at 13 (“For some, like immigrants and people with criminal records, microbusiness may be their only option for earning income, a phenomenon known as necessity entrepreneurship. For others, it’s an alternative to a second or third job.”); Serviere, *supra* note 27, at 42 (“[S]elf-employment is well established as the most common start-up option for necessity entrepreneurs. Overall, many individuals in a jobless environment will opt to begin a personal service enterprise rather than remain unemployed.”).

as a form of economic enfranchisement.⁹¹ Barriers to self-employment can be reduced in a number of ways, such as limiting legal restrictions or encouraging technological innovation.⁹² Increasingly, these self-employment opportunities are becoming part of a full-time employment strategy for those with little or no options due to their criminal record and geographic isolation from opportunities.⁹³

Unfortunately, necessity entrepreneurship does not create economic security but serves as a “last resort” that provides some relief to those in perilous financial conditions.⁹⁴ Additionally, unlike opportunity entrepreneurs, necessity entrepreneurs do not positively impact the growth of the overall economy.⁹⁵ Necessity entrepreneurs may never rise to the level of true opportunity entrepreneurs, but given the right amount of support and resources, they can move beyond mere subsistence and achieve greater economic enfranchisement. As returning citizens are among the most vulnerable entrepreneurs, this Article advocates for exploring opportunities to transition these necessity entrepreneurs into opportunity entrepreneurs through municipal leadership and social enterprise strategies.

The primary factor preventing the metamorphosis of necessity entrepreneurs into a more sustainable and economically beneficial calling is a lack of resources. Necessity entrepreneurs are disconnected from foundational services enjoyed by successful businesses,⁹⁶ including funding, business coaching, financial planning, marketing, prototype development, affordable office space, computing solutions, and other technical assistance.⁹⁷

91. See Cowling & Bygrave, *supra* note 87, at 633 (“Ease of entry to the market is . . . critical in facilitating necessity entrepreneurship.”).

92. Technology platforms that enable self-employment (apps like Uber and websites like Thumbtack or Craigslist) are one such example of reducing barriers to market entry for necessity entrepreneurs. Legal limitations that can be reduced or removed include occupational licensing barriers. See *supra* note 25 and accompanying text.

93. In a recent study by the Pew Research Center, sixty percent of surveyed individuals selling their labor through digital platforms identified this income stream as essential. AARON SMITH, PEW RESEARCH CTR., GIG WORK, ONLINE SELLING AND HOME SHARING 4 (2016), http://www.assets.pewresearch.org/wp-content/uploads/sites/14/2016/11/17161707/PI_2016.11.17_Gig-Workers_FINAL.pdf. Of those surveyed, the majority of individuals dependent on gig economy income were from low-income households, non-white, and lacked a higher education degree. *Id.* at 5.

94. Marc Cowling & Peter Mitchell, *The Evolution of U.K. Self-Employment: A Study of Government Policy and the Role of the Macroeconomy*, 65 MANCHESTER SCH. 427, 434 (1997).

95. Acs, *supra* note 83, at 102 (“As more and more of the population becomes involved in opportunity entrepreneurship and as more and more people leave necessity entrepreneurship (self-employment), the more we see rising levels of economic development.”).

96. *Id.* (“The answer depends clearly on what one means by entrepreneurship. If one means self-employment, either in agriculture or very small-scale industry, then in most cases entrepreneurship will not lead to economic development because there is no mechanism to link the activity to development.”).

97. Dana Thompson, *Accelerating the Growth of the Next Generation of Innovators*, 8 OHIO ST. ENTREPRENEURIAL BUS. L.J. 379, 381 (2013) (noting that “[w]ell-designed commercial busi-

In addition, necessity entrepreneurs lack access to mentorship—a key component in growing to scale. The appropriate mentor network can provide a range of services that are vital for early-stage entrepreneurs. Business incubation and acceleration, discussed in greater detail below, is one prominent strategy used to provide start-up entrepreneurs with the required resources for growth.⁹⁸

Business incubators and accelerators play an important role for nascent enterprises, grooming them for market success through mentorship, commercialization testing, and access to financing.⁹⁹ These programs are sometimes housed within nonprofits¹⁰⁰ or are run by private, for-profit ventures.¹⁰¹ Local governments are also creating VDFs, local incubators for start-ups.¹⁰² These public-private (or purely public) initiatives provide a range of support to early-stage entrepreneurs, including seed funding, free or heavily discounted office space, and a variety of technical assistance.¹⁰³

Currently, the majority of VDFs do not incorporate necessity entrepreneurs.¹⁰⁴ Publicly funded start-ups cultivated by these municipal incubators

ness incubators cultivate nascent companies by providing them with mentoring, training on business basics, marketing assistance, work space, networking opportunities with other startup companies and entrepreneurial experts and access to capital, legal and accounting and other technical resource providers,” and also noting that “business incubators decrease the likelihood that small businesses involved in their programs will fail and help to produce more viable businesses”).

98. *See infra* notes 99–102.

99. The Y Combinator (“YC”) is one example of an accelerator program. The YC is staffed and led by successful start-up entrepreneurs who select and groom nascent enterprises for their program. *See People*, Y COMBINATOR, <http://www.ycombinator.com/people/> (last visited Jan. 14, 2019). The purpose of the accelerator is to help early-stage entrepreneurs and nascent enterprises launch successfully. *About*, Y COMBINATOR, <http://www.ycombinator.com/about/> (last visited Jan. 14, 2019). The program provides targeted advice on the best way to commercialize a product and also provides necessary technical assistance in developing the technology. *Id.* Additionally, the YC helps entrepreneurs with initial phase and ongoing financing for their ventures. *Id.* As the YC states on its website:

Yes, we can make introductions, but that part is easy. We spend much more time teaching founders how to pitch their startups to investors, and how to close a deal once they’ve generated interest. In the second phase we supply not just advice but protection; potential investors are more likely to treat you well if you come from YC, because how they treat you determines whether in the future we’ll steer deals toward or away from them.

Id.

100. The Chicagoland Entrepreneurial Center “is a non-profit organization that supports entrepreneurs on their path to building high-growth, sustainable businesses.” *About CEC*, CHICAGOLAND ENTREPRENEURIAL CTR., <https://1871.com/about-cec/> (last visited Dec. 19, 2018).

101. Paul Graham, *How Y Combinator Started*, Y COMBINATOR (Mar. 15, 2012), <http://old.ycombinator.com/start.html> (explaining how Y combinator began as an investment fund, which is not a nonprofit).

102. *See infra* Section IV.B.

103. *See infra* text accompanying note 229.

104. In his article, Professor Abraham J.B. Cable queried, “But what public purpose justifies using public resources to favor [venture capital (“VC”)] funds and their portfolio companies over other economic actors?” Abraham J.B. Cable, *Incubator Cities: Tomorrow’s Economy, Yester-*

rarely employ unskilled labor or increase the economic prospects of low-income, disenfranchised residents, as discussed in greater detail in Part IV of this Article.¹⁰⁵ However, the existing incubator model can be modified to include necessity entrepreneurs. Necessity entrepreneurs also require seed capital and business advising in order to transform their endeavors from small-scale operations to legitimate enterprises. Moreover, they often require smaller amounts of investment and will increase financial stability for the economically vulnerable, including the scores of returning citizens excluded from traditional employment.¹⁰⁶

II. FAILURES OF THE EXISTING NONPROFIT MODEL

Unfortunately, the existing nonprofit model is limited in its ability to bridge the employment gap for returning citizens. This is due in large part to the current legal regime, which requires nonprofits to operate within fairly narrow parameters set forth in the Code. Despite these constraints, the majority of employment and workforce development programs for returning citizens remain within nonprofit organizations. This Section explores the specific programmatic elements of the current nonprofit model and briefly outlines the underlying causes for the popularity of the nonprofit-

day's Start-Ups, 2 MICH. J. PRIV. EQUITY & VENTURE CAP. L. 195, 208 (2013). Although Cable's argument focuses on larger economic theories, the same question can be applied in the context of community economic development: Should a city use public resources to displace its citizens rather than assist them in obtaining employment, housing, education, and other social services?

105. See *infra* Section IV.B for a full discussion of the intentional exclusion of low-income entrepreneurs and the potential economic consequences for these populations.

106. As an added benefit, necessity entrepreneurship also provides an opportunity to build agency for returning citizens—an important element of successful reentry. Prisoners exist in a state of constant deprivation, operating within a new, abnormal system of social norms and rules prescribed by the imprisoning institution. See Richard Florida, *More Losers Than Winners in America's New Economic Geography*, CITYLAB (Jan. 30, 2013), <https://www.citylab.com/life/2013/01/more-losers-winners-americas-new-economic-geography/4465/> (“[L]ess-skilled blue-collar and service workers also earn more in these places, more expensive housing costs eat away those gains. There is a rising tide of sorts, but it only lifts about the most advantaged third of the workforce, leaving the other 66 percent much further behind.”); Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment* 7 (Dec. 2001) (unpublished manuscript), <https://aspe.hhs.gov/basic-report/psychological-impact-incarceration-implications-post-prison-adjustment#II> (“[P]enal institutions require inmates to relinquish the freedom and autonomy to make their own choices and decisions and this process requires what is a painful adjustment for most people.”). Social science research documents the correlation between increased recidivism and an inability to escape negative behaviors required to survive within prison institutions. See *id.* (“If and when this external structure is taken away, severely institutionalized persons may find that they no longer know how to do things on their own, or how to refrain from doing things that are ultimately harmful or self-destructive.”). As prisons exist outside normal society, they cultivate habits and mentalities that disadvantage individuals post-release. See *id.* at 15 (observing that the “psychological consequences of incarceration” can “interfere with the transition from prison to home”). Prison behaviors are often at odds with the skills, mindset, and outlook needed to, for example, find, obtain, and maintain employment and housing, rebuild family and social networks, navigate the bureaucracy associated with civil services, and so on. See *id.*

based approach. This Section then details the obstacles created by the existing legal regimes that make the non-profit based approach an imperfect solution for the economic enfranchisement of returning citizens.

A. Overview of Existing Nonprofit-Based Programming

Two factors have played a central role in perpetuating the prevalence of the nonprofit-based approach: (1) the role nonprofits play in aiding disenfranchised groups and (2) funding sources for reentry initiatives. It is important to examine each factor independently to fully understand their collective impact in entrenching the nonprofit-based model.

For many nonprofit organizations, assisting returning citizens is a natural extension of their mission and programming. Nonprofits often engage in the provision of key social services to economically disenfranchised populations—a group inclusive of returning citizens—and use social workers as case managers, connecting clients to important resources like healthcare, housing, education, substance abuse treatment services, and so on. In response to a decline in prison job-training opportunities, nonprofits began to implement their own workforce development and job-training programs for returning citizens.¹⁰⁷ Some nonprofit-based programs focus on teaching a specific skill or trade, even facilitating opportunities to obtain certifications. One such example is Together We Bake, a nonprofit organization dedicated to empowering and training economically disenfranchised women in the greater Washington, D.C. area.¹⁰⁸ The organization conducts an eight-week training program that includes mentoring, resume workshops, and employment soft skills training.¹⁰⁹ Participants in the program are also eligible for ServSafe Manager Certification, a useful qualification for anyone seeking to manage a commercial kitchen.¹¹⁰

Training is only one aspect of obtaining viable employment. Returning citizens must also grapple with the complexities of the job search process and navigate the modern job market. In fact, studies show a large

107. See Derek Gilna, *Audit Reveals Federal Prison Industries Faces Declining Revenue, Job Losses*, PRISON LEGAL NEWS, Nov. 2013, at 52 (citing an audit that covered FPI's operations from 2001–2012 and documents growing losses in prisoner job positions); see also *supra* notes 49, 54.

108. *Basics*, TOGETHER WE BAKE, <https://new.togetherwebake.org/program/general/> (last visited Dec. 19, 2018).

109. *Id.*; *How it Works*, TOGETHER WE BAKE, <https://new.togetherwebake.org/program/about-our-program/> (last visited Dec. 19, 2018); see Whitney Pipkin, *Together We Bake: Helping Women, Baking Cookies*, ALEXANDRIA LIVING MAGAZINE (Feb. 21, 2018), <https://alexandrialivingmagazine.com/food-and-dining/together-we-bake/> (“Outside of program hours, we pair each woman with a job counselor on resume writing and searching and applying for jobs.”).

110. See generally *FAQs*, SERVSAFE, <https://www.servsafe.com/ServSafe-Manager/FAQs#!/> (last visited Feb. 5, 2018) (detailing the frequently asked questions regarding the ServSafe certification process).

number of ex-offenders rely heavily on family and community connections when seeking employment.¹¹¹ While helpful, this is an extremely limited system, thus many nonprofits also provide job placement services to assist in the search, application, and interview process.¹¹² Programs range from well-structured corporate partnerships with placement pipelines to more general job postings and placement services.¹¹³

As employment is only one of the many barriers returning citizens face, it is extremely important for organizations to offer comprehensive case management assistance. Service areas include healthcare access, housing, child support, addiction treatment, food access, literacy, debt counseling, and so on. Organizations may provide direct case management or create a network of referral organizations. For example, an organization dedicated exclusively to housing advocacy or debt counseling may partner with a nonprofit dedicated to reentry to better serve their clients. Mentorship and coaching is another tool nonprofits use to provide additional support during the reentry process.¹¹⁴ Finally, some organizations also work toward systemic change through general education and policy advocacy. These organizations engage in limited direct advocacy efforts,¹¹⁵ testifying in favor of initiatives or legal changes that would positively impact the lives of returning citizens.¹¹⁶

111. See Mark T. Berg & Beth M. Huebner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, 28 JUST. Q. 382, 382–84, 386–87 (2011).

112. There are a number of different nonprofits that provide job placement in addition to training for returning citizens, including BUILD in Baltimore, *Turnaround Tuesday*, BUILD, <https://www.buildiaf.org/turnaround-tuesday/> (last visited Dec. 18, 2018), the Bread Project in California, *What We Do*, BREAD PROJECT, <https://breadproject.org/page/> (last visited Dec. 19, 2018), and the Tampa Bay Academy of Hope, *Helping Offenders Prepare for Employment (H.O.P.E.)*, TAMPA BAY ACADEMY OF HOPE, <http://www.tampahope.org/helping-offenders-prepare-for-employment--h.o.p.e..html> (last visited Dec. 19, 2018).

113. Together We Bake uses more informal networks to help place graduates of their program; in contrast, the New Jersey Reentry Corporation has developed more robust networks with employers. *Compare How it Works*, TOGETHER WE BAKE, *supra* note 109, with *About*, N.J. REENTRY CORP., <http://njreentry.org/about/> (last visited Dec. 19, 2018).

114. In particular, Ready4Work promotes the use of mentorship and has even created a guide for nonprofits to include mentorship when designing job-training programs. RENATA COBBS FLETCHER, PUB./PRIVATE VENTURES, MENTORING FORMER PRISONERS: A GUIDE FOR REENTRY PROGRAMS 3–4 (2009), <https://www.aecf.org/resources/mentoring-former-prisoners/> (“Ready4Work suggest[s] that mentoring may have real benefits in strengthening outcomes in the context of a multifaceted reentry program.”). The nonprofit organizations listed in *supra* note 112 and *infra* note 125 incorporate a mentorship component in their programming for returning citizens.

115. The Author uses the term “limited” because Section 501(c)(3) of the Code and the accompanying treasury regulations both limit the amount of direct lobbying Section 501(c)(3) organizations can engage in. See generally I.R.C. § 501(c)(3) (2012).

116. For example, as discussed above, the National Employment Law Project (“NELP”) advocates for the removal of criminal background disclosures in common job applications because such disclosures disqualify many applicants before their ability to perform the job is assessed. These advocacy efforts are commonly known as Ban the Box, and NELP’s efforts included gen-

Funding also plays an important role in enabling the nonprofit model. Traditionally, nonprofits have access to charitable donations as well as funds from private foundations. While this is an important funding benefit, it also constrains the activities of these organizations.¹¹⁷ The Federal government has also supported these nonprofit-based efforts that aid returning citizens, adding yet another funding stream exclusively for nonprofits. The Department of Labor (“DOL”) invested heavily in building capacity for nonprofit-led reentry efforts through the Ready4Work program, believing these organizations are uniquely situated to best assist returning citizens seeking employment post-incarceration.¹¹⁸ The DOL created the Ready4Work pilot program designed to provide technical assistance, funding, and general capacity building for these nonprofits in eleven cities.¹¹⁹ The project operated from 2003 to 2006 and required an investment of \$25 million.¹²⁰ Ready4Work provided “employment-focused programs” that included “mentoring, job training, job placement, case management and other comprehensive transitional services.”¹²¹ In addition to practical, industry-specific training, the Ready4Work program encouraged service providers to include “soft skills” in their programming.¹²²

eral educational materials in the form of reports and data as well as direct public petitions. *See supra* notes 43–45 and accompanying text.

117. *See infra* Section II.B.

118. LINDA JUCOVY, PUB./PRIVATE VENTURES, JUST OUT: EARLY LESSONS FROM THE READY4WORK PRISONER REENTRY INITIATIVE 2 (2006), https://www.prisonlegalnews.org/media/publications/ppv_publication_just_out_early_lessons_from_the_ready_4_work_prisoner_reentry_initiative_02_2005.pdf. (“Ready4Work places faith- and community-based organizations at the heart of a network supporting the reentry efforts of former prisoners. Frequently located in the most deeply affected neighborhoods, and often the only institutions with close ties to members of those communities, these organizations are a unique resource for returning offenders. In some sites, these smaller, grassroots organizations are partnering with larger, intermediary organizations with program experience and technical-assistance capacity, so the two groups can benefit from their collective strengths.”).

119. *Ready4Work: A Business, Community, and Criminal Justice Partnership*, DEP’T OF LAB., https://www.doleta.gov/PRI/PDF/Ready4Work_Information.pdf (last visited Sept. 9, 2018).

120. *Id.*

121. *Id.*

122. Soft skills refer to general professionalism, including punctuality, attendance, teamwork, cooperation, and other general skills needed to maintain employment. *See JUCOVY, supra* note 118, at 18–19 (detailing the Ready4Work soft skills training requirement); *see also* JEANNE BELLOTTI ET AL, MATHEMATICA POLICY RESEARCH, INC., EXAMINING A NEW MODEL FOR PRISONER RE-ENTRY SERVICES: THE EVALUATION OF BENEFICIARY CHOICE 3, 33 (2011), [https://www.dol.gov/asp/evaluation/completed-](https://www.dol.gov/asp/evaluation/completed-stud-)

[studies/Examining_a_new_Model_for_prisoner_Reentry_Services/FINAL_REPORT_examining_new_model_prisoner_reentry_services.pdf](https://www.dol.gov/asp/evaluation/completed-studies/Examining_a_new_Model_for_prisoner_Reentry_Services/FINAL_REPORT_examining_new_model_prisoner_reentry_services.pdf) (noting that all nonprofit grantees—also known as “specialized service providers”—must provide three core services, “including soft skills, life skills, and/or basic skills training”); Lisa Rabasca Roepe, *Why Soft Skills Will Help You Get the Job and the Promotion*, FORBES (Aug. 18, 2017), <https://www.forbes.com/sites/lisaroepe/2017/08/18/why-soft-skills-will-help-you-get-the-job-and-then-promoted/#41d8ec4e54b8> (describing the general importance of soft skills for employees).

As stated earlier, Ready4Work was intended to leverage the existing skills and expertise of social service oriented nonprofit organizations. Inadvertently, it may have entrenched the nonprofit-based model. The current model is not limited to the nonprofit organizations selected to participate in Ready4Work, but includes other organizations offering similar combinations of job training and soft skills. Some organizations have expanded on the existing structure to incorporate an additional element of issue advocacy to promote the fair treatment of returning citizens.¹²³

The nonprofit model is not wholly without merit and has benefits, specifically during the early stages of reentry when returning citizens are the most isolated and vulnerable. However, the nonprofit model consistently fails to address the underlying issue—namely, increasing market participation for individual returning citizens. Often traditional employment alone is not sufficient, or even an option, due to the collective negative impact of collateral consequences and geographically disadvantaged spaces.¹²⁴ Graduates of job-training programs are still dependent on the local economy's demand for service industry labor and an individual employer's commitment to fair hiring.¹²⁵ Helping returning citizens take steps toward greater

123. For example, the New Jersey Reentry Corporation is a nonprofit that works “to remove all barriers to employment for citizens returning from incarceration.” N.J. REENTRY CORP., <http://njreentry.org/> (last visited Dec. 19, 2018). They engage in direct job training and placement services. *About*, N.J. REENTRY CORP., *supra* note 113. They also create policy papers with prescriptive recommendations, recently releasing a New Jersey specific report on the opioid crisis. *See* STEPHANIE ALBANESE ET AL., N.J. REENTRY CORP., REENTRY: NEW JERSEY OPIOID ADDICTION REPORT (2018), http://njreentry.org/wp-content/uploads/2018/09/Published_9_24.pdf. This organization was not part of the initial cohort of organizations selected to participate in the Ready4Work pilot program. *See* U.S. DEP'T OF LABOR, READY4WORK: FINAL RESEARCH REPORT 3 tbl.1 (2008), https://wdr.doleta.gov/research/FullText_Documents/Ready4Work%20Final%20Research%20Report.pdf. Other examples of organizations engaged in job-training and mentorship include EMERGE Connecticut, Inc. (a Section 501(c)(3) organization in New Haven, Connecticut that provides “employment services, literacy and numeracy tutoring, counseling, a support system, and other services”) and PACE Indy (a nonprofit in Indianapolis, Indiana that provides services including “family reunification, transitional housing, substance abuse groups, and education”). *See Who We Are*, EMERGE CONNECTICUT, <https://www.emergect.net/who-we-are> (last visited Dec. 19, 2018); *About PACE Indy*, PUBLIC ADVOCATES IN COMMUNITY REENTRY, <http://www.paceindy.org/about-us/> (last visited Dec. 19, 2018).

124. Kevin Schnepel, *Can Jobs Reduce Recidivism?*, IZA WORLD OF LABOR (Nov. 6, 2017), <https://wol.iza.org/opinions/can-jobs-reduce-recidivism> (“The transitional jobs provided by employment-focused re-entry programs, as well as work in the retail and food service industries, typically pay wages that are often at (or near) the minimum wage. If a released inmate is comparing the returns from illegal versus legal activity—a minimum-wage job just may not be enough to deter the illegal choice.”). Although this study is centered on recidivism, the low-wages factor clearly demonstrates the need for supplemental income—whether through illegal activity or necessity entrepreneurship.

125. *See* Arnesa A. Howell, *Mastering ‘Life and Knife’ Skills in a Training Kitchen*, ATLANTIC (Dec. 25, 2015), <https://www.theatlantic.com/politics/archive/2015/12/mastering-life-and-knife-skills-in-a-training-kitchen/433710/> (“Finding meaningful employment after incarceration often eludes returning citizens because of the stigma of having a criminal record.”). Howev-

economic enfranchisement requires direct opportunities to build wealth. Such measures include not just traditional employment opportunities, but also profit sharing, dividends, and other forms of compensation. While the best nonprofits provide key services to returning citizens, IRS regulations impose constraints that prohibit nonprofit engagement in necessary direct market interventions. The next Section explains the complex statutory and IRS regulatory framework that ensures nonprofits focus on job training instead of job creation and wealth building.

B. *Legal Limitations of Existing Nonprofit Models*

Most nonprofits seek tax-exempt status under Section 501(c)(3) of the Code. A number of benefits are associated with Section 501(c)(3) tax-exempt status, including exemption from federal corporate income tax,¹²⁶ the ability to receive tax-deductible donations,¹²⁷ and the legitimacy and branding advantages lent to an organization's mission and operations because of IRS recognition.¹²⁸

The United States government has long considered tax-exempt status to be a privilege, an understandable position considering tax exemption effectively serves as a government subsidy to an organization.¹²⁹ The government relies on revenues generated by taxes in order to operate, and exempting organizations from taxes reduces the government's ability to provide services. Although there is no single stated purpose in the series of legislative acts that first created tax-exempt status, Congress justified the

er, DC Central Kitchen's program has a nearly ninety percent employment rate, which can be attributed to local commitment to supporting returning citizens. *Id.* For example, Washington, D.C. has an Office of Returning Citizen Affairs, *About MORCA*, MAYOR'S OFFICE ON RETURNING CITIZEN AFFAIRS, <https://orca.dc.gov/page/about-morca> (last visited Dec. 20, 2018), numerous nonprofits that provide job-training and social services to returning citizens, like DC Central Kitchen and Thrive DC, *About Us*, THRIVE DC, <https://www.thrivedc.org/about/> (last visited Dec. 20, 2018), and even programs exclusively dedicated to placing returning citizens with employers, *Ex-Offender Job Placement Project*, ECON. GROWTH DC FOUND. (Apr. 1, 2016), <http://egdcfoundation.org/ex-offender-job-placement-project/>.

126. JOHN SIMON ET AL., *THE FEDERAL TAX TREATMENT OF CHARITABLE ORGANIZATIONS, IN THE NONPROFIT SECTOR: A RESEARCH HANDBOOK* 267, 268 (Walter W. Powell & Richard Steinberg eds., 2d ed. 2006) ("With some minor exceptions . . . what all inhabitants of [the nonprofit] sector have in common is . . . exemption from the federal income tax False.").

127. I.R.C. § 170 (2012).

128. See Aurélien Lorie, *Designing a Legal Vehicle for Social Enterprises: An Issue Spotting Exercise*, 5 COLUM. J. TAX. L. 100, 107 (2013) ("Overall, the 501(c)(3) status also operates as a brand by identifying the organization's activity as a proper social mission.").

129. Lloyd Hitoshi Mayer & Joseph R. Ganahl, *Taxing Social Enterprise*, 66 STAN. L. REV. 387, 412 (2014) ("The subsidy theory in its most basic form posits that tax exemption and the other tax benefits provided to charities are the government's way 'of subsidizing particular services—such as health care, education, research, and aid to the poor—that nonprofit organizations often provide,' rather than providing them directly." (quoting Henry Hansmann, *The Rational for Exempting Nonprofit Organizations from Corporate Income Taxation*, 91 YALE L.J. 54, 56–57 (1981))).

tax subsidy to these organizations by reasoning that “the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds, and by the benefits resulting from the promotion of the general welfare.”¹³⁰ Tax-exempt organizations are viewed as beneficial because they provide services for the greater public good, often reducing demands on government agencies in the process.

As a reward for dedicating themselves to exemption-worthy purposes, qualifying nonprofits receive two significant financial advantages. First, they can operate without the burden of corporate income taxation, meaning they retain all their revenue and can spend it without tax consequences.¹³¹ Second, the Code creates a revenue stream for tax-exempt organizations by incentivizing donations from individuals and businesses.¹³² In essence, the law helps tax-exempt organizations receive funding from the public and does not (generally) tax these dollars.

However, the IRS is fairly rigid in both granting tax-exempt status and regulating tax-exempt organizations. The requirements for achieving and maintaining Section 501(c)(3) tax-exempt status are stringently defined and interpreted through the Code, Treasury Regulations, and IRS Rulings.¹³³ This framework serves as a gatekeeping function, ensuring that only organizations engaged in permitted exempt purposes enjoy the tax advantages.¹³⁴

1. *Threshold Requirements for Obtaining Section 501(c)(3) Status*

In order to qualify for Section 501(c)(3) tax-exempt status, an entity must meet two legal tests at the outset: it must be *organized* and *operated*

130. H.R. REP. NO. 75-1860, at 19 (1938).

131. See *supra* note 126. Although nonprofits are generally exempt from Federal taxation, they may on occasion generate income that is subject to corporate taxation. This is commonly called “unrelated business income.” For a full discussion of unrelated business income and subsequent tax consequences, see Paul D. Carman, *Unrelated Business Taxable Income—Where We Are And How We Got There*, 23 TAX’N EXEMPTS 31 (2012).

132. Contributions to a Section 501(c)(3) organization are generally deductible up to ten percent of a corporation’s taxable income and up to fifty percent of an individual’s taxable income. I.R.C. §§ 170(a)(2)(A), 170(b)(1)(A). See also Michael Fricke, *The Case Against Income Tax Exemption for Nonprofits*, 89 ST. JOHN’S L. REV. 1129, 1134–35 (2015) (noting, “Thus, much of the revenue flowing into such organizations escapes taxation at two levels: once for the donor and once for the recipient. The vast majority of non-501(c)(3) nonprofits might still enjoy exemption from income tax, but their donors do not receive any special tax benefits for making a donation. For this reason, almost all organizations whose purposes are even close to the purposes outlined in § 501(c)(3) will fight tooth-and-nail to be classified under § 501(c)(3).”).

133. IRS Rulings refer to both Revenue Rulings and Private Letter Rulings. Revenue Rulings are administrative decisions to which the IRS considers itself bound. Private Letter Rulings are administrative rulings binding only the named party and the IRS. *Understanding IRS Guidance: A Brief Primer*, IRS, <https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer> (last visited Jan. 31, 2019).

134. Terri Lynn Helge, *Policing the Good Guys: Regulation of the Charitable Sector Through a Federal Charity Oversight Board*, 19 CORNELL J.L. & PUB. POL’Y 1, 55–58 (2009).

exclusively for one or more exempt purposes.¹³⁵ Exempt purposes are defined by the Code and include religious, charitable, or educational purposes.¹³⁶ The Code places a number of additional requirements on Section 501(c)(3) organizations. The Code provides that net earnings may not “inure[] to the benefit” of any shareholder or private individual, meaning that no organizational insider can benefit financially from the organization.¹³⁷ Finally, the Code restricts Section 501(c)(3) organizations from engaging in substantial activities to influence legislation and bans any support on behalf of candidates for public office.¹³⁸

A nonprofit is organized for exclusively exempt purposes if its governing documents comply with certain Code requirements.¹³⁹ The second, more crucial test for Section 501(c)(3) qualification is that an organization must be operated exclusively for one or more exempt purposes.¹⁴⁰ An organization meets this standard “only if it engages primarily in activities which accomplish one or more of such exempt purposes.”¹⁴¹ An organization may engage in activities that do not further an exempt purpose only to an insubstantial degree.¹⁴² However, the presence of any one *substantial* nonexempt purpose, as revealed by an organization’s activities, is sufficient

135. I.R.C. § 501(c)(3).

136. *Id.*

137. *Id.* Insiders who provide services are permitted to earn reasonable compensation, and insiders can access organizational services on the same terms as the general public. Excessive compensation or disproportionate receipt of organizational services will be considered impermissible private inurement. *Easter House v. United States*, 12 Cl. Ct. 476, 487 (1987); *John Marshall Law Sch. & John Marshall Univ. v. United States*, Nos. 27-78 and 28-78 1981 WL 11168, at *3 (Cl. Ct. Jun. 24, 1981).

138. I.R.C. § 501(c)(3).

139. Treas. Reg. § 1.501(c)(3)-1(b)(1) (as amended in 2017).

140. *Id.* § 1.501(c)(3)-1(c)(1); BLOOMBERG LAW, PORTFOLIO 451-1ST: TAX-EXEMPT ORGANIZATIONS: OPERATIONAL REQUIREMENTS, DETAILED ANALYSIS, B. THE OPERATIONAL TEST (2018) <https://www.bloomberglaw.com/ms/p/538e343212d742635cc87506e78bca96/document/2948488744>.

141. Treas. Reg. § 1.501(c)(3)-1(c)(1).

142. *Id.*; *see, e.g.*, *S. Cmty. Ass’n v. Comm’r*, 90 T.C.M. (CCH) 568, 569, 571–73 (2005) (holding that the IRS properly revoked the exemption of an organization whose primary activity was conducting a gambling operation, even though the organization contributed some receipts from that operation to educational programs); I.R.S. Priv. Ltr. Rul. 200842050 (Jul. 18, 2008) (ruling that an organization that invested substantial assets in the formation of a for-profit corporation, whose business activity was property development and commercial real estate rental, was denied exempt status because commercial activity was attributed to the organization, as the organization exercised control over the for-profit corporation and was its sole shareholder); I.R.S. Priv. Ltr. Rul. 200644048 (Jan. 11, 2006) (ruling that an entity formed by a declaration of trust as a supporting organization and that used its assets to make a loan to its founders and pay their third-party financial obligations was not exempt because its primary purpose—benefiting its founders—was substantial and noncharitable); *see also* BLOOMBERG LAW, PORTFOLIO 450-1ST: TAX-EXEMPT ORGANIZATIONS: ORGANIZATIONAL REQUIREMENTS, DETAILED ANALYSIS, A. THE ORGANIZATIONAL TEST (2018), <https://www.bloomberglaw.com/document/X2NRRBH8>.

to deny it tax-exemption.¹⁴³ Therefore, the operational test is satisfied if an organization's primary activities further its exempt purposes and all other activities are collectively insubstantial.¹⁴⁴

2. *Insubstantial Activities*

Except for lobbying activities, there is no precise threshold for substantiality. It is assessed in relation to the organization's overall operations rather than in absolute terms. There are three general measures of whether an activity is substantial:

- (1) the amount of income derived from the activity in comparison to total income;
- (2) the amount of expenditures for the activity in comparison to total expenditures; and
- (3) the amount of time the organization's employees devote to the activity in comparison to total hours worked.¹⁴⁵

In the lobbying context, the threshold for substantiality ranges from five percent to twenty percent depending on the size of the organization. Non-lobbying decisions also suggest that insubstantial activities should not exceed twenty percent of the whole.¹⁴⁶

Activities are generally not considered exempt if they operate in a commercial manner.¹⁴⁷ This is evaluated based on all of the relevant facts and circumstances.¹⁴⁸ Factors include the existence of profits and having a "commercial hue" (meaning, an organization's activities look like a busi-

143. *Better Bus. Bureau of Wash., D.C., Inc. v. United States*, 326 U.S. 279, 283 (1945); Rev. Rul. 72-369, 1972-2 C.B. 245 (holding that the operational test requires that an organization "devote" its resources to charitable purposes); *see also* *Fund for Anonymous Gifts v. I.R.S.*, No. Ci. A. 95-1629(Rcc), 1997 WL198108, at *1 (D.D.C. Apr. 15, 1997) (ruling that a fund's substantial activity of investing and donating contributions at the instruction of its donors does not further an exempt purpose, disentitling the fund to Section 501(c)(3) exempt status), *rev'd & remanded*, 194 F.3d 173 (D.C. Cir. 1999) (vacating and remanding in part the district court's judgment after the organization amended its articles to remove the offending provision); I.R.S. Priv. Ltr. Rul. 201404013 (Oct. 29, 2013) (ruling that an organization is not tax-exempt, despite providing some educational services, because the organization also provided substantial commercial services that did not further its exempt purpose); I.R.S. Priv. Ltr. Rul. 201340020 (July 10, 2013) (same); I.R.S. Priv. Ltr. Rul. 201114036 (Jan. 11, 2011) (same); BLOOMBERG LAW, *supra* note 142.

144. BLOOMBERG LAW, *supra* note 142.

145. *Id.*; *Bethel Conservative Mennonite Church v. Comm'r.*, 80 T.C. 352 (1983), *rev'd*, 746 F.2d 388 (7th Cir. 1984).

146. *See* *World Family Corp. v. Comm'r.*, 81 T.C. 958 (1983) (holding that an activity consuming ten percent of organization expenditures is insubstantial); *Church in Boston v. Comm'r.*, 71 T.C. 102 (1978) (holding that an activity consuming twenty percent of organization expenditures is substantial).

147. *Airlie Found. v. I.R.S.*, 283 F. Supp. 2d 58, 63 (D.D.C. 2003).

148. *Id.*

ness with increasing profits, salaries, and accumulated surplus).¹⁴⁹ Additionally, if the IRS views an organization's activities as unfair competition with taxable businesses, that will also weigh against receiving tax-exempt status. In one case, a nonprofit corporation formed to provide job training and referrals to unemployed individuals did not qualify as a Section 501(c)(3) charity because the services provided by the corporation were indistinguishable from those provided by for-profit temporary service agencies.¹⁵⁰ The United States Tax Court noted that the only difference between the nonprofit corporation and a for-profit agency was the fact that the nonprofit did not charge for its services.¹⁵¹ The fact that an organization does not charge for its services, the court concluded, does not make the organization's activities charitable. Similarly, in another case, the reviewing court considered a religious nonprofit organization that operated two vegetarian restaurants and health food stores.¹⁵² The IRS had previously held that this organization did not operate for exempt purposes within the meaning of Section 501(c)(3), and instead operated for a substantial commercial purpose.¹⁵³ The reviewing court agreed, noting that (1) the organization's operations were presumptively commercial; (2) it competed directly with other restaurants; (3) it used profit-making formulas common in the retail businesses; and (4) its hours of operation were competitive with other commercial enterprises.¹⁵⁴

Herein lies the heart of the conflict. The IRS actively limits a nonprofit's contribution to certain acceptable activities—mainly job-training programs and social services. The IRS discourages nonprofits from engaging in direct market intervention,¹⁵⁵ defining this as the territory of for-profit businesses. Faced with significant barriers to obtaining employment

149. *Incorporated Trs. of the Gospel Worker Soc'y v. United States*, 510 F. Supp. 374, 379–81 (D.D.C. 1981); *see also* *Scripture Press Found. v. United States*, 285 F.2d 800, 803, 806 (Ct. Cl. 1961). Indeed, in *B.S.W. Group, Inc. v. Commissioner*, the United States Tax Court held:

Under the operational test, the purpose towards which an organization's activities are directed, and not the nature of the activities themselves, is ultimately dispositive of the organization's right to be classified as a [S]ection 501(c)(3) organization The critical inquiry is whether petitioner's primary purpose for engaging in its sole activity is an exempt purpose, or whether its primary purpose is the nonexempt one Factors such as the particular manner in which an organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits are relevant evidence of a forbidden predominant purpose.

B.S.W. Group, Inc. v. Comm'r, 70 T.C. 352, 356–57 (1978).

150. *At Cost Servs., Inc. v. Comm'r*, 80 T.C.M. (CCH) 573, 576 (2000).

151. *Id.*

152. *Living Faith, Inc. v. Comm'r*, 950 F.2d 365, 367 (7th Cir. 1991).

153. *Living Faith, Inc. v. Comm'r*, 60 T.C.M. (CCH) 710 (1990), *aff'd*, 950 F.2d 365 (7th Cir. 1991).

154. *Id.* at 373–74.

155. Direct market intervention includes providing permanent employment options, effectively competing with for-profit businesses who do not receive tax subsidies.

through traditional avenues and a regulatory framework that severely restricts the ability of nonprofits to render assistance, returning citizens remain economically disenfranchised.

C. Wealth-Building Barriers in the Nonprofit World

In a market economy, there are a number of means to build personal wealth, ranging from salaries to equity compensation. The previous Section discussed restrictions placed on Section 501(c)(3) organizations with regards to wages and permanent employment. This Section examines similar restrictions with regard to equity compensation. Having equity in a business can commonly be understood as having some form of ownership interest.¹⁵⁶ For example, in a corporation, shareholders own shares/stocks, which are a form of equity.¹⁵⁷ Equity generates some form of monetary compensation, which can take the form of dividends, profit sharing, or revenues from the sale of this equity interest. Equity can be an important form of wealth building for individuals, perhaps best demonstrated by the prevalence of equity compensation for high-profile CEOs.¹⁵⁸ However, unlike the private sector, IRS regulations restrict nonprofits from issuing equity.¹⁵⁹

To best understand IRS restrictions, it is important to briefly cover the mechanics of equity compensation through corporate stock ownership. An individual receives stock, units of ownership interest in the company, in return for some form of payment (such as cash, real property, man-hours

156. STEPHEN F. REED & ESTHER S. BARON, *ENTREPRENEURSHIP LAW: CASES & MATERIALS* 149 (Wolters Kluwer 2013) (describing equity and equity financing as selling “an ownership interest in the business”).

157. *Id.*

158. CEO compensation packages are typically comprised of “five basic components: salary, annual bonus, payouts from long-term incentive plans, restricted option grants, and restricted stock grants.” Carola Frydman & Dirk Jenter, *CEO Compensation*, 2 *ANN. REV. FIN. ECON.* 75, 81 (2010). The latter two components, restricted option grants and restricted stock grants, are both forms of equity compensation. *Id.* at 81–82. It is also worth noting that start-up firms often offer greater equity incentives because they are cash-poor and cannot afford large salaries or bonuses.

159. See Benjamin M. Leff, *Preventing Private Inurement in Tranched Social Enterprises*, 45 *SETON HALL L. REV.* 1, 3–4 (2015) (“[U]nder the so-called ‘no inurement’ rule, tax-exempt organizations are prohibited from distributing any net earnings or other ‘excess benefit’ to shareholders or any other person who is in a position to control the organization (so-called ‘disqualified persons’). . . . This no-inurement rule does . . . prevent [Section 501(c)(3) organizations] from having owners who share in those profits”); Dana Brakman Reiser, *Benefit Corporations—A Sustainable Form of Organization?*, 46 *WAKE FOREST L. REV.* 591, 607–08 (2011) (“[I]f formed as a tax-exempt nonprofit, a social enterprise will be prohibited from distributing net profits by the inurement, private benefit, and excess benefit transaction rules under federal tax law. Therefore, if a social entrepreneur wishes to distribute profits to investors, a nonprofit form is a nonstarter.”); Reiser, *supra*, at 617 (“Due to the nondistribution constraint, equity capital will not be available to social enterprises formed as nonprofits”).

worked, and so on).¹⁶⁰ The stock itself carries specific terms that dictate how much the owner can receive in dividend payments, whether they will receive any preferred payment priorities or voting rights, and other terms.¹⁶¹ Generally, stock owners receive dividend payments when the company decides to share its profit largess with its stockholders.¹⁶² As corporations are beholden in part to their shareholders, there is a general expectation that corporations operate for the benefit of these shareholders.¹⁶³ In contrast, Section 501(c)(3) organizations are required to operate for an exempt purpose,¹⁶⁴ not for the benefit of a limited number of shareholders.

Treasury Regulations specifically state a Section 501(c)(3) nonprofit organization “is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.”¹⁶⁵ Here, the IRS is primarily concerned with misuse of a nonprofit’s assets to benefit individuals involved in the nonprofit’s activities.¹⁶⁶ This rule against private inurement is applied broadly to all individuals, regardless of whether they possess decision-making authority.¹⁶⁷ This rule is also commonly known as the “nondistribution constraint.”¹⁶⁸ The restrictions against private inurement extend beyond issuing stock to private shareholders and include profit-sharing agreements. These are contractual bonuses awarded to employees or managers when certain growth goals for the business are met. Alternatively, individuals can be rewarded for meeting specific milestones that contribute toward the overall growth and development of the enterprise. Again, the IRS discourages linking compensation to revenue-based performance. Compensation such as salaries, payments, or bonuses that are based on revenues start to

160. JAMES D. COX & THOMAS LEE HAZEN, *CORPORATE COUNSEL GUIDES: CORPORATION LAW* 405–06 (2013).

161. 18 C.J.S. *Corporations* § 244 (2018).

162. *Dividend*, INVESTOPEDIA, <https://www.investopedia.com/terms/d/dividend.asp> (last updated Oct. 12, 2018).

163. *Dodge v. Ford Motor Co.*, 170 N.W. 668, 684 (Mich. 1919) (“A business corporation is organized and carried on primarily for the profit of the stockholders.”). There is much debate among corporate law as to the discretion of managers and directors to maximize benefits to shareholders at all other costs. It is important to note that this debate does not contest whether shareholders are due some benefit. Rather it centers on (1) the amount of benefit shareholders are due and (2) how much the amount of shareholder benefit should impact managerial decisions. See generally D. Gordon Smith, *The Shareholder Primacy Norm*, 23 J. CORP. L. 277 (1998).

164. I.R.C. § 501(c)(3) (2012).

165. Treas. Reg. § 1.501(c)(3)-1(c)(2) (as amended in 2017).

166. See I.R.S. Gen. Couns. Mem. 39,862 (Dec. 2, 1991) (“Protecting charitable organizations against private inurement serves important purposes.”).

167. I.R.S. Gen. Couns. Mem. 38,459 (July 31, 1980).

168. Hansmann, *supra* note 129, at 54, 56.

resemble distributions of organizational profits, violating the nondistribution constraint.¹⁶⁹

D. IRS Rulings Impacting Reentry Organizations

Nonprofits dedicated to assisting returning citizens like John must contend with the difficult economic reality of their constituents. John's precarious financial position is due in part to his underemployment—working less than full-time in his retail position. Other returning citizens may find themselves in more dire circumstances, unable to secure any form of traditional employment. Nonprofits may be tempted to explore other means to economically enfranchise returning citizens, including providing better avenues for well-paid, permanent employment within the nonprofit or engaging in forms of equity compensation as means to build wealth beyond standard wages. However, the complex legal framework governing nonprofits make it difficult to pursue certain economic enfranchisement measures while maintaining Section 501(c)(3) status. As illustrated in greater detail below, such creative methods to increase the economic enfranchisement of returning citizens have been tested and have failed IRS scrutiny.

The IRS is consistent in its enforcement of these regulations and rulings, which can directly impact reentry organizations. The Agency recently denied Section 501(c)(3) status to an organization dedicated to “reliev[ing] the poor, disadvantaged, distressed, underprivileged, and in particular ex-felons in seeking gainful employment.”¹⁷⁰ The organization wished to capitalize on the flourishing highway industry by providing returning citizens training and permanent employment opportunities in construction and highway maintenance.¹⁷¹ The organization designed a three-part program focusing on skills training, permanent employment opportunities for graduates, and social benefits like medical insurance and financial literacy.¹⁷²

The training programs focused on operating specialized construction machinery and practical on-the-job training through various construction projects.¹⁷³ The organization strongly believed that training alone was insufficient to help returning citizens successfully reintegrate into society. They planned to retain the trainees as full-time employees after completing the program and provide them with generous compensation packages and support programming. Employees would receive three times the minimum

169. See, e.g., *Church of Scientology v. Comm'r*, 823 F.2d 1310, 1312 (9th Cir. 1987); *Birmingham Bus. Coll., Inc. v. Comm'r*, 276 F.2d 476, 478–79 (5th Cir. 1960); *Kemper Military Sch. v. Crutchley*, 274 F. 125, 127 (W.D. Mo. 1921); *Sonora Cmty. Hosp. v. Comm'r*, 46 T.C. 519, 526 (1966), *aff'd*, 397 F.2d 814 (9th Cir. 1968); *Gemological Inst. of Am. v. Comm'r*, 17 T.C. 1604, 1609–10 (1952), *aff'd*, 212 F.2d 205 (9th Cir. 1954).

170. I.R.S. Priv. Ltr. Rul. 201525012 (Mar. 25, 2015).

171. *Id.*

172. *Id.*

173. *Id.*

wage, an employee benefit package that included health and dental insurance, paid sick leave, paid vacation, and employer-matched 401(k) contributions. The organization also planned to provide additional wrap-around social services, including income tax planning and financial literacy services.¹⁷⁴ An emphasis on long-term employment was central to the organization's mission to support successful reentry.

At first, this organization may appear to mirror elements of the traditional nonprofit model outlined earlier: It provided job training and social services and utilized a pathway to permanent employment for program graduates, much like the job placement initiatives of traditional nonprofits. However, the organizational model contained some key distinctions under the operational test.

The IRS applies a narrowly defined standard for acceptable charitable operations. In this instance, the IRS was unpersuaded by the organization's mission, finding that their operations furthered substantial *commercial* purposes rather than charitable purposes. The IRS took issue with a number of points, including that the organization would compete with standard businesses and operate like these businesses but with the tax advantages of a Section 501(c)(3) organization. As evidence, the IRS noted that the organization would directly compete with for-profit businesses when bidding for highway construction contracts. Furthermore, the organization planned on charging market rates for its services on projects. The expenses of the organization were primarily related to the operation of the construction projects, including salaries, facilities, equipment, and so on. The combination of these factors made it clear to the IRS that the activities were commercial in nature rather than charitable. The IRS did acknowledge that the job-training program may have some acceptable charitable purposes. However, these charitable purposes did not extend to the permanent employment of returning citizens. The IRS noted that the permanent employees are essentially "long-term employees to further [the organization's] commercial operations" rather than recipients of charitable skills training.¹⁷⁵ The IRS relied on their long-standing rule that "the scale of the commercial endeavor is larger than reasonably necessary to accomplish any charitable purpose, demonstrating [that the organization was] operating for substantial commercial purposes."¹⁷⁶

The IRS also disapproved of the organization's ability to issue stock and make distributions to its stockholders. The IRS noted that those powers that "entitle[] [an] individual to any part of [the organization's] assets or in-

174. *Id.*

175. *Id.*

176. *Id.*

come constitutes [private] inurement prohibited under Section 501(c)(3) of the Code.”¹⁷⁷ Such private inurement “precludes exemption.”¹⁷⁸

Although there are structuring possibilities that navigate some problems caused by commercial activities, the underlying fact remains—nonprofits are restricted from key market interventions, including permanently employing returning citizens who graduate from their job-training programs. Given that individual wealth building through direct market participation is essential to the economic enfranchisement of returning citizens, alternatives to the nonprofit model must be explored.

III. CLEAN DECISIONS AND CHANGING PERCEPTIONS: A NEW SOCIAL ENTERPRISE MODEL FOR REENTRY ORGANIZATIONS

In his seminal article examining small business development in urban areas, Professor Robert Suggs highlighted the importance of three unique sources of capital: financial, human, and social.¹⁷⁹ Professor Suggs referred to financial capital as access to funding networks and business-related technical assistance.¹⁸⁰ Professor Suggs defined human capital as the ability to build skills and cultivate entrepreneurial attitudes.¹⁸¹ Lastly, Professor Suggs described social capital as the support networks that provide access to and credibility with suppliers of credit, equipment, space, labor, and other resources.¹⁸² Although Professor Suggs wrote his article over two decades ago as an analysis of developing minority-owned businesses in urban centers, Professor Suggs’ identification of these crucial components for supporting successful businesses can also be applied to the modern necessity entrepreneur. Emerging social enterprise models are developing programs to increase access to human, social, and financial capital for returning citizens interested in entrepreneurship. Often, these social enterprises are structured as partnerships between nonprofits and mission-driven for-profits, leveraging various resources available to each organization to amplify benefits to returning citizens.

Just as nonprofits are an imperfect tool, market-based solutions alone are insufficient to effectively support returning citizens seeking economic enfranchisement. Returning citizen entrepreneurs require both the traditional services offered by nonprofit organizations as well as targeted, small business services. The very structural barriers that force returning citizens to become resourceful and resilient entrepreneurs are major burdens that

177. *Id.*

178. *Id.*

179. Robert E. Suggs, *Bringing Small Business Development to Urban Neighborhoods*, 30 Harv. C.R.-C.L. L. Rev. 487, 489–90 (1995).

180. *Id.* at 489.

181. *Id.*

182. *Id.*

can lead to recidivism. The collective impact of collateral consequences can create housing insecurity, limit access to SNAP or other benefits, and limit access to mental health services including trauma-related support; thus, generally preventing returning citizens from effectively reintegrating to society post-incarceration. One returning citizen entrepreneur in Washington, D.C. recognized the need for a more comprehensive solution, supporting individuals through both the reentry process as well as the entrepreneurial journey. The two organizations founded by Will Avila, Clean Decisions and Changing Perceptions, have partnered to implement a social enterprise model, combining policy advocacy, social service resource networks, and market-based solutions to help empower and serve returning citizens.¹⁸³

Changing Perceptions is a Section 501(c)(3) nonprofit organization that provides entrepreneurial training opportunities for returning citizens.¹⁸⁴ Participants are enrolled in a multi-week training program that takes them from ideation to pitch readiness. Along the way, they learn key business development skills including financial literacy.¹⁸⁵ The program participants are also connected with supporting nonprofit organizations that can provide educational assistance, housing assistance, substance abuse treatment, and other social services.¹⁸⁶

183. *About Us*, CHANGING PERCEPTIONS, <https://changingperceptions.org/about-us> (last visited Dec. 20, 2018) (“Will dreamt of helping employ returning citizens—people like him—who longed for an opportunity to prove to society they are worth investing. Clean Decisions has successfully provided full- and part-time employment to over [thirty] people, and they have a [one hundred percent] anti-recidivism rate. However, in addition to employment, what the year highlighted was the desperate need for therapeutic and supportive services. Returning citizens not only struggle to find employment, but they also need training and counseling to help them successfully transition back into contributing members of society. Thus emerged Changing Perceptions.”).

184. Julie Braun, *Here’s Veronica Vargas, Founder of Changing Perceptions*, PRICE OF BUS. (Feb. 1, 2016), <http://priceofbusiness.com/heres-veronica-vargas-ceo-of-changing-perceptions/>.

185. Courtland Milloy, *When an Ex-Offender Couldn’t Find a Job, He Made One for Himself*, WASH. POST (May 30, 2017), https://www.washingtonpost.com/local/when-an-ex-offender-couldnt-find-a-job-he-made-one-for-himself/2017/05/30/0fbec9b8-455e-11e7-a196-a1bb629f64cb_story.html?utm_term=.2acad7cdd2b0; see also Gerard Robinson & Elizabeth English, *From Prisoner to Entrepreneur*, AEI (Nov. 22, 2016), <http://www.aei.org/publication/from-prisoner-to-entrepreneur/> (“The six-month Changing Perceptions program enables the formerly incarcerated to rejoin the workforce by creating their own businesses. Participants are taught entrepreneurship and the essentials for business success, including how to obtain business licenses and access capital. Current participants have started or are starting businesses in towing, heating and ventilation, accounting, cosmetology, and pest control.”). Charles Binion is a small business owner in D.C. who benefitted from Changing Perceptions. Emily Andrews, *Changing Perceptions: A Q&A on Second Chances*, PRISON FELLOWSHIP (Sept. 6, 2016), <https://www.prisonfellowship.org/2016/09/changing-perceptions/> (“All of us [at Changing Perceptions] are examples of big results. Just look at the names on our website. It’s really unique how every paid staff member is a member of the reentry community. I am a small business owner now, which is amazing only coming out of prison nine months ago. I’m looking for this business to really grow and help a lot of people in the community.” (alterations in original)).

186. Milloy, *supra* note 185.

Clean Decisions is a for-profit enterprise led by a returning citizen who also helped found Changing Perceptions.¹⁸⁷ Clean Decisions offers returning citizens the opportunity to work, earn a living wage, and learn what it takes to become an entrepreneur by observing and participating in business decision-making. For returning citizens interested in starting their own ventures, their experience at Clean Decisions serves as an important training ground on the inner workings of a successful enterprise. As part of employment, they receive continued peer-support as they navigate professionalism and the challenges (emotional and economic) of the reentry process. This creates an environment that allows returning citizens to operate successfully within the market while receiving daily support at their jobs.¹⁸⁸

Independently, neither Changing Perceptions nor Clean Decisions can meet the needs of returning citizens. Changing Perceptions, as a Section 501(c)(3) organization, is subject to legal restrictions and must avoid certain direct economic interventions like equity compensation or permanent employment for trainees.¹⁸⁹ Likewise, Clean Decisions though a mission driven business, is still a business. The primary purpose is profit and growth, and recent efforts to grow the business have been successful, including receiving investments from John Legend¹⁹⁰ and expanding the suite of business services to include landscaping.¹⁹¹ Thus, independently, Clean Decisions is not equipped to provide a full package of social services to returning citizens. The partnership between the two organizations is an excellent social enterprise solution that navigates the restrictions placed on Section 501(c)(3) organizations while maximizing each entity's ability to support individual returning citizens.

Will Avila's efforts to use social enterprise strategies to assist other returning citizens is very commendable. In fact, more and more organizations are working to help returning citizen entrepreneurs—some offer micro-financing,¹⁹² while others focus only on entrepreneurial training and busi-

187. Telephone Interview with Will Avila, Founder, Clean Decisions LLC, (May 11, 2016).

188. *Id.*

189. *See supra* Part II.

190. *New Profit, John Legend's Free America, and Bank of America Announce First 'Unlocked Futures' Entrepreneurs*, NEWPROFIT: AMPLIFY BLOG (Dec. 5, 2017), <http://blog.newprofit.org/AMPLIFY/FIRST-GROUP-OF-UNLOCKED-FUTURES-ENTREPRENEURS-ANNOUNCED>.

191. Elizabeth O'Gorek, *A Breakout Year for Clean Decisions*, HILLRAG (Feb. 6, 2018), <http://hillrag.com/2018/02/06/breakout-year-clean-decisions/>.

192. For example, Mercy Corps Northwest Reentry Transition Center offers a number of coordinated programs for self-employment for female returning citizens including access to micro-loans. MERCY CORPS NORTHWEST, PRISON AND REENTRY PROGRAM: FORGING A SUCCESSFUL BUSINESS FORMATION PATH FOR RETURNING CITIZENS (2017), https://www.mercycorpsnw.org/wp-content/uploads/2017/05/FINAL_-MF_LIFE-REPORT_0501.pdf.

ness support services.¹⁹³ These individual efforts, while laudable, are piecemeal and lack coordination. A more strategic approach would better serve returning citizens, first mapping available resources and programs, then leveraging these assets to create a comprehensive ecosystem that provides the necessary reentry services and entrepreneurship support. With such an ecosystem, returning citizen entrepreneurs would have access to a single location that could aggregate information and services. The next Part outlines specific recommendations for creating this entrepreneurial ecosystem, including key lessons from existing programs designed to assist more traditional entrepreneurs.

IV. PROPOSED SOLUTIONS: CREATING AN ENTREPRENEURIAL ECOSYSTEM THAT SUPPORTS THE ECONOMIC ENFRANCHISEMENT OF RETURNING CITIZENS

Economic enfranchisement for returning citizens requires an entrepreneurial ecosystem of financial, human, and social capital discussed by Professor Suggs.¹⁹⁴ The ecosystem is a more holistic and efficient solution, enabling localities to marshal existing resources in the small business sector as well as the reentry community. Imagine if John could join a business incubator in Pittsburgh specifically structured to provide returning citizens with continuous mentorship from experienced small business owners, access to affordable legal and accounting services, a shared office space, a shared receptionist and web designer, high-speed internet and computing equipment, commercialization and market testing services, access to entrepreneurial trainings, access to funding, and the opportunity to collaborate with other, motivated necessity entrepreneurs. In fact, some traditional entrepreneurs in Pittsburgh already benefit from similar business incubation services. Pittsburgh's Innovation Works incubator, a collaborative partnership between the City of Pittsburgh and other organizations, currently provides similar services to traditional start-ups.¹⁹⁵ The incubator's portfolio is not limited to STEM- or technology-based businesses but extends to businesses that sell consumer goods and services, including a craft brewery and a creative gifts boutique.¹⁹⁶

193. For example, Mission Launch provides entrepreneurial resources and support services. They advocate for improving access to capital for returning citizen necessity entrepreneurs but do not currently provide funding to such enterprises. *What We Do*, MISSION: LAUNCH, http://www.mission-launch.org/what_we_do (last visited Dec. 20, 2018).

194. *See supra* Part III.

195. *See About*, INNOVATION WORKS, <https://www.innovationworks.org/about/overview/> (last visited Dec. 20, 2018).

196. *See generally Consumer Products*, INNOVATION WORKS, <https://www.innovationworks.org/companies/specialty/consumer-products/> (last visited Dec. 20, 2018). Aurochs Brewing Company and Romeo Delivers are two examples of businesses incubated by Pittsburgh Innovation Works that sell consumer goods or services. *Id.* Pittsburgh's Innova-

This Article advocates for expanding the existing municipal incubator model to include returning citizen entrepreneurs as a means to build the requisite entrepreneurial ecosystem. This Part begins by outlining various obstacles to building the requisite financial, social, and human capital for successful small business endeavors.¹⁹⁷ This Part then explores existing municipal efforts to cultivate entrepreneurial ecosystems for traditional start-ups and questions whether these models could be modified for necessity entrepreneurs.¹⁹⁸ Finally, this Part concludes with social enterprise strategy recommendations for municipalities and existing reentry organizations, encouraging the creation of EJIs to support returning citizens.¹⁹⁹ Urban municipalities that contain geographically disadvantaged spaces have a vested interest in improving the economic prospects of returning citizens due to the number of formerly incarcerated individuals living in the community. This is also a matter of some urgency for local governments because current federal policies have reduced funding for reentry services while simultaneously increasing the prison population through a renewed commitment to mandatory minimum sentences.²⁰⁰ Moreover, some munic-

tion Works is just one example in a growing list of efforts by local governments to create an entrepreneurial ecosystem. The goal is to cultivate start-up businesses by allocating public funds for investment and programming, coordinating with educational institutions (nonprofits) to leverage knowledge-based resources, and collaborating with existing private industry to support growth to scale. Currently, these efforts are exclusively targeted toward opportunity entrepreneurs. However, there is no reason they cannot be tailored to be inclusive of necessity entrepreneurs by creating EJIs. For other examples of municipal business incubators, see generally the Microbusiness Enterprise Center in Albany, Georgia, *Business Incubator Programs*, CITY OF ALBANY, GEORGIA, <http://www.albanyga.gov/about-us/city-departments/community-economic-development/economic-development/programs> (last visited Dec. 20, 2018), which provides workshops, trainings, and affordable office space, and the Temecula Valley Entrepreneurs Exchange in Southern California, *Temecula Valley Entrepreneurs Exchange*, TEMECULA, <https://temeculaca.gov/912/TVE2-Temecula-Valley-Entrepreneurs-Excha> (last visited Dec. 20, 2018), which serves both as a regional business hub in addition to providing training and support to early stage entrepreneurs.

197. See *infra* Section IV.A.

198. See *infra* Section IV.B.

199. See *infra* Section IV.C.

200. Municipalities face mounting pressures on two fronts. First, federal initiatives currently curtail funding for existing reentry services and programming. Second, incarceration rates, which are already unconscionably high, are slated to increase because former U.S. Attorney General Jeff Sessions ordered federal prosecutors to enforce mandatory minimums, eliminating Obama-era prosecutorial discretion in these cases. It is unclear whether Jeff Sessions's replacements will reverse course and return to the Obama-era policies.

The Trump Administration has promulgated a number of troubling policies that negatively impact returning citizens. Included in this list is a reduction in funding for halfway houses, which can serve as a means of shortening sentences and reintegrating returning citizens into communities by giving them opportunities to work and receive training outside prison. See Sarah N. Lynch & Julia Harte, *Exclusive: Trump Administration Reduces Support for Prisoner Halfway Houses*, REUTERS (Oct. 13, 2017), <https://www.reuters.com/article/us-usa-justice-prisons-exclusive/exclusive-trump-administration-reduces-support-for-prisoner-halfway-houses-idUSKBN1CI2ZA>; Samantha Michaels, *Team Trump Is Slashing Programs That Help Prisoners*

ipalities already provide an entrepreneurial ecosystem for traditional start-ups.²⁰¹ This existing platform can easily be modified to create more inclusive and equitable programming.

A. *Building Financial Capital for Returning Citizens*

Funding remains a constant obstacle for necessity entrepreneurs, reinforcing the importance of increasing access to financial capital. As funding is essential to cover initial costs during the business planning and launch phase as well as obtaining future financing as the business grows, it is unsurprising that many different entrepreneurs are preoccupied with acquiring funding. Most entrepreneurs rely on a fairly standard menu of options to raise funds. Early stage financing typically starts with “bootstrapping”—relying on personal funds, personal credit and credit cards, and money from family and friends.²⁰² Additional funds are often raised through debt financing, seeking loans from commercial banks or the U.S. Small Business Administration (“SBA”).²⁰³

However, these various funding options are not always readily accessible to all entrepreneurs. Studies show that minority and low-income entrepreneurs have less ability to leverage personal funds, family funds, or secure debt financing.²⁰⁴ For example, early stage entrepreneurs are often encouraged to raise funds from “family and friends” through personal loans

Adapt to Life on the Outside, MOTHER JONES (Dec. 15, 2017), <https://www.motherjones.com/crime-justice/2017/12/team-trump-is-slashing-programs-that-help-prisoners-adapt-to-life-on-the-outside/>.

Recently, as noted above, President Trump expressed his support for a criminal justice reform bill, the FIRST STEP Act. See *supra* note 12. However, it is unclear whether the bill has sufficient support to pass as of the writing of this Article. Kim, *supra* note 12.

201. See *supra* note 196 and accompanying text.

202. See John L. Orcutt, *Improving the Efficiency of the Angel Finance Market: A Proposal to Expand the Intermediary Role of Finders in the Private Capital Raising Setting*, 37 ARIZ. ST. L.J. 861, 872 n.56 (2005); see also Susan R. Jones, *Supporting Urban Entrepreneurs: Law, Policy, and the Role of Lawyers in Small Business Development*, 30 W. NEW ENG. L. REV. 71, 87 (2007) (“Most entrepreneurs rely on family, friends, credit cards, banks, and home equity for start-up capital.”); *infra* note 241.

203. Jones, *supra* note 202, at 87; Orcutt, *supra* note 202, at 869–70.

204. There is ample research on the challenges faced by low-income entrepreneurs in securing financing to fund their ventures. See Nick Williams & Colin C. Williams, *Tackling Barriers to Entrepreneurship in a Deprived Urban Neighbourhood*, 26 LOC. ECON. 30, 30–42 (2011); see also MICHAEL S. BARR, HAMILTON PROJECT, MINORITY AND WOMEN ENTREPRENEURS: BUILDING CAPITAL, NETWORKS, AND SKILLS 10 (2015), https://www.brookings.edu/wp-content/uploads/2016/07/minority_women_entrepreneurs_building_skills_barr.pdf (“Minority-owned businesses rely significantly more on investments of personal and family wealth than on external debt or equity; this source of capital is often constrained relative to nonminority-owned businesses by the low household wealth of the entrepreneur, as well as to the low wealth of her friends and family The lack of personal wealth constrains the ability of minorities to invest directly in their businesses or to acquire other businesses.”).

or even offering some equity.²⁰⁵ Elizabeth Holmes, the founder of the controversial health technology start-up Theranos, easily secured \$500,000 from family friend and notable venture capitalist Tim Draper.²⁰⁶ In stark contrast, a minority or low-income entrepreneur may not be able to request cash infusions from more affluent friends and family.²⁰⁷ Structural factors, like the wealth gap and income gap, ensure there is less wealth and less liquidity within communities of color to finance investment when compared to white communities.²⁰⁸ Similarly, low-income communities may also lack the necessary wealth to invest.

Many returning citizen entrepreneurs are often doubly disadvantaged, burdened by both their low-income status as well as collateral consequences. For example, returning citizens like John cannot rely on friends and family for capital, so he must turn to more traditional sources like banks. However, John's status as a returning citizen and the attendant collateral consequences make it difficult for him to qualify for business loans. At the outset, John lacks sufficient personal assets that can be used as collateral for the loan.²⁰⁹ Even if this obstacle could be surmounted, John does not have a sufficient credit history, making him a poor candidate for a traditional bank loan.²¹⁰ Additionally, his work history, interrupted by incarceration, may also negatively impact the bank's willingness to lend to John.²¹¹

205. Pantin, *supra* note 31, at 443 (defining the friends and family round of investing). Although it is more commonly discussed in the start-up space, a variety of entrepreneurs raise funds from their personal networks. *See generally How To Borrow From Family and Friends*, WALL ST. J., <http://guides.wsj.com/small-business/funding/how-to-borrow-from-family-and-friends/> (last visited Feb. 18, 2019).

206. Polina Marinova, *Why VC Tim Draper Keeps Defending Theranos CEO Elizabeth Holmes*, FORTUNE (May 11, 2018), <http://fortune.com/2018/05/11/tim-draper-theranos-elizabeth-holmes>.

207. *See* Pantin, *supra* note 31, at 443.

208. BARR, *supra* note 204, at 10.

209. *Id.* (noting that a lack of wealth and liquid assets make it difficult to provide collateral for commercial lenders).

210. Abhay P. Anuja & Carlos F. Avenacio-León, *Credit-Driven Crime Cycles: The Connection Between Incarceration and Access to Credit* 24 (Dec. 2017) (unpublished manuscript), <https://static1.squarespace.com/static/59dc0ec564b05fea9d3dfec3/t/5a3b0eec652dea6d9c0318f1/1513819887630/JobMarketPaper-CarlosAvenancio.pdf> ("Formerly incarcerated individuals may face harsher conditions obtaining credit if creditors believe the criminal record is informative about the individual's ability or willingness to pay. Even when income information is available, the bank could interpret the individual's criminal history as evidence of lower ability to repay. This could be so if the individual faces higher levels of unemployment risk following incarceration—i.e., if unemployed, she will be less likely to get another job. Similarly, the bank might use criminal history to assess the 'character' of the borrower—if proxying 'character' based on criminal history signals low or high willingness to pay relative to other borrowers with the same observables."); *see id.* at 25 ("Lenders screen borrowers in part by looking at their credit scores and labor income. These variables inform the lender about the default risk each borrower represents. However, because credit history and labor market income are reduced by incarceration, the informational content of screening on these traits is distorted . . .").

211. BARR, *supra* note 204, at 10.

Despite the existing limitations of mainstream funding, there are concerted efforts to create more financing programs and options for returning citizens. As mentioned above, the SBA is an important source of financing for many entrepreneurs,²¹² and the agency has made positive strides in expanding its programming to include returning citizens. In 2015, the SBA Microloan Program, which provides small loans to businesses, changed its criteria to allow loan applications from individuals on parole or probation.²¹³ The SBA is also collaborating with two private foundations to support returning citizen entrepreneurs. Aspire Entrepreneurship Initiative (“AEI”) is a pilot partnership between the SBA, W.K. Kellogg Foundation, and microlender Justine PETERSEN that provides “entrepreneurial education and microloans for formerly incarcerated individuals, with a specific focus on those who are parents.”²¹⁴ The AEI launched in 2016 and currently operates in Chicago, Louisville, Detroit, and St. Louis.²¹⁵ The AEI program is a truly collaborative model, leveraging program design and evaluation with education and funding to create comprehensive training and support for entrepreneurs.²¹⁶

In addition to federal agency initiatives, a number of nonprofit organizations have emerged to provide training, mentorship, and funding for enterprises owned by returning citizens. One such nonprofit is New York-based Defy Ventures (“Defy”).²¹⁷ Defy recruits individuals with criminal histories that are interested in entrepreneurship and provides them with training, coaching, and seed capital for their business ideas.²¹⁸ Participants must complete the Defy Academy program, a twelve-month classroom

212. Orcutt, *supra* note 202, at 869–70.

213. Microloan Program Expanded Eligibility and Other Program Changes, 80 Fed. Reg. 34,043, 34,043 (June 15, 2015) (to be codified at 13 C.F.R. pt. 120).

214. *SBA Partners with W.K. Kellogg Foundation, Justine PETERSEN to Launch \$2.1 Million in Entrepreneurship Training and Microloans for Previously Incarcerated Citizens*, SMALL BUS. ADMIN. (Aug. 22, 2016), <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-partners-wk-kellogg-foundation-justine-petersen-launch-21-million-entrepreneurship-training-and> [hereinafter *SBA Partners*].

215. Tamra Thetford, *Entrepreneurship and Re-Entry: Aspire Entrepreneurship Initiative*, FED. RES. BANK OF ST. LOUIS (2017), <https://www.stlouisfed.org/publications/bridges/spring-2017/entrepreneurship-reentry-aspire-entrepreneurship-initiative>.

216. *See SBA Partners, supra* note 214 (“SBA will oversee strategic planning for the pilot initiative, work with its microlending partners to make capital available for program participants, and leverage its policy research expertise to craft a comprehensive evaluation design for assessing the pilot’s effectiveness. Justine PETERSEN will deliver the intensive, cohort-based entrepreneurial education program and the Kellogg Foundation will fund the pilot initiative and provide matching revolving loan funds and evaluation support. The Kellogg Foundation will also partner with the SBA to produce a white paper summarizing the insights produced by the pilot initiative.”).

217. DEFY VENTURES, INC., <https://defyventures.org/> (last visited Feb. 7, 2018).

218. Jessica Weisberg, *Skills Honed in Illicit Trades, and Put to Better Use*, N.Y. TIMES (Sept. 23, 2012), http://www.nytimes.com/2012/09/24/nyregion/helping-ex-criminals-develop-start-ups.html?_r=0.

course that provides instruction akin to an MBA program.²¹⁹ Each participant completes a fifteen to twenty page business plan and prepares a pitch presentation.²²⁰ The participants compete for seed money from Defy, private sector investors, venture capital funds, and business executives through several Defy-hosted competitions.²²¹ Defy has helped found 139 businesses and claims a recidivism rate under five percent for graduates of the program.²²²

Investing in the entrepreneurial efforts of returning citizens should not be the sole responsibility of nonprofits, however. Local governments clearly have an obligation to pursue solutions on the regional level to ensure the long-term economic well-being of their cities. As the number of returning citizens continues to grow, a key component of a healthy, local economy will be incorporating this population into the tax base rather than relegating them to the economic margins. To do so, governments must create new avenues for returning citizens to develop key skills, obtain support services, and connect with funding opportunities to launch their ventures. Unfortunately, there are woefully few public initiatives targeting returning citizen entrepreneurs. In contrast, there are a growing number of municipal programs cultivating traditional start-up enterprises. The next Section examines these existing municipal efforts and comments on the dangers created by their lack of inclusivity.

B. Building Human and Social Capital for Returning Citizens: Lessons from Venture Development Funds

A VDF is an economic development tool currently utilized by local governments²²³ to invest in local start-ups and spur the development of new, knowledge-based economic sectors.²²⁴ VDFs identify scalable local start-ups, cultivate these enterprises through a mix of early-stage financing and technical assistance, and then use these investments to build the overall economic vitality of the region.²²⁵ Traditional economic development efforts focus on helping small businesses grow and contribute to the local

219. *Training*, DEFY VENTURES, INC., <https://defyventures.org/what-we-do/our-solution/training/> (last visited Feb. 9, 2018).

220. *Id.*

221. *Investment*, DEFY VENTURES, INC., <https://defyventures.org/what-we-do/our-solution/investment/> (last visited Sept. 5, 2018); Michael Zakaras, *Why Ex-Cons Make Great Entrepreneurs*, FORBES (Nov. 5, 2012), <https://www.forbes.com/sites/ashoka/2012/11/05/why-ex-cons-make-great-entrepreneurs/#5a986d5760b6>.

222. *Our Impact*, DEFY VENTURES, INC., <https://defyventures.org/what-we-do/our-impact/> (last visited Dec. 21, 2018).

223. The term “local government” is defined as state-, regional-, county-, or municipal-level governments.

224. Cable, *supra* note 104, at 201–02.

225. *Id.* at 205–08.

economy through hiring and operations.²²⁶ Municipalities who utilize VDFs also believe local governments can leverage the successes of start-ups to create a new economic sector in a particular field or industry.²²⁷ In short, cultivating one successful biotech start-up can galvanize additional investment in this sector, attract more talent and smaller companies, and result in the creation of a new and growing economic sector for that region or municipality.

A VDF aggregates public funds and private money to create investment capital.²²⁸ That investment capital is then used to invest in start-ups and provide wrap-around services, including office space, business coaching, mentoring, and important technical assistance.²²⁹ For example, the Portland Seed Fund's initial investment capital was \$3 million, with over half consisting of municipal and state funds, including \$500,000 from the Portland Development Commission²³⁰ and \$750,000 from the now defunct Oregon Growth Account—a state investment pool funded by state lottery dollars.²³¹ A VDF's capital contributions are designed to be initial seed financing in the form of equity investments or grants.²³² All the investments are designed to serve as bridge financing—meaning, funds that will enable a business to grow and become attractive to venture capital investment or,

226. Jose Vasquez, *Why Are Small Businesses So Important for the Economy?*, HUFFINGTON POST (Apr. 18, 2017), https://www.huffingtonpost.com/entry/why-are-small-businesses-so-important-for-the-economy_us_58f61f9ae4b048372700db75.

227. *See generally* Cable, *supra* note 104 (discussing whether VDFs are a valid economic development approach). This Article does not take a position on the underlying economic theory or legitimacy of the VDF approach.

228. *Id.* at 205.

229. *Id.* at 203–09.

230. *See* Janie Har, *Portland Mayor Sam Adams Pushes Jobs, Education, Sustainability in State of the City Speech*, OREGONIAN (Feb. 5, 2010), http://www.oregonlive.com/portland/index.ssf/2010/02/portland_mayor_sam_adams_pushes.html; Mike Rogoway, *Startups Play Waiting Game While Portland Seed Fund Evaluates Flood of Applicants*, OREGONIAN (June 11, 2011), http://www.oregonlive.com/business/index.ssf/2011/06/startups_play_waiting_game_whi.html.

231. Rogoway, *supra* note 230; Oregon House Bill 4040 abolished the Oregon Growth Account and transferred its power and functions to the Oregon Growth Board. *See* H.R. 4040, 76th Leg. Assemb. (Or. 2012).

232. In Cleveland, the VDF provides equity investment. *See What We Do*, JUMPSTART, INC., <http://www.jumpstartinc.org/about/what-we-do/> (last visited Sept. 9, 2018) (describing the mission of JumpStart, a Northeast Ohio-based private-public partnership that “provides venture capital and intensive, high-impact assistance to diverse entrepreneurs”). In contrast, Portland's VDF provides grants, as Article XI, Section 9 of the Oregon Constitution prevents direct investment by a municipality in private enterprise. *See* Mike Rogoway, *Portland Picks Team to Oversee \$500,000 for the City's Startups*, OREGONIAN (June 4, 2010, 9:47 AM), http://blog.oregonlive.com/siliconforest/2010/06/portland_picks_team_to_oversee.html (explaining Oregon law prevents Portland from investing directly and noting that the money is issued as grants); *see also* OR. CONST. art. XI, § 9.

alternatively, support itself through operations.²³³ Technical assistance provided by VDFs range from advising on making products market-ready, developing prototypes, financial modeling, and introductions to important future investors and partners.²³⁴

The start-up ventures targeted by VDFs routinely have specific criteria—notably, they are in target industries like software, they are composed of skilled management teams, and they have the potential to grow into large businesses and attract additional capital.²³⁵ Cable noted in his article that “[n]ail salons and taxicab operators need not apply” to Portland’s Seed Fund,²³⁶ which is only designed to cultivate businesses in six target industries.²³⁷ The reasoning for excluding traditional small businesses is multifaceted. Central to the VDF target analysis is the belief that start-ups have unique financing and operational needs that are not copacetic with existing funding and support structures designed to strengthen traditional businesses, necessitating the creation of VDFs to specifically assist and cultivate start-ups.²³⁸ Targeted start-ups’ specific funding needs usually include a lower level seed capital investment to build the company.²³⁹ VDFs distribute investments between \$25,000 and \$50,000, which is much less than the amount a typical VC or angel investor²⁴⁰ would provide but more than the company could hope to raise through bootstrapping.²⁴¹

233. Both Cleveland and Portland’s VDF program websites make it clear that cultivated start-ups will need additional financing. See *Investments*, JUMPSTART, INC., <http://www.jumpstartinc.org/funding/investments/> (last visited Dec. 21, 2018) (“In addition to JumpStart’s investment funds, we can connect entrepreneurs to numerous other pre-seed, seed and early-stage sources of venture capital across Northeast Ohio.”); *Why PSF*, PORTLAND SEED FUND, <http://portlandseedfund.com/whypsff/> (last visited Feb. 7, 2018) (“Our accelerator program is focused on growing and scaling the startup: financial planning and controls; building a winning team and culture; leveraging modern customer development techniques and accessing growth capital.”).

234. See, e.g., *Why PSF*, *supra* note 233.

235. *Id.*

236. Cable, *supra* note 104, at 204.

237. *Why PSF*, *supra* note 233.

238. Cable, *supra* note 104, at 205–07.

239. *Id.* at 207.

240. “Angels” are typically successful business people with a high net worth that invest in and often advise start-up companies. Richard A. Mann et al., *Starting from Scratch: A Lawyer’s Guide to Representing A Start-Up Company*, 56 ARK. L. REV. 773, 823 (2004).

241. Start-up entrepreneurs typically fund themselves through bootstrapping, angel investors, VCs, or crowdfunding. Christopher W. Cole, *Financing an Entrepreneurial Venture: Navigating the Maze of Corporate, Securities, and Tax Law*, 78 UMKC L. REV. 473, 477–78 (2009) (“Common examples of bootstrapping include tapping into personal savings, obtaining equity lines of credit against personal or real property, and withdrawing from retirement accounts.”); John F. Coyle & Joseph M. Green, *Contractual Innovation in Venture Capital*, 66 HASTINGS L.J. 133, 146 (2014) (“Those who were fortunate enough to have friends and family who could help finance the fledgling company could obtain capital from them.”); David A. Hughes, *Angel Investment Tax Credits: A Win-Win-Win for Taxpayers, New Ventures, and the States*, 20 J. MULTISTATE TAX’N & INCENTIVES 10, 10 (2010) (“According to a brief issued by the National Governors Association,

All of a local government's economic development efforts are in the hope of increasing revenue and generally improving the lives of its residents.²⁴² Proponents of VDFs see fostering start-ups as a compelling strategy for building a stronger local economy, leading to job creation and helping regional economies transition to a knowledge-based economy.²⁴³ However, it is unclear whether low-income residents would benefit from the new economic sectors created by VDFs. On its face, VDF efforts are designed to "produce companies ready for venture capital."²⁴⁴ Low-income workers often lack the skills or credentials necessary for securing the types of jobs generated by companies in the knowledge-based economy and are left relegated to low-wage service industry positions.²⁴⁵ One such contemporary example is the intense competition between various cities and metropolitan areas for the site of the next Amazon headquarters.²⁴⁶ Amazon's success brought more revenue for its home city of Seattle but also contributed to rising rents and increased homelessness.²⁴⁷ Critics warn that low-income residents who are not included in the knowledge-based economy will be inevitably displaced by Amazon's initiative and other similar strategies, cautioning that "[w]hen you have finite public resources, you have to think about using them in a way that serves the entire city."²⁴⁸ Thus, de-

individual angel investors typically invest somewhere between \$5,000 and \$100,000 in local and regional businesses, thereby allowing their investments to have a local impact.").

242. PETER K. EISINGER, *THE RISE OF THE ENTREPRENEURIAL STATE: STATE AND LOCAL ECONOMIC DEVELOPMENT POLICY IN THE UNITED STATES* 3–4 (1988).

243. *See* Cable, *supra* note 104, at 209–11 (citing job creation and innovation products as two primary reasons for pursuing VDFs as a local economic development strategy).

244. *Id.* at 208.

245. Matthew J. Rossman, *Evaluating Trickle Down Charity: A Solution for Determining when Economic Development Aimed at Revitalizing America's Cities and Regions Is Really Charitable*, 79 *BROOK. L. REV.* 1455, 1490 (2014) (questioning the link between businesses in the knowledge-based economy and the economic impact on unemployed and poor residents in a distressed region, particularly with regard to short-term hiring needs for highly skilled workers in these sectors).

246. Several of the Amazon HQ2 finalists offered large incentive packages. Stephen Cohen, *City Experts: Amazon's HQ2 Search Set Off 'Race to the Bottom'*, *SEATTLE P-I* (Feb. 5, 2018), <https://www.seattlepi.com/business/tech/article/Amazon-hq2-search-public-incentives-cities-12546835.php>. Incredibly, Chicago even offered to waive \$1.32 billion in personal income taxes for Amazon employees. *Id.*; *see also* *Amazon HQ2-RFP*, AMAZON, https://images-na.ssl-images-amazon.com/images/G/01/Anything/test/images/usa/RFP_3_V516043504.pdf (last visited Feb. 4, 2018).

247. Mark Belko, *Seattle Brewed: Amazon's Rapid Growth Transforms a City—But It's Complicated*, *PITT. POST-GAZETTE* (Oct. 16, 2017), <http://www.post-gazette.com/business/development/2017/10/16/Amazon-HQ2-Pittsburgh-Seattle/stories/201710150037> ("[Amazon] has been blamed for skyrocketing housing prices, for an alarming increase in the homeless population, [and] for traffic jams that stretch for hours . . .").

248. Carolyn Adolph, *In Seattle, Amazon Is a Low-Key Presence and a Powerful Influence*, 90.5 *WESA* (Oct. 16, 2017), <http://wesa.fm/post/seattle-amazon-low-key-presence-and-powerful-influence#stream/0> (quoting Lisa Herbold, Seattle City Councilor).

spite a potential economic boom in certain sectors that leads to greater revenue for the local government, low-income workers and their families remain at the fringes. What good is a robust local economy if it provides no option for effectively including unskilled, low-income workers? If such is the plight of the average low-income worker, returning citizens, who encounter additional barriers to employment, face even greater economic isolation and exclusion.

As an economic development strategy, the current VDF approach is problematic because of its narrow definition of entrepreneurship. However, as a tool for early-stage enterprises, VDFs can be very useful by filling existing gaps encountered by both traditional and necessity entrepreneurs. VDFs seek to grow businesses to scale, turning small start-ups with potential into big businesses that can serve as anchors in the local economy. The VDF model can be applied to transform necessity enterprises into productive small businesses. Moreover, since public investments fuel VDFs, their assistance should reach all members of the community, including economically vulnerable entrepreneurs like returning citizens.

C. A New Municipal Strategy for Increasing Economic Security for Returning Citizens: The Economic Justice Incubator

This Article advocates for municipalities to pursue a more holistic, social enterprise solution by creating EJIs. EJIs are municipally led business incubators tailored to meet the needs of returning citizens. The primary purpose of EJIs is to advocate for economic justice by reducing barriers to social and economic participation. EJIs are designed to include traditional business incubation models as well as social services that are specially tailored to the needs of returning citizens. This comprehensive approach ensures that returning citizens have greater economic enfranchisement in the modern gig economy by supporting the development of their nascent enterprises and helping them grow to scale. Equally important, the EJI model incorporates access to key social services and support networks corresponding to the unique needs of this group.

The development of EJIs should proceed in three phases. Phase One should consist of a thorough needs assessment survey of existing assets and services in the community, stakeholders and their concerns, and the local economic landscape. Phase Two should create a blueprint of key services and programming the EJI will provide based on the best practices of existing business incubators and the data derived from the needs assessment survey. Phase Three should outline key stakeholders and partners to include in the EJI's programming and referral network.

1. Phase One: A Comprehensive and Inclusive Needs Assessment

Before launching an EJI, municipalities should engage in an extensive needs assessment survey to determine what services, partner organizations, and economic sectors to include in the ultimate design. Often, a standard needs assessment is limited to asset mapping—identifying potential new economic sectors and local talent pools. In contrast, the EJI process must take a more holistic approach, incorporating community listening sessions with returning citizens, their families, the community at large, and organizations dedicated to assisting returning citizens. In short, the EJI needs assessment should document: (1) existing underground economies that employ returning citizens; (2) job-training and workforce development resources for returning citizens within the region; (3) interests and talents of returning citizens; (4) common challenges and obstacles faced by returning citizens in either obtaining employment or starting an enterprise; and (5) potential new economic sectors that can include returning citizens.

2. Phase Two: A Blueprint of the EJI's Programming—Building Financial, Human, and Social Capital

In addition to any specific programming and resources identified by the needs assessment, EJIs should provide many of the same basic amenities as traditional business incubators.²⁴⁹ The EJI's services can be divided into the following broad categories: (1) entrepreneurial services, (2) business administrative services, and (3) returning citizen support services.

Entrepreneurial services help build all three types of capital: financial, human, and social. Entrepreneurial services help build human capital—the ability to build skills and the entrepreneurial mindset—through coaching, workshops, trainings, and technical assistance designed for early-stage enterprises.²⁵⁰ EJIs should provide a variety of basic business services, such as business plan writing, strategic planning and marketing, proof of concept, and commercialization assistance.²⁵¹ These services may be delivered

249. Brian Kingsley Krumm, *Fostering Innovation and Entrepreneurship: Shark Tank Shouldn't Be the Model*, 70 ARK. L. REV. 553, 600–01 (2017) (explaining that many business incubators provide a standard slate of services including office space, administrative support, networking with other entrepreneurs, financing assistance, and legal and accounting services). *Id.*

250. See Clovia Hamilton, *University Technology Transfer and Economic Development: Proposed Cooperative Economic Development Agreements Under the Bayh-Dole Act*, 36 JOHN MARSHALL L. REV. 397, 409 (2003) (“Incubators also provide donations to startup businesses; training in the commercialization process to introduce new technology to market; inexpensive office and manufacturing space; equipment and administration support; and financial, technical, and managerial business guidance, which support new and start-up businesses.”).

251. *Id.*; Anna Bergek & Charlotte Norrman, *Incubator Best Practice: A Framework*, 28 TECHNOVATION 20, 24 (2008). (“Those of most concern to us here are those related to business development and entrepreneurial training, including coaching and education related to business planning, leadership marketing and sales”).

through coaching sessions with individual entrepreneurs²⁵² or provided in a small-group workshop series to a cohort of entrepreneurs.²⁵³ Entrepreneurial services also include important training opportunities, such as building foundational knowledge on a variety of basic business topics including financial literacy, taxation, entity formation and governance issues.²⁵⁴ Additionally, the EJI may build targeted educational programming tailored to meet the specific findings of the needs assessment, creating new programs focused on computer literacy or skills training for specific growing industries or fields.²⁵⁵ The EJI should also build financial capital and social capital through technical assistance, including financial and legal assistance to entrepreneurs.²⁵⁶ Financial assistance should include direct investment from the EJI to incubated businesses, providing important early stage investment.²⁵⁷ Financial assistance should also include coordination with existing small business resources and financial networks, building important social capital by connecting entrepreneurs with established investors and lenders. For example, the EJI can coordinate workshops with existing Small Business Development Centers (“SBDC”) to educate entrepreneurs on available government grants and programs.²⁵⁸ EJIs can also provide support for more traditional financing mechanisms like debt and equity financing, collaborating with private investors to provide networking oppor-

252. Bergek & Norrman, *supra* note 251, at 24.

253. Delivering services to cohorts—small groups—of selected entrepreneurs through workshops is a common model. For example, the BIG Incubator program, which cultivates enterprises led by African American and Latinx women, uses cohorts. *BIG Incubator General FAQ*, DIGITAL UNDIVIDED, <https://www.digitalundivided.com/big-incubator-general-faq> (last visited Dec. 22, 2018) (“The BIG Incubator Program spans [three] modules focused on Customer Development, Product Development, and Company Development. Participation includes a membership to BIG’s co-working space during the time of the module; access to a range of other BIG events (Lunch&Learn, Innovation Thursdays and special events) for the program’s duration; and access to other community events.”).

254. Thompson, *supra* note 97, at 387–88.

255. There are business incubators that target specific industries such as food, like Hot Bread Kitchen in New York City, HBK INCUBATES, <https://hotbreadkitchen.org/incubates/> (last visited Dec. 22, 2018), and health technology, like MATTER in Chicago, *About MATTER*, MATTER, <https://matter.health/> (last visited Dec. 22, 2018). Each of these programs offers unique services related to the industry, like a commercial kitchen access or medical prototyping services. If the EJI’s community needs assessment identified a particular area of need, the EJI could design programming to help support additional industry-specific entrepreneurial services.

256. Darren A. Prum, *Amenities, Amenities, Amenities? How Policymakers Can SWOT Their Way to Better Entrepreneurial Facility Options*, 5 MICH. BUS. & ENTREPRENEURIAL L. REV. 1, 14 (2015) (“[M]any BIs offer general business and operational support in areas like accounting, law, advertising, and finance.”).

257. For example, the Portland Seed Fund invests directly in incubated businesses. According to its website, the PSF has invested in thirty-eight businesses to date. *About Us*, PORTLAND SEED FUND., <http://portlandseedfund.com/aboutus/> (last visited Dec. 22, 2018).

258. For example, the SBDC conducted a workshop for increasing sales and marketability for TVE2 incubator. *Calendar*, TEMECULA, <https://temeculaca.gov/calendar.aspx?eid=2597> (last visited Dec. 22, 2018).

tunities.²⁵⁹ EJIs should also provide technical assistance on a variety of legal matters, including advice on business structure, consultations regarding taxation, and the provision of general legal services like contract drafting or review.²⁶⁰

The second category of support services, business administrative services, are general back-end resources. Start-ups often operate on a lean model, reducing costs by cutting receptionists, business phones, physical office space, and office equipment.²⁶¹ Business incubators typically provide these shared services for start-ups, including co-working spaces, shared receptionists, shared printing, and shared high-speed internet.²⁶² At a minimum, EJIs should provide physical office space and access to conference rooms. EJIs should also provide technology services like high-speed internet, access to computers and printers, access to bookkeeping software, and relevant technology training.²⁶³

Returning citizen support services, the third category of services provided by EJIs, focus on building social and human capital for necessity entrepreneurs. Navigating the complex web of collateral consequences is challenging and draining for many returning citizens. When coupled with the emotional burdens and stigma of a criminal history, successful reentry can feel impossible. EJIs should customize incubator programming to provide the necessary social services and community support through referrals to local resources and partner organizations. For example, partnerships can be built with local organizations or government agencies dedicated to providing key social services like credit counseling.²⁶⁴ Such partnerships are extremely important, as building good credit can positively impact an individual's ability to access housing, compete for jobs, obtain funds to pur-

259. Prum, *supra* note 256, at 14 (“[A]ccessibility to seed financing and angel investor networks is one of the most important value added amenities a BI provides.”).

260. Thompson, *supra* note 97, at 387–88.

261. Prum, *supra* note 256, at 12–13 (“In an effort to assist the fledgling enterprise manage overhead costs, while also recognizing the common need for many of the different types of support functions, the BIs generally offered a shared receptionist, copy machines, and conference rooms.”).

262. *Id.*

263. *Id.*; see also PLACE DYNAMICS, BUSINESS INCUBATOR FEASIBILITY STUDY—RIVER FALLS, WISCONSIN 31–32 (n.d.), <https://www.rfcity.org/DocumentCenter/View/794/Business-Incubator-Feasibility-Study—Final?bidId=> (recommending key infrastructure elements for a municipal incubator including conference rooms, cubicles, and high-speed internet).

264. One example of a potential partner includes the Financial Opportunity Centers housed within Local Initiatives Support Corporations. These Centers provide financial coaching and credit counseling to low- and moderate-income individuals throughout the country. See *Financial Opportunity Centers*, LISC, <http://www.lisc.org/our-initiatives/financial-stability/financial-opportunity-centers/> (last visited Dec. 22, 2018).

sue higher education, or finance their business venture.²⁶⁵ Likewise, EJIs can partner with law school programs and student organizations to provide free legal clinics. These clinics can help returning citizens navigate the necessary paperwork to access certain benefits they need to survive, like food assistance²⁶⁶ or driver's license reinstatement.²⁶⁷

3. Phase Three: Creating Partnerships

EJIs must build a network of local and national partners to maximize programming and impact. They should include the following stakeholders: (1) national and local nonprofits serving returning citizens, (2) local educational institutions, (3) local and federal small business resources, (4) private business interests, and (5) returning citizens and their communities. Each of these partners plays a central role in the success of EJI programs. For example, the EJI cannot provide direct social services but can connect individual entrepreneurs with a local nonprofit for assistance. Similarly, local nonprofits with traditional job-training programs can also serve as an important referral resource for the EJI, linking necessity entrepreneurs with the job-training program. The EJI should also collaborate with national nonprofits, like Defy Ventures,²⁶⁸ to enable better technical assistance for returning citizen entrepreneurs.

Partnerships with educational institutions are essential to provide training for returning citizens and direct technical assistance through law school clinics or similar programs. EJIs in collaboration with existing federal and local small business resources can provide additional training, guidance, and mentorship during the critical business development phases. Engaging with interested, socially conscious private business interests can help incubated businesses grow to scale. Finally, returning citizens and their communities must be part of the larger network to ensure programmatic integrity. If the perspectives and voices of returning citizens are not included, the EJI is inherently flawed, as it is not responding to the needs of the community.²⁶⁹

265. Marlysa Thomas, *The Case for Helping Prisoners and Returning Citizens Build Good Credit*, PROSPERITY NOW: BLOG (July 21, 2015), <https://prosperitynow.org/blog/case-helping-prisoners-and-returning-citizens-build-good-credit>.

266. THE FOOD STAMP ADVOC. PROJECT, <https://www.law.umich.edu/historyandtraditions/students/organizations/Pages/Details.aspx?StdOrg=The+Food+Stamp+Advocacy+Project> (last visited Dec. 22, 2018).

267. A driver's license can be essential for individual transportation but also for self-employment purposes for individuals using ride-based applications like Lyft. The East Bay Community Law Center provides a variety of legal services to returning citizens as part of their Clean Slate Clinic. *Clean Slate Services*, EAST BAY CMTY. LAW CTR., <https://ebclc.org/need-services/clean-slate-services/> (last visited Dec. 22, 2018).

268. See *supra* notes 217–222 and accompanying text.

269. The District of Columbia passed the Incarceration to Incorporation Entrepreneurship Program Act of 2015, D.C. CODE § 2-1210.51–2-1210.55 (2019) (not funded), which creates an

The EJI offers municipalities an opportunity to create a cohesive and efficient entrepreneurial ecosystem for returning citizens, aggregating existing resources and building a more inclusive environment for necessity entrepreneurs. Many geographically disadvantaged spaces have a vested interest in improving the economic prospects of returning citizens due to the number of formerly incarcerated individuals living in the community. The need for economic enfranchisement is also a matter of some urgency for local governments. As discussed earlier in this article, current federal policies have reduced funding for reentry services while simultaneously increasing the prison population through a renewed commitment to mandatory minimums.²⁷⁰ Local governments must think creatively to provide opportunities for the many returning citizens that call these communities home. EJIs offer an important mechanism for municipalities to help economically enfranchise returning citizens by simply expanding access to existing business incubation initiatives and services.

V. CONCLUSION

John's story is a common one in many cities throughout the United States. Relegated to the fringes of the local economy, returning citizens are forced to hustle. What would it take to change John's life? John's economic circumstances are due to the structural inequities of the current criminal justice system and the economic policies of the United States.²⁷¹ As advocates continue to fight for structural and transformative change, local governments must also explore short-term measures to create inclusive economies for returning citizens. This issue of economic inclusivity for returning citizens is timely due to the recent changes in federal policies. On a national level, the Trump Administration has reduced funding for reentry pro-

investment and resource pool that targets and cultivates entrepreneurship opportunities for returning citizens. *B21-0463—District of Columbia Incarceration to Incorporation Entrepreneurship Program Act of 2015*, COUNCIL OF THE D.C., <http://lims.dccouncil.us/Legislation/B21-0463> (last visited Dec. 30, 2018). The bill called for the creation of a \$10 million fund to support the Incarceration to Incorporation Entrepreneurship Program, which includes providing seed capital to for-profit ventures. Memorandum from Jeffrey S. DeWitt to The Honorable Phil Mendelson 1–2 (June 23, 2016), <http://lims.dccouncil.us/Download/34815/B21-0463-Fiscal-Impact-Statement1.pdf>.

Tragically, funding was never allocated for the execution of this program. This spurred considerable criticism by advocates and citizens as the bill enjoyed popular support and positive publicity. See Kevin Smith & Kimberly A. Nelson, *D.C. Missed Another Opportunity to Help Ex-Offenders*, WASH. POST (June 16, 2017), https://www.washingtonpost.com/opinions/dc-missed-another-opportunity-to-help-ex-offenders/2017/06/16/a674af84-4f87-11e7-be25-3a519335381c_story.html?utm_term=.604d760c67da.

270. See *supra* note 200.

271. See, e.g., SARAH TREUHAFT, POLICYLINK, *EQUITABLE DEVELOPMENT: THE PATH TO AN ALL-IN PITTSBURGH* 18 (2016), http://www.policylink.org/sites/default/files/report_pittsburgh_FINAL_PDF_0.pdf (demanding equitable investment in minority-owned businesses and low-income entrepreneurs in Pittsburgh).

grams while increasing enforcement of mandatory minimum sentencing. The combination of these federal policies results in added pressures on a local level, ensuring more returning citizens serve longer sentences with fewer resources upon release from incarceration. Further complicating the issue, local governments have steadily divested from supporting returning citizens, placing increasing responsibility on individuals, communities, and community-based organizations. This is counterproductive for all parties and increases the recidivism risks for individual returning citizens. Communities that are already under-resourced are further strained and the economic health of municipalities and regions are negatively impacted.

The EJI can empower municipalities to ameliorate the collective impact of recent federal policy changes and reduce the potential harm posed to returning citizens and communities of color. This program embodies the best elements of the social enterprise model, combining market-based strategies and social services to build the necessary capacity for returning citizens in a holistic and comprehensive manner.

Returning to John's story, we can envision how an EJI can greatly improve his prospects for economic enfranchisement. John, frustrated at his continued partial employment, reaches out to his former caseworker at BetterBurgh. The caseworker connects John to the local EJI, and John pitches the idea of converting his handyman hustle into a legitimate business capable of hiring other BetterBurgh graduates. John works with an EJI business coach who helps John craft a business plan, leveraging his skills and existing customer base so that he may grow to scale. John attends a series of workshops cosponsored by the local SBA, learning important online marketing and general management skills. John also receives additional training on small business accounting through the local community college. John is on track to fully operationalize.

The back-end services of the EJI allow John to fully dedicate himself to the business. He is no longer dependent on the public library to post handyman jobs or check his email. He has regular access to a computer and works with a web designer to create an official site for his business. The EJI also provides John with a small no-interest loan to purchase additional equipment. The EJI connects John with a legal clinic from a local law school who reviews the EJI loan documents with John. The legal clinic also creates standard contracts for John to use with his customers. They advise him on his upcoming crowdfunding campaign, including how to avoid any securities issues. John moves toward his launch date for his enterprise, knowing he can rely on the EJI's resources until his business becomes self-sufficient. John hopes to volunteer with the EJI in the future, using his own experience to help mentor other necessity entrepreneurs.

EJIs are a natural component of the latest evolution in criminal justice reform efforts—one that emphasizes local strategies.²⁷² As we strive to improve sentencing and punishment, we must also work toward increasing economic opportunity for returning citizens. The existing nonprofit model is too limited by regulations and outdated to meet the needs of returning citizens and their communities. Localities must explore dynamic solutions that best serve their residents. EJIs can play an important role in the transformation of historically disadvantaged communities into equitable spaces.

272. *See supra* note 13 and accompanying text.