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**SUPREME COURT**

**STATE OF WISCONSIN**  
**SUPREME COURT**  
**Appeal Nos. 2024-AP-554 & 556**

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STATE OF WISCONSIN,

*Plaintiff-Appellant,*

*v.*

CHRISTOPHER J. SYRRAKOS,

*Defendant-Respondent-Petitioner.*

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STATE OF WISCONSIN,

*Plaintiff-Appellant,*

*v.*

KRISTYN A. SHATTUCK,

*Defendant-Respondent-Petitioner.*

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**PETITION FOR REVIEW**

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## I. Introduction.

This case is about a promise that the Legislature made to encourage people to enter the hemp industry. In particular, it's about a statutory guarantee that the State won't prosecute industry participants without a referral from the Department of Agriculture, Trade and Consumer Protection.<sup>1</sup> For context, under Wis. Stat. § 94.55, DATCP regulates hemp growers and processors. It's done so through a complex licensing regime. To ensure one central entity oversees this space, another statute prevents a district attorney from commencing a Chapter 961 prosecution (the general controlled substance statutes) against "a person who violates ... § 94.55 or a rule promulgated under § 94.55" unless DATCP has referred that person to the district attorney.<sup>2</sup> In other words, if a licensee violates the terms of their license, DATCP has primary jurisdiction, not local prosecutors.

The Court of Appeals, District II, issued a published opinion that will cause regulatory uncertainty.<sup>3</sup> It has two core problems. First, the Court emphasized the difference between a hemp-grower license and a hemp-processor license and DATCP's authority over each.<sup>4</sup> Under the opinion, grower licensees who intentionally possess hemp or hemp products with too much THC are subject to DATCP's regulatory reach.<sup>5</sup> They are, to quote the relevant statute, "a person who violates Wis. Stat. § 94.55 or a rule promulgated under § 94.55."<sup>6</sup> In contrast, processor licensees who do the same thing – possess hemp or hemp products with too much THC – aren't.<sup>7</sup> They appear to escape DATCP oversight completely because they aren't a person who violates either the statute or a rule. To be clear about the consequences, a logical corollary to the Court's reasoning is that while a district attorney can come after the Petitioners, DATCP can't. That's a problem because the purpose of the whole statutory scheme is to vest in one centralized agency, DATCP, authority to oversee this industry. Yet if a licensed hemp processor used their facility to manufacture hard drugs, DATCP couldn't yank the license. That can't be. The Legislature delegated to DATCP authority over *both* growers and processors, and charges can be brought against either only if there's a referral.

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<sup>1</sup> Wis. Stat. § 961.32(3)(c).

<sup>2</sup> *Id.* (cleaned up).

<sup>3</sup> *State v. Syrrakos*, 2025 WI App 73.

<sup>4</sup> *See, e.g., id.*, ¶¶7, 13, 15, 30–32.

<sup>5</sup> *See id.*, ¶¶31–32.

<sup>6</sup> Wis. Stat. § 961.32(3)(c) (cleaned up).

<sup>7</sup> *Syrrakos*, 2025 WI App 73, ¶32.

Second, the Court of Appeals overlooked the regulatory definition of “licensee.” It analyzed contextual clues to conclude that many rules in ATCP Chapter 22 apply only to grower licensees, not to processor licensees.<sup>8</sup> It then held that neither Petitioner violated those particular rules.<sup>9</sup> But DATCP regulations define a “licensee” as “a person possessing a grower license *or* processor license.”<sup>10</sup> So, throughout the chapter, anytime the word “licensee” appears without further specification (which happens a lot), it’s referring to both types of licensees—growers and processors. That is, many, *many* of DATCP’s rules apply to processor licensees because they are, well, licensees. For example, ATCP 22.15 provides: “All licensees must comply with all applicable federal, state, and local laws. It is the responsibility of the licensee to understand and comply with all federal and state regulations.” Although the Petitioners pointed out in their response brief that the term is defined, the Court didn’t discuss the definition.<sup>11</sup> That definition changes the entire analysis.

At bottom, the Petitioners submit that when this Court reads the definition of “licensee” in ATCP Chapter 22 then looks to the Chapter as a whole, they are, in fact, “persons who violate Wis. Stat. § 94.55 or a rule promulgated under § 94.55.”<sup>12</sup> This Court should grant their petition, apply the plain meaning of the statute, and ultimately reverse the decision of the Court of Appeals.

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<sup>8</sup> *Id.*, ¶¶29–32.

<sup>9</sup> *Id.*, ¶32.

<sup>10</sup> ATCP 22.02(17) (emphasis added).

<sup>11</sup> Resp’ts Br., at 24.

<sup>12</sup> Wis. Stat. § 961.32(3)(c) (cleaned up).

## II. Issues Presented for Review.

Wisconsin Stat. § 961.32(3)(c) prevents a district attorney from commencing a Chapter 961 prosecution against “a person who violates s. 94.55 or a rule promulgated under s. 94.55” unless DATCP has referred that person to the district attorney. Although the conduct described in the criminal complaint violated rules promulgated under § 94.55, the district attorney commenced a criminal prosecution against the Petitioners without a DATCP referral. Does the Circuit Court lack competence over their criminal cases?

The Circuit Court answered: Yes.

The Court of Appeals answered: No.

This Court should answer: Yes.

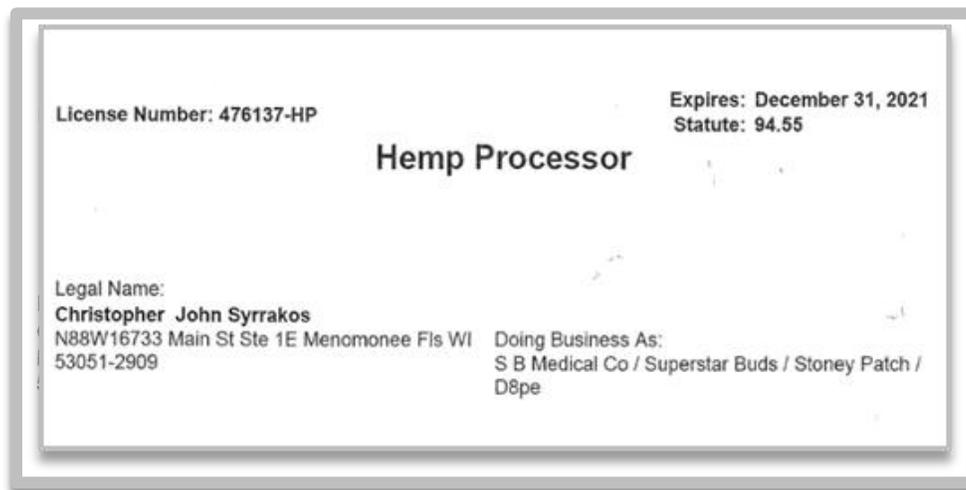
### III. Statement of Facts and of the Case.

The facts of this case aren't as important as the law, but a few points about the record help illustrate how the law operates in this case. After setting forth those facts, what follows focuses on how the law has developed, the Circuit Court's decision, and the Court of Appeals' erroneous reversal.

#### A. Syrrakos, a licensed hemp processor, sold certified hemp products.

In 2017, the Legislature passed a groundbreaking law that recognized the distinction between hemp and marijuana and provided a legal framework for entrepreneurs to participate in the hemp industry.<sup>13</sup> The Legislature didn't mince words about its ultimate goal, writing into the law that Wisconsinites should have the "greatest possible opportunity" to participate in the industry.<sup>14</sup>

Under Wis. Stat. § 94.55, the next year, Syrrakos became a licensed hemp processor and started selling hemp products.<sup>15</sup> As a licensee, he has to renew his license every year. Below is his 2021 license, issued by DATCP.<sup>16</sup> With this license, he could lawfully purchase products from licensed growers and other licensed processors.<sup>17</sup>



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<sup>13</sup> 2017 Wis. Act 100.

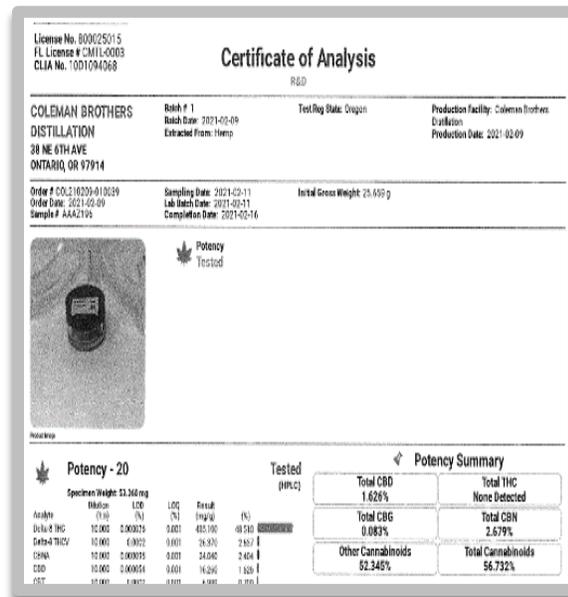
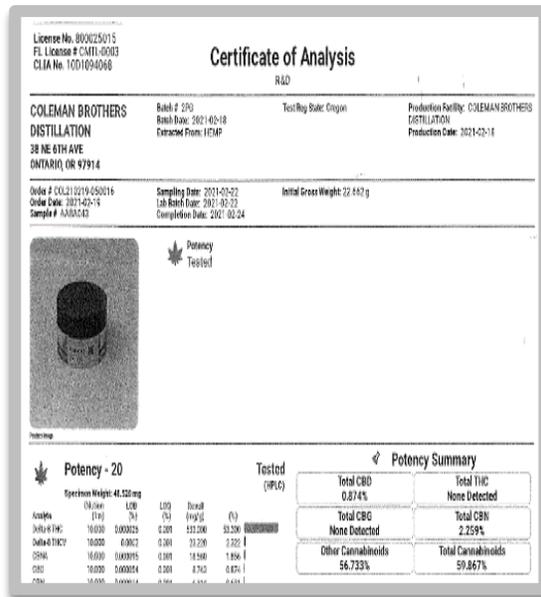
<sup>14</sup> Wis. Stat. § 94.55(2)(b)2.

<sup>15</sup> R.43:1.

<sup>16</sup> R.43:3.

<sup>17</sup> ATCP 22.02(10); ATCP 22.13(2).

As a licensed processor and consistent with DATCP regulations, every product he purchased had to come with a certificate of analysis from a registered testing laboratory.<sup>18</sup> The purpose of this requirement was to ensure that each product was within the legal THC limits.<sup>19</sup> When the Petitioners came under investigation, they produced the certificates below showing that their products had tested within the prescribed limits.<sup>20</sup>



Despite providing these certificates, Syrrakos and Shattuck (Syrrakos’s fiancée who worked at his store and with whom he has two children) were charged with several counts under Chapter 961. The table on the next page provides an overview of each charge.

<sup>18</sup> ATCP 22.13.

<sup>19</sup> *Id.*; ATCP 22.02(10).

<sup>20</sup> R.43:5-6.

Count	Charged against	Charges under Chapter 961
1	Syrrakos	Manufacture/Deliver THC
2	Syrrakos	Manufacture/Deliver THC
3	Syrrakos	Manufacture/Deliver THC
4	Syrrakos	Manufacture/Deliver THC
5	Syrrakos	Manufacture/Deliver THC
5	Syrrakos	Manufacture/Deliver THC
6	Syrrakos	Possession with Intent to Deliver THC
7	Syrrakos	Maintaining Drug Trafficking Place
8	Syrrakos	Possession of THC
9	Syrrakos	Possession with Intent to Deliver THC
10	Syrrakos	Maintaining Drug Trafficking Place
11	Syrrakos	Possession of THC
12	Shattuck	Maintaining Drug Trafficking Place

The Petitioners moved to dismiss, citing the Legislature's promise that "a person who violates Wis. Stat. § 94.55 or a rule promulgated under § 94.55 may not be prosecuted under § 94.55 or this chapter unless the person is referred to the district attorney ... by [DATCP]." <sup>21</sup> The motion was initially denied, but then it was given a fresh look by a different judge and a new round of briefing ensued. <sup>22</sup>

Before turning to that judge's decision, a brief pause is helpful to give a little background on how the statutory scheme regulating hemp has developed in Wisconsin. This information informs why the Legislature would demand a referral by DATCP before a district attorney could commence a prosecution.

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<sup>21</sup> Wis. Stat. § 961.32(3)(c) (cleaned up).

<sup>22</sup> R.77.

**B. The Legislature wanted Wisconsinites to fully participate in the national hemp industry.**

At one time, Wisconsin was the top hemp-growing state in the country.<sup>23</sup> That all stopped in 1970, when the federal government effectively halted its production.<sup>24</sup> Then after forty years of intense lobbying, Congress passed the 2014 Farm Bill.<sup>25</sup> Enthusiastic about the return of a crop that once thrived in Wisconsin, the Legislature provided that DATCP would regulate the hemp industry, but “only to the extent required under federal law, and in a manner that allows the people of this state to have the greatest possible opportunity to engage in those activities.”<sup>26</sup>

Wisconsin’s pilot program defined hemp as “a variety of cannabis with a THC concentration of not more than 0.3 percent on a dry weight basis or the maximum concentration allowed under federal law up to 1 percent, whichever is greater.”<sup>27</sup> And, in line with the Controlled Substances Act, hemp was still on the “state list of controlled substances, meaning the use of hemp outside the program [was] still illegal.”<sup>28</sup> That, of course, created problems in the industry, where people were obviously wary of potential criminal prosecutions.

To ease those worries and combat the chilling effect the threat of prosecution can bring, the Legislature created safe-harbor provisions.<sup>29</sup> It immunized “Planting, growing, cultivating, harvesting, processing, or transporting hemp that contains a delta-9-tetrahydrocannabinol concentration of the crop of not more than 0.7 percent above the permissible limit for industrial hemp on a dry weight basis or that is grown from industrial hemp seed.”<sup>30</sup> In addition, possessing hemp with a delta-9 THC level above the permissible level was covered when “the possessor had no reason to believe at that time that the certification was incorrect.”<sup>31</sup>

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<sup>23</sup> Dirk Hildebrandt, *Hemp: Wisconsin’s Forgotten Harvest*, Wis. Mag. Hist. 12 (2017).

<sup>24</sup> Ryan LeCloux, *Regulating Wisconsin’s Hemp Industry*, Wis. Pol’y Project vol. 2 no. 9, at 4 (April 2019), [https://docs.legis.wisconsin.gov/misc/lrb/wisconsin\\_policy\\_project/wisconsin\\_policy\\_project\\_2\\_9.pdf](https://docs.legis.wisconsin.gov/misc/lrb/wisconsin_policy_project/wisconsin_policy_project_2_9.pdf).

<sup>25</sup> *Id.*; see R.77:3.

<sup>26</sup> Wis. Stat. § 94.55(2)(b)2.

<sup>27</sup> R.77:3 (quoting Wis. Stat. § 94.55(1) (2017–18)).

<sup>28</sup> LeCloux, *supra* note 24, at 6; see also R.77:3.

<sup>29</sup> Wis. Stat. § 961.32(3)(b) (2017–18).

<sup>30</sup> Wis. Stat. § 961.32(3)(b)1. (2017–18).

<sup>31</sup> Wis. Stat. § 961.32(3)(b)4. (2017–18).

Furthermore, the Legislature provided that a person violating Wis. Stat. § 94.55 or an attendant regulation couldn't be prosecuted under Chapter 961 "unless the person is referred to the district attorney ... by [DATCP]."<sup>32</sup> The Legislature also directed DATCP to establish factors guiding when it'd make a referral.<sup>33</sup>

In 2019, the Legislature expanded the program to reflect significant changes from the 2018 Farm Bill.<sup>34</sup> By then, the Controlled Substances Act removed hemp from the definition of "marihuana" and Wisconsin followed suit.<sup>35</sup> The Legislature also expanded the safe-harbor provisions, adding direction for what to do with negligent violations of the hemp regulations—they aren't to be criminally prosecuted.<sup>36</sup> And it added protection for hemp processors who possessed cannabis "during the normal course" of processing.<sup>37</sup> The new statutory provisions for negligent violations applied to hemp "producers" — a term that was not statutorily defined.<sup>38</sup> But DATCP interpreted the negligent-violations provision as applying to "licensees," which it (in its expertise) has defined as both growers and processors.<sup>39</sup> To be clear, and this is very important to note: there are only two types of hemp licenses available in Wisconsin—growers and processors.<sup>40</sup> (Contrary to what the State might say, DATCP has never issued "producer" licenses.)

Throughout all those years of change (and even now), uncertainty persisted about the testing threshold for hemp.<sup>41</sup> Noncompliant hemp, called "hot hemp," tested above 0.3% delta-9-THC by dry weight.<sup>42</sup> During Wisconsin's first growing season, many crops had to be destroyed for noncompliance; and over the years, those problems have persisted.<sup>43</sup> The fear that product could be destroyed because it tests as hot hemp proved a significant financial risk.<sup>44</sup> To address this, additional

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<sup>32</sup> Wis. Stat. § 961.32(3)(c) (2017–18).

<sup>33</sup> Wis. Stat. § 94.55(2)(b)6.

<sup>34</sup> See generally LeCloux, *supra* note 24, at 7–8.

<sup>35</sup> *Id.* 7 n.61; Wis. Stat. § 961.01(14).

<sup>36</sup> Wis. Stat. § 961.32(3)(cm).

<sup>37</sup> Wis. Stat. § 961.32(3)(b)4m.

<sup>38</sup> See Wis. Stat. § 94.55(2g).

<sup>39</sup> ATCP 22.16; ATCP 22.02(17).

<sup>40</sup> See ATCP 22.

<sup>41</sup> See R.77:4.

<sup>42</sup> R.77:4.

<sup>43</sup> LeCloux, *supra* note 24, at 7; Hope Kirwan, *Wisconsin Hemp Growers Call on DATCP to Change Regulation After Testing Delays*, Wis. Pub. Radio (Oct. 14, 2019).

<sup>44</sup> See LeCloux, *supra* note 24, at 7. See generally Krishna Ramanujan, *Hemp Goes 'Hot' Due to Genetics, Not Environmental Stress*, Cornell Chron. (July 28, 2021).

regulations were promulgated.<sup>45</sup> No one wants valuable product to be tossed because of a bad test or when less costly means of remediation could solve the problem. But the real risk of hot hemp – jail – was taken care of by the Legislature’s promise that *no* criminal charges under Wis. Stat. § 94.55 or Chapter 961 could be brought by a prosecutor without first obtaining a referral.<sup>46</sup>

**C. Consistent with the statutory scheme, the Circuit Court dismissed the criminal cases.**

That was a relatively *brief* history of hemp in Wisconsin. The big takeaway is this: the industry is comprehensively regulated. From farmers in the field to the processors in the storefront and everyone in between, the Legislature has set forth a strong, pro-hemp statutory scheme to allow the industry to flourish. Again, DATCP can regulate the industry, but “only to the extent required under federal law, and in a manner that allows the people of this state to have the greatest possible opportunity to engage in those activities.”<sup>47</sup> Consistent with that mandate, DATCP has created a licensing regime, offering both grower and processor licenses.

For both growers and processors, the Legislature has provided a key assurance: a district attorney won’t prosecute them without a referral by DATCP.<sup>48</sup> This safeguard is central to the statutory scheme. After all, few entrepreneurs would venture into this already risky industry if their livelihood and freedom were at risk for hot hemp.<sup>49</sup> Notably, over time, the Legislature has added additional safeguards, just further illustrating that it wants to minimize legal risk for would-be entrepreneurs.<sup>50</sup>

Consistent with that history and text, the Circuit Court rejected the State’s argument that if a hemp product has too much THC, it becomes illegal marijuana that can form the basis for a district attorney prosecution absent a referral by DATCP.<sup>51</sup> The Court explained: “the statute prohibits unambiguously any prosecution, whether civil or criminal until and unless a referral is made by the designated government agency.”<sup>52</sup> It added: “It is clear that the legislature intended that a governmental agency chosen by the legislature act as a

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<sup>45</sup> R.77:4; ATCP 22.

<sup>46</sup> Wis. Stat. § 961.32(3)(b)–(c).

<sup>47</sup> 2017 Wis. Act 100, § 2.

<sup>48</sup> Wis. Stat. § 961.32(3)(b)–(c).

<sup>49</sup> See Kirwan, *supra* note 43.

<sup>50</sup> Wis. Stat. § 94.55(2g).

<sup>51</sup> R.77.

<sup>52</sup> R.77:10.

clearinghouse for individuals operating under licenses issued under Section 94.55, Wis. Stat. Doing so avoids inconsistent interpretation of the criminal intent required for a criminal prosecution amongst 72 Wisconsin counties.”<sup>53</sup> Finally, it stressed an important point that resonates here: “Further, [the referral protocol] eliminates the potential of fact-fights brought before juries impaneled to hear criminal matters over the hemp license process and the rights and limitations of licenses.”<sup>54</sup> With that proper understanding of the law, the Court dismissed the cases.<sup>55</sup> The State then appealed.

**D. The Court of Appeals erroneously reversed the Circuit Court.**

As already alluded to, the Court of Appeals reversed, concluding that even if the Petitioners intentionally sold a hemp product with too much THC, they didn’t violate Wis. Stat. § 94.55 or any DATCP rule. In other words, Syrrakos didn’t violate the terms of his hemp processor license. As it reasoned, none of the rules in ATCP Chapter 22 apply to the Petitioners because the rules only apply to those who are licensed to grow hemp – as opposed to process hemp.<sup>56</sup> The Court appears to have looked at the context in which the phrase licensee was used in some rules (but not others), but it didn’t address the regulatory definition of the term “licensee.”<sup>57</sup> Again, under DATCP’s definition, “licensee” includes both licensed growers and processors, a point that was raised in the response brief.<sup>58</sup> Because Syrrakos, in the Court’s view, held the wrong type of license, the Petitioners lost. They moved for reconsideration, flagging that the Court missed a regulatory definition, but the Court denied that motion. This petition followed.

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<sup>53</sup> R.77:11.

<sup>54</sup> R.77:11.

<sup>55</sup> R.77:11.

<sup>56</sup> See *Syrrakos*, 2025 WI App 73, ¶¶27–32.

<sup>57</sup> *Id.*, ¶31.

<sup>58</sup> Resp’ts Br., at 24.

#### IV. Argument.

This whole case turns on two critical questions: First, under the plain language of the statute, must there be a referral from the DATCP before a prosecution can commence? Second, does the prosecutor's failure to abide by the statute's plain language deprive the Circuit Court of competence to hear the case? In answering both, the analysis begins and ends with the statute's text.<sup>59</sup> To be fair, the second question does demand some discussion of the Wisconsin Supreme Court's seminal cases on competence, but all of the real analysis lies with whether the referral provision is critical to the statutory scheme.<sup>60</sup> It is.

##### A. The Petitioners are covered by the referral provision.

Here, the plain meaning of the statutory text provides that before a person can be charged, DATCP must issue a referral. The key provision provides:

A person who violates Wis. Stat. § 94.55 or a rule promulgated under § 94.55 may not be prosecuted under § 94.55 or this chapter unless the person is referred to the district attorney for the county in which the violation occurred ... by [DATCP].<sup>61</sup>

While it should be clear what the words mean—particularly what *may not* and *unless* do in this context—the next few pages break them down step by step.

Applying the plain, ordinary meaning of this language, a person cannot be criminally prosecuted under Chapter 961 for conduct that also violates Wis. Stat. § 94.55 or a DATCP regulation without a DATCP referral.<sup>62</sup> The term “may not be prosecuted” provides a certain and definite safeguard. Consistent with how people normally read the phrase “may not,” this Court has had no problem deciphering what it means: “‘May not’ is a negative term. Where statutory restrictions are couched in negative terms, they are usually held to be mandatory.”<sup>63</sup>

But here, the statute doesn't create an absolute bar but rather a conditional one: “*unless* the person is referred to the district attorney” by DATCP. In ordinary usage, the term “unless” provides a conditional statement that introduces conditions that must be present before the exception can take place.<sup>64</sup> Not

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<sup>59</sup> *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110.

<sup>60</sup> See generally *Vill. of Trempealeau v. Mikrut*, 2004 WI 79, ¶10, 273 Wis. 2d 76, 681 N.W.2d 190.

<sup>61</sup> Wis. Stat. § 961.32(3)(c) (cleaned up).

<sup>62</sup> *Id.*

<sup>63</sup> *State v. R.A.M.*, 2024 WI 26, ¶19, 412 Wis. 2d 285, 8 N.W.3d 349.

<sup>64</sup> *DWD v. LIRC*, 2018 WI 77, ¶19, 382 Wis. 2d 611, 914 N.W.2d 625.

surprisingly in dealing with statutes, courts have no problem interpreting the meaning of “unless”: “The word ‘unless’ ordinarily means ‘except if.’ Replacing the word ‘unless’ with the words ‘except if’ where the word ‘unless’ appears in the statute may run into grammatical issues, but it helps make the meaning of the statute clear.”<sup>65</sup> So too here; adding “except if” into the relevant text reads this way:

A person who violates a rule promulgated under § 94.55 may not be prosecuted under this chapter *except if* the person is referred to the district attorney by [DATCP].<sup>66</sup>

The plain language is pellucid. A person who violates Wis. Stat. § 94.55’s regulations may not be prosecuted under Chapter 961 *except if* the person is referred to the district attorney by DATCP. While that’s clear enough just from the text, it’s also consistent with the purpose of the statutory scheme: to allow the hemp industry to flourish. As the industry has expanded over the years, so too have these protections. Under the statute and regulations, *all* aspects of the hemp industry are overseen by DATCP.<sup>67</sup> DATCP, for example, decides what happens when there is a negligent violation.<sup>68</sup> In this highly regulated industry, the Legislature wants to ensure that *before* criminal charges stifle the industry, the agency it put in charge has adjudged the violation. As the Circuit Court observed, this “clearinghouse” is important to the statutory scheme for a few reasons: it standardizes the criminal intent required for a criminal referral; it permits remediation opportunities to bring noncompliant products into compliance; and it prevents jury fights over the hemp-licensing process.<sup>69</sup> In other words, by having a clearinghouse, the Legislature has ensured uniformity and protection. Violators will still be prosecuted, but only after there has been a referral. That’s not escaping justice, it’s ensuring that justice is uniform.

Turning to the Petitioners, no one disputes that Syrrakos has a processor license. And while the Court of Appeals missed it, here’s how DATCP regulations defines a “licensee”: “a person possessing a grower license or processor license.”<sup>70</sup> So, every time a DATCP regulation uses that term, he’s covered. To give just one example, ATCP 22.15: “All licensees must comply with all applicable federal, state,

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<sup>65</sup> *Id.*

<sup>66</sup> See Wis. Stat. § 961.32(3)(c) (cleaned up).

<sup>67</sup> Wis. Stat. § 961.32(3).

<sup>68</sup> Wis. Stat. § 961.32(3)(cm).

<sup>69</sup> R.77:11.

<sup>70</sup> ATCP 22.02(17).

and local laws. It is the responsibility of the licensee to understand and comply with all federal and state regulations.”

As a licensed processor, Syrrakos must comply with all laws and regulations.<sup>71</sup> This includes not having any product above the legal limit.<sup>72</sup> If he does, he must destroy or remediate it.<sup>73</sup> And in doing so, he must give notice to DATCP.<sup>74</sup> Thus, Syrrakos possessing and distributing product that exceeds .3% violates those regulations.<sup>75</sup> The question for DATCP would then be whether the violation was negligent or willful.<sup>76</sup>

Put differently and succinctly, it’s clear that Syrrakos’s allegedly criminal conduct all falls under DATCP regulations. Since he’s a licensee covered by those regulations and since his alleged conduct violates those regulations, his conduct cannot be charged under Chapter 961 unless there has been a referral.<sup>77</sup> There has been no referral, so the Petitioners cannot be criminally charged.

Here, the Circuit Court correctly concluded that it lacked competence. As the Wisconsin Supreme Court has put it, “when the failure to abide by a statutory mandate is central to the statutory scheme of which it is a part,” the court can’t proceed.<sup>78</sup> Whether a mandate is central to a statutory scheme essentially “treat[s] competency as a question of legislative purpose.”<sup>79</sup> Here, the purpose is clear as day. The entire scheme, which vests in one central agency (DATCP) regulatory responsibility is turned completely on its head if the referral provision is unenforceable.

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<sup>71</sup> Wis. Stat. § 961.32(1m)(a); ATCP 22.15.

<sup>72</sup> See Wis. Stat. § 961.32(3)(b)4.

<sup>73</sup> ATCP 22.10(3), (6); ATCP 22.12.

<sup>74</sup> ATCP 22.12(1)(a).

<sup>75</sup> Wis. Stat. § 961.32(1m)(a); ATCP 22.15.

<sup>76</sup> Wis. Stat. § 961.32(3)(b)-(cm).

<sup>77</sup> See *DWD*, 382 Wis. 2d 611, ¶19.

<sup>78</sup> See *Mikrut*, 273 Wis. 2d 76, ¶10 (cleaned up).

<sup>79</sup> *Id.*, ¶11.

**B. This Court should grant the petition to ensure the Legislature's safeguard for a young and growing industry is respected.**

For multiple reasons, this Court should grant the petition to address the Court of Appeals' erroneous decision. Most importantly, the opinion below is the first and only published decision addressing Wis. Stat. § 94.55 and the referral statute. That's a big deal. It will necessarily affect the hemp industry throughout Wisconsin. As anyone who's walked down State Street in the past year knows, it's a booming industry. And while not everyone is a fan, that's a policy choice that the Legislature made. And for the industry to grow (as the Legislature desires), it needs regulatory certainty. Hemp stores can't be looking over their shoulder every time they sell a product. The published opinion, if it stands, will make it very, *very* hard for hemp processors to operate. This Court needs to ensure that the safeguards they're afforded by law are protected.

The published opinion is also important for its effect on DATCP. Again, the Court of Appeals (seemingly by accident) created a very serious problem: if the Petitioners *really* didn't violate Wis. Stat. § 94.55 or a DATCP regulation, DATCP can't take any action against them. It's an either/or situation. Either they violated the terms of the license, and so it's an issue for DATCP, or they didn't, and so it's an issue for local district attorneys. Both DATCP and prosecutors across the State would benefit from this Court's review. If a hemp processor sells hot hemp, who's in charge? What, if anything, can DATCP do? The division of prosecutorial jurisdiction is, in and of itself, an issue worthy of this Court's review.

**V. Conclusion.**

The bottom line: This Court should grant the petition to ensure the Legislature's promise is kept. It's a chance not only to clarify the law in a developing area but to ensure a growing industry can thrive.

Dated December 26, 2025.

Respectfully submitted,

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### **Certification of Form and Length**

I hereby certify that this petition conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a petition produced with a proportional serif font. The length of this petition is 3,593 words as calculated by Microsoft Word.

Dated this 26th day of December 2025.

Electronically signed by Joseph A. Bugni  
Joseph A. Bugni

### **Certification of Electronic Filing**

I hereby certify that: I have submitted an electronic copy of this petition and the appendix, which will accomplish notice and service on all registered users.

Dated this 26th day of December 2025.

Electronically signed by Joseph A. Bugni  
Joseph A. Bugni

### **Certification of Appendix**

I hereby certify that filed with this petition, either as a separate document or as a part of this petition, is an appendix that complies with Wis. Stat. § (Rule) 809.62(2)(f) and that contains, at a minimum: (1) a table of contents; (2) the decision and opinion of the court of appeals; and (3) the findings or opinion of the circuit court necessary for an understanding of the petition.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 26th day of December 2025.

Electronically signed by Joseph A. Bugni  
Joseph A. Bugni