

# Wyoming's DAO Statutes

## A Model for Wider Adoption

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### Abstract

*This article examines the first American statutes that address the legal organizational structure of decentralized autonomous organizations (DAOs). In 2021, the state of Wyoming folded the cryptocurrency-based organizations into the state's definition of limited liability company (LLC), a legislative move that almost immediately drew widespread attention and criticism, while prompting the introduction of mirrored legislation in other states. This article addresses Wyoming's novel statutory framework, securities regulation in this context, the practicality of treating DAOs as LLCs, and the first DAO organized under this statutory regime.*

**Keywords:** DAO, cryptocurrency, Wyoming, securities, Howey, crypto.

### A Introduction

As blockchain technology has pushed its way to the forefront of public discourse, a new organizational design has emerged alongside the cryptocurrencies that dominate the headlines. Decentralized autonomous organizations (DAOs) are nascent organizational structures that have received little serious legal attention. Beyond the State of Wyoming, where recently passed state statutes provide for (among other aspects) the legal formation, management and dissolution of DAOs, there is much lacking in the way of a legal framework for understanding these organizations.<sup>1</sup> This article explores what DAOs are as a practical matter, the legal framework created by the Wyoming statutes and the legal necessities of these organizations moving forward.

#### *I What Is a DAO?*

DAOs are built upon blockchains. A 'blockchain is a shared, immutable ledger that facilitates the process of recording transactions and tracking assets in a business

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1 WY Stat. § 17-31-105, WY Stat. § 17-31-109, WY Stat. § 17-31-114.

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network'.<sup>2</sup> Since blockchains are recorded on multiple servers to ensure redundancy, the technology is referred to as 'distributed ledger technology' or DLT. While the blockchain that operates the Bitcoin network is relatively simple, blockchains such as Ethereum and Avalanche facilitate the development of more complex applications that run on the network. The Ethereum blockchain was the first to provide what is essentially a fully functional computer, the Ethereum Virtual Machine (EVM) on a blockchain. Whatever can run on a computer can thus be operated on a blockchain. Since these applications run in parallel on many servers, they are referred to as decentralized applications.<sup>3</sup> Decentralized applications can also employ the use of smart contracts which are 'programs stored on a blockchain that run when predetermined conditions are met'.<sup>4</sup> Examples for the use of smart contracts running on a blockchain are applications that hold and transfer digital assets, i.e. coins, tokens, NFTs, etc. The smart contract is programmed to make the value transfer from one user wallet to another if and when certain conditions are met.

While some smart contracts are programmed to facilitate funds transfers without recourse to traditional intermediaries such as banks, they can also be programmed to do many other things. In case of DAOs, the smart contracts provide for collective decision-making by the members. If a DAO is created to pursue certain business or investment activities, individual members can join the DAO by purchasing a certain number of the DAO coins, giving them voting rights about business decisions comparable to traditional shares. However, by contrast to traditional companies, the DAO does not have to be incorporated, does not need physical premises and does not need employees or managers to execute its decisions. At least in theory, everything can be done in virtual space and recorded only on a blockchain.

The Ethereum foundation defines a DAO as

an internet-native business that's collectively owned and managed by its members. [DAOs] have built-in treasuries that no one has the authority to

- 2 IBM Learning, *What Is Blockchain Technology?*, <https://www.ibm.com/topics/what-is-blockchain>.
- 3 Ethereum Foundation, Learning Section, Ethereum 101, <https://ethereum.org/en/what-is-ethereum/>. (Describing the difference between the Ethereum blockchain and the Bitcoin blockchain, the foundation writes, 'Both let you use digital money without payment providers or banks. But Ethereum is programmable, so you can also use it for lots of different digital assets ... It's a marketplace of financial services, games and apps.' These apps are decentralized applications, also referred to as 'dapps'.)
- 4 IBM Learning, *What Are Smart Contracts on Blockchain?*, <https://www.ibm.com/topics/smart-contracts>. ('[Smart contracts] typically are used to automate the execution of an agreement so that all participants can be immediately certain of the outcome, without any intermediary's involvement or time loss. They can also automate a workflow, triggering the next action when conditions are met.') See also WY Stat. § 17-31-102(a)(ix) which defines a smart contract as 'an automated transaction, as defined in W.S. 40-21-102(a)(ii), or any substantially similar analogue, or code, script or programming language relying on a blockchain which may include taking custody of and transferring an asset, administrating membership interest votes with respect to a decentralized autonomous organization or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.'

access without the approval of the group. Decisions are governed by proposals and voting to ensure everyone in the organization has a voice.<sup>5</sup>

Because Wyoming State statute § 17-31-102 provides one of the only legal definitions in the United States, it will be the reference point for this analysis.<sup>6</sup> “Decentralized autonomous organization’ means a limited liability company organized under this chapter.”<sup>7</sup> This definition may seem simplistic, and it is.<sup>8</sup> The primary aspect of note is the fact that the novel Wyoming statute defines a DAO as a limited liability company (LLC) organized within the meaning of the DAO supplemental chapter to Wyoming Title 17 which addresses corporations, partnerships and associations. Within the Wyoming State, DAOs are LLCs in which members acquire a ‘membership interest’ that can be ‘characterized as either a digital security or a digital consumer asset’.<sup>9</sup> Similar to the way law firm partners buy equity in the firm, membership in a DAO is purchased via a digital asset issued by a protocol or smart contract that governs the organization itself. Professor Aaron Wright describes DAOs as organizations in which ‘Members rely on smart

5 Ethereum Foundation, Learning Section, *Decentralized Autonomous Organizations: What Are DAOs?*, <https://ethereum.org/en/dao/>.

6 Tennessee recently passed legislation similar to the Wyoming statutes examined here. The Tennessee legislation reflects many of the same tenets and goals as the Wyoming legislation. In particular, the Tennessee regime also allows a DAO to be incorporated in the state as an LLC. Just like Wyoming, the Tennessee regime does not require any member of the DAO to reside within the state but does require someone to file articles of organization/incorporation with the Secretary of State (one-time hire to deliver paperwork). The legislation also designates a DAO as ‘member-managed’ (as opposed to smart contract managed) unless otherwise stated. Tennessee requires that a DAO that is to be smart contract managed must allow for the amendment of the underlying governing smart contracts. In short, the Tennessee legislation appears to be largely reflective if not explicitly modelled after the statutes enacted in Wyoming. See Amendment No. 1 to Tennessee House Bill 2645 (HB2645), <https://www.capitol.tn.gov/Bills/112/Amend/HA0748.pdf>.

7 WY Stat. § 17-31-102(a)(ii).

8 For a more specific and complex definition, see P.D. Filippi & S. Hassan, ‘Blockchain Technology as a Regulatory Technology: From Code Is Law to Law Is Code’, *First Monday*, Vol. 21, No. 12, 2016, <https://doi.org/10.5210/fm.v21i12.7113>. (‘In some cases, a complex set of smart contracts is set up in such a way as to make it possible for multiple parties (smart contracts or humans) to interact with each other. This combination of smart contracts may be regarded as a distributed autonomous organization (or DAO) – a self-governed organization controlled only and exclusively by an incorruptible set of rules, implemented under the form of a [smart contract]. An individual may decide to transact with the DAO in order to, for instance, get paid in exchange of a service. Thus, a DAO could in practice hire people or smart contracts to perform specific tasks, and could potentially sell their own services (or resources) to third parties. DAOs operate thanks to all network’s nodes; they do not rely on any central server and thus cannot be shut down (unless they feature an explicit kill switch). DAOs are both autonomous, to the extent that they do not need (nor heed) their original creator, and self-sufficient, to the extent that they can charge users for their own services (or assets) in order to pay for the services they need.’) citing M. Campbell-Kelly, ‘Development and Structure of the International Software Industry, 1950-1990,’ *Business and Economic History*, Vol. 24, No. 2, 1995, pp. 73-110, and K.R. Eschenfelder & A.C. Desai, ‘Software as Protest: The Unexpected Resiliency of US-based DeCSS Posting and Linking,’ *Information Society*, Vol. 20, No. 2, 2004, pp. 101-116. doi: <http://dx.doi.org/10.1080/01972240490422987>.

9 WY Stat. § 17-31-102(a)(vi), See WY Stat. § 34-29-101(a)(ii) and WY Stat. § 34-29-101(a)(iii) for definitions of ‘digital security’ and ‘digital consumer asset.’

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contracts as the primary glue to manage member-to-member transactions. Smart contracts define tamper-resistant rules that structure and facilitate the operation of the organization.<sup>10</sup> Professor Wright and others have noted the difficulties that abound when membership in an organization can potentially take the form of purchasing a security.<sup>11</sup> However, it is worth noting at the outset that membership in an organization that features ‘tamper-resistant’ rules is something that has both market value and inherent value.<sup>12</sup>

The operative word in the acronym is ‘autonomous’. While traditional corporations operate via a board of directors who adhere to the corporation’s written bylaws, the governance and operations of a DAO are automated through a coded ‘smart contract’. A smart contract is ‘[an] automated computer program that enable[s] the terms of a contract to execute upon the occurrence of some event, without external intervention’.<sup>13</sup> Similar to how written contracts contain terms and conditions that must be executed by the parties to the agreement, smart contracts function automatically and fulfil the terms of the agreement upon the satisfaction of prescribed and encoded conditions.<sup>14</sup> This automation is what allows DAOs to function autonomously.<sup>15</sup>

## II Are DAO Memberships Securities?

Whether or not a market offering is a security is a question of substance and the seminal test for determining whether an asset is a security comes from *SEC v. Howey Co.*, 328 U.S. 293 (1946), and is often simply referred to as the ‘Howey test’. The test is defined by a set of fact-sensitive criteria that a court examines in

- 10 A. Wright, ‘The Rise of Decentralized Autonomous Organizations: Opportunities and Challenges’, *Stanford Journal of Blockchain Law & Policy*, Vol. 4, No. 2, 2021, retrieved from <https://stanford-jblp.pubpub.org/pub/rise-of-daos> citing Filippi & Wright, *supra* note 8, at 131-155.
- 11 *Id.*, see also DAOpulse Issue No. 6, *\$500m DAOs Marketcap*, DeepDAO, 5 September 2020, <https://deepdao.substack.com/p/daopulse-issue-6-500m-daos-marketcap> (noting that DAOs are hitting a milestone of managing over \$500 million worth of digital assets, including 16 DAOs with over \$1 million in assets).
- 12 Some DAO memberships are rather expensive, e.g. CityDAO’s ‘Founding Citizen’ token, which last sold for \$21,427.36. <https://etherscan.io/tx/0x1397bede2af1d6f7c0c70d00aec8a04d98adfd781ad5bfe6114985321948ff5b>.
- 13 L. Metjahic, ‘Deconstructing the DAO: The Need for Legal Recognition and the Application of Securities Laws to Decentralized Organizations’, *Cardozo Law Rev.*, Vol. 39, No. 4, 2018, p. 1533, citing E.D. Baker, ‘Trustless Property Systems and Anarchy: How Trustless Transfer Technology Will Shape the Future of the Property Exchange’, *SW. L. Rev.*, Vol. 45, No. 351, 2015, pp. 360-361 (explaining that ‘smart contracts are ‘computer programs that can automatically execute the terms of a contract’ (footnote omitted)). See also Filippi & Hassan *supra* note 8 (‘the most recent blockchains have introduced the ability for people to upload small snippets of code (so-called *smart contracts*) directly onto the blockchain, for them to be executed in a decentralized manner by every node of the network. These rules are automatically enforced by the underlying technology (the blockchain), even if they do not reflect any underlying legal or contractual provision.’)
- 14 *Id.*
- 15 See also C. Jentzsch, *Decentralized Autonomous Organization to Automate Governance*, <https://download.slock.it/public/DAO/WhitePaper.pdf>. ‘a DAO Entity purportedly would supplant traditional mechanisms of corporate governance and management with a blockchain such that contractual terms are formalized, automated and enforced using software’.

determining whether a particular asset is an 'investment contract'. An investment contract is described in the case as one

whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise.<sup>16</sup>

The test breaks down into four elements: (1) an investment of money, (2) in a common enterprise, (3) with the expectation of profit and (4) profit will be derived from the efforts of others.<sup>17</sup> It seems clear that a DAO membership token satisfies at least the first two elements of the Howey test – to be a member, one has to invest in that membership, and that investment is undoubtedly in a common enterprise. DAOs require members to literally buy-in to the mission of the organization, whether it be to purchase land for the organization, or purchase one of the only surviving original copies of the Constitution of the United States.<sup>18</sup> Essentially they often operate as community-governed treasuries that can be focused on any democratically agreed upon venture.

The third element of the test, the investors' expectation of profit, is not as easily satisfied. DAO members do not always expect to profit. The very nature of these organizations is built on crowd-funding a common goal, not profit sharing – although there are instances in which this does happen, or is at least in the roadmap for certain DAOs. Similar to the way in which a crowd-funded product does not constitute the offering of a security, many DAOs likely do not meet the Howey test for the same reason. DAOs are not money-making organizations, but rather are money spending organizations.

The fourth element, profit will be derived from the efforts of others, might also be unsatisfied. One of the hallmarks of joining a DAO is contributing not just monetarily to the mission of the organization, but contributing substantively to the end goal(s) of the organization. This may take the form of voting on the direction of the organization, putting forth novel avenues for expenditures or taking on a leadership role.<sup>19</sup>

Yet it should be noted that the U.S. Securities and Exchange Commission (SEC) has supplied an answer to this question, at least with respect to one of the first DAOs. In a report dated 25 July 2017, the SEC stated 'DAO Tokens are securities under the Securities Act of 1933'.<sup>20</sup> The report characterizes the DAO in question,

16 *SEC v. Howey Co.*, 328 U.S. 293, 299 (1946).

17 *Id.*

18 A. Iscoe, *We the Crypto People Seek a Constitution*, Crowd-Sourcing Department, 27 November 2021, <https://www.newyorker.com/magazine/2021/12/06/we-the-crypto-people-seek-a-constitution>.

19 Although decentralization can imply a lack of central leadership, often a DAO's founders will take on leadership roles in an effort to properly steer the direction of the organization.

20 Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Release No. 81207, 25 July 2017, retrieved from <https://www.sec.gov/litigation/investreport/34-81207.pdf>. In this report released by the SEC, one of the factors that leads to the SEC characterizing the

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one that was hacked and drained of crowd-funded capital, as ‘virtual organizations or capital raising entities that use distributed ledger or blockchain technology to facilitate capital raising and/or investment and the related offer and sale of securities’.<sup>21</sup> The characterization of DAOs as ‘capital raising entities’ is accurate. DAOs primarily function as crowd-funding operations with a particular goal in mind in terms of how those funds will be spent.<sup>22</sup> It should be noted also that the SEC’s characterization of the DAO in question as one that offered securities without registration<sup>23</sup> seems to be at least somewhat fact sensitive to the DAO that spawned the report. In short, not all DAOs operate in the manner described here by the SEC – in particular, not all DAOs offer ERC-20 tokens as the means through which investors purchase memberships in the organizations.<sup>24</sup> There are still novel questions in terms of how DAOs deploy purchasable membership tokens.<sup>25</sup>

### III Wyoming’s Registration Requirements

Wyoming requires that individuals file an original and a copy of a DAO’s articles of organization with the Secretary of State for the DAO to be a legally recognized organization in Wyoming.<sup>26</sup> Interestingly, the statute does not require that the person registering the DAO with the State has to be a part of the DAO.<sup>27</sup> This would

DAO’s issuance of tokens as the issuance of unregistered securities was the fact that the organization was centrally controlled. The SEC report states, ‘The DAO’s investors relied on the managerial and entrepreneurial efforts of Slock.it and its co-founders, and The DAO’s Curators, to manage The DAO and put forth project proposals that could generate profits for The DAO’s investors.’ Central control and generating profits for investors together are significant facts that produced the SEC’s conclusion that the DAO was issuing unregistered securities.

- 21 Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Release No. 81207, p. 2, 25 July 2017, retrieved from <https://www.sec.gov/litigation/investreport/34-81207.pdf>.
- 22 In its initial marketing blurb, the DAO at the centre of the SEC’s report cited earlier marketed its organization’s goals as follows: ‘To blaze a new path in business for the betterment of its members, existing simultaneously nowhere and everywhere and operating solely with the steadfast iron will of unstoppable code.’ <https://www.sec.gov/litigation/investreport/34-81207.pdf> citing the DAO website which was available at <https://daohub.org>.
- 23 See footnote 11 on page 4 of the SEC document and its description of crowd-funding regulations/registration.
- 24 *Id.*
- 25 See footnote 6 above. The sale of an ERC-1155 token is distinct in that it is not the kind of token that is tradable on an exchange as described in the SEC report.
- 26 WY Stat. § 17-31-105(a) states, ‘Any person may form a decentralized autonomous organization which shall have one (1) or more members by signing and delivering one (1) original and one (1) exact or conformed copy of the articles of organization to the secretary of state for filing. The person forming the decentralized autonomous organization need not be a member of the organization.’
- 27 The second sentence of the statute cited in footnote 20 states that the person who officially forms the DAO, i.e. files with the Secretary of State office, need not be a member of the DAO. There has been some criticism of this requirement because the initial versions of the statutory scheme required a DAO to maintain a registered agent in the State of Wyoming throughout the DAO’s lifetime. However, it should be noted that a DAO’s registered agent is not required to be a member of the DAO itself, and thus the ‘meatspace’ requirement under the Wyoming laws is likely not a hindrance to use of the statutes themselves. The advantages of registering a DAO as an LLC, thereby avoiding the pitfalls of a general partnership and in turn individual member liability, surely outweigh the disadvantage of having to maintain one registered agent in the state.

allow for the person who officially forms the DAO by filing with the Secretary of State's office to be someone hired specifically and only for the purpose of filing the paperwork. One should recall that DAOs are by definition decentralized and their 'leaders' or 'founders' (de facto or otherwise) are often not located in the same place.

DAOs under the Wyoming statute can be formed and operated for 'any lawful purpose', meaning that DAOs are given fairly wide discretion to pursue for any number of purposes.<sup>28</sup> Wyoming's statutory regime also, and perhaps most crucially, requires that DAO registrants include a 'publicly available identifier' in a DAO's articles of organization.<sup>29</sup>

More specifically, WY Stat. § 17-31-106(c)(i-xii) require that a DAO's articles of organization delineate the specific processes and governance structures of the DAO.<sup>30</sup> While many of the provisions in this list are relatively clear, there are a few requirements that merit further exploration due to the complexity that underlies the reality of these requirements.

WY Stat. § 17-31-106(c)(v) requires that a DAO registrant tell the State of Wyoming how the organization will govern or distribute the 'rights and voting rights of members'.<sup>31</sup> As stated, this requirement is much more complex than the statutory language reflects. Majority voting mechanisms would lead to majority rule, and could theoretically leave DAOs vulnerable to 51% attacks – a vulnerability that places a large target on the well-funded wallets of some DAOs because a group

See J. Durham, 'Wyoming Built a Home for DAOs – Why They Won't Come', *Journal of Business and Intellectual Property*, Vol. 2021, (30 June) 2021, retrieved from <http://ipjournal.law.wfu.edu/2021/06/wyoming-built-a-home-for-daos-why-wont-they-come/>.

28 WY Stat. § 17-31-105(c) states, 'A decentralized autonomous organization may form and operate for any lawful purpose, regardless of whether for profit.'

29 WY Stat. § 17-31-106(b) states, 'In addition to the requirements of subsection (a) of this section the articles of organization shall include a publicly available identifier of any smart contract directly used to manage, facilitate or operate the decentralized autonomous organization.' A publicly available identifier refers to a public contract address expressed in a hexadecimal format. '[A] contract address refers to the address hosting a collection of code on the Ethereum blockchain that executes functions. These functions of a contract address are executed when a transaction with associated input data (contract interaction) is made to it.' <https://info.etherscan.com/what-is-an-ethereum-address/>.

30 WY Stat. § 17-31-106(c)(i-xii) state that 'the articles of organization and the smart contracts for a decentralized autonomous organization shall govern all of the following:

- i Relations among the members and between the members and the decentralized autonomous organization;
- ii Rights and duties under this chapter of a person in their capacity as a member;
- iii Activities of the decentralized autonomous organization and the conduct of those activities;
- iv Means and conditions for amending the operating agreement;
- v Rights and voting rights of members;
- vi Transferability of membership interests;
- vii Withdrawal of membership;
- viii Distributions to members prior to dissolution;
- ix Amendment of the articles of organization;
- x Procedures for updating, modifying or otherwise revising the organization's smart contracts;
- xi dispute resolution;
- xii All other aspects of the decentralized autonomous organization.'

31 WY Stat. § 17-31-106(c)(v).

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that gradually acquires 51% of the voting rights, either by buying into the DAO or by hacking some of the wallets of the owners, could then transfer all assets of the DAO to itself.<sup>32</sup> One of the more common mechanisms implemented by modern DAOs is quorum-based voting (something that traditional boards of directors are familiar with and, in turn, know the challenges that accompany this voting system design), but it too has its own vulnerabilities.<sup>33</sup> Quorum-based voting requires that a certain number of votes be allocated among the options before a proposal can be passed.<sup>34</sup> More recently, DAOs have begun to adopt even more complex voting systems, such as holographic consensus voting, which inserts a prediction market middle layer.<sup>35</sup> ‘Conviction’-based voting is another voting scheme that is being tested and used in some DAOs.<sup>36</sup> All of this is to say that the statutory requirement is significantly more onerous than the language reflects.

There is another provision that more specifically provides for the distribution of voting power among a DAO’s members if a DAO’s articles of incorporation are silent on the matter.<sup>37</sup> This statute provides first that a DAO’s members will exercise a voting share proportionate to their individual contributions to the DAO.<sup>38</sup> However, in the case that not every member of the DAO has contributed to the

32 The basic concept of this kind of attack is that an individual manages to acquire 51% (or at least over 50%) of a DAO’s native token. With that majority holding (likely held in separate wallets so as to fool the smart contract into reading each token as a discrete member-voter), the attacker could direct the funds of the DAO anywhere they wish. Effectively, the attacker owns the contract and can drain the wallet. Modern DAOs of any substantial size do not use a voting mechanism of this sort and have measures in place to prevent the sort of ‘wallet spoofing’ described in this footnote. The Ethereum network was subject to a different kind of attack precipitated by an attack on the DAO in 2016, testing the nascent network’s strength. See I. Allison, ‘Legal Experts Examine the DAO Attack and Ethereum Fork, INT’L BUS’, *Times* (21 June 2016, 7:47 am), [www.ibtimes.co.uk/legal-experts-examine-dao-attack-ethereum-fork-1566318](http://www.ibtimes.co.uk/legal-experts-examine-dao-attack-ethereum-fork-1566318).

33 E. Arnesault, ‘Voting Options in DAOs’, Published in DAOStack, *Medium*, 15 December 2020, <https://medium.com/daostack/voting-options-in-daos-b86e5c69a3e3> citing C. Harper, *MakerDAO Members Voting on a Safeguard against BProtocol Flash Loan-Type Attack*, Coindesk (Tech Column), 30 October 2020, [www.coindesk.com/tech/2020/10/30/makerdao-members-voting-on-a-safeguard-against-bprotocol-flash-loan-type-attack/](http://www.coindesk.com/tech/2020/10/30/makerdao-members-voting-on-a-safeguard-against-bprotocol-flash-loan-type-attack/).

34 *Id.*, Arnesault.

35 Y. Faqir-Rhazoui, J. Arroyo, & S. Hassan, ‘A Comparative Analysis of the Platforms for Decentralized Autonomous Organizations in the Ethereum Blockchain’, *J Internet Serv Appl*, Vol. 12, No. 9, 2021. <https://doi.org/10.1186/s13174-021-00139-6>. The concept of holographic consensus voting systems is also discussed in the article cited in footnote 28 – the author interviews a number of DAO leaders and creators who discuss the challenges that leaders and members face specifically in terms of voting.

36 Wright, *supra* note 10, citing J. Emmett, ‘Conviction Voting: A Novel Continuous Decision Making Alternative to Governance’, *Medium*, 3 July 2019, <https://medium.com/giveth/conviction-voting-a-novel-continuous-decision-making-alternative-to-governance-aa746cfb9475>. (‘Participatory DAOs are already experimenting with different types of voting mechanisms to encourage participation in governance-related decisions. For example, some DAOs are allocating more weight to decisions based on how long a member supports a given proposal, undefined aiming to approximate voting ‘conviction’ and rewarding the votes of long-standing members of a DAO.’)

37 WY Stat. § 17-31-111(a)(i) and (a)(ii). It should be noted that because of the crucial/central role that member voting holds in any member-managed DAO, it seems highly unlikely that a sufficiently sophisticated DAO would omit these provisions from its articles of incorporation.

38 WY Stat. § 17-31-111(a)(i).



DAO, 'each member shall possess one (1) membership interest and be entitled to one (1) vote'.<sup>39</sup> As is noted later, these default voting mechanisms are likely not going to be adopted by most DAOs. The voting systems already in existence in most DAOs exhibit a necessary degree of complexity that exceeds the default systems defined by the Wyoming statute. However, it seems possible that smaller, less sophisticated and perhaps even less serious DAOs might take advantage of these default systems as a means of both properly registering their organizations with the State of Wyoming, and establishing the organizations themselves without an undue amount of administration, respectively the help of expensive attorneys.

A degree of complexity can also be found in the statutory requirement that DAOs provide Wyoming with the 'means and conditions for amending the operating agreement'.<sup>40</sup> It is worth noting that the State seems to require that a DAO delineate the conditions that allow the code that governs the DAO to change autonomously, or otherwise execute pre-programmed changes. As this is a novel statutory regime, this registration requirement is an attempt to regulate or at least keep the State aware of the changes that a DAO will undergo during its existence.<sup>41</sup>

#### IV DAOs as LLCs

WY Stat. § 17-31-102(a)(ii) defines a legally recognized DAO as one organized as a LLC under the Wyoming statute. Wyoming's DAO statutes are novel, and represent a haven of sorts for DAOs that seek to limit their members' personal liability.

Without the benefit of this statutory regime, or others similarly designed, the members of a DAO could be held personally liable for the actions of the DAO.<sup>42</sup> The

39 WY Stat. § 17-31-111(a)(ii).

40 WY Stat. § 17-31-106(c)(iv).

41 See Filippi & Hassan *supra* note 8 ('However, the decentralized nature of the blockchain and the resulting attributes of smart contract code (which can be used to create autonomous, self-sufficient, and potentially unstoppable DAOs) raise new important issues in terms of legal responsibility and regulability. Just as law cannot prevent a biological virus from spreading, it also cannot shutdown autonomous software agents simply by ordering them to do so.'). Wyoming seems to be attempting to answer the challenge described by Hassan and Filippi by requiring DAOs to inform the State of the ways in which the DAO will or can evolve. If the State is sufficiently informed, it seems that the doomsday prediction is at least somewhat neutralized by the fact that the State can observe and be ready for the potentially disastrous consequences of a DAO run amok – although it is still unclear how the State would effectively respond to a problematic DAO. To be clear, the uncontrolled DAO scenario described by Hassan and Filippi describes the case of an algorithmically controlled DAO, as opposed to a member-managed DAO. This distinction is one that is contemplated and addressed by Wyoming's statutory regime at WY Stat. § 17-31-104(e).

42 Metjahic, *supra* note 13, at 1533, 1566. (Metjahic argues that without legal clarity, DAOs are general partnerships or at least joint ventures, both of which would yield the individual members personally liable in the event of a suit. The author here also argues that DAOs need exactly the sort of clear legal framework outlined by the Wyoming statutes discussed here.) See also Wright, *supra* note 8 citing Reyes, *supra* note 56, at 378, 395. ('For blockchain-based governance to go mainstream, participants will need a clear path to limited liability.' The clear path to limited liability is exactly what the Wyoming statutory regime creates. The effect of these statutes has yet to be fully realized, but their adoption in Wyoming, and now the adoption of similar statutes in Tennessee and possibly Vermont in the near future, reflects lawmakers' belief in the possibility of widespread/mainstream blockchain-based organization formation. The presence of adequate legal infrastructure is key to this adoption and other authors are clearly aware of this fact.)

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limitation and distribution of liability is likely the most incentivizing factor that will lead to certain DAOs registering as LLCs in Wyoming. The benefits to limited liability for DAO members are numerous.<sup>43</sup> Benefits such as protecting member assets from creditors and establishing legal personhood for DAOs have the potential to create a new class of business organization, with the added effect of democratizing venture capital.<sup>44</sup>

In terms of the actual practical effects of Wyoming's recognition of DAOs as LLCs, it should be recognized that Wyoming law already provides that individuals can be LLC members without a capital contribution to the LLC.<sup>45</sup> Importantly, where LLC members can be such without capital contribution, in the case of traditional LLCs, the member names must be in the articles of incorporation.<sup>46</sup> Wyoming's DAO statutes contemplate both the fact that individuals need not actually contribute capital to be considered members of a DAO and that membership is in fact transferrable from one member to another (new) member.<sup>47</sup> Conceivably, if one is a member of a DAO organized under Wyoming's statutory regime, one could gift the DAO membership to another and thereby make the gift receiver a full member of the DAO and, in turn, a member of the DAO-LLC without a capital contribution.

- 43 Wright, *supra* note 10. ('One of the longstanding benefits of creating a legal entity, whether a corporation or limited liability company, is the ability to protect the personal assets of an organization's owners from creditors.')
- 44 *Id.* ('legislative recognition of blockchain-based governance does lend it some legitimacy and offers a clear path for those relying on blockchain-based governance to capture the benefits of legal personhood and limited liability.')
- T. Wang, *Will DAOs Replace Crypto Venture Capital?* (6 January 2022 at 12:16 pm EST), <https://www.coindesk.com/business/2022/01/06/will-daos-replace-crypto-venture-capital/> ('Crypto has allowed micro VCs to really thrive, because the return on investment on blockchain projects can be in the thousands of percent,' said Michael Steinberg, founder of venture capital firm Reciprocal Ventures. Steinberg dubbed investment DAOs as 'fundamental recasts' of angel networks or syndicates – loosely organized networks of investors whom early-stage startups have traditionally turned to for funding.) The author goes on to note that for now, crypto startups are still looking to traditional venture capital firms for seed round funding, but DAOs are certainly a force to be reckoned with in the VC ecosystem.
- 45 *In re Kite Ranch, LLC*, 2010 WY 83, 234 P.3d 351, 356-357 (Wyo. 2010). In this case, the Supreme Court of Wyoming found that 'even if the facts are viewed in the light most favorable to Powell and Brickmans, and we assume that Brickmans, Hedstroms, and Dumires did not each pay the stated \$266.67, that fact does not mean they are not members of the LLC'. The court went on to state that these individuals were members of the LLC despite not contributing capital to the venture, and that these members were liable to the LLC in the amount of the difference between their actual contribution and the stated contribution in the LLC's articles of incorporation.
- 46 *In re Kite Ranch, LLC*, 2010 WY 83, 234 P.3d 351, 356 (Wyo. 2010).
- 47 WY Stat. § 17-31-106(c)(vi). This subsection of the statute sets forth the governance requirements of a DAO's articles of organization in terms of the transferability of membership interests. Today, DAO memberships can be bought and sold on various marketplaces. However, as noted earlier, a DAO membership could conceivably be gifted to another, effectively granting them membership to the DAO (or LLC in Wyoming) without requiring the new member to contribute capital to the venture. However, a DAO's articles of organization could also likely provide that such transferability is not permitted within that particular organization. The point being made is that Wyoming's LLC law already provides for the sort of non-capital-based LLC membership that could easily be a hallmark of certain DAOs' growth and development.

There is an aspect of the case cited earlier, and in turn the very nature of traditional LLCs, that highlights one of the differences between traditional LLCs and DAOs as LLCs. The Supreme Court of Wyoming notes, 'It would seem illogical, however, to assume that the management rights of the members would change every time some member contributed another dollar, or every time a dollar was returned to a member'.<sup>48</sup> While the court's observation here makes sense in the context of traditional LLCs, in the context of a DAO, a member's management rights can in fact change in proportion to the member's capital contribution.<sup>49</sup> Because many DAOs pass resolutions through the various complex voting systems discussed earlier, voting power is a key aspect of DAO governance. A member's voting power is often directly proportional to a member's capital (or other) contribution to the DAO.<sup>50</sup> In short, the illogical change in governance power observed by the Wyoming Supreme Court in *In re Kite Ranch* is notably absent in the context of DAO-LLCs. In fact a change in a member's capital contribution can directly affect that member's management and governance rights in the DAO. This is one of the central tenets of decentralized governance.

#### V DAOs as 'More Responsive Legal Entities'<sup>51</sup>

One of the hallmarks of a blockchain is its transparency. Blockchains are both transparent and unassailable as transactional records. This verifiability and transparency combined produce a public record of transactions accessible to anyone.<sup>52</sup> Wyoming's DAO legislation makes it possible for that transparency and

48 *In re Kite Ranch, LLC*, 2010 WY 83, 234 P.3d 351, 357 (Wyo. 2010).

49 Wright, *supra* note 10, citing Filippi & Wright, *supra* note 8, at 131-145. ('Participants in DAOs sign a blockchain-based transaction and record evidence of a vote on a blockchain, with comparative voting weights assessed by capital contributions, ownership balances, or ownership of a DAO's native token.')

50 O. Hernandez, *ENS DAO Delegates Offer Perspective on DAO Governance and Decentralized Identity*, 30 November 2021, <https://cointelegraph.com/news/ens-dao-delegates-offer-perspective-on-dao-governance-and-decentralized-identity> ('Cointelegraph spoke to two ENS DAO delegates who applied for the opportunity to represent the community and stay involved in the decision making process: Victor Zhang, CEO of AlphaWallet, an open source Ethereum wallet, and Gregory Rocco, co-founder of Spruce, a decentralized ID and data toolkit for developers.' In the ENS DAO, and some others, holders of the DAO's token, \$ENS, can delegate their tokens to individuals with a larger stake in the organization (i.e. more tokens), and thereby increase the voting/governance power of the delegate. 'During the ENS token airdrop. 100 million total ENS tokens were distributed. While 25% went to users with .eth domains, another 25% of the tokens were allocated to those who 'contributed in significant ways to ENS over the last four years'. The other 50% remains in the DAO community treasury.' The ENS token distribution also illustrates the fact that individuals who contribute significantly (and non-monetarily) to a DAO's mission before the inception of the DAO itself can acquire significant voting/governance power.)

51 Wright, *supra* note 10. ('By rendering the decision-making process more transparent, secure, and autonomous, DAOs hold out the hope of being more responsive than existing legal entities.')

52 *Id.* ('By relying on a blockchain for voting, members can cryptographically verify the results of member votes, undefined and depending on whether identities are correlated with the addresses used for voting, who voted and how. DAO members' decisions are open for public audit by all members of the organization') citing A. Lafarre & C. Van der Elst, 'Blockchain Technology for Corporate Governance and Shareholder Activism', *European Corporate Governance Institute (ECGI) – Law Research Paper Series*, 15-16, 2018, [http://ssrn.com/abstract\\_id=3135209](http://ssrn.com/abstract_id=3135209).

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verifiability to be of use to the judiciary in a manner that is unprecedented in terms of verifying asset ownership and transfers.<sup>53</sup> In the context of a DAO built on a blockchain, decisions made through the voting systems discussed earlier are recorded on a public ledger that is accessible to all at all times.<sup>54</sup> While a corporation or LLC's board of directors make decisions behind closed doors and with little input or diversity of voting, DAOs incorporate widely varying voting positions, opinions and situations. Effectively, DAOs democratize organizational governance in a manner that is both more inclusive and more democratic.<sup>55</sup> The title of this section describes DAOs as legal entities which is only possible through Wyoming's novel statutory infrastructure and other similarly designed statutory schemes.<sup>56</sup> The advantages of transparency, diversified input in organizational decision-making and verifiability should not be underestimated.<sup>57</sup> The value inherent in all of these aspects of DAO governance should be understood as both legally desirable and significant in their prioritization of public trust in organizations. DAOs as legal entities have the potential to eliminate (or at least significantly reduce) the problems that one can observe in the governance of traditional corporations or LLCs such as insider trading, self-dealing and unauthorized power shifts at the executive level.<sup>58</sup>

The value of organizational law in general is well documented.<sup>59</sup> There is a vast body of statutes that are designed to properly govern the relationship between a

53 A. Bull, 'Regulators Everywhere Should Follow Wyoming's DAO Law', *Coindesk*, 8 July 2021, retrieved from <https://www.coindesk.com/markets/2021/07/08/regulators-everywhere-should-follow-wyomings-dao-law/> ('Without legislative recognition of the DAO structure, far more ambiguity would exist within the courts over verifying these smart contracts, costing additional time and resources.')

54 Wright, *supra* note 10.

55 *Id.* ('DAOs that rely on participatory input incorporate information and feedback from a wider group of stakeholders in a wider variety of situations and circumstances ... Indeed, the technologists building these systems often hope to empower large groups of people to participate in DAO-related decisions, aiming to eliminate the need for one or more central managers. If effective, this approach could draw into question a foundational principle of corporate governance: the allocation of managerial authority to the board of directors and its primacy.') citing S.M. Bainbridge, 'Director Primacy and Shareholder Disempowerment', *Harv. L. Rev.*, Vol. 119, No. 6, 2006, pp. 1735, 1745.

56 See footnote 2 of this piece for a brief acknowledgement of Tennessee's recently passed legislation of the same nature as the Wyoming statutes discussed in this piece.

57 Wright, *supra* note 10. ('By conducting and recording votes on a blockchain, participatory DAOs implement voting procedures that exhibit a high degree of transparency, while also avoiding opportunities for contested decision-making, fraudulent behavior, or simple mistake.')

58 *Id.* ('By relying on blockchain-based smart contracts, DAOs appear to reduce the likelihood of self-dealing and opportunistic behavior. As opposed to traditional organizations, DAOs are governed according to rigid rules defined in the code of smart contracts. This makes it possible to structure an organization in a more deterministic manner, with code detailing the rules for how members agree to cooperate.' The word 'deterministic' is crucial to this analysis. A DAO's smart contract(s) are ideally rigorous enough to mitigate the risk of large stakeholders controlling the contract and/or funds to their own benefit. For more on the 'deterministic' nature of code, an aspect of code that comes to life in the aphorism 'code is law', see Filippi, & Hassan, *supra* note 8.)

59 H. Hansmann & R. Kraakman, 'The Essential Role of Organizational Law', *Yale L. J.*, Vol. 110, No. 3, 2000, p. 387.

firm's owners and its managers.<sup>60</sup> The need for such statutes is clear – because a firm's board of directors make decisions about the direction of a firm, there must be clear guidelines regarding the board and the managers of a firm acting in their own interest. The mere possibility that individual actors can initiate transactions that are self-beneficiary has produced entire legal doctrines regarding fiduciary duties and self-dealing.<sup>61</sup> The problem of self-dealing is addressed by DAOs through the use of smart contracts as mechanisms of governance. The smart contracts that govern a DAO contain 'code detailing the rules for how members agree to cooperate'.<sup>62</sup> Much of the (financial) corporate malfeasance that happens at the executive level (or by the board of directors themselves) can be addressed and eliminated by DAOs due to their lack of board of directors and a lack of central leadership altogether. A well-designed DAO requires any expenditure to be approved by a complex voting process, and DAOs even require multi-signature authentication before funds can be dispersed. The distribution of organizational control and power among a DAO's members creates a need for consensus/coalition building, and avoids the possibility of rogue actors making unilateral decisions from which they alone benefit.

The transferability of ownership (and other firm assets) is something that is provided for by traditional organizational law.<sup>63</sup> However, the statutes governing such transfers do not in and of themselves create that possibility outright. The transferability of assets and ownership can be established by contract, something that DAOs have come to exemplify.<sup>64</sup> The acknowledgement of the complexity of these contracts should not be overlooked, and the smart contracts that govern

60 *Id.*, at 433. ('Much of organization law – such as rules concerning governance of the firm and distribution of the firm's earnings – regulates relationships among the owners of a firm and relations between the firm's owners and its managers.')

61 Hansmann & Kraakman, *supra* note 59, at 434. ('Consider, for example, the managers' duty of loyalty. This consists, in essence, of a promise on the part of the manager not to engage in self-interested transactions involving the firm's property and prospects. That promise – accompanied, if needed, by a definition in any appropriate level of detail of what types of transactions will be considered self-interested, and what forms of disclosure and approval are required – can simply be inserted into the firm's founding document and incorporated by reference in the employment contract with each of the firm's managers.' The contractual relationships described here can be coded into a smart contract. The need for individualized definitions of self-interested transactions is likely eliminated by a DAO structured such that all members are of equivalent executive position within the organization to the extent that each member has a say, although some more than others given voting shares and the given distribution of voting power among members.)

62 Wright, *supra* note 10.

63 Hansmann & Kraakman, *supra* note 59.

64 *Id.* ('Thus, to establish free transferability of ownership interests absent specific organizational law doctrine to that effect, it should be sufficient to put terms to that effect in the owners' association agreement and into the firm's contracts with each of its creditors. This might be burdensome, but it would not be infeasible. The contracting costs involved would presumably be comparable to those of establishing limited liability by contract.' The authors are arguing that these complex contractual relationships are possible through the common law of contracts, and without organizational law. However, the authors' overarching argument seems to be in favour of the value of organizational law as a means of codifying and solidifying the law of corporate and organizational governance. The Wyoming DAO statutes reflect exactly the sort of value these authors ascribe to laws of this nature. DAOs represent a notable innovation in the use of contracts as a means of private organizational

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DAOs are indeed rather complex. However, the difference between the complex ownership transfer contracts contemplated by Hansmann and Kraakman is that the contracts these authors discuss are likely not public records. A DAO's organizational advantages are both that it can operate effectively and continuously through contractual mechanisms, and that those operations are transparent and publicly available.

The role of Wyoming's DAO statutes here is not to create legal relationships where none can exist, but really to allow DAOs to take advantage of organizational law that might make their creation and governance more easily accessible and less costly. If a DAO's founders do not have to build out every aspect of the organization in the smart contracts that govern the DAO, but can instead appeal to the organizational law codified in Wyoming's corporate governance statutes, there is a great deal of time and money to be saved. That being said, it seems unlikely that a sufficiently sophisticated DAO would simply rely on the default statutory governance structures, just as a sufficiently sophisticated corporation would likely not do as much.

## VI *Objections and Responses*

One of the primary criticisms of Wyoming's novel DAO statutes is that DAOs have little incentive to tie themselves to a physical location.<sup>65</sup> DAOs are founded on the notion that complete decentralization maximizes the value of each member's input. However, the benefits inherent in legal personhood and limited liability should not be dismissed in favour of complete decentralization. For DAOs that hold significant funds, appealing to legal protection for both the funds and the members of the DAO likely will only become more important over time. It seems that it would only take one well-publicized lawsuit against a DAO or its members individually for DAOs to recognize the need for legal protection of the kind available to and widely used by traditional corporations and organizations.

Another criticism of the Wyoming statutory regime is that it automatically dissolves a DAO if it 'has failed to approve any proposals or take any actions for a period of one (1) year'.<sup>66</sup> Critics of this provision argue that if a DAO is functioning in a manner approved of by its constituents and no proposals are pending in need of approval or rejection, there is no need to take action, yet the DAO would be dissolved (at least in terms of its registration as an LLC with the State of Wyoming).<sup>67</sup>

governance, and their creation/innovation seems at least to have been partially (if not exactly) reflected or predicted in the authors' observations about the power of the common law of contracts.)

65 See Durham, *supra* note 27. (Durham's criticisms are not unique, and in fact the author of this paper even wrote a piece questioning whether DAOs would have any incentive to utilize Wyoming's DAO statutes. However, it should be clear that the benefits of legal personhood and limited liability most likely outweigh the benefits of a DAO remaining entirely decentralized and untethered. Legal protection and recognition are inherently valuable to an organization – especially as the assets of that organization reach significant amounts.)

66 WY Stat. § 17-31-114(a)(iv).

67 See Durham, *supra* note 27. (Durham writes that this requirement 'handicaps innovative DAO LLCs – projects should not have to take any actions if they are satisfied with their DAO's performance.' The point is well taken; however, it seems easily answered by a sufficiently active DAO interested in maintaining its LLC status.)

In other words, a DAO might be doing exactly what it is designed to do and require no intervention from its members to continue on that course, but the Wyoming statute would dissolve it nonetheless by default strictly for this failure to take (what would be unnecessary) action. There seems to be a simple resolution to this requirement, which seems designed to keep the members of a DAO interested and engaged in the actions of the organization. It is conceivable that compliance with this requirement would mean that any DAO-LLC registered in Wyoming would simply need to hold a vote on whether or not to dissolve the DAO within each year of its existence to satisfy this provision.<sup>68</sup> Beyond a continued existence proposal, any number of simple proposals would likely satisfy this statutory requirement. In short, the criticism levied against this provision is understandable; however, it seems easily overcome.

It may not be an objection per se, but DAOs registering in Wyoming still must be aware of federal securities regulations so as not to run afoul of registration requirements. As discussed earlier, the *Howey* test for determining whether an investment constitutes an investment contract has already been applied to cryptocurrencies/tokens, and has been applied in at least one DAO case.<sup>69</sup> In *S.E.C. v. Kik Interactive Inc.*, the court noted that ‘every cryptocurrency, along with the issuance thereof, is different and requires a fact-specific analysis’.<sup>70</sup> DAO membership tokens are often, if not always, exclusively cryptocurrencies (or at least blockchain tokens purchased with cryptocurrencies), and as such, can be subject to federal registration requirements. Per the *Howey* test, the particular facts of the investment situation are crucial – the test is founded on an analysis of substance rather than form. DAO founders must be aware of this test and choose either to actively create non-security investments, or register their tokens and organization with the SEC.

### VII Wyoming's DAO Statutes in Action

The American CryptoFed DAO became the first legally recognized DAO in the United States on 1 July 2021 when it received notice from the Wyoming Secretary of State's office of its application approval.<sup>71</sup> This DAO's mission is to ‘create a monetary system with zero inflation, zero deflation, zero transaction costs, and maximum employment’.<sup>72</sup> Although these are lofty goals, the final one, ‘maximum

68 In other words, a proposal to establish the continued existence of the DAO itself, with a voting window that ends within the statutory period, would likely satisfy this requirement.

69 Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Release No. 81207, 25 July 2017, retrieved from <https://www.sec.gov/litigation/investreport/34-81207.pdf>. See generally, footnote 20 in this article.

70 *S.E.C. v. Kik Interactive Inc.*, 19 Civ. 5244 (S.D.N.Y. 30 September 2020) (holding that the token at issue was subject to federal securities laws).

71 Cision, PR Newswire, *The American CryptoFed DAO Is Legally Recognized by the State of Wyoming as the First Decentralized Autonomous Organization (DAO) in the United States*, 4 July 2021, retrieved from <https://www.prnewswire.com/news-releases/the-american-cryptofed-dao-is-legally-recognized-by-the-state-of-wyoming-as-the-first-decentralized-autonomous-organization-dao-in-the-united-states-301325384.html>.

72 American CryptoFed DAO, Organizational mission statement printed on the DAO's website, retrieved from <https://www.americancryptofed.org/>.

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employment’, seems the most noteworthy. DAOs can employ individuals just as traditional corporations and organizations do. Without the overhead costs of executive management and central control, the costs of hiring new employees are lowered significantly. As mentioned in the previous section, DAOs have to be wary of how their tokens are issued (if tokens are issued, and for what purpose) and the American CryptoFed DAO has filed paperwork with the SEC acknowledging this need.<sup>73</sup> Interestingly, this DAO has stated in its SEC filing that its tokens, dubbed ‘Locke’ and ‘Ducat’, are ‘utility tokens’ and not securities, despite labelling both tokens as securities pursuant to Section 12(g) of the Securities Exchange Act of 1934 on the second page of the filing.<sup>74</sup> ‘Locke’ is the DAO’s governance token, and ‘Ducat’ is the DAO’s ‘deflationary stablecoin’.<sup>75</sup> The DAO is built upon the EOS protocol, a programmable blockchain similar to Ethereum.<sup>76</sup> The DAO’s website actually addresses the ‘legal certainty’ of its existence on its website’s homepage.<sup>77</sup>

73 American CryptoFed DAO, Whitepaper, retrieved from <https://www.americancryptofed.org/whitepaper>. (Whitepapers are generally issued by digital asset companies as a means of explaining to potential investors the means by which the token is distributed (referred to as ‘tokenomics’), and the mechanisms of a protocol’s governance, maintenance and growth. This practice began with the Bitcoin whitepaper which can be found at <https://bitcoin.org/bitcoin.pdf>.)

74 Form 10 General Form for Registration of Securities, Pursuant to Section 12(b) or (g) of The Securities Exchange Act of 1934, American CryptoFed DAO LLC, pages 2 and 5. (‘CryptoFed is registering Locke and Ducat tokens with the SEC as utility tokens, not as securities, for the purpose of disclosure. Form 10 allows CryptoFed to voluntarily become a reporting company for ongoing disclosure purposes and becomes effective sixty (60) days after the initial filing date regardless of whether there are outstanding SEC comments. Filing Form 10 does not mean CryptoFed concedes that Locke and Ducat tokens are securities.’)

75 American CryptoFed DAO, Homepage, retrieved from <https://www.americancryptofed.org/> (Stablecoins are ‘cryptocurrencies with values tied to fiat currencies or other assets.’ See D. Arner, R. Auer, & J. Frost, BIS Working Papers No. 905 *Stablecoins: Risks, Potential and Regulation*, November 2020, Bank for International Settlements, <https://www.bis.org/publ/work905.pdf>. The DAO’s website features numerous quotes from famous political and economic thinkers including Milton Friedman, Oliver E. Williamson, Ronald H. Coase and Ben Bernanke. The ‘Locke’ token is even named after John Locke.)

76 See footnote 3 in this article.

77 American CryptoFed DAO, Homepage, ‘DAO Legal Certainty’, retrieved from <https://www.americancryptofed.org/>. There is speculation that this characterization of the tokens was an attempt to test the SEC and force the Commission to commit to specific definitions. On 18 November 2022, the SEC initiated administrative proceedings against CryptoFed DAO due to the description of the tokens it planned to issue, and the SEC claimed that the tokens were in fact unregistered securities. David Hirsch, Chief of Enforcement’s Crypto Assets and Cyber Unit, was quoted in the SEC’s press release as follows: ‘American CryptoFed not only failed to comply with the disclosure requirements of the federal securities laws, but it also claimed that the securities transactions they seek to register are not in fact securities transactions at all.’ This case is still pending, and the proceedings have been live-streamed on at least one occasion. The implications of the results should not be ignored – this case represents the first enforcement action against a DAO organized under a state’s statutes designed for that exact organization purpose. Similarly, the implications for legal token issuance are just as important here. Because the Token *Safe Harbor Proposal 2.0* (see footnote 78) is not law, CryptoFed DAO’s appeal to the language therein is not binding or definitive, although one expects concerted analysis by the presiding administrative law judge on the definitions in that proposal. A. Zuckerman, *The SEC’s Enforcement Division Seems Fed Up With American CryptoFed*, Baker McKenzie Blog, 12 December 2022, retrieved 9 March 2023 from <https://blockchain.bakermckenzie.com/2022/12/12/the-secs-enforcement-division-seems-fed-up-with-american-cryptofed/>.



This DAO's founders also appeal to SEC commissioner Hester M. Pierce's 'Token Safe Harbor Proposal 2.0' which provides for a three-year grace period in which companies and organizations can develop and grow without filing registration documents with the SEC.<sup>78</sup> Because this rule is yet to be adopted, it is unclear at this time whether these tokens are actually securities.

The creation of this first legally recognized DAO-LLC is a milestone in both American legal history and the growth and development of blockchain technology. The American CryptoFed DAO is still in existence and its politico-economic mission statement seems to be grounded in the libertarian philosophies that permeate the digital asset economy.

## B Conclusion

The influence of Wyoming's innovative legislation is noticeable and is likely to continue given the size of the cryptocurrency markets.<sup>79</sup> As other states observe the effect and utility of Wyoming's legislation, the desire to attract similarly situated organizations and companies will likely grow. Legal recognition of the DAO structure has enumerable benefits for organizational governance, member protection and the adjudication of disputes between DAO members or between a DAO and other entities.<sup>80</sup> The legislation examined in this article represents a well-received answer to the constant request for legal clarification regarding the status of cryptocurrencies, tokens and the organizations that develop and issue these assets. DAOs are a modern example of the transparency and verifiability offered by blockchain technology, and laws such as those examined here validate those central aspects of blockchains in the eyes of the state. The natural consequence of that validation, as we are seeing in Tennessee and Vermont, is further validation and understanding of this technology.

While lawmakers are often criticized for moving slow, and not fully understanding blockchain technology as they attempt to reign in bad actors, Wyoming has once again demonstrated its willingness to tackle difficult issues. In 1977, Wyoming enacted the first legislation allowing for the formation of LLCs,

78 H.M. Pierce, *Token Safe Harbor Proposal 2.0*, Proposed Securities Act Rule 195. Time-limited Exemption for Tokens. 13 April 2021, retrieved from <https://www.sec.gov/news/public-statement/peirce-statement-token-safe-harbor-proposal-2.0> ('The safe harbor seeks to provide network developers with a three-year grace period within which, under certain conditions, they can facilitate participation in and the development of a functional or decentralized network, exempted from the registration provisions of the federal securities laws.') Because this is just a proposal for SEC rule-making, this is not law as of the writing of this article. In light of the increasingly hostile approach taken by the SEC under Gary Gensler against crypto businesses, and the increasing isolation of Commissioner Pierce at the SEC, it is also unlikely that the proposal will become law in the foreseeable future.

79 There is legislation in both the Tennessee and Vermont legislatures that addresses the legal status of DAOs, and both bills ostensibly prioritize innovation in an attempt to attract blockchain-based companies and organizations to the respective states. See footnote 6 for a brief analysis of the Tennessee regime.

80 Bull, *supra* note 53.

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pushing organization law into a new frontier.<sup>81</sup> The laws examined here represent the same state pushing its organizational law into yet another frontier, and other states have followed suit. Although Wyoming's DAO laws are still in their relative infancy, the attention these statutes have received in and of itself should be commendable. Lawmakers often highlight their business-friendly policy preferences, and in many cases that simply means catering to large established firms. Yet here, one sees a state's general assembly catering to a particular, and fairly novel, subset of organizations that do not have historical or financial power to assert themselves in the same ways as traditional corporations. Wyoming's statutes tangentially advocate for the proliferation and popular adoption of the DAO structure more broadly. It remains to be seen just how effective that advocacy will be.

81 See Wyoming Limited Liability Company Act, ch. 158, 1977 Wyo. Sess. Laws 577 (enacted 4 March 1977).