



September 8, 2024

Wyoming Legislative Select Committee on Blockchain,  
Financial Technology, and Digital Innovation Technology

**Re: Testimony on the Clarity of DAOs' Token Issuance**

Dear Chairman Rothfuss, Chairman Western, and Members of the Select Committee:

Thank you for the opportunity for American CryptoFed DAO (“CryptoFed”) to provide public testimony during the session of the Wyoming Secretary of State's Office scheduled at 10:45 AM – 12:00 PM in the Select Committee’s September 16, 2024 meeting. Scott Moeller and Xiaomeng Zhou will attend the session in person to provide oral public comments, based on this written testimony.

**I. BACKGROUND**

This testimony is to petition this Select Committee again to consider CryptoFed’s written proposal (attached as **Exhibit A**) which was submitted to this Select Committee and briefly discussed during the July 1, 2024 meeting. Since the last meeting of the Select Committee, CryptoFed has sent two letters on July 31, 2024 (attached as **Exhibit B**) and August 12, 2024 (attached as **Exhibit C**) respectively, to the Wyoming Secretary of State's Office, cc’ing this Select Committee, to seek for clarification on CryptoFed’s intra-state token issuance within the State of Wyoming. As of today, the only response to CryptoFed’s two letters was a brief



statement by Deputy Secretary of State, Jesse Naiman, emphasizing, “I would note that we previously declined to answer this question, per my email dated December 8, 2023.”

## II. CRYPTOFED’S PETITION

In order to make both the Wyoming Decentralized Autonomous Organization Supplement and Wyoming Decentralized Unincorporated Nonprofit Association Act functional, CryptoFed petitions this Select Committee again to consider adding a paragraph to W.S. 17-4-605(d) of Wyoming Uniform Securities Act, similar to the following proposed paragraph:

**If the secretary of state declines to answer questions sought by a Decentralized Autonomous Organization or a Decentralized Unincorporated Nonprofit Association, the declination is a determination that the secretary of state will not institute a proceeding or an action against the Decentralized Autonomous Organization or the Decentralized Unincorporated Nonprofit Association for engaging in the specified activities raised by the questions.**

## III. BENEFITS OF CRYPTO FED’S PROPOSAL

The Wyoming’s Supreme Court held in *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977), “A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application **violates the first essential of due process of law.**” (emphasis added). The U.S Supreme Court held in *Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358, “As generally stated, the void-for-vagueness doctrine requires that **a penal statute define the criminal offense with sufficient**



**definiteness** that ordinary people can understand what conduct is prohibited and in a manner that does not encourage **arbitrary and discriminatory enforcement.**” (emphasis added).

CryptoFed’s proposal has at least three benefits from a practical perspective:

- i) The Wyoming Secretary of State's Office can exercise regulatory oversight without the legal obligation of providing clarity as to what tokens are securities and what are not. Under existing federal and state laws (Supra, *Sanchez v. State; Kolender v. Lawson*), the Wyoming Secretary of State's Office does have this obligation.
- ii) By the proposed legislation, this Select Committee and the Wyoming Legislature can provide legal clarity to Wyoming DAOs without the necessity of defining what tokens are securities and what are not.
- iii) Wyoming DAOs will have a clear and specific guidance to innovate and explore the frontiers of a token economy without “be[ing] required at peril of life, liberty or property **to speculate as to the meaning of penal statutes.**” (Supra, *Sanchez v. State*, emphasis added).

#### IV. CONCLUSION

For all the reasons set forth above, CryptoFed respectfully petitions this Select Committee again to consider CryptoFed’s proposal. CryptoFed hopes that the Wyoming Secretary of State's Office will support this proposal, because this proposal can fundamentally reduce the burden of the Wyoming Secretary of State’s Office to comply with the obligations



mandated by the Wyoming's Supreme Court (Supra, *Sanchez v. State* ) and the U.S. Supreme Court (Supra, *Kolender v. Lawson*).

CryptoFed appreciates the pioneering efforts of Wyoming's lawmakers to explore the potential of cryptocurrencies in the real world. We look forward to an ongoing dialogue with Wyoming's legislators.

Sincerely,

/s/ Scott Moeller

DocuSigned by:  
*Scott Moeller*  
A82E97EDD0C44FD...

Scott Moeller

Organizer, American CryptoFed DAO  
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

Signed by:  
*Xiaomeng Zhou*  
6F7F189BD770455...

Xiaomeng Zhou

Organizer, American CryptoFed DAO  
zhouxm@americancryptofed.org

# **Exhibit A**



June 25, 2024

Wyoming Legislative Select Committee on Blockchain,  
Financial Technology, and Digital Innovation Technology

**Re: Testimony on DAOs' Token Issuance Clarification**

Dear Chairman Rothfuss, Chairman Western, and Members of the Select Committee:

Thank you for the opportunity for American CryptoFed DAO (“CryptoFed”) to provide public testimony for the session of Wyoming Secretary of State's Office during the Select Committee’s July 1st, 2024 meeting. We will attend the session to provide oral public comments, based on this written testimony. Xiaomeng Zhou will attend in person, while Scott Moeller will attend online.

**I. CRYPTOFED’S PETITION**

In order to make the Wyoming Decentralized Autonomous Organization Supplement and Wyoming Decentralized Unincorporated Nonprofit Association Act functional, CryptoFed petitions the Select Committee to consider adding a paragraph to W.S. 17-4-605(d) of Wyoming Uniform Securities Act, similar to the following proposed paragraph:

**If the secretary of state declines to answer questions sought by a Decentralized Autonomous Organization or a Decentralized Unincorporated Nonprofit Association, the declination is a determination that the secretary of state will not institute a proceeding or an action against the Decentralized Autonomous**

**Organization or the Decentralized Unincorporated Nonprofit Association for engaging in the specified activities raised by the questions.**

## **II. FACTUAL BACKGROUND**

CryptoFed is the first Wyoming DAO established on July 1st, 2021, under the Wyoming Decentralized Autonomous Organization Supplement, about three years ago. During this period, CryptoFed has done its best to explore these methodologies of issuing tokens which are compatible with the Wyoming Uniform Securities Act. After tireless efforts for three years, CryptoFed has no choice but to petition this Select Committee to add the paragraph above to W.S. 17-4-605(d), because on December 8th, 2023, Mr. Jesse Naiman, Deputy Secretary of State formally notified CryptoFed of the following decision:

We have received your request for an answer to this question: “As of [November, 25, 2023], can American CryptoFed DAO legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge?”

Your request is governed by W.S. 17-4-605(d), which states:

The secretary of state **may** provide interpretative opinions or issue determinations that the secretary of state will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. A rule adopted or order issued under this act may establish a reasonable charge for interpretative opinions or determinations that the secretary of state will not institute an action or a proceeding under this act.

**After reviewing your request, the Secretary of State’s Office declines to answer your question at this time.** (emphasis added).

**III. MANDATE BY WYOMING'S SUPREME COURT AND  
THE U.S. SUPREME COURT**

1. The Wyoming's Supreme Court states in *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977) (emphasis added):

In *State v. Gallegos*, Wyo., 384 P.2d 967, 968, we categorized some of the principles of due process previously discussed in *Day v. Armstrong*, Wyo., 362 P.2d 137, 147-148, as follows:

- "1. The requirement of a **reasonable degree of certainty** in legislation, especially in the criminal law, is a well-established element of the guarantee of due process of law.  
 "2. No one may be required at peril of life, liberty or property to **speculate as to the meaning of penal statutes**.  
 "3. All are entitled to be informed **as to what the state commands or forbids**.  
 "4. A statute which either forbids or requires the doing of an act in terms **so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law**.  
 "5. The constitutional guarantee of equal rights under the law (see Art. 1, §§ 2 and 3, Wyoming Constitution) will not tolerate a criminal law **so lacking in definition that each defendant is left to the vagaries of individual judges and juries**."

2. The U.S. Supreme Court's opinion states in *Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358 (emphasis added):

**As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.** *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, supra; *Smith v. Goguen*, 415 U. S. 566 (1974); *Grayned v. City of Rockford*, 408 U. S. 104 (1972); *Papachristou v. City of Jacksonville*, 405 U. S. 156 (1972); *Connally v. General Construction Co.*, 269 U. S. 385 (1926). Although the doctrine focuses both on actual notice to citizens and **arbitrary enforcement**, we have recognized recently that **the more important aspect of the vagueness doctrine** "is not actual notice, but the other principal element of the doctrine — **the requirement that a legislature establish minimal guidelines to govern law enforcement**." *Smith*, 415 U. S., at 574. **Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."** *Id.*, at 575.





For all the reasons set forth above, CryptoFed respectfully petitions this Select Committee to consider CryptoFed's proposal. CryptoFed hopes that Wyoming Secretary of State's Office will support this proposal, because it can fundamentally reduce the burden of Wyoming Secretary of State's Office to comply with the mandate by the Wyoming's Supreme Court and the U.S. Supreme Court.

CryptoFed appreciates the pioneering efforts of Wyoming's lawmakers to explore the potential of cryptocurrencies in the real world. We look forward to an ongoing dialogue with Wyoming's legislators.

Sincerely,

/s/ Scott Moeller

DocuSigned by:  
*Scott Moeller*  
A82E97EDD0C44FD...

Scott Moeller

Organizer, American CryptoFed DAO  
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

DocuSigned by:  
*Xiaomeng Zhou*  
6F7F189BD770455...

Xiaomeng Zhou

Organizer, American CryptoFed DAO  
zhouxm@americancryptofed.org

# **Exhibit B**



July 31, 2024  
Via Electronic Email

Secretary of State, Chuck Gray, [chuck.gray@wyo.gov](mailto:chuck.gray@wyo.gov)  
Deputy Secretary of State, Jesse Naiman, [jesse.naiman1@wyo.gov](mailto:jesse.naiman1@wyo.gov)  
Compliance Division Director, Kelly Janes, [kelly.janes@wyo.gov](mailto:kelly.janes@wyo.gov)  
Business Division Director, Colin Crossman, [colin.crossman@wyo.gov](mailto:colin.crossman@wyo.gov)  
Wyoming Secretary of State's Office,  
Herschler Building East, 122 W 25th St.  
Suites 100 and 10, Cheyenne, WY 82002-0020

CC:

Co-Chairman, Senator Chris Rothfuss, [Chris.Rothfuss@wyoleg.gov](mailto:Chris.Rothfuss@wyoleg.gov)  
Co-Chairman, Representative Cyrus Western, [Cyrus.Western@wyoleg.gov](mailto:Cyrus.Western@wyoleg.gov)  
All Members of Wyoming Legislative Select Committee on Blockchain, Financial Technology  
and Digital Innovation Technology

Re: Request for Clarity on Intrastate Token Issuance within Wyoming

Dear Secretary Gray, Deputy Secretary Naiman, Director Janes and Director Crossman,

Thank you very much for the opinion of the Secretary of State's Office during the July 1, 2024 meeting of the Wyoming Legislative Select Committee on Blockchain, Financial Technology and Digital Innovation Technology ("Select Committee") regarding the token issuance of American CryptoFed DAO ("CryptoFed"). During the 15-minute discussion<sup>1</sup>, the Secretary of State's Office did not raise any Wyoming statute, regulation or any binding precedent that CryptoFed may possibly violate if CryptoFed distributes its Locke governance tokens to its contributors within the State of Wyoming ("Intrastate Token Issuance"), free of charge.

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<sup>1</sup> Available at 2:09:19 -2:23:51, <https://www.youtube.com/live/-fs6TE654es>

However, before CryptoFed begins any intrastate issuance of Locke tokens within Wyoming in Q4 2024, in order to avoid misunderstandings and for the purpose of compliance, CryptoFed is seeking clarity from the Secretary of State's Office on the following question:

Does CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without a registration filing, violate any Wyoming statute, regulation, or any binding precedent under the jurisdiction of the Secretary of State's Office? ("CryptoFed Question")

CryptoFed would be very grateful if the Secretary of State's Office would answer this CryptoFed Question prior to September 16, 2024 when the next Select Committee meeting will be held in Laramie. CryptoFed hopes this matter can be discussed at the next Select Committee meeting, because i) CryptoFed's issuance of Locke token can prove that the Wyoming DAO legislation is functional; and ii) the opinion of the Secretary of State's Office is the only regulatory hurdle CryptoFed needs to overcome prior to its intrastate issuance of Locke tokens within the sovereign borders of Wyoming. To help inform the Secretary of State's answer to the CryptoFed Question, CryptoFed provides the following factual background and legal argument as to why Locke tokens are not securities.

## **I.** **Statement of Material Facts**

To accomplish its mission, CryptoFed has designed a dual-token economy to operate in tandem under the names of Locke and Ducat. The Ducat token will have an unlimited issuance only constrained by the metrics of zero inflation and zero deflation as measured by the PCE price index published monthly by the Bureau of Economic Analysis, the US Department of Commerce. The Ducat token will be used as a crypto currency for the daily purchases of goods and services, a unit of account, and a store of value. The Locke token is a governance token with



a finite number not to exceed 10 trillion total tokens. Locke holders are decentralized and oversee the policies and rules which will facilitate the Ducat economy.

CryptoFed anticipates the intrastate distribution of Locke tokens within Wyoming, free of charge, will take place from Q4 2024 through Q4 2026. This letter focuses solely on this intrastate distribution of Locke tokens from Q4 2024 through Q4 2026 within Wyoming. Ducat tokens will not be distributed until after January of 2027. CryptoFed does not seek an opinion from the Secretary of State's Office on the issuance of the Ducat token at this time and will do so around Q2 2026 prior to its distribution.

The Locke tokens to be distributed from Q4 2024 through Q4 2026 will have the following characteristics:

- i) CryptoFed creates Locke tokens in ERC-20 format.
- ii) CryptoFed distributes certain Locke tokens, free of charge, to Wyoming individual residents and Wyoming legal entities (intrastate distribution) who have made, are making and will make non-monetary contributions to CryptoFed ("Contributors") in one way or another.
- iii) The Contributors, at their own discretion, may sell the Locke tokens on centralized or decentralized crypto swaps or exchanges, the natural result of which is the independent formation of a secondary market for Locke tokens.
- iv) CryptoFed will not have control, obligations or rights related to these Locke tokens distributed to Contributors, although the holders of these Locke tokens will have rights to participate in the CryptoFed's governance.

## **II.** **Howey Test**

In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 298–99, the US Supreme Court stated “an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person [(1)] invests his money [(2)] in a common enterprise and [(3)] is led to expect profits solely from the efforts of the promoter or a third party.” The US Supreme Court further emphasized, “The test is whether the scheme involves [(1)] an investment of money [(2)] in a common enterprise [(3)] with profits to come solely from the efforts of others.” *Id.*, at 301. An investment contract exists in a specific transaction if the three prongs are simultaneously satisfied. In other words, the absence of one of the three prongs will result in the conclusion that no investment contract exists.

The first prong of *Howey* examines whether an “investment of money” was part of the relevant transaction. *Id.*, at 301. Here, the CryptoFed’s Contributors do not invest money by providing fiat or other assets in exchange for Locke token.

The third prong of *Howey* examines whether the economic reality surrounding the distribution of Locke tokens will lead the CryptoFed’s Contributors to “expect profits solely from the efforts of the promoter or a third party,” *Id.*, 298–99. Here, the CryptoFed’s Contributors understand that they have to contribute their own efforts and do not expect profits “solely from the efforts of others” *Id.*, at 301. Given that these Contributors do not invest money by providing fiat or other assets, and given that Wyo. Stat. § 17-31-110 specifies, “no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member,” it would be unreasonable to assume that CryptoFed’s Contributors as Locke token holders will expect profits “solely from the efforts of others” *Id.*, at 301, if no member has any fiduciary duty to make any efforts to generate profit for Locke token holders.

As a result, an investment contract under the Securities Act of 1933 and Wyo. Stat. § 17-4-102 (xxviii) does not exist in the transaction that CryptoFed distributes Locke tokens, free of charge, only to Wyoming individual residents and Wyoming legal entities (intrastate distribution) who have made, are making and will make non-monetary contributions to CryptoFed in one way or another. This conclusion is independent of whether or not the second prong of *Howey*, the existence of a “common enterprise,” 328 U.S. at 301, can be demonstrated in CryptoFed. The absence of the first and the third prongs of *Howey* are sufficient to prove that no investment contract exists in the transaction distributing Locke tokens to CryptoFed’s Contributors free of charge. Any rebuttal to this conclusion would need to prove that the transaction satisfies simultaneously both the first and the third prongs of *Howey*.

### **III.** **Exclusive Jurisdiction of the Secretary of State’s Office**

Director Crossman raised the issue of Federal “covered securities” during the July 1, 2024 meeting of the Select Committee.<sup>2</sup> However, “covered securities” does not preclude the State of Wyoming from regulating intrastate transactions. The boundary between the State of Wyoming’s rights and Federal rights is clearly defined in the matter of securities regulation. Below are the statements of the U.S. Securities and Exchange Commission (Release No. 33-7524, File No. S7-11-98, Request for Comments)<sup>3</sup> which recognize this boundary:

A dual system of federal-state securities regulation has existed since the adoption of the federal regulatory structure in the Securities Act of 1933 (the “Securities Act”).

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<sup>2</sup> Available at 2:19:43 -2:21:10, <https://www.youtube.com/live/-fs6TE654es>

<sup>3</sup> Available at <https://www.sec.gov/rules-regulations/1998/04/securities-uniformity-annual-conference-uniformity-securities-laws> ).

The 1996 Act amended section 18 of the Securities Act to preempt state blue-sky registration and review of securities offerings of “covered securities.” “Covered securities” are defined by section 18 and include several types of securities, including “nationally traded securities,” i.e., securities traded on the New York Stock Exchange, Inc. (“NYSE”), American Stock Exchange, Inc. (“AMEX”) or the Nasdaq National Market System (“Nasdaq/NMS”).

**Securities that are not ‘covered securities’ remain subject to state registration requirements.** (emphasis added).

In September 2021, CryptoFed has filed Form 10 and Form S-1 registrations with the U.S. Securities and Exchange Commission (“SEC”) against which the SEC has instituted two proceedings to stop these registrations (*see* SEC’s public dockets for Form 10 and Form S-1 proceedings).<sup>4</sup> However, the SEC has still not made rulings on these two proceedings even though the deadlines for each have long passed. Regarding the Form 10 proceedings, CryptoFed keeps filing monthly letters to urge the SEC to make a ruling<sup>5</sup>. Regarding the Form S-1 proceedings, the SEC issued an Order Extending Time to Issue Decision.<sup>6</sup> The SEC’s inability to make rulings for its formal proceedings indicate that CryptoFed’s Locke tokens will not become Federal “covered securities”. A deadlock has ensued, in which the SEC has neither legal infrastructure to handle CryptoFed’s non-securities tokens, nor legal authority to stop CryptoFed’s registration filings for the purposes of compliance and disclosure. However, the deadlock is a milestone for CryptoFed’s achievement, to the extent that the deadlock will effectively preempt the SEC from accusing CryptoFed of issuing unregistered securities. Since

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<sup>4</sup> Available at <https://www.sec.gov/litigation/apdocuments/3-20650> and <https://www.sec.gov/litigation/apdocuments/3-21243>

<sup>5</sup> The letters from February through June 2024 were published in the SEC docket, available at <https://www.sec.gov/enforcement-litigation/administrative-proceedings/3-20650>

<sup>6</sup> Available at <https://www.sec.gov/files/litigation/opinions/2024/33-11288.pdf>



2021, CryptoFed has regularly updated the Secretary of State's Office on the status of these two proceedings.

Given that CryptoFed's Locke tokens are not Federal "covered securities", the Wyoming Secretary of State's Office has an exclusive jurisdiction over this matter, because CryptoFed as a Wyoming legal entity will distribute Locke tokens, free of charge, *only* to Wyoming individual residents and Wyoming legal entities (intrastate distribution). During the July 1, 2024 meeting of the Select Committee, Secretary Gray made the statement, "The issue is really with the SEC, not with our office."<sup>7</sup> However, his statement mischaracterized the nature of this matter and confused the clear boundary of State of Wyoming's rights vs. Federal rights. Under a dual system of federal-state securities regulation, the State of Wyoming has its sovereign rights to make its decision on CryptoFed's Intrastate Token Issuance independent of the SEC as a Federal agency. If the Secretary of State's Office voluntarily defers to the SEC's decisions even in the matter of an intrastate transaction, the Blockchain initiatives of a series of Wyoming legislations will be fatally and effectively stifled.

The Select Committee, during the July 2, 2024 meeting, discussed a bill (25LSO-0090 Working Draft 0.4)<sup>8</sup> entitled Defense of State Banking, which stated: "AN ACT relating to banks, banking and finance; requiring the attorney general to take action **to defend the state's interest in the dual banking system...**" (emphasis added). In the same spirit, in order for Wyoming DAOs to survive and thrive, CryptoFed urges the Secretary of State's Office "**to defend the state's interest in the dual**" (*ibid*) **federal-state securities regulation system**, instead of willingly abandoning the sovereign autonomy and rights of the State of Wyoming.

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<sup>7</sup> Available at 2:16:50 -2:17:12, <https://www.youtube.com/live/-fs6TE654es>

<sup>8</sup> Available at p.1 <https://wyoleg.gov/InterimCommittee/2024/S19-2024070125LSO-0090v0.4.pdf>

**IV****Mandate by the Supreme Courts of the U.S. and Wyoming**

To be clear, CryptoFed does not seek legal advice from the Secretary of State's Office. CryptoFed has conducted its own legal analysis of the *Howey* test as demonstrated in Section II of this letter. What CryptoFed seeks is a clarity from the Secretary of State's Office, as a regulator, as to whether CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without a registration filing, violates any Wyoming statute, regulation, or any binding precedent under the jurisdiction of the Secretary of State's Office. For the purpose of compliance, CryptoFed needs a Yes or No answer. In an email dated December 8th, 2023, Deputy Secretary Naiman declined to provide a Yes or No answer. However, as the following legal binding precedents demonstrate, the Secretary of State's Office is mandated by the Wyoming's Supreme Court and the U.S. Supreme Court to provide CryptoFed with clarity.

1. The Wyoming's Supreme Court stated in *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977) (emphasis added):

In *State v. Gallegos*, Wyo., 384 P.2d 967, 968, we categorized some of the principles of due process previously discussed in *Day v. Armstrong*, Wyo., 362 P.2d 137, 147-148, as follows:

- "1. The requirement of a **reasonable degree of certainty in legislation**, especially in the criminal law, is a well-established element of the **guarantee of due process of law**.
- "2. No one may be required at peril of life, liberty or property to **speculate as to the meaning of penal statutes**.
- "3. All are entitled to be informed **as to what the state commands or forbids**.
- "4. A statute which either forbids or requires the doing of an act in terms **so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law**.
- "5. The constitutional guarantee of equal rights under the law (see Art. 1, §§ 2 and 3, Wyoming Constitution) will not tolerate a criminal law **so lacking in definition that each defendant is left to the vagaries of individual judges and juries**."

2. The Wyoming's Supreme Court stated in *Griego v. State*, Wyo., 761 P.2d 973, 976 (1988) (emphasis added):

We must next decide whether the statute is **unconstitutionally vague as applied to appellant's conduct**. In making this determination we must decide whether the statute provides **sufficient notice to a person of ordinary intelligence that appellant's conduct was illegal** and whether the facts of the case demonstrate **arbitrary and discriminatory enforcement**.

3. The U.S. Supreme Court's opinion stated in *Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358 (emphasis added):

As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, supra; *Smith v. Goguen*, 415 U. S. 566 (1974); *Grayned v. City of Rockford*, 408 U. S. 104 (1972); *Papachristou v. City of Jacksonville*, 405 U. S. 156 (1972); *Connally v. General Construction Co.*, 269 U. S. 385 (1926). Although the doctrine focuses both on actual notice to citizens and **arbitrary enforcement**, we have recognized recently that **the more important aspect of the vagueness doctrine** "is not actual notice, but the other principal element of the doctrine — **the requirement that a legislature establish minimal guidelines to govern law enforcement.**" *Smith*, 415 U. S., at 574. **Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."** *Id.*, at 575.

4. The US Supreme Court's opinion stated in *Lanzetta v. New Jersey*, 306 U. S. 451 (1939) at 453, (emphasis added):

**No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.** The applicable rule is stated in *Connally v. General Construction Co.*, 269 U.S. 385, 391: **"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."**



V  
**Conclusion**

Wyo. Stat. § 17-4-605(d) authorizes Secretary of State's Office to provide CryptoFed with a clarity, and the U.S. Supreme Court and the Wyoming's Supreme Court mandate the Secretary of State's Office to do so. Taken together, the Secretary of State's Office not only has the authority but also has the obligation to provide CryptoFed with clarity from the perspective of a regulator.

For all the reasons set forth above, CryptoFed respectfully requests the Secretary of State's Office to answer the following CryptoFed Question prior to the next Select Committee meeting scheduled on September 16-17, 2024:

Does CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without a registration filing, violate any Wyoming statute, regulation, or any binding precedent under the jurisdiction of the Secretary of State's Office?

CryptoFed looks forward to a written answer from the Secretary of State's Office and appreciates all the help of the Secretary of State's Office in exploring the crypto frontier, as always.

Sincerely,

/s/ Scott Moeller

DocuSigned by:  
*Scott Moeller*  
A82E97EDD0C44FD...

Name: Scott Moeller

Title: Organizer/President

scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

Signed by:  
*Xiaomeng Zhou*

6F7F189BD770455...  
Name: Xiaomeng Zhou

Title: Organizer/COO

zhouxm@americancryptofed.org

# **Exhibit C**



August 12, 2024  
Via Electronic Email

Secretary of State, Chuck Gray, [chuck.gray@wyo.gov](mailto:chuck.gray@wyo.gov)  
Deputy Secretary of State, Jesse Naiman, [jesse.naiman1@wyo.gov](mailto:jesse.naiman1@wyo.gov)  
Compliance Division Director, Kelly Janes, [kelly.janes@wyo.gov](mailto:kelly.janes@wyo.gov)  
Business Division Director, Colin Crossman, [colin.crossman@wyo.gov](mailto:colin.crossman@wyo.gov)  
Wyoming Secretary of State's Office,  
Herschler Building East, 122 W 25th St.  
Suites 100 and 10, Cheyenne, WY 82002-0020

CC:

Co-Chairman, Senator Chris Rothfuss, [Chris.Rothfuss@wyoleg.gov](mailto:Chris.Rothfuss@wyoleg.gov)  
Co-Chairman, Representative Cyrus Western, [Cyrus.Western@wyoleg.gov](mailto:Cyrus.Western@wyoleg.gov)  
All Members of Wyoming Legislative Select Committee on Blockchain, Financial Technology  
and Digital Innovation Technology

Re: Request for Clarity on Intrastate Token Issuance within Wyoming

Dear Secretary Gray, Deputy Secretary Naiman, Director Janes and Director Crossman,

Thank you very much for the short email response from Deputy Secretary Naiman dated August 1, 2024 (“SOS August 1, 2024 Email”) to CryptoFed’s July 31, 2024 Letter. For the convenience of our discussion, we include the SOS August 1, 2024 Email in its entirety at the end of this letter (following the signature page). The SOS August 1, 2024 Email stated the following:

Thank you for your inquiry, which we will review.

I would note that we previously declined to answer this question, per my email dated December 8, 2023. (“SOS December 8, 2023 Email”).

**I****The Secretary of State's Obligation to Provide Clarity**

The SOS December 8, 2023 Email above notified CryptoFed of the following decision:

We have received your request for an answer to this question: “As of [November, 25, 2023], can American CryptoFed DAO legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge?”

Your request is governed by W.S. 17-4-605(d), which states:

The secretary of state **may** provide interpretative opinions or issue determinations that the secretary of state will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. A rule adopted or order issued under this act may establish a reasonable charge for interpretative opinions or determinations that the secretary of state will not institute an action or a proceeding under this act.

**After reviewing your request, the Secretary of State's Office declines to answer your question at this time.** (emphasis added).

However, the Wyo. Stat. § 17-4-605(d) cited above authorizes the Secretary of State's Office to provide CryptoFed with clarity, but it does not authorize the Secretary of State's Office to decline to provide CryptoFed with clarity. The SOS December 8, 2023 Email and the SOS August 1, 2024 Email inevitably raise a fundamental question:

Can the Secretary of State's Office provide at least one legal binding precedent (case law) to substantiate the legal position that the government agencies of the State of Wyoming in general and the Secretary of State's Office in particular are allowed by laws to decline to provide CryptoFed with clarity?

The Due Process Clause of the Fourteenth Amendment of the US Constitution, the Due Process Law of Art. 1, § 6, of the Wyoming Constitution, the legal binding precedents of Wyoming's Supreme Court and the U.S. Supreme Court, all mandate the Secretary of State's

Office to provide CryptoFed with clarity. The Due Process Clause of the Fourteenth Amendment of the US Constitution states: “nor shall any State deprive any person of life, liberty, or property, without **due process of law.**” (emphasis added). The Due Process Law of Art. 1, § 6, of the Wyoming Constitution states: “No person shall be deprived of life, liberty or property without **due process of law.**” (emphasis added). In CryptoFed’s July 31, 2024 Letter, CryptoFed cited two legal binding precedents of the Wyoming’s Supreme Court (*Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977); *Griego v. State*, Wyo., 761 P.2d 973, 976 (1988)), and two legal binding precedents of the U.S. Supreme Court (*Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358; *Lanzetta v. New Jersey*, 306 U. S. 451 (1939) at 453 ) to prove that the Secretary of State’s Office has the obligation to provide CryptoFed with clarity from the perspective of a regulator. For the sake of simplicity, here we just cite the opinion of Wyoming’s Supreme Court in *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977) as below (emphasis added) to make our point:

In *State v. Gallegos*, Wyo., 384 P.2d 967, 968, we categorized some of the principles of **due process** previously discussed in *Day v. Armstrong*, Wyo., 362 P.2d 137, 147-148, as follows:

- "1. The requirement of a **reasonable degree of certainty in legislation**, especially in the criminal law, is a well-established element of the **guarantee of due process of law.**
- "2. No one may be required at peril of life, liberty or property to **speculate as to the meaning of penal statutes.**
- "3. All are entitled to be informed **as to what the state commands or forbids.**
- "4. A statute which either forbids or requires the doing of an act in terms **so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.**
- "5. The constitutional guarantee of equal rights under the law (see Art. 1, §§ 2 and 3, Wyoming Constitution) will not tolerate a criminal law **so lacking in definition that each defendant is left to the vagaries of individual judges and juries.**"

Therefore, unless the Secretary of State’s Office can provide a legal binding precedent to prove the contrary, it is inevitable to conclude that the legal position of the Secretary of State’s Office, declining to provide CryptoFed with clarity, violates the Due Process Clause of the



Fourteenth Amendment of the US Constitution and the Due Process Law of Art. 1, § 6, of the Wyoming Constitution, shown by the legal binding precedents of the Wyoming's Supreme Court and the U.S. Supreme Court.

## II Due Process and Void of Vagueness Doctrine

When the Secretary of State's Office declined to provide CryptoFed with clarity in both the SOS December 8, 2023 Email and the SOS August 1, 2024 Email, CryptoFed assumed that the Secretary of State's Office acted in good faith. Good faith here is used to encompass honest dealing and requires an honest belief, faithful performance of duties, and observance of fair dealing standards. Therefore, acting in good faith means that the Secretary of State's Office really did *not* know the answer to the CryptoFed's question, when it said "After reviewing your request, the Secretary of State's Office declines to answer your question at this time" in the SOS December 8, 2023 Email, and "I would note that we previously declined to answer this question, per my email dated December 8, 2023" in the SOS August 1, 2024 Email. In other words, if the Secretary of State's Office had known the answer, it would have informed CryptoFed in good faith rather than declining to answer CryptoFed's question.

In *Giles v. State*, Wyo. 96 P.3d 1027 (Wyo. 2004) ¶ 15, the Supreme Court of Wyoming stated (emphasis added):

As identified in *Alcalde v. State*, 2003 WY 99, ¶ 13, 74 P.3d 1253, ¶ 13 (Wyo. 2003), a statute may be challenged for vagueness "on its face" or "as applied" to particular conduct. When a statute is challenged for vagueness on its face, the court examines the statute not only in light of the complainant's conduct, but also as it might be applied in other situations. **On the other hand, when a statute is challenged on an "as applied" basis, the court examines the statute solely in light of the complainant's specific conduct.**

In *Griego v. State*, 761 P.2d 973, 976 (Wyo. 1988), the Supreme Court of Wyoming stated (emphasis added):

We must next decide whether the statute is **unconstitutionally vague as applied to appellant's conduct**. In making this determination we must decide whether the statute provides sufficient notice to **a person of ordinary intelligence** that **appellant's conduct was illegal** and whether the facts of the case demonstrate **arbitrary and discriminatory enforcement**.

Given that the Secretary of State's Office was unable to provide CryptoFed with an answer, not only is it impossible for CryptoFed as "a person of ordinary intelligence" (*Supra, Griego v. State*) to know whether its intended conduct is illegal, but also it is impossible for the Secretary of State's Office to enforce the law without "arbitrary and discriminatory enforcement". (*Supra, Griego v. State*). Therefore, in no event, can the Secretary of State's Office enforce the Wyoming Uniform Securities Act, without violating the Due Process Law of Art. 1, § 6, of the Wyoming Constitution and the parallel Due Process Clause of the Fourteenth Amendment of the US Constitution. As a result, CryptoFed can make an as-applied constitutional challenge to the Wyoming Uniform Securities Act, and can argue that the Wyoming Uniform Securities Act is void for vagueness as applied to CryptoFed's specific conduct of distributing its Locke tokens to its contributors within the State of Wyoming (intrastate token issuance or distribution), free of charge, because the Wyoming Uniform Securities Act not only fails to provide fair notice of forbidden conduct to CryptoFed, but also allows arbitrary and discriminatory enforcement by the Secretary of State's Office.

Wyoming Legislative Service Office in a memorandum dated July 24, 2023<sup>1</sup> also emphasized:

In Wyoming, a statute is void for vagueness "if it fails to give a person of ordinary sensibility fair notice that the contemplated conduct is forbidden." *Keser v.*

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<sup>1</sup> Available at p.3, [https://wyoleg.gov/InterimCommittee/2023/04-2023080806-02\\_24LSO-0076\\_Parentalrightsineducation-1WD0.2.pdf](https://wyoleg.gov/InterimCommittee/2023/04-2023080806-02_24LSO-0076_Parentalrightsineducation-1WD0.2.pdf)

*State*, 706 P.2d 263, 265-266 (Wyo. 1985). A statute violates **due process** if people "must necessarily guess at its meaning and differ as to its application." *Id.* at 266. A **statute may be challenged as void for vagueness** as a facial challenge (which is available only when the statute reaches a substantial amount of constitutionally protected conduct or when the statute specifies no standard of conduct at all) or **an as-applied challenge**. *Giles v. State*, 2004 WY 101, ¶ 15, 96 P.3d 1027, 1031-32 (Wyo. 2004).

By declining to provide clarification sought by CryptoFed, the Secretary of State's Office has not only violated the Due Process Clause of the Fourteenth Amendment of the US Constitution, the Due Process Law of Art. 1, § 6, of the Wyoming Constitution, the legal binding precedents of Wyoming's Supreme Court and the U.S. Supreme Court, but also *has* invalidated the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct.

When the SOS December 8, 2023 Email stated "After reviewing your request, the Secretary of State's Office declines to answer your question **at this time**" (emphasis added), the Secretary of State's Office intended to preserve its option to arbitrarily select a future time and apply undisclosed criteria to discriminatorily enforce the Wyoming Uniform Securities Act against CryptoFed, exacerbating the violation of the Due Process Law of Art. 1, § 6, of the Wyoming Constitution and the parallel Due Process Clause of the Fourteenth Amendment of the US Constitution.

### **III** **Conclusion**

In a conflict between the action or inaction of the Secretary of State's Office and the Constitutions of both Wyoming and the United States, the Constitutions of both Wyoming and the United States prevail. In *Lanzetta v. New Jersey*, 306 U. S. 451, 453 (1939) at 453, the US Supreme Court's opinion states, "No one may be required at peril of life, liberty or property to

speculate as to the meaning of penal statutes.” In *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977), the Wyoming’s Supreme Court repeated the same. Given that the Secretary of State’s Office declined to provide clarification, and consequently created a vague situation lacking fair notice as to what CryptoFed should do in order to comply with the Wyoming Uniform Securities Act, for all the reasons set forth in this letter, CryptoFed has no choice but to conclude that the SOS December 8, 2023 Email and the SOS August 1, 2024 Email amount to proof that the Wyoming Uniform Securities Act does not apply to CryptoFed’s specific conduct. The default is freedom. CryptoFed should be able to enjoy its constitutional right to freedom from governmental intervention to pursue its “life, liberty, or property”.

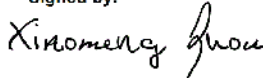
If the Secretary of State’s Office disagrees with CryptoFed’s conclusion, please inform CryptoFed, and provide CryptoFed with legal arguments together with supporting statues and legally binding precedents. CryptoFed would like to resolve the differences through fruitful discussion guided by the spirit of the Rule of Law in good faith. CryptoFed looks forward to a written answer from the Secretary of State’s Office prior to the next Select Committee meeting scheduled on September 16-17, 2024, and appreciates all the help of the Secretary of State’s Office in exploring the crypto frontier, as always.

Sincerely,

/s/ Scott Moeller

DocuSigned by:  
  
A82E97EDD0C44FD...  
Name: Scott Moeller  
Title: Organizer/President  
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

Signed by:  
  
6F7F189BD770455...  
Name: Xiaomeng Zhou  
Title: Organizer/COO  
zhouxm@americancryptofed.org



----- Forwarded message -----

From: **Jesse Naiman** <jesse.naiman1@wyo.gov>

Date: Thu, Aug 1, 2024 at 12:09 PM

Subject: Re: Request for Clarity on Intrastate Token Issuance within Wyoming

To: Xiaomeng Zhou <zhouxm@americancryptofed.org>

Cc: <chuck.gray@wyo.gov>, Kelly Janes <kelly.janes@wyo.gov>, <colin.crossman@wyo.gov>, Senator - Rothfuss, Chris <Chris.Rothfuss@wyoleg.gov>, <Cyrus.Western@wyoleg.gov>, Representative - Andrew, Ocean <Ocean.Andrew@wyoleg.gov>, <Tara.Nethercott@wyoleg.gov>, <Dan.Furphy@wyoleg.gov>, Representative - Singh, Daniel <Daniel.Singh@wyoleg.gov>, <Mike.Yin@wyoleg.gov>, <Affie.Ellis@wyoleg.gov>, LSO - Clarissa Nord <Clarissa.Nord@wyoleg.gov>, <david.hopkinson@wyoleg.gov>, Scott Moeller <scott.moeller@americancryptofed.org>

Mr. Zhou,

Thank you for your inquiry, which we will review.

I would note that we previously declined to answer this question, per my email dated December 8, 2023.

Thank you,

Jesse

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**Jesse Naiman**

Deputy Secretary of State

Wyoming Secretary of State's Office

Phone: (307) 777-5873

Email: [jesse.naiman1@wyo.gov](mailto:jesse.naiman1@wyo.gov)

Website: [sos.wyo.gov](http://sos.wyo.gov)